



City of Richmond

Report to Committee

To: Planning Committee **Date:** October 27, 2009
From: Cathryn Volkering Carlile, General Manager, Community Services **File:** 06-2280-30-020/Vol 01
Re: **Housing Agreement Bylaw No. 8535 to Permit the City to Enter into a Housing Agreement to Secure Affordable Housing Units – 9420, 9460, 9480, 9500 Odlin Road**

Staff Recommendation

That Bylaw No. 8535 be introduced and given first, second and third readings to permit the City to enter into a Housing Agreement substantially in accordance with requirements of the Local Government Act (Section 905).

Cathryn Volkering Carlile
General Manager, Community Services
(604-276-4068)

Att. 1

FOR ORIGINATING DEPARTMENT USE ONLY			
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER	
Law.....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>		
Development Applications.....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	_____	
REVIEWED BY TAG	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	REVIEWED BY CAO	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

Staff Report

Origin

This report responds to Council's adopted term goal:

Improve the effectiveness of the delivery of social services in the City through the development and implementation of a Social and Community Services Strategy that includes increased social housing, implementation of the campus of care concept and an emergency shelter for women.

On May 28, 2007, Council adopted the final City of Richmond Affordable Housing Strategy (the "Strategy"). The Strategy indicates three priorities in the development of affordable housing in the City, the second of which is the creation of affordable low end market rental units.

The City received a rezoning application by Polygon Development 222 Ltd. for rezoning at 9420, 9460, 9480, 9500 Odlin Road from "Single Family Housing District, Subdivision Area (R1/F)" to "Comprehensive Development District (CD/201)" in order to permit two four-storey buildings consisting of approximately 229 units over a parking level ("Cambridge Apartments"). The applicant agreed to provide affordable housing in accordance with the City's Strategy and with the West Cambie Area Plan. The Cambridge Apartments development application passed Planning Committee on June 16, 2009; received first reading at the Council Meeting on June 22, 2009 and received second and third reading at Public Hearing on July 20, 2009 (Rezoning 08-408104 and associated Bylaw Number 8440).

In addition, the City received a rezoning application by Polygon Development 225 Ltd. for rezoning at 9631, 9651, 9691, 9711, 9731, 9751, 9791 Alexandra Road and 4471, 4511, 4531, 4551 No. 4 Road (RZ 08-408107) ("Fisher Gate") in order to develop a 141 unit, 3 storey townhouse development, including a freestanding amenity building. This development application passed Planning Committee on September 22, 2009, received first reading at the Council Meeting on September 28, 2009, and received second and third reading at Public Hearing on October 19, 2009. The affordable housing contribution from the Fisher Gate application is being secured under the attached Housing Agreement, registered against the Cambridge Apartments application.

The *Local Government Act*, Section 905, states that in order for the City to enter into the Housing Agreement required to secure the affordable rental units, the City must enact a Housing Agreement bylaw. The purpose of this report is to recommend that Bylaw Number 8535 be introduced and given first, second, and third readings in order to permit the City to enter into the Housing Agreement. Adoption of the attached Bylaw Number 8535 would permit registration of a Housing Agreement on the subject site.

Execution of the Housing Agreement is a rezoning consideration of the Cambridge Apartments and Fisher Gate rezoning applications.

Analysis

The Cambridge Apartments rezoning application proposes a multi-family residential complex known as Cambridge Apartments consisting of approximately 229 units with associated amenity

space. Of these 229 units, 22 are affordable low end market rental units to be restricted by the attached Cambridge Apartments Housing Agreement. Eleven of these affordable units are associated with the Fisher Gate rezoning application.

The affordable low end market rental units include 10 one-bedroom/one-bedroom and den units and 12 two-bedroom units.

The applicant has agreed to register a Housing Agreement on title to secure the twenty-two low end market rental units. The Housing Agreement restricts annual household occupant income and restricts rents in perpetuity for the twenty-two (22) low end market rental units. The Housing Agreement includes provisions for adjustment of the maximum annual household income and the rental rate on an annual basis.

The applicant has agreed to the attached Housing Agreement with the current terms and conditions, but has asked that should Council amend the Affordable Housing Strategy to permit a lesser term for the Housing Agreement, then the developer may apply to the City to amend the Housing Agreement to permit such a lesser term. The Housing Agreement would need to be changed by Bylaw. In addition, if changes to the term are deemed to introduce new information to Council, a process in accordance with the *Local Government Act* would apply, including the potential requirement for a new Public Hearing.

Financial Impact

Administration of this Housing Agreement will be covered by existing City resources. Should the owner breach the Housing Agreement, additional resources may be required which would be funded through the Affordable Housing Reserve Funds.

Conclusion

In accordance with the Local Government Act (Section 905), adoption of Bylaw Number 8535 is required to permit the City to enter into a Housing Agreement to secure 22 low end market rental units that are proposed in association with the Cambridge Apartments rezoning application as well as in association with the Fisher Gate rezoning application.

Staff recommend Council adoption of Bylaw Number 8535.



Joan D'Angola
Affordable Housing Coordinator
(604-247-4946)

JD:



**Housing Agreement (9420, 9460, 9480, 9500 Odlin Road)
Bylaw No. 8535**

The Council of the City of Richmond enacts as follows:

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

- PID: 003-753-352 East Half Lot 7 Block "B" Section 34 Block 5 North Range 6 West
New Westminster District Plan 1224

- PID: 018-742-971 Lot A Section 34 Block 5 North Range 6 West New Westminster
District Plan LMP16370

- PID: 018-742-980 Lot B Section 34 Block 5 North Range 6 West New Westminster
District Plan LMP16370

- PID: 012-032-344 Lot 9 Except: Parcel "A" (Explanatory Plan 25130), Block "B"
Section 34 Block 5 North Range 6 West New Westminster District
Plan 1224

2. The General Manager of Community Services for the City of Richmond is authorized to cause notice of the housing agreement to be registered in the Land Title Office.

3. This Bylaw is cited as **"HOUSING AGREEMENT (9420, 9460, 9480, 9500 ODLIN ROAD) BYLAW NO. 8535, 2009"**.

FIRST READING

SECOND READING

THIRD READING

ADOPTED

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

MAYOR

CORPORATE OFFICER

Schedule A

To Housing Agreement (9420, 9460, 9480, 9500 Odlin Road) Bylaw No. 8535, 2009

**HOUSING AGREEMENT BETWEEN POLYGON DEVELOPMENT 222 LTD. AND CITY
OF RICHMOND IN RELATION TO 9420, 9460, 9480, 9500 ODLIN ROAD**

HOUSING AGREEMENT
(Section 905 Local Government Act)

THIS AGREEMENT is dated for reference the ___ day of _____, 2009.

BETWEEN:

POLYGON CAMBRIDGE PARK HOMES LTD. (Inc. #750656)
a company duly incorporated under the laws of the Province of British
Columbia and having its offices at 900 – 1333 West Broadway,
Vancouver, British Columbia, V6H 4C2

(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, availability of housing units to classes of persons, administration of housing units and rent which may be charged for housing units;
- B. The Owner is the registered and beneficial owner of the Lands (as hereinafter defined); and
- C. The Owner and the City wish to enter into this Agreement (as herein defined) to provide for affordable housing on the terms and conditions set out in this Agreement,

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

ARTICLE 1
DEFINITIONS AND INTERPRETATION

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

- (a) **"Affordable Housing Unit"** means a Dwelling Unit or Dwelling Units designated as such in accordance with a building permit and/or development permit issued by the City and/or, if applicable, in accordance with any rezoning consideration applicable to the development on the Lands and includes, without limiting the generality of the foregoing, the Dwelling Unit charged by this Agreement;
- (b) **"Agreement"** means this agreement together with all schedules, attachments and priority agreements attached hereto;
- (c) **"City"** means the City of Richmond;
- (d) **"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;
- (e) **"Daily Amount"** means \$100.00 per day as of January 1, 2009 adjusted thereafter by adding thereto an amount calculated by multiplying \$100.00 by the percentage change in the CPI since January 1, 2009, to January 1 of the year that a written notice is delivered to the owner by the City pursuant to section 6.1 of this Agreement;
- (f) **"Dwelling Unit"** means a residential dwelling unit or units located or to be located on the Lands whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, and includes single family detached dwellings, duplexes, townhouses, auxiliary residential dwelling units, rental apartments and strata lots in a building strata plan and includes, where the context permits, an Affordable Housing Unit;
- (g) **"Eligible Tenant"** means a Family having a cumulative annual income of:
 - (i) in respect to a bachelor unit, \$26,000 or less;
 - (ii) in respect to a one bedroom unit, \$30,500 or less;
 - (iii) in respect to a two bedroom unit, \$36,000 or less; or
 - (iv) in respect to three or more bedroom unit, \$42,000 or less

provided that, commencing January 1, 2009, the annual incomes set-out above shall, in each year thereafter, be adjusted, plus or minus, by adding or subtracting, as the case may be, there from, an amount calculated by multiplying the annual incomes set-out above, or, in subsequent years, the annual incomes derived by

applying the formula set-out in this section 1.1(g) of this Agreement, by the sum of the annual percentage change in the CPI plus 2 percent;

- (h) **"Family"** means:
 - (i) a person;
 - (ii) two or more persons related by blood, marriage or adoption; or
 - (iii) a group of not more than 6 persons who are not related by blood, marriage or adoption
- (i) **"GST"** means Good and Services Tax and any similar value added taxes;
- (j) **"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 ___ day of _____, 2009, under number _____;
- (k) **"Lands"** means the following lands and premises situate in the City of Richmond and, including a building or a portion of a building, into which said land is Subdivided:

 PID: NPA
 Lot 1, Section 34, Block 5 North, Range 6 West, NWD, Plan BCP _____
- (l) **"LTO"** means the New Westminster Land Title Office or its successor;
- (m) **"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;
- (n) **"Owner"** means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or of any part into which the Lands are Subdivided, and includes any person who is a registered owner in fee simple of an Affordable Housing Unit from time to time;
- (o) **"Permitted Rent"** means no greater than:
 - (i) \$580.00 a month for a bachelor unit;
 - (ii) \$650.00 a month for a one bedroom unit;
 - (iii) \$770.00 a month for a two bedroom unit; and
 - (iv) \$930.00 a month for a three (or more) bedroom suite,

provided that, commencing January 1, 2009, the rents set-out above shall, in each year thereafter, be adjusted, plus or minus, by adding or subtracting therefrom, as

the case may be, an amount calculated by multiplying the rents set-out above, or, in subsequent years, the rents derived by applying the formula set-out in this section 1.1(o) of this Agreement, by the sum of the annual percentage change in the CPI plus 2 percent. In the event that, in applying the formula set-out above, the rental increase is at any time greater than the rental increase permitted by the *Residential Tenancy Act*, then the increase will be reduced to the maximum amount permitted by the *Residential Tenancy Act*;

- (p) **"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;
- (q) **"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;
- (r) **"Strata Property Act"** means *Strata Property Act* S.B.C. 1998, Chapter 43 together with together with all amendments thereto and replacements thereof;
- (s) **"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*;
- (t) **"Tenancy Agreement"** means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit; and
- (u) **"Tenant"** means an occupant of an Affordable Housing Unit by way of a Tenancy Agreement.

1.2 In this Agreement:

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

- (e) 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 AFFORDABLE HOUSING UNITS

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

ARTICLE 3
DISPOSITION AND ACQUISITION OF AFFORDABLE HOUSING UNITS

- 3.1 The Owner will not permit an Affordable Housing Unit Tenancy Agreement to be subleased or assigned.
- 3.2 If this Housing Agreement encumbers more than one Affordable Housing Unit, then the Owner may not, without the prior written consent of the City Solicitor, sell or transfer less than 5 Affordable Housing Units in a single or related series of transactions with the result that when the purchaser or transferee of the Affordable Housing Units becomes the owner, the purchaser or transferee will be the legal and beneficial owner of not less than 5 Affordable Housing Units.
- 3.3 The Owner must not rent, lease, license or otherwise permit occupancy of any Affordable Housing Unit except to an Eligible Tenant and except in accordance with the following additional conditions:
- (a) the Affordable Housing Unit will be used or occupied only pursuant to a Tenancy Agreement;
 - (b) the monthly rent payable for the Affordable Housing Unit will not exceed the Permitted Rent applicable to that class of Affordable Housing Unit;
 - (c) the Owner will not require the Tenant or any permitted occupant to pay any strata fees, strata property contingency reserve fees or 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 or similar tax; provided, however, if the Affordable Housing Unit is a strata unit and the following costs are not part of strata or similar fees, an Owner may charge the Tenant the Owner's cost, if any, of providing cablevision, telephone, other telecommunications, gas, or electricity fees, charges or rates;
 - (d) the Owner will attach a copy of this Agreement to every Tenancy Agreement;
 - (e) the Owner will include in the Tenancy Agreement a clause requiring the Tenant and each permitted occupant of the Affordable Housing Unit to comply with this Agreement;
 - (f) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:
 - (i) an Affordable Housing Unit is occupied a person or persons other than an Eligible Tenant;
 - (ii) the annual income of an Eligible Tenant rises above the applicable maximum amount specified in section 1(1)(g) of this Agreement;

- (iii) the Affordable Housing Unit is occupied by more than the number of people the City's building inspector determines can reside in the Affordable Housing Unit given the number and size of bedrooms in the Affordable Housing Unit and in light of any relevant standards set by the City in any bylaws of the City;
- (iv) the Affordable Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and/or
- (v) the Tenant subleases the Affordable Housing Unit or assigns the Tenancy Agreement in whole or in part,

and in the case of each breach, the Owner hereby agrees with the City to forthwith provide to the Tenant a notice of termination. Except for section 3.3(f)(ii) of this Agreement [*Termination of Tenancy Agreement if Annual Income of Tenant rises above amount prescribed in section 1(1)(g) of this Agreement*], the notice of termination shall provide that the termination of the tenancy shall be effective 30 days following the date of the notice of termination. In respect to section 3.3(f)(ii) of this Agreement, termination shall be effective on the day that is 6 months following the date that the Owner provided the notice of termination to the Tenant;

- (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 forthwith deliver a certified true copy of the Tenancy Agreement to the City upon demand.
- 3.4 If the Owner has terminated the Tenancy Agreement, then the Owner shall use best efforts to cause the Tenant to vacate the Affordable Housing Unit on or before the effective date of termination.

ARTICLE 4 DEMOLITION OF AFFORDABLE HOUSING UNIT

- 4.1 The Owner will not demolish an Affordable Housing Unit unless:
- (a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Affordable Housing Unit, and the Owner has delivered to the City a copy of the engineer's or architect's report; or
 - (b) the Affordable Housing Unit is damaged or destroyed, to the extent of 40% or more of their value above its foundations, as determined by the City in its sole discretion,

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

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

ARTICLE 5 STRATA CORPORATION BYLAWS

- 5.1 This Agreement will be binding upon all strata corporations created upon the strata title Subdivision of the Lands or any subdivided parcel of the Lands.
- 5.2 Any strata corporation bylaw which prevents, restricts or abridges the right to use the Lands and the buildings thereon from time to time as rental accommodation will have no force and effect.
- 5.3 The strata corporation shall not pass any bylaws preventing, restricting or abridging the use of the Lands and the buildings thereon from time to time as rental accommodation.
- 5.4 The strata corporation shall not pass any bylaw or approve any levies which would result in the Owner or the Tenant paying any extra charges or fees for the use of any common property, limited common property or other common facilities of the strata corporation.
- 5.5 The strata corporation shall not pass any bylaw or make any rule which would restrict the Owner or the Tenant from using and enjoying any common property or common facility of the strata corporation.

ARTICLE 6 DEFAULT AND REMEDIES

- 6.1 The Owner agrees that, in addition to any other remedies available to the City under this Agreement or the Housing Covenant or at law or equity, if an Affordable Housing Unit is used or occupied in breach of this Agreement or rented at a rate in excess of the Permitted Rent or the Owner is otherwise in breach of any of its obligations under this Agreement or the Housing Covenant, the Owner will pay a 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. For greater certainty, the City is not entitled to give written notice with respect to any breach of the Agreement until any applicable cure period has expired. The Daily Amount is due and payable 5 business days following receipt by the Owner of an invoice from the City for the same.

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

ARTICLE 7 MISCELLANEOUS

7.1 Housing Agreement

The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under section 905 of the *Local Government Act* (British Columbia);
- (b) where an Affordable Housing Unit is a separate legal parcel the City may file notice of this Agreement in the LTO against title to the Affordable Housing Unit and, in the case of a strata corporation, may note this Agreement on the common property sheet; and
- (c) where the Lands have not yet been Subdivided to create the separate parcels to be charged by this Agreement, the City may file a notice of this Agreement in the LTO against title to the Lands. If 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, it is the intention 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 Affordable Housing Units and the City Solicitor shall be entitled, without further City Council approval, authorization or bylaw, to partially discharge this Agreement accordingly. The Owner acknowledges and agrees that notwithstanding a partial discharge of this Agreement, this Agreement shall be and remain in full force and effect and, but for the partial discharge, otherwise unamended. Further, the Owner acknowledges and agrees that in the event that the Affordable Housing Unit is in a strata corporation, this Agreement shall remain noted on the strata corporation's common property sheet.

7.2 Modification

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

7.3 Management

The Owner covenants and agrees that it will furnish good and efficient management of the Affordable Housing Units and will permit representatives of the City to inspect the Affordable Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Affordable Housing Units in a good state of repair and fit for habitation and will

comply with all laws, including health and safety standards applicable to the Lands. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Affordable Housing Units.

7.4 **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, operation, management or financing of the Lands 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.

7.5 **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, operation or management of the Lands 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.

7.6 **Survival**

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

7.7 **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;

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

7.9 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 Affordable Housing Unit; and
- (c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

7.10 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.

7.11 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 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

And to: Senior Vice-President, Development
Polygon Cambridge Park Homes Ltd.
900 – 1333 West Broadway
Vancouver, BC V6H 4C2

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

7.12 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.

7.13 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.

7.14 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.

7.15 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 Affordable Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement. In the event of any conflict between this Agreement and the Housing Covenant, this Agreement shall, to the extent necessary to resolve such conflict, prevail.

7.16 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.

7.17 Covenant Runs with the Lands

This Agreement burdens and runs with the Lands 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 Lands.

7.18 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.

7.19 Equitable Remedies

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

7.20 No Joint Venture

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

7.21 Applicable Law

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

7.22 Deed and Contract

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

7.23 Joint and Several

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



City of Richmond

Report to Committee

To: Planning Committee **Date:** October 27, 2009
From: Cathryn Volkering Carlile, General Manager, Community Services **File:** 06-2280-30-020/Vol 01
Re: **Housing Agreement Bylaw No. 8535 to Permit the City to Enter into a Housing Agreement to Secure Affordable Housing Units – 9420, 9460, 9480, 9500 Odlin Road**

Staff Recommendation

That Bylaw No. 8535 be introduced and given first, second and third readings to permit the City to enter into a Housing Agreement substantially in accordance with requirements of the Local Government Act (Section 905).

Cathryn Volkering Carlile
General Manager, Community Services
(604-276-4068)

Att. 1

FOR ORIGINATING DEPARTMENT USE ONLY			
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER	
Law.....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>		
Development Applications.....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	_____	
REVIEWED BY TAG	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	REVIEWED BY CAO	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>

Staff Report

Origin

This report responds to Council's adopted term goal:

Improve the effectiveness of the delivery of social services in the City through the development and implementation of a Social and Community Services Strategy that includes increased social housing, implementation of the campus of care concept and an emergency shelter for women.

On May 28, 2007, Council adopted the final City of Richmond Affordable Housing Strategy (the "Strategy"). The Strategy indicates three priorities in the development of affordable housing in the City, the second of which is the creation of affordable low end market rental units.

The City received a rezoning application by Polygon Development 222 Ltd. for rezoning at 9420, 9460, 9480, 9500 Odlin Road from "Single Family Housing District, Subdivision Area (R1/F)" to "Comprehensive Development District (CD/201)" in order to permit two four-storey buildings consisting of approximately 229 units over a parking level ("Cambridge Apartments"). The applicant agreed to provide affordable housing in accordance with the City's Strategy and with the West Cambie Area Plan. The Cambridge Apartments development application passed Planning Committee on June 16, 2009; received first reading at the Council Meeting on June 22, 2009 and received second and third reading at Public Hearing on July 20, 2009 (Rezoning 08-408104 and associated Bylaw Number 8440).

In addition, the City received a rezoning application by Polygon Development 225 Ltd. for rezoning at 9631, 9651, 9691, 9711, 9731, 9751, 9791 Alexandra Road and 4471, 4511, 4531, 4551 No. 4 Road (RZ 08-408107) ("Fisher Gate") in order to develop a 141 unit, 3 storey townhouse development, including a freestanding amenity building. This development application passed Planning Committee on September 22, 2009, received first reading at the Council Meeting on September 28, 2009, and received second and third reading at Public Hearing on October 19, 2009. The affordable housing contribution from the Fisher Gate application is being secured under the attached Housing Agreement, registered against the Cambridge Apartments application.

The *Local Government Act*, Section 905, states that in order for the City to enter into the Housing Agreement required to secure the affordable rental units, the City must enact a Housing Agreement bylaw. The purpose of this report is to recommend that Bylaw Number 8535 be introduced and given first, second, and third readings in order to permit the City to enter into the Housing Agreement. Adoption of the attached Bylaw Number 8535 would permit registration of a Housing Agreement on the subject site.

Execution of the Housing Agreement is a rezoning consideration of the Cambridge Apartments and Fisher Gate rezoning applications.

Analysis

The Cambridge Apartments rezoning application proposes a multi-family residential complex known as Cambridge Apartments consisting of approximately 229 units with associated amenity

space. Of these 229 units, 22 are affordable low end market rental units to be restricted by the attached Cambridge Apartments Housing Agreement. Eleven of these affordable units are associated with the Fisher Gate rezoning application.

The affordable low end market rental units include 10 one-bedroom/one-bedroom and den units and 12 two-bedroom units.

The applicant has agreed to register a Housing Agreement on title to secure the twenty-two low end market rental units. The Housing Agreement restricts annual household occupant income and restricts rents in perpetuity for the twenty-two (22) low end market rental units. The Housing Agreement includes provisions for adjustment of the maximum annual household income and the rental rate on an annual basis.

The applicant has agreed to the attached Housing Agreement with the current terms and conditions, but has asked that should Council amend the Affordable Housing Strategy to permit a lesser term for the Housing Agreement, then the developer may apply to the City to amend the Housing Agreement to permit such a lesser term. The Housing Agreement would need to be changed by Bylaw. In addition, if changes to the term are deemed to introduce new information to Council, a process in accordance with the *Local Government Act* would apply, including the potential requirement for a new Public Hearing.

Financial Impact

Administration of this Housing Agreement will be covered by existing City resources. Should the owner breach the Housing Agreement, additional resources may be required which would be funded through the Affordable Housing Reserve Funds.

Conclusion

In accordance with the Local Government Act (Section 905), adoption of Bylaw Number 8535 is required to permit the City to enter into a Housing Agreement to secure 22 low end market rental units that are proposed in association with the Cambridge Apartments rezoning application as well as in association with the Fisher Gate rezoning application.

Staff recommend Council adoption of Bylaw Number 8535.



Joan D'Angola
Affordable Housing Coordinator
(604-247-4946)

JD:



Housing Agreement (9420, 9460, 9480, 9500 Odlin Road)
Bylaw No. 8535

The Council of the City of Richmond enacts as follows:

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

PID: 003-753-352 East Half Lot 7 Block "B" Section 34 Block 5 North Range 6 West New Westminster District Plan 1224

PID: 018-742-971 Lot A Section 34 Block 5 North Range 6 West New Westminster District Plan LMP16370

PID: 018-742-980 Lot B Section 34 Block 5 North Range 6 West New Westminster District Plan LMP16370

PID: 012-032-344 Lot 9 Except: Parcel "A" (Explanatory Plan 25130), Block "B" Section 34 Block 5 North Range 6 West New Westminster District Plan 1224

- 2. The General Manager of Community Services for the City of Richmond is authorized to cause notice of the housing agreement to be registered in the Land Title Office.

- 3. This Bylaw is cited as "HOUSING AGREEMENT (9420, 9460, 9480, 9500 ODLIN ROAD) BYLAW NO. 8535, 2009".

FIRST READING

SECOND READING

THIRD READING

ADOPTED

Four horizontal lines for signatures or dates.

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

MAYOR

CORPORATE OFFICER

Schedule A

To Housing Agreement (9420, 9460, 9480, 9500 Odlin Road) Bylaw No. 8535, 2009

HOUSING AGREEMENT BETWEEN POLYGON DEVELOPMENT 222 LTD. AND CITY
OF RICHMOND IN RELATION TO 9420, 9460, 9480, 9500 ODLIN ROAD

HOUSING AGREEMENT
(Section 905 Local Government Act)

THIS AGREEMENT is dated for reference the ____ day of _____, 2009.

BETWEEN:

POLYGON CAMBRIDGE PARK HOMES LTD. (Inc. #750656)
a company duly incorporated under the laws of the Province of British
Columbia and having its offices at 900 – 1333 West Broadway,
Vancouver, British Columbia, V6H 4C2

(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, availability of housing units to classes of persons, administration of housing units and rent which may be charged for housing units;
- B. The Owner is the registered and beneficial owner of the Lands (as hereinafter defined); and
- C. The Owner and the City wish to enter into this Agreement (as herein defined) to provide for affordable housing on the terms and conditions set out in this Agreement,

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

ARTICLE 1
DEFINITIONS AND INTERPRETATION

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

- (a) **"Affordable Housing Unit"** means a Dwelling Unit or Dwelling Units designated as such in accordance with a building permit and/or development permit issued by the City and/or, if applicable, in accordance with any rezoning consideration applicable to the development on the Lands and includes, without limiting the generality of the foregoing, the Dwelling Unit charged by this Agreement;
- (b) **"Agreement"** means this agreement together with all schedules, attachments and priority agreements attached hereto;
- (c) **"City"** means the City of Richmond;
- (d) **"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;
- (e) **"Daily Amount"** means \$100.00 per day as of January 1, 2009 adjusted thereafter by adding thereto an amount calculated by multiplying \$100.00 by the percentage change in the CPI since January 1, 2009, to January 1 of the year that a written notice is delivered to the owner by the City pursuant to section 6.1 of this Agreement;
- (f) **"Dwelling Unit"** means a residential dwelling unit or units located or to be located on the Lands whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, and includes single family detached dwellings, duplexes, townhouses, auxiliary residential dwelling units, rental apartments and strata lots in a building strata plan and includes, where the context permits, an Affordable Housing Unit;
- (g) **"Eligible Tenant"** means a Family having a cumulative annual income of:
 - (i) in respect to a bachelor unit, \$26,000 or less;
 - (ii) in respect to a one bedroom unit, \$30,500 or less;
 - (iii) in respect to a two bedroom unit, \$36,000 or less; or
 - (iv) in respect to three or more bedroom unit, \$42,000 or less

provided that, commencing January 1, 2009, the annual incomes set-out above shall, in each year thereafter, be adjusted, plus or minus, by adding or subtracting, as the case may be, there from, an amount calculated by multiplying the annual incomes set-out above, or, in subsequent years, the annual incomes derived by

applying the formula set-out in this section 1.1(g) of this Agreement, by the sum of the annual percentage change in the CPI plus 2 percent;

- (h) **"Family"** means:
 - (i) a person;
 - (ii) two or more persons related by blood, marriage or adoption; or
 - (iii) a group of not more than 6 persons who are not related by blood, marriage or adoption
- (i) **"GST"** means Good and Services Tax and any similar value added taxes;
- (j) **"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 ____ day of _____, 2009, under number _____;
- (k) **"Lands"** means the following lands and premises situate in the City of Richmond and, including a building or a portion of a building, into which said land is Subdivided:

 PID: NPA
 Lot 1, Section 34, Block 5 North, Range 6 West, NWD, Plan BCP_____
- (l) **"LTO"** means the New Westminster Land Title Office or its successor;
- (m) **"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;
- (n) **"Owner"** means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or of any part into which the Lands are Subdivided, and includes any person who is a registered owner in fee simple of an Affordable Housing Unit from time to time;
- (o) **"Permitted Rent"** means no greater than:
 - (i) \$580.00 a month for a bachelor unit;
 - (ii) \$650.00 a month for a one bedroom unit;
 - (iii) \$770.00 a month for a two bedroom unit; and
 - (iv) \$930.00 a month for a three (or more) bedroom suite,

provided that, commencing January 1, 2009, the rents set-out above shall, in each year thereafter, be adjusted, plus or minus, by adding or subtracting therefrom, as

the case may be, an amount calculated by multiplying the rents set-out above, or, in subsequent years, the rents derived by applying the formula set-out in this section 1.1(o) of this Agreement, by the sum of the annual percentage change in the CPI plus 2 percent. In the event that, in applying the formula set-out above, the rental increase is at any time greater than the rental increase permitted by the *Residential Tenancy Act*, then the increase will be reduced to the maximum amount permitted by the *Residential Tenancy Act*;

- (p) **"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;
- (q) **"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;
- (r) **"Strata Property Act"** means *Strata Property Act* S.B.C. 1998, Chapter 43 together with together with all amendments thereto and replacements thereof;
- (s) **"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*;
- (t) **"Tenancy Agreement"** means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit; and
- (u) **"Tenant"** means an occupant of an Affordable Housing Unit by way of a Tenancy Agreement.

1.2 In this Agreement:

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

- (e) 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 AFFORDABLE HOUSING UNITS

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

ARTICLE 3
DISPOSITION AND ACQUISITION OF AFFORDABLE HOUSING UNITS

- 3.1 The Owner will not permit an Affordable Housing Unit Tenancy Agreement to be subleased or assigned.
- 3.2 If this Housing Agreement encumbers more than one Affordable Housing Unit, then the Owner may not, without the prior written consent of the City Solicitor, sell or transfer less than 5 Affordable Housing Units in a single or related series of transactions with the result that when the purchaser or transferee of the Affordable Housing Units becomes the owner, the purchaser or transferee will be the legal and beneficial owner of not less than 5 Affordable Housing Units.
- 3.3 The Owner must not rent, lease, license or otherwise permit occupancy of any Affordable Housing Unit except to an Eligible Tenant and except in accordance with the following additional conditions:
- (a) the Affordable Housing Unit will be used or occupied only pursuant to a Tenancy Agreement;
 - (b) the monthly rent payable for the Affordable Housing Unit will not exceed the Permitted Rent applicable to that class of Affordable Housing Unit;
 - (c) the Owner will not require the Tenant or any permitted occupant to pay any strata fees, strata property contingency reserve fees or 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 or similar tax; provided, however, if the Affordable Housing Unit is a strata unit and the following costs are not part of strata or similar fees, an Owner may charge the Tenant the Owner's cost, if any, of providing cablevision, telephone, other telecommunications, gas, or electricity fees, charges or rates;
 - (d) the Owner will attach a copy of this Agreement to every Tenancy Agreement;
 - (e) the Owner will include in the Tenancy Agreement a clause requiring the Tenant and each permitted occupant of the Affordable Housing Unit to comply with this Agreement;
 - (f) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:
 - (i) an Affordable Housing Unit is occupied a person or persons other than an Eligible Tenant;
 - (ii) the annual income of an Eligible Tenant rises above the applicable maximum amount specified in section 1(1)(g) of this Agreement;

- (iii) the Affordable Housing Unit is occupied by more than the number of people the City's building inspector determines can reside in the Affordable Housing Unit given the number and size of bedrooms in the Affordable Housing Unit and in light of any relevant standards set by the City in any bylaws of the City;
- (iv) the Affordable Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and/or
- (v) the Tenant subleases the Affordable Housing Unit or assigns the Tenancy Agreement in whole or in part,

and in the case of each breach, the Owner hereby agrees with the City to forthwith provide to the Tenant a notice of termination. Except for section 3.3(f)(ii) of this Agreement [*Termination of Tenancy Agreement if Annual Income of Tenant rises above amount prescribed in section 1(1)(g) of this Agreement*], the notice of termination shall provide that the termination of the tenancy shall be effective 30 days following the date of the notice of termination. In respect to section 3.3(f)(ii) of this Agreement, termination shall be effective on the day that is 6 months following the date that the Owner provided the notice of termination to the Tenant;

- (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 forthwith deliver a certified true copy of the Tenancy Agreement to the City upon demand.
- 3.4 If the Owner has terminated the Tenancy Agreement, then the Owner shall use best efforts to cause the Tenant to vacate the Affordable Housing Unit on or before the effective date of termination.

ARTICLE 4 DEMOLITION OF AFFORDABLE HOUSING UNIT

- 4.1 The Owner will not demolish an Affordable Housing Unit unless:
- (a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Affordable Housing Unit, and the Owner has delivered to the City a copy of the engineer's or architect's report; or
 - (b) the Affordable Housing Unit is damaged or destroyed, to the extent of 40% or more of their value above its foundations, as determined by the City in its sole discretion,

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

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

ARTICLE 5 STRATA CORPORATION BYLAWS

- 5.1 This Agreement will be binding upon all strata corporations created upon the strata title Subdivision of the Lands or any subdivided parcel of the Lands.
- 5.2 Any strata corporation bylaw which prevents, restricts or abridges the right to use the Lands and the buildings thereon from time to time as rental accommodation will have no force and effect.
- 5.3 The strata corporation shall not pass any bylaws preventing, restricting or abridging the use of the Lands and the buildings thereon from time to time as rental accommodation.
- 5.4 The strata corporation shall not pass any bylaw or approve any levies which would result in the Owner or the Tenant paying any extra charges or fees for the use of any common property, limited common property or other common facilities of the strata corporation.
- 5.5 The strata corporation shall not pass any bylaw or make any rule which would restrict the Owner or the Tenant from using and enjoying any common property or common facility of the strata corporation.

ARTICLE 6 DEFAULT AND REMEDIES

- 6.1 The Owner agrees that, in addition to any other remedies available to the City under this Agreement or the Housing Covenant or at law or equity, if an Affordable Housing Unit is used or occupied in breach of this Agreement or rented at a rate in excess of the Permitted Rent or the Owner is otherwise in breach of any of its obligations under this Agreement or the Housing Covenant, the Owner will pay a 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. For greater certainty, the City is not entitled to give written notice with respect to any breach of the Agreement until any applicable cure period has expired. The Daily Amount is due and payable 5 business days following receipt by the Owner of an invoice from the City for the same.

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

ARTICLE 7 MISCELLANEOUS

7.1 Housing Agreement

The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under section 905 of the *Local Government Act* (British Columbia);
- (b) where an Affordable Housing Unit is a separate legal parcel the City may file notice of this Agreement in the LTO against title to the Affordable Housing Unit and, in the case of a strata corporation, may note this Agreement on the common property sheet; and
- (c) where the Lands have not yet been Subdivided to create the separate parcels to be charged by this Agreement, the City may file a notice of this Agreement in the LTO against title to the Lands. If 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, it is the intention 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 Affordable Housing Units and the City Solicitor shall be entitled, without further City Council approval, authorization or bylaw, to partially discharge this Agreement accordingly. The Owner acknowledges and agrees that notwithstanding a partial discharge of this Agreement, this Agreement shall be and remain in full force and effect and, but for the partial discharge, otherwise unamended. Further, the Owner acknowledges and agrees that in the event that the Affordable Housing Unit is in a strata corporation, this Agreement shall remain noted on the strata corporation's common property sheet.

7.2 Modification

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

7.3 Management

The Owner covenants and agrees that it will furnish good and efficient management of the Affordable Housing Units and will permit representatives of the City to inspect the Affordable Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Affordable Housing Units in a good state of repair and fit for habitation and will

comply with all laws, including health and safety standards applicable to the Lands. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Affordable Housing Units.

7.4 **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, operation, management or financing of the Lands 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.

7.5 **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, operation or management of the Lands 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.

7.6 **Survival**

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

7.7 **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;

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

7.9 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 Affordable Housing Unit; and
- (c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

7.10 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.

7.11 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 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

And to: Senior Vice-President, Development
Polygon Cambridge Park Homes Ltd.
900 – 1333 West Broadway
Vancouver, BC V6H 4C2

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

7.12 **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.

7.13 **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.

7.14 **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.

7.15 **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 Affordable Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement. In the event of any conflict between this Agreement and the Housing Covenant, this Agreement shall, to the extent necessary to resolve such conflict, prevail.

7.16 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.

7.17 Covenant Runs with the Lands

This Agreement burdens and runs with the Lands 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 Lands.

7.18 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.

7.19 Equitable Remedies

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

7.20 No Joint Venture

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

7.21 Applicable Law

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

7.22 Deed and Contract

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

7.23 Joint and Several

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

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

CITY OF RICHMOND
by its authorized signatories:

Per: _____

POLYGON CAMBRIDGE PARK HOMES LTD.
by its authorized signatories:

Per: _____
Per: _____

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

Appendix A to 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 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 noted 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*.

DECLARED BEFORE ME at the City of)
Richmond, in the Province of British Columbia,)
this _____ day of _____, 2009.)
)
)
)
)
)

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 of the *Local Government Act* between the City of Richmond and Polygon Cambridge Park Homes Ltd. in respect to the lands and premises legally known and described as PID: NPA, Lot 1, Section 34, Block 5 North, Range 6 West, NWD, Plan BCP _____ (the "Lands").

The Bank of Nova Scotia (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 BB110182 (as extended by BB867248) and BB110183 (as extended by BB867249) ("the Bank Charge").

The Chargeholder, being the holder of the Bank Charge, 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 Housing Agreement and hereby covenants that the Housing Agreement shall bind the Bank Charge in the Lands and shall rank in priority upon the Lands over the Bank Charge as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands 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.

THE BANK OF NOVA SCOTIA
by its authorized signatories:

Per: _____

Per: _____