



City of Richmond

Report to Committee

To: Planning Committee

To Planning - Sep 16, 2008
Date: August 13, 2008

From: Andrew Nazareth
General Manager, Business & Financial Services

File: 12-8060-20-8377/Vol 01
XR: 06-2280-30-018/Vol 01

Re: **Housing Agreement Bylaw No.8377 to Permit the City to Enter into a Housing Agreement to Secure Affordable Housing Units and Rental Units - 6351/6391/6491 Minoru Boulevard**

Staff Recommendation

That Bylaw No. 8377 be introduced and given first, second and third readings to permit the City to enter into a Housing Agreement in accordance with requirements of the Local Government Act (Section 905).

Andrew Nazareth
General Manager, Business & Financial Services
(604-276-4095)

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"/>	
City Clerk.....	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	

Staff Report

Origin

On July 24, 2006, Council adopted the City of Richmond Affordable Housing Strategy: Interim Strategy and Report (hereafter the "Interim Strategy"). Included in the Interim Strategy was a recommendation to support the development of all forms of rental housing, including low end of market units (LEM). The Interim Strategy identified a target maximum income threshold for occupancy in LEM units of \$37,700 which equates into an affordable rent of \$943 monthly.

Prior to adoption of the Interim Strategy (and consequently prior to adoption of the final Strategy), the City received a rezoning application by W.T. Leung Architects Inc. for rezoning at 6351 and 6391 Minoru Boulevard from Townhouse and Apartment District (R3) to Comprehensive Development District (CD/177) [Rezoning 04-286496/Bylaw No. 8103]. Notwithstanding that the application preceded the Interim Strategy, the applicant agreed to provide both affordable rental and market rental units. The said development application passed Planning Committee on July 5, 2006, received first reading at the Council Meeting on July 24, 2006 and received second and third reading at Public Hearing on September 6, 2006.

The Local Government Act, Section 905, states that in order for the City to enter into the Housing Agreement required to secure the affordable and market rental units, the City must enact a Housing Agreement bylaw. Adoption of the Housing Agreement bylaw is required to fulfill the provision of the affordable housing amenity package endorsed as part of the rezoning of the site and prior to issuance of the Development Permit for the proposed development. It is expected that the rezoning application will be presented for adoption by Council on September 8, 2008. The purpose of this report is to recommend that Bylaw No. 8377 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 No. 8377, which incorporates the Housing Agreement as executed by the applicant, would permit registration of a Housing Agreement on the subject site (see Attachment 1).

Analysis

The rezoning/development permit application proposes to develop two (2) 16-storey high-rise buildings over a common parking structure consisting of approximately 224 dwelling units and 253 parking spaces as Phase I of a multi-phase development at 6351, 6391 and 6491 Minoru Boulevard, that when completed, will include four (4) high-rise residential towers with approximately 448 dwelling units and approximately 614 off-street parking spaces, on a site zoned "Comprehensive Development District (CD/177).

Proposed Phase I of the development will provide for 132 rental units in Tower A, including 22 affordable rental "Senior Independent Living" units and 110 market rental units. The 22 affordable rental "Senior Independent Living" units will be affordable according to the definition of affordability at the time of the rezoning application – rents of no greater than \$1,000 per month. This maximum rental amount is very close to the maximum rental amount ultimately established in the City's final Affordable Housing Strategy.

The Seniors affordable rental units include seven bachelor units and 15 one-bedroom units. The 110 market rental units include 21 bachelor units, 59 one-bedroom units, and 30 two-bedroom units.

Given the timing of this rezoning application, and in the absence of both a one to one rental replacement policy and an Affordable Housing Strategy at the time, the affordable housing contribution from this development application is significant.

The applicant has agreed to register a Housing Agreement on title to secure the twenty-two affordable rental "Senior Independent Living" units and the 110 market rental units. The Housing Agreement ensures rental tenure on all 132 units and further restricts the seniors units to rents of \$1,000 or less per month and occupancy to senior citizens aged 65 and older. The Housing Agreement has a minimum term of 10 years.

Financial Impact

There are no financial impacts.

Conclusion

In accordance with the Local Government Act (Section 905), adoption of Bylaw No. 8377 is required to permit the City to enter into a Housing Agreement to secure 22 affordable rental "Senior Independent Living" units and 110 market rental units that are proposed in association with Rezoning 04-286496/Bylaw No. 8103.

The attached Housing Agreement is in accordance with the terms and conditions of the affordable housing amenity package presented to Council as part of the rezoning of the site and as such staff recommend Council adoption of Bylaw No.8377.



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

JD:



City of Richmond

Bylaw 8377

Housing Agreement (6351, 6391 & 6491 Minoru Boulevard) Bylaw No. 8377

The Council of the City of Richmond enacts as follows:

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

Lot A Section 8 Block 4 North Range 6 West NWD Plan _____
2. The Manager, Real Estate 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 (6351, 6391 & 6491 MINORU BOULEVARD) BYLAW NO. 8377, 2008"**.

FIRST READING

SECOND READING

THIRD READING

ADOPTED

CITY OF RICHMOND
APPROVED for content by originating dept.
APPROVED for legality by Solicitor
<i>12</i>

MAYOR

CORPORATE OFFICER

Schedule A

To Housing Agreement (6351, 6391 & 6491 Minoru Boulevard) Bylaw No. 8377, 2008

HOUSING AGREEMENT BETWEEN 410730 B.C. LTD. AND CITY OF RICHMOND IN
RELATION TO 6351, 6391 & 6491 MINORU BOULEVARD

LAND TITLE ACT
FORM C

(Section 233)

Province of
British Columbia

GENERAL INSTRUMENT – PART 1 (This area for Land Title Office use)

Page 1 of 23 pages

1. APPLICATION: (Name, address, phone no. and signature of applicant, applicant's solicitor or agent)

CITY OF RICHMOND
6911 No. 3 Road
Richmond, British Columbia, V6Y 2C1
Tel: (604) 276-4201

Lori Enright/ Authorized Agent

File No. 8060-20 8103

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:*

(PID) (LEGAL DESCRIPTION)

No PID Number Lot A Section 8 Block 4 North Range 6 West NWD Plan BCP

3. NATURE OF INTEREST: *

DESCRIPTION

DOCUMENT REFERENCE
(Page and paragraph)

PERSON ENTITLED TO INTEREST

Section 219 Covenant

Entire Agreement

City of Richmond

Rent Charge

Page 12, para. 18 and 19

City of Richmond

Priority Agreement

Page 23

City of Richmond

granting Section 219
Covenant and Rent Charge
priority over Mortgage
BX127916 and Assignment
of Rents BX127917

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

(a) Filed Standard Charge Terms

D.F. No.

(b) Express Charge Terms

Annexed as Part 2

(c) Release
instrument

There is no Part 2 of this

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

5. TRANSFEROR(S): *

410730 B.C. LTD., (Inc. No. BC0790741) (Section 219 Covenant and Rent Charge) and
HSBC BANK CANADA (Priority Agreement)

6. TRANSFEREE(S): *

CITY OF RICHMOND, a City incorporated under the Local Government Act, and having its
offices at 6911 No. 3 Road, Richmond, British Columbia, V6Y 2C1

**LAND TITLE ACT
FORM C Continued**

7. ADDITIONAL OR MODIFIED TERMS: *

None

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

Officer Signature(s)

Execution Date

Y	M	D
08	08	15
08	08	25

Party(ies) Signature(s)

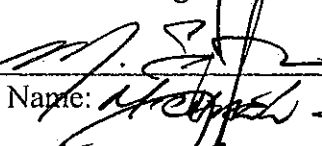
410730 B.C. LTD.
by its authorized signatories:


Print Name: **RICHARD JACKSON**

Print Name:

Party(ies) Signature(s)

HSBC BANK CANADA
by its authorized signatories:


Print Name: **FRANCIS LI**

Print Name: **FRANCIS LI**



(as to both signatures)
NATALIE V. MARACH
BARRISTER AND SOLICITOR
STIKEMAN ELLIOTT LLP
SUITE 1700 PARK PLACE 666 BURRARD STREET
VANCOUVER, BRITISH COLUMBIA, CANADA
V6C 2X8 604-631 1300



(as to both signatures)
BRIAN J.P. CORCORAN
BARRISTER & SOLICITOR
SUITE 500 NORTH TOWER
5811 COONEY ROAD
RICHMOND, B.C. V6X 3M1
TELEPHONE 604-276-2765

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

**LAND TITLE ACT
FORM E
EXECUTIONS**

Officer Signature(s)

Barbara Dunnet Sage

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

as to the signature of
David Weber

Y	M	D
2008	09	

Transferee(s) Signature(s)
CITY OF RICHMOND
by its authorized signatories

MALCOLM D. BRODIE
Mayor, Authorized Signatory

DAVID WEBER
Corporate Officer,
Authorized Signatory

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

HOUSING AGREEMENT

THIS AGREEMENT dated for reference the 2nd day of September, 2008 is

BETWEEN:

410730 B.C. LTD.
1700 – 666 Burrard Street
Vancouver, British Columbia, V6C 2X8

(the “Owner”)

AND:

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

(the “City”)

WHEREAS:

- A. Section 219 of the Land Title Act permits the registration of a covenant of a negative or positive nature in favour of the Corporation of the City of Richmond (the “City”) in respect of the use of land or construction on land;
- B. The Owner is the registered and beneficial owner of the Land (hereinafter defined); and
- C. The Owner and the City wish to enter into this Agreement to provide for affordable housing on the terms and conditions set out in this Agreement, and this Agreement is both a covenant under Section 219 of the *Land Title Act* and a housing agreement under Section 905 of the *Local Government Act*.

In consideration of \$1.00 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 and in accordance with Section 219 of the *Land Title Act*:

PART I – DEFINITIONS

1. In this Agreement the following words have the following meanings:
 - (a) “Affordable Housing Unit” means any Dwelling Unit designated as such in accordance with Part II herein to be used and occupied in accordance with this Agreement (for greater clarity and certainty, “Affordable Housing Unit” includes

- all the Seniors Housing Units and the Market Rental Housing Units required to be provided pursuant to this Agreement);
- (b) "Agreement" means these standard charge terms together with the General Instrument;
 - (c) "Building" means the building or buildings to be constructed on the Land pursuant to Rezoning Application 04-286496;
 - (d) "City Solicitor" means the person designated as such by the City from time to time;
 - (e) "CPI" means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function, where Occupancy Year (as hereinafter defined) = 100;
 - (f) "Daily Amount" means \$100.00 per day as of December 31, 2007 adjusted thereafter by an amount determined by multiplying \$100.00 by the percentage change in the CPI since December 31, 2007 to January 1 of the year that a written notice is delivered to the owner by the City pursuant to Section 17 herein;
 - (g) "Dispose" means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, license, rent or sublet, divest, release, and agree to do any of those things;
 - (h) "Dwelling Units" means all residential dwelling units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation of the Land may be Subdivided (as hereinafter defined) and includes single family detached dwellings, duplexes, townhouses, auxiliary residential dwelling units, rental apartments and strata lots in a building strata plan;
 - (i) "Eligible Tenant" means, subject to Section 4, a Family having at least one person that is sixty-five (65) years or older at the commencement of the Term;
 - (j) "Family" has the meaning given in Section 104 of Richmond Zoning and Development Bylaw 5300, as amended;
 - (k) "General Instrument" means the Form C under the Land Title (Transfer Forms) Regulations, as amended, and all schedules and addenda to the Form C charging the Land and citing these Standard Charge Terms;
 - (l) "Gross Floor Area" means the habitable gross floor area of each Affordable Housing Unit and includes enclosed sunrooms but does not include crawl spaces, open patios, open balconies or parking spaces. If the Affordable Housing Unit is a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be based on the gross floor area shown corresponding to the Affordable Housing Unit on the strata plan filed in the LTO in respect of the Land. If the Affordable Housing Unit is not a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be made in accordance with the procedure for determining gross floor area set out in the *Strata Property Act* as if the Affordable Housing Unit were a strata lot;

- (m) "Interest" means the property interest of the Owner in an Affordable Housing Unit;
- (n) "Land" means the land described in Item 2 of the General Instrument and any part, including a building or a portion of a building, into which said land is Subdivided;
- (o) "LTO" means the New Westminster Land Title Office or its successor;
- (p) "Market Rental Housing Units" means the 110 Dwelling Units referred to in section 3(a) of this Agreement which are not subject to the restrictions contained in this Agreement concerning the amount of rent which may be charged for such units or concerning any obligation to rent them to an Eligible Tenant;
- (q) "Market Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting rights to occupy a Market Rental Housing Unit in accordance with the terms of this Agreement;
- (r) "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;
- (s) "Original Rent" means \$1,000.00 or less a month;
- (t) "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of an Affordable Housing Unit from time to time;
- (u) "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;
- (v) "Seniors Housing Units" means the 22 Dwelling Units referred to in section 3(a) of this Agreement which are subject to the restrictions contained in this Agreement concerning the amount of rent which may be charged for such units and the restriction that they may only be occupied by an Eligible Tenant;
- (w) "Seniors Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting rights to occupy a Seniors Housing Unit in accordance with the terms of this Agreement;
- (x) "Subdivide" means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative units" or "shared interests in land" as defined in the *Real Estate Act*;
- (y) "Tenancy Agreement" means the Market Tenancy Agreement and the Seniors Tenancy Agreement;

- (z) "Tenant" means an occupant of an Affordable Housing Unit by way of a Tenancy Agreement;
- (aa) "Term" means a period of ten (10) years commencing on the issuance of the first Final Inspection Notice for an Affordable Housing Unit; and
- (bb) "Tower A" means a _____ storey tower to be constructed on the Land in the approximate location as set out on the sketch plan attached hereto as Schedule "A" pursuant to Rezoning Application 04-286496.

PART II - TERM

- 2. The Owner and the City agree that subject to the survival provisions contained in section 26 of this Agreement, the Owner's obligations contained herein shall terminate at the expiration or earlier termination of the Term.
- 3. At the expiration of the Term, the City shall execute a discharge(s) of the covenants, agreements and rent charge constituting covenants pursuant to Section 219 of the Land Title Act, RSBC 1996, Chapter 250, as amended, together with a discharge of the Notice filed under Section 905 of the Local Government Act, provided however that:
 - (a) the City shall have no obligation to execute such discharges until a written request therefore from the Owner has been received by the City, which request shall include the form of discharge(s) in registrable form;
 - (b) the cost of preparation of the aforesaid discharges, and the cost of registration of the same in the LTO shall be paid by the Owner;
 - (c) the City shall have a reasonable time within which to execute the aforesaid discharges and return the same to the Owner for registration; and
 - (d) the Owner acknowledges that any such discharges shall be without prejudice to the indemnity and release set forth in Sections 24 and 25 of this Agreement.

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

- 4. The Owner covenants and agrees with the City that:
 - (a) the Land will not be developed and no building or structure will be constructed or used on the Land unless as part of the development, construction or use of any such building or structure, the Owner also designs and constructs to completion, in accordance with a building permit issued by the City and in accordance with any development permit issued by the City, at least 132 Affordable Housing Units of which;
 - (i.) 22 will be Seniors Housing Units, 15 of which will be one-bedroom and 7 will be bachelor units, all to be located on the second, third and fourth floors of Tower A; and
 - (ii.) 110 will be Market Rental Housing Units, 21 of which will be bachelor units, 59 will be one-bedroom units and 30 will be two-bedroom units, all

to be located in Tower A. Notwithstanding the foregoing, with the City's prior written consent, the Owner may change the number and breakdown of the Market Rental Housing Units;

- (b) the Owner will meet or exceed the construction standards for Affordable Housing Units as specified by the City in its bylaws and any required building permits issued by the City in respect of development on the Land;
- (c) the Owner will at all times ensure that the Land is used and occupied in compliance with all statutes, laws, regulations, and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of the City and all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws;
- (d) the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement, if required by the City Solicitor, will be registered against title to the Land in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in writing by the City Solicitor or in favour of the City, and that a notice under Section 905(5) of the *Local Government Act* will be filed on the title to the Land;
- (e) the Owner will not apply for a building permit for any construction or development on the Land unless the proposed construction complies with the requirements of this Agreement;
- (f) the Owner may not sell or otherwise transfer the Seniors Housing Units separately; and
- (g) the Owner may sell or otherwise transfer the Market Rental Housing Units separately.

PART IV - USE AND OCCUPANCY OF AFFORDABLE HOUSING UNITS

5. The Owner agrees each Seniors Housing Unit may only be used as a permanent residence occupied by one Eligible Tenant. The Owner further agrees that the number of ~~individuals who permanently reside in any~~ Affordable Housing Unit must be equal to or less than the number of individuals that the City's building inspector determines can reside in the Affordable Housing Unit given the number and size of bedrooms in the Affordable Housing Unit and in light of any relevant standards set by the City in any bylaws of the City. A Seniors Housing Unit must not be occupied by the Owner, the Owner's family members (unless the Owner's family members qualify as an Eligible Tenant), or any tenant or guest of the Owner, other than an Eligible Tenant. A Market Rental Housing Unit must not be occupied by the Owner, the Owner's family members or any guest of the Owner.
6. Within 30 days after receiving notice from the City, the Owner must in respect of each Seniors Housing Unit, deliver, or cause to be delivered, to the City statutory declarations, substantially in the forms attached as Appendices A and B, sworn by each Eligible Tenant and a representative of the Owner respectively, containing all of the information

required to complete the statutory declarations. The City may request these statutory declarations in respect of the Seniors Housing Unit no more than four times in any calendar year.

7. Within 30 days after receiving notice from the City, the Owner must in respect of each Market Housing Unit, deliver, or cause to be delivered, to the City statutory declarations, substantially in the forms attached as Appendices C and D, sworn by each Tenant and a representative the Owner respectively, containing all of the information required to complete the statutory declarations. The City may request these statutory declarations in respect of the Market Housing Unit no more than four times in any calendar year.
8. The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement, and irrevocably authorizes and directs the recipient of the request for information from the City to provide such information to the City.

PART V - DISPOSITION AND ACQUISITION OF AFFORDABLE HOUSING UNITS

9. The Owner will not permit a Tenancy Agreement to be subleased or assigned.
10. The Owner must not rent or lease any Seniors Housing Unit except to an Eligible Tenant in accordance with Section 4 and except in accordance with the following additional conditions:
 - (a) the Seniors Housing Unit will be used or occupied only pursuant to a Seniors Tenancy Agreement;
 - (b) the monthly rent payable for a Seniors Housing Unit will not exceed the Original Rent, rounded to the nearest dollar. Subject always to the provisions of the *Residential Tenancy Act* (British Columbia), the Owner may increase the rent payable for the Seniors Housing Unit annually, beginning with the first anniversary of the final inspection of the Seniors Housing Unit, and thereafter on each successive anniversary date, by an amount determined by multiplying the rent payable for the Seniors Housing Unit at the time of the proposed rent increase by the percentage change in the CPI since the last anniversary date;
 - (c) the Owner will not require the Tenant of a Seniors Housing Unit to pay any extra charges or fees for use of any common property, limited common property, or other common area, or for sanitary sewer, storm sewer, water utilities, property taxes or strata fees. For clarity, this Section does not apply to cablevision, parking charges, telephone, other telecommunications, gas utility or electricity utility fees or charges;
 - (d) the Owner will attach a copy of this Agreement to the Seniors Tenancy Agreement;
 - (e) the Owner will include in the Seniors Tenancy Agreement a clause requiring the Tenant to comply with the use and occupancy restrictions contained in Section 4 of this Agreement;
 - (f) the Owner will include in the Seniors Tenancy Agreement a clause entitling the Owner to terminate the Seniors Tenancy Agreement in accordance with the

Residential Tenancy Act if the Tenant uses or occupies, or allows use or occupation of, the Seniors Housing Unit in breach of the use or occupancy restrictions contained in this Agreement and, without limiting anything contained herein the Seniors Tenancy Agreement will provide for termination of the Seniors Tenancy Agreement by the Owner, and the Owner hereby agrees to terminate any tenancy, in situations where:

- i. the Seniors Housing Unit is occupied by more than the number of people the City's building inspector determines can reside in the Seniors Housing Unit given the number and size of bedrooms in the Seniors Housing Unit and in light of any relevant standards set by the City in any bylaws of the City;
 - ii. the Seniors Housing Unit is occupied by persons other than an Eligible Tenant;
 - iii. the Seniors Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and
 - iv. the Tenant subleases the Seniors Housing Unit or assigns the Seniors Tenancy Agreement;
- (g) the Seniors Tenancy Agreement will identify all occupants of the Seniors Housing Unit, and will stipulate that anyone not identified in the Seniors Tenancy Agreement will be prohibited from residing at the Seniors Housing Unit for more than 30 consecutive days or more than 45 days total in any calendar year; and
- (h) the Owner will deliver a copy of the Seniors Tenancy Agreement to the City upon demand.

11. The Owner must not rent or lease any Market Housing Unit except in accordance with section 4 and with the following additional conditions:

- (a) the Market Rental Housing Unit will be used or occupied only pursuant to a Market Tenancy Agreement;
- (b) the monthly rent payable for a Market Rental Housing Unit is not restricted by this Agreement;
- (c) the Owner will attach a copy of this Agreement to the Market Tenancy Agreement;
- (d) the Owner will include in the Market Tenancy Agreement a clause requiring the Tenant to comply with the use and occupancy restrictions contained in Section 4 of this Agreement;
- (e) the Owner will include in the Market Tenancy Agreement a clause entitling the Owner to terminate the Market Tenancy Agreement in accordance with the *Residential Tenancy Act* if the Tenant uses or occupies, or allows use or occupation of, the Market Rental Housing Unit in breach of the use or occupancy restrictions contained in this Agreement and, without limiting anything contained herein the Market Tenancy Agreement will provide for termination of the Market Tenancy Agreement by the Owner, and the Owner hereby agrees to terminate any tenancy, in situations where:

- i. the Market Rental Housing Unit is occupied by more than the number of people the City's building inspector determines can reside in the Market Rental Housing Unit given the number and size of bedrooms in the Market Rental Housing Unit and in light of any relevant standards set by the City in any bylaws of the City;
 - ii. the Market Rental Housing Unit is occupied by a person or persons other than a Tenant;
 - iii. the Market Rental Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and
 - iv. the Tenant subleases the Market Rental Housing Unit or assigns the Market Tenancy Agreement;
- (f) the Market Tenancy Agreement will identify all occupants of the Market Rental Housing Unit, and will stipulate that anyone not identified in the Market Tenancy Agreement will be prohibited from residing at the Market Rental Housing Unit for more than 30 consecutive days or more than 45 days total in any calendar year; and
- (g) the Owner will deliver a copy of the Market Tenancy Agreement to the City upon demand.
12. The Owner will terminate any Tenancy Agreement where the Tenant uses or occupies, or allows use or occupation of an Affordable Housing Unit in breach of this Agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).

PART VI - DEMOLITION OF AFFORDABLE HOUSING UNIT

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

a demolition permit for the Affordable Housing Unit has been issued by the City (unless the Building has, or the Dwelling Units have been destroyed by an accident, act of God, or sudden and unanticipated force) and the Affordable Housing Unit has been demolished under that permit.

Following demolition, the Owner will use and occupy any replacement Dwelling Unit in compliance with this Housing Agreement, and this Agreement will apply to the construction of any replacement Dwelling Unit to the same extent and in the same manner as those Sections apply to the construction of the original Dwelling Unit, and the

Dwelling Unit must be approved by the City as an Affordable Housing Unit in accordance with this Agreement.

PART VII - STRATA CORPORATION BYLAWS

14. During the Term the Affordable Housing Units on the Land will be used to provide rental accommodation in accordance with this Agreement.
15. This Agreement will be binding upon all strata corporations created upon the strata title subdivision of the Land or any subdivided parcel of the Land with respect to the use of Tower A during the Term.
16. During the Term any strata corporation bylaw which prevents, restricts or abridges the right to use Tower A from time to time as rental accommodation, will have no force and effect.
17. During the Term the strata corporation will not pass any bylaws preventing, restricting or abridging the use of Tower A from time to time as rental accommodation.

PART VIII - DEFAULT AND REMEDIES

18. The Owner acknowledges that the City requires Affordable Housing to retain family units in the City, retain the historical sense of community, and attract Eligible Tenants to work for businesses in the community and that these businesses may generate tax and other revenue for the City and economic growth for the community. The Owner therefore agrees that, in addition to any other remedies available to the City under this Agreement or at law or equity, if during the Term an Affordable Housing Unit is used or occupied in breach of this Agreement or rented at a rate in excess of that permitted under this Agreement, the Owner will pay, as a rent charge under Section 18, the Daily Amount to the City for every day that the breach continues after 10 days written notice from the City to the Owner stating the particulars of the breach. The Daily Amount is increased on January 1 of each year by an amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase in the CPI between that previous January 1 and the immediately preceding December 31. The Daily Amount is due and payable 5 business days following receipt by the Owner of an invoice from the City for the same.
19. The Owner hereby grants to the City a rent charge under Sections 18 and 19 of this Agreement and under Section 219 of the *Land Title Act* (British Columbia), and at common law, securing payment by the Owner to the City of any amount payable by the Owner pursuant to this Agreement. The Owner agrees that the City, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the City in law or in equity.

PART IX - INTERPRETATION

20. 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) reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes Eligible Tenants, agents, officers and invitees of the party;
- (i) 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
- (j) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

PART X - MISCELLANEOUS

21. **Housing Agreement.** The Owner acknowledges and agrees that:
- (a) this Agreement constitutes a covenant under Section 219 of the *Land Title Act* and a housing agreement entered into under Section 905 of the *Local Government Act* (British Columbia);
 - (b) where an Affordable Housing Unit is a separate legal parcel the City may register this Agreement in the Land Title Office as a covenant and file a notice of housing agreement under Section 905 of the *Local Government Act* in the LTO against title to the Affordable Housing Unit and may note this Agreement on the Common Property Sheet; and
 - (c) where Affordable Housing Units are not separate legal parcels, or have not yet been constructed, or where the land has not yet been Subdivided to create the Affordable Housing Units, the City may register this Agreement in the Land Title Office as a covenant and file a notice of housing agreement under Section 905 of the *Local Government Act* in the LTO against title to the Land.
22. **Modification.** This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the City, if it is signed by the City and the Owner.

23. **Management.** The Owner covenants and agrees that it will furnish good and efficient management of the Affordable Housing Units and will permit representatives of the City to inspect the Affordable Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Affordable Housing Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Affordable Housing Units, such person or company to be selected by the Owner based on criteria suggested by the City.
24. **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 Land or any Affordable Housing Unit or the enforcement of any Tenancy Agreement; and/or
 - (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.
25. **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 Land or any Affordable Housing Unit under this Agreement; and/or
 - (b) the exercise by the City of any of its rights under this Agreement or an enactment.
26. **Survival.** The obligations of the Owner set out in Sections 24 and 25 will survive termination of this Agreement.
27. **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 Land;
 - (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - (c) affect or limit any enactment relating to the use or subdivision of the Land; or

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

28. **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 Land or the building or any portion thereof, including any Affordable Housing Unit;
- (c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

29. **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.

30. **Notice.** Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of Owner set out in the records at the LTO, and in the case of the City addressed:

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

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

And to: 410730 B.C. LTD.
1700 – 666 Burrard Street
Vancouver, British Columbia, V6C 2X8

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.

31. **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.

32. **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.

33. **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.

34. **Sole Agreement.** This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the City and the Owner respecting the use and occupation of the Affordable Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement.
35. **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.
36. **Covenant Runs with the Land.** This Agreement burdens and runs with the Land provided however the parties acknowledge and agree that the Owner intends to Subdivide the Land into separate legal lots by air space parcel plan, fee simple subdivision plan, strata plan or otherwise and the City agrees, at the written request and expense of the Owner, to execute a discharge of the registrable interests contained in this Agreement from one or more of the separate legal lots thereby created (the "Discharged Lots") upon and following the Owner having obtained the subdivision approval and subject to the City first being satisfied that the Discharged Lots do not contain any Affordable Housing Units and the interests registered in connection with the Discharged Lots are not required (in the City's sole discretion) in connection with any Affordable Housing Units.
37. **Limitation on Owner's Obligations.** The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
38. **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.
39. **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.
40. **Applicable Law.** Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. Without limiting the above, in the event of any conflict between any provision of this Agreement and the *Residential Tenancy Act*, this Agreement is without effect to the extent of the conflict.
41. **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.

**Appendix A to Housing Agreement
STATUTORY DECLARATION**

CANADA)

**IN THE MATTER OF A
HOUSING AGREEMENT WITH
THE CITY OF RICHMOND
("Housing Agreement")**

PROVINCE OF BRITISH COLUMBIA)

TO WIT:

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

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

Names, addresses and phone numbers of Eligible Tenants:

4. The rent charged each month for the Affordable Housing Unit is as follows:
 - (a) the monthly rent on the date 365 days before this date of this statutory declaration: \$ _____ per month;
 - (b) the rent on the date of this statutory declaration: \$ _____; and
 - (c) the proposed or actual rent that will be payable on the date that is 90 days after the date of this statutory declaration: \$ _____.
5. I acknowledge and agree to comply with the Owner's obligations under the Housing Agreement, and other charges in favour of the City registered in the Land Title Office against the land on which the Seniors 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)
_____, 200____.)
_____)
_____)
A Commissioner for Taking Affidavits in)
the Province of British Columbia)

DECLARANT

Appendix B to Housing Agreement
STATUTORY DECLARATION

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

TO WIT:

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

1. I am the Eligible Tenant or authorized signatory of the Eligible Tenant of _____ (the Seniors 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 Seniors Housing Unit.
3. As of the date of my entering into a Tenancy Agreement in respect of the Seniors Housing Unit, my age was [insert age].
4. I acknowledge and agree to comply with the Housing Agreement, and other charges in favour of the City registered in the Land Title Office against the land on which the Seniors Housing Unit is situated and confirm that to my knowledge the Owner has complied with the Owner's obligations under the Housing Agreement.
5. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at the City of _____)
 Richmond, in the Province of British _____)
 Columbia, this _____ day of _____)
 _____, 200____.)
 _____)
 _____)
 A Commissioner for Taking Affidavits in _____)
 the Province of British Columbia

DECLARANT

Appendix C 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:

- I am the owner or authorized signatory of the owner of _____ (the "Market Housing Unit"), and make this declaration to the best of my personal knowledge.
- This declaration is made pursuant to the Housing Agreement in respect of the Market Housing Unit.
- For the period from _____ to _____ the Market Housing Unit was occupied only by the 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 Tenants:

- I acknowledge and agree to comply with the Owner's obligations under the Housing Agreement, and other charges in favour of the City registered in the Land Title Office against the land on which the Market Housing Unit is situated and confirm that the Owner has complied with the Owner's obligations under the Housing Agreement.
- 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)
 _____, 200__)
 _____)
 _____)
 A Commissioner for Taking Affidavits in)
 the Province of British Columbia)

DECLARANT

Appendix D to 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* Tenant or authorized signatory of the Tenant of _____ (the "Market Rental 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 Market Rental Housing Unit.
3. I acknowledge and agree to comply with the Housing Agreement, and other charges in favour of the City registered in the Land Title Office against the land on which the Affordable Housing Unit is situated and confirm that to my knowledge the Owner has complied with the Owner's obligations under the Housing Agreement.
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)
_____, 200____.)
)
)
A Commissioner for Taking Affidavits in)
the Province of British Columbia)

DECLARANT

PRIORITY AGREEMENT

HSBC BANK CANADA (the "Chargeholder") is the holder of a Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents was registered in the Lower Mainland LTO under numbers BX127916 and BX127917, respectively (the "Bank Charges").

The Chargeholder, being the holder of the Bank Charges, by signing the Form C General Instrument attached hereto as Part I, 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 this Section 219 Covenant and Rent Charge and hereby covenants that this Section 219 Covenant and Rent Charge shall bind the Bank Charges in the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Section 219 Covenant and Rent Charge had been registered 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.

END OF DOCUMENT