

APPENDIX 4 TO THE MINISTER'S ORDER

Block F Housing Agreement Bylaw

1. The Minister may enter into a Housing Agreement substantially in the form attached as Schedule 1 to this Bylaw.

Schedule 1 to the Block F Housing Agreement Bylaw

THIS HOUSING AGREEMENT AND RESTRICTIVE COVENANT MADE THIS
DAY OF 2016

BETWEEN:

MUSQUEAM BLOCK F LAND LTD. Inc. No. 0817948
(the "OWNER")

AND

HER MAJESTY THE QUEEN IN THE RIGHT OF BRITISH COLUMBIA
(the "CROWN")

WHEREAS:

- A. Pursuant to s. 12(1) and (2) of the *University Endowment Land Act* RSBC 1996 c. 469, the Crown represented by the Minister of Community Sport and Cultural Development may by Bylaw enter into a Housing Agreement and may pursuant to s. 219 of the *Land Title Act* RSBC 1996 c.25 accept restrictive covenants and;
- B. The Crown considers it in the public interest to provide for affordable rental housing on Block F of the University Endowment Lands and for that purpose has adopted a Housing Agreement Bylaw and accepts the restrictive covenants granted herein by the Owner.

1. DEFINITIONS

- a) Affordable Rental Rate: means the rate determined by the Society which rental rate is a rate that is affordable, economic and within the means of moderate income working households having a Household Annual Income within the income limit ranges published annually as "HILS" for Vancouver;
- b) Affordable Rental Unit: means Residential Dwelling Units to be constructed on

Block F of the University Endowment Lands or on an airspace parcel subdivided out of Block F that are available for rent at an Affordable Rental Rate;

- c) Block F: means those lands legally described as: Block F District Lot 140, Group 1 New Westminster District, PID 013-763-938;
- d) Caregiver: means an individual who provides assistance with the performance of the personal functions and activities necessary for daily living that a person is unable to perform efficiently for himself or herself;
- e) Dwelling Unit: means a self-contained residential accommodation providing sleeping rooms, a washroom, a living room and no more than one kitchen, intended for domestic use, and used or intended to be used permanently or semi-permanently for a Household;
- f) Household Annual Income: means the sum of all taxable incomes of persons forming a household, being the amount identified as taxable income on the most recent income tax return (line 260 of the income tax T1 General Form), of all the individuals 15 years and older that reside together in that Household in an Affordable Rental Unit;
- g) HILS: means Housing Income Limits for Vancouver currently published annually by the British Columbia Housing Management Commission (“BC Housing”) setting out the ranges of incomes for moderate income working households necessary to qualify to rent affordable housing;
- h) Household: means:
 - i) a person;
 - ii) two or more persons related by blood, marriage, or adoption; or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities;
 - iii) a group of not more than three persons, who are not related by blood, marriage, or adoption, or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities; or
 - iv) a combination of (ii) and (iii), provided that the combined total does not include more than three persons unrelated by blood, marriage or adoption or associated through foster care; all living together in one dwelling unit as a single household using common cooking facilities;
- i) Land: means an airspace parcel created by subdivision of “Block F, District Lot 140, Group 1, NWD, PID 013-763-938” in particular that portion of Block F referred to as Lot A in Section 2 (a)(iv) of the Restrictive Covenant charging the

said Block F under No.xxxxxxx;

- j) LTO: means the Vancouver New Westminster Land Title office or its successor;
- k) Manager: means the Manager of the University Endowment Lands pursuant to the *University Endowment Land Act* RSBC c.469;
- l) Maximum Allowable Income: in respect of an Affordable Rental Unit means a Household's Annual Income equal to or less than the maximum household income level published in HILS for Vancouver in the relevant year by BC Housing;
- m) Moderate Incomes: means, for the purposes of this Agreement, those Households with Household incomes not exceeding those incomes set out in each year in HILS;
- n) Owner: means MUSQUEAM BLOCK F LAND LTