

CITY OF NANAIMO

BYLAW NO. 7363

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

WHEREAS Section 483 of the *Local Government Act* provides that Council may enter into a Housing Agreement, which may include terms and conditions agreed to regarding the occupancy of the housing units identified in the Agreement;

AND WHEREAS, Council wishes to enter into such an Agreement with respect to certain housing units located in the City of Nanaimo;

THEREFORE BE IT RESOLVED, that Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as the City of Nanaimo “Housing Agreement Bylaw 2023 No. 7363”.
2. The Council of the City of Nanaimo hereby authorizes the Mayor and Corporate Officer to enter into an Agreement, on behalf of the City of Nanaimo, in substantially the form attached hereto as Schedule ‘A’, which sets out the terms and conditions of the occupancy of the housing units identified in the Agreement. The land identified in the Agreement is legally described as LOT B, SECTION 20, RANGE 7, MOUNTAIN DISTRICT, PLAN EPP110921 (the “**Land**”);
3. Upon execution of the Agreement by the Mayor and Corporate Officer and application of the seal of the City of Nanaimo, this Agreement shall be validly entered into as authorized by this Bylaw.

PASSED FIRST READING: 2023-MAY-15
PASSED SECOND READING: 2023-MAY-15
PASSED THIRD READING: 2023-MAY-15
ADOPTED: 2023-JUN-05

L. E. KROG

MAYOR

S. GURRIE

CORPORATE OFFICER

SCHEDULE A
SECTION 219 COVENANT AND AFFORDABLE HOUSING
AGREEMENT

THIS AGREEMENT made this ____ day of _____ 2023

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC
V9R 5J6

(the “**City**”)

OF THE FIRST PART

AND:

PROVINCIAL RENTAL HOUSING CORPORATION
C/O BC Housing Management Commission
1701 - 4555 Kingsway
Burnaby, BC
V5H 4V8

(the “**Grantor**”)

OF THE SECOND PART

WHEREAS:

- A. The City may, by agreement under Section 483 of the *Local Government Act*, enter into a housing agreement with an Owner regarding the use and occupancy of the dwelling units identified in the agreement, including but not limited to terms and conditions referred to in Section 483(2) of the *Local Government Act*;
- B. The Grantor is the registered owner in fee-simple of the lands described as:

LOT B SECTION 20 RANGE 7 MOUNTAIN DISTRICT PLAN EPP110921, PID 031-406-939, (the “**Land**”);
- C. The Grantor wishes to develop 30 Dwelling Units and 10 Sleeping Units (the “**Development**”) and has applied for a Building Permit (BP128482);

- D. Section 483 of the *Local Government Act* (British Columbia) authorizes the City, by bylaw, to enter into a Housing Agreement;
- E. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the City in respect of the subdivision of land, use of land or construction on the Land;
- F. The City and the Grantor wish to enter into this agreement (“**Agreement**”) to restrict the use of, and construction on, the Land on the terms and conditions of this Agreement, to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*.

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 483 of the *Local Government Act* and Section 219 of the *Land Title Act* and in consideration of the premises and covenants contained in this Agreement, the parties hereto covenant and agree with the other as follows:

1.0 INTERPRETATION

- 1.1 The City and the Grantor agree that the definitions in the City of Nanaimo’s Zoning Bylaw 2011 No. 4500, as amended or replaced from time to time, (“**Zoning Bylaw**”) apply to the interpretation of the terms in this Agreement.
- 1.2 In addition to the definitions of the Zoning Bylaw, the following words and terms have the following meanings:
 - a) "Affordable Units" means all of the Dwelling Units which will only be occupied by one or more Eligible Tenants, but does not include any Sleeping Unit;
 - b) "Development" refers to the totality of all Dwelling Units, Sleeping Units and ancillary spaces constructed on that part of the Land;
 - c) "Dwelling Unit" means a habitable room consisting of a self-contained unit with a separate entrance for the residential accommodation of only one family and which contains a cooking facility but excludes all accommodation for the travelling public, but does not include any Sleeping Unit; and
 - d) "Eligible Tenant" means a tenant or tenants of an Affordable Unit whose collective annual before-tax income does not exceed the most current Housing Income Limits for Nanaimo, as amended from time to time, published by British Columbia Housing Management Commission or its successors in function that is in effect at the time the Eligible Tenant takes occupancy of the Affordable Unit;

- e) “Final Occupancy Date” means the date upon which the entirety of the Development has been approved for occupancy by the building inspector for the City;
- f) “Grantor” means the current owner of the Land or any person who acquires an interest in the Land;
- g) “Permitted Rent” means the monthly rent that the Grantor may charge an Eligible Tenant for an Affordable Unit, which monthly rent shall not exceed 1/12 of 30% of the Eligible Tenant(s) collective before-tax annual income;
- h) “Rent Charge” means the rent charge referred to in Section 6.6;
- i) “Sleeping Unit” shall have the meaning set out in the Zoning Bylaw;
- j) “Term” means in perpetuity from the Final Occupancy Date.

2.0 OCCUPANCY and USE OF AFFORDABLE UNITS

- 2.1 The Grantor covenants and agrees with the City that from and after the Final Occupancy Date and for the Term, no less than 30% of the Dwelling Units within the Development are and shall remain Affordable Units for the Term and shall only be occupied by an Eligible Tenant.
- 2.2 The Grantor covenants and agrees that no Affordable Unit shall be rented to an Eligible Tenant for more than the Permitted Rent.
- 2.3 The Grantor shall not require an Eligible Tenant to pay any extra charges or fees for use of any common area, including parking or storage, or for sanitary sewer, storm sewer, water, strata fees or levies, and property taxes. Provided, however, that this section shall not apply to cablevision, telephone, internet, gas or electricity and shall not prohibit the Grantor from charging for the use of washing and drying machines in the common areas of the Development.
- 2.4 The Grantor covenants and agrees with the City that the Land shall not be subdivided by any means whatsoever.

3.0 DEVELOPMENT COST CHARGES

- 3.1 If the number of Affordable Units in the Development is at least 30% of the total number of Dwelling Units, the City agrees to reduce development cost charges for the Development, in accordance with Section 6 of CITY OF NANAIMO DEVELOPMENT COST CHARGE BYLAW 2017 NO. 7252.

4.0 ANNUAL REPORT

4.1 The Grantor further covenants and agrees that during the Term of this Agreement, it will, commencing on the first anniversary of the issuance of the Final Occupancy Date for the Development on the Land, and on that anniversary date annually thereafter, provide to the City's General Manager of Development Services a report in writing and in a form acceptable to the City's General Manager of Development Services confirming that the Affordable Units continue to be used and occupied as required under this Agreement.

5.0 BINDING EFFECT

5.1 This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

6.0 ENFORCEMENT AND WAIVER

6.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Land as if this Agreement had not been executed and delivered by the Grantor. The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

6.2 The parties agree that the City is not obligated to inspect the Land or to otherwise ensure compliance with this Agreement, nor is the City obligated to remedy any default of this Agreement. A failure by the City to enforce this Agreement shall not constitute a waiver of any of the City's rights hereunder.

6.3 No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available at law or in equity.

6.4 The Grantor covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the City is entitled to all equitable remedies, including specific performance, injunction and declarative relief to enforce its rights under this Agreement. The Grantor acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Grantor under this Agreement.

6.5 The Grantor acknowledges that the City requires the Affordable Units for the benefit of the community. The Grantor therefore agrees that for each day the Land is occupied in breach of this Agreement, the Grantor must pay the City \$100.00 (the “**Daily Amount**”) as liquidated damages and not as a penalty, due and payable at the offices of the City on the last day of the calendar month in which the breach occurred. Should any breach be unintentional, and the Grantor is actively and diligently working to rectify the breach, the Cure period shall be extended to a maximum of 60 days inclusive, in order for the Grantor to rectify the breach, and the Daily Amount shall not accrue until the cure period has expired. The Daily Amount is increased on January 1 of each year by the amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase between that previous January 1 and the immediately preceding December 31 in the Consumer Price Index. The Grantor agrees that payment may be enforced by the City in a court of competent jurisdiction as a contract debt. The Daily Amount may be collected by the City as a rent charge under the following section.

6.6 By this section, the Grantor grants to the City a rent charge under section 219 of the *Land Title Act*, and at common law, securing payment by the Grantor to the City of the Daily Amount as described in section 6.5. The City may enforce the rent charge granted by this section by an action for an order for sale or by proceedings for the appointment of a receiver.

7.0 **NOTICE TO BE REGISTERED IN LAND TITLE OFFICE**

7.1 Notice of this Agreement shall be registered in the *Land Title Office* by the City at the cost of the Grantor in accordance with Section 483 of the *Local Government Act*, and as a covenant in accordance with Section 219 of the *Land Title Act*.

8. **TERMINOLOGY**

8.1 Wherever the singular, masculine or neuter are used throughout this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic as the context requires.

9. **BC LAWS GOVERN**

9.1 This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

CITY OF NANAIMO by its authorized signatories

_____)
_____)
_____)
Mayor _____)
_____)
_____)
Corporate Officer _____)

PROVINCIAL RENTAL HOUSING CORPORATION
by its authorized signatories:

_____)
_____)
_____)
_____)
_____)
_____)