



# What Works

Securing Affordable and Special Needs Housing through Housing Agreements

## ACKNOWLEDGEMENTS

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# 1.0 Introduction

Metro Vancouver member jurisdictions have varying experience and capacity when it comes to developing and implementing Housing Agreements. This “What Works” Resource Guide was prepared in response to an interest from Metro Vancouver member jurisdictions, who saw value in documenting best practices and shared learnings, and developing guidelines for drafting, administering, and monitoring Housing Agreements.

Although a local government can only enter into a Housing Agreement by bylaw, the Housing Agreement itself is a contract. This means that the terms of a Housing Agreement must be agreed upon by both the local government and the land owner. The Housing Agreement is often a condition of the sale or rezoning of the subject land, and the terms are typically negotiated with the land owner well in advance of a local government’s adoption of a bylaw to authorize the agreement. Unlike zoning bylaws, which can only govern the use of land, Housing Agreements can specifically authorize provisions with respect to the occupancy and form of tenure of the housing units. Furthermore, Housing Agreements can include provisions regulating the availability of the housing units to classes of persons identified in the agreement (e.g. seniors, low income families), the administration and management of the housing units, the rental and sale prices, and the rates at which these may be increased over time.

Housing Agreements are regularly used in conjunction with Section 219 Covenants, which – like zoning bylaws – can regulate the use of land, and can also regulate subdivision and be more specific about the construction of buildings (e.g. densities). Through the use of a Housing Agreement, local governments can include restrictions beyond those that may be specified through zoning or a Section 219 Covenant, particularly with regards to restricting the user (occupancy) of the land. As of 2019, local governments in British Columbia also have the option to use **Residential Rental Tenure Zoning** as a means to restrict tenure.

## Residential Rental Tenure Zoning

A zoning tool in British Columbia that can regulate tenure in the case of rental housing but cannot regulate rental rates or target populations.

Local governments often utilize Housing Agreements to reinforce a community’s housing policy objectives – such as increasing the supply of affordable housing, facilitating the supply of special needs housing, or preserving or protecting housing over the long term. Since the *Local Government Act* does not predetermine what is meant by affordable housing or special needs housing, local governments have considerable flexibility to respond to the specific housing needs of their own communities.

## Templates and Standard Terms

Given the nuance and complexity unique to each project and site, the development of standard terms and definitions, using template agreements, especially from a different local government, can be challenging and inefficient. This Resource Guide is to assist in the preparation of Housing Agreements, but it is recommended that they are also reviewed by a lawyer.

Expanding the supply and diversity of housing to meet a variety of needs is a key direction of Metro Vancouver's *Regional Affordable Housing Strategy (2016)*, and *Metro Vancouver 2040: Shaping Our Future (Metro 2040)*, the regional growth strategy. Some of the ways that Metro Vancouver advances regional planning and housing policy goals is by convening member jurisdictions and stakeholders on planning issues of common interest, and providing planning resources to members through the development of policy and best practices research. Previous reports in the "What Works" series looked at local government measures for facilitating affordable housing (2012) and effective local government practices to sustain and expand the supply of purpose-built rental housing (2016).

This Resource Guide draws from the collective experiences of planning, development, and non-profit housing professionals across British Columbia to identify key factors that contribute to the successful creation and implementation of Housing Agreements. In addition, legal review by Young Anderson Barristers and Solicitors provided the important legal perspective for determining "What Works" when drafting and enforcing effective Housing Agreements.

This Resource Guide is intended to help Metro Vancouver local governments employ Housing Agreements by:

- providing an overview of Housing Agreements and their legislative context;
- outlining the key steps to structuring a Housing Agreement;
- identifying success factors and key considerations for entering into, administering, monitoring, and enforcing a Housing Agreement;
- highlighting common challenges and proposed solutions for local governments; and
- presenting illustrative scenarios that highlight Housing Agreement terms and conditions for a diversity of housing types.

## 2.0 Legislative Context

In British Columbia, a local government may, by bylaw, enter into a Housing Agreement under Section 483 of the *Local Government Act (LGA)*. When combined with a covenant – which is common practice – Housing Agreements may also engage Section 219 of the *Land Title Act (LTA)*.

### Housing Agreements – *Local Government Act (Sec. 483)*

Amendments to the LGA in 1993 enabled local governments to enter into Housing Agreements (formerly under Section 905) with property owners as a means to restrict the occupancy and use of the housing proposed for a site.

Under what is now Section 483 of the LGA, a local government may enter into a Housing Agreement with an owner of land to supply affordable housing or special needs housing. Section 483 explicitly grants local governments the authority to impose requirements on the user of the land.

Housing Agreements “run with the land”, thereby committing any future owner/user of the property to be bound by the terms of the agreement.

Under Section 482 of the LGA, local governments are granted the authority to establish different density rules or conditions under a zoning bylaw in exchange for the provision of affordable or special needs housing. This condition is typically detailed in a Housing Agreement before a building permit is issued (Section 482(2)) and may include higher density development or other regulatory relaxations.

### Section 219 Covenants – *Land Title Act (Sec. 219)*

Although covenants can be created by contract between any two land owners, Section 219 of the LTA authorizes the registration of a very unique type of covenant, in favour of local governments and certain other entities. Among other features, these covenants can include positive obligations, and are enforceable against the **covenantor** and any future owner of the property.

#### **Covenantor**

The person/group who enters into a formal agreement with the local government (the covenantee). While the covenantor is the current owner, the agreement also binds future owners of the property.

A Section 219 Covenant can concern the use of the land, buildings or construction on the land, including subdivision of the land, but it typically does not concern the user(s) of the land (i.e. it cannot address rental rates, occupancy, target population). For example, a Section 219 Covenant can be used to:

- limit the density of a development;
- require that land is to be built upon (as per the covenant) or is not to be built upon;
- prohibit the subdivision of the land; or
- protect, maintain, or restore a park, historical structure, or cultural amenity.

When a Housing Agreement is authorized by bylaw, a notice is filed in the Land Title Office. However, a Housing Agreement is often coupled with a Section 219 Covenant where the local government also desires restrictions in respect of use, building, and subdivision where those restrictions go beyond the “occupancy” provisions available under the legislation. Local governments have varying practices for how they do this – some will attach the Housing Agreement to the Section 219 Covenant and others will incorporate the terms of the Housing Agreement within the Section 219 Covenant.





# 3.0 Housing Agreements 101

## What is a Housing Agreement?

A Housing Agreement is a contract that is entered into voluntarily by a purchaser or property owner with a local government. It is often a condition of rezoning or sale of land by the local government to an owner/developer. Housing Agreements are a powerful tool that help facilitate non-market housing development and secure the longevity of **affordable or special needs housing** by specifying certain terms and conditions. The terms and conditions of a Housing Agreement will vary depending on the project and the community and may include:

- the groups or persons permitted to occupy the building (e.g. seniors, low income households, or a mix of tenants);
- type of tenure (rent or ownership);
- rent levels;
- price restrictions (upon re-sale);
- administration or management requirements; and
- other terms related to the occupancy.

### **Affordable or Special Needs Housing**

Provincial legislation does not define affordable or special needs housing. It is up to each local government to define, and to align these definitions with the needs of their community and local policy objectives.

## How is a Housing Agreement drafted?

Typically, Housing Agreements are a requirement of a rezoning/development application and the specific elements are negotiated between the local government and the owner during the approval process. The negotiation of the Housing Agreement can also involve consultation with other parties, for example, funders and other key project partners. The Housing Agreement is typically drafted by the lawyer for the local government and then reviewed by the lawyer for the owner, with a final draft endorsed by Council before being registered on title. Housing Agreements are typically required prior to the issuance of a building permit.

## How is a Housing Agreement entered into?

A Housing Agreement, and any amendments to it, must be entered into by bylaw and the local government must file notice at the Land Title Office. Once the notice is filed, the Housing Agreement becomes legally binding on future owners of the land and legal notation of the Agreement will appear on title of the respective property. However, the actual agreement will not be registered as a charge on the title to the property, and if a person doing a land title search wanted to view the agreement, they would have to contact the local government to obtain a copy.

As such, in addition to the above-mentioned notice, a good practice that many local governments follow is to register the Housing Agreement as a Section 219 Covenant which shows up as a charge on the land's title, and a copy can then be obtained from the Land Title Office. This practice ensures that future purchasers are aware of the agreements on the land. This can also potentially protect the local government by ensuring that they receive priority in terms of payment obligations of the covenantor above those of lenders or financial institutions. Without a Section 219 Covenant with a priority agreement, the local government may be unable to enforce a notice of Housing Agreement against the holder of prior charges.

## Can a Housing Agreement be revised or rescinded?

Section 483 of the LGA states that a local government may enter into a Housing Agreement by bylaw. As a result, once the Housing Agreement bylaw has received final reading, it can only be revised by an amending bylaw. To remove a Housing Agreement, the bylaw must be rescinded, and the notation removed from title to the land.

## Who are the parties involved?

The owner (private or non-profit) and the local government are typically the principal parties involved when entering into a Housing Agreement. In circumstances where the local government is the owner of the land, other organizations may also be included in the agreement, for example, the lessee or the operator of the secured units located on the property. Notice of a Housing Agreement is registered on title by a local government to ensure that its requirements are known to potential purchasers, and that the agreement will be binding on future owners.

Housing Agreements should be considered any time a local government wants to impose terms and conditions related to the occupancy of housing units. They are typically used in the following circumstances:

- a. the local government is directly selling a piece of land and has a specific vision for how the land is to be used in the future;
- b. a rezoning was enacted with an intention to build affordable housing;
- c. a density bonus is granted in exchange for amenities including affordable or special needs housing; or
- d. as a condition of authorizing strata conversion or stratification of an existing building.

The following sections of the Resource Guide outline the typical structure of a Housing Agreement, a step-by-step guide to developing a Housing Agreement, and discussion of common challenges, solutions, and case studies to support the drafting of a Housing Agreement.

### **What happens to the Housing Agreement when a building is demolished or redeveloped?**

A Housing Agreement is independent of the building. Once a notice of the agreement is filed at the Land Title Office, it runs with the land. The Housing Agreement would therefore remain in effect until the notation is removed from title to the land.

# 4.0 Building Blocks: Structuring a Housing Agreement

The purpose of this section is to provide an overview of the common elements, or “Building Blocks”, of a Housing Agreement. Each common element is defined in the order of a typical Housing Agreement. This structure is for illustrative purposes only and may differ depending on a local government’s objectives and individual legal advice.

## Authorizing Bylaw

The authorizing bylaw permits the local government to enter into a Housing Agreement with the owner. Typically, the authorizing bylaw is brief, and attaches the terms of the Housing Agreement as a schedule.

## Identification of Parties

The identification of the parties entering into the agreement. This includes the legal name and address of each party involved.

## Recitals and Consideration

These are the introductory statements in the Housing Agreement, similar to a preamble, which provide the context and background to the agreement.

**Recitals** are usually identified by the word “WHEREAS” at the beginning of the statement. The omission of recitals does not invalidate the Housing Agreement bylaw, or make it unenforceable. However, a **consideration clause** is required to make the agreement legally binding between the parties and represents a bargained-for exchange of value between parties to a contract. Typically, a consideration clause of a nominal cost (e.g. a sum of ten dollars) paid by the local government to the owner is used to meet this requirement.

## Definitions

Terms used in the Housing Agreement are defined to make interpretation of the Housing Agreement easier. Similar to definitions used in a zoning bylaw, these define what a particular term or word means. For example, definitions could include the user group (e.g. seniors, workforce, single-parent households, eligible tenant, etc.), the tenure terms (e.g. rental, ownership), and any rent or re-sale criteria (e.g. affordable rent, permitted rent, Housing Income Limits). As with any legal instrument, definitions should be very carefully drafted. Ambiguity in defined terms (or other aspects of a Housing Agreement) can result in an agreement that does not achieve a local government’s policy goals for the housing units that are subject to it and can make some or all of the agreement difficult to administer or enforce.

## Interpretive Rules (or Interpretation)

The interpretation section is included, if necessary, to provide further clarification on ordinary terms used in the agreement such as currency, gender, headings, and subsections. For example, an interpretation clause could be included to identify that gender specific terms (his/her) in the Housing Agreement are meant to include both genders and include corporations. Another example would be to clarify the currency used in the agreement (e.g. Canadian Dollars). It is a best practice to obtain legal input on what interpretation clauses should be included in a Housing Agreement.

### Recitals

Short and concise statements describing the context of the Housing Agreement.

### Consideration Clause

Required to make the agreement legally binding between the parties and represents a bargained-for exchange of value between parties to a contract.

## Terms

Any Housing Agreement must have at least one term or condition “respecting the occupancy of the housing units identified in the agreement” (Section 483 LGA). This may include, but is not limited to, clauses regarding whom may occupy the units, rent or re-sale restrictions, tenure, and any procedures for compliance issues and enforcement. A common drafting technique is to have agreement terms grouped into subsections for ease of reading. For example, a Housing Agreement could be drafted with separate sections addressing tenancy and occupancy, rental rates and affordability of the units, and remedies/enforcement.

## General or Miscellaneous Provisions

While key terms are those that reflect the agreement between the two parties, this section is for other more general provisions that can cover requirements such as legal costs, that the agreement runs with the land and binds any future owners of the land, registration at a Land Title Office, and other miscellaneous obligations of the parties.

## Authorization of the Owner

Housing Agreements must be entered into with the consent of the owner and cannot be imposed. The Housing Agreement is signed by both parties. Signatures are found at the end of the agreement, although when the agreement is combined with a Section 219 Covenant, signatures might be on the *Land Title Act Form C* instead.

## Filed with Land Titles

Section 483(5) of the LGA requires the local government to file a Notice of the Housing Agreement (and any amendments) in the Land Title Office. Filing of the notice makes the agreement binding on “all persons who acquire an interest in the land”.

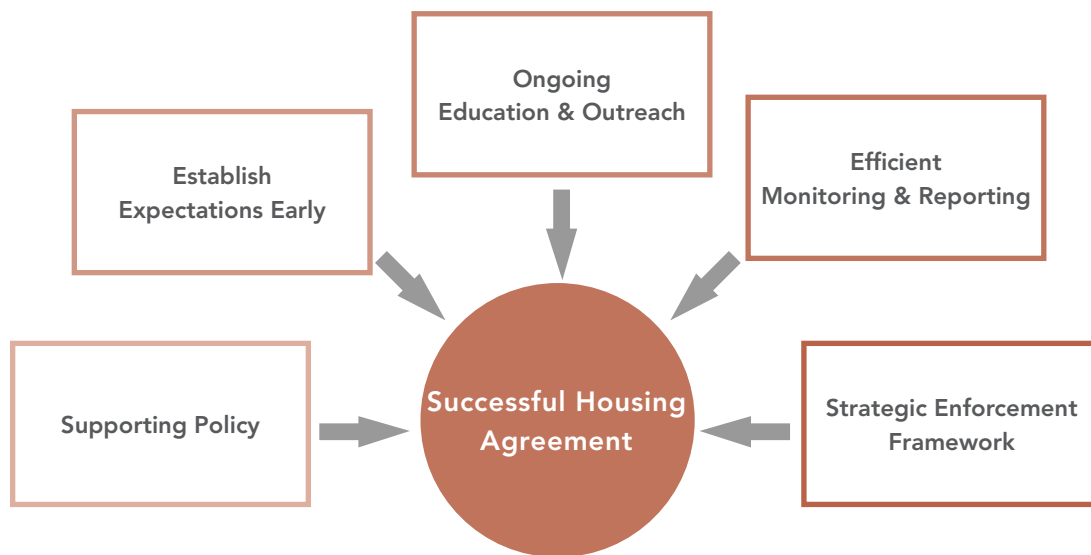
## STEP-BY-STEP PROCESS TO DEVELOPING A HOUSING AGREEMENT

1	<b>Understand Project Context</b> <ul style="list-style-type: none"><li>• Who is the owner of the site? Is it a not-for-profit society, a private developer, government entity, municipality?</li><li>• In the case of a local government owned lot, will the lessee be included in the Housing Agreement?</li><li>• What funders are or may be involved (i.e. BC Housing, CMHC)? If so, what are the requirements of the funding program?</li><li>• What local government policies regarding affordability or housing need are applicable?</li><li>• Who is the target group to be served? What level of affordability is being targeted?</li></ul>
2	<b>Develop Key Principles</b> <ul style="list-style-type: none"><li>• Consider existing policy directions that apply to the project site</li><li>• Communicate expectations and co-develop a set of Housing Agreement Key Principles with owner or lessee</li><li>• Ideally, these principles are acceptable to both parties before the project proceeds through design development and approvals</li><li>• Optional: Preliminary approval (Applicant signs) and Council endorsement of Principles at 1st Reading of the applicable bylaw</li></ul>
3	<b>Draft Housing Agreement</b> <ul style="list-style-type: none"><li>• Work with in-house or external legal team to draft the Housing Agreement based on the Key Principles developed with the Applicant; in particular, whether the Housing Agreement should include a Section 219 Covenant on title and whether a consent to priority should be obtained (i.e. if mortgage foreclosure)</li><li>• Clarify terms, definitions, considerations</li><li>• Reference and include floorplans and drawings as necessary</li></ul>
4	<b>Review and Revise</b> <ul style="list-style-type: none"><li>• Draft is sent to Owner and Funders (if possible) for a round of legal review</li><li>• Identify issues and make revisions as necessary</li><li>• Collaborate with any funding organizations to streamline reporting requirements</li><li>• Confirm the Housing Agreement does not conflict with or contravene other agreements or laws: operating agreement, <i>Strata Property Act</i>, <i>Residential Tenancy Act</i>, <i>BC Human Rights Code</i>, Canada Revenue Agency requirements</li></ul>
5	<b>Approval and Endorsement</b> <ul style="list-style-type: none"><li>• Owner signs the Housing Agreement</li><li>• Housing Agreement is presented to Council for endorsement</li><li>• 3rd or 4th/Final Reading of the applicable bylaw</li></ul>
6	<b>Registration on Title</b> <ul style="list-style-type: none"><li>• File notice of Housing Agreement as notation at Land Title Office and, if also a Section 219 Covenant, register agreement at Land Title Office as a charge on title.</li></ul>

# 5.0 Success Factors

Based on the collective experiences of planning, development, and non-profit professionals across British Columbia, the following key factors that contribute to the successful implementation of Housing Agreements were identified.

## SUCCESSFUL HOUSING AGREEMENT FACTORS



### Supporting Policy

Local governments with a robust policy framework around housing and affordability are better positioned to negotiate successful Housing Agreements. The Housing Agreement itself should not be seen as an ad-hoc opportunity to create new expectations and requirements; rather, it should be used as a tool to achieve existing planning and policy targets.

*Metro 2040* and a local government’s Housing Needs Report, as required by the Province, can guide local government targets and provide insight into regional housing trends and projections. However, housing action plans and affordable housing policies may differ to allow each local government to respond to the community’s specific housing needs, local priorities and aspirations. For example, some local governments

may have policies or plans that address specific needs for rental housing, family-friendly housing, workforce housing, or other special needs housing for vulnerable populations.

Furthermore, a local government should ensure that its housing policies include clear definitions of affordability that accommodate (or are not in conflict with) definitions used by BC Housing and Canada Mortgage and Housing Corporation (CMHC) funding programs or regional development cost charge (DCC) waiver programs. Compatibility of funding requirements and local government requirements can create synergies that encourage and support the development of affordable housing.

When drafting a Housing Agreement, a local government may consider referencing associated local government policies (e.g. family-friendly housing, tenant relocation and protection) in the recitals section to improve transparency and increase understanding.

Local government policies may include language to support the registration of Housing Agreements in perpetuity, particularly when significant local government investments are involved in a project. This helps to bolster the use of Housing Agreements as a tool to secure and protect affordable housing stock in the jurisdiction.

Other legal mechanisms to secure the property include clauses for Right-of-First-Refusal and Option to Purchase in favour of the local government, which gives a local government the option to match a purchase price for the property. With this clause, the Land Title Office will not allow an owner to sell the property unless the local government waives its interest.

## Establish Expectations Early

Plans and policies help to establish high-level expectations regarding what a local government is looking to achieve in their community, and communicates these expectations to developers. Through the rezoning and development approvals process, it is equally important to set expectations related to Housing Agreements, and to start conversations with owners and any relevant stakeholders as early as possible. Clear processes and early communication allow affordable housing developers to budget appropriately and avoid surprises that could compromise project viability or affordability of the project late in an approvals process. A Housing Agreement is both contractual and voluntary, which means that there is room for negotiation. Ideally, an agreement allows the project to proceed with both parties being satisfied with the arrangement. Although

each project will differ, consistency in the timeline and process helps to establish a baseline level of agreement at the early stages of a project, which will facilitate the process when it comes to drafting and formally entering into the agreement.

