



To: Richmond City Council
Date: May 23, 2008

From: Councillor Harold Steves, Chair
Planning Committee
File: 12-8060-20-8372/Vol
01

Re: **HOUSING AGREEMENT BYLAW NO. 8372 TO PERMIT THE CITY OF RICHMOND TO ENTER INTO A HOUSING AGREEMENT TO SECURE ENTRY LEVEL OWNERSHIP UNITS (AT 6600, 6620 COONEY ROAD AND 6591, 6611 ECKERSLEY ROAD)**

The Planning Committee, at its meeting held on May 21, 2008, considered the attached report, and recommends as follows:

Committee Recommendation

That support be given to an alternative arrangement to accept 0.60 cents per buildable square foot under the interim policy for the project to secure entry level ownership units at 6600, 6620 Cooney Road and 6591, 6611 Eckersley Road.

Councillor Harold Steves, Chair
Planning Committee

Attach.

VARIANCE

Please note that staff recommended the following:

That Bylaw No. 8372 be introduced and given first, second and third readings to permit the City of Richmond to enter into a Housing Agreement in accordance with requirements of the Local Government Act (Section 905) to secure 15 entry-level ownership units within a multi-family development (RZ 06-339190).

Staff Report

Origin

On July 24, 2006, Council adopted the Richmond Affordable Housing Strategy - Interim Strategy and Report. Among the recommendations outlined in the report is the provision of entry-level ownership for households with an annual income of \$60,000 or less.

In response to Council's objective, MacLean Homes Ltd. committed to include entry-level ownership units within their proposed development located at 6600 & 6620 Cooney Road and 6591 & 6611 Eckersley Road. In association with the rezoning application (RZ 06-339190), which is at Third Reading, the applicant agreed to provide 15 entry-level ownership units secured by a Housing Agreement, in accordance with the Richmond Affordable Housing Strategy - Interim Strategy and Report.

The Local Government Act states that in order for the City to enter into a Housing Agreement, which is required to secure the entry-level ownership units, the City must enact a Housing Agreement Bylaw. This report recommends that Council grant first, second and third readings to the attached Bylaw No. 8372, in order to permit the City to enter into a Housing Agreement to secure 15 entry-level ownership units.

Analysis

MacLean Homes's rezoning application (RZ 06-339190) is at Third Reading, and the associated Development Permit (DP 07-361966) has been reviewed by the Development Permit Panel. The terms for rezoning bylaw adoption are established and the applicant is in the final stages of satisfying all requirements. Registration of a Housing Agreement on title is a condition of rezoning bylaw adoption.

MacLean Homes Ltd. proposes to rezone the subject site to permit development of 13 three-storey townhouse units and 37 units in a four-storey apartment building over a parking level. The development proposal includes 15 entry-level ownership units.

Housing affordability is commonly established as a ratio of housing costs to income based on the principle that a household should not spend more than 30% of their income on shelter costs. According to the "Interim Strategy and Report" (June 29, 2006) undertaken for the City of Richmond by McClanaghan & Associates, the average annual income required for a household wishing to access entry-level ownership within the City of Richmond is approximately \$60,360. Therefore, a payment of approximately \$1,500 per month may be allocated toward shelter costs for a household earning approximately \$60,000 annually.

The Richmond Affordable Housing Strategy - Interim Strategy and Report, which references the "Interim Strategy and Report" by McClanaghan & Associates, identifies entry level ownership as attainable housing for households earning \$60,000 or less, assuming a 10% down payment. Further, it requires that entry-level ownership housing units provided in multiple-family developments constitute at least 14% of the total units.

Based on the applicant's projection of the purchase price for the entry-level ownership housing units, which is based on a price per square foot of approximately \$415, with a 10% down payment, the total monthly payment (including maintenance fee, hydro fee and property taxes) is approximately \$1,387.98 per month. Further, the subject development will designate 15 units, the equivalent of 30% of the total number of units, as entry-level ownership housing based on the size of the units.

In addition to securing units with a Housing Agreement, the proposed Comprehensive Development District (CD/180) secures floor area (Floor Area Ratio (FAR) of 0.28) to be used entirely to accommodate dwelling units that have an individual gross floor area no greater than 54 m² (580 ft²).

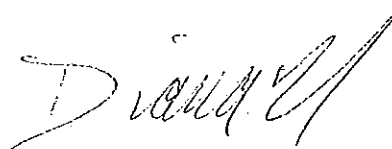
In order to enter into a Housing Agreement, the Local Government Act, Section 905 requires enactment of a bylaw by the City. Bylaw No. 8372, which is attached to this report, complies with the process required by the Local Government Act. Adoption of the attached bylaw permits registration of a Housing Agreement on the subject site to secure the entry-level ownership units in accordance with the terms outlined in the associated rezoning application (RZ 06-339190) that is at Third Reading.

Financial Impact

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

Conclusion

In accordance with the Local Government Act (Section 905), adoption of Bylaw No. 8372 is required to permit the City to enter into a Housing Agreement to secure 15 entry-level ownership units that are proposed in association with rezoning (RZ 06-339190) in accordance with the Richmond Affordable Housing Strategy - Interim Strategy and Report.



Diana Nikolic
Planner II (Urban Design)

DN:blg



Housing Agreement (MacLean Homes) Bylaw No. 8372

The Council of the City of Richmond enacts as follows:

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

P.I.D. 010-181-415
 Lot 34 Section 9 Block 4 North Range 6 West New Westminster District Plan 16523

P.I.D. 010-181-431
 Lot 35 Section 9 Block 4 North Range 6 West New Westminster District Plan 16523

P.I.D. 010-181-482
 Lot 42 Section 9 Block 4 North Range 6 West New Westminster District Plan 16523

P.I.D. 004-043-308
 Lot 41 Section 9 Block 4 North Range 6 West New Westminster District Plan 16523

- 2. This Bylaw is cited as "HOUSING AGREEMENT (MACLEAN HOMES) BYLAW NO. 8372".

FIRST READING

SECOND READING

THIRD READING

ADOPTED

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

MAYOR

CORPORATE OFFICER

SCHEDULE A ATTACHED TO AND FORMING PART OF BYLAW NO.8372

LAND TITLE ACT
FORM C (Section 233(1))
Province of British Columbia

GENERAL INSTRUMENT – PART 1

(This area for Land Title Office use)

Page 1 of 16 pages

1. **APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)**
TAMARA A. HUCULAK, c/o LANDO & COMPANY LLP, Barristers & Solicitors, (Client #010394), (LTO Agent #11506) P.O. Box 11140, 2010 – 1055 West Georgia Street, Vancouver, British Columbia, V6E 3P3
Telephone: 682-6821, File No.: 50179/0022

Signature of Authorized Agent

2. (a) **PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:***
(PID) (LEGAL DESCRIPTION)
SEE SCHEDULE SEE SCHEDULE

3. **NATURE OF INTEREST: ***

DESCRIPTION	DOCUMENT REFERENCE	PERSON ENTITLED TO INTEREST
SEE SCHEDULE	SEE SCHEDULE	SEE SCHEDULE

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

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

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

5. **TRANSFEROR(S): ***
MACLEAN HOMES COONEY ROAD LTD., Inc. No. 763397 (Section 219 Covenant) and HSBC BANK CANADA (Priority Agreement)

6. **TRANSFeree(S): (including postal address(es) and postal code(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

7. **ADDITIONAL OR MODIFIED TERMS: ***
N/A

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

TRANSFEROR(S) SIGNATURE(S)

Y M D

2008		
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MACLEAN HOMES COONEY ROAD LTD. by its authorized signatory(ies)

Print Name:

Print Name:

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.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

OFFICER SIGNATURE(S)

EXECUTION DATE

TRANSFEROR/BORROWER/PARTY SIGNATURE(S)

Y M D

Doug Long

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

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CITY OF RICHMOND
by its authorized signatories

MALCOLM D. BRODIE
Mayor, Authorized Signatory

DAVID WEBER, Corporate Officer,
Authorized Signatory

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

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.

OFFICER SIGNATURE(S)

EXECUTION DATE

TRANSFEROR/BORROWER/PARTY SIGNATURE(S)

Y M D

2008		
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HSBC BANK CANADA by its signatory(ies)

Print Name:

Print Name:

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

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM,
MORTGAGE FORM OR GENERAL DOCUMENT FORM

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

Lot A of Section 9 Block 4 North Range 6 West New Westminster District Plan
BCP _____

3. NATURE OF INTEREST: *

Description	Document Reference (Page and Paragraph)	Person Entitled to Interest
Section 219 Covenant	Entire Agreement	City of Richmond
Option to Purchase	Page 8	City of Richmond
Priority Agreement granting Section 219 Covenant _____ and Option to Purchase _____ priority over Mortgage CA621243 and Assignment of Rents CA621244	Page 14	City of Richmond

PART 2 – TERMS OF INSTRUMENT

STANDARD HOUSING AGREEMENT, 219 COVENANT,
OPTION TO PURCHASE AND INDEMNITY

THIS AGREEMENT is dated for reference March 20, 2008 (the "Reference Date")

BETWEEN:

MACLEAN HOMES COONEY ROAD LTD., Inc. No. 0763397
2415 Marine Drive, West Vancouver, British Columbia, V7V 1L3

(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")

GIVEN THAT:

- A. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the City (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);
- C. The Owner wishes to construct (or cause to be constructed) a multi-unit residential development (the "Development") on the Lands; and
- D. 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 \$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 and in accordance with section 219 of the *Land Title Act*:

PART 1 – DEFINITIONS

- 1. In this Agreement the following words have the following meanings:
 - (a) "Affordable Housing Unit" means the Dwelling Units as designated by the Owner-Developer to be used, occupied, or Disposed in accordance with this Agreement;
 - (b) "Agreement" means the agreement contained in this Part 2 – Terms of Instrument together with the General Instrument (hereinafter defined) and all schedules attached hereto;

- (c) "Arms Length" has the same meaning as that term has in the *Income Tax Act* of Canada and amending Acts;
- (d) "City" means the Corporation of the City of Richmond;
- (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 (hereinafter defined) = 100;
- (f) "Development" has the meaning set-out in recital C of this Agreement;
- (g) "Dispose" or "Disposition" 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 in the Development;
- (i) "Eligible Purchaser" means:
 - (i) a person who purchases an Affordable Dwelling Unit from the Owner-Developer and has an annual Family income of \$60,000 or less, except that the reference to \$60,000 is deemed to be increased by the CPI in respect of each calendar year commencing January 1, 2008; and
 - (ii) a person who is at Arms Length to the Owner-Developer;
- (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 forming Part 1 of this Instrument; "Interest" means the property interest of the Owner in an Affordable Housing Unit;
- (l) "Land" means the land described in Item 2 of the General Instrument and any part, including a building or a portion of a building, into which said land is Subdivided;
- (m) "LTO" means the New Westminster Land Title Office or its successor;
- (n) "Owner" means the Owner-Developer being the Transferor described in the General Instrument and any subsequent owner of the Land or of any part thereof or of any part into which the land is subdivided (pursuant to the *Land Title Act* or *Strata Property Act* or otherwise) and includes any person who is or becomes a registered owner in fee simple of an Affordable Housing Unit and includes, where the context permits, an Eligible Purchaser;
- (o) "Owner-Developer" means MacLean Homes Cooney Road Ltd.;

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

2. The Owner-Developer 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 the Owner-Developer also designs and constructs to completion, in the manner and location set-out in the building permit issued by the City and the manner and location set-out in any development permit issued by the City, at least 15 Affordable Housing Units;
 - (b) the Owner-Developer will meet or exceed the construction standards for Affordable Housing Units as specified by the City in its bylaws and any applicable development permits or building permits issued by the City in respect of the Development;
 - (c) the Owner-Developer will do everything necessary, at the Owner-Developer's expense, to ensure that this Agreement, 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 and that a notice under section 905(5) of the *Local Government Act* will be filed on the title to the Land;
 - (d) the Owner-Developer will not apply for a building permit for any construction of the Development unless the proposed construction complies with the requirements of this Agreement;
 - (e) the Owner-Developer will not apply for a final building inspection of the Development and the City shall not be obligated to provide a final building inspection of the Development and the Owner shall not permit the occupancy of any Dwelling Unit unless all 15 Affordable Housing Units have been constructed and finished in accordance with this Agreement; and
 - (f) the Owner-Developer shall not transfer all or any portion of its interest in the Land without the prior written consent of the City (which, provided that such transferee provides to the City an assumption of this Agreement in a form and substance acceptable to the City, shall not be unreasonably withheld). Notwithstanding this section 2(f) the Owner-Developer shall be entitled to transfer, subject to the terms and conditions of this Agreement, individual strata lots to individual purchasers without the consent of the City.

PART III - DISPOSITION OF AFFORDABLE HOUSING UNITS

3. The Owner-Developer shall not Dispose or permit to be Disposed an Affordable Housing Unit unless:
- (a) such Disposition is a transfer of full legal and beneficial ownership of an Affordable Housing Unit to an Eligible Purchaser;
 - (b) the Eligible Purchaser is the same person described as the "Purchaser" in the statutory declaration submitted by the Owner-Developer to the City pursuant to section 4 of this Agreement; and
 - (c) the purchase price is the same "Purchase Price" as that set-out in the statutory declaration submitted by the Owner-Developer to the City pursuant to section 4 of this Agreement.

4. At least 30 days prior to the transfer of the Affordable Housing Unit from the Owner-Developer to an Eligible Purchaser, the Owner-Developer shall deliver, or cause to be delivered to the City, statutory declarations in the form attached as Appendices A and B sworn by the Owner-Developer and Eligible Purchaser respectively containing all of the information required to fully complete the statutory declarations.
5. An Eligible Purchaser shall not, for a period of 18 months following the date that a *Land Title Act* Form A Transfer transferring the Affordable Housing Unit from the Owner-Developer to the Eligible Purchaser is submitted to the LTO, Dispose of the Affordable Housing Unit without the City's prior written consent (which consent may be arbitrarily withheld).
6. The Eligible Purchaser covenants and agrees with the City that so long as it is the registered owner of an Affordable Housing Unit, it shall reside in the Affordable Housing Unit as its principal place of residence for a period of 18 months following the date that a *Land Title Act* Form A Transfer conveying the Affordable Housing Unit from the Owner-Developer to the Eligible Purchaser is submitted to the LTO.
7. The City acknowledges and agrees that after the period of 18 months following the date that a *Land Title Act* Form A Transfer conveying the Affordable Housing Unit from the Owner-Developer to the Eligible Purchaser is submitted to the LTO, the Eligible Purchaser shall be entitled to Dispose of the Affordable Housing Unit to any party without the City's prior written consent in the event the Eligible Purchaser is not in breach of sections 5 or 6 herein and the Owner-Developer is not in breach of section 3 herein, and in such case, the City shall provide the Eligible Purchaser with a partial discharge of this covenant, Agreement, and Option, as set out in Section 24 herein.
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 IV – OPTION TO PURCHASE

9. In consideration of the sum of \$10.00 (Ten) dollars now paid by the City to the Owner and other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges), the Owner hereby grants to the City an exclusive and irrevocable Option to Purchase (the "Option") the Affordable Housing Unit for the sum of \$10.00, not including GST, if any, (the "Option Purchase Price") and on the terms and conditions of this Agreement, free from all liens, charges and encumbrances except:
 - (a) existing reservations, conditions and exceptions contained in the original Crown Grant or in any other grant or disposition from the Crown;
 - (b) any easements, rights of way, covenants or other non-financial encumbrances registered against the Affordable Housing Unit, provided they were approved in advance by the City,

(collectively the "Permitted Encumbrances").
10. The Option may be exercised by the City only if:
 - (a) the Owner-Developer Disposes of an Affordable Housing Unit in breach of any of its obligations in section 3 of this Agreement; or

- (b) an Eligible Purchaser breaches any of its obligations set out in section 5 or section 6 of this Agreement.
11. Subject to section 10, the Option may be exercised by the City at any time by the City by the City giving written notice to the Owner in the manner set-out in this Agreement for the giving of notices.
 12. The City may elect not to exercise the Option for any reason.
 13. Upon the exercise of the Option by the City, a binding contract of purchase and sale will arise between the City and the Owner with respect to the Affordable Housing Unit.
 14. The Contract arising from the exercise of the Option will be completed on a date (the "Completion Date") that is 45 days after the City has exercised this Option (or, if the LTO is not open on such date, then the Completion Date shall be on the ensuing date that the LTO is open) and the place of completion will be the Land Title Office.
 15. The City will have vacant possession of the Affordable Housing Unit free from all financial liens, charges and encumbrances other than the Permitted Encumbrances on the Completion Date.
 16. The City will be responsible for all taxes, strata maintenance fees, utilities, rates, assessments and all other charges and will be entitled to receive income, if any, relating to the Affordable Housing Unit from and including the Completion Date and all adjustments, both incoming and outgoing, of whatsoever nature will be made as of the Completion Date.
 17. The Affordable Housing Unit will be at the Owner's risk until twelve o'clock noon on the Completion Date and thereafter at the City's risk. In the event of loss or damage occurring after the exercise of this Option but before the Completion Date, whether the result of fire or any other cause, the City may discharge this Option from title to the Affordable Housing Unit.
 18. The Owner will execute and deliver to the City at least ten days prior to the Completion Date, a good and sufficient Form A Transfer in fee simple in registrable form (the "Transfer") conveying the Affordable Housing Unit to the City free and clear of all financial liens, charges and encumbrances except the Permitted Encumbrances. The Owner will also deliver to the City at least ten days prior to the Completion Date, instruments in registrable form sufficient to discharge all financial liens, charges and encumbrances (the "Discharges"), together with the cost of registering or filing such instruments.
 19. The City will cause the City's solicitors to prepare and present to the Owner or its solicitors the following closing documents to be executed by the Owner:
 - (a) the Transfer;
 - (b) the Vendor's Statement of Adjustments, which shall adjust for the following items: the Option Purchase Price, property taxes, strata fees, utilities, and any other items to be adjusted in a standard residential conveyance; and

- (c) such other appropriate documents and assurances as may be requisite in the opinion of the City Solicitor for more perfecting and absolutely transferring title to the Affordable Housing Unit to the City (collectively, the "Closing Documents").
- 20 Before the Completion Date, the Owner will deliver, or cause its solicitors to deliver to the City Solicitor, the Closing Documents, all executed by the Owner and in registrable form, as applicable, together with the Discharges.
21. The conveyance of the Affordable Housing Unit by the Owner to the City will be completed in accordance with the following procedure:
- (a) after receipt of the Closing Documents from the Owner, the City, at its own cost, will cause the City Solicitor to apply to register the Transfer and the Discharges in the Land Title Office on the Completion Date, upon receipt of a satisfactory pre-index search of the Affordable Housing Unit; and
- (b) forthwith following the filing referred to in section 21(a) and upon the City's Solicitor being satisfied as to the City's title to the Affordable Housing Unit after conducting a post filing for registration check of the property index disclosing only the following:
- (i) the title number to the Affordable Housing Unit;
 - (ii) Permitted Encumbrances;
 - (iii) financial charges to be discharged; and
 - (iv) pending number assigned to the Transfer;
- the City will cause the City Solicitor to deliver to the Owner's solicitors a cheque for the Option Purchase Price, as adjusted by section 19, for the Affordable Housing Unit and a signed GST declaration acceptable to the City Solicitor.

PART V - MISCELLANEOUS

22. **Housing Agreement.** The Owner acknowledges and agrees that:
- (a) this Agreement constitutes a covenant under section 219 of the Land Title Act, an Option to Purchase 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.
- 23 **Discharge on Dwelling Units.** Upon the registration of the final strata plan for the Development at the LTO and upon the City's receipt from the Owner-Developer of a form of discharge of this

covenant, Agreement and Option from the title for the Dwelling Units not designated as Affordable Housing Units pursuant to this Agreement, the City shall execute and provide to the Owner-Developer's solicitor such discharge for registration at the LTO, at the Owner-Developer's cost.

24. **Discharge upon Compliance with Covenant and Agreement.** After 18 months following the date that a *Land Title Act* Form A Transfer conveying the Affordable Housing Unit from the Owner-Developer to the Eligible Purchaser is submitted to the LTO and upon the City's receipt from the Eligible Purchaser of a discharge of this covenant, Agreement and Option from the title of the Eligible Purchaser's Affordable Housing Unit, the City shall, provided the Eligible Purchaser is not in default of this covenant, Option or Agreement and the Owner-Developer is not in breach of section 3 herein, execute and provide to the Eligible Purchaser such discharge from the title to the Eligible Purchaser's Affordable Housing Unit for registration at the LTO, at the Eligible Purchaser's cost.
25. **Modification.** This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the City, if it is signed by the City and a person who is the current registered owner of the Land.
26. **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; and/or
 - (b) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.
27. **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 exercise by the City of any of its rights under this Agreement or an enactment.
28. **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.
29. **Agreement for Benefit of City only.** The Owner and the City agree that:
- (a) this Agreement is entered into only for the benefit of the City;

- (b) this Agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Property, the Land or the building or any portion thereof, including any Affordable Housing Unit;
- (c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

30. **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.

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

In the case of the Owner-Developer:

To: MacLean Homes Cooney Road Ltd.
2415 Marine Drive
West Vancouver, British Columbia
V7V 1L3

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.

32. **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.

33. **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.

34. **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.

35. **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.

36. **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.
37. **Covenant Runs with the Land.** This Agreement burdens and runs with the Land and every parcel into which the Land is subdivided (pursuant to the Land Title Act), Strata Property Act or otherwise). All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Land.
38. **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.
39. **Equitable Remedies.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement or the Option and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement or the Option.
40. **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.
41. **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.

PRIORITY AGREEMENT

HSBC BANK CANADA (the "Chargeholder") is the holder of Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the Lower Mainland LTO under numbers CA621243 and CA621244 (collectively the "Bank Charge").

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, Option to Purchase and Housing Agreement and hereby covenants that this Section 219 Covenant, Option to Purchase and 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 Section 219 Covenant, Option to Purchase and Housing Agreement 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.

APPENDIX A TO HOUSING AGREEMENT

STATUTORY DECLARATION

CANADA

PROVINCE OF BRITISH COLUMBIA

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)
)
)

IN THE MATTER OF A HOUSING AGREEMENT (the "Housing Agreement") IN RESPECT TO:

[Important: add full Parcel Identifier and Legal Description of unit]

(the "Affordable Housing Unit")

TO WIT:

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

1. I am the authorized signatory of _____ (the "Owner Developer"), and make this declaration to the best of my personal knowledge.
2. The Owner-Developer has entered into a Contract of Purchase and Sale dated _____ to sell the Affordable Housing Unit to: _____ (the "Purchaser") [Important: add full and complete name(s) of Purchaser(s) – as they will show on title]
3. The full Purchase Price (as set-out on the Contract of Purchase and Sale) for the Affordable Housing Unit is (including GST): _____
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*.

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

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

)
)
)
)
)
)
)

DECLARANT

A Commissioner for Taking Affidavits in
the Province of British Columbia

Appendix B to Housing Agreement

STATUTORY DECLARATION

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

TO WIT:

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

1. I have entered into a Contract of Purchase and Sale dated _____ (the "Contract of Purchase and Sale") with MacLean Homes Cooney Road Ltd. to purchase the Affordable Housing Unit, and make this declaration to the best of my personal knowledge.
2. My annual income for _____ [add previous year] was _____ [insert amount] and the total annual income for _____ [add previous year] of all persons to be residing in the Affordable Housing Unit was _____ [insert amount]. A certified true copy of all of my Income Tax Act T4 slips is attached to this statutory declaration. A certified true copy of the Income Tax Act T4 slips of all other persons who will be residing in the Affordable Housing Unit is also attached to this statutory declaration.
3. I acknowledge that I have received a copy and read the Housing Agreement prior to entering into the Contract of Purchase and Sale or if the Contract of Purchase and Sale was subject to any condition precedent in respect to reviewing the title to the Affordable Housing Unit or reviewing the Housing Agreement, then prior to my removal of such condition precedent.
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*.

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

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

 A Commissioner for Taking Affidavits
 in the Province of British Columbia

 DECLARANT

END OF DOCUMENT