

THE CORPORATION OF THE CITY OF NEW WESTMINSTER

HOUSING AGREEMENT (51 ELLIOT STREET) BYLAW NO. 8447, 2024

A BYLAW TO ENTER INTO A HOUSING AGREEMENT UNDER SECTION 483 OF THE *LOCAL GOVERNMENT ACT*

GIVEN THAT:

- A. The owner of the lands (the “Owner”) within the City of New Westminster, British Columbia legally described as:

PID: 015-745-791

BLOCK 19, NEW WEST DISTRICT, PLAN NWP84467 PARCEL A, GROUP 1.

(the “**Land**”)

wishes to construct dwelling units on the Land.

- B. In connection with such construction, the Owner has agreed to use the Land for rental housing in accordance with the terms of the Section 219 Covenant and Housing Agreement attached hereto as Schedule “A” (the “Housing Agreement”).

The Council of the City of New Westminster, in open meeting assembled,

ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as “Housing Agreement (51 Elliot Street) Bylaw No. 8447, 2024”.
2. Council hereby authorizes the City of New Westminster to enter into the Housing Agreement with the Owner, substantially in the form attached hereto as Schedule “A”.

3. The Mayor and the Corporate Officer of the City of New Westminster are authorized to execute the Housing Agreement, substantially in the form attached hereto as Schedule "A", and the Corporate Officer is authorized to sign and file in the Land Title Office a notice of the Housing Agreement, as required by section 483 of the *Local Government Act*.

READ A FIRST TIME this ____ day of _____, 2024.

READ A SECOND TIME this ____ day of _____, 2024.

READ A THIRD TIME this ____ day of _____, 2024.

ADOPTED this ____ day of _____, 2024.

Mayor:

Corporate Officer:

Schedule "A"
Section 219 Covenant and Housing Agreement

PART 2 – TERMS OF INSTRUMENT

HOUSING AGREEMENT AND COVENANT

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

THIS AGREEMENT is dated for reference the 11th day of April, 2024:

BETWEEN:

RC LIMITED PARTNER INC., INC.NO. BC1152999

Suite 120 - 4299 Canada Way

Burnaby, BC

V5G 1H3

(the “**Owner**”)

AND:

THE CORPORATION OF THE CITY OF NEW WESTMINSTER,

511 Royal Avenue, New Westminster, British Columbia, V3L 1H9

(the “**City**”)

WHEREAS:

- A. The Owner is the registered owner of the land legally described in the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement (the “**Lands**”);
- B. Section 483 of the *Local Government Act* (British Columbia) permits the City to enter into housing agreements for the provision of affordable and special needs housing, which may include conditions in respect to the form of tenure of housing units;
- C. Section 219 of the *Land Title Act* (British Columbia) permits the registration of a covenant of a positive or a negative nature in favour of the City in respect of the use of and subdivision of land;
- D. The Owner intends to build a 37-storey mixed-use building including market Dwelling Units (hereinafter defined), affordable Rental Dwelling Units (hereinafter defined), amenities, including vehicle and bicycle parking, and a daycare space (the “**Building**”) on the Lands;
- E. Once constructed, the Owner intends to subdivide the Building to create the Air Space Parcel (hereinafter defined) which will contain 13 Rental Dwelling Units;
- F. The City requires the Owner to enter into this Agreement to ensure, among other things, that the 13 Dwelling Units located within the Air Space Parcel are used only as Rental Dwelling Units during the Term; and

- G. The City adopted Housing Agreement Bylaw No. 8447, 2024, authorizing the City to enter into 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 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 LTO forms, schedules, appendices, attachments and priority agreements attached hereto.
- (b) **“BC Housing”** means the British Columbia Housing Management Commission or its’ successor in function.
- (c) **“Building”** has the meaning assigned to it in Recital D.
- (d) **“Childcare Air Space Parcel”** means that air space parcel that will be created via air space subdivision of the Lands and will contain, *inter alia*, a daycare in the Building.
- (e) **“CPI”** means the All-items Consumer Price Index for British Columbia as calculated by Statistics Canada or its’ successor in function.
- (f) **“Cost Sharing and Easement Agreement”** means a cost sharing and easement agreement containing without limitation:
 - (i) easements for support, access, utilities, life safety systems and other benefits among the Childcare Air Space Parcel, the Rental Air Space Parcel and the Remainder Lands and any other subdivided portions of the Lands (including the common areas and facilities of the Building shared by such parcels);
 - (ii) without limiting the generality of subsection (i) above, easements over the Remainder Lands for the Owner and the tenants of the Rental Dwelling Units to access and use the Rental Dwelling Unit Facilities which are located within the Remainder Lands;
 - (iii) covenants under section 219 of the *Land Title Act* in favour of the City, as may be required by the approving officer for the City;
 - (iv) provisions for the sharing among parcels of the responsibilities and costs of ongoing maintenance of portions that are shared among the parcels on each of the parcels and the Building;

- (v) terms that will apply as necessary in the event of major damage or destruction of part(s) of the Building; and
 - (vi) such other terms and conditions as the Owner and the owners of any other subdivided portions of the Lands may agree to.
- (g) **“Cumulative Gross Annual Household Income”** means the current cumulative, gross (before-tax), annual (based on a calendar year) income of each member of a Household that occupies a Rental Dwelling Unit from time to time that is over 18 years of age, as calculated in accordance with the Metro Vancouver Rent Calculation Policy, provided that:
 - (i) if Metro Vancouver Housing Corporation ceases to publish the Metro Vancouver Rent Calculation Policy and does not replace it with a similar policy, then Cumulative Gross Annual Household Income shall be determined in accordance with the most recently published BC Housing Rent Calculation Guide, or, if BC Housing ceases to publish a Rent Calculation Guide, an equivalent guide for determining the Cumulative Gross Annual Household Income of affordable housing tenants that is acceptable to the City; and
 - (ii) if BC Housing ceases to publish a Rent Calculation Guide and does not replace it with an equivalent guide for determining the Cumulative Gross Annual Household Income of affordable housing tenants that is acceptable to the City, Cumulative Gross Annual Household Income shall be determined in accordance with the final Rent Calculation Guide or equivalent guide or method acceptable to the City.
- (h) **“Dwelling Unit”** means a residential dwelling unit and includes single family detached dwellings, duplexes, townhouses, auxiliary residential dwelling units, apartments and condominiums.
- (i) **“Eligible Tenant”** means a Household having a Cumulative Gross Annual Household Income for the most recent financial year that does not exceed the Maximum Income for a HIL Unit or a RGI Unit, as applicable.
- (j) **“Household”** means:
 - (i) one individual; or
 - (ii) two or more individuals related by blood, marriage or adoption.
- (k) **“Household Income Limits”** or **“HILs”** means the Housing Income Limits for the Vancouver planning area most recently published by BC Housing, provided that:
 - (i) The maximum annual income amounts set out above shall be adjusted annually on January 1 of each calendar year to reflect the applicable Housing

Income Limits for the Vancouver planning area published by BC Housing or its successor in function.

- (ii) In the event that BC Housing ceases to publish HILs but replaces HILs with a 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.
- (iii) In the event that BC Housing ceases to determine HILs and the HIL's are not replaced by similar income limits or standards published by BC Housing that are acceptable to the City, then the Maximum Income for Eligible Tenants of Market Units 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.

(l) **"HIL Unit"** means a Rental Dwelling Unit that:

- (i) is designated as a HIL Unit pursuant to section 3.1(d) of this Agreement;
- (ii) may only be occupied by a Household whose Cumulative Gross Annual Household Income does not exceed the Maximum Income for a HIL Unit; and
- (iii) is subject to the HIL Unit Permitted Rent.

(m) **"HIL Unit Permitted Rent"** means, subject to section 3.4:

- (i) For a 2 bedroom Dwelling Unit: 30% of 60% of the HIL for a 2 bedroom unit.

For clarity, the 2023 HIL for a 2 bedroom Dwelling Unit in the Vancouver Planning area is \$72,000. The rent for a 2 bedroom HIL Unit is determined using the following formula:

$$((\$72,000 \times .6) \times .3)/12 = \$1,080/\text{month}$$

- (ii) For a 3 bedroom Dwelling Unit: 30% of 60% of the HIL for a 3 bedroom unit.

For clarity, the 2023 HIL for a 3 bedroom Dwelling Unit in the Vancouver Planning area is \$86,000. The rent for a 3 bedroom HIL Unit is determined using the following formula:

$$((\$86,000 \times .6) \times .3)/12 = \$1,290/\text{month}.$$

(n) **"Interpretation Act"** means the *Interpretation Act*, RSBC 1996, Chapter 238.

(o) **"Lands"** has the meaning assigned in Recital A.

- (p) **“Land Title Act”** means the *Land Title Act*, RSBC 1996, Chapter 250.
- (q) **“Local Government Act”** means the *Local Government Act*, RSBC 2015, Chapter 1.
- (r) **“LTO”** means the New Westminster Land Title Office or its successor.
- (s) **“Maximum Income”** means:
 - (i) for an RGI Unit: the then current income threshold listed for the non-market rental units in the City of New Westminster’s Inclusionary Housing Policy. As of April 2022, the maximum income threshold is \$29,999.00 annually.
 - (ii) for a HIL Unit: the then current income threshold listed for the below-market rental units in the City of New Westminster’s Inclusionary Housing Policy. As of April 2022, the maximum income threshold is \$75,000.00 annually.

provided that:

- (iv) The income thresholds set out above shall be adjusted annually on January 1 of each calendar year to reflect the applicable thresholds for non-market and below market rental units set out in the City of New Westminster’s Inclusionary Housing Policy.
- (v) If New Westminster ceases to publish the thresholds for non-market and below market rental units but replaces such thresholds with similar income limits or standards that is acceptable to the City for the purposes of this Agreement, such replacement limit or standard shall replace the thresholds for non-market and below market rental units for the purposes of this Agreement.
- (vi) If New Westminster ceases to publish the thresholds for non-market and below market rental units and does not replace such thresholds with a similar income limit or standard that is acceptable to the City, then the Maximum Income for tenants of the Rental Dwelling Units shall be determined by reference to the final thresholds for non-market and below market rental units published by New Westminster 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.
- (t) **“Metro Vancouver Rent Calculation Policy”** means the Metro Vancouver Housing Corporation’s Rent Calculation and Income Determination Guidelines, as set out in Metro Vancouver Housing Corporation Policy No. 00451008, dated May 28, 2007, as may be amended or replaced from time to time.
- (u) **“Public Housing Body”** means a person or organization meeting the definition of “public housing body” under the RTA.
- (v) **“Registration Date”** has the meaning given in section 4.1.

- (w) **“Remainder Lands”** means the portion or portions of the Lands remaining after the air space subdivision creating the Childcare Air Space Parcel and the Rental Air Space Parcel.
- (x) **“Rental Air Space Parcel”** means that air space parcel that will be created via air space subdivision of the Lands and will contain, *inter alia*, 13 Dwelling Units on the entire 6th floor and a portion of the 7th floor of the Building as contemplated in section 2.2.
- (y) **“Rental Dwelling Unit”** means a Dwelling Unit:
 - (i) with a form of tenure that is limited to rental tenure only and can only be used and occupied as a residential rental pursuant to a Tenancy Agreement; and
 - (ii) that is designated as a Rental Dwelling Unit in accordance with section 2.1 of this Agreement.
- (z) **“Rental Dwelling Unit Facilities”** means vehicle and bicycle parking spaces comprising not less than 10 motor vehicle parking spaces and not less than one bicycle parking space for each Rental Dwelling Unit and designated for the exclusive use by the Tenants of the Rental Dwelling Units, with the access to and use of such facilities secured by the Cost Sharing and Easement Agreement.
- (aa) **“Rent-Geared-to-Income Unit” or “RGI Unit”** means a Rental Dwelling Unit that:
 - (i) is designated as a RGI Unit pursuant to 3.1(b) of this Agreement;
 - (ii) may only be occupied Household whose Cumulative Gross Annual Household Income does not exceed the Maximum Income for a RGI Unit; and
 - (iii) is subject to the RGI Unit Permitted Rent.
- (bb) **“RGI Permitted Rent”** means, subject to section 3.4, rent calculated in accordance with the Metro Vancouver Rent Calculation Policy, provided that:
 - (i) if Metro Vancouver Housing Corporation ceases to implement the Rent Calculation and Income Determination Guidelines and does not replace them with similar guidelines, then the RGI Permitted Rent shall be determined in accordance with the most recently published BC Housing Rent Calculation Guide, or, if BC Housing ceases to publish a Rent Calculation Guide, an equivalent guide for determining tenant rent contributions for residents living in subsidized “rent geared to income” units that is acceptable to the City; and
 - (ii) if BC Housing ceases to publish a Rent Calculation Guide and does not replace it with an equivalent guide for determining tenant rent contributions for residents living in subsidized “rent geared to income units” that is acceptable to the City, the RGI

Permitted Rents shall be determined in accordance with the final Rent Calculation Guide or equivalent guide or method acceptable to the City.

- (cc) **“RTA”** means the *Residential Tenancy Act*, SBC 2002, c 78.
- (dd) **“Subdivide”** means to divide, apportion, consolidate or subdivide the Lands or any portion thereof, or the ownership or right to possession or occupation of the Lands or any portion thereof, 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*, SBC 1998, Chapter 43, or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or a “shared interest in land” as defined in the *Real Estate Development Marketing Act*, SBC 2004, Chapter 41.
- (ee) **“Tenancy Agreement”** means a tenancy agreement, lease, license or other agreement granting rights to occupy a Rental Dwelling Unit as a residence, that is entered into by the Owner and a Tenant on or after the date this Agreement is registered in the LTO.
- (ff) **“Tenancy Default”** has the meaning assigned to it in section 3.7(f)(iii).
- (gg) **“Tenant”** means an occupant of Rental Dwelling Unit.
- (hh) **“Term”** has the meaning given in section 4.1.

ARTICLE 2 USE OF AIR SPACE PARCEL AND SUBDIVISION

2.1 Section 219 Covenant – As a covenant pursuant to section 219 of the *Land Title Act*, the Owner covenants and agrees as follows:

- (a) **Designation and Use** – The Owner agrees that:
 - (i) not less than 13 Dwelling Units constructed on the Lands will be designated as Rental Dwelling Units; and
 - (ii) a Rental Dwelling Unit may only be occupied and used as a permanent residence for a Tenant pursuant to a Tenancy Agreement.

Without limiting the foregoing and for clarity, a Rental Dwelling Unit may not be occupied by the Owner, the Owner's family members or any tenant or guest of the Owner. For the purposes of this section, "permanent residence" means that the place where the person lives and to which, whenever absent, the person intends to return.

- (b) **City Authorized to Make Inquiries** – 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.

- (c) **Requirement for Statutory Declaration** – Within 30 days after receiving notice from the City, the Owner must, in respect of each Rental Dwelling 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 or desirable) attached as Appendix A, sworn by an authorized signatory of the Owner, containing all of the information required to complete the statutory declaration. The City may request such statutory declaration in respect to each Rental Dwelling 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 a Rental Dwelling 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.

2.2 Restriction on Subdivision – As a covenant pursuant to section 219 of the *Land Title Act*, the Owner covenants and agrees that it shall not Subdivide the Lands except to create the Childcare Air Space Parcel and the Rental Air Space Parcel and to subsequently subdivide the Remainder Lands by strata plan to create the market Dwelling Units.

2.3 Discharge of Agreement – The City and the Owner agree upon the request of the Owner and after the Owner Subdivides the Lands to create the Childcare Air Space Parcel and the Rental Air Space Parcel, the City will execute and deliver a discharge of this Agreement from title to the Remainder Lands and the Childcare Air Space Parcel.

Notwithstanding the foregoing, the Owner may submit: (a) the air space plan to raise title to the Childcare Air Space Parcel and the Rental Air Space Parcel; (b) the discharge of this Agreement from the Remainder Lands and the Childcare Air Space Parcel; and (c) the strata plan for the Remainder Lands raising title to the market Dwelling Units, provided the plans and discharge are submitted to the Land Title Office as an “all or nothing” package such that the discharge cannot be registered unless the air space plan is also registered.

2.4 Costs of Related to Discharge – The Owner will bear all costs and expenses associated with preparing the discharge contemplated by section 2.3, including the preparation and filing of any documents.

ARTICLE 3 OCCUPANCY AND MANAGEMENT OF RENTAL DWELLING UNITS

3.1 Rental Dwelling Unit Designation Requirements – Subject to Section 3.2 below, the Rental Dwelling Units in the Building will each be occupied and designated in accordance with the following requirements:

- (a) the RGI Units will be occupied only by Eligible Tenants having a Cumulative Gross Annual Household Income for the most recent financial year that does not exceed the Maximum Income for a RGI Unit;

- (b) six of the Rental Dwelling Units will be designated as RGI Units and three of the RGI Units will have at least three bedrooms;
- (c) the HIL Units will be occupied only by Eligible Tenants having a Cumulative Gross Annual Household Income for the most recent financial year that does not exceed the Maximum Income for a HIL Unit; and
- (d) seven of the Rental Dwelling Units will be designated as HIL Units and two of the HIL Units will have at least three bedrooms.

3.2 Acknowledgement – Notwithstanding Section 3.1, the City and the Owner acknowledge and agree that if a Household ceases to qualify for an RGI Unit, such Household will be charged the HIL Unit Permitted Rent and the RGI Unit occupied by the Household will be designated as HIL Unit; and as soon as another HIL Unit in the Rental Air Space Parcel becomes available, the Owner will re-designate such HIL Unit as an RGI Unit, so as to bring the allocation of HIL Units and RGI Units into compliance with Sections 3.1(b) and 3.1(d) above.

3.3 Maximum Income – The Owner will not enter into a Tenancy Agreement with a Household to rent a Rental Dwelling Unit unless the Household establishes that its Cumulative Gross Annual Household Income for the most recent financial year does not exceed the Maximum Income for the relevant Rental Dwelling Unit.

3.4 Increase in Cumulative Gross Annual Household Income – If the Cumulative Gross Annual Household Income of a Household occupying a Rental Dwelling Unit rises after the Household enters into a Tenancy Agreement and exceeds the Maximum Income applicable to the Rental Dwelling Unit the Household is occupying, the Owner will help such Household find alternate housing that is more appropriately suited to their increased Cumulative Gross Annual Household Income but is still affordable, and in doing so will make reasonable efforts to find a suitable alternative Dwelling Unit for the Household to rent, either in the Rental Air Space Parcel, in another rental building operated by the Owner in New Westminster, or if there are no available Dwelling Units in any rental buildings operated by the Owner in the New Westminster, then in another rental building in the Owner's rental building portfolio outside of New Westminster and may, at its discretion, terminate the Household's existing Tenancy Agreement pursuant to section 49.1(2) of the RTA on the basis that the Household ceases to qualify for the Dwelling Unit because the Household's Cumulative Gross Annual Household Income exceeds the Maximum Income provided that:

- (i) the Owner has on two separate occasions, offered to enter into a Tenancy Agreement for a different Dwelling Unit in the Rental Air Space Parcel or in another rental building operated by the Owner in the New Westminster or, if there are no available Dwelling Units in the Rental Air Space Parcel or in any of the Owner's rental buildings in New Westminster, in another Dwelling Unit in the Owner's rental building portfolio outside of New Westminster, more suitable for the Household's increased income; and on each occasion, the Household has refused to accept the Owner's offer; or

- (ii) the Household's Cumulative Gross Annual Household Income exceeds the maximum cumulative gross annual household income to qualify for housing operated by the Owner or the Public Housing Body contracted by the Owner.

3.5 Monthly Rent –

- (a) The monthly rent charged for a Rental Dwelling Unit for the initial 12 months of a Tenancy Agreement will not exceed:
 - (i) the then current HIL Unit Permitted Rent for a HIL Unit; or
 - (ii) the then current RGI Permitted Rent for an RGI Unit.
- (b) The Owner may increase the monthly rent for a HIL Unit under an existing Tenancy Agreement 12 months after the existing rent was initially established for the current Tenants or 12 months after the date of the last rent increase allowed under this Agreement and by no more than the maximum rent increase amount prescribed under the RTA.
- (c) The Owner may only increase the monthly rent for a RGI Unit under an existing Tenancy Agreement if the Household's Cumulative Gross Annual Household Income has increased and such rent increase is below or equal to the applicable RGI Permitted Rent.

3.6 Storage – The Owner will provide storage spaces for use of the Tenants of each Dwelling Unit at no additional cost, and each storage space provided will meet the following requirements:

- (a) the space will be located inside of the Dwelling Unit;
- (b) the space will have a minimum area of 2.35m²; and
- (c) the space will have at least 2.25 metres of vertical clearance.

3.7 Occupancy Terms and Conditions – The occupancy of each Rental Dwelling Unit shall comply at all times with all of the following terms and conditions, provided in each case that none of such terms are expressly prohibited under the RTA, or determined by the Residential Tenancy Branch (or delegated authority) or any court of competent jurisdiction to be unenforceable or impermissible:

(a) Eligible Tenant and Guests –

- (i) the Owner will accept applications from prospective tenants and establish a waitlist of potential Eligible Tenants or will include such prospective tenants within the Owner's existing housing registry and will use this waitlist or housing registry, as applicable, to fill Rental Dwelling Units vacancies;
- (ii) the Owner's selection of Eligible Tenants will adhere with the *BC Human Rights Code*, RSBC 1996, c 210, and any other applicable legislation;

- (iii) a Rental Dwelling Unit shall only be occupied by and rented to an Eligible Tenant; and
 - (iv) a Tenant may have guests stay at the Rental Dwelling Unit on a temporary basis, provided that any guest will not use or occupy the Rental Dwelling Unit for more than 14 consecutive days or more than 45 days total in any calendar year.
- (b) **Tenancy Agreement** – The Rental Dwelling Units will be used or occupied only pursuant to a Tenancy Agreement.
- (c) **Tenancy Agreement Term** – The Rental Dwelling Units will be rented on a month-to-month basis.
- (d) **Additional Charges** – A Tenant shall not be required by the Owner to pay any amounts for:
 - (i) bicycle parking spaces;
 - (ii) utilities, including without limitation charges for the use of sanitary sewer, storm sewer or water, except that the Owner may charge Tenants for electricity in addition to their rent or require tenants to pay for electricity directly to the provider thereof. For clarity, “utilities” does not include a phone line, cablevision or internet;
 - (iii) the use of common areas or facilities; or
 - (iv) taxes or strata fees or strata charges of any kind, including, without limitation, move in and move out fees and fees or levies related to contingency or reserve funds of the strata corporations. For clarity, the Owner may require a Tenant to pay fines incurred by the Owner or the Tenant as a result of the Tenant’s breach of any rules and regulations applicable to the use of common areas or facilities.
- (e) **Use of Common Areas** – The City and the Owner acknowledge and agree that the Owner and the Tenant’s entitlement to use any common areas or facilities not within the Air Space Parcel will be governed by the terms and conditions of the Cost Sharing and Easement Agreement. The Owner will use commercially reasonable efforts to ensure that pursuant to the terms of the Cost Sharing and Easement Agreement a Tenant is not:
 - (i) required to pay any additional fee for, nor prevented or prohibited from accessing any common areas or facilities, including, without limitation, Building entrances, within the Building or on the Remainder Lands, or any other applicable subdivided portions of the Lands, except the Tenant may be required to pay a security deposit and obtain insurance coverage when using certain common areas and facilities; or

- (ii) prevented or prohibited from accessing amenities, including without limitation the Rental Dwelling Unit Facilities, within the Building or on the Remainder Lands, or any other applicable subdivided portions of the Lands, provided that reasonable rules may be implemented to govern all Tenants' access to shared amenities, including the right for Tenants to schedule exclusive access to certain amenities on a first come, first served, basis, and provided that such rules will apply equally to the occupants of all Dwelling Units, including the Rental Dwelling Units, in the Building, regardless of whether the occupants own or rent their Dwelling Unit.
- (f) **Tenancy Agreement Requirements** – Every Tenancy Agreement respecting a Rental Dwelling Unit shall comply with the following requirements provided in each case that none of such terms or conditions are expressly prohibited under the RTA, or determined by the Residential Tenancy Branch (or delegated authority) or any court of competent jurisdiction to be unenforceable or impermissible:
 - (i) A copy of this Agreement shall be attached to the Tenancy Agreement.
 - (ii) The Tenancy Agreement shall include a provision requiring the Tenant and each permitted occupant of the Rental Dwelling Unit to comply with this Agreement.
 - (iii) The Tenancy Agreement shall include a provision entitling the Owner to terminate the Tenancy Agreement if any of the following occur (each of which constitutes a **"Tenancy Default"**):
 - A. the Rental Dwelling Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent;
 - B. the Tenant rents or makes the Rental Dwelling Unit available as a vacation rental or short term rental;
 - C. the Tenant subleases the Rental Dwelling Unit or assigns the Tenancy Agreement in whole or in part, without the Owner's consent.
 - (iv) The Tenancy Agreement will identify all occupants of the Rental Dwelling Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing in the Rental Dwelling Unit.
- (g) **Tenancy Agreement Defaults** – In the event of a Tenancy Default, the Owner will end the Tenancy Agreement by providing notice to the Tenant that ends the tenancy on the earliest date possible permitted under the RTA and will cause the Tenant to vacate by that date.
- (h) **Subleasing and Assignment** – The Owner will not consent to the assignment of a Tenancy Agreement or the subletting of a Rental Dwelling Unit, except if: (i) if required pursuant to the RTA or by the Residential Tenancy Branch (or delegated authority) or any court of

competent jurisdiction; or (ii) the assignment or subletting is to an Eligible Tenant that meets the occupancy requirements of this Agreement applicable to the Rental Dwelling Unit subject to the proposed assignment or subletting, 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 Rental Dwelling Unit.

(i) **Delivery of Tenancy Agreements –**

- (i) The Owner will forthwith deliver a copy of every Tenancy Agreement (or for certain Rental Dwelling Units specified by the City) to the City upon demand.
- (ii) If specifically requested by the City, the Owner will deliver a true copy, certified by a lawyer, notary, or other person before whom an affidavit may be sworn under the *Evidence Act*, of every Tenancy Agreement (or for certain Rental Dwelling Units specified by the City).

3.8 RTA and Residential Tenancy Branch Matters - For certainty, with respect to the foregoing provisos in this Article 3 regarding any terms, conditions, requirements or other covenants of the Owner that may be expressly prohibited under the RTA, or determined by the Residential Tenancy Branch (or delegated authority) or any court of competent jurisdiction to be unenforceable or impermissible, the Owner further covenants and agrees to use commercially-reasonable efforts to comply as closely with such terms, conditions, requirements and other covenants as is permitted pursuant to the RTA or the Residential Tenancy Branch and to co-operate with and provide such further assurances to the City in pursuing such compliance to accord with the parties' intention herein.

ARTICLE 4 TERM

4.1 Expiry of Housing Agreement – This Agreement will commence on the date it is registered in the LTO (the “**Registration Date**”) and will expire and cease to apply on the sixtieth (60th) anniversary of the Registration Date (the “**Term**”). Upon the expiration of the Term, the Owner may provide to the City a discharge of this Agreement, which the City will execute and return to the Owner for filing in the LTO.

ARTICLE 5 MISCELLANEOUS

5.1 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* and a covenant under section 219 of the *Land Title Act*; and
- (b) the City may file notice of, and register, this Agreement in the LTO pursuant to section 483(5) 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 a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

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

- (a) if the Owner is not a Public Housing Body, the Owner will at all times cause a Public Housing Body to administer, manage and operate the Rental Dwelling Units and will cause that Public Housing Body to administer, manage and operate the Rental Dwelling Units in accordance with all of the restrictions and requirements of this Agreement and the Owner's obligations under this Agreement. For clarity, the Owner's engagement of a Public Housing Body pursuant to this Agreement will not relieve the Owner from any of the Owner's obligations under this Agreement or any of the restrictions or requirements of this Agreement;
- (b) the Owner will furnish, or cause to be furnished, good and efficient management of the Rental Dwelling Units and will permit representatives of the City to inspect the Rental Dwelling Units at any reasonable time, subject to the notice provisions in the RTA.
- (c) the Owner will maintain the Rental Dwelling Units in a good state of repair and fit for habitation and will comply with all health and safety standards applicable to the Rental Dwelling Units; and
- (d) the Owner shall comply with all laws, including, without limitation:
 - (i) the City of New Westminster Business Regulation and Licencing (Rental Units) Bylaw No. 6926, 2004 and all other City bylaws, and any health and safety standards applicable to the Lands; and
 - (ii) The City of New Westminster Business Regulations and Licencing (Rental Units) Part 6 – Building Renovations Amendment, Bylaw No. 8085, 2019.

5.4 Indemnity – The Owner, on its 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, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) the maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Rental Dwelling Unit or the enforcement of any Tenancy Agreement; or
- (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner,

except to the extent arising from the negligence or wilful misconduct of the City or those for whom it is at law responsible.

5.5 Release – The Owner, on its 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) maintenance, repair, ownership, lease, license, operation or management of the Lands or any Rental Dwelling Unit under this Agreement; or
- (b) except to the extent arising from the negligence or wilful misconduct of the City or those for whom it is at law responsible, the exercise by the City of any of its rights under this Agreement.

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

5.7 Registration & Priority – The Owner will cause this Agreement to be registered as a covenant under section 219 of the *Land Title Act* against title to the Lands in priority to all charges and encumbrances registered or pending registration against title to the Lands save and except those in favour of the City or specifically approved in advance in writing by the City, and will cause a notice of this Agreement under section 483(5) of the *Local Government Act* to be filed in the Land Title Office and shown as a legal notation on title to the Lands.

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 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 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 Rental Dwelling 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.

5.10 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 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:

- (a) to the postal address of the Owner set out in the records at the LTO, and in the case of the City addressed to:

City of New Westminster
511 Royal Avenue
New Westminster, BC V3L 1H9
Attention: Clerk

- (b) or to the most recent postal address provided in a written notice given by each of the parties to the other; or

- (c) to the following email addresses:

City: plnpost@newwestcity.ca

Owner: ericcheung@regalcentury.com

Any notice which is delivered is to be considered to have been given, if sent by mail, on the third day after it is dispatched for delivery, and if sent by email, on the first day after it is sent.

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 contemplated by this Agreement, represent the whole agreement between the City and the Owner respecting the use and occupation of the Rental Dwelling Units, and there are no warranties, representations, conditions or collateral agreements made by the City or the Owner except as set forth in or contemplated by 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 Lands** – This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided in perpetuity, subject always to section 2.3. 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.
- 5.18 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.
- 5.19 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.
- 5.20 Applicable Law** – The laws of British Columbia (including, without limitation, the RTA) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.
- 5.21 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* (British Columbia) 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, 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”.

5.22 Execution in Counterparts & Electronic Delivery – This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of 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.

Appendix A to Housing Agreement

OWNER'S CERTIFICATE

I, _____ of _____, British Columbia, certify that:

1. I am the owner (the "**Owner**") or authorized signatory of the Owner of _____ (the "**Rental Dwelling Unit**"), and make this certificate to the best of my personal knowledge.
2. This certificate is made pursuant to the Housing Agreement in respect of the Rental Dwelling Unit.
3. For the period from _____ to _____, the Rental Dwelling Unit was occupied only by the Tenant(s) whose names and current addresses and whose employer's names and current addresses appear below:

[Names, addresses and phone numbers of Tenant(s)]
4. The rent charged each month for the Rental Dwelling Unit is as follows:
 - (a) the monthly rent on the date 365 days before this date of this certificate: \$ _____ per month;
 - (b) the rent on the date of this certificate: \$ _____; and
 - (c) the proposed or actual rent that will be payable on the date that is 90 days after the date of this certificate: \$ _____.
5. The Cumulative Gross Annual Household Income (as defined in the Housing Agreement) of the Tenant of the Affordable Housing Unit for the most recent calendar year was: \$ _____.
6. I acknowledge and agree to comply with the Owner's obligations under the Housing Agreement, and other charges in favour of the City noted or registered in the Land Title Office against the land on which the Rental Dwelling Unit is situated and confirm that the Owner has complied with the Owner's obligations under the Housing Agreement.
7. I make this certificate, conscientiously believing it to be true and knowing that the City of New Westminster will be relying upon the statements made herein.

[Owner]

Signature

END OF DOCUMENT