

TERMS OF INSTRUMENT - PART 2

AFFORDABLE RENTAL HOUSING AGREEMENT AND SECTION 219 COVENANT

THIS AGREEMENT dated for reference _____ 2025

BETWEEN:

Provincial Rental Housing Corporation
c/o British Columbia Housing Management Commission
1701-4555 Kingsway,
Burnaby, BC V8H 4V8

(the "Owner")

AND:

City of Port Coquitlam
200-2564 Shaughnessy Street,
Port Coquitlam, BC V3C 3G4

(the "City", as more fully defined in section 1.1 of this Agreement)

WITNESSES THAT WHEREAS:

- A. Section 483 of the *Local Government Act* permits the City to enter into housing agreements for the provision of affordable and special needs housing, which may include, without limitation, conditions in respect of 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. 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, construction on land, or the subdivision of land;
- C. The Owner of the Lands (as hereinafter defined) intends to construct the Development;
- D. BC Housing intends to enter into an Operator Agreement with an Operator and the Operator will operate and maintain the Lands as hereinafter defined;
- E. The Owner and the City wish to enter into this Agreement to provide for Affordable Rental Housing on the Lands on the terms and conditions set out in this Agreement and to restrict the use of, and construction on, the Lands on the terms and conditions of this Agreement, to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act* and to charge the Lands; and
- F. The Owner has agreed to execute this Agreement solely for the purpose of facilitating its registration in the LTO in accordance with the *Land Title Act* and the requirements of the LTO and in order to provide confirmation to the City that the Lands will be available to provide for Affordable Rental Housing for a term of sixty (60) years, including by granting to the City a

covenant under section 219 of the *Land Title Act* to ensure the Lands are used only for Affordable Rental Housing.

NOW THEREFORE, in consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree, 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) **"Affordable Rental Housing"** means the occupation of Affordable Rental Housing Units by Eligible Tenants.
- (b) **"Affordable Rental Housing Unit"** means a Dwelling Unit or Dwelling Units in the Development used for Affordable Rental Housing in accordance with this Agreement.
- (c) **"Agreement"** means this agreement together with all schedules.
- (d) **"BC Housing"** means the British Columbia Housing Management Commission or its successor(s) in function.
- (e) **"City"** means the City of Port Coquitlam and is called the "City" when referring to the corporate entity and "City of Port Coquitlam" when referring to the geographic location.
- (f) **"CPI"** means the All-Items Consumer Price Index for the City of Vancouver published from time to time by Statistics Canada, or its successor in function.
- (g) **"Cumulative Gross Annual Household Income"** means the cumulative income of each member of a Family that occupies an Affordable Rental Housing Unit that is over eighteen (18) years of age.
- (h) **"Development"** means the seventy-four (74) Affordable Rental Housing Units, consisting of studio, one (1) and two (2) bedrooms on the Lands.
- (i) **"Development Permit"** means a development permit under section 490 of the *Local Government Act* in respect of the Lands.
- (j) **"Dwelling Unit"** means a self-contained suite of rooms used or intended to be used as a residence by individual(s) and containing both cooking and sanitary facilities.
- (k) **"Eligible Tenant"** means:
 - (i) an RGI Tenant; and
 - (ii) a Shelter Allowance Tenant.
- (l) **"Employment and Assistance Act"** means the *Employment and Assistance Act*, S.B.C 2002, c 40, together with all amendments thereto and replacements thereof.

- (m) **"Employment and Assistance Regulation"** means the *Employment and Assistance Regulation*, BC Reg 263/2002, together with all amendments thereto and replacements thereof.
- (n) **"Employment and Assistance for Persons with Disabilities Act"** means the *Employment and Assistance for Persons with Disabilities Act*, S.B.C 2002, c 41, together with all amendments thereto and replacements thereof.
- (o) **"Employment and Assistance for Persons with Disabilities Regulation"** means the *Employment and Assistance for Persons with Disabilities Regulation*, BC Reg 265/2002, together with all amendments thereto and replacements thereof.
- (p) **"HILs"** means Housing Income Limits as established by BC Housing from time to time.
- (q) **"ICBC"** means the Insurance Corporation of British Columbia, or its successor in function;
- (r) **"Family"** means a household with a minimum of two (2) persons and must include at least one (1) dependent child at the time of occupancy. A dependent child is:
 - (i) a child, stepchild, adopted child, or legal ward under the age of nineteen (19); or
 - (ii) a child aged nineteen (19) to twenty-four (24) years who has provided proof of attending school full time; and
 - (iii) is unmarried and not in a common-law relationship.
- (s) **"Interpretation Act"** means the *Interpretation Act*, R.S.B.C. 1996, c 238, together with all amendments thereto and replacements thereof.
- (t) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c 250, together with all amendments thereto and replacements thereof.
- (u) **"Lands"** means the lands and premises civically described 2365 & 2371 Kelly Ave, Port Coquitlam, and legally described in Item 2 of the *Land Title Act* Form C to which this Agreement is attached.
- (v) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 2015, c 1, together with all amendments thereto and replacements thereof.
- (w) **"LTO"** means the New Westminster Land Title Office or its successor.
- (x) **"Maximum Income"** means one hundred percent (100%) of the most current HILs published by BC Housing:
 - (i) in the event that BC Housing ceases to publish HILs but replaces HILs with similar income limits or standards that are acceptable to the City for the purposes of this Agreement, such replacement limit or standards shall replace HILs for the purposes of this Agreement; or

- (ii) in the event that BC Housing ceases to determine HILs and the HILs are not replaced by similar income limits or standards published by BC Housing that are acceptable to the City, then the cumulative annual income limits of RGI Tenants shall be determined by reference to the final HILs published by BC Housing and thereafter increased annually by an amount equal to the increase, if any, in the CPI for the period of January 1 to December 31 of the previous calendar year.
- (y) "**Maximum Shelter Allowance**" means the maximum monthly Shelter Allowance that a Shelter Allowance Tenant is entitled to receive based on their Family unit size or composition as outlined in the:
 - (i) *Employment and Assistance Act and Employment and Assistance Regulation*; or
 - (ii) *Employment and Assistance for Persons with Disabilities Act*; and
 - (iii) *Employment and Assistance for Persons with Disabilities Act Regulation*.
- (z) "**Occupancy Standards**" means, with respect to an Affordable Rental Housing Unit, the requirement that there shall be no less than one (1) occupant per bedroom. The National Occupancy Standards or applicable City By-law will be referenced in defining maximum occupancy per bedroom.
- (aa) "**Operator Agreement**" means an agreement or agreements entered into or in effect between the Operator for the time being and BC Housing in respect of the operation and rental of the Affordable Housing Units and which provides for operating requirements and standards which are then standard for BC Housing funded Affordable Rental Housing developments comparable to the Development, as the same may be amended from time to time.
- (bb) "**Operator**" means a non-profit society selected by BC Housing to operate the building.
- (cc) "**Owner**" means the registered and beneficial owner of the Property, who, as of the date of this Agreement, is PRHC.
- (dd) "**Permitted Rent**" means:
 - (i) with respect to RGI Tenants: a monthly rent of no greater than 1/12th of 30% of the Cumulative Gross Annual Household Income of the RGI Tenant occupying the Affordable Rental Housing Unit; and
 - (ii) with respect to Shelter Allowance Tenants, means the Maximum Shelter Allowance.
- (ee) "**PRHC**" means Provincial Rental Housing Corporation or its successor(s) in function.
- (ff) "**Public Housing Body**" has the same meaning as under section 49.1 of the *Residential Tenancy Act*.

- (gg) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, c 78, together with all amendments thereto and replacements thereof and all regulations thereunder.
- (hh) **"RGI Tenant"** means an individual that has a Cumulative Gross Annual Household Income that does not exceed the Maximum Income Persons with disabilities and those living with mental illness may be given priority for Affordable Rental Housing Units occupied by RGI Tenants.
- (ii) **"Section 219 Covenant Term"** means a period ending on the earlier of sixty (60) years from the date that the City issues an occupancy permit for the Development and the date that the Owner determines, acting reasonably, that it is not economical to repair or restore the Building or to keep and maintain the Building in a tenantable condition to the standard required by this Agreement, based on the remainder of the useful life of the Building as determined by a professional engineer or architect who is at arm's length to the Owner, and the Owner has delivered to the City a copy of the engineer's or architect's report, or the Owner is no longer able to qualify for or obtain funding in order to maintain the building in a tenable condition to the standard required by this Agreement.
- (jj) **"Shelter Allowance"** means the monthly allowance provided to an individual or family for shelter under the:
- (i) *Employment and Assistance Act and Employment and Assistance Regulation*; or
 - (ii) *Employment and Assistance for Persons with Disabilities Act*; and
 - (iii) *Employment and Assistance for Persons with Disabilities Act Regulation*.
- (kk) **"Shelter Allowance Tenant"** means an individual who qualifies for and receives the Shelter Allowance;
- (ll) **"Strata Property Act"** means the *Strata Property Act* S.B.C. 1998, Chapter 43, together with all amendments thereto and replacements thereof.
- (mm) **"Subdivide"** or **"Subdivided"** means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two (2) 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 interests in land" as defined in the British Columbia *Real Estate Development Marketing Act*, S.B.C. 2004, c.41.
- (nn) **"Tenancy Agreement"** means a written tenancy agreement, lease or license or other written agreement granting rights to occupy an Affordable Rental Housing Unit.
- (oo) **"Tenancy Default"** has the meaning set out in section 3.5(c)(ii) of this Agreement.

(pp) **"Tenant"** means an individual(s) that occupies an Affordable Rental Housing Unit.

(qq) **"Transferee"** has the meaning set out in section 5.2 of this Agreement.

1.2 Interpretation- In this Agreement:

- (a) Party. Any reference to a party herein will be deemed to include the successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) Singular Gender. Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References. References to this "Agreement" and the words "hereof", "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated recital, section, subsection or other subdivision is a reference to the designated recital, section, subsection or subdivision hereof.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made from time to time to such statute and regulations and as they are in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

ARTICLE 2 - CONSTRUCTION, USE AND MANAGEMENT OF AFFORDABLE RENTAL HOUSING UNITS

2.1 Minimum Construction Requirements- The Owner will construct the Development.

2.2 Use — Each Affordable Rental Housing Unit may only be used as a permanent residence by an Eligible Tenant pursuant to a Tenancy Agreement, with consideration given to Eligible Tenants

with intellectual or physical disabilities. Without limiting the foregoing and for clarity, an Affordable Rental Housing Unit may not be occupied by the Owner's or the Operator's officers, directors, employees, agents, contractors, permittees or invitees. For the purposes of this section, "permanent residence" means the place where the person lives and to which, whenever absent, the person intends to return.

- 2.3 Subdivision** - The building containing the Affordable Rental Housing Units shall not be Subdivided, including by deposit of a strata plan of any kind under the *Strata Property Act*, provided that the building may be subdivided by deposit of a strata plan if, concurrently with the deposit of such strata plan, a covenant under section 219 of the *Land Title Act* is granted in favour of the City and registered against title to the strata lots containing all of the Affordable Rental Housing Units, with priority over all financial liens, charges and encumbrances, providing that such strata lots shall not be separately sold or otherwise transferred.
- 2.4 Municipal Approvals**— The Owner agrees that the City may withhold its final inspection in respect of a building on the Lands until all of the following requirements are satisfied:
- (a) if the Owner is not a Public Housing Body, it has entered into a contract with a Public Housing Body for the Public Housing Body to administer, manage and operate the Affordable Rental Housing Units in accordance with the requirements of this Agreement; or
 - (b) the Owner will ensure the Operator is a Public Housing Body for the purposes of section 49.1 of the *Residential Tenancy Act*; and
 - (c) the Owner will ensure the Operator is not otherwise in breach of any of its obligations under this Agreement.
- 2.5 Parking** – The Owner shall cause the Operator to:
- (a) not permit more than twelve (12) vehicles owned or otherwise operated by Eligible Tenants to use the address of the Development for registering such vehicles with ICBC for insurance purposes;
 - (b) maintain a record of which Eligible Tenants are entitled to have a vehicle registered with ICBC pursuant to section 2.5 **Error! Reference source not found.**, along with the corresponding license plate of each vehicle (the "**Parking Record**"), and
 - (c) following the receipt of a written request from the City,
 - (i) but subject to applicable privacy legislation and the consent of Eligible Occupants, provide the City with the Parking Record, or, if the Operator is not able to provide the Parking Record to the City, cause the Operator to provide written confirmation to the City that the Operator is complying with the requirements of this section 2.5.

ARTICLE 3 - OCCUPANCY AND MANAGEMENT OF AFFORDABLE RENTAL HOUSING UNITS

- 3.1** Occupancy Terms and Conditions— The terms and conditions of occupancy for each Affordable Rental Housing Unit shall be determined by:
- (a) the terms and conditions of the Operator Agreement, where an Operator Agreement is in effect between the Operator and BC Housing, subject to the maximum rent provision set out in section 3.2(a) herein; or
 - (b) the terms and conditions in sections 3.3 to 3.7 below, where there is no Operator Agreement in effect between the Operator and BC Housing.
- 3.2** Rent — The monthly rent charged for an Affordable Rental Housing Unit will not exceed:
- (a) the Permitted Rent as defined in this Agreement
- 3.3** **Tenant Composition Requirements**— Where there is no Operator Agreement in effect, the Affordable Rental Housing Units will be occupied in accordance with the following requirements:
- (a) 100% of the units will be occupied by Eligible Tenants.
- 3.4** **Occupancy Declaration**— Where there is no Operator Agreement in effect, within thirty (30) days after receiving notice from the City, the Owner must, in respect of each Affordable Rental Housing Unit or those specified in the City's notice, provide to the City a statutory declaration, substantially in the form attached hereto as Schedule A, certified by the Owner, containing all of the information required to complete the statutory declaration.
- 3.5** **Occupancy Terms and Conditions Where there is No Operator Agreement** — Where there is no Operator Agreement in effect, the occupancy of each Affordable Rental Housing Unit shall comply at all times with all of the following terms and conditions:
- (a) **Eligible Tenant** — The Affordable Rental Housing Unit shall only be occupied as a permanent residence by, and rented to, an Eligible Tenant in accordance with the Occupancy Standards.
 - (b) **Tenancy Agreement** - The Affordable Rental Housing Unit will be used or occupied only pursuant to a Tenancy Agreement.
 - (c) **Tenancy Agreement Requirements** – Subject always to the requirements of the Residential Tenancy Act, every Tenancy Agreement with respect to an Affordable Rental Housing Unit shall comply with the following requirements:
 - (i) the Tenancy Agreement shall include a clause requiring the Tenant and each permitted occupant of the Affordable Rental Housing Unit to comply with this Agreement;

- (ii) the Tenancy Agreement shall include a clause entitling the Owner to terminate the Tenancy Agreement if any of the following occur (each of which constitutes a "**Tenancy Default**"):
 - A. the Affordable Rental Housing Unit is occupied by more than the number of people the City's building inspector determines can reside in the Affordable Rental Housing Unit given the number and size of bedrooms in the Affordable Rental Housing Unit and in light of any applicable City bylaw requirements;
 - B. the Affordable Rental Housing Unit remains vacant for three (3) consecutive months or longer, notwithstanding the timely payment of rent; or
 - C. the Tenant subleases the Affordable Rental Housing Unit or assigns the Tenancy Agreement in whole or in part, without the Owner's consent; and
- (iii) the Tenancy Agreement will identify all occupants of the Affordable Rental Housing Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing in the Affordable Rental Housing Unit

and the parties acknowledge and agree that if and to the extent of a conflict between the provisions of this Agreement and the Residential Tenancy Act, the provisions of the Residential Tenancy Act will govern.

3.6 Subleasing and Assignment- Where there is no Operator Agreement in effect, the Owner will not consent to the assignment of a Tenancy Agreement or the subletting of an Affordable Rental Housing Unit, except if the assignment or subletting is to an Eligible Tenant and, in the case of an assignment, the assignee does not pay any amount to the assignor in consideration of such assignment or in the case of a sublease, the subtenant does not pay monthly rent to the Tenant that exceeds the Permitted Rent applicable to the Affordable Rental Housing Unit.

3.7 Management - Where there is no Operator Agreement in effect, the Owner is responsible for operations.

ARTICLE 4 - DEFAULTS AND REMEDIES

4.1 Notice of Default- If the Owner is in default of this Agreement, the City may give the Owner written notice requiring that the Owner cure the default within thirty (30) days of receiving such notice, or such longer period as the Owner reasonably requires if the default cannot be cured within thirty (30) days if the Owner is acting diligently. The notice must specify the nature of the default. The Owner must act diligently to correct the default within the time specified in the notice.

4.2 Costs - The Owner will pay to the City, upon demand by the City, all of the City's costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.

- 4.3 Specific Relief-** The Owner agrees that, without affecting any other rights or remedies the City may have in respect of any breach of this Agreement that continues beyond the cure period, the City is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement that continues beyond the cure period. The Owner agrees that this is reasonable given the public interest in ensuring the provision of Affordable Rental Housing Units to be occupied by Eligible Tenants and restricting occupancy of the Lands in accordance with this Agreement.
- 4.4 No Penalty or Forfeiture-** The Owner acknowledges and agrees that it is entering into this Agreement to benefit the public interest in providing Affordable Rental Housing Units for Eligible Tenants, and that the City's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out, and the City's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.
- 4.5 Cumulative Remedies-** 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 to 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 for a default by the Owner under this Agreement.

ARTICLE 5 MISCELLANEOUS

- 5.1 Section 219 Covenant** - In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the parties), the Owner covenants and agrees with the City as a covenant in favour of the City pursuant to section 219 of the *Land Title Act*, it being the intention and agreement of the Owner that the provisions hereof be annexed to, and run with and be a charge on title to the Lands, that for the Section 219 Covenant Term, the Lands shall only be used for the provision of Affordable Rental Housing, and the Owner shall cause the section 219 covenant under this section to be registered against title to the Lands in the LTO with priority over all financial liens, charges and encumbrances, including any leases, options to purchase, rights of first refusal, and agreements for sale.
- 5.2 Sale of Lands-** The Owner covenants and agrees with the City that it shall use reasonable commercial efforts to cause any purchaser or transferee (each a "**Transferee**") of all or any portion of the Lands to execute and/or deliver, prior to completion of such sale or transfer, an acknowledgment of this Agreement and a covenant from such Transferee to assume and be bound by all of the Owner's obligations set out in this Agreement, in a form satisfactory to the City, acting reasonably and thereupon the Owner shall be, automatically and without further instrument, released from its ongoing obligations under this Agreement.
- 5.3 No Obligation of The Owner-** The City acknowledges, covenants, and agrees with the Owner that the Owner is executing and delivering this Agreement for the sole purpose of facilitating the registration of this Agreement in the LTO and providing the section 219 Covenant set forth in section 5.1.

- 5.4 Alternate Provider-** The Owner, for so long as the Owner is PRHC, shall provide the City with as much advanced written notice as is practicable in the circumstances, as determined by the Owner in its sole discretion, in the event that the Operator Agreement is terminated or the Operator is replaced for any reason, and the Owner covenants and agrees to consult with the City with respect to the replacement of any Operator during the Section 219 Covenant Term, and to give due consideration to the City's input with respect to same, but notwithstanding the foregoing or anything else herein contained, the City acknowledges that decisions in connection with the termination of the Operator Agreement or the replacement of the Operator will be made by the Owner in its sole and unfettered discretion, and that in some instances the Owner may determine it necessary to terminate an Operator Agreement or replace an Operator with immediate effect and that consequently such advanced notice and due consideration will not be possible.
- 5.5 Discharge** - This Agreement will expire and become null and void on the conclusion of the Section 219 Covenant Term. On or after the expiration of this Agreement, the Owner may submit a registrable discharge of this Agreement and a cancellation of the notice of this Agreement filed in the LTO pursuant to section 483 of the *Local Government Act* to the City and the City shall, within a reasonable time after request by the Owner, execute and deliver to the Owner such discharge of this Agreement and cancellation of the notice.
- 5.6 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 which at any time may result directly or indirectly from the operation of this Agreement.
- 5.7 Indemnity** – Save and except to the extent caused by the negligence or wrongful intentional acts of the City and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns (collectively, the “**City Parties**”), the Owner will indemnify and save harmless the City Parties, from and against all claims, demands, actions, losses, damages, 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 the Owner is responsible at law in connection with the observance or performance of the obligations of the Owner 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;
 - (c) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Rental Housing Unit or the enforcement of any Tenancy Agreement; or
 - (d) any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.
- 5.8 Release** - Save and except for when caused by the negligence or wrongful intentional acts of the City Parties, the Owner hereby releases and forever discharges the City Parties 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, management or financing of the Lands or any Affordable Rental Housing Unit;
- (b) 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; or
- (c) exercise by the City of any of its rights under this Agreement.

5.9 Registration & Priority - The Owner agrees to cause this Agreement to be registered in the LTO against title to the Lands in priority to all financial encumbrances charging the Lands. If the LTO defects or rejects the registration of this Agreement, then the parties will take such remedial steps as may be required by the LTO to allow this Agreement to be registered in the LTO against the Owner's fee simple interest in the Lands.

The Owner acknowledges that the City must file a notice of this Agreement in the LTO as required by section 483(5) of the *Local Government Act* in relation to housing agreements and that this will result in a legal notation on title to the Lands referencing the existence of this Agreement.

5.10 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.

5.11 Agreement for Benefit of the 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 Rental 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.

5.12 Enduring Effect - This Agreement will extend to and be binding upon and endure 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 against the Owner 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 Sole Agreement** - This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the City and the Owner respecting the use and occupation of the Affordable Rental Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement.
- 5.16 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.
- 5.17 Agreement Runs with the Lands-** This Agreement shall burden and run with, and bind the successors in title to the Owner in the Lands and every parcel into which the Lands may be Subdivided.
- 5.18 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.
- 5.19 Applicable Law** - Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.
- 5.20 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.

IN WITNESS WHEREOF – the parties hereto have executed this Agreement by signing the General Instrument –Part 1 attached hereto as of the date first above written.

SCHEDULE A

OCCUPANCY DECLARATION

DRAFT