



City of Richmond

Report to Council

To Council - June 11, 2007

To: Richmond City Council **Date:** June 8, 2007
From: Jean Lamontagne **File:** 8060-20-8269
Director of Development
Re: **Housing Agreement Bylaw No. 8269 to Permit the City to Enter into a Housing Agreement to Secure Seniors' Rental Units**

Staff Recommendation

That Bylaw No. 8269 be introduced and given first, second and third readings to permit the City to enter into a Housing Agreement in accordance with requirements of the Local Government Act (Section 905).

J. Lamontagne
Jean Lamontagne
Director of Development

DN:blg

FOR ORIGINATING DEPARTMENT USE ONLY		
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER
Real Estate Services.....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	<i>J. Lamontagne</i>
Law.....	<i>C.M.C.</i> Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	

Staff Report

Origin

On May 28, 2007, Council adopted the Richmond Affordable Housing Strategy. Among the recommendations outlined in the report is the acquisition of affordable low-end market rental housing. The City has received a development application for the site located at 6040 No. 3 Road. The site is currently zoned for the proposed use and requires only a development permit. In association with this development permit application, the applicant has agreed to provide five affordable seniors' rental units. The Local Government Act states that in order for the City to enter into the Housing Agreement required to secure the units, the City must enact a housing agreement bylaw. This report recommends that Council grant first, second and third readings to the attached Bylaw No. 8269, in order to permit the City to enter into the Housing Agreement. If Council grants first, second and third readings, final adoption of the housing agreement bylaw can occur immediately prior to issuance of the Development Permit.

Analysis

Development Permit (DP) 06-350946, proposes a mixed-use commercial/residential development consisting of approximately 131 dwelling units including five (5) seniors' housing units, approximately 750 m² (8,070 ft²) of commercial space and associated parking in a 16-storey building fronting on to Westminster Highway and a four-storey building fronting on to No. 3 Road on a site zoned "Downtown Commercial District (C7)".

In association with the issuance of Development Permit (DP 06-350946), the applicant has agreed to register a Housing Agreement on title to secure five (5) seniors' rental units. The agreement secures the market rental units for use by seniors for 25 years. To qualify, the household must include at least one person of 55 years of age or older and the annual total household income is restricted to no greater than \$37,700. The five (5) rental units will have an original monthly rent of no more than \$943.00. The agreement includes provisions for adjustment of the maximum annual household income and the original rent according to the Consumer Price Index published by Statistics Canada. The Housing Agreement has been signed by the applicant but not by the City.


In order to enter into a Housing Agreement, the Local Government Act, Section 905 requires enactment of a bylaw by the City. Bylaw No. 8269, which is attached to this report, complies with the process required by the Local Government Act. Adoption of the attached bylaw would permit registration of a Housing Agreement on the subject site. It is anticipated that DP 06-350946 will be presented for consideration by Council on June 25, 2007. If Council does not issue DP 06-350946, the Housing Agreement will not be executed by the City.

Financial Impact

No final or economic impact is anticipated as a result of adoption of the attached bylaw.

Conclusion

In accordance with the Local Government Act (Section 905), adoption of Bylaw No. 8269 is required to permit the City to enter into a Housing Agreement to secure 5 (five) seniors' rental units that are proposed in association with Development Permit (DP 06-350946).


Jean Lamontagne
Director of Development

DN:blg



HOUSING AGREEMENT (MINGLIAN) BYLAW NO. 8269

The Council of the City of Richmond enacts as follows:

1. The Manager of Real Estate Services for the City of Richmond is authorized to execute and deliver a housing agreement, in the form set out as Schedule A to this Bylaw, with the owner of land legally described as:

PID: 027-067-793

Parcel A Section 9 Block 4 North Range 6 West

New Westminster District Plan BCP29978 .

2. The Manager of Real Estate Services for the City of Richmond is authorized to register notice of the housing agreement in the Land Title Office.
3. This Bylaw is cited as **“HOUSING AGREEMENT (MINGLIAN) BYLAW NO. 8269, 2007”**.

FIRST READING

SECOND READING

THIRD READING

ADOPTED

_____	CITY OF RICHMOND
_____	APPROVED for content by originating dept.
_____	APPROVED for legality by Solicitor
_____	<i>WCB</i>

MAYOR

CORPORATE OFFICER

Schedule A

To Housing Agreement (Minglian) Bylaw No. , 2007

HOUSING AGREEMENT

1. APPLICATION:

File: _____

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
(PID) (LEGAL DESCRIPTION)

027-067-793

Parcel A Section 9 Block 4 North Range 6 West New Westminster District
Plan BCP29978

3. NATURE OF INTEREST:

Description	Document Reference (Page and Paragraph)	Person Entitled to Interest
Section 219 Covenant	Entire Agreement	Transferee
Priority Agreement granting the above Section 219 Covenant priority over Mortgage BA307946 and Assignment of Rents BA307947	Page 22	Transferee

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms D. F. No.
(b) Express Charge Terms Annexed as Part 2
(c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S): 0714061 B.C. Ltd. (Section 219 Covenant) and HSBC Bank Canada (Priority Agreement)

6. TRANSFEREE(S): CITY OF RICHMOND, a City Incorporated under the *Local Government Act*, and having its offices at 6911 No. 3 Road in the City of Richmond, Province of British Columbia, V6Y 2C1

Cont'd

FORM C Continued

7. ADDITIONAL OR MODIFIED TERMS: N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the property of the interest(s) described in item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s) _____	Execution Date	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Y</td> <td style="width: 33%; text-align: center;">M</td> <td style="width: 33%; text-align: center;">D</td> </tr> <tr> <td style="height: 100px;"></td> <td></td> <td></td> </tr> </table>	Y	M	D				Party(ies) Signature(s) 0714061 B.C. Ltd. by its authorized signatories _____ Print Name Authorized Signatory _____ Print Name Authorized Signatory
Y	M	D							

Officer Signature(s) _____	Execution Date	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Y</td> <td style="width: 33%; text-align: center;">M</td> <td style="width: 33%; text-align: center;">D</td> </tr> <tr> <td style="height: 100px; vertical-align: top;">2007</td> <td></td> <td></td> </tr> </table>	Y	M	D	2007			Party(ies) Signature(s) HSBC Bank Canada by its authorized signatories _____ Print Name: Authorized Signatory _____ Print Name: Authorized Signatory (as to priority)
Y	M	D							
2007									

OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

Officer Signature(s)

Commissioner for Taking Affidavits
for British Columbia
City of Richmond
6911 No. 3 Road
Richmond, BC V6Y 2C1

as to the signature of
David Weber

Y	M	D
2007		

Transfer(s) Signature(s)

CITY OF RICHMOND
by its authorized signatories

MALCOLM D. BRODIE
Mayor, Authorized Signatory

DAVID WEBER
Corporate Officer,
Authorized Signatory

CITY OF RICHMOND APPROVED for content by originating dept.
APPROVED for legality by Solicitor
DATE OF COUNCIL APPROVAL (if applicable Bylaw •)

SECTION 219 COVENANT (Housing Agreement)

PART 2 - TERMS OF INSTRUMENT

THIS AGREEMENT, dated for reference the 8th day of June, 2007.

BETWEEN:

0714061 B.C. Ltd., a British Columbia company with its registered offices at #330 – 1501 West Broadway, Vancouver, British Columbia, V6J 4Z6

(the "Owner")

AND:

CITY OF RICHMOND, a municipal corporation pursuant to the *Local Government Act* and having its offices at 6911 No. 3 Road, Richmond, British Columbia, V6Y 2C1

(the "City")

WHEREAS:

- A. The Owner is the registered and beneficial owner of the following lands and premises situate in Richmond, British Columbia, more particularly known and described as follows:

PID No. 027-067-793

**Parcel A Section 9 Block 4 North Range 6 West
New Westminster District Plan BCP29978**

(the "Lands");

- B. The Owner has applied to the City for issuance of development permit no. DP06-350946 (the "Development Permit");
- C. As a condition of the issuance of the Development Permit, the City requires that the Owner enter into a housing agreement on the terms set out herein;
- D. Section 904 of the *Local Government Act* RS, 1996, Chapter 323, states that a zoning bylaw may establish conditions that will entitle an owner to a higher density and may include conditions relating to the provision of the affordable housing including the number, kind and extent of the housing;
- E. Section 905 of the *Local Government Act* states that a local government may, by bylaw, enter into a housing agreement under Section 905 and the housing agreement may include terms respecting the form of tenure of the units, the availability of the units to classes of persons, the administration and management of the units, rents and lease rates and the rates at which these may be increased over time. The City has enacted Bylaw _____ authorizing the City to enter into this Housing Agreement; and

- F. Section 219 of the *Land Title Act*, Chapter 250, R.S.B.C. 1996, allows the registration of a covenant in favour of a municipality that land is to be or not to be used in a particular manner,

In consideration of the issuance of the Development Permit 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 and in accordance with Section 219 of the *Land Title Act*.

PART I – DEFINITIONS

1. In this Agreement the following words have the following meanings:
 - (a) "Affordable Housing Unit or Units" means a Dwelling Unit or Dwelling Units designated as such in accordance with Part II herein to be used and occupied in accordance with this Agreement;
 - (b) "Agreement" means these standard charge terms together with the General Instrument (hereinafter defined);
 - (c) "CPI" means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function, where Occupancy Year (hereinafter defined) = 100;
 - (d) "Daily Amount" means \$100.00 per day as of December 31, 2007 adjusted thereafter by an amount determined by multiplying \$100.00 by the percentage change in the CPI since December 31, 2007 to January 1 of the year that a written notice is delivered to the owner by the City pursuant to Section 14 herein;
 - (e) "Dispose" means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, license, rent or sublet, divest, release, and agree to do any of those things;
 - (f) "Dwelling Units" means all residential dwelling units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation of the Land may be Subdivided (hereinafter defined) and includes single family detached dwellings, duplexes, townhouses, auxiliary residential dwelling units, rental apartments and strata lots in a building strata plan;
 - (g) "Eligible Tenant" means, subject to Section 3, a Family having an annual income of \$37,700 or less, except that the reference to \$37,700 is deemed to be increased by the CPI in respect of each calendar year commencing January 1, 2008. At all times during the tenancy of the Family in the Dwelling Unit, at least one tenant comprising the Eligible Tenant must be of fifty-five years or older;
 - (h) "Family" has the meaning given in Section 104 of Richmond Zoning and Development Bylaw 5300, as amended;

- (i) "General Instrument" means 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;
- (j) "Gross Floor Area" means the habitable gross floor area of each Affordable Housing Unit and includes enclosed sunrooms but does not include crawl spaces, open patios, open balconies or parking spaces. If the Affordable Housing Unit is a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be based on the gross floor area shown corresponding to the Affordable Housing Unit on the strata plan filed in the LTO in respect of the Land. If the Affordable Housing Unit is not a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be made in accordance with the procedure for determining gross floor area set out in the *Strata Property Act* as if the Affordable Housing Unit were a strata lot;
- (k) "Interest" means the property interest of the Owner in an Affordable Housing Unit;
- (l) "Land" means the land described in Item 2 of the General Instrument and any part, including a building or a portion of a building, into which said land is Subdivided;
- (m) "LTO" means the New Westminster Land Title Office or its successor;
- (n) "Occupancy Year" means the calendar year in which the City conducts the final inspection under the then applicable *British Columbia Building Code* in respect of an Affordable Housing Unit;
- (o) "Original Rent" means not more than \$943.00 per month;
- (p) "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of an Affordable Housing Unit from time to time;
- (q) "Prime Rate" means the annual rate of interest, expressed as a percentage, used as a reference rate by the Royal Bank of Canada at its main branch in Vancouver, British Columbia for Canadian dollar loans and designated by the Royal Bank of Canada from time to time as its prime rate;
- (r) "Subdivide" means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land 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 units" or "shared interests in land" as defined in the *Real Estate Act*;

- (s) "Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit in accordance with the terms of this agreement; and
- (t) "Tenant" means an occupant of an Affordable Housing Unit by way of a Tenancy Agreement.

PART II - USE OF LAND AND CONSTRUCTION OF AFFORDABLE HOUSING UNITS

2. The Owner covenants and agrees with the City that:
 - (a) the Land will not be developed and no building or structure will be constructed or used on the Land unless as part of the development, construction or use of any such building or structure, the Owner also designs and constructs to completion, in accordance with any building permit issued by the City and in accordance with the Development Permit, at least five Dwelling Units must be constructed on the Land for the purposes of use as affordable housing units. The Owner will, prior to occupancy of the building located on the Lands:
 - (i) designate at least five (5) of the Dwelling Units in such building as the "Affordable Housing Units" for the purposes of this agreement; and
 - (ii) deliver written notice of such designation to the City's Manager, Real Estate Services;
 - (b) the Owner may not sell or otherwise transfer the Affordable Housing Units separately;
 - (c) the Owner will meet or exceed the construction standards for Affordable Housing Units as specified by the City in its bylaws and any required building permits issued by the City in respect of development on the Land;
 - (d) the Owner will at all times ensure that the Land is used and occupied in compliance with all statutes, laws, regulations, and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of the City and all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;
- (e) the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement, if required by the City's City Solicitor, will be registered against title to the Land in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in writing by the City Solicitor or in favour of the City, and that a notice under Section 905(5) of the *Local Government Act* will be filed on the title to the Land; and

- (f) the Owner will not apply for a building permit for any construction or development on the Land unless the proposed construction complies with the requirements of this Agreement.

PART III - USE AND OCCUPANCY OF AFFORDABLE HOUSING UNITS

3. The Owner agrees that each Affordable Housing Unit may only be used as a permanent residence occupied by one Eligible Tenant, and the Owner further agrees that the number of individuals who permanently reside in the Affordable Housing Unit must be equal to or less than the number of individuals that 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. 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.

4. Within 30 days after receiving notice from the City, the Owner must in respect of each Affordable Housing Unit, deliver, or cause to be delivered, to the City statutory declarations, substantially in the forms attached as Appendices A and B, sworn by the Owner and Eligible Tenant respectively, containing all of the information required to complete the statutory declarations. The City may request these statutory declarations in respect of the Affordable Housing Unit no more than four times in any calendar year.

5. 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, and irrevocably authorizes and directs the recipient of the request for information from the City to provide such information to the City.

PART IV – DISPOSITION AND ACQUISITION OF AFFORDABLE HOUSING UNITS

6. The Owner will not permit an Affordable Housing Unit Tenancy Agreement to be subleased or assigned.

7. The Owner must not rent or lease any Affordable Housing Unit except to an Eligible Tenant in accordance with Section 3 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 Original Rent, rounded to the nearest dollar. Subject always to the provisions of the *Residential Tenancy Act* (British Columbia), the Owner may increase the rent payable for the Affordable Housing Unit annually, beginning with the first anniversary of the final inspection of the Affordable Housing Unit, and thereafter on each successive anniversary date, by an amount determined by multiplying the rent payable for the Affordable Housing Unit at the time of the proposed rent increase by the percentage change in the CPI since the last anniversary date;

- (c) the Owner will not require the Tenant to pay any extra charges or fees for use of any common property, limited common property, or other common area, or for sanitary sewer, storm sewer, water utilities, property taxes or strata fees. For clarity, this Section does not apply to cablevision, telephone, other telecommunications, gas utility or electricity utility fees or charges;
- (d) the Owner will attach a copy of this Agreement to the Tenancy Agreement;
- (e) the Owner will include in the Tenancy Agreement a clause requiring the Tenant to comply with the use and occupancy restrictions contained in Part III of this Agreement;
- (f) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement in accordance with the *Residential Tenancy Act* if the Tenant uses or occupies, or allows use or occupation of, the Affordable Housing Unit in breach of the use or occupancy restrictions contained in this Agreement and, without limiting anything contained herein the Tenancy Agreement will provide for termination of the Tenancy Agreement by the Owner, and the owner hereby agrees to terminate any tenancy, in situations where:
 - i. 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;
 - ii. the Affordable Housing Unit is occupied by persons other than an Eligible Tenant;
 - iii. the annual income of an Eligible Tenant rises above the maximum amount specified in subsection 1 (g) as adjusted in accordance with the CPI;
 - iv. the Affordable Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and
 - v. the Tenant subleases the Affordable Housing Unit or assigns the Tenancy Agreement;
- (g) 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
- (h) the Owner will deliver a copy of the Tenancy Agreement to the City upon demand.

8. The Owner will terminate any Tenancy Agreement where the Tenant uses or occupies, or allows use or occupation of an Affordable Housing Unit in breach of this Agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).

PART V - DEMOLITION OF AFFORDABLE HOUSING UNIT

9. 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 their value above its foundations, as determined by the City in its sole discretion, and

a demolition permit for the Affordable Housing Unit has been issued by the City (unless the Building has, or the Dwelling Units have been destroyed by an accident, act of God, or sudden and unanticipated force) 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 Housing Agreement, and this Agreement will apply to the construction of any replacement Dwelling Unit to the same extent and in the same manner as those Sections apply to the construction of the original Dwelling Unit, and the Dwelling Unit must be approved by the City as an Affordable Housing Unit in accordance with this Agreement.

PART VI – STRATA CORPORATION BYLAWS

10. The Affordable Housing Units on the Lands will always be used to provide rental accommodation in accordance with this Agreement.

11. 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.

12. Any strata corporation bylaw which prevents, restricts or abridges the right to use the Lands and the buildings thereon from time to time as rental accommodation, will have no force and effect.

13. The strata corporation will not pass any bylaws preventing, restricting or abridging the use of the Lands and the buildings thereon from time to time as rental accommodation.

PART VII - DEFAULT AND REMEDIES

14. The Owner acknowledges that the City requires Affordable Housing to retain senior housing units in the City, retain the historical sense of community, and attract

Eligible Tenants to work for businesses in the community and that these businesses may generate tax and other revenue for the City and economic growth for the community. The Owner therefore agrees that, in addition to any other remedies available to the City under this Agreement or at law or equity, if an Affordable Housing Unit is used or occupied in breach of this Agreement or rented at a rate in excess of that permitted under this Agreement, the Owner will pay, as a rent charge under Section 15, the Daily Amount to the City for every day that the breach continues after 10 days written notice from the City to the Owner stating the particulars of the breach. The Daily Amount is increased on January 1 of each year by an amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase in the CPI between that previous January 1 and the immediately preceding December 31. The Daily Amount is due and payable 5 business days following receipt by the Owner of an invoice from the City for the same.

15. The Owner hereby grants to the City a rent charge under Sections 14 and 15 and under Section 219 of the *Land Title Act* (British Columbia), and at common law, securing payment by the Owner to the City of any amount payable by the Owner pursuant to this Agreement. The Owner agrees that the City, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the City in law or in equity.

PART VIII – OPTION TO PURCHASE IN EVENT OF DEFAULT BY THE OWNER

16. In consideration of the issuance of the Development Permit and other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges), the Owner hereby grants to the City an exclusive and irrevocable Option to Purchase (the "Option") the Affordable Housing Units for the sum of \$10.00, not including GST, if any, (the "Purchase Price") and on the terms and conditions of this Agreement, free from all liens, charges and encumbrances except:

- (a) existing reservations, conditions and exceptions contained in the original Crown Grant or in any other grant or disposition from the Crown;
- (b) any easements, rights of way, covenants or other non-financial encumbrances registered against the Affordable Housing Unit, provided they were approved in advance by the City,

(collectively the "Permitted Encumbrances")

17. Subject to Section 18, the Option may be exercised by the City only if, in the opinion of the City's Council, the Owner is in material breach of the terms of this agreement and has failed to rectify such breach within sixty (60) days of receiving written notice thereof, which notice will detail the breach(es) in reasonable detail, and by the City giving written notice to the Owner in the manner set out in this Agreement for the giving of notices.

18. The Parties acknowledge that the City may elect not to exercise the Option for any reason.

19. Upon the exercise of the Option by the City, a binding contract of purchase and sale will arise between the City and the Owner with respect to the Affordable Housing Unit.

20. The Contract arising from the exercise of the Option will be completed on a date (the "Completion Date") chosen by the City and the place of completion will be the Land Title Office.

21. The City will have vacant possession of the Affordable Housing Unit free from all financial liens, charges and encumbrances other than the Permitted Encumbrances on the Completion Date.

22. The City will be responsible for all taxes, rates, assessments and other charges and will be entitled to receive income, if any, relating to the Affordable Housing Unit from and including the Completion Date and all adjustments, both incoming and outgoing, of whatsoever nature will be made as of the Completion Date.

23. The Affordable Housing Unit will be at the Owner's risk until twelve o'clock noon on the Completion Date and thereafter at the City's risk. In the event of loss or damage occurring after the exercise of this Option but before the Completion Date whether the result of fire or any other cause, the City may cancel this Option.

24. The City will cause the City's solicitors to prepare and present to the Owner or its solicitors the following closing documents to be executed by the Owner:

- (a) the Transfer;
- (b) the Vendor's Statement of Adjustments;
- (c) such other appropriate documents and assurances as may be requisite in the opinion of the City Solicitor for more perfecting and absolutely transferring title to the Affordable Housing Unit to the City (collectively, the "Closing Documents").

25. The Owner will execute and deliver to the City at least ten days prior to the Completion Date a good and sufficient Form A Transfer in fee simple in registrable form (the "Transfer") conveying the Affordable Housing Unit to the City free and clear of all financial liens, charges and encumbrances except the Permitted Encumbrances. The Owner will also deliver to the City at least ten days prior to the Completion Date, instruments in registrable form sufficient to discharge all financial liens, charges and encumbrances (the "Discharges"), together with the cost of registering or filing such instruments together with the cost of registering or filing such instruments.

26. Before the Closing Date, the Owner will deliver or cause its solicitors to deliver to the City Solicitor, the Closing Documents, all executed by the Owner and in registrable form, as applicable.

27. **Closing Procedure.** The conveyance of the Affordable Housing Unit by the Owner to the City will be completed in accordance with the following procedure:

- (a) after receipt of the Closing Documents from the Owner, the City, at its own cost, will cause the City Solicitor to apply to register the Transfer and

the Discharges in the Land Title Office on the Completion Date, upon receipt of a satisfactory pre-index search of the Affordable Housing Unit;

- (b) forthwith following the filing referred to in section 27(a) and upon the City Solicitor being satisfied as to the City's title to the Affordable Housing Unit after conducting a post filing for registration check of the property index disclosing only the following:
 - i. the title number to the Affordable Housing Unit;
 - ii. Permitted Encumbrances;
 - iii. financial charges to be discharged; and
 - iv. pending number assigned to the Transfer;

the City will cause the City Solicitor to deliver to the Owner's solicitors a trust cheque for the adjusted Purchase Price for the Affordable Housing Unit and a signed GST declaration acceptable to the City Solicitor.

PART IX. – INTERPRETATION

28. 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 Eligible Tenants, agents, officers and invitees of the party;

- (j) 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".

PART X - MISCELLANEOUS

29. **Housing Agreement.** The Owner acknowledges and agrees that:

- (a) this Agreement constitutes a covenant under Section 219 of the *Land Title Act* and a housing agreement entered into under Section 905 of the *Local Government Act* (British Columbia);
- (b) where an Affordable Housing Unit is a separate legal parcel the City may register this Agreement in the Land Title Office as a covenant and file a notice of housing agreement under Section 905 of the *Local Government Act* in the LTO against title to the Affordable Housing Unit and may note this Agreement on the Common Property Sheet; and
- (c) where Affordable Housing Units are not separate legal parcels, or have not yet been constructed, or where the land has not yet been Subdivided to create the Affordable Housing Units, the City may register this Agreement in the Land Title Office as a covenant and file a notice of housing agreement under Section 905 of the *Local Government Act* in the LTO against title to the Land.

30. **Modification.** This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the City, if it is signed by the City and a person who is the current registered owner of the Land.

31. **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 satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land. 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.

32. **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 construction, maintenance, repair, ownership, lease, license, use, operation, management or financing of the Land or any Affordable Housing Unit or the enforcement of any Tenancy Agreement; and/or
- (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

33. **Release.** The Owner by this Agreement 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, use, operation or management of the Land or any Affordable Housing Unit under this Agreement; and/or
- (b) the exercise by the City of any of its rights under this Agreement or an enactment.

34. **Survival.** The obligations of the Owner set out in PARTS II, III, IV, V, VI and VII will survive termination of this Agreement.

35. **Municipalities 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 Land;
- (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 Land; or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

36. **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 Property, the Land or the building or any portion thereof, including any Affordable Housing Unit;
- (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.

37. **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.

38. **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 Owner set out in the records at the LTO, and in the case of the City addressed:

To: Clerk, City of Richmond,
6911 No. 3 Road
Richmond BC V6Y 2C1

And to: Manager, Real Estate Services
City of Richmond
6911 No. 3 Road
Richmond BC V6Y 2C1

And to: **[Tony Kwan to provide INSERT OWNER INFORMATION]**

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.

39. **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.

40. **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.

41. **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.

42. **Sole Agreement.** This Agreement, and any documents signed by the Owners contemplated by this Agreement, 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.

43. **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.

44. **Covenant Runs with the Land.** This Agreement burdens and runs with the Land and every parcel into which it is Subdivided. 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 Land.

45. **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 Land.

46. **Equitable Remedies.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement or the Option 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 or the Option.

47. **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.

48. **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. Without limiting the above, in the event of any conflict between any provision of this Agreement and the *Residential Tenancy Act*, this Agreement is without effect to the extent of the conflict.

49. **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.

50. **Term.** The term of this agreement shall be for the twenty-five year period following either issuance of an occupancy permit for the building containing the Affordable Housing Units or the posting by the City of notice that the final inspection of the building containing the units has been completed and the Affordable Housing Units may be occupied.

Appendix A to Housing Agreement

STATUTORY DECLARATION

CANADA)	IN THE MATTER OF A HOUSING
)	AGREEMENT WITH THE CITY OF
PROVINCE OF BRITISH COLUMBIA)	RICHMOND
)	("Housing Agreement")

TO WIT:

I, _____ of _____, British Columbia, do solemnly declare that:

1. I am the owner or authorized signatory of the owner of _____ (the "Affordable Housing Unit"), 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 Affordable Housing Unit.
3. For the period from _____ to _____ the Affordable Housing Unit was occupied only by the Eligible Tenants (as defined in the Housing Agreement) whose names and current addresses and whose employer's names and current addresses appear below:

Names, addresses and phone numbers of Eligible Tenants:

4. The rent charged each month for the Affordable Housing Unit is as follows:
 - (a) the monthly rent on the date 365 days before this date of this statutory declaration: \$_____ per month;
 - (b) the rent on the date of this statutory declaration: \$_____; and
 - (c) the proposed or actual rent that will be payable on the date that is 90 days after the date of this statutory declaration: \$_____.
5. I acknowledge and agree to comply with the Owner's obligations under the Housing Agreement, and other charges in favour of the City registered in the Land Title Office against the land on which the Affordable Housing Unit is situated and confirm that the Owner has complied with the Owner's obligations under the Housing Agreement.

6. 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*.

NOTE: A false declaration may result in a fine of up to \$2000.00, up to six months' imprisonment, or both.

DECLARED BEFORE ME at the City of)
Richmond, in the Province of British)
Columbia, this _____ day of)
_____, 200__.

DECLARANT

A Commissioner for Taking Affidavits in
the Province of British Columbia

Appendix B to Housing Agreement

STATUTORY DECLARATION

CANADA)	IN THE MATTER OF A HOUSING
)	AGREEMENT WITH THE CITY OF
PROVINCE OF BRITISH COLUMBIA)	RICHMOND
)	("Housing Agreement")

TO WIT:

I, _____ of _____, British
Columbia, do solemnly declare that:

1. I am the Eligible Tenant or authorized signatory of the Eligible Tenant of _____ (the "Affordable Housing Unit"), 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 Affordable Housing Unit.
3. As of the date of my entering into a Tenancy Agreement in respect of the Affordable Housing Unit, my annual income was [insert amount] and the total annual income of all persons to be residing in the unit was [insert amount].
4. I acknowledge and agree to comply with the Housing Agreement, and other charges in favour of the City registered in the Land Title Office against the land on which the Affordable Housing Unit is situated and confirm that to my knowledge the Owner has complied with the Owner'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*.

NOTE: A false declaration may result in a fine of up to \$2000.00, up to six months' imprisonment, or both.

DECLARED BEFORE ME at the City of)
Richmond, in the Province of British)
Columbia, this _____ day of)
_____, 200__)
)
)
)
)
)

DECLARANT

A Commissioner for Taking Affidavits in
the Province of British Columbia

PRIORITY AGREEMENT

HSBC Bank of Canada (the "Chargeholder") is the holder of a Mortgage BA307946 and Assignment of Rents BA307947 encumbering the Lands.

The Chargeholder, being the holder of the Bank Charge, by signing the Form C General Instrument attached hereto as Part I, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Section 219 Covenant and hereby covenants that this Section 219 covenant shall bind the Bank Charge in the Lands and shall rank in priority upon the Lands over the Bank Charge as if the Section 219 Covenant had been registered prior to the Bank Charge and prior to the advance of any monies pursuant to the Bank Charge. The grant of priority is irrevocable, unqualified and without reservation or limitation.

END OF DOCUMENT