Developing guiding principles for the Housing Agreement should begin with understanding the owner/applicant's project and identifying what negotiable items would be of value to the project. A Housing Agreement is part of a larger negotiation process between the local government and owner/operator for various allowances, such as density bonusing, parking relaxations, exceptions to minimum unit sizes, land equity, fee waivers or grants, etc. In return, the local government will propose a set of terms for the project, to, for example, secure a desired tenure and level of affordability. It is critically important for local government staff to clearly establish these guiding principles on a per-project basis as these will assist in clearly articulating the objectives of the agreement to the lawyer as they draft the Housing Agreement.

Equally important is the commitment to understand how local governments can work with non-profit organizations that might be involved as owners or operators, to leverage the Housing Agreement as a means to better support and serve specific clients. For example, in a recent project for women and children fleeing violence, additional eligibility criteria and restrictions were outlined in a Housing Agreement to ensure the privacy and safety of all residents.

## Ongoing Education and Outreach

Housing Agreements are only useful as a tool if all parties abide by the terms. In order to achieve consensus, buy-in, trust, and commitment to the agreement, local governments must demonstrate a willingness to build good working relationships and identify opportunities for improvement.

As allies in advancing affordable housing, local governments should be prepared to work collaboratively with BC Housing (or other funders) to better understand the funding programs and to avoid conflicts with BC Housing's Operating Agreements. Competing interests and policies can create roadblocks that are counterproductive to ensuring that affordable housing is built.

### How does a Housing Agreement impact a property's value?

As with changes to zoning, a Housing Agreement can impact the assessed value of a property. Depending on the appraisal method used, a restrictive covenant and/or Housing Agreement could potentially result in a lower valuation. In the case of a non-profit organization, this outcome could be seen as favourable since it could lead to reduced property tax rates.

Stakeholder outreach and education also includes ongoing consultation with affordable housing developers and non-profit operators to create opportunities for engagement outside of the negotiation setting. Reaching out to tenants can also be an important opportunity for increasing awareness of a Housing Agreement and the tenant's knowledge of the owner's responsibilities. Platforms for open communication and mutual learning build trust and understanding that contribute to a smoother negotiation process.

Ongoing outreach and education also involves engaging with the respective local government Council to raise awareness and support for Housing Agreements as a mechanism to secure affordable housing in a community. The more that Council understands the parameters of a Housing Agreement, the better prepared they will be when responding to any concerns raised by the community.

## Efficient Systems for Monitoring and Reporting

For local governments, compliance with Housing Agreements can be entirely voluntary or encouraged by periodic monitoring, but sometimes direct enforcement measures are required. Most local governments have limited capacity to engage in proactive monitoring, which means the onus is often placed on the housing operator or property manager to provide evidence of compliance through reporting requirements. A common form of monitoring and reporting is through a Statutory Declaration process whereby operators and/or property managers declare tenants' incomes, rent levels, and other fees. The content and frequency of reporting may vary depending on the specifics of the Housing Agreement and the context of the project, and personal information sharing needs to be evaluated within the parameters of applicable privacy legislation and regulations.

### Example: City of Richmond

Recently, the City of Richmond simplified reporting requirements for their Low-End Market Rental program, requiring only one Statutory Declaration from the owner with operating information attached.



Reporting requirements have been raised as a challenge by non-profit housing providers, particularly when the process is cumbersome or when the local government and funders both have separate reporting requirements, potentially increasing costs and/or duplicating the amount of work for administrative staff. Though there is not one standard that fits all, some of the most efficient reporting mechanisms typically involve a single Statutory Declaration submitted to the local government by the owner, with operating information such as tenant addresses, contact information, proof of household income (if necessary for the terms of the agreement), and rent charges, attached as appendices. This is a far more efficient approach than requesting a Statutory Declaration signed by each tenant.

Furthermore, shifting reporting frequency from annual reporting to once every two to three years could also help to alleviate any administrative burden without compromising the efficacy of the Housing Agreement. This can also reduce the amount of time local government staff will need to spend reviewing these submissions. As the number of Housing Agreements increase, an auditing system could be employed to randomly verify these submissions.

Further suggestions for efficient monitoring and reporting are identified in the “Common Challenges and Solutions” section of this Resource Guide.

**Tip: BC Housing engages in a comprehensive review process every three years for projects with an Operating Agreement in place. To further capitalize on reporting efficiencies, local governments could consider streamlining the process by accepting a copy of BC Housing’s operational review as an alternative to local government forms when available, supplemented by verification of outstanding items where needed.**

## Strategic Enforcement Framework

The ability to enforce Housing Agreements is critical to their success. Housing Agreements can be a challenge to enforce if one or more of the following occurs:

- There is disagreement as to whether the activity in question is in fact a contravention of the Housing Agreement;
- The Housing Agreement lacks disincentives (e.g. penalties) to dissuade those who knowingly contravene the agreement; or
- The local government does not have the resources or knowledge to follow-up on penalties or fines owed by the owner or is unable to come to a resolution on how the situation can be brought into compliance.

Building capacity for enforcement can be considered in three ways (whether separately or in combination):

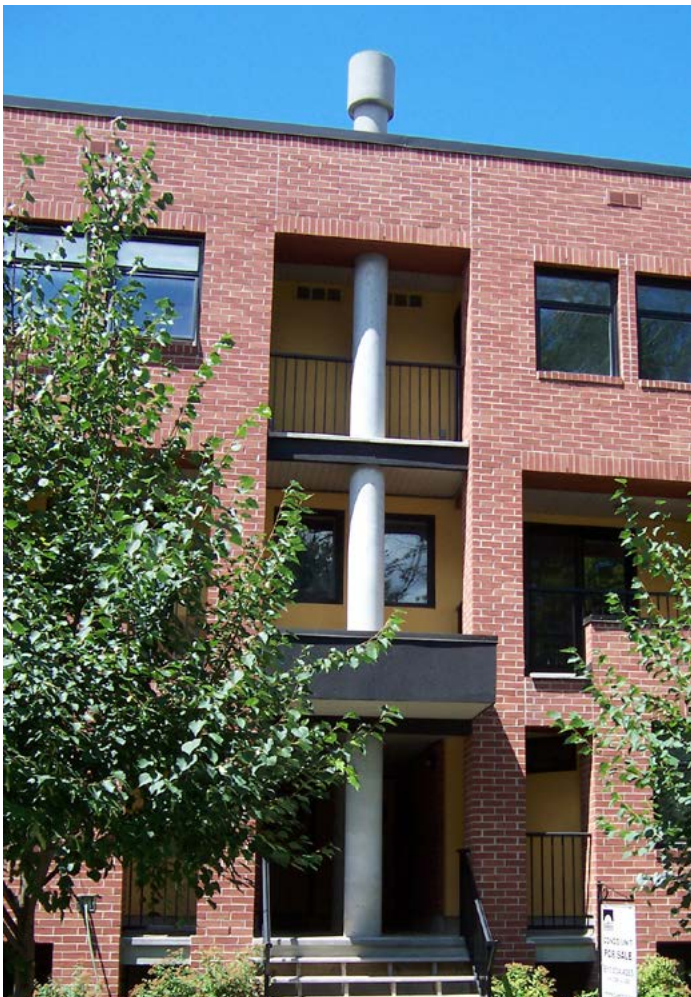
1. Include enforcement terminology (e.g. offences and penalties) in the Housing Agreement to enable and validate enforcement activities;
2. Allocate resources and staff to enforcement; and
3. Simplify and streamline the monitoring and enforcement process to create more efficient use of staffing resources.

A Housing Agreement needs to not only be drafted as clearly as possible with respect to key terms, but also to set out consequences if the agreement is not honoured. Escalating steps of enforcement should be defined within the Housing Agreement itself. Further information on escalating steps of enforcement can be found in the “Common Challenges and Solutions” section of this Resource Guide.

The agreement can also outline the possibility of legal action should the non-compliance continue after efforts to resolve the issue have failed. However, the available remedies may not be entirely effective. The local government may seek to force compliance by seeking injunctive relief (a court order to stop the non-compliance) or, alternatively, seeking damages for breach of the agreement. The ability to seek damages is of questionable use, as it is not clear that the local government suffers a loss if a housing unit is occupied by someone other than the permitted occupant or if a property is sold for higher than the restricted price. Injunctive relief can be successful in some cases at stopping an ongoing breach, but it will not be useful where the breach is the result of a single completed transaction, such as a land sale above restricted prices.

As such, a local government should consider some flexibility when considering enforcement, including alternative methods to legal action such as mediation, which may help determine the reason for non-compliance, and seek to bring the matter into compliance (e.g. a tenant finds new employment that increases their income, but is not yet able to find new housing). Depending on the level of cooperation from the owner and willingness to comply, planning/housing and legal staff or advisors should work closely to decide whether to pursue conflict resolution or initiate higher levels of enforcement. Non-profit affordable housing and special needs housing provide a community benefit – therefore, all efforts should be made to resolve non-compliance without increasing financial burden on an organization providing or operating these units.

Commencing legal action for breach of a Housing Agreement should be considered a last resort in circumstances involving non-profit affordable and special needs housing because of the potential negative impact on the non-profit organization operating the units, which may in turn have a negative impact on tenants.



## TABLE: AT A GLANCE COMPARISON OF HOUSING TYPES

The following table provides a summary of the main housing types that would be secured by a Housing Agreement.

Housing Types	Tenure	Considerations for Agreement	Sample Eligibility Criteria	Context/Notes
<b>Affordable Homeownership</b>	Owner-occupied	<ul style="list-style-type: none"> <li>• No re-sale for # years</li> <li>• Re-sale price restriction</li> </ul>	<ul style="list-style-type: none"> <li>• First time buyers</li> <li>• Former residents of non-market housing</li> <li>• Primary residence only</li> <li>• Household income limits</li> </ul>	Many local governments are now exploring the possibility of incentives for affordable homeownership. Current examples restrict re-sale for a number of years. Resort community examples often include price increase restriction tied to rate of inflation or some other measures.
<b>Secured Rental Housing</b>	Rental	<ul style="list-style-type: none"> <li>• Units secured as market rental or below market rental</li> <li>• Duration</li> </ul>	<ul style="list-style-type: none"> <li>• Typically, none</li> <li>• Income limits for discounted units</li> </ul>	Secured rental housing policies support the development of new market rental. May be secured for a set number of years or in perpetuity.
<b>Rental Units in a Strata/Mixed Tenure Housing</b>	Owner-occupied + Rental	<ul style="list-style-type: none"> <li>• Units secured as rental or below market rental in strata building</li> </ul>	<ul style="list-style-type: none"> <li>• Income limits</li> </ul>	Typically market rental in strata condominiums. However, strata condos with non-market rental may increase as local governments seek more ways to increase rental options.
<b>Non-Market Housing</b>	Rental	<ul style="list-style-type: none"> <li>• Units rented at below market levels</li> </ul>	<ul style="list-style-type: none"> <li>• Income limits</li> <li>• Population groups (e.g. seniors, families, singles, individuals experiencing homelessness)</li> </ul>	Many sites have operating agreements and funding obligations similar to restrictions and reporting requirements of Housing Agreements.
<b>Special Needs Housing</b>	Rental/Transitional	<ul style="list-style-type: none"> <li>• Units rented to individuals/ households with specific characteristics, i.e. age or ability</li> </ul>	<ul style="list-style-type: none"> <li>• Income limits</li> <li>• Population groups (e.g. youth, women and children)</li> <li>• Other focus (e.g. rehabilitation, hospice, supportive)</li> <li>• Agreement to participate in temporary housing</li> </ul>	Many sites have operating agreements and funding obligations similar to restrictions and reporting requirements of Housing Agreements.

# 6.0 Key Considerations By Housing Type

The following are key considerations based on six housing types that could be subject to a Housing Agreement.

## Affordable Homeownership

- What is the eligibility criteria for owners (e.g. first-time buyers)?
- Are there any restrictions on owner-occupancy/primary residence?
- Are there any restrictions for re-sale timing or pricing?
- Are there any income limits and/or income reporting requirements?
- Upon re-sale, is there any equity capture for the owner/local government?

## Secured Rental Housing

For secured rental housing, a local government may wish to consider other tools for securing the rental units, such as the use of Residential Rental Tenure Zoning.

- Would the secured rental housing be better achieved by way of Residential Rental Tenure Zoning? (legal advice is recommended)
- Will there be any rent level restrictions or caps?
- Will rental rates be tied to any particular metric?
- Are the rental units to remain rental in perpetuity?
- What level of detail will be required in a Statutory Declaration for monitoring (if any)?

## Rental Units in a Strata / Mixed Tenure Housing

- Will there be any rent level restrictions or caps?
- Will rental rates be tied to any particular metric?
- Will there be an income limit or asset limit for tenants of the affordable units?
- Are the rental units to remain rental in perpetuity?
- What level of detail will be required in a Statutory Declaration for monitoring (if any)?
- Do affordable rental unit tenants have access to shared spaces/amenities?

## Non-Market Housing

- What is the level of affordability?
- Will rental rates be tied to any particular metric?
- Will there be an income limit or asset limit for tenants?
- What is the eligibility criteria for tenants?
- Is there a particular population group to be served by this project (e.g. seniors, families, etc.)?
- Will there be funding partners involved?
- What are the funding requirements?
- Will an operating agreement be in place?
- What is the owner/operator's capacity to report annually?
- Are there any other reporting requirements through funders?
- Are there any opportunities for efficiencies in reporting?

## Special Needs Housing

- What are the population group(s) to be served by this project?
- What is the tenure (e.g. rental, temporary transitional)?
- Are there any particular special needs that could be identified in the Housing Agreement (e.g. accessibility, seniors, low income)?
- Will there be any rent level restrictions or caps?
- Will rental rates be tied to any particular metric?
- What is the eligibility criteria for tenants?
- Will there be funding partners involved?
- What are the funding requirements?
- Will an operating agreement be in place?
- What is the owner/operator's capacity to report annually?
- Are there any other reporting requirements through funders?
- Are there any opportunities for efficiencies in reporting?

# 7.0 Common Challenges and Solutions

This section provides some examples of common challenges that have arisen for stakeholders engaged in or affected by Housing Agreements, as well as proposed solutions for how local governments might address these challenges.

## 7.1 Avoiding Conflicts Between Housing Agreements and Operating Agreements

**Challenge:** For BC Housing-funded projects, or projects that may require funding through CMHC, it is important to understand that program criteria will play a large role in dictating rent levels and tenant mix. Housing Agreement terms that conflict with the funding model might compromise a project's viability and access to grant and financing opportunities. Furthermore, conflicts between Housing Agreements and Operating Agreements place owners and operators at risk of compromising either the property or program funding. This sometimes happens because Housing Agreements can be signed well before an Operating Agreement is put in place, but are required as part of the funding requirements.

**Solution:** Identify funders involved and engage in discussions about expectations as early as possible. Ensure all stakeholders review and comment on the Housing Agreement to identify potential conflict areas prior to registering a covenant and formalizing an agreement. Sample Operating Agreements can be obtained from BC Housing to ensure early alignment. For city-owned land or city-partnered initiatives, the local government has more bargaining power to push for deeper affordability and other local government targets. A key part of negotiations around Housing Agreements is controlled rent levels. It is advisable to set a rent-increase or rent-cap structure that references changing standards as they are updated over time; for example, rent requirements could be tied to one of BC Housing's or CMHC's rent metrics, and not exceeding permitted annual rent increases as per the *Residential Tenancy Act*.

**Tip:** If current funding programs do not support the affordable housing objectives of the local government, engage in a longer-term discussion with funders to discuss future opportunities for alignment or partnership.

### What happens to the Housing Agreement when an Operating Agreement expires?

A Housing Agreement is independent of the building. Once a notice of the agreement is filed at the Land Title Office, it runs with the land. The Housing Agreement would therefore remain in effect until the notation is removed from title to the land, even if an Operating Agreement has expired. A local government may wish to consider the impact of an Operating Agreement's expiry when drafting a Housing Agreement.

## 7.2 Avoiding Conflicts Between Housing Agreements and Other Provincial Legislation

*Challenge:* Housing Agreements can include clauses related to administrative requirements and eligibility criteria relating to tenants. It is important to ensure that any clauses in the Housing Agreement do not conflict with the *Residential Tenancy Act* or the *BC Human Rights Code*. If an agreement conflicts with the legal requirements of other provincial legislation, it may impact the enforceability of the agreement.

*Solution:* Make sure an in-house or contracted legal team reviews the Housing Agreement against other pertinent Acts to ensure no conflicts. Similarly, when considering tenant eligibility or tenancy terms, check with your legal advisor to ensure that the provisions do not conflict with the *Residential Tenancy Act* or *BC Human Rights Code*, and privacy or other applicable legislation.

## 7.3 Addressing the Lack of Capacity for Effective Monitoring and Enforcement

*Challenge:* Staffing and internal capacity for ongoing monitoring and enforcement of Housing Agreements continues to be a challenge for both large and small communities alike.

*Solution:* Local governments can consider other ways to minimize workload and maximize compliance. Aside from the recommended practices outlined in the Success Factors section of this Resource Guide, three options are outlined below for consideration.

### Tiered Reporting

A tiered reporting standard is a system of increasing levels of requirement based on a history of non-compliance. A tiered reporting requirement framework could look something like this:

- Low reporting (e.g. single Statutory Declaration every two to three years)
  - Property managers and housing owners/operators with a history of compliance over 5 years.
  - Any housing project where an operating agreement is in place and BC Housing is involved with monitoring and reporting reviews.
- Moderate reporting (e.g. single-form Statutory Declaration every year with random audits to confirm income and rent)
  - Property managers and housing owners/operators with less than 5 years' history of compliance; and,
- High reporting (e.g. individual Statutory Declarations required every year, higher penalties for repeat offenses)
  - Property managers and housing owners/operators with a history of non-compliance in the past 5 years.

## Staff Ambassadors

To better track and identify non-compliance in an increasing portfolio of projects subject to Housing Agreements, local governments may wish to consider identifying ambassadors across relevant departments to help flag issues as they arise, identifying the avenues through which an inquiry or complaint may be brought forward to the local government. For example, would bylaw staff be the front-line staff receiving complaint calls? Or would it be business licensing staff receiving inquiries first? Consider which interdepartmental staff would require access to the Housing Agreement, require a basic understanding of the terms to assess next steps, or access to designated contacts who can provide more information on a need-to-know basis. Expanding local government software and online capacity to ensure easy access to the Housing Agreement and primary staff liaison is also a form of capacity-building that is worth considering.

## Tenant Empowerment

In a primarily complaint-driven system of monitoring and enforcement, it is important to take steps to ensure that tenants are aware of the basic terms of the Housing Agreement that may impact them, and that there are avenues for tenants to issue a complaint if they notice property managers or neighbours contravening a Housing Agreement. This enables tenants to act as ambassadors of the agreement. Some local governments have already capitalized on this monitoring capacity by mandating that rental operators distribute information packages when a new lease is signed or at move-in. However, local governments can take a more proactive approach by distributing this information directly to tenants and posting approved Housing Agreements publicly.





## 7.4 Balancing Tenant Eligibility and Housing Stability

*Challenge:* A local government has the discretion to define eligibility criteria through a Housing Agreement. Aligning policy priorities and the practicalities of operating affordable or special needs housing can present some challenges, for example when a tenant or household's total income increases, or their family composition changes, and they no longer meet the eligibility criteria outlined in the Housing Agreement.

Balancing the objectives of a local government, that has entered into a Housing Agreement to ensure that affordable or special needs housing is secured for those who truly need it, with the importance of providing safe and stable housing is essential when drafting a Housing Agreement and when evaluating tenant eligibility against a Housing Agreement.

For example, if income restrictions apply equally to new tenancies and tenants in situ, an existing tenant may experience a modest change of circumstance that renders them ineligible for the housing based on the restrictions placed on their unit through the Housing Agreement.

Tenants may only face eviction based on the acceptable reasons for eviction in the *Residential Tenancy Act* (RTA). A Housing Agreement does not grant a local government the authority to evict a tenant, however, they may take steps to require the owner/lessee to come into compliance with the agreement. There is an exception for Public Housing Bodies, as defined by the RTA, who have the ability to end the tenancy of a subsidized rental if the tenant or other occupant ceases to qualify for the rental unit (Section 49.1 RTA).

*Solution:* When drafting a Housing Agreement, the local government should give careful consideration to various eligibility requirements and their potential impacts on both prospective tenants and tenants in situ. In particular, local governments should consider the risk of tenant displacement and should consider building sufficient flexibility into the agreement to avoid unreasonable displacement of tenants in situ.

Depending on the situation, strict enforcement may not be appropriate, as it may be counter productive to overall policy objectives, or be considered too punitive. For example, for households that have achieved modest upward mobility, but are not yet in a position to seek a suitable housing alternative.

The local government may also choose to consider the mandate of the housing provider or operator; for example, most non-profits are structured to prioritize the best possible outcomes for tenants and will have their own mechanisms for addressing non-compliance. In such cases, the local government may choose to exercise greater flexibility in enforcement.

The solution to this challenge will depend largely on the local government's primary policy objectives, and what level of flexibility it is comfortable pursuing when drafting and enforcing a Housing Agreement.

Most likely, when there is non-compliance, this challenge will be dealt with on a case-by-case basis to avoid any negative impacts on tenants, and to ensure that the approach is not unreasonably corrective. In situations where household income has increased and is above the income limit stated in the Housing Agreement, a local government may need to work with the housing provider or operator, as some of the responses will be operational in nature, and outside the local government's ability to enforce the Housing Agreement. For example:

- Adjusting the tenant/income mix in a building or across a housing portfolio;
- Adjusting income testing practices (e.g. income testing only when establishing new tenancies);
- Managing the income mix through tenant turnover;
- Allowing other mechanisms such as Rent-Geared-to-Income rents to self-manage the issue (e.g. as income increases, rent increases, thus encouraging households to move on to market housing when subsidy is no longer needed);
- Allowing a buffer when evaluating income eligibility (e.g. allowing flexibility for households in situ whose incomes increase up to X% above the threshold);
- Developing a phased plan to work with tenants to either increase their rent charge or re-house appropriately within a portfolio or into market housing (working collaboratively with tenants whose incomes have increased significantly above the limit, and within the limitations set by the RTA).

Ultimately, Housing Agreements should be drafted in consideration of their purpose, and to ensure a reasonable security of tenure for the impacted tenants. Working with other partners (e.g. BC Housing, non-profit operator, etc.) and increasing tenant education and communication around the terms of a Housing Agreement will help address this challenge in a way that produces positive outcomes for tenants.

## 7.5 Addressing access to amenities and shared spaces in mixed tenure and mixed income buildings

*Challenge:* There has been much discussion about separate amenities (e.g. swimming pools, fitness centres) and spaces (e.g. entrances/lobbies, playgrounds) for market strata and non-market housing residents in mixed income housing.

Some note that separate configurations are more feasible operationally, stating that shared spaces and amenities can increase costs for non-profit housing operators. On the other hand, there are concerns about the separation of residents by income, and the lack of social integration.

Residents of strata developments can pay significant fees for shared facilities and services in their building. In developments where there is a mix of strata ownership and affordable rental units, fees associated with access

to amenities and shared spaces may pose affordability barriers for low income residents of the non-market rental units.

*Solution:* Some local governments have included provisions in a Housing Agreement that address equitable access to amenities and use of shared spaces to minimize any financial hardship or the exclusion of affordable rental tenants. However, it is important to confirm that the terms do not conflict with the *Strata Property Act*, and legal advice should be sought on such provisions.



# 8.0 Scenarios

The purpose of the following section is to outline hypothetical scenarios based on common project characteristics, to illustrate the process of developing guiding principles, aligning with supportive policies, and drafting the Housing Agreement language.

Each scenario includes a short description of a project and related local government policies, reviews key considerations (bullets), and provides descriptions of potential clauses for an associated Housing Agreement (inset boxes).

## Scenario 1 – Non-Profit Family Housing

A non-profit society approaches a local government to develop 11 townhouse units to operate affordable family housing designed for low income families. The local government agrees to lease a local government-owned site to the society. The society is applying for funding through BC Housing. A rezoning is required to allow for the proposed townhouses. To secure the housing units, the local government is requiring that a Housing Agreement be entered into by the society, as the lessee, and the local government as both the owner and the local government.

### Policies

The local government has in place an Affordable Housing Plan with policies related to increasing housing choice for low income residents. The local government also has in place a family-friendly housing policy.

### Agreement Terms

- *Unit Types:* In accordance with the local government’s family-friendly housing policies, the local government requires that all units contain a minimum of two bedrooms.

“The Owner and the Lessee covenant and agree to design and construct to completion, in accordance with the building permit issued by the local government, at least eleven (11) secured rental units, of which all 11 units shall contain a minimum of two bedrooms.”

- *Tenure:* Grounded in its adopted plans and policies, the local government requires that the units be secured as rental tenure in perpetuity. If the building is demolished, any redevelopment would have to continue to comply with the Housing Agreement.

In the Housing Agreement, key terms and general provisions are included to ensure any changes to the agreement require consensus of both the lessee and the local government (as owner and local government).

- *Rental Rates:* The local government and the society agree to rental rates no greater than 30% of each tenant household's income. This restriction still provides flexibility for the society to receive funding through BC Housing's program in this case.

"Rent will be no greater than 30% of the Tenant's total income as declared by the Tenant to the Owner and the Lessee from time to time, but no less than once every year."

- *Tenant Selection and Monitoring:* The society will be responsible for tenant selection and income testing by the society will be required at lease commencement and annually thereafter. A tenant would be considered eligible if they earn less than or equal to BC Housing's Housing Income Limits (HILs) for the current year for their respective unit type.

In the Housing Agreement, the term "Eligible Tenant" could be defined as: "a person with a net household income which is equal to or less than the income specified by the Housing Income Limits as established by BC Housing and updated from time to time, for a two-bedroom unit in the 'Vancouver Planning Area'".

- *Enforcement:* If a breach of the Housing Agreement is discovered, whether through a complaint or the Statutory Declaration, the local government's first step is to request compliance from the owner, or in this case, the lessee. The local government does not have the ability to evict non-compliant tenants but can seek injunctive relief (a court order to stop the non-compliance).

In the Housing Agreement, a general term that could be included regarding breach of agreement could recognize that damages are an inadequate remedy and that the public interest in affordable housing favours compliance measures or injunctive relief.

## Other Considerations

- Some funding programs require a number of low-end-of-market units as defined by funders (e.g. BC Housing's Affordable Market Rents). Local governments should take this into consideration when drafting rental rate restrictions.
- Funding programs through BC Housing typically have their own tenant selection requirements and procedures.
- Commencing legal action for non-compliance should be considered a last resort in circumstances involving non-profit affordable housing and special needs housing.

## Scenario 2 – Redevelopment Including Secured Rental Housing Units

A private developer approaches a local government to redevelop two aging low-rise apartment buildings near the downtown core. The proposed development is a mid-rise apartment rental housing project that will include two 6-storey buildings connected by a common entrance hall and amenities. A total of 160 rental units are proposed with 20 units at mid-market affordable rates. The development would replace the existing 40 apartment rental units.

### Policies

The local government has a Housing Strategy which supports the development of secured market rental housing as a key housing priority. It also identifies family-friendly housing as a priority, encouraging the development of 3-bedroom units in new development projects. Through the local government's density bonusing policy, affordable housing can be calculated as an amenity contribution. The local government has also developed a tenant relocation and protection policy which seeks to provide compensation and assistance to tenants of older affordable rental stock that are displaced by new development.

### Agreement Terms

- *Tenant Relocation and Protection Policy:* The Housing Agreement references the local government's Tenant Relocation and Protection Policy for the purposes of transparency to tenants and future tenants or owners.

The Agreement notes that compensation and assistance will be provided to renters who will be displaced from the existing building. It also notes that the future property manager must prioritize existing residents for tenancy in the affordable mid-market rental units once constructed.

- *Affordable Rental:* As part of the negotiation between the developer and the local government, bonus density is permitted in exchange for 20 rental units to be rented at affordable mid-market rents in perpetuity.

In the Housing Agreement, "Affordable Rent" is defined as a rent payment amount equal to 10% below the "Private Apartment Average Rents" for the corresponding bedroom type as established by CMHC's Housing Market Information Portal.

- *Land Use and Tenure Restrictions:* The Housing Agreement includes language to restrict subdivision or stratification of the buildings.
- *Tenancy:* The Housing Agreement includes a clause regarding the number of unit types for the mid-market affordable rental units. Any changes to the mix prior to completion of the building require a review by the local government's planning department.

"The 20 mid-market affordable rental units shall provide a mix of studio, 1-bedroom, 2-bedroom, and 3-bedroom units. Changes in the mix after rezoning must be approved at the discretion of the Director of Planning. The location of the affordable units within the building may be decided at the discretion of the Owner".

- *Mid-Market Rental Rates and Tenant Selection:* The local government wishes to ensure that rental rates meet the standard definition of affordability for housing (30% of household income) and that tenants in the current rental building will be provided Right of First Refusal or the new units at rental rates that meet the 30% of household income standard.

“Mid-Market Rents will be no greater than 30% of the total gross household income as declared by the Tenant to the Owner from time to time, but no less than once every year. Tenants from the existing rental building on the Lands should be provided right of first refusal in the Mid-Market Rental Units, regardless of income”.

- *Monitoring of Compliance:* In this particular circumstance, the owner and the local government agree that the owner is not responsible for monitoring of ongoing financial eligibility of the tenants once the Tenancy Agreement is signed.

“In determining tenant eligibility, the Owner or rental agent relies on information provided by the prospective tenant. The Owner will not be liable for incorrect personal information provided by the tenant and is under no obligation to monitor the financial circumstances of the tenant once the lease is signed”.

- *Enforcement:* The local government includes language in the Housing Agreement regarding notice to the owner when non-compliance with the Agreement is discovered.

The Owner is given 30 days to remedy a non-compliance when discovered. The local government also included a term that any penalties paid would be directed into the local government’s Affordable Housing Fund.

### Other Considerations

- The Housing Agreement is part of several phases of negotiation that occur throughout the development approval process. If the local government is not able to provide additional density bonusing and other relaxations to justify the affordability contribution, the mid-market rental rates could be negotiated for a minimum term (e.g. 1 year, 3 years, or until termination of the first lease at a mid-market rate) rather than in perpetuity. In these scenarios, a minimum term for the provision of affordable units shall be identified in the Housing Agreement, after which time any new tenancy agreement may be adjusted to market rental rate.

## Scenario 3 – Rental Housing Units in a Mixed-Use Strata Development

In a local government that employs inclusionary housing policies, a private developer has submitted a rezoning application to develop a mixed-use development comprising a commercial podium (retail) and a residential tower above. A total of 136 units of residential housing is proposed to be developed, 9 of which will be affordable rental housing units as per the local government's 5% affordable housing contribution requirement. A Housing Agreement is entered into by the developer (currently the owner of the property) and the local government to secure these affordable units under a set of agreed-upon terms and conditions.

### Policies

The local government has an Affordable Housing Strategy, which specifies the creation of affordable rental housing units as a key housing priority. The registration of a Housing Agreement and Section 219 Covenant are conditions of the rezoning application, securing the affordable rental housing units in perpetuity with maximum rental rates and tenant income as established by the local government's Affordable Housing Strategy.

### Agreement Terms

- *Mix and Tenure*: The Housing Agreement is based on a development application that proposes to deliver a specific mix of affordable units.

The Housing Agreement secures rental tenure for six 1-bedroom units, two 2-bedroom units, and one 3-bedroom unit and ensures affordable rental rates in perpetuity.

- *Maximum Monthly Rent*: In accordance with the local government Affordable Housing Strategy, the affordability of the units is secured in a Housing Agreement. The local government elects to set the initial rates for the unit types with a metric for rent increases over time.

In the Housing Agreement, maximum monthly unit rent is prescribed for each unit type, to be adjusted annually by a percentage equal to the increase in the Consumer Price Index, not exceeding the permitted increase by the Residential Tenancy Branch.

- *Eligible Tenant – Income Testing*: The Housing Agreement restricts the annual household incomes and maximum rents for eligible tenant(s). Income limits are different for each unit type.

"Criteria for eligibility of tenancy is based on annual household income to be adjusted annually by a percentage equal to the percentage increase in the Consumer Price Index."

- *Use and Occupancy*: The local government and owner agree to restrict subletting or use of the units by those other than an eligible tenant. This means that the affordable units are to be occupied by the eligible tenant/leaseholder only and shall be the tenant's primary residence.

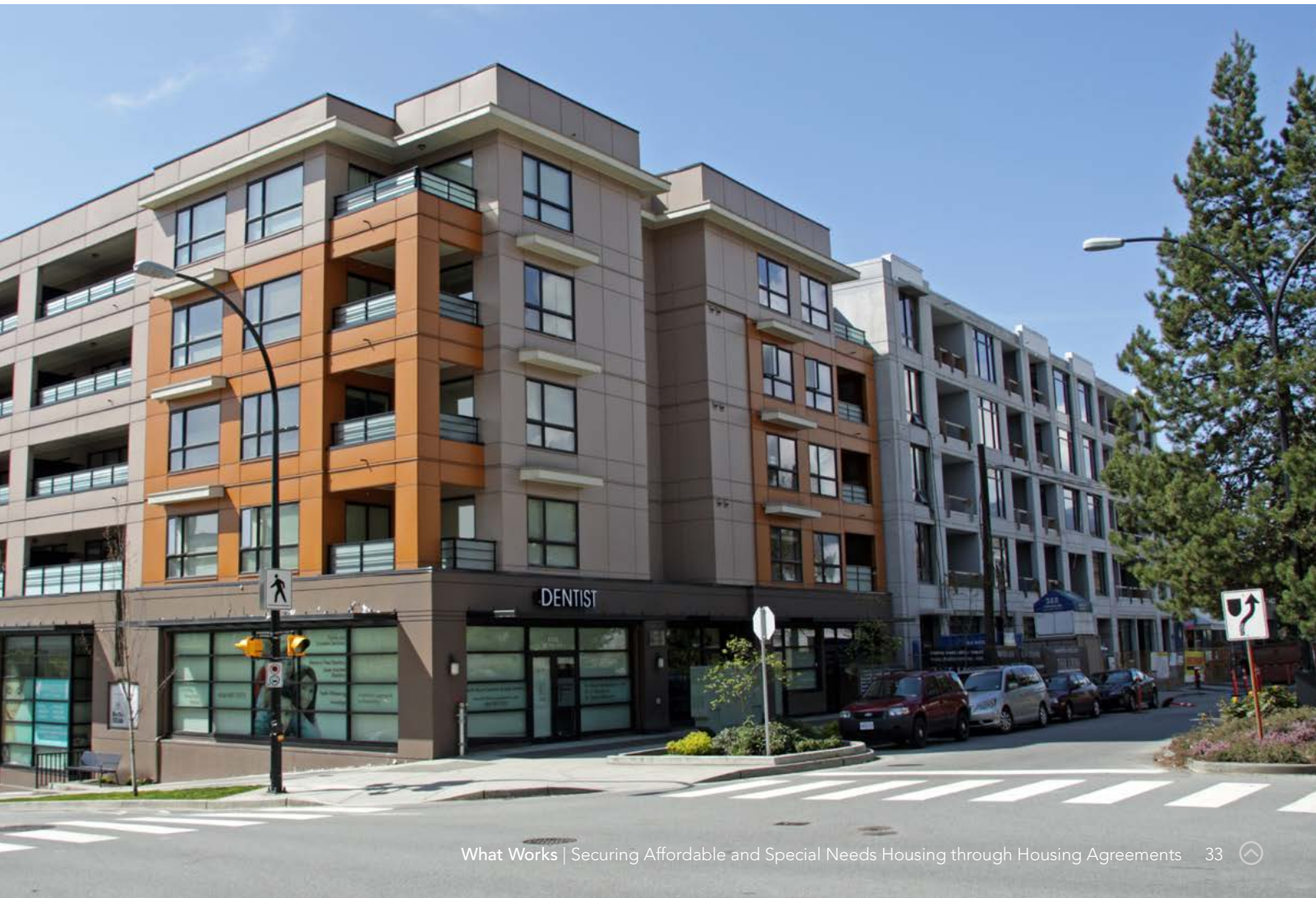
The affordable housing unit may only be used as a "permanent residence" occupied by the Eligible Tenant/Household. The unit cannot be occupied on a part-time or short-term basis or used as a secondary home.



- *Tenancy Agreement*: For the purposes of transparency to tenants, the Housing Agreement includes a clause requiring the owner to attach a copy of the Housing Agreement to every Tenancy Agreement.

“Occupants of the affordable rental housing units shall have unlimited access to all amenity spaces (e.g. parking, on-site gym facilities, outdoor amenity space), and will not be charged additional costs (e.g. move-in/move-out fees). However, the owner may charge the Tenant the cost of providing cable television, telephone, or other utilities.”

- *Strata Corporation Bylaws*: To ensure equity for lower income residents, the Housing Agreement includes language related to amenity access. As noted previously, careful consideration and legal advice is required to ensure there is no conflict with the *Strata Property Act*.
- *Reporting Requirements*: The local government includes standardized reporting requirements in the Housing Agreement.



## Scenario 4 – Special Needs Housing for Adults with Developmental Disabilities

A non-profit society that offers support services to adults with developmental disabilities wishes to consolidate and rezone 4 lots for the purpose of developing a four-storey apartment building that is 100% secured rental. Of the 70 units proposed, 20 units will be reserved for independent living for people with developmental disabilities. These individuals are clients of the society that will live there with support from the society's staff. The remaining 50 units will be available to non-clients at a mix of affordable rental rates, including both rent-geared-to-income and below market rental rates. These units would also be managed by the society.

The society, in this case, is both the owner and operator of the project, and as such, the local government and the society are entering into a Housing Agreement to secure the use and occupancy of the proposed rental units. The project is receiving funding from the society and BC Housing.

### Policies

The local government has a Housing Action Plan, which encourages opportunities to increase the supply of non-market housing for low income households, and to support housing for seniors, youth, people with disabilities, and people with addictions and mental disorders. The proposed building provides housing and supports to several vulnerable populations at the highest risk of homelessness. It would also meet the demand for independent affordable and inclusive living, which are currently limited in the jurisdiction. As rental housing is in short supply in this neighbourhood overall, this project supports several key principles set out in policy.

The project requires both an Official Community Plan amendment and an amendment to the local land use plan to accommodate an apartment development and higher density than previously allocated. As such, the completion and registration of a Housing Agreement is a condition of final rezoning and development permit approval.

### Agreement Terms

- *Restrictions on Use and Tenure:* Recognizing the special needs of many of the tenants, the local government and society agree to a minimum accessibility standard to be included in the Housing Agreement.

In the Housing Agreement, a clause could be included to specify at least 10 units must be accessible (as defined by the local government); all residents must have equal access to all common amenities in the building.

- *Restrictions on Occupancy:* With two tenant types in the building, the local government and the Society agree to a broader definition of "Eligible Occupant" to provide flexibility for the society when renting the units, while still meeting the local government's policy framework.

"Eligible Occupant" is a person who: is identified by the society as someone who has developmental disabilities and who can live independently (a "Client"); or is an "Affordable Housing Occupant" which is defined as having a gross household income equal to or less than the median income for the type of dwelling occupied, as determined by BC Housing (or BC Housing Management Commission).

- *Leasing Restrictions:* With significant funding and financing coming from outside sources (BC Housing), the local government and society draft a Housing Agreement that recognizes BC Housing’s design guidelines, and ensures alignment with the local government’s definition of accessible units.

“The Covenantor is responsible for allocating and leasing the Dwelling Units, ensuring that the terms are in accordance with the Housing Agreement. The Covenantor agrees to operate the development in accordance with B.C. Housing’s standards”.

- *Maximum Monthly Rent:* Client rents will be charged at income assistance rates, and Affordable Housing Occupants shall not be charged rent that is greater than 30% of the median household income.

“Client rents will be charged at income assistance rates as determined by the Province.”  
 “Rent will be no greater than 30% of the Affordable Housing Occupants total income for that type of dwelling as determined by BC Housing”.

- *Restrictions on Parking:* The development will provide less parking than that required by the local government’s bylaws. Due to the provision of special needs housing, the local government agrees to relax this requirement, and references the varied parking requirement within the Housing Agreement. This includes a minimum number of staff stalls during operating hours and a minimum number of visitor stalls.

“A minimum of 15 underground parking stalls shall be reserved for staff use during hours of service (e.g. Monday to Friday, 7am to 2pm), which shall be made available for visitor parking outside of these hours.”

“A minimum of 10 parking stalls shall be reserved for the use of Eligible Occupants’ visitors and families. The remaining stalls shall be designated to specific Dwelling Units according to the needs of each resident and the size of their particular unit”.

## Scenario 5 –Temporary Modular Housing for Individuals Experiencing Homelessness

Housing Agreements may also be used as a condition of approval for Temporary Use Permits. In this case, the land that does not have the appropriate zoning may allow a different land use than currently permitted on a temporary basis, subject to Council approval.

In response to the Province’s Rapid Response to Homelessness, a partnership formed between the Provincial Rental Housing Corporation (BC Housing) and a non-profit operator to operate a 2-storey modular building containing 40 residential units of supported transitional housing for women at-risk of or currently experiencing homelessness. Stable supportive housing is necessary as a first step toward transitioning individuals into stable, long-term housing, and offers services such as: 24/7 staffing, meal program, non-clinical supports, individualized assessment and case management, health care, and housing and community integration services.

It is important to note that this type of housing is a fairly recent initiative and that careful consideration and legal advice is required to prepare such a Housing Agreement.

### Agreement Terms

- *Administration and Maintenance:* The local government includes terms for the design of the building (e.g. utilizing Crime Prevention Through Environmental Design (CPTED)) and the ongoing safety and security of the site.

CPTED is required for all uses on the lands, particularly exterior security lighting. Storage shall be provided and used; nothing may be stored or allowed to accumulate around the exterior of the Housing Facility. Adequate on-site parking for staff, residents and visitors must be provided.

- *Conditions of Residency and Rent:* The local government includes broad conditions to allow for operator flexibility in the selection of tenants. This is due to the complex issues that the operator will be managing with the mental health and well-being of the incoming prospective residents. There is also language noting that this housing is meant to be transitional in nature. Rental rates are set at income assistance levels.

The operator shall ensure that residents are appropriately matched for the housing and services provided at this facility, and that residents enter into an agreement regarding conduct, obligations, goal planning, support programs, and transition into permanent housing options. Rental rates shall not exceed the shelter portion of Income Assistance in BC.

- *Reference to Resident Agreement:* For the purposes of transparency in the Housing Agreement, the local government and operator agree to include the Temporary Modular Housing Resident Agreement as an appendix to the Housing Agreement.

The agreement between the operator and residents is attached as an Appendix to the Housing Agreement outlining terms and conditions of their participation in the supportive transitional housing program.

# 10.0 Conclusion

Housing Agreements (as per Section 483 of the *Local Government Act*) are a significant tool that local governments can use to expand and preserve diverse and affordable housing choices across the region; a key strategy of Metro Vancouver's *Regional Affordable Housing Strategy* and *Metro Vancouver 2040: Shaping Our Future (Metro 2040)*, the regional growth strategy.

Drawing on the collective experiences of planning, legal, development, and non-profit housing professionals in the Metro Vancouver region and throughout British Columbia, *What Works: Securing Affordable and Special Needs Housing through Housing Agreements* is intended to support Metro Vancouver member jurisdictions and other housing stakeholders in drafting, administering, and monitoring Housing Agreements.

The Resource Guide highlights success factors that contribute to effective Housing Agreements, including an overview of their general structure, common challenges and solutions, and illustrative scenarios, however, each project and associated Housing Agreement will present unique circumstances and objectives, therefore, individual legal advice is recommended.





# 11.0 Attachments

- 11.1 Sample Housing Agreement Structure
- 11.2 Sample Housing Agreement – Affordable Homeownership Housing
- 11.3 Sample Housing Agreement – Secured Market Rental Housing
- 11.4 Sample Housing Agreement – Rental Units in a Strata / Mixed Tenure Housing
- 11.5 Sample Housing Agreement – Non-Profit Housing
- 11.6 Sample Housing Agreement – Special Needs Housing
- 11.7 Sample Statutory Declaration

## 11.1 SAMPLE HOUSING AGREEMENT STRUCTURE

NOTE: This example agreement is for illustrative purposes only and is not a template. Please contact your legal advisor for drafting of a Housing Agreement.

1 THE CITY OF \*\*\*\*\*  
BYLAW NO. #####

1 The Authorizing Bylaw to be approved by Council

A Bylaw to enter into a Housing Agreement (<insert address here>)

**WHEREAS** Section 483 of the *Local Government Act* R.S.B.C. 2015 c.1 permits a local government to enter into a housing agreement for rental housing.

**NOW THEREFORE** the Council of the City of \*\*\*\*\* , in open meeting assembled enacts as follows:

1. This Bylaw shall be known and cited for all purposes as "**Housing Agreement Bylaw, YYYY, No. #####**" (<insert name here>).

2 The Council hereby authorizes the agreement substantially in the form attached to this bylaw as Schedule "A" between the City of \*\*\*\*\* and <insert name here> with respect to the lands referenced as <insert address/property identifiers here>.

2 The parties are identified in the Bylaw as well as on the Registration documentation (Form C)

3. The Mayor and City Clerk are authorized to execute any documents required to give effect to the Housing Agreement.

READ a first time on the <> day of <>, YYYY.

READ a second time on the <> day of <>, YYYY.

READ a third time on the <> day of <>, YYYY.

ADOPTED on the <> day of <>, YYYY.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK



## TERMS OF INSTRUMENT - PART 2

### HOUSING AGREEMENT & SECTION 219 COVENANT - RENTAL BUILDINGS

3

#### 4 WHEREAS:

- A. The Owner is the registered owner the Lands;
- B. Section 219 of the *Land Title Act* (British Columbia) permits registration of a covenant in favour of a municipality in respect of the use of land or the use of a building on or to be erected on land, that land is or is not to be built on except in accordance with the covenant and that land is not to be subdivided except in accordance with the covenant;
- C. Section 483 of the *Local Government Act* (British Columbia) permits a local government to, by bylaw, enter into a housing agreement that may include terms and conditions regarding the occupancy of the housing units identified in the agreement, including respecting the form of tenure of the housing units, the availability of the housing units to classes of persons, the administration and management of the housing units and the rents and lease, sale or share prices that may be charged;
- D. The City has enacted a bylaw authorizing this Agreement ; and
- E. The Owner and the City wish to enter into this Agreement pursuant to section 219 of the *Land Title Act* and section 483 of the *Local Government Act*.

5 **NOW THEREFORE** in consideration of the sum of \$10 .00 now paid by the City to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges ), the Owner and the City covenant each with the other as follows :

#### 6 1. INTERPRETATION

##### 1.1. Definitions

In this Agreement:

- 7 (a) "Affordable Rent" means an amount equal to 90% of the "Private Apartment Average Rents" for the corresponding bedroom type in the City of \*\*\*\*\* as published by Canada Mortgage and Housing Corporation on its Housing Market Information Portal, using the most recently available Canada Mortgage and Housing Corporation information at the time the applicable Tenancy Agreement is entered into.
- (b) "Agreement" means, together, Part 1 and these Terms, including schedules attached hereto.
- (c) "Buildings" means
  - (i) a mixed-use building to be constructed on the Lands following the registration of this Agreement in the LTO (the "New Building"), to be comprised of:

3 When an agreement is not combined with a S.219 Covenant, the parties are listed here

4 The Recitals describing the agreement context

5 Consideration to make the agreement legally binding

6 The "interpretation" section which contains both the definitions and interpretive rules

7 Defined terms to define and clarify the meaning of terms used in the agreement

<b>9</b>	<b>8</b>	<p>(1) 23 stories of rental residential housing (containing 166 dwelling units, with 18 of those dwelling units to be rented at less than market rates in accordance with the City's Housing Action Plan);</p> <p>(2) one storey of commercial units and amenity space; and</p> <p>(3) additional amenity space on the partial second storey; and</p> <p>(ii) the mixed use building already constructed on the Lands at the time of registration of this Agreement in the LTO (the "Existing Building"), comprised of ## stories containing ## residential units and a #-storey podium containing ## commercial units.</p> <p>(d) "City " means the the City of *****.</p> <p>(e) "Claims and Expenses " means all actions, causes of action, suits, judgments, proceedings, demands and claims, whether at law or in equity, losses, damages, expenses and costs (including legal fees and disbursements on an indemnity basis) of any kind or nature whatsoever, at law or in equity, for any damage, loss, injury or death.</p> <p>(f) "CPI" means the All- Items Consumer Price Index for City, Province published from time to time by Statistics Canada, or its successor in function.</p> <p>(g) "Daily Amount " means \$50.00 per day as of January 1, YYYY adjusted annually thereafter by adding thereto an amount calculated by multiplying \$100.00 by the percentage change in the CPI since January 1, YYYY, to January 1 of the year that a notice of default referred to Section 6.1 (b) is delivered to the Owner by the City.</p> <p>(h) "Household " means the individuals who occupy a Mid-Market Rental Unit.</p> <p>(i) "Household Income " means the aggregate of income from all sources of all the occupants of an Affordable Housing Unit, based on the tax returns filed by such occupants with Canada Customs and Revenue Agency for the most recent taxation year.</p> <p>(j) "Lands " means those lands and premises legally described in Item 2 of Part 1.</p> <p>(k) "LTO" means the Land Title Office.</p> <p>(l) "Mid-Market Income Level" means an amount equal to the Affordable Rent for a Mid-Market Rental Unit with respect to the proposed tenancy agreement, multiplied by 12 and divided by 0.3 (i.e. 30%).</p> <p>(m) "Market Rental Units " means all residential dwelling units in the New Building other than the Mid-Market Rental Units.</p> <p>(n) "Mid-Market Rental Units " means those residential dwellings designated by the Owner as Mid-Market Rental Units pursuant to this Agreement.</p> <p>(o) "Owner" means the person described in Item 5 of Part 1.</p> <p>(p) "Part 1" means the General Instrument - Part 1 (<i>Land Title Act Form C</i>) to which these Terms of Instrument are attached as Part 2.</p>
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**8** Description of project – 166 market rental units with 18 non-market units

**9** Continuation of Definitions

- (q) "Rental Purposes " means an occupancy or intended occupancy which is or would be governed by a tenancy agreement as defined in the *Residential Tenancy Act* (British Columbia).
- (r) "Rental Units " means all residential dwellings in the Buildings.
- (s) "Rent Charge " has the meaning set out in Section 6.1.
- (t) "Section 219 Covenant " means a covenant pursuant to Section 219 of the *Land Title Act* .
- (u) "Tenancy Agreement " means an agreement, whether written or oral, express or implied, between the Owner and a tenant respecting possession or occupancy of a Mid-Market Rental Unit.

## 10 1.2 INTERPRETATION

In this Agreement:

- a) words importing the singular number include the plural and vice versa and words importing the neuter gender include the masculine and the feminine genders;
- (b) the division of this Agreement into articles and sections and the insertion of headings are for convenience only and will not affect the construction or the interpretation of this Agreement ;
- (c) references to any article, section or schedule will, unless the context otherwise requires, mean that article, section or schedule of this Agreement ;
- (d) every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows;
- (e) the words "include" and "including" are to be construed as meaning "include without limitation" and "including without limitation";
- (f) all payments to be made will be deemed to be payments in lawful currency of Canada;
- (g) reference to "business day" means all days other than Saturday, Sunday and statutory holidays in the Province of British Columbia;
- (h) reference to "party" and "parties" means the one or more parties to this Agreement, as the context demands;
- (i) reference to a whole, for example, the "Lands", includes reference to a portion thereof ; and
- (j) unless expressly stated otherwise, the term "enactment" has the same meaning as under the *Interpretation Act* (British Columbia) and reference to a specific enactment shall be to that enactment, as amended or replaced from time to time, unless otherwise expressly provided.

10 Interpretation section providing clarification on general terms in the agreement

**11 1.3 ACKNOWLEDGEMENTS**

The Owner acknowledges that:

- (a) nothing in this Agreement will relieve the Owner from any obligation or requirement arising under any enactment, including City bylaws, in respect of the use, subdivision and development of the Lands; and
- (b) nothing contained or implied in this Agreement will prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act* (British Columbia), the *Community Charter* (British Columbia) or other enactment, including City bylaws.

**11** Acknowledgements to further assist in the interpretation of the agreement

**12 2. SECTION 219 OF THE LAND TITLE ACT**

**2.1. Section 219 Covenant**

The Owner hereby covenants and agrees with the City, as a covenant in favour of the City pursuant to Section 219 of the *Land Title Act* (British Columbia), it being the intention and agreement of the Owner that the provisions in this Agreement be annexed to, and run with and be a charge upon the lands, that notwithstanding the enactment of the Rezoning Bylaw, the lands will be subdivided, used, built and used only in strict compliance with the terms and conditions of this Agreement.

**2.2. Section 219 Indemnity**

As an indemnity pursuant to section 219(6) of the *Land Title Act* (British Columbia), the Owner shall indemnify the City against all Claims and Expenses arising out of or, in any way related to or that would not or could not be sustained but for, this Agreement, including, but not limited to, the exercise by the City of any rights granted in this Agreement, or any restrictions imposed pursuant to this Agreement, except if resulting from a negligent action or omission by the City.

**12** These are terms for the Section 219 Covenant. In this example, the municipality has elected to incorporate the Housing Agreement into a Section 219 covenant

**2.3. Registration of the indemnity in the LTO**

At the City's direction, the indemnity contained herein will be filed for registration in the LTO under a separate registration number from the Section 219 Covenant contained in this Agreement.

**2.4. Release**

The Owner hereby releases the City from all Claims and Expenses arising out of or in any way related to this Agreement, including, but not limited to, the exercise by the City of any rights granted in this Agreement, or any restrictions imposed pursuant to this Agreement, except if resulting from a negligent action or omission by the City.

**2.5. Survival of release and indemnity**

The indemnity and release in this Section 2 will survive any discharge, expiration, termination or cancellation of this Agreement.

**13 3. RENTAL UNITS**

**14 3.1. Rental Units**

The Rental Units shall only be used for Rental Purposes.

**3.2. No Subdivision**

The Lands shall not be subdivided pursuant to the *Land Title Act* (British Columbia), the *Strata Property Act* (British Columbia) or otherwise without the prior written consent of the City, except that this Section 3.2 shall not prevent the Owner from proceeding to subdivide the Lands to create one or more air space parcels (but not strata lots), provided that each Building is entirely contained within a single air space parcel.

**3.3. No Separate Sale or Transfer**

In the event that the Lands are subdivided (pursuant to the *Land Title Act* (British Columbia), the *Strata Property Act* (British Columbia) or otherwise), in accordance with section 3.2, with the written consent of the City or in contravention of Section 3.2, the resulting parcels (including strata lots) shall not, without the prior written consent of the City, be sold or otherwise transferred separately unless such sale or transfer is in respect of a parcel containing the New Building, the Existing Building or both.

**4. MID-MARKET RENTAL UNITS**

**15 4.1. Unit Designation**

Eighteen of the Rental Units within the New Building shall be used, occupied and rented in accordance with the requirements of this Section 4 and shall constitute the Mid-Market Rental Units. Before using or occupying the New Building, and before issuance of an occupancy permit for the New Building, the Owner shall designate, in writing, to the City which the Rental Units in the New Building are the Mid-Market Rental Units.

**4.2. Unit Mix**

The Mid-Market Rental Units shall meet the following ‘unit mix’ requirements, and the Owner’s designation under section 4.1 shall comply with such requirements :

- (a) Minimum of two three-bedroom units.
- (b) Minimum of six two-bedroom units.

**16 4.3. Rent Restrictions & Tenure Requirements**

- (a) Mid-Market Rental Units shall only be rented to and occupied by a Household having a Household Income less than or equal to the Mid-Market Income Level.
- (b) Before entering into a Tenancy Agreement for a Mid-Market Rental Unit, the Owner shall:

**13** We are now commencing the Key Terms sections of the Housing Agreement

**14** The key terms begin with the tenure (rental)

**15** Key terms related to the location of a particular type of non-market rental unit

**16** Key terms related to rental charges and occupancy of the units

- (i) obtain from the prospective tenant, in writing, the names of all members of the Household that will occupy the Mid-Market Rental Unit;
  - (ii) obtain, from the prospective tenant, the tax returns filed with Canada Customs and Revenue Agency for the most recent taxation year for each individual identified under Section 4.3(a)(i) who was required to file a tax return for that taxation year; and
  - (iii) take such other steps as may be reasonably necessary, in the opinion of the Owner, to confirm that the Mid-Market Rental Unit shall be occupied by a Household having a Household Income less than or equal to the Mid-Market Income Level.
- (c) If a Tenancy Agreement is entered into in respect of a Mid-Market Rental Unit, the Owner shall retain copies of all documents obtained pursuant to Section 4.3(b) and will make and retain records of any information obtained pursuant to Section 4.3(b) in respect of such tenancy for a period of no less than one year following the expiration or earlier termination of such Tenancy Agreement, subject to any applicable restrictions under the *Personal Information Protection Act* (British Columbia) or other applicable privacy legislation, and the Owner shall, within 14 days following a request from the City from time to time, provide copies of such documents and records to the City, subject to any applicable restrictions under the *Personal Information Protection Act* (British Columbia) or other applicable privacy legislation.
- (d) The Owner shall not enter into a Tenancy Agreement for a Mid-Market Rental Unit unless the requirements of Sections 4.3(b) and 4.3(c) have been satisfied in relation to such Tenancy Agreement. If those requirements have been satisfied, the Owner will have no liability to the City in the event that any information provided by the tenant to the Owner under Section 4.3(b) in relation to the Tenancy Agreements proves to be false or if the Household Income of the occupants of the Mid-Market Rental Unit increases during the term of the Tenancy Agreement.
- (e) The monthly rent payable for a Mid-Market Rental Unit shall not exceed the Affordable Rent, except that the Owner may increase the rent under a Tenancy Agreement in accordance with the provisions of the *Residential Tenancy Act* (British Columbia).
- (f) The Owner shall not require a tenant of a Mid-Market Rental Unit to pay any extra charges or fees for use of any common property, limited common property, or other common area, for property taxes or for sanitary sewer, storm sewer, water utilities and similar services, except in respect of the following:
- (i) any utilities not included in the Tenancy Agreement, including without limitation, television/cable, internet and telephone ;
  - (ii) any utilities for which individual meters are provided by the Owner, from time to time;
  - (iii) parking;

Continuation of key terms related to occupancy and rental charges for the Mid-Market units

- iv) storage lockers or other facilities;
  - (v) use of storage lockers; and
  - vi) booking for exclusive use of any common amenity spaces as may be made available for such booking by the Owner from time to time.
- (g) Mid-Market Rental Units shall be occupied only pursuant to a written Tenancy Agreement;
- (h) The initial term of every Tenancy Agreement for a Mid-Market Rental Unit shall be for 1 year.
- (i) Every Tenancy Agreement for a Mid-Market Rental Unit will identify all members of the Household and will stipulate that anyone not identified in such Tenancy Agreement will be prohibited from residing at the Mid-Market Rental Unit for more than 30 consecutive days or more than 45 days total in any calendar year.
- (j) Every Tenancy Agreement for a Mid-Market Rental Unit shall provide that the tenant shall not sublease the Mid-Market Rental Unit or assign the Tenancy Agreement, without the consent of the Owner .
- (k) The Owner shall not consent to a sublease of a Mid-Market Rental Unit or to an assignment of a Tenancy Agreement in respect of a Mid-Market Rental Unit, except if the requirements of Sections 4.3(b) and (c) are first satisfied in relation to the proposed subtenant or assignee .
- (l) The Owner shall deliver a copy of every Tenancy Agreement in respect of a Mid-Market Rental Unit to the City within 14 days following a request from the City from time to time.
- (m) The restrictions under Sections 4.3(a), (b) and (c) shall not apply to a Tenancy Agreement in respect of a Mid-Market Rental Unit entered into within 6 months following the date of issuance of an occupancy permit for the New Building if the tenant under the Tenancy Agreement was a tenant of the Existing Building on the date of registration of this Agreement.
- (n) The requirements of this Section 4.3 shall cease to apply from and after the 10th anniversary of the date this Agreement is registered in the LTO.
- (o) The Owner shall, within 14 days following a written request from the City, but no more than once each calendar year, provide the City with a statutory declaration in a form determined by the City, sworn by the Owner, or by an officer or director of the Owner if the Owner is a corporation, before a commissioner for taking of affidavits for British Columbia under the *Evidence Act* (British Columbia) setting out the current monthly rent amounts for each Tenancy Agreement in respect of a Mid-Market Rental Unit as of the date of the statutory declaration.

Continuation of key terms related to occupancy and rental charges for the Mid-market units

#### 4.4 Lease to Non-Profit Organization

19 Notwithstanding Section 4.3, the Owner may lease (by way of a signed, written lease) up to ## the Mid-Market Rental Units to a non-profit organization approved in writing by the City, for the purposes of providing affordable housing as determined by the non-profit organization or such other approved organization, which purposes shall be expressly stated in the lease, and if and for so long as a Mid-Market Rental Units is subject to such a lease, the restrictions under section 4.3 shall not apply to such Mid-Market Rental Unit. The Owner shall provide to the City a copy of every such lease, and every amendment thereto, promptly following the execution thereof.

### 5. DEFAULT AND REMEDIES

#### 5.1. Default and remedies

20 (a) If the Owner fails to comply with any of its obligations under this Agreement, the City may notify the Owner in writing (at the address shown on title to the Lands in the LTO at the relevant time) that the Owner is in default, describe the default, and instruct the Owner to correct the default within 15 days of receiving the notice, or such longer period as the City may consider necessary to correct the default given the nature of the default (the "Cure Period").

(b) Upon receipt of a notice from the City under Section 7.1 (a), the Owner will diligently proceed to correct the default within the Cure Period.

21 (c) The Owner agrees that the public interest in ensuring that all of the matters described in this Agreement are complied with strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the City, in the event of an actual or threatened breach of this Agreement.

(d) No reference to or exercise of any specific right or remedy by the City, shall prejudice or preclude the City from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the City may from time to time exercise any one or more of such remedies independently or in combination.

#### 5.2 City may perform Owner's obligations

Without limiting Section 5.1, if, following notice from the City under Section 5.1 (a), the Owner fails to correct the default within the Cure Period, the City may (but is not obligated to), upon giving to the Owner five days' prior written notice describing the default, or immediately in the case of an emergency, perform such obligations, for and on behalf of and at the sole cost of the Owner.

#### 5.3 Owner will reimburse City for its costs

Upon receipt of written demand for same, the Owner will pay to the City all costs incurred by the City under Section 5.2, including a 30% administrative fee.

19 A number of non-market housing units are also provided in this project. The following key term relates to the lease between the Owner and the non-profit operator

20 Terms related to enforcement

21 Acknowledgement of public interest and in the event of a default, an injunction, specific performance or other specific relife would be favoured over financial relief



## 6. RENT CHARGE

22

### 6.1 Rent Charge

- (a) The Lands are subject to a daily rent charge (the "Rent Charge"), payable by the Owner on the first of each calendar month (the "due date"), in the amount equal to the Daily Amount, which Rent Charge is deemed to accrue day to day, from and after the Rent Charge Default Date until the Default Correction Date (each as defined in subsection (b) below).
- (b) The Rent Charge shall abate against the Lands, and no amounts will accrue or be payable by the Owner thereunder, until such time (the "Rent Charge Default Date") as the Owner does not comply with section 4.3(e) in relation to a Mid-Market Rental Unit and the Owner does not, within Cure Period, correct that default by reducing the rent under the Tenancy Agreement to the Affordable Rent plus any increase permitted under the *Residential Tenancy Act* (British Columbia). For clarity, the Rent Charge shall to accrue on a day to day basis for every day that a default continues after Cure Period until the Owner has corrected that default by reducing the rent under the Tenancy Agreement to the Affordable Rent plus any increase permitted under the *Residential Tenancy Act* (British Columbia) (the "Default Correction Date").
- (c) Any arrears of Rent Charge shall bear interest from the due date until payment at the rate of eleven per cent (11 %) per annum and shall be a charge upon the Lands in the same manner as the Rent Charge hereby charged on the Lands.
- (d) The Rent Charge ranks prior to all other financial charges and encumbrances registered at any time against the Lands.
- (e) The Rent Charge is granted both under section 219(6)(b) of the *Land Title Act* (British Columbia) as an integral part of the Section 219 Covenant contained in this Agreement, and as a fee simple rent charge at common law.
- (f) The City may enforce and collect the Rent Charge by any combination or all of:
  - (i) an action against the Owner for the Rent Charge ;
  - (ii) distraint against the Lands to the extent of the Rent Charge ;
  - (iii) an action for appointment of receiver in respect of the Lands; or
  - (iv) an order for sale of the Lands.

22

Rent Charge provisions providing for financial relief as another means of enforcing the agreement if a default

23

## 7. GENERAL

### 7.1 Building manager

If the Owner retains a building manager in respect of the Building, the Owner shall instruct and ensure that the building manager complies with the terms of this Agreement .

23

General provisions section

## 7.2 Severance

If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion will be severed and the decision that it is invalid will not affect the validity of the remainder of this Agreement.

## 7.3 Runs with the Lands

The Section 219 Covenant (including the Rent Charge) herein will run with, and bind the successors in title to, the Lands and each and every part into which the Lands may be divided or subdivided, whether by subdivision plan, strata plan or otherwise .

## 7.4 Notice of Housing Agreement

This Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 483 of the *Local Government Act*. The Owner acknowledges that the City is required to file a notice of housing agreement in the LTO against title to the Land; and once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land as a housing agreement under section 483 of the *Local Government Act*.

## 7.5 Limitation on Owner 's Obligations

In accordance with section 219(8) of the *Land Title Act* (British Columbia), a person is not liable for a breach of this Agreement occurring after that person has ceased to be an owner of the Lands.

## 7.6 Further Assurances

The parties will execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this Agreement.

## 7.7 Waiver

Waiver by the City of a default by the Owner will be in writing and will not be deemed to be a waiver of any subsequent or other default.

## 7.8 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

## 7.9 Priority

The Owner will take all steps necessary to ensure that this Agreement is registered in the LTO in priority to all charges and encumbrances which may impair the covenants granted in this Agreement and, in any event, in priority to all financial charges .

## 7.10 Counterparts and Electronic Delivery

This Agreement may be executed in any number of counterparts and delivered via facsimile or email, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument, provided that any party delivering this Agreement via facsimile or e-mail will deliver to the other party an originally executed copy of this Agreement forthwith upon request by the other party.

25 IN WITNESS OF THIS AGREEMENT the City and the Owner have executed this Agreement by signing the "Form C - General Instrument- Part 1" or "Form D - Executions Continued" attached hereto

25 Continuation of general provisions

26

26 When an agreement is not combined with a S.219 Covenant, the signatures are added here

## 11.2 SAMPLE HOUSING AGREEMENT – AFFORDABLE HOMEOWNERSHIP HOUSING

NOTE: This example agreement is for illustrative purposes only and is not a template.

### HOUSING AGREEMENT

**This Agreement** dated for reference the day of \_\_\_\_\_, 20##.

BETWEEN:

STRATA CORPORATION \_\_\_\_\_

(hereinafter “Strata Corp”)

AND:

CITY OF \*\*\*\*\* , a municipality incorporated under the *Municipal Act* and having its address at \*\*\*\*\*

(hereinafter “the City”)

#### WHEREAS:

- A. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the City in respect of the use of land or construction on land;
- B. The Developer (hereinafter defined) is the registered owner of the Land (hereinafter defined):
- C. Strata Corp and the City wish to enter into this Agreement to provide for restricted affordable housing on the terms and conditions set out in this Agreement, and this Agreement is both a covenant under section 219 of the *Land Title Act* and a housing agreement under s. 483 of the *Local Government Act*.

NOW THEREFORE in consideration of the mutual promises contained herein, and of the payment of One (\$1) Dollar by the City to Strata Corp, the receipt and sufficiency of which is hereby acknowledged, the parties covenant and agree with each other as follows:

#### 1. DEFINITIONS

1.1 Definitions. In this Agreement:

- a. “Agreement” means these standard charge terms together with the Form C under the Land Title (Transfer Forms) Regulations as amended and all schedules and addenda to the Form C charging the Land and citing these Standard Charge Terms.
- b. “Strata Corp” means Strata Corporation

- c. "Designated Unit" means each of the Strata title residential units specified in Schedule A to be designated and maintained as affordable housing units under the terms of this Agreement;
- d. "Designated Unit Agreement" means the agreement between the Designated Unit Owner from time to time and Strata Corp which may apply in the form attached as Schedule C to this Agreement;
- e. "Designated Unit Owner" means the registered owner in fee simple at any time of any Designated Unit located on the Lands;
- f. "Developer" means Strata Corp Ltd.;
- g. "Development" means the construction of the Project;
- h. "Discount Price First Sale" means, the price for the sale of the Designated Unit to the First Purchaser as set forth in the Form A Transfer for each of the Designated Units as filed in the LTO on account of the first transfer of each Designated Unit from the Developer to the First Purchaser which shall be a purchase price equal to twenty percent (20%) less than the initial sale price of a comparable sized Non-Designated Unit in the Project as determined by Strata Corp, to an arm's length bona fide purchaser to whom such comparable strata lot is first transferred to after the issuance of the occupancy permit for such comparable Non- Designated Unit. In addition to the Discount Price First Sale, the Developer will be entitled to charge the First Purchaser the net GST payable by the First Purchaser plus any additional costs and expenses requested by the applicable Qualified Purchaser and incurred by the Developer in the construction of the applicable Designated Unit which is over and above the initial specifications and costs for the construction of the applicable Designated Unit;
- i. "Discount Price Resale" means, at the time of any proposed sale or transfer, the Fair Market Value of a Designated Unit less twenty percent (20%) of that value;
- j. "Fair Market Value" of the Designated Unit means the value, as determined by a qualified appraiser approved by Strata Corp, which is the amount that would be paid for the fee simple interest in the Designated Unit by a willing buyer to a willing seller on the open market, for the interest unencumbered by:
  - i. a mortgage, debenture, trust deed, hypothec agreement or any other financial instrument which secures the payment of money or the performance of an obligation;
  - iii. a right to purchase under an agreement for sale;
  - iii. judgment for the payment of money;
  - iv. a lien under the *Builders Lien Act*;
  - v. any other financial encumbrance; or
  - vi. the Option, RFR or this Agreement;
- k. "First Purchaser" means the Qualified Purchaser to whom the Interest in a Designated Unit is first transferred after issuance of the occupancy permit for the Designated Unit by the City;

- l. "Lands" means the following property of which Strata Corp is the registered owner:
- m. "Non-Designated Units" has the meaning given to it in Section 4.1;
- n. "Option" means any option to purchase agreement between any Designated Unit Owner and Strata Corp, in favour of Strata Corp, as from time to time may be in existence in accordance with the terms of this Agreement:
- o. "Project" means the residential development to be constructed on the Lands by Strata Corp and which will contain Strata title residential units and common amenity areas;
- p. "Qualified Purchaser" means a prospective purchaser of any Designated Unit who meets the criteria set out in Schedule B of this Agreement: and
- q. "RFR" means any right of first refusal agreement between any Designated Unit Owner and Strata Corp, in favour of Strata Corp, as from time to time may be in existence in accordance with the terms of this Agreement.

## **2. TERM**

2.1 Term. This Agreement shall commence upon the registration of this Agreement in the Land Title Office and remain in effect until terminated by the City, as set out in this Agreement.

## **3. SALE OF DESIGNATED UNITS**

3.1. Sale Limitations. Strata Corp will not sell any Designated Unit to any person who is not a Qualified Purchaser. Strata Corp will not sell any Designated Unit for any amount greater than the Discount Price.

3.2. Agreement. Strata Corp will require, as a condition of sale to any Qualified Purchaser, that the Qualified Purchaser enter into a Designated Unit Agreement with Strata Corp.

3.3. Approved Sale Price. Strata Corp will not approve any sale price proposed by the Owner of any Designated Unit which exceeds the Discount Price Resale.

3.4. The Designated Unit Agreement/Sale of Designated Unit. Prior to the completion of any Sale or transfer of a Designated Unit, Strata Corp shall ensure that the owner of the Designated Unit causes the transferee of the Designated Unit to enter into an agreement with Strata Corp in the form of the Designated Unit Agreement, or with such amendments as may be approved in advance in writing by the City.

## **4. EXERCISE OF OPTION OR RFR**

4.1. Registration of Option and/or RFR. Upon the sale of a Designated Unit to the First Purchaser, Strata Corp shall have the First Purchaser execute the Option and the RFR and register the Option and RFR against the title to such Designated Unit. If for any reason this Agreement or the Option or RFR is registered against title to one or more of the strata units ("Non-Designated Units") of the Project which are not Designated Units, the City shall upon request of the Developer take all steps necessary to discharge this Agreement from the title to such Non-Designated Unit(s).

4.2. Exercise of Option or Right of First Refusal. Strata Corp agrees not to exercise any Option or RFR it holds in respect of a Designated Unit unless the Designated Unit Owner is in default of his or her obligations under the Designated Unit Agreement, and fails (or a lender to a Designated Unit Owner fails) to cure such default within the times and other terms provided for therein.

4.3. Immediate Resale. Strata Corp agrees that, should it become the registered owner of a Designated Unit as a result of the exercise of an Option or RFR in respect of that Designated Unit, Strata Corp shall immediately list for sale or take all necessary steps to resell such Designated Unit to a Qualified Purchaser in accordance with the terms and conditions of the Designated Unit Agreement.

## **5. PERFORMANCE**

5.1. Performance. Strata Corp agrees to perform its functions under this Agreement diligently and in good faith and to take all reasonable steps necessary to ensure that ownership of the Designated Units is restricted to Qualified Purchasers. Strata Corp agrees to take all reasonable steps to ensure the Qualified Purchaser complies with the terms of the Designated Unit Agreement.

5.2. Notice to the City. Strata Corp shall provide to the City a copy of any executed Designated Unit Agreement immediately following any sale or transfer of a Designated Unit, and shall, on request by the City, supply to the City copies of any documentation in the possession of Strata Corp which establishes that the owner or any prospective purchaser of a Designated Unit is a Qualified Purchaser.

## **6. ASSIGNMENT**

6.1. No Assignment. Except as otherwise provided in this Agreement, neither this Agreement nor any rights, obligations or responsibilities under this Agreement, may be assigned by Strata Corp. Strata Corp agrees that any assignment not authorized by the City, in writing and in advance, shall be invalid.

6.2. Non-Profit Organization. Strata Corp may apply to the City for consent for Strata Corp to assign all its rights and obligations under this Agreement, an Option and/or RFR, to a charitable organization so registered under the *Income Tax Act* or to any other non-profit organization prepared to assume all the Obligations of Strata Corp in this Agreement, the Option and RFR. Strata Corp shall provide to the City all information requested by the City regarding any proposed registered charitable organization assignee or other proposed assignee. The City may, in its sole discretion, refuse consent for this Agreement, an Option or RFR to be assigned by Strata Corp to any registered charitable organization or any other non-profit organization and the City need not act reasonably in this determination.

6.3. Authorized Assignment. Strata Corp agrees that no authorized assignment by Strata Corp to a registered charitable organization, approved by the City, shall take effect unless and until the proposed assignee enters into an agreement with the City whereby the assignee covenants to perform all of the obligations of Strata Corp under this Agreement and any Option or RFR in respect of any Designated Unit.

6.4. Relief from Obligations. Upon acceptance by the City of a proposed assignee and the execution of the assignment agreement set out in Section 6.3 by the assignee, Strata Corp shall be relieved of any obligations under this Agreement and any Option or RFR assigned in respect of any Designated Unit arising subsequent to the effective date of the assignment agreement.

## **7. TERMINATION**

- 7.1. City's Discretion. The City may, at its sole discretion and upon sixty (60) days' notice to Strata Corp, terminate this Agreement and provide for its discharge from title in respect of any Designated Unit.
- 7.2. Other Termination. At any time during the currency of this Agreement Strata Corp may apply to the City to terminate this Agreement. The City in its sole discretion may agree to terminate this Agreement. In the event that termination of this Agreement is approved by the City under this section, Strata Corp shall notify each Designated Unit Owner that the Designated Unit may at any time thereafter be sold at a price Fair Market Value, provided that
- a. a written contract of purchase and sale is entered into which expressly provides that the sale is conditional upon the written approval of Strata Corp;
  - b. Strata Corp determines on an independent basis that the proposed selling price for the Designated Unit is Fair Market Value, and provides its written approval to the Designated Unit Owner;
  - c. and the Designated Unit Owner pays to the City upon the completion of such sale an amount equal to the difference between the sale price and the Discount Price.
- 7.3. Discharge of Option and RFR. Strata Corp shall discharge any Option or RFR in respect of the Designated Unit subject to sale under Section 7.2 immediately following the completion of such sale of the Designated Unit.

## **8. CHANGE IN STATUS**

### **8.1. Status of Strata Corp. If Strata Corp**

- a. ceases to exist; or
- b. materially defaults in the performance of its obligations under this Agreement and notice of such default is given by the City to Strata Corp, and Strata Corp fails to cure such default within 30 days;

then all of the functions and obligations of Strata Corp under this Agreement, any Designated Unit Agreement, Option and RFR shall at the City's further election and in the case of subsection (b) upon written notice to Strata Corp thereupon be assumed by the City and all of the rights of Strata Corp under any such agreement shall thereupon be deemed to be assigned to the City, without the need for any further act or deed, provided the City provides the covenant set out in Section 6.7 of the Designated Unit Agreement.

- 8.2. the City May Assign. Following any assumption by the City of the rights and obligations of Strata Corp under this Agreement, any Designated Unit Agreement, Option or RFR, the City may, in its sole discretion and without limitation, assign these rights to any other person, corporation or non-profit organization, provided such assignee provides the covenant set out in Section 6.7 of the Designated Unit Agreement.



## 9. GENERAL PROVISIONS

9.1. Schedules. All schedules attached to this Agreement hereby form part of this Agreement as though contained in the body of this Agreement.

9.2. Further Assurances. The parties agree to execute any further documents, deliver any such further assurances, or do or cause to be done any further acts and things which may be reasonably necessary to give effect to the intent and purposes of this Agreement.

9.3. Governing Law. This Agreement shall be construed in accordance with the applicable laws of the Province of British Columbia.

9.4. Time is of the Essence. Time shall be of the essence in this Agreement.

9.5. Enurement. This Agreement shall enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

9.6. Notice. Any notice given by one party to another under this Agreement shall be deemed to have been given at such time as delivered to the address of any party referred to in this Agreement, or such other address as may be provided in writing from one party from time to time to the other party under this Agreement.

9.7. Covenant Runs With the Land. This Agreement burdens and runs with the Land.

**IN WITNESS WHEREOF** the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing the Form C (attached hereto).

## 11.3 SAMPLE HOUSING AGREEMENT – SECURED MARKET RENTAL HOUSING

NOTE: This example agreement is for illustrative purposes only and is not a template.

### RENTAL HOUSING AGREEMENT

**THIS AGREEMENT** dated for reference the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BETWEEN:

(the "Owner")

AND:

(the "City")

#### WHEREAS:

- A. The Owner is the registered owner of the Lands.
- B. The City is a municipal corporation incorporated pursuant to the Act.
- C. As a condition of the Rezoning Bylaw, the Owner has agreed to enter into a housing agreement with the City in accordance with section 483 of the Act.
- D. Section 483 authorizes the City, by bylaw, to enter into a housing agreement in respect of the form of tenure of housing units, availability of such units to classes of identified person, administration and management of such units and the rent that may be charged for such units.

**NOW THEREFORE** in consideration of the sum of Ten Dollars (\$10.00) now paid by the City to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges), the Owner and the City covenant each with the other as follows:

#### 1. DEFINITIONS

- a. **"Act"** means the *Local Government Act*, RSBC. 2015 c.1 as amended from time to time;
- b. **"Affordable Rent"** means with respect to each Mid-Market Rental Unit a rent payment amount equal to 10% below the "Private Apartment Average Rents" for the corresponding bedroom type in the City as established by CMHC's Housing Market Information Portal for the year the tenancy is entered into;
- c. **"Agreement"** means this agreement as amended from time to time;
- d. **"Commencement Date"** has the meaning set out in section 2.1 herein;
- e. **"Council"** means the municipal council for the City;
- f. **"CMHC"** means Canada Mortgage and Housing Corporation;

- g. **“Director of Planning”** means the chief administrator of the Department of Planning of the City and his or her successors in function and their respective nominees;
- h. **“Dwelling Unit”** means a dwelling unit as defined in the City’s Zoning Bylaw YYYY, No. ##### as amended from time to time;
- i. **“Lands”** means those lands and premises legally described as Parcel Identifier: ###-###-###
- j. **“Mid-Market Rental Units”** means Dwelling Units that are rented to tenants for Affordable Rent;
- k. **“Market Rental Units”** means Dwelling Units that are rented to tenants for market rental rates as set by the Owner;
- l. **“Rental Purposes”** means an occupancy or intended occupancy which is or would be governed by a tenancy agreement as defined in Section 1 of the *Residential Tenancy Act*, SBC 2002 c. 78 as amended from time to time between the Owner and the tenant;
- m. **“Rental Units”** means the Market Rental Units and the Mid-Market Rental Units;
- n. **“Residential Building”** means the # storey building to be constructed on the Lands to be used for Rental Purposes with ### Dwelling Units, of which ### Dwelling Units will be Market Rental Units and ## Dwelling Units will be Mid-Market Rental Units;
- o. **“RT Act”** means the *Residential Tenancy Act*, SBC 2002 c. 78;
- p. **“Rezoning Bylaw”** means the rezoning bylaw applicable to the Lands described as “Zoning Bylaw, YYYY, No. #####, Amendment Bylaw, YYYY, No. #####”; and
- q. **“Term”** has the meaning set out in section 2.1 herein.

## 2. TERM

2.1. This Agreement will commence upon adoption by Council of “Housing Agreement Bylaw, YYYY, No. #####”, (the **“Commencement Date”**) and will continue until the earlier of:

- a. the date this Agreement is terminated in accordance with sections 2.2 or 8.3(c); and
- b. the 20th anniversary of the Commencement Date, (the “Term”).

2.2. This Agreement will terminate immediately upon the removal or destruction of the Residential Building provided the Residential Building is not repaired or rebuilt following the destruction thereof.

2.3. Subject to section 7.3, upon termination of this Agreement, this Agreement will be at an end and of no further force and effect.

### **3. USE OF LANDS**

- 3.1. The Owner covenants and agrees with the City that during the term of this Agreement, notwithstanding the Rezoning Bylaw, the Lands shall be used and built on only in strict compliance with the terms and conditions of this Agreement and that:
- a. the Lands shall not be subdivided or stratified;
  - b. the Residential Building shall be used for Rental Purposes only; and
  - c. no Rental Unit in the Residential Building shall be occupied for any purpose except for Rental Purposes.
- 3.2. The Owner further covenants and agrees with the City that the Lands and any buildings or structures constructed thereon including the Residential Building shall be developed, built and maintained in accordance with all City bylaws, regulations and guidelines as amended from time to time.

### **4. TENANCY RESTRICTIONS**

- 4.1. The unit mix for Rental Units in the Residential Building shall be no fewer than # one-bedroom units, ## three-bedroom units, ## two-bedroom units, ## one-bedroom units and ## studio units or as otherwise approved in writing by the Director of Planning in his or her discretion.
- 4.2. The ## Mid-Market Rental Units shall be provided in the following unit mix: ## studio units, ## one-bedroom units, ## two-bedroom units, and ## three-bedroom unit. The Owner may only change this mix with the approval in writing by the Director of Planning with such approval to be granted in his or her discretion. The Owner shall be entitled to determine the locations of the ## Mid-Market Rental Units within the Residential Building.
- 4.3. The Owner shall enter into a minimum 1 year tenancy agreement for each of the Mid-Market Rental Units which will convert to a month to month tenancy at the end of the 1 year term. If such a tenancy is ended prior to the end of the Term, the Owner must rent the Mid-Market Rental Unit at Affordable Rent. After the Term has elapsed, when a tenancy of the Mid- Market Rental Unit is terminated in accordance with the RT Act, the Owner may rent the Mid- Market Rental Unit out at a market rental rate.
- 4.4. The Owner will notify the City when a tenancy of the Mid-Market Rental Unit is terminated in accordance with the RT Act and will notify the City when the Owner intends to rent the Mid-Market Rental Unit out at market rent.

## 5.0 OWNER'S OBLIGATIONS

5.1 Without limiting section 3.1 of this Agreement:

- a. Management and administration: the management, administration, and associated costs with the management and administration of the Rental Units, including the Mid-Market Rental Units, will be borne by the Owner or its designated rental agent, unless otherwise approved by the City in writing;
- b. Advertisement: the Owner will feature the tenure restrictions set out in this Agreement prominently in all advertising of Mid-Market Rental Units;
- c. Tenant Selection: the Owner will determine the selection of the tenants of the Mid-Market Rental Units, applying the suggested income qualification of a maximum household income determined by multiplying the low-end of market rents by 12 to yield the households' annual housing costs, and divided by 30% to meet the standard definition of affordability. Tenants from the existing rental building on the Lands should be provided first right of refusal in the Mid-Market Rental Units, regardless of income. In determining financial eligibility, the Owner or its rental agent, so long as it acts honestly and in good faith, is entitled to rely on all information provided by the prospective tenant and the Owner will have no liability if the prospective tenant intentionally or unintentionally provides any incorrect information. The Owner is under no obligation to monitor or update the financial circumstances of the tenant once the lease is signed.
- d. Rent Amount and Permitted Increases: Affordable Rent for Mid-Market Rental Units is to be determined at the time of tenancy. Rent amounts may be subsequently increased by the permitted annual rent increase then set under the RT Act.
- e. Compliance with applicable laws: without restricting the foregoing, the Owner will comply with all applicable provisions of the RT Act and any other provincial or municipal enactments imposing obligations on landlords in relation to residential tenancies;
- f. Performance: the Owner will perform its obligations under this Agreement diligently and in good faith; and
- g. Evidence of compliance: provided that the same can be done without breaching the *Personal Information Protection Act* (as amended from time to time) the Owner will, at Business License renewal or upon request by the City, supply to the City copies of any documentation in possession of the Owner necessary to establish compliance with the Owner's obligations under this Agreement.

## 6. DEFAULT AND REMEDIES

- 6.1. The City may, acting reasonably, give to the Owner a written notice (in this section 6.1, the “**Notice**”) requiring the Owner to cure a default under this Agreement within 30 days of receipt of the Notice. The Notice must specify the nature of the default. The Owner must act with diligence to correct the default within the time specified.
- 6.2. If the default is not corrected within the time specified, the Owner will pay to the City on demand by the City 200 percent of the difference between current market rent, as determined by a third-party appraiser, and Affordable Rent for each Mid-Market Rental Unit in default for the default year to the end of the Term of the Agreement. The monies collected from default will be deposited to the City’s Affordable Housing Reserve Fund.
- 6.3. The Owner will pay to the City on demand by the City all the City’s costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.
- 6.4. The Owner acknowledges and agrees that in case of a breach of this Agreement which is not fully remediable by the mere payment of money and promptly so remedied, the harm sustained by the City and to the public interest will be irreparable and not susceptible of adequate monetary compensation.
- 6.5. Each party to this Agreement, in addition to its rights under this Agreement or at law, will be entitled to all equitable remedies including specific performance, injunction and declaratory relief, or any of them, to enforce its rights under this Agreement.
- 6.6. The Owner acknowledges and agrees that it is entering into this Agreement to benefit the public interest in providing housing for Rental Purposes, and that the City’s rights and remedies under this Agreement are necessary to ensure that this purpose is carried out and that the City’s rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.
- 6.7. No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right or remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy of a default by the Owner under this Agreement.

## **7.0 LIABILITY**

7.1 Except for the negligence of the City or its employees, agents or contractors, the Owner will indemnify and save harmless each of the City and its elected officials, board members, officers, directors, employees, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- a. any act or omission by the Owner, or its officers, directors, employees, agents, contractors, or other persons for whom at law the Owner is responsible; and
- b. the Owner's ownership, operation, management or financing of the Lands for the provision of housing for Rental Purposes.

7.2. Except to the extent such advice or direction is given negligently, the Owner hereby releases and forever discharges the City, its elected officials, board members, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns from and against all claims, demands, damages, actions or causes of action by reason of or arising out of advice or direction respecting the ownership, operation or management of the Lands for the provision of housing for Rental Purposes which has been or hereafter may be given to the Owner by all or any of them.

7.3. The covenants of the Owner set out in sections 7.1 and 7.2 of this Agreement will survive the expiration or the earlier termination of this Agreement and will continue to apply to any breach of the Agreement and to any claims arising under this Agreement during the ownership by the Owner of the Lands.

## **8. GENERAL PROVISIONS**

8.1. The Owner agrees to reimburse the City for all legal costs reasonably incurred by the City for the preparation, execution and registration of this Agreement. The Owner will bear their own costs, legal or otherwise, connected with the preparation, execution or registration of this Agreement.

8.2. Nothing in this Agreement:

- a. affects or limits any discretion, rights, powers, duties or obligations of the City under any enactment or at common law, including in relation to the use or subdivision of land;
- b. affects or limits any enactment relating to the use of the Lands or any condition contained in any approval including any development permit concerning the development of the Lands; or
- c.. relieves the Owner from complying with any enactment, including the City's bylaws in relation to the use of the Lands.

8.3 The Owner and the City agree that:

- a. this Agreement is entered into only for the benefit of the City;
- b. this Agreement is not intended to protect the interests of the Owner, occupier or user of the Lands or any portion of it including the Rental Units and the Limited Common Property; and

- c. without limiting part 2 of this Agreement, the City may at any time execute a release and discharge of this Agreement in respect of the Lands, without liability to anyone for doing so.
- 8.4 This Agreement burdens and runs with the Lands and any part into which any of them may be subdivided or consolidated, by strata plan or otherwise. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its successors and assigns, and all persons who acquire an interest in the Lands after the date of this Agreement. Without limiting the generality of the foregoing, the Owner will not be liable for any breach of any covenant, promise or agreement herein in respect of any portion of the Lands sold, assigned, considered or otherwise disposed of, occurring after the Owner has ceased to be the owner of the Lands.
- 8.5 The covenants and agreements on the part of the Owner in this Agreement have been made by the Owner as contractual obligations as well as being made pursuant to section 483 of the Act and as such will be binding on the Owner.
- 8.6 The Owner will, at its expense, do or cause to be done all acts reasonably necessary to ensure this Agreement is registered against the title to the Lands, including any amendments to this Agreement as may be required by the Land Title Office or the City to effect such registration.
- 8.7 The City and the Owner each intend by execution and delivery of this Agreement to create both a contract and a deed under seal.
- 8.8 An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.
- 8.9. If a Court of competent jurisdiction finds that any part of this Agreement is invalid, illegal, or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 8.10 Every obligation of a party which is set out in this Agreement will extend throughout the Term and, to the extent that any obligation ought to have been observed or performed prior to or upon the expiry or earlier termination of the Term, such obligation will survive the expiry or earlier termination of the Term until it has been observed or performed.
- 8.11 All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, by facsimile or e-mail transmission, or by personal service, to the following address for each party:

Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; if made by facsimile or e-mail transmission, on the first business day after the date when the facsimile or e-mail transmission was transmitted; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the



other parties, may designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.

- 8.12 Upon request by the City, the Owner will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the City, to give effect to this Agreement.
- 8.13 This Agreement will enure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.

## **9. INTERPRETATION**

- 9.1. Gender specific terms include both genders and include corporations. Words in the singular include the plural, and words in the plural include the singular.
- 9.2 The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this Agreement is to be construed simply according to its fair meaning, and not strictly for or against either party.
- 9.3. The word "including" when following any general statement or term is not to be construed to limit the general statement or term to the specific items which immediately follow the general statement or term to similar items whether or not words such as "without limitation" or "but not limited to" are used, but rather the general statement or term is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of the general statement or term.
- 9.4. The words "must" and "will" are to be construed as imperative.
- 9.5. Any reference in this Agreement to any statute or bylaw includes any subsequent amendment, re-enactment, or replacement of that statute or bylaw.
- 9.6. This is the entire agreement between the City and the Owner concerning its subject, and there are no warranties, representations, conditions or collateral agreements relating to the subject matter of this Agreement, except as included in this Agreement. This Agreement may be amended only by a document executed by the parties to this Agreement and by bylaw, such amendment to be effective only upon adoption by City Council of an amending bylaw to "Housing Agreement Bylaw, YYYY, No. ####".
- 9.7 This Agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia.
- 9.8 This Agreement can be signed in counterpart.

**IN WITNESS WHEREOF** each of the City and the Owner have executed this Agreement under seal by their duly authorized officers as of the reference date of this Agreement.

## 11.4 SAMPLE HOUSING AGREEMENT – RENTAL UNITS IN A STRATA / MIXED TENURE HOUSING

NOTE: This example agreement is for illustrative purposes only and is not a template.

### HOUSING AGREEMENT

(Section 483 *Local Government Act*)

**THIS AGREEMENT** is dated for reference DD,MM,YYYY

**BETWEEN:**

(the “**Owner**”)

**AND:**

(the “**City**”)

**WHEREAS:**

- A. Section 483 of the *Local Government Act* permits the City to enter into and, by legal notation on title, note on title to lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units and rent which may be charged for housing units;
- B. The Owner is the registered owner of the Lands (as hereinafter defined); and
- C. The Owner and the City wish to enter into this Agreement (as herein defined) to provide for affordable housing on the terms and conditions set out in this Agreement.

In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree as follows:

### ARTICLE 1

#### DEFINITIONS AND INTERPRETATION

- 1.1. In this Agreement the following words have the following meanings:
  - a. “**Affordable Housing Strategy**” means the \*\*\*\*\* Affordable Housing Strategy approved by the City on MM, DD, YYYY, and containing a number of recommendations, policies, directions, priorities, definitions and annual targets for affordable housing, as may be amended or replaced from time to time;

- b. **"Affordable Housing Unit"** means a Dwelling Unit or Dwelling Units designated as such in accordance with a building permit and/or development permit issued by the City and/or, if applicable, in accordance with any rezoning consideration applicable to the development on the Lands and includes, without limiting the generality of the foregoing, the Dwelling Units charged by this Agreement;
- c. **"Agreement"** means this agreement together with all schedules, attachments and priority agreements attached hereto;
- d. **"Building Permit"** means the building permit authorizing construction on the Lands, or any portion(s) thereof;
- e. **"City"** means the City of \*\*\*\*\*;
- f. **"Commercial Users"** means the owners, tenants and employees of, and visitors and guests to, businesses and non-residential spaces located on the Lands (including, without limitation, the hotel to be constructed on the Lands as part of the Development), including employees and/or contractors working for the benefit of the Affordable Housing Units, but excluding businesses carried out within a Dwelling Unit, and excluding residents or occupants of Dwelling Units or Affordable Housing Units;
- g. **"CPI"** means the All-Items Consumer Price Index for Canada published from time to time by Statistics Canada, or its successor in function;
- h. **"Daily Amount"** means \$100.00 per day as of January 1, YYYY adjusted annually thereafter by adding thereto an amount calculated by multiplying \$100.00 by the percentage change in the CPI since January 1, YYYY, to January 1 of the year that a written notice is delivered to the Owner by the City pursuant to section 6.1 of this Agreement. In the absence of obvious error or mistake, any calculation by the City of the Daily Amount in any particular year shall be final and conclusive;
- i. **"Development"** means the two-tower, high-density, mixed-use residential and commercial development to be constructed on the Lands;
- j. **"Development Permit"** means the development permit authorizing development on the Lands, or any portion(s) thereof;
- k. **"Director of Development"** means the individual appointed to be the chief administrator from time to time of the Development Applications Division of the City and his or her designate;
- l. **"Dwelling Unit"** means a residential dwelling unit or units located or to be located on the Lands whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, and includes single family detached dwellings, duplexes, townhouses, auxiliary residential dwelling units, rental apartments and strata lots in a building strata plan and includes, where the context permits, an Affordable Housing Unit;

m. **"Eligible Tenant"** means a Family having a cumulative annual income of:

- i. in respect to a bachelor unit, \$34,650 or less;
- ii. in respect to a one-bedroom unit, \$38,250 or less;
- iii. in respect to a two-bedroom unit, \$46,500 or less; or
- iv. in respect to a three or more bedroom unit, \$58,050 or less

provided that, commencing January 1, YYYY, the annual incomes set-out above shall be adjusted annually on January 1st of each year this Agreement is in force and effect, by a percentage equal to the percentage of the increase in the CPI for the period January 1 to December 31 of the immediately preceding calendar year. If there is a decrease in the CPI for the period January 1 to December 31 of the immediately preceding calendar year, the annual incomes set-out above for the subsequent year shall remain unchanged from the previous year. In the absence of obvious error or mistake, any calculation by the City of an Eligible Tenant's permitted income in any particular year shall be final and conclusive;

n. **"Family"** means:

- i. a person;
- ii. two or more persons related by blood, marriage or adoption; or
- iii. a group of not more than 6 persons who are not related by blood, marriage or adoption

o. **"Housing Covenant"** means the agreements, covenants and charges granted by the Owner to the City (which includes covenants pursuant to Section 219 of the *Land Title Act*) charging the Lands, dated for reference , YYYY, and registered under number CA. , as it may be amended or replaced from time to time;

p. **"Interpretation Act"** means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;

q. **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250, together with all amendments thereto and replacements thereof;

r. **"Lands"** means PID ###-###-###;

s. **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;

t. **"LTO"** means the Land Title Office or its successor;

u. **"Manager, Community Social Development"** means the individual appointed to be the Manager, Community Social Development from time to time of the Community Services Department of the City and his or her designate;

v. **“Owner”** means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or of any part into which the Lands are Subdivided, and includes any person who is a registered owner in fee simple of an Affordable Housing Unit from time to time;

w. **“Permitted Rent”** means no greater than:

- i. \$811.00 a month for a bachelor unit;
- ii. \$975.00 a month for a one-bedroom unit;
- iii. \$1,162.00 a month for a two-bedroom unit; and
- iv. \$1,480.00 a month for a three (or more) bedroom unit,

provided that, commencing January 1, YYYY of each year this Agreement is in force and effect, by a percentage equal to the percentage of the increase in the CPI for the period January 1 to December 31 of the immediately preceding calendar year. In

the event that, in applying the values set-out above, the rental increase is at any time greater than the rental increase permitted by the *Residential Tenancy Act*, then the increase will be reduced to the maximum amount permitted by the *Residential Tenancy Act*. If there is a decrease in the CPI for the period January 1 to December 31 of the immediately preceding calendar year, the permitted rents set-out above for the subsequent year shall remain unchanged from the previous year. In the absence of obvious error or mistake, any calculation by the City of the Permitted Rent in any particular year shall be final and conclusive;

x. **“Real Estate Development Marketing Act”** means the *Real Estate Development Marketing Act*, S.B.C. 2004, Chapter 41, together with all amendments thereto and replacements thereof;

y. **“Residential Tenancy Act”** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;

z. **“Strata Property Act”** means the *Strata Property Act* S.B.C. 1998, Chapter 43, together with all amendments thereto and replacements thereof;

aa. **“Subdivide”** means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or “shared interest in land” as defined in the *Real Estate Development Marketing Act*;

bb. **“Tenancy Agreement”** means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit; and

cc. **“Tenant”** means an occupant of an Affordable Housing Unit by way of a Tenancy Agreement.

**1.2.** In this Agreement:

- a. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- b. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- c. if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- d. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- e. any reference to any enactment is to the enactment in force on the date the Owner signs this Agreement, and to subsequent amendments to or replacements of the enactment;
- f. the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- g. time is of the essence;
- h. all provisions are to be interpreted as always speaking;
- i. reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes an Eligible Tenant, agent, officer and invitee of the party;
- j. U) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- k. where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

## ARTICLE 2

### USE AND OCCUPANCY OF AFFORDABLE HOUSING UNITS

- 2.1.** The Owner agrees that each Affordable Housing Unit may only be used as a permanent residence occupied by one Eligible Tenant. An Affordable Housing Unit must not be occupied by the Owner, the Owner's family members (unless the Owner's family members qualify as Eligible Tenants), or any tenant or guest of the Owner, other than an Eligible Tenant. For the purposes of this Article, "permanent residence" means that the Affordable Housing Unit is used as the usual, main, regular, habitual, principal residence, abode or home of the Eligible Tenant.
- 2.2.** Within 30 days after receiving notice from the City, the Owner must, in respect of each Affordable Housing Unit, provide to the City a statutory declaration, substantially in the form (with, in the City Solicitor's discretion, such further amendments or additions as deemed necessary) attached as Appendix A, sworn by the Owner, containing all of the information required to complete the statutory declaration. The City may request such statutory declaration in respect to each Affordable Housing Unit no more than once in any calendar year; provided, however, notwithstanding that the Owner may have already provided such statutory declaration in the particular calendar year, the City may request and the Owner shall provide to the City such further statutory declarations as requested by the City in respect to an Affordable Housing Unit if, in the City's absolute determination, the City believes that the Owner is in breach of any of its obligations under this Agreement.
- 2.3.** The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.
- 2.4.** The Owner agrees that notwithstanding that the Owner may otherwise be entitled, the Owner will not:

  - a. be issued with a Development Permit (except for parking) unless the Development Permit includes the Affordable Housing Units;
  - b. be issued with a Building Permit (except for parking) unless the Building Permit includes the Affordable Housing Units; and
  - c. occupy, nor permit any person to occupy any Dwelling Unit or any portion of any building (except for parking), in part or in whole, constructed on the Lands and the City will not be obligated to permit occupancy of any Dwelling Unit or building (except for parking) constructed on the Lands until all of the following conditions are satisfied:
    - i. the Affordable Housing Units and related uses and areas have been constructed to the satisfaction of the City;
    - ii. the Affordable Housing Units have received final building permit inspection granting occupancy; and
    - iii. the Owner is not otherwise in breach of any of its obligations under this Agreement or any other agreement between the City and the Owner in connection with the development of the Lands.

## ARTICLE 3

### DISPOSITION AND ACQUISITION OF AFFORDABLE HOUSING UNITS

- 3.1** The Owner may sub-contract the operation and management of the Affordable Housing Units to a qualified and reputable non-profit provider of affordable housing, provided that any such subcontract and non-profit affordable housing provider is pre-approved by the Manager, Community Social Development or other authorized City personnel, in their sole discretion.
- 3.2** The Owner will not permit an Affordable Housing Unit Tenancy Agreement to be subleased or assigned, except where the Owner believes, acting reasonably, that refusing to consent to a sublease or assignment would be a breach of its obligations under the *Residential Tenancy Act* (British Columbia), and provided such sublease or assignment is to an Eligible Tenant.
- 3.3** If this Housing Agreement encumbers more than one Affordable Housing Unit, then the Owner may not, without the prior written consent of the City Solicitor, sell or transfer less than ### (#) Affordable Housing Units in a single or related series of transactions with the result that when the purchaser or transferee of the Affordable Housing Units becomes the owner, the purchaser or transferee will be the legal and beneficial owner of not less than ### (#) Affordable Housing Units.
- 3.4** If the Owner sells or transfers one (1) or more Affordable Housing Units, the Owner will notify the City Solicitor of the sale or transfer within 3 days of the effective date of sale or transfer.
- 3.5** The Owner must not rent, lease, license or otherwise permit occupancy of any Affordable Housing Unit except to an Eligible Tenant and except in accordance with the following additional conditions:
- a. the Affordable Housing Unit will be used or occupied only pursuant to a Tenancy Agreement;
  - b. the monthly rent payable for the Affordable Housing Unit will not exceed the Permitted Rent applicable to that class of Affordable Housing Unit;
  - c. the Owner will allow the Tenant of an Affordable Housing Unit and any permitted occupant and visitor to have full access to and use and enjoy all on-site common indoor and outdoor amenity spaces that are available for use by, and on the same terms and conditions as, the owners, tenants or other permitted occupants of all strata lots which are not Affordable Housing Units and that are located in the strata plan for the Dwelling Units (which, for certainty, excludes all facilities and amenities reserved for the exclusive use of the Commercial Users), all in accordance with the bylaws and rules and regulations of the applicable strata corporation, provided that such bylaws and rules and regulations of the applicable strata corporation do not conflict with Article 5 of this Agreement;



- d. the Owner will not require the Tenant or any permitted occupant of an Affordable Housing Unit to pay any:
  - i. move-in/move-out fees, strata fees, strata property contingency reserve fees; or
  - ii. extra charges or fees for:
    - A. use of any common property, limited common property, or other common areas, facilities or amenities, including without limitation parking; bicycle storage, electric vehicle charging stations or related facilities, which the Owner is required pursuant to the Development Permit or any agreement with the City to make available to the Tenant or permitted occupants of an Affordable Housing Unit (for greater certainty, whether on an exclusive or shared basis); or
    - B. sanitary sewer, storm sewer, water, other utilities, property or similar tax,  
  
provided, however, that if the Affordable Housing Unit is a strata unit and the following costs are not part of strata or similar fees, an Owner may charge the Tenant the Owner's cost, if any, of providing cable television, telephone, other telecommunications, gas, or electricity fees, charges or rates;
- e. the Owner will attach a copy of this Agreement to every Tenancy Agreement;
- f. the Owner will include in the Tenancy Agreement a clause requiring the Tenant and each permitted occupant of the Affordable Housing Unit to comply with this Agreement;
- g. the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:
  - i. an Affordable Housing Unit is occupied by a person or persons other than an Eligible Tenant;
  - ii. the annual income of an Eligible Tenant rises above the applicable maximum amount specified in section 1.1(m) of this Agreement;
  - iii. the Affordable Housing Unit is occupied by more than the number of people the City's building inspector determines can reside in the Affordable Housing Unit given the number and size of bedrooms in the Affordable Housing Unit and in light of any relevant standards set by the City in any bylaws of the City;
  - iv. the Affordable Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and/or
  - v. the Tenant subleases the Affordable Housing Unit or assigns the Tenancy Agreement in whole or in part, without the prior written consent of the Owner,

and in the case of each breach., the Owner hereby agrees with the City to forthwith provide to the Tenant a notice of termination. Except for section 3.5(g)(ii) of this Agreement [*Termination of Tenancy Agreement if Annual Income of Tenant rises above amount prescribed in section 1.1(m) of this Agreement*], the notice of termination shall provide that the termination of the tenancy shall be effective 30 days following the date of the notice of termination. In respect to section 3.S(g)(ii) of this Agreement, termination shall be effective on the day that is six (6) months following the date that the Owner provided the notice of termination to the Tenant;

- h. the Tenancy Agreement will identify all occupants of the Affordable Housing Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Affordable Housing Unit for more than 30 consecutive days or more than 45 days total in any calendar year; and
- i. the Owner will forthwith deliver a certified true copy of the Tenancy Agreement to the City upon demand.

**3.6** If the Owner has terminated the Tenancy Agreement, then the Owner shall use best efforts to cause the Tenant and all other persons that may be in occupation of the Affordable Housing Unit to vacate the Affordable Housing Unit on or before the effective date of termination.

## **ARTICLE 4**

### **DEMOLITION OF AFFORDABLE HOUSING UNIT**

**4.1** The Owner will not demolish an Affordable Housing Unit unless:

- a. the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Affordable Housing Unit, and the Owner has delivered to the City a copy of the engineer's or architect's report; or
- b. the Affordable Housing Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the City in its sole discretion,

and, in each case, a demolition permit for the Affordable Housing Unit has been issued by the City and the Affordable Housing Unit has been demolished under that permit.

Following demolition, the Owner will use and occupy any replacement Dwelling Unit in compliance with this Agreement and the Housing Covenant both of which will apply to any replacement Dwelling Unit to the same extent and in the same manner as those agreements apply to the original Dwelling Unit, and the Dwelling Unit must be approved by the City as an Affordable Housing Unit in accordance with this' Agreement.

## **ARTICLE 5**

### **STRATA CORPORATION BYLAWS**

- 5.1** Subject to discharge in accordance with Section 7.1(c), this Agreement will be binding upon all strata corporations created upon the strata title Subdivision of the Lands or any Subdivided parcel of the Lands.
- 5.2** Any strata corporation bylaw which prevents, restricts or abridges the right to use the Affordable Housing Units as rental accommodation will have no force and effect.
- 5.3** No strata corporation shall pass any bylaws preventing, restricting or abridging the use of the Affordable Housing Units as rental accommodation.
- 5.4** No strata corporation shall pass any bylaw or approve any levies which would result in only the Owner or the Tenant or any other permitted occupant of an Affordable Housing Unit (and not include all the owners, tenants, or any other permitted occupants of all the strata lots in the applicable strata plan which are not Affordable Housing Units) paying any extra charges or fees for the use of any common property, limited common property or other common areas, facilities, or indoor or outdoor amenities of the strata corporation.
- 5.5** No strata corporation shall pass any bylaws or approve any levies, charges or fees which would result in the Owner or the Tenant or any other permitted occupant of an Affordable Housing Unit paying for the use of parking, bicycle storage, electric vehicle charging stations or related facilities, notwithstanding that the Strata Corporation may levy such parking, bicycle storage, electric vehicle charging stations or other related facilities charges or fees on all the other owners, tenants, any other permitted occupants or visitors of all the strata lots in the applicable strata plan which are not Affordable Housing Units; provided, however, that the electricity fees, charges or rates for use of electric vehicle charging stations are excluded from this provision.
- 5.6** The strata corporation shall not pass any bylaw or make any rule which would restrict the Owner or the Tenant or any other permitted occupant of an Affordable Housing Unit from using and enjoying any common property, limited common property or other common areas, facilities or amenities of the strata corporation, including parking, bicycle storage, electric vehicle charging stations or related facilities, except, subject to section 5.5 of this Agreement, on the same basis that governs the use and enjoyment of any common property, limited common property and other common areas, facilities or amenities of the strata corporation, including parking, bicycle storage, electric vehicle charging stations and related facilities, by all the owners, tenants, or any other permitted occupants of all the strata lots in the applicable strata plan which are not Affordable Housing Units.

## **ARTICLE 6**

### **DEFAULT AND REMEDIES**

- 6.1** The Owner agrees that, in addition to any other remedies available to the City under this Agreement or the Housing Covenant or at law or in equity, if an Affordable Housing Unit is used or occupied in breach of this Agreement or rented at a rate in excess of the Permitted Rent or the Owner is otherwise in breach of any of its obligations under this Agreement or the Housing Covenant, the Owner will pay the Daily Amount to the City for every day that the breach continues after forty-five (45) days written notice from the City to the Owner stating the particulars of the breach. For greater certainty, the City is not entitled to give written notice with respect to any breach of the Agreement until any applicable cure period, if any, has expired. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the City for the same.
- 6.2** The Owner acknowledges and agrees that a default by the Owner of any of its promises, covenants, representations or warranties set-out in the Housing Covenant shall also constitute a default under this Agreement.

## **ARTICLE 7 MISCELLANEOUS**

### **7.1 Housing Agreement**

The Owner acknowledges and agrees that:

- a. this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act*;
- b. where an Affordable Housing Unit is a separate legal parcel the City may file notice of this Agreement in the LTO against the title to the Affordable Housing Unit and, in the case of a strata corporation, may note this Agreement on the common property sheet; and
- c. where the Lands have not yet been Subdivided to create the separate parcels to be charged by this Agreement, the City may file a notice of this Agreement in the LTO against the title to the Lands. If this Agreement is filed in the LTO as a notice under section 483 of the *Local Government Act* prior to the Lands having been Subdivided, and it is the intention that this Agreement is, once separate legal parcels are created and/or the Lands are Subdivided (including, for greater certainty, by way of air space subdivision), to charge and secure only the legal parcels or Subdivided Lands which contain the Affordable Housing Units, then the City Solicitor shall be entitled, without further City Council approval, authorization or bylaw, to partially discharge this Agreement accordingly. The Owner acknowledges and agrees that notwithstanding a partial discharge of this Agreement, this Agreement shall be and remain in full force and effect and, but for the partial discharge, otherwise unamended. Further, the Owner acknowledges and agrees that in the event that the Affordable Housing Unit is in a strata corporation, this Agreement shall remain noted on the strata corporation's common property sheet.

## **7.2 No Compensation**

The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the City, for any decrease in the market value of the Lands or for any obligations on the part of the Owner and its successors in title which at any time may result directly or indirectly from the operation of this Agreement.

## **7.3 Modification**

Subject to section 7.1 of this Agreement, this Agreement may be modified or amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

## **7.4. Management**

The Owner covenants and agrees that it will furnish good and efficient management of the Affordable Housing Units and will permit representatives of the City to inspect the Affordable Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Affordable Housing Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Affordable Housing Units.

## **7.5 Indemnity**

The Owner will indemnify and save harmless the City and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- a. any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- b. the City refusing to issue a development permit, building permit or refusing to permit occupancy of any building, or any portion thereof, constructed on the Lands;
- c. the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Housing Unit or the enforcement of any Tenancy Agreement; and/or
- d. without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

## **7.6 Release**

The Owner hereby releases and forever discharges the City and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:

- a. construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Affordable Housing Unit under this Agreement;
- b. the City refusing to issue a development permit, building permit or refusing to permit occupancy of any building, or any portion thereof, constructed on the Lands; and/or
- c. the exercise by the City of any of its rights under this Agreement or an enactment.

## **7.7 Survival**

The obligations of the Owner set out in this Agreement will survive termination or discharge of this Agreement, but only, for greater certainty, to the extent such obligations arose prior to such termination or discharge.

## **7.8 Priority**

The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement, if required by the City Solicitor, will be noted against title to the Lands in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Lands save and except those specifically approved in advance in writing by the City Solicitor or in favour of the City, and that a notice under section 483(5) of the *Local Government Act* will be filed on the title to the Lands.

## **7.9 City's Powers Unaffected**

This Agreement does not:

- a. affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- b. impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
- c. affect or limit any enactment relating to the use or subdivision of the Lands; or
- d. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

### **7.10 Agreement for Benefit of City Only**

The Owner and the City agree that:

- a. this Agreement is entered into only for the benefit of the City;
- b. this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier or user of the Lands or the building or any portion thereof, including any Affordable Housing Unit; and
- c. the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

### **7.11 No Public Law Duty**

Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

### **7.12 Notice**

Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out in the records at the LTO and in the case of the City addressed:

or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

### **7.13 Enuring Effect**

This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

### **7.14 Severability**

If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

### **7.15 Waiver**

All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

### **7.16 Sole Agreement**

This Agreement, and any documents signed by the Owners contemplated by this Agreement (including, without limitation, the Housing Covenant), represent the whole agreement between the City and the Owner respecting the use and occupation of the Affordable Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement. In the event of any conflict between this Agreement and the Housing Covenant, this Agreement shall, to the extent necessary to resolve such conflict, prevail.

### **7.17 Further Assurance**

Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.

### **7.18 Covenant Runs with the Lands**

Subject to discharge in accordance with Section 7.1(c), this Agreement burdens and runs with the Lands and every parcel into which it is Subdivided in perpetuity. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Lands.

### **7.19 Equitable Remedies**

The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

### **7.20 No Joint Venture**

Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

### **7.21 Applicable Law**

Unless the context otherwise requires, the laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.



### **7.22 Deed and Contract**

By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

### **7.23 Joint and Several**

If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

### **7.24 Limitation on Owner's Obligations**

The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands provided however that notwithstanding that the Owner is no longer the registered owner of the Lands, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Lands.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

## 11.5 SAMPLE HOUSING AGREEMENT - NON-PROFIT HOUSING

NOTE: This example agreement is for illustrative purposes only and is not a template.

### HOUSING AGREEMENT AND COVENANT

#### (Section 483 Local Government Act and Section 219 Land Title Act)

THIS AGREEMENT is dated for reference the DDth day of MMM, YYYY is:

**BETWEEN:**

(the "Owner")

**AND:**

(the "City")

**AND:**

(the "Lessee")

**WHEREAS:**

- A. Section 483 of the *Local Government Act* permits the City to enter into and note on title to lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units, and rent that may be charged for housing units;
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a positive or a negative nature in favour of the City in respect of the use of land and construction on land;
- C. The Owner is the Owner of the Lands, and the Owner and the Lessee have entered into or intend to enter into the Ground Lease;
- D. The Lessee proposes to construct a residential building (the "Building") containing a total of # units (the "Secured Rental Units"), and operate the Secured Rental Units as affordable rental accommodation all as more particularly described in the Ground Lease; and
- E. The City, the Owner and the Lessee wish to enter into this Agreement (as hereinafter defined) to provide long-term affordable rental housing on the terms and conditions set out in this Agreement,

In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner, the Lessee and the City covenant and agree with each other pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

## ARTICLE 1 DEFINITIONS AND INTERPRETATION

**1.1. Definitions** – In this Agreement, the following words have the following meanings:

- a. "Agreement" means this agreement together with all Land Title Office forms, schedules, appendices, attachments and priority agreements attached hereto;
- b. "Dwelling Unit" means one or more rooms in a building that are used, or constructed so as to be capable of being used, for the residential use of a single household, and containing common access, one kitchen, and eating, sleeping and living areas, and where the context permits, a Secured Rental Unit;
- c. "Eligible" means a Tenant, who, at the time he or she enters into a Tenancy Agreement, has a net family income which is equal to, or less than, the income specified by the Housing Income Limits as established from time to time by BC Housing for a unit in the "Planning Area";
- d. "Ground Lease" means a lease of the Lands from the City to the Lessee, as such lease may be amended, renewed or extended from time to time;
- e. "Income Assistance" means financial assistance received from the Provincial Government of British Columbia for individuals or households under the Income Assistance or Disability Assistance programs, as regulated by the *Employment and Assistance Act* or regulations thereunder, and/or the *Employment and Assistance for Persons with Disabilities Act* and regulations thereunder;
- f. "*Interpretation Act*" means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;
- g. "Lands" means the following lands and premises situate in the City  
PID: ###-###-###  
  
Legal Description:
- h. "Land Title Act" means the *Land Title Act*, R.S.B.C. 1996, Chapter 250, together with all amendments thereto and replacements thereof;
- i. "Local Government Act" means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;
- j. "LTO" means the \*\*\*\*\* Land Title Office or its successor;
- k. "*Residential Tenancy Act*" means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
- l. "Secured Rental Unit" means any of the Dwelling Units to be constructed on the Lands;
- m. "*Strata Property Act*" means the *Strata Property Act* S.B.C. 1998, Chapter 43, together with all amendments thereto and replacements thereof;

- n. "Subdivide" means to divide, apportion, consolidate or subdivide the Lands or any building on the Lands, or the ownership or right to possession or occupation of the Lands or any building on the Lands, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise;
- o. "Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting rights to occupy a Secured Rental Unit, but does not include the Ground Lease; and
- p. "Tenant" means an occupant of a Secured Rental Unit by way of a Tenancy Agreement.

**1.2. Interpretation** – In this Agreement:

- a. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- b. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- c. if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- d. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- e. reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- f. the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- g. time is of the essence;
- h. all provisions are to be interpreted as always speaking;
- i. reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes a Tenant, agent, officer and invitee of the party;
- j. reference to a "day", "month", or "year" is a reference to a calendar day, calendar month, calendar or calendar year, as the case may be, unless otherwise expressly provided; and
- k. where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

## **ARTICLE 2 USE AND CONSTRUCTION OF LANDS AND SECURED RENTAL UNITS**

**2.1 Use and Construction of Lands** – The Owner and the Lessee covenants and agrees that the Lands will not be developed and no building or structure will be constructed or used on the Lands unless as part of the development, construction, or use of any such building or structure, the Owner and the Lessee also designs and constructs to completion, in accordance with a building permit issued by the City, any development permit issued by the City and, if applicable, any rezoning consideration applicable to the development on the Lands, at least # Secured Rental Units, of which all # units shall contain two bedrooms.

**2.2 Short-term Rentals Prohibited** – The Owner and the Lessees agrees that no Secured Rental Unit may be rented to or tenanted by any person for a term of less than thirty (30) days.

**2.2 Requirement for Statutory Declaration** – Within thirty (30) days after receiving notice from the City, the Lessee must, in respect of each Secured Rental Unit, provide to the City a statutory declaration, substantially in the form (with, in the City’s discretion, such further amendments or additions as deemed necessary) attached as Appendix A, sworn by the Lessee, containing all of the information required to complete the statutory declaration. The City may request such statutory declaration in respect to each Secured Rental Unit no more than once in any calendar year; provided, however, notwithstanding that the Lessee may have already provided such statutory declaration in the particular calendar year, the City may request and the Lessee shall provide to the City such further statutory declarations as requested by the City in respect to a Secured Rental Unit if, in the City’s absolute determination, the City believes that the Lessee is in breach of any of its obligations under this Agreement.

**2.2 City Authorized to Make Inquiries** – The Lessee hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Lessee is complying with this Agreement.

**2.5 Termination** – If the Owner is the City, this Agreement expires and is of no force and effect on and after the Ground Lease, including any renewal terms, has been terminated or expires.

## **ARTICLE 3 USE OF SECURED RENTAL UNITS**

**3.1 Use of Secured Rental Units** – The Owner and the Lessee agree that each Secured Rental Unit may only be used as a residence occupied by a Tenant who is Eligible.

**3.2 Tenant Screening and Records** – The Owner and the Lessee covenant and agree with the City as follow:

- a. the Lessee shall review income of a prospective Tenant at the commencement of each Tenancy to determine whether the prospective Tenant is Eligible, and to determine rent payable in accordance with section 3.4;
- b. the Lessee shall maintain a system of records indicating the incomes of and rent paid by each past and current Tenant; and
- c. the Lessee shall, in selecting Tenants, give priority to households comprised of single mothers and their children.

**3.3 Occupancy and Tenure of Secured Rental Units** – The Owner and the Lessee must not rent, lease, license or otherwise permit occupancy of any Secured Rental Unit except in accordance with the following additional conditions:

- a. the Secured Rental Unit will be used or occupied only pursuant to a Tenancy Agreement;
- b. every Tenancy Agreement shall be a fixed term tenancy for a period of up to twelve months, which tenancy shall require the Tenant to vacate the Secured Rental Unit on or before the date the tenancy ends, unless on the date that is 30 days before the end of the tenancy, the Tenant is Eligible, in which case the Tenant and the Lessee may enter into a new fixed term Tenancy Agreement with rent payable in accordance with section 3.4;
- c. the Lessee will not require the Tenant or any permitted occupant to pay any extra charges or fees for sanitary sewer, storm sewer, water or property or similar tax;
- d. the Lessee will attach a copy of this Agreement to every Tenancy Agreement;
- e. the Lessee will not require the Tenant to pay any additional fee for, nor prevent or prohibit Tenants from accessing any common areas or amenities within the Building or on the Lands; and
- f. the Lessee will forthwith deliver a certified true copy of the Tenancy Agreement to the City upon demand.

**3.4 Rental Rates of Secured Rental Units** – The Lessee shall charge Rental Rates for each Secured Rental Unit as follows:

- a. where a Tenant receives only Income Assistance, rent will be no greater than the shelter portion of that Tenant's Income Assistance;
- b. where a Tenant receives employment income or income from sources other than or in addition to Income Assistance, rent will be no greater than the lesser of:
  - i. 70% of the Housing Income Limit rate, or
  - ii. 30% of the Tenant's total income as declared by the Tenant to the Owner and the Lessee from time to time, but no less often than once every six months; and
- c. notwithstanding (a) and (b) above, the Lessee may make application to the City to amend the rental rates should financial circumstances of the Lessee warrant.

**3.5 Tenant to Vacate Rental Unit Upon Termination** – If the Lessee has terminated any Tenancy Agreement, then the Lessee shall use best efforts to cause the Tenant and all other persons that may be in occupation of the Secured Rental Unit to vacate the Secured Rental Unit on or before the effective date of termination.

## ARTICLE 4 DEMOLITION OF SECURED RENTAL UNIT

**4.1 Demolition** – The Owner and the Lessee will not demolish a Secured Rental Unit unless:

- a. the Lessee has obtained the written opinion of a professional engineer or architect who is at arm's length to the Lessee that it is no longer reasonable or practical to repair or replace any structural component of the Secured Rental Unit, and the Lessee has delivered to the City a copy of the engineer's or architect's report; or
- b. the Secured Rental Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the City, in its sole discretion,

and, in each case, a demolition permit for the Secured Rental Unit has been issued by the City and the Secured Rental Unit has been demolished under that permit.

Following demolition, the Owner and the Lessee will use and occupy any replacement Dwelling Unit in compliance with this Agreement to the same extent and in the same manner as this Agreement applies to the original Dwelling Unit, and the Dwelling Unit must be approved by the City as a Secured Rental Unit in accordance with this Agreement.

## ARTICLE 5 MISCELLANEOUS

**5.1 Housing Agreement** – The Owner and the Lessee acknowledges and agrees that:

- a. this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*;
- b. the City may file notice of, and register, this Agreement in the LTO pursuant to section 483 of the *Local Government Act* against the title to the Lands.

**5.2 Modification** – This Agreement may be modified or amended from time to time, by consent of the Owner and the Lessee and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner and the Lessee

**5.3 Management** – The Owner and the Lessee covenants and agrees with the City that:

- a. the Secured Rental Units will be managed and operated by a non-profit or charitable organization with a mission related to and experience in the provision of affordable housing, and without limiting the foregoing, the Lessee may engage the services of a third party property manager if required;
- b. the Lessee shall furnish good and efficient management of the Secured Rental Units;
- c. the Lessee shall permit representatives of the City to inspect the Secured Rental Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*;
- d. the Lessee shall maintain the Secured Rental Units in a good state of repair and fit for habitation;

- e. the Lessee shall comply with all laws, including health and safety standards applicable to the Lands, and without limiting the generality of the foregoing, including the *Residential Tenancy Act*; and
- f. in the event that the Lessee wishes to cease operation or management of the Secured Rental Units, the operation and management will be transferred to a non-profit housing society with similar objectives as the Lessee, subject to written approval of the City, acting reasonably.

**5.4 Indemnity** – The Owner and the Lessee, each on their on behalf, will indemnify and save harmless the City and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- a. any negligent act or omission of the Owner and the Lessee, or its officers, directors, agents, contractors or other persons for whom at law the Owner and the Lessee is responsible relating to this Agreement;
- b. the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Secured Rental Unit or the enforcement of any Tenancy Agreement; or
- c. without limitation, any legal or equitable wrong on the part of the Owner and the Lessee or any breach of this Agreement by the Owner and the Lessee.

**5.5 Release** – The Owner and the Lessee, each on their own behalf, hereby releases and forever discharges the City and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:

- a. construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Secured Rental Unit under this Agreement; or
- b. the exercise by the City of any of its rights under this Agreement.

**5.6 Assignment** – The Lessee may not assign this Agreement, except to the Provincial Rental Housing Corporation, and only with the written approval of the City, acting reasonably where the Lessee.

**5.7 Survival** – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.

**5.8 City's Powers Unaffected** – This Agreement does not:

- a. affect, fetter or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- b. impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
- c. affect or limit any enactment relating to the use or subdivision of the Lands; or



d. relieve the Owner and the Lessee from complying with any enactment, including in relation to the use or subdivision of the Lands.

**5.9 Agreement for Benefit of City Only** – The Owner and the Lessee and the City agree that:

- a. this Agreement is entered into only for the benefit of the City;
- b. this Agreement is not intended to protect the interests of the Owner and the Lessee, any Tenant, or any future Owner and the Lessee, lessee, occupier or user of the Lands or the building or any portion thereof, including any Secured Rental Unit; and
- c. the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner and the Lessee.

**5.10 No Public Law Duty** – Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner and the Lessee agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

**5.11 Notice** – Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner and the Lessee set out in the records at the LTO, and in the case of the City addressed to:

or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

**5.12 Enuring Effect** – This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

**5.13 Severability** – If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

**5.14 Waiver** – All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

**5.15 Whole Agreement** – This Agreement, and any documents signed by the Owner and the Lessee contemplated by this Agreement, represent the whole agreement between the City and the Owner and the Lessee respecting the use and occupation of the Secured Rental Unit, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in or contemplated by this Agreement.

**5.16 Further Assurance** – Upon request by the City the Lessee will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.

**5.17 Agreement Runs with Lands** – This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided in perpetuity. All of the covenants and agreements contained in this Agreement are made by the Owner and the Lessee for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement acquire an interest in the Lands.

**5.18 Equitable Remedies** – The Owner and the Lessee acknowledges and agrees that damages would be an inadequate remedy for the City for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

**5.19 No Joint Venture** – Nothing in this Agreement will constitute the Owner and the Lessee as the agent, joint venturer, or partner of the City or give the Owner and the Lessee any authority to bind the City in any way.

**5.20 Applicable Law** – The laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

**5.21 Owner’s Liability** – For so long as the City of \*\*\*\*\* is the registered owner of the Lands, the City shall have no liability to the Lessee, any operator or funder or anyone else for any of the obligations of the “Owner” under this Agreement.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement on the *Land Title Act* Form C and D which is attached to and forms part of this Agreement

## 11.6 SAMPLE HOUSING AGREEMENT – SPECIAL NEEDS HOUSING

NOTE: This example agreement is for illustrative purposes only and is not a template.

### RENTAL HOUSING AGREEMENT

THIS AGREEMENT dated for reference the <> day of <>, YYYY. BETWEEN:

(the "Owner")

AND:

(the "City")

#### WHEREAS:

A.The Owner is the registered and beneficial owner of the Lands.

B.The City is a municipal corporation incorporated pursuant to the Act.

C.As a condition of the Rezoning Bylaw, the Owner has agreed to enter into a housing agreement with the City in accordance with section 483 of the Act.

D.Section 483 authorizes the City, by bylaw, to enter into a housing agreement in respect of the form of tenure of housing units, availability of such units to classes of identified person, administration and management of such units and the rent that may be charged for such units.

**NOW THEREFORE** in consideration of the sum of Ten Dollars (\$10.00) now paid by the City to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges), the Owner and the City covenant each with the other as follows:

#### 1. DEFINITIONS

- a. "**Act**" means the *Local Government Act*, RSBC. 2015 c.1 as amended or replaced from time to time;
- b. "**Affordable Housing Unit**" means a Dwelling Unit occupied by a tenant for Rental Purposes at Affordable Rent;
- c. "**Affordable Rent**" means rent (exclusive of taxes and utility fees) that is the higher of the following:
  - i. \$###/month; and
  - ii. market rent for a comparable Dwelling Unit, provided, however, that it does not exceed thirty percent (30%) of the total household income of the residents of the unit from all sources (including government rent subsidies);

- d. **"Agreement"** means this agreement as amended from time to time;
- e. **"Commencement Date"** has the meaning set out in section 2.1 herein;
- f. **"Council"** means the municipal council for the City;
- c. **"Director of Planning and Development"** means the chief administrator of the Department of Planning and Development of the City and his or her successors in function and their respective nominees;
- d. **"Dwelling Unit"** means a dwelling unit as defined in the City's "Zoning Bylaw, YYYY, No. ####", as amended from time to time;
- e. **"Lands"** means those lands and premises described in Schedule A;
- f. **"Market Rental Unit"** means a Dwelling Unit occupied by a tenant for Rental Purposes at market rates, as set by the Owner;
- g. **"Rental Purposes"** means an occupancy or intended occupancy which is or would be governed by a tenancy agreement as defined in Section 1 of the *Residential Tenancy Act*, SBC 2002 c. 78 as amended from time to time between the Owner and the tenant;
- h. **"Rental Units"** means the Market Rental Units and the Affordable Housing Units;
- i. **"Residential Building"** means the #- storey residential building to be constructed on the Lands to be used for Rental Purposes with ## Dwelling Units, of which ## Dwelling Units will be Market Rental Units and ## Dwelling Units will be Affordable Housing Units;
- j. **"RT Act"** means the *Residential Tenancy Act*, SBC 2002 c. 78;
- k. **"Rezoning Bylaw"** means the rezoning bylaw applicable to the Lands described as "Zoning Bylaw, YYYY, No. ####, Amendment Bylaw, YYYY, No. ####"; and
- l. **"Term"** has the meaning set out in section 2.1 herein.

## 2. TERM

- 2.1 This Agreement will commence upon adoption by Council for the Physically Disabled "Housing Agreement Bylaw, YYYY, No. ####", (the "Commencement Date") and will continue until the date this Agreement is terminated in accordance with sections 2.2 or 8.3(d) (the "Term").
- 2.2 This Agreement will terminate immediately upon the removal or destruction of the Residential Building provided the Residential Building is not repaired or rebuilt following the destruction thereof.
- 2.3 Subject to section 7.3, upon termination of this Agreement, this Agreement will be at an end and of no further force and effect.

### 3. USE AND TENANCY RESTRICTIONS

3.1 The Owner covenants and agrees with the City that during the term of this Agreement, notwithstanding the Rezoning Bylaw, the Lands will be used and built on only in strict compliance with the terms and conditions of this Agreement and that:

- a. the Lands will not be subdivided or stratified in any manner;
- b. all Dwelling Units in the Residential Building will be used for Rental Purposes only;
- c. the Residential Building will contain at least ## Affordable Housing Units; and
- d. all Affordable Housing Units in the Residential Building will be wheelchair accessible, to the satisfaction of the City.

3.2 The Owner will not rent, lease, license or otherwise permit occupancy of any Affordable Housing Units except in accordance with the following conditions:

- a. the Affordable Housing Unit will be used or occupied only pursuant to a tenancy agreement under RT Act, as may be amended or replaced from time to time;
- b. the monthly rent payable for the Affordable Housing Unit will not exceed the Affordable Rent; and
- c. the Owner will not permit an Affordable Housing Unit to be subleased or assigned, except at Affordable Rent, in accordance with this Agreement.

3.3 The Owner shall ensure that all tenants and occupants of the Residential Building, including tenants and occupants of the Affordable Housing Units, have equal access to all indoor and outdoor common amenities in the Residential Building.

3.4 The Owner hereby authorizes the City to make such investigations as the City deems necessary from time to time to confirm that the Owner is complying with this Agreement.

3.5 The Owner further covenants and agrees with the City that the Lands and any buildings or structures constructed thereon including the Residential Building will be developed, built and maintained in accordance with all City bylaws, regulations and guidelines as amended from time to time.

### 4. LOCATION OF AFFORDABLE HOUSING UNITS

4.1 The Owner will be entitled to determine the location of the ## Affordable Housing Units within the Residential Building.

### 5. OWNER'S OBLIGATIONS

5.1 The Owner will manage and administer the Residential Building in accordance with the following requirements:

- a. **Management and administration:** the Owner will be fully responsible for the management, and administration of the Rental Units, including all associated costs, unless otherwise approved by the City in writing;

- b. **Advertisement:** the Owner will feature the tenure restrictions set out in this Agreement prominently in all advertising of the Affordable Housing Units;
- c. **Compliance with applicable laws:** the Owner will comply with all applicable provisions of the RT Act and any other provincial or municipal enactments imposing obligations on landlords in relation to residential tenancies;
- d. **Performance:** the Owner will perform its obligations under this Agreement diligently and in good faith;
- e. **Evidence of compliance:** provided that the same can be done without breaching the *Personal Information Protection Act* (as amended from time to time) the Owner will, upon request by the City, supply to the City copies of any documentation in possession of the Owner necessary to establish compliance with the Owner's obligations under this Agreement;
- f. **Maintenance:** the Owner will maintain the Lands and the Residential Building in a fit, clean and habitable condition at all times and ensure the Lands and the Residential Building meet all applicable standards of any provincial, municipal or other applicable laws or enactments, including the Building Code requirements. The Owner will immediately perform or cause to be performed any repair work necessary to keep the Lands in a fit, clean and habitable condition.

5.2 It is the intent of the parties that the Affordable Housing Units will be rented to low income individuals and families. To that effect, unless otherwise permitted by the City in writing in advance, the Owner will ensure that the Affordable Housing Units are at all time managed and administered by one non-profit organization having as one of its objective the provision of affordable housing in the City of \*\*\*\*\*.

**6. DEFAULT AND REMEDIES**

- 6.1 The City may, acting reasonably, give to the Owner a written notice (in this section 6.1, the "Notice") requiring the Owner to cure a default under this Agreement within 30 days of receipt of the Notice. The Notice must specify the nature of the default. The Owner will act with diligence to correct the default within the time specified.
- 6.2 The Owner will pay to the City on demand by the City all the City's costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.
- 6.3 The Owner acknowledges and agrees that monetary compensation may not be sufficient to remedy a breach of this Agreement.
- 6.4 Each party to this Agreement, in addition to its rights under this Agreement or at law, will be entitled to all equitable remedies including specific performance, injunction and declaratory relief, or any of them, to enforce its rights under this Agreement.
- 6.5 The Owner acknowledges and agrees that it is entering into this Agreement to benefit the public interest in providing housing for Rental Purposes, and that the City's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out.
- 6.6 No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit or preclude that party from exercising any other right or remedy. No right or

remedy will be exclusive or dependent upon any other right or remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination.

## **7. LIABILITY**

7.1 Except for the negligence of the City or its employees, agents or contractors, the Owner will indemnify and save harmless each of the City and its elected officials, officers, directors, employees, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of one or more of the following:

- a. any act or omission by the Owner, or its officers, directors, employees, agents, contractors, or other persons for whom at law the Owner is responsible;
- b. the Owner complying with its obligations under this Agreement;
- c. the Owner defaulting on its obligations under this Agreement;
- d. the Owner's ownership, operation, management or financing of the Lands for the provision of housing for Rental Purposes; and
- e. the City exercising its rights under this Agreement.

7.2 Except to the extent of negligence of the City or its employees, agents or contractors, the Owner hereby releases and forever discharges the City, its elected officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns from and against all claims, demands, damages, actions or causes of action by reason of or arising out of one or more of the following:

- a. any act or omission by the Owner, or its officers, directors, employees, agents, contractors, or other persons for whom at law the Owner is responsible;
- b. the Owner complying with its obligations under this Agreement;
- c. the Owner defaulting on its obligations under this Agreement;
- d. the Owner's ownership, operation, management or financing of the Lands for the provision of housing for Rental Purposes; and
- e. the City exercising its rights under this Agreement.

7.3 The covenants of the Owner set out in sections 7.1 and 7.2 of this Agreement will survive the expiration or the earlier termination of this Agreement and will continue to apply to any breach of the Agreement and to any claims arising under this Agreement during the ownership by the Owner of the Lands.

## **8. GENERAL PROVISIONS**

8.1 The Owner agrees to reimburse the City for all legal costs reasonably incurred by the City for the preparation, execution and registration of this Agreement. The Owner will bear their own costs, legal or otherwise, connected with the preparation, execution or registration of this Agreement.

8.2 Nothing in this Agreement:

- a. affects or limits any discretion, rights, powers, duties or obligations of the City under any enactment or at common law, including in relation to the use or subdivision of land;
- b. affects or limits any enactment relating to the use of the Lands or any condition contained in any approval including any development permit concerning the development of the Lands; or
- c. relieves the Owner from complying with any enactment, including the City's bylaws in relation to the use of the Lands.

8.3 The Owner and the City agree that:

- a. this Agreement is entered into only for the benefit of the City;
- b. the Owner is not entitled and will not claim any compensation from the City for any decrease in the market value of the Lands or for any obligations on the part of the Owner and its successors in title which at any time may result directly or indirectly by operation of this Agreement;
- c. this Agreement is not intended to protect the interests of the Owner, occupier or user of the Lands or any portion of it including the Rental Units; and
- d. without limiting part 2 of this Agreement, the City may at any time execute a release and discharge of this Agreement in respect of the Lands, without liability to anyone for doing so.

8.4 This Agreement burdens and runs with the Lands and any part into which any of them may be subdivided or consolidated, by strata plan or otherwise. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its successors and assigns, and all persons who acquire an interest in the Lands after the date of this Agreement. Without limiting the generality of the foregoing, the Owner will not be liable for any breach of any covenant, promise or agreement herein in respect of any portion of the Lands sold, assigned, considered or otherwise disposed of, occurring after the Owner has ceased to be the owner of the Lands.

8.5 The covenants and agreements on the part of the Owner in this Agreement have been made by the Owner as contractual obligations as well as being made pursuant to section 483 of the Act and as such will be binding on the Owner and its successors in title.

8.6 The Owner will, at its expense, do or cause to be done all acts reasonably necessary to ensure this Agreement is registered against the title to the Lands, including any amendments to this Agreement as may be required by the Land Title Office or the City to effect such registration.



- 8.7 The City and the Owner each intend by execution and delivery of this Agreement to create both a contract and a deed under seal.
- 8.8 An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.
- 8.9 If a Court of competent jurisdiction finds that any part of this Agreement is invalid, illegal, or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 8.10 Every obligation of a party which is set out in this Agreement will extend throughout the Term and, to the extent that any obligation ought to have been observed or performed prior to or upon the expiry or earlier termination of the Term, such obligation will survive the expiry or earlier termination of the Term until it has been observed or performed.
- 8.11 All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, by facsimile or e-mail transmission, or by personal service, to the following address for each party:

City:

Owner:

Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; if made by facsimile or e-mail transmission, on the first business day after the date when the facsimile or e-mail transmission was transmitted; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the other parties, may

designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.

- 8.12 Upon request by the City, the Owner will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the City, to give effect to this Agreement.
- 8.13 This Agreement will enure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.

## **9. INTERPRETATION**

- 9.1 Gender specific terms include both genders and include corporations. Words in the singular include the plural, and words in the plural include the singular.

9.2 The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this Agreement is to be construed simply according to its fair meaning, and not strictly for or against either party.

9.3 The word “including” when following any general statement or term is not to be construed to limit the general statement or term to the specific items which immediately follow the general statement or term to similar items whether or not words such as “without limitation” or “but not limited to” are used, but rather the general statement or term is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of the general statement or term.

9.4 The words “must” and “will” are to be construed as imperative.

9.5 Any reference in this Agreement to any statute or bylaw includes any subsequent amendment, re-enactment, or replacement of that statute or bylaw.

9.6 This is the entire agreement between the City and the Owner concerning its subject, and there are no warranties, representations, conditions or collateral agreements relating to the subject matter of this Agreement, except as included in this Agreement. This Agreement may be amended only by a document executed by the parties to this Agreement and by bylaw, such amendment to be effective only upon adoption by City Council of an amending bylaw to “Housing Agreement Bylaw, YYYY, No. #####”.

9.7 This Agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia.

9.8 This Agreement can be signed in counterpart.

9.9 Schedule A is attached and forms part of this Agreement.

**IN WITNESS WHEREOF** each of the City and the Owner have executed this Agreement under seal by their duly authorized officers as of the reference date of this Agreement.

## 11.7 SAMPLE STATUTORY DECLARATION

NOTE: This example agreement is for illustrative purposes only and is not a template.

TO WIT:

I, \_\_\_\_\_ of \_\_\_\_\_, British Columbia, do solemnly declare that:

1. I am the owner or the authorized signatory of the Lessee of ### Street Name, (the "Lands"), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the Lands.
3. For the period from \_\_\_\_\_ to \_\_\_\_\_ the Lands were occupied only by the tenants whose names and current addresses appear below:

Tenant Name(s)	Tenant Address	Tenant Phone Number	Rent Paid by Tenant

4. The Lessee has agreed to comply with the Lessee's obligations under the Housing Agreement, and other charges in favour of the City noted or registered in the Land Title Office against the Lands and I confirm that the Lessee has complied with the Lessee's obligations under the Housing Agreement.
5. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at the City of \_\_\_\_\_ ]  
 \_\_\_\_\_, in the Province of \_\_\_\_\_ ]  
 British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_ ]  
 \_\_\_\_\_, 20\_\_\_\_. ]

\_\_\_\_\_  
 DECLARANT

A Commissioner for Taking Affidavits  
 in the Province of British Columbia



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