



City of Richmond

Report to Committee

To: Planning Committee **Date:** March 28, 2014
From: Cathryn Volkering Carlile **File:**
 General Manager, Community Services
Re: **Approval to Replace Housing Agreement (10820 No. 5 Road) Bylaw No. 8937 with Termination of Housing Agreement (10820 No. 5 Road) Bylaw No. 9118, Housing Agreement (10820 No. 5 Road) Bylaw No. 9119, and Market Rental Housing Agreement (10820 No. 5 Road) Bylaw No. 9123**

Staff Recommendations

1. That Termination of Housing Agreement (10820 No. 5 Road) Bylaw No. 9118 be introduced and given first, second, and third readings to authorize the termination, release and discharge of the Housing Agreement entered into pursuant to Housing Agreement (10820 No. 5 Road) Bylaw No.8937 and the repeal of Housing Agreement (10820 No. 5 Road) Bylaw No.8937.
2. That Housing Agreement (10820 No. 5 Road) Bylaw No. 9119 be introduced and given first, second, and third readings to permit the City to enter into a Housing Agreement substantially in the form attached thereto, in accordance with the requirements of s. 905 of the Local Government Act, to secure the affordable rental housing units required by Zoning Text Amendment No. 14-656053 and Development Application No. 13-641796.
3. That Market Rental Housing Agreement (10820 No. 5 Road) Bylaw No. 9123 be introduced and given first, second, and third readings to permit the City to enter into a Market Rental Housing Agreement substantially in the form attached thereto, in accordance with the requirements of s. 905 of the Local Government Act, to secure the market rental housing units required by Zoning Text Amendment No. 14-656053 and Development Application No. 13-641796.

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

Att. 4

REPORT CONCURRENCE		
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER
Law Development Applications	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	
REVIEWED BY STAFF REPORT / AGENDA REVIEW SUBCOMMITTEE	INITIALS:	APPROVED BY CAO

Staff Report

Origin

The report and bylaws are consistent with Council's adopted Term Goal #2.5:

Development of a clearer definition of affordable housing priorities and subsequent utilization of affordable housing funding.

An application has been received from 0864227 B.C. Ltd. for permission to develop a 5-storey, mixed-use building (Building D – 'The Camellia') with a gross floor area of 10,839.1 m² (116,671 ft²) including 163 residential rental units with a floor area of 9,231.8 m² (99,370 ft²) and 10 commercial retail units with a floor area of 1,607.3 m² (17,301 ft²) located at 10820 No. 5 Road.

'The Gardens' project is a master planned, mixed-use development at the northeast corner of Steveston Highway and No. 5 Road. Building D would be Phase 2 of this overall development, and the residential component (163 apartments) of this building is proposed as 144 market rental housing units and 19 affordable rental housing units.

The rezoning (RZ 08-450659) for this overall development was adopted on July 25, 2011, and secured the 5% affordable housing requirement on all residential uses. The rezoning allowed the Phase 1 affordable housing requirements (7,817.29 ft²) to be deferred to later phases, because of the substantial off-site improvements associated with rezoning.

The Development Permit for Phase 1 (DP 10-544504) has been issued and the buildings are under construction.

A Development Permit for Phase 2 (DP 12-599057) was endorsed by Development Permit Panel on August 22, 2012, for the applicant to construct a market condominium building. As a condition of the Development Permit, Housing Agreement (10820 No. 5 Road) Bylaw No.8937 was adopted on October 9, 2012, to secure nine affordable housing units in Phase 2. The applicant withdrew that Development Permit application in order to pursue market rental housing for Phase 2. Because that application has been withdrawn, Termination of Housing Agreement (10820 No. 5 Road) Bylaw 9118 is required to repeal Housing Agreement (10820 No. 5 Road) Bylaw No. 8937.

The applicant is currently proposing a combined Market Rental (144 units) and Low End Market Rental (19 units) building as Phase 2 of the development. A site-specific zoning text amendment (ZT 14-656053) to waive the 5% affordable housing requirement from the 144 market rental units only was granted 1st reading at the open Council meeting on March 24, 2014.

The zoning text amendment and new development permit require two bylaws that would secure the following municipal approval requirements:

- Housing Agreement (10820 No. 5 Road) Bylaw No.9119 to secure 19 affordable housing units in Phase 2, which will include 100% of the deferred commitment of affordable housing required to be developed in Phase 1; and

- Market Rental Housing Agreement (10820 No. 5 Road) Bylaw No.9123 to secure all residential units in Phase 2 with the exception of the 19 affordable housing units as market rental units in perpetuity.

Analysis

The rezoning adopted on July 25, 2011, allowed the affordable housing requirements for Phase 1 to be deferred, given the substantial off-site improvements associated with the rezoning. Consequently, Housing Agreement Bylaw No.8937 secured 9 units (6,755.69 ft²) of affordable rental housing in Phase 2 which represented 30% of the deferred Phase 1 requirements plus 5% of the total residential floor area of Phase 2 (i.e., Building D) as summarized in Table 1.

Table 1: Affordable Housing Commitments from DP 12-599057

Phase/Building	Total Square Feet	Number of Units
Phase 1: Buildings A & B	7,817.29 ft ² to be deferred as follows: - 30% or 2,345.19 ft ² to Phase 2 - 70% or 5,472.10 ft ² to Phase 3	to be provided in Phase 2: Building D and Phase 3.
Phase 2 (Lot C): Building D	2,345.19 ft ² Phase 1 deferral + 4,410.50 ft ² required for Building D = 6,755.69 ft ²	9
Phase 3 (Lot D): Buildings E1 & E2	5,472.10 ft ² Phase 1 deferral + 5% of gross residential floor area, to be confirmed upon receipt of Development Permit for Phase 3.	To be determined
Phase 4 (Lot E): Building F	5% of gross residential floor area, to be confirmed upon receipt of Development Permit for Phase 4.	To be determined

The applicant’s new development application involves a mixed-use development that includes 163 residential rental units (64 studios, 89 one-bedroom units, and 10 two-bedroom units). Proposed changes to the existing affordable housing commitments and a new commitment to market rental housing are summarized in Table 2.

Table 2: Proposed Affordable Housing and Market Rental Housing Commitments

Phase/Building	Total Square Feet	Number of Units
Phase 1: Buildings A & B	AH = 7,817.29 ft ² deferred to Phase 2	Phase 1 commitment to be included in Phase 2: Building D
Phase 2: Building D	AH = 100% of Phase 1 AH requirement of 7,817.29 ft ² ; 8,013 ft ² provided Balance of units secured as market rentals in perpetuity = 91,357 ft ²	19 affordable rentals with aging-in-place features 144 secured market rentals with aging-in-place features; 3 meet Basic Universal Housing requirements
Phase 3: Buildings E1 & E2	AH = 5% of gross residential floor area, to be confirmed upon receipt of Development Permit for Phase 3.	8 projected affordable rentals that meet Basic Universal Housing requirements; type and size are indicated in Table 4 below
Phase 4: Building F	AH = 5% of gross residential floor area, to be confirmed upon receipt of Development Permit for Phase 4.	8 projected affordable rentals that meet Basic Universal Housing requirements; type and size are indicated in Table 4 below

The applicant’s new proposal presents several advantages over their previous affordable housing commitments on the subject site:

1. The applicant’s current DP 13-641796 for Phase 2 of 98.62 m² (726.25 m²– 627.63 m²; or 8,013 ft²) will provide more affordable housing floor area than previously proposed in DP

12-599057. This represents 100% of the Affordable Housing requirements deferred from Phase 1, rather than the 30% previously agreed upon. Thus, the City will receive more affordable housing units (19 versus 9) in the short term than formerly agreed to by the applicant. These 19 units will be Low End of Market Rental (LEMR) units.

- 2. The applicant’s current Phase 2 proposal includes 18.18 m² (744.43 m² - 726.25 m²; or 196 ft²) more affordable housing floor area than was required in Phase 1, which Townline has agreed will not be credited to subsequent phases of the Gardens development but is provided by the applicant as a supplemental affordable housing contribution to the City (see Table 2).

As per the City’s Affordable Housing Strategy, the proposed Housing Agreement for the 19 affordable housing units in Phase 2:

- restricts the annual household incomes for eligible occupants and specifies that the units must be made available at low end market rent rates in perpetuity,
- includes provisions for annual adjustment of the maximum annual household incomes and rental rates in accordance with City requirements, and
- specifies that occupants of the affordable housing units subject to the Housing Agreement shall enjoy full and unlimited access to and use of all on-site indoor and outdoor amenity spaces.

Table 3: Affordable Housing Units Proposed for Phase 2

Phase	Unit Type	No. of Units	Max. Rent	Total Household Income	Min. Unit Size (ft ²)	Avg. Unit Size (ft ²)	Total Amount (ft ²)
Phase 2 (Lot C) Building D	Studio	17	\$850	\$34,000 or less	400	406	4,055
	1 Bedroom	2	\$950	\$38,000 or less	535	554	1,661
	Sub-Total	19				-	8,013

- 3. While the currently proposed 19 affordable housing units in Phase 2 are predominantly smaller units, the applicant has agreed that the affordable housing units to be provided in Phases 3 and 4 will be larger units constructed to the City’s Basic Universal Housing standards and appropriate for families, according to the following schedule that will be secured through a No Development Covenant on the affected Parcels:

Table 4: Affordable Housing Units Proposed for Phases 3 and 4

Phase	Unit Type	No. of Units	Max. Rent	Total Household Income	Min. Unit Size (ft ²)	Avg. Unit Size (ft ²)	Total Amount (ft ²)
Phase 3 (Parcel D) Buildings E1 & E2	2 Bedroom	4	\$1,162	\$46,500 or less	860	867	3,468
	3 Bedroom	4	\$1,437	\$57,500 or less	980	1000	4,000
	Sub-Total	8				-	7,468
Phase 4 (Parcel E) Building F	Accessible 1 Bedroom	1	\$950	\$38,000 or less	535	650	650
	2 Bedroom	4	\$1,162	\$46,500 or less	860	880	3,520
	3 Bedroom	3	\$1,437	\$57,500 or less	980	1001	3,003
	Sub-Total	8				-	7,173

The applicant has agreed to the terms and conditions of the agreement to terminate the housing agreement referred to in Housing Agreement (10820 No. 5 Road) Bylaw No.8937. The applicant has also agreed to the terms and conditions of the Housing Agreement (Attached, Bylaw 9119, Schedule A), and to register notice of the Housing Agreement on title to secure the 19 affordable rental housing units.

Market Rental Housing Considerations

The market rental housing component of Phase 2 comprises 91,357 ft² constituting 144 apartments: 47 studios, 87 one-bedroom units, and 10 two-bedroom units.

This section briefly restates the more detailed comments that Affordable Housing staff provided in the zoning text amendment report brought forward by Development Applications with regard to policy considerations and project specifics for removing the 5% affordable housing requirements from the 144 market rental housing units.

The primary goal of the Affordable Housing Strategy is to focus on the housing needs of low to moderate income households. The Strategy does not specifically address market rental housing nor does the City have a formal market rental policy. However, the Strategy does acknowledge the importance of preserving and maintaining existing and new rental housing stock in Richmond.

The City has reviewed requests to waive the affordable housing requirements for market rental projects on a case-by-case basis. To date, only one such proposal has been approved. It is not a precedent for the consideration of the applicant’s proposal, because the origin and nature of the two requests differ in several key respects outlined here:

<p>14000 & 14088 Riverport Way</p> <ul style="list-style-type: none"> • trigger: rezoning from dormitory to apartment use, and to allow reduced parking • use and density given for market rentals • waiver: \$213,823 cash-in-lieu required on one Lot 	<p>Townline Gardens Phase 2 (Lot C)</p> <ul style="list-style-type: none"> • trigger: switch from condo to market rental • density given for affordable housing • waiver: 5% built units (4,568 ft² required on Lot C)
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The applicant's request to waive the affordable housing requirements for the 144 market rental housing units within Building D of Phase 2 merits support for the following reasons:

1. Metro Vancouver estimates that the demand for market rental housing in Richmond amounts to 170 units each year. The applicant's 144 purpose-built market rental units would achieve 85% of this annual target and add welcome diversity to housing options outside of the City Centre.
2. The vacancy rate in Richmond purpose-built apartment rental housing was 2.7% in 2013 and averaged 1.6% for the decade between 2003 and 2012. Increasing the supply of market rental adds options for those who do not choose or are not able to enter into the homeownership market housing. As tenants with middle and high incomes are attracted to the upgraded amenities of new constructed condo-quality market rental units, pressure is relieved over time on rent rates within the older stock where low and modest income renters reside.
3. The applicant's proposal includes 17 LEMR studios and also 47 market rate studios which are not readily available in typical new developments and which will be comparatively affordable due to size. According to CMHC's Fall 2013 Rental Report Market, Richmond has a total of 219 purpose-built studio apartments. Despite the addition of 23 units to the market since 2012, the studio vacancy rate in 2013 continued a trend from prior years as the lowest of any unit type at 2.3%. The vacancy rate has been 0% twice in the past five years.

Since demand for studios continues to outpace supply, the average rent increased from \$749 in 2012 to \$796 in 2013. A monthly rent of \$796 is affordable to someone paying 30% of an annual income of \$31,840. The 2006 Census counted 2,515 one-person renter households in Richmond with an income of less than \$30,000.

To date, the City has secured 34 studios through housing agreements. Seven were secured as LEMR units through the Interim Affordable Housing Strategy. Twenty-five market rental units (Riverport), one LEMR unit, and one subsidized unit have been secured through the Affordable Housing Strategy.

4. The 144 market rental housing units proposed in Phase 2 will be subject to a separate legal agreement registered on title in the Land Title Office that ensures these units cannot be stratified and must remain market rental housing units in perpetuity.

The applicant has agreed to the terms and conditions of the attached Market Rental Housing Agreement (Attached, Bylaw 9123, Schedule A), and to register notice of the Market Rental Housing Agreement on title to secure usage of the 144 apartments as market rental housing units.

Approval of the applicant's request should not be regarded as a precedent for future requests to waive affordable housing requirements. Such requests will continue to be evaluated on a case-by-case basis on their own merits and in accordance with the Affordable Housing Strategy objectives current at the time of application.

Staff are aware that there is increased interest among developers to provide market rental housing. Further policy research will be conducted so that the Affordable Housing Strategy can

be updated to reflect how market rental provision can best complement the delivery of affordable housing to meet Richmond's estimated housing needs.

In summary, staff recommend that

1. That Termination of Housing Agreement (10820 No. 5 Road) Bylaw No. 9118 be introduced and given first, second, and third readings to authorize the termination, release and discharge of the Housing Agreement entered into pursuant to Housing Agreement (10820 No. 5 Road) Bylaw No.8937 and the repeal of Housing Agreement (10820 No. 5 Road) Bylaw No.8937;
2. Housing Agreement (10820 No. 5 Road) Bylaw No. 9119 be introduced and given first, second, and third readings to permit the City to enter into a Housing Agreement that would secure 19 affordable rental housing units; and
3. Market Rental Housing Agreement (10820 No. 5 Road) Bylaw No. 9123 be introduced and given first, second, and third readings to permit the City to enter into a Market Rental Housing Agreement to secure 144 market rental housing units.

Financial Impact

None.

Conclusion

In accordance with Section 905 of the Local Government Act, adoption of Bylaw No. 9118, Bylaw No. 9119, and Bylaw No. 9123 is required to permit the City to enter into the housing agreements which, together with the housing covenants, will act to secure the 19 affordable housing units and 144 market rental housing units that are proposed in association with Zoning Text Amendment Application No. 14-656053 and Development Permit Application No. 13-641796.

It is recommended that the above noted Bylaws be introduced and given first, second, and third readings. Following the adoption of the Bylaws, the City will be able to execute the Agreements and arrange for notice of the two new housing agreements to be filed in the Land Title Office.



Dena Kae Beno
Affordable Housing Coordinator
(604-247-4946)

DKB: jdb

- Att. 1 - Site Plan, 10820 No. 5 Road
- Att. 2 - Termination of Housing Agreement (10820 No. 5 Road) Bylaw No.9118
- Att. 3 - Housing Agreement (10820 No. 5 Road) Bylaw No.9119
- Att. 4 - Market Rental Housing Agreement (10820 No. 5 Road) Bylaw No. 9123



Termination of Housing Agreement (10820 No. 5 Road)
Bylaw No. 9118

The Council of the City of Richmond enacts as follows:

- 1. The Mayor and City Clerk for the City of Richmond are authorized to:
(a) execute agreements to terminate the housing agreement referred to in Housing Agreement (10820 No. 5 Road) Bylaw No. 8937 (the "Original Housing Agreement");
(b) cause Notices and other charges registered at the Land Title Office in respect to the Original Housing Agreement to be discharged from title;
(c) execute such other documentation required to effect the termination of the Original Housing Agreement;
2. To repeal Housing Agreement (10820 No. 5 Road) Bylaw No.8937.
3. This Bylaw is cited as "Housing Agreement (10820 No. 5 Road) Bylaw No. 9118".

FIRST READING

SECOND READING

THIRD READING

ADOPTED

Four horizontal lines for signatures or initials.

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

MAYOR

CORPORATE OFFICER



Housing Agreement (10820 No. 5 Road) Bylaw No. 9119

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 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 **“Housing Agreement (10820 No. 5 Road) Bylaw No. 8937”**.

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 (10820 No. 5 Road) Bylaw 9119

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, 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 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 nineteen (19) Affordable Housing Units (as hereinafter defined), being constructed on the Lands 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 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 annually 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. In the absence of obvious error or mistake, any calculation by the City of the Daily Amount in any particular year shall be final and conclusive;
- (f) **"Dwelling Unit"** means a residential dwelling unit or units located or to be located on the Lands whether those dwelling units are lots, parcels, or parts or portions thereof, and includes single family detached dwellings, duplexes, townhouses, auxiliary residential dwelling units, rental apartments 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, \$34,000 or less;
 - (ii) in respect to a one bedroom unit, \$38,000 or less;
 - (iii) in respect to a two bedroom unit, \$46,500 or less; or
 - (iv) in respect to a three or more bedroom unit, \$57,500 or less

provided that, commencing July 1, 2013, the annual incomes 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 that is equal to the Core Need Income Threshold data and/or other applicable data produced by Canada Mortgage Housing Corporation in the years when such data is released. In the event that, in applying the values 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*. In the absence of obvious error or mistake, any calculation by the City of an Eligible Tenant's permitted income in any particular year shall be final and conclusive;

- (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) **"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 _____, 20_, under number _____, as it may be amended or replaced from time to time;
- (j) **"Interpretation Act"** means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;
- (k) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250, together with all amendments thereto and replacements thereof;
- (l) **"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

- (m) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 1996, Chapter 323, together with all amendments thereto and replacements thereof;
- (n) **"LTO"** means the New Westminster Land Title Office or its successor;
- (o) **"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;

- (p) **“Permitted Rent”** means no greater than:
- (i) \$850.00 a month for a bachelor unit;
 - (ii) \$950.00 a month for a one bedroom unit;
 - (iii) \$1,162.00 a month for a two bedroom unit; and
 - (iv) \$1,437.00 a month for a three (or more) bedroom unit,

provided that, commencing July 1, 2013, 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 that is equal to the Core Need Income Threshold data and/or other applicable data produced by Canada Mortgage Housing Corporation in the years when such data is released. In the event that, in applying the values 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*. In the absence of obvious error or mistake, any calculation by the City of the Permitted Rent in any particular year shall be final and conclusive;

- (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) **“Residential Tenancy Act”** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
- (s) **“Strata Property Act”** means the *Strata Property Act* S.B.C. 1998, Chapter 43, together with all amendments thereto and replacements thereof;
- (t) **“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*;
- (u) **“Tenancy Agreement”** means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit; and
- (v) **“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, however, notwithstanding that the Owner may have already provided such statutory declaration in the particular calendar year, the City may request and the Owner shall provide to the City such further statutory declarations as requested by the City in respect to 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 The Owner shall not apply for stratification (subdivision by way of strata plan) of all or any portion of the Lands.
- 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 fees, contingency reserve fees or any extra charges or fees for use of any common areas, facilities or amenities, or for sanitary sewer, storm sewer, water, other utilities, property or similar tax; provided, however, an Owner may charge the Tenant the Owner's cost, if any, of providing to the Affordable Housing Unit cablevision, telephone, other telecommunications, gas, or electricity fees, charges or rates;
 - (d) the Owner shall not make any rule which would restrict the Tenant or any other permitted occupant of an Affordable Housing Unit from using and enjoying any common areas, facilities or amenities situated on the Lands;

- (e) the Owner will attach a copy of this Agreement to every Tenancy Agreement;
- (f) 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;
- (g) 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 by 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 six (6) months following the date that the Owner provided the notice of termination to the Tenant;

- (h) 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
- (i) 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 and all other persons that may be in occupation of the

Affordable Housing Unit 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 its 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.

- 4.2 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 an Affordable Housing Unit in accordance with this Agreement.

**ARTICLE 5
DEFAULT AND REMEDIES**

- 5.1 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 in 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 the Daily Amount to the City for every day that the breach continues after forty-five (45) 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, if any, has expired. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the City for the same.
- 5.2 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 6 MISCELLANEOUS

6.1 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 Affordable Housing 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 Affordable Housing 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.

6.2 Modification

Subject to section 6.1 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.

6.3 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.

6.4 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.

6.5 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 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.

6.6 Survival

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

6.7 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.

6.8 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.

6.9 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.

6.10 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.

6.11 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.

6.12 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.

6.13 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.

6.14 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.

6.15 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.

6.16 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.

6.17 **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 Affordable Housing 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.

6.18 **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.

6.19 **No Joint Venture**

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

6.20 **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.

6.21 **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.

6.22 **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.

6.23 **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.

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: _____
Name:

Per: _____
Name:

CITY OF RICHMOND

by its authorized signatory(ies):

Per: _____
Malcolm D. Brodie, Mayor

Per: _____
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 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 and their employer(s)]

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 or registered in the Land Title Office against the land on which the Affordable Housing Unit is situated and confirm that the Owner has complied with the Owner's obligations under the Housing Agreement.

6. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at the City of _____)
_____, in the Province of British)
Columbia, this _____ day of)
_____, 20____.)

_____)
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

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")

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:



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

The Council of the City of Richmond enacts as follows:

- 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

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

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 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)
PROVINCE OF BRITISH COLUMBIA)
IN THE MATTER OF A HOUSING AGREEMENT WITH 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

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")

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: