



Market Rental Housing Agreement (10820 No. 5 Road) Bylaw No. 9123

The Council of the City of Richmond enacts as follows:

1. The Mayor and City Clerk for the City of Richmond are authorized to execute and deliver a market rental housing agreement, substantially in the form set out as Schedule A to this Bylaw, with the owner of the land legally described as:

PID: 028-631-561

Lot C Section 31 Block 4 North Range 5 West NWD
EPP 12978

2. This Bylaw is cited as “**Market Rental Housing Agreement (10820 No. 5 Road) Bylaw No. 9123**”.

FIRST READING

APR 28 2014

SECOND READING

APR 28 2014

THIRD READING

APR 28 2014

ADOPTED

CITY OF RICHMOND
APPROVED for content by originating dept.
APPROVED for legality by Solicitor

MAYOR

CORPORATE OFFICER

Schedule A

to Market Rental Housing Agreement (10820 No. 5 Road) Bylaw 9123

MARKET RENTAL HOUSING AGREEMENT BETWEEN THE CITY OF RICHMOND
AND TOWNLINE GARDENS INC.

HOUSING AGREEMENT
(Section 905 *Local Government Act*)

THIS AGREEMENT is dated for reference the 12th day of March, 2014.

BETWEEN:

0864227 B.C. LTD., (Inc. No. 0864227),

a company duly incorporated under the laws of the Province of British Columbia and having its registered office at 120 – 13575 Commerce Parkway, Richmond, British Columbia, V6V 2L1

(the “Owner” as more fully defined in section 1.1 of this Agreement)

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” as more fully defined in section 1.1 of this Agreement)

WHEREAS:

- A. Section 905 of the *Local Government Act* permits the City to enter into and, by legal notation on title, note on title to lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units;
- B. The Owner is the registered owner of the Lands (as hereinafter defined);
- C. As a condition of adopting Zoning Text Amendment Bylaw 9112 (ZT14-656053), the Owner is required to register the City’s Housing Agreement to secure at least one hundred and forty-four (144) Dwelling Units, (as hereinafter defined), being constructed on the Lands for market rental purposes in perpetuity and to also provide that the Owner shall not apply for subdivision by way of strata plan of all or any portion of the Lands; and
- D. The Owner and the City wish to enter into this Agreement (as hereinafter defined) to provide the Dwelling Units (as hereinafter defined) on the terms and conditions set out in this Agreement.

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

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words have the following meanings:

- (a) **"Agreement"** means this agreement together with all schedules, attachments and priority agreements attached hereto;
- (b) **"City"** means the City of Richmond;
- (c) **"Dwelling Unit"** means a residential dwelling unit or units located or to be located on the Lands;
- (d) **"Housing Covenant"** means the agreements, covenants and charges granted by the Owner to the City (which includes covenants pursuant to section 219 of the *Land Title Act*) charging the Lands registered on the ___ day of ___, 2011 under number _____, as it may be amended or replaced from time to time;
- (e) **"Interpretation Act"** means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238 together with all amendments thereto and replacements thereof;
- (h) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250 together with all amendments thereto and replacements thereof;
- (i) **"Lands"** means the following lands and premises situate in the City of Richmond and any part, including a building or a portion of a building, into which said land is Subdivided:

PID: 028-631-561

Lot C Section 31 Block 4 North Range 5 West NWD Plan EPP12978

- (j) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 1996, Chapter 323 together with all amendments thereto and replacements thereof;
- (k) **"LTO"** means the New Westminster Land Title Office or its successor;
- (l) **"Market Rent"** means the amount of rent that a willing tenant would pay to a willing landlord for the rental of a comparable unit with comparable amenities in a comparable location for a comparable period of time;

- (m) **"Owner"** means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or of any part into which the Lands are Subdivided, and includes any person who is a registered owner in fee simple of a Dwelling Unit from time to time;
- (n) **"Real Estate Development Marketing Act"** means the *Real Estate Development Marketing Act*, S.B.C. 2004, Chapter 41 together with all amendments thereto and replacements thereof;
- (o) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78 together with all amendments thereto and replacements thereof;
- (p) **"Strata Property Act"** means *Strata Property Act* S.B.C. 1998, Chapter 43 together with all amendments thereto and replacements thereof;
- (q) **"Subdivide"** means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative interests" or "shared interest in land" as defined in the *Real Estate Development Marketing Act*;
- (r) **"Tenancy Agreement"** means a written tenancy agreement, lease, license or other agreement granting rights to occupy a Dwelling Unit for a term; and
- (s) **"Tenant"** means an occupant or occupants of a Dwelling Unit by way of a Tenancy Agreement. A Tenant does not include the Owner or the Owner's family members or any guest of the Owner.

1.2 In this Agreement:

- (a) reference to the singular includes a reference to the plural, and *vice versa*, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) 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 an Eligible Tenant, agent, officer and invitee 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".

**ARTICLE 2
USE AND OCCUPANCY OF DWELLING UNITS**

- 2.1 Notwithstanding that the Owner may be otherwise entitled, the Owner agrees that each of the one hundred and forty-four (144) Dwelling Units being constructed on the Lands may only be:
 - (a) occupied by a Tenant pursuant to a Tenancy Agreement and that no Dwelling Unit may be occupied by the Owner, the Owner's family members or any guest of the Owner; and
 - (b) used for the provision of housing at Market Rent in perpetuity in accordance with this Agreement.
- 2.2 Notwithstanding that the Owner may be otherwise entitled, the Owner shall not apply for stratification (subdivision by way of strata plan) of all or any portion of the Lands.
- 2.3 The Owner will not cause or permit the beneficial or registered title to any of the Dwelling Units to be sold or otherwise transferred, other than pursuant to a Tenancy Agreement, unless title to the Lands is sold or otherwise transferred to the same beneficial and legal owner.
- 2.4 Within 30 days after receiving a request in writing from the City, the Owner or its property manager shall provide the City with a statutory declaration in the form attached as Appendix A confirming that all Dwelling Units are being used for the provision of housing at Market Rent in accordance with this Agreement.

- 2.5 The Owner will not permit a Tenancy Agreement to be subleased or assigned unless the proposed Tenant enters into a new Tenancy Agreement with the Owner.
- 2.6 The Owner shall not rent, lease, license or otherwise permit occupancy of any Dwelling Unit except to a Tenant and the Dwelling Unit will be used or occupied only pursuant to a Tenancy Agreement.
- 2.7 The Owner shall not apply for stratification (subdivision by way of strata plan) of all or any portion of the Lands.

ARTICLE 3 DEMOLITION OF A DWELLING UNIT

- 3.1 The Owner will not demolish a Dwelling 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 Dwelling Unit, and the Owner has delivered to the City a copy of the engineer's or architect's report; or
 - (b) the Dwelling Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the City in its sole discretion,

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

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

ARTICLE 4 DEFAULT AND REMEDIES

- 4.1 The Owner acknowledges and agrees that a default by the Owner of any of its promises, covenants, representations or warranties set-out in the Housing Covenant shall also constitute a default under this Agreement.

- 4.2 The Owner agrees that damages may be an inadequate remedy for the City for any breach by the Owner of its obligations under this Agreement and the Owner agrees that the City is entitled to seek and obtain an order for specific performance, or a prohibitory or mandatory injunction, in order to compel performance by the Owner of its obligations under this Agreement.

ARTICLE 5 MISCELLANEOUS

5.1 Housing Agreement

The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under section 905 of the *Local Government Act*;
- (b) the City may file notice of this Agreement in the LTO against the title to the Lands; and
- (c) if notice of this Agreement is filed in the LTO as a notice under section 905 of the *Local Government Act* prior to the Lands having been Subdivided, and as it is the intention of the City and the Owner that this Agreement is, once separate legal parcels are created and/or the Lands are Subdivided, to charge and secure only the legal parcels or Subdivided Lands which contain the Dwelling Units, then the City Solicitor shall be entitled, without further City Council approval, authorization or bylaw, to partially discharge this Agreement accordingly and to cause the release of the notice of this Agreement from those portions of the Lands which do not contain any Dwelling Units. The Owner acknowledges and agrees that notwithstanding a partial discharge of this Agreement, this Agreement shall be and remain in full force and effect and, but for the partial discharge, otherwise unamended.

5.2 Modification

Subject to section 5.1 of this Agreement, this Agreement may be modified or amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

5.3 Management

The Owner covenants and agrees that it will furnish good and efficient management of the Dwelling Units. The Owner further covenants and agrees that it will maintain or cause to be maintained the Dwelling Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands. Notwithstanding the foregoing, the Owner acknowledges and agrees that the

City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Dwelling Units.

5.4 Indemnity

The Owner will indemnify, protect 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, operation, management or financing of the Lands or any Dwelling 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.

5.5 Release

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

- (a) construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Dwelling Unit under this Agreement; and/or
- (b) the exercise by the City of any of its rights under this Agreement or an enactment.

5.6 Survival

The obligations of the Owner set out in this Agreement will survive termination or discharge of this Agreement.

5.7 Priority

The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement, if required by the City Solicitor, will be noted against title to the Lands in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Lands save and except those specifically approved

in advance in writing by the City Solicitor or in favour of the City, and that a notice under section 905(5) of the *Local Government Act* will be filed on the title to the Lands;

5.8 City's Powers Unaffected

This Agreement does not:

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

5.9 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 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, to the postal address of the 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: City Solicitor
City of Richmond
6911 No. 3 Road
Richmond, BC V6Y 2C1

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

5.12 **Enuring Effect**

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

5.13 **Severability**

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

5.14 **Waiver**

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

5.15 **Sole Agreement**

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

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 Covenant Runs with the Lands

This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided in perpetuity PROVIDED HOWEVER it is the intention of the City and the Owner that this Agreement, once separate legal parcels are created and/or the Lands are Subdivided, is to charge and secure only the legal parcels or Subdivided Lands which contain the Dwelling Units. 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 Limitation on Owner's Obligations

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

5.20 No Joint Venture

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

5.21 Applicable Law

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

5.22 Deed and Contract

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

5.23 **Joint and Several**

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

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

0864227 B.C. LTD.

by its authorized signatory(ies):

Per: _____

Per: _____

CITY OF RICHMOND

by its authorized signatories:

Per:

Malcolm D. Brodie, Mayor

David Weber, Corporate Officer

CITY OF RICHMOND
APPROVED for content by originating dept.
APPROVED for legality by Solicitor
DATE OF COUNCIL APPROVAL

Appendix A to the Housing Agreement

STATUTORY DECLARATION

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

TO WIT:

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

1. I am the owner or authorized signatory of the owner, or authorized agent of the owner of _____ (the "Lands"), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the Lands notice of which is registered on title to the Lands under registration number _____.
3. For the period from _____ to _____ all the Dwelling Units (as defined in the Housing Agreement) on the Lands were being used solely for the provision of housing for Tenants (as defined in the Housing Agreement) at Market Rent (as defined in the Housing Agreement).
4. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at the City of _____)
 Richmond, in the Province of British Columbia,)
 this _____ day of _____, 2014.)
 _____)
 _____)
 A Commissioner for Taking Affidavits in the)
 Province of British Columbia)

DECLARANT

PRIORITY AGREEMENT

In respect to a Housing Agreement (the "Housing Agreement") made pursuant to section 905 of the *Local Government Act* between the City of Richmond and **0864227 B.C. LTD.** (the "Owner") in respect to the lands and premises legally known and described as:

PID: 028-631-561

Lot C Section 31 Block 4 North Range 5 West NWD Plan EPP12978

(the "Lands")

PARALLEL LEGION SDN BHD (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the Lower Mainland LTO under numbers BB331040, as modified by CA2697080, and BB331041, respectively ("the Bank Charges").

The Chargeholder, being the holder of the Bank Charges, by signing below, in consideration of the payment of Ten Dollars (\$10.00) 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 the covenants in the Housing Agreement by the Owner and hereby covenants that the Housing Agreement shall bind the Bank Charges in the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

PARALLEL LEGION SDN BHD

by its authorized signatory(ies):

Per: _____
Name:

Per: _____
Name:

PRIORITY AGREEMENT

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PID: 028-631-561

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(the "Lands")

TA DEVELOPMENT ONE (CANADA) LTD. (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the Lower Mainland LTO under numbers BB1134744 and BB1134745, respectively ("the Bank Charges").

The Chargeholder, being the holder of the Bank Charges, by signing below, in consideration of the payment of Ten Dollars (\$10.00) 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 the covenants in the Housing Agreement by the Owner and hereby covenants that the Housing Agreement shall bind the Bank Charges in the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

TA DEVELOPMENT ONE (CANADA) LTD.

by its authorized signatory(ies):

Per: _____
Name:

Per: _____
Name:

PRIORITY AGREEMENT

In respect to a Housing Agreement (the "Housing Agreement") made pursuant to section 905 of the *Local Government Act* between the City of Richmond and **0864227 B.C. LTD.** (the "Owner") in respect to the lands and premises legally known and described as:

PID: 028-631-561
Lot C Section 31 Block 4 North Range 5 West NWD Plan EPP12978

(the "Lands")

HSBC BANK CANADA and **CANADIAN WESTERN BANK** (together, the "Chargeholder") is the holder of a Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the Lower Mainland LTO under numbers CA2578488 and CA2578489, respectively ("the Bank Charges").

The Chargeholder, being the holder of the Bank Charges, by signing below, in consideration of the payment of Ten Dollars (\$10.00) 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 the covenants in the Housing Agreement by the Owner and hereby covenants that the Housing Agreement shall bind the Bank Charges in the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

HSBC BANK CANADA
by its authorized signatory(ies):

Per: _____
Name:

Per: _____
Name:

CANADIAN WESTERN BANK
by its authorized signatory(ies):

Per: _____
Name:

Per: _____
Name: