

SAMPLE

TERMS FOR THE SHARED EQUITY MORTGAGE

A. *Interpretation*

1. In this set of terms:

- (a) “**Additional Costs**” means any other amount that may be added to the Incentive under the terms of the Shared Equity Mortgage including the costs of registering a discharge of the Shared Equity Mortgage from title to the Property;
- (b) “**Business Day**” a day other than a public holiday, a Saturday or a Sunday, and where a time limit under these Mortgage Terms expires on a day that is not a Business Day, that time limit shall be deemed to extend until the next day that is a Business Day;
- (c) “**CMHC**” means, in its capacity as administrator of the Program, Canada Mortgage and Housing Corporation and its affiliates and agents and their successors and assigns;
- (d) “**Approved Lender**” means a lender approved by the mortgage loan insurer under the NHA;
- (e) “**First Insured Mortgage**” means the mortgage or charge insured pursuant to the NHA or PRMHIA and registered in priority to this mortgage or charge on title to the Property, in the amount not to exceed the amount indicated in the Shared Equity Mortgage Agreement;
- (f) “**First Insured Lender**” means the Approved Lender in favour of whom the First Insured Mortgage is granted;
- (g) “**Homeowner**” means the natural persons so identified in the Shared Equity Mortgage, and includes his, her or their heirs and legal representatives, as the case may be;
- (h) “**Incentive**” means the amount advanced by CMHC to the Homeowner under the Program and as set out in the Shared Equity Mortgage Agreement;
- (i) “**Indebtedness**” means the aggregate of,
 - (i) the Incentive; plus
 - (ii) the Shared Equity Amount; plus
 - (iii) the Additional Costs (if any);
- (j) “**Market Value**” means, at the sole discretion of CMHC:
 - (i) the selling price of the Property set out in an agreement of purchase and sale between the Homeowner and a third party who is at arm’s length to the Homeowner within the meaning of the *Income Tax Act*; or
 - (ii) the market value of the Property as determined by CMHC (i.e. by way of an independent appraisal). For certainty, improvements made to the Property during the term of the Shared Equity Mortgage will be included when determining the “Market Value”;

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- (k) **“Mortgage Terms”** means these terms;
- (l) **“NHA”** means *National Housing Act*, R.S.C., 1985, c. N-11, together with its associated regulations and as may be amended, replaced or extended from time to time;
- (m) **“Original Home Value”** means the **lesser** of the purchase price of the Property, and the fair market value of the Property, as determined by the mortgage loan insurer. If improvements will be made to the Property immediately after the purchase then the value of those improvements will be included when determining the “Original Home Value”;
- (n) **“PRMHIA”** means *Protection of Residential Mortgage or Hypothecary Insurance Act*, S.C. 2011, C. 15, together with its associated regulations and as may be amended, replaced or extended from time to time;
- (o) **“Program”** means the first-time home buyer incentive program established by CMHC in accordance with section 57 of the NHA on behalf of the Government of Canada to help a first-time home buyer with the purchase of a home;
- (p) **“Property”** means the property described on the Shared Equity Mortgage. If the Homeowner leases the property or a structure or building on the property, then Property means the lease, except for the last day of the term of the lease, and any other interest, right, option or benefit set out in the lease. If the property is a condominium unit or strata lot, then the Property includes the Homeowner’s interest in the common elements and any other interest that the Homeowner may have in the assets of the condominium or strata corporation. Any references to the Property means all or any part of the Property;
- (q) **“Share”** means:
- (i) where the Property is a resale property, five percent (5%); or
 - (ii) where the Property is a new construction property, five percent (5%) or ten percent (10%), as indicated in the Shared Equity Mortgage Agreement.
- (r) **“Shared Equity Amount”** means CMHC’s share of the difference in (a) the Market Value of the Property on the time of repayment, and (b) the Original Home Value. CMHC’s share will depend on the original Share of the purchase price advanced to the Homeowner (i.e. the Share will be 5% if the Incentive was based on 5% of the Original Home Value at the date of advance, or the Share will be 10% if the Incentive was based on 10% at the date of advance).

By way of example:

(i) **Resale property or new construction property where the approved Share is 5%:**

- (1) **Increase:** if the Original Home Value is \$400,000, the Incentive advanced by CMHC is \$20,000 and the Market Value on the time of repayment is \$480,000, the Shared Equity Amount would be:

$$(\$480,000 - \$400,000) \times 5\% = \$4,000$$

As such, the Homeowner repays the Incentive of \$20,000 **TOGETHER WITH** the Shared Equity Amount of \$4,000 for a total of \$24,000 **PLUS** the Additional Costs (if any).

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- (2) **Decrease:** if the Original Home Value is \$400,000, the Incentive advanced by CMHC is \$20,000 and the Market Value on the time of repayment is \$331,040, the Shared Equity Amount would be:

$$(\$331,040 - \$400,000) \times 5\% = (\$3,448)$$

As such, the Homeowner repays the Incentive of \$20,000 **TOGETHER WITH** the Shared Equity Amount of (\$3,448) for a total of \$16,552 **PLUS** the Additional Costs (if any).

(ii) **New construction property where the approved Share is 10%:**

- (1) **Increase:** if the Original Home Value is \$400,000, the Incentive advanced by CMHC is \$40,000 and the Market Value on the time of repayment is \$480,000, the Shared Equity Amount would be:

$$(\$480,000 - \$400,000) \times 10\% = \$8,000$$

As such, the Homeowner repays the Incentive of \$40,000 **TOGETHER WITH** the Shared Equity Amount of \$8,000 for a total of \$48,000 **PLUS** the Additional Costs (if any).

- (2) **Decrease:** if the Original Home Value is \$400,000, the Incentive advanced by CMHC is \$40,000 and the Market Value on the time of repayment is \$331,040, the Shared Equity Amount would be:

$$(\$331,040 - \$400,000) \times 10\% = (\$6,896)$$

As such, the Homeowner repays the Incentive of \$40,000 **TOGETHER WITH** the Shared Equity Amount of (\$6,896) for a total of \$33,104 **PLUS** the Additional Costs (if any).

- (s) **“Shared Equity Mortgage”** means the Shared Equity Mortgage Agreement, the mortgage or charge registered on title to the Property, including these Mortgage Terms and any schedules that are attached to such mortgage or charge and any renewals or amendments thereto; and
- (t) **“Shared Equity Mortgage Agreement”** means the agreement between the Homeowner and CMHC under the Program pursuant to which CMHC has agreed to advance to the Homeowner the Incentive to be used towards the purchase price of the Property, which the Homeowner agrees to repay to CMHC together with the Shared Equity Amount, and includes all supplements, amendments, renewals, substitutions and replacements thereto.

B. The Shared Equity Mortgage

2. By granting the Shared Equity Mortgage, the Homeowner agrees to mortgage and charge the Homeowner's interest in the Property to CMHC, whether it is a freehold interest or leasehold interest in the Property, as consideration for the Incentive advanced by CMHC to the Homeowner pursuant to the Shared Equity Mortgage Agreement.

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3. The Shared Equity Mortgage secures all debts, liabilities and obligations of the Homeowner to CMHC under the Shared Equity Mortgage Agreement and remains as a continuing charge for such payment and performance until the Homeowner has repaid the Indebtedness in full to CMHC. For certainty, the amount
4. shown on the registered mortgage or charge will not in any way reduce or lessen the obligations of the Borrower under or in respect of the Shared Equity Agreement.

C. Shared Equity Amount

5. As consideration for CMHC advancing the Incentive to the Homeowner, the Homeowner acknowledges and agrees that CMHC is entitled to the Shared Equity Amount.
6. The Homeowner must pay to CMHC an amount equal to the Incentive **PLUS** the Shared Equity Amount **PLUS** the Additional Costs (if any) based on the Market Value of the Property as determined under Section 6 if:
 - (a) the Homeowner sells the Property; or
 - (b) the Homeowner wishes to repay the Incentive in full; or
 - (c) an event occurs under Section 9; or
 - (d) 25 years have passed since the date the Incentive was advanced to the Homeowner.

By way of example, see definition of "Shared Equity Amount".

7. CMHC may make a determination of the Market Value of the Property on, or within 2 weeks prior to,
 - (a) the date on which the Homeowner wishes to repay the Indebtedness in full; and
 - (b) the date when the Indebtedness becomes repayable under the Shared Equity Mortgage.
8. Any amounts payable under these Mortgage Terms shall not be subject to compounding.
9. The costs of any appraisal of the Property shall be borne by the Homeowner.

D. When Principal and other Amounts Secured are Repayable

10. The Indebtedness outstanding at any time and all other amounts then owing under and secured by the Shared Equity Mortgage shall be payable in full on demand, where CMHC determines that:
 - (a) the Homeowner has sold, transferred or otherwise disposed of the Property;
 - (b) CMHC determines that the Homeowner was not eligible for the advance under the Shared Equity Mortgage Agreement at the time of the original advance;
 - (c) the Incentive was used contrary to Part E;
 - (d) the Homeowner increases the principal amount or amounts of the First Insured Mortgage without obtaining the prior written consent of CMHC;

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- (e) the Homeowner fails to comply with any of its obligations under this Shared Equity Mortgage;
- (f) there is a default under the First Insured Mortgage;
- (g) the Homeowner has been fraudulent in their representations for eligibility under the Program; or
- (h) the Homeowner fails to keep the Property in good and reasonable state of repair and condition.

11. Where the Original Home Value and Incentive was subject to required improvements at the time of purchase and the Homeowner failed to complete such improvements, CMHC will take such failure into account when determining Market Value. In such circumstances, CMHC will determine the Market Value for the purpose of payment of the Indebtedness.
12. The Indebtedness outstanding at any time and all other amounts then owing under and secured by the Shared Equity Mortgage shall be payable in full, 120 days after the death of the Homeowner, provided that the obligation to repay shall not apply where the spouse or any one or more of the children of the Homeowner wish to take ownership of the Property and assume the obligations of the Homeowner under the Shared Equity Mortgage.

E. Use of the Incentive

13. The Incentive must be used by the Homeowner to purchase the Property.

F. Use of the Property

14. The Property must be intended to be used as the Homeowner's primary place of residence, and be suitable and available for full-time, year-round occupancy and be located in Canada.
15. Commercial uses are not permitted.

G. CMHC's Remedies

16. CMHC may:
 - (a) reimburse or satisfy any existing or future charge, lien or other encumbrance against the Property;
 - (b) pay the fees and expenses of any receiver, receiver and manager, or of any lawyers (on a substantial indemnity basis), real estate broker, realtor or agency appointed or retained by CMHC in connection with collecting the amount secured by the Shared Equity Mortgage; or
 - (c) take any other proceedings or exercise any of its other rights under the Shared Equity Mortgage including court proceedings to foreclose the Homeowner's right, title and equity of redemption to the Property or, where permitted by law and on the minimum period of written notice to the Homeowner required by law, sell the Property. If any amount received by CMHC from the sale of the Property is less than the Indebtedness, the Homeowner must pay the difference as permitted by applicable laws. To effect the foregoing, the Homeowner hereby waives any legislation prohibiting CMHC from proceeding against the Homeowner on his/her personal covenant.

and all costs, fees or expenses that CMHC incurs in taking any one or more of these steps is payable by the Homeowner and shall be added to the Indebtedness.

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H. Allocation of Payments

Any amount that the Homeowner pays to CMHC on account of the outstanding balance under the Shared Equity Mortgage shall be applied first to accumulated costs of borrowing, if any, and second, to the Incentive.

I. Payment and Prepayment

17. No monthly payment on account of the Incentive or interest shall be required from the Homeowner except as set out in the Shared Equity Mortgage.
18. Early prepayment of the Indebtedness is subject to the consent of CMHC, which will not be unreasonably withheld.
19. In the event of voluntary, early prepayment of the Indebtedness, where no sale of the Property is to occur, CMHC reserves the right to approve the amount being repaid by the Homeowner and to place additional conditions on prepayment including amendments to the calculation of the Market Value of the Property.

J. First Insured Mortgages and Subordination

20. Where the First Insured Mortgage, or any refinance thereof, is a collateral mortgage or charge:
 - (a) the First Insured Lender shall enter into a subordination agreement in the form to be provided by CMHC and to be executed by both the First Insured Lender and CMHC; and
 - (b) in the event the First Insured Mortgage is enforced by either the First Insured Lender or CMHC, the Shared Equity Mortgage shall be paid out in accordance with the subordination agreement and, for the avoidance of doubt, all non-insured debt under the First Insured Mortgage shall be paid subsequent to the repayment of the Shared Equity Mortgage.
21. CMHC agrees and confirms that the Shared Equity Mortgage shall always rank behind a mortgage or charge insured pursuant to the NHA or PRMHIA, which replaces the First insured Mortgage, without increase to the outstanding balance or the amortization period of the First Insured Mortgage (for this Section, the “replacement **insured mortgage**”), and hereby subordinates and postpones the Indebtedness and the Shared Equity Mortgage to such replacement insured mortgage. Notwithstanding the foregoing, where the replacement insured mortgage is a collateral charge that secures indebtedness that may not be subject to the NHA or PRMHIA insurance, this subordination and postponement is **only** effective in respect of the indebtedness insured pursuant to the NHA or PRMHIA and **does not** apply in respect of any uninsured indebtedness secured by such replacement insured mortgage.

K. Approval of Sale By CMHC

22. In the event of an intended sale of the Property to a third party who is at arm's length to the Homeowner within the meaning of the Income Tax Act, at least 10 Business Days prior to the proposed closing date, the Homeowner must provide to CMHC all documents and other deliverables required by CMHC in accordance with its guidelines and procedures.

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L. Repayment

23. The Shared Equity Mortgage shall be discharged upon the full payment of the Indebtedness and the performance by the Homeowner of all of its obligations under the Shared Equity Mortgage. The discharge of the Shared Equity Mortgage shall be prepared by CMHC, and, where permitted by law, all legal and other expenses for the preparation, execution and registration of such discharge shall be borne by the Homeowner.

M. Portability

24. This Shared Equity Mortgage is not portable and cannot be assigned by the Homeowner to any other person.
25. The Homeowner may only add one or more persons on title to the Property if:
- (a) the prior written consent of CMHC is obtained; and
 - (b) the person enters into an assumption agreement whereby they covenant, promise and agree to and with CMHC to pay all Indebtedness, and to observe, perform, keep and be bound by every covenant, attornment, term, condition and agreement contained in the Shared Equity Mortgage to the same extent as if such person had executed the Shared Equity Mortgage as the Homeowner.
26. If, at any time, the person registered on title to the Property changes and such person is not the original Homeowner, such person agrees to be bound by all obligations of the original Homeowner under the Shared Equity Mortgage.

N. General Provisions

27. All buildings, structures, improvements, substitutions, additions or alterations on, made to or in respect of the Property, now or at such later date shall form part of the Property and be subject to the Shared Equity Mortgage.
28. The Homeowner shall pay punctually when due, all amounts owing:
- (a) Under the First Insured Mortgage or other loan agreement or under any other contractual, statutory or other legal or equitable obligation (including any tax) that ranks or could in any event rank in priority or equal to the Shared Equity Mortgage; and
 - (b) In respect of the Property including, without limitation, all municipal property taxes, the fees and charges under the declaration, by-laws and rules and regulations of the condominium corporation or strata corporation, as the case may be, and all utilities.
29. On each anniversary date of the Shared Equity Mortgage (or when requested by CMHC in writing) the Homeowner shall provide CMHC with written evidence of payments noted above. If the Homeowner fails to make any such payments, or to provide such confirmation to CMHC's reasonable satisfaction, CMHC may pay the amount thereof, which amount shall be added to the Indebtedness secured by this Shared Equity Mortgage.

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30. The Homeowner must insure and keep insured all buildings, structures, fixtures and improvements on the Property in accordance with the provisions of the First Insured Mortgage or, if there is no First Insured Mortgage, in accordance with customary requirements for properties similar to the Property.
31. Any notice required to be given to the Homeowner or to CMHC may be made by giving it at the respective address for each stated on the Shared Equity Mortgage, and shall be deemed to have been given on the next Business Day following the date of personal delivery or facsimile transmission, or the fourth next Business Day after the date of mailing. Either the Homeowner or CMHC may change its address for service by giving written notice to the other party in accordance with this Section.
32. No modification, variation or amendment of the Shared Equity Mortgage, or any explanation of any provision of the Shared Equity Mortgage, shall be effective and binding upon the Homeowner unless in writing and signed by CMHC.
33. If any part of the Shared Equity Mortgage is found to be illegal or unenforceable, the validity or enforceability of all other parts of the Shared Equity Mortgage will not be affected.
34. The Shared Equity Mortgage is governed by the federal laws of Canada and applicable laws of the jurisdiction where the Property is located.
35. If the Property is located in Manitoba, **The *Mortgage Act (Manitoba)* provides that the Homeowner can obtain free of charge from CMHC a statement of the debt secured by the mortgage once every twelve months or as needed for pay off or sale.**
36. If the Property is located in Alberta, the Shared Equity Mortgage is a high ratio mortgage to which sections 43(4.1) and (4.2) and 44(4.1) and (4.2) of the *Law of Property Act (Alberta)* apply. The Homeowner and anyone who, expressly or impliedly, assumes the Shared Equity Mortgage from the Homeowner, could be sued for any obligations under the Shared Equity Mortgage if there is a default by the Homeowner or by a person who assumes the Shared Equity Mortgage. In this section, a high ratio mortgage means a mortgage of land given to secure a loan under which the maximum amount secured by the mortgage, together with the amount of any other existing encumbrance on or mortgage of the same land, exceeds 75% of the market value of the Property at the time the mortgage was given.
37. The parties have agreed that these Mortgage Terms and all documents related thereto will be drafted in the English language. Les parties aux présentes ont convenu que cette convention et tous les documents qui s'y rapportent soient rédigés en langue anglaise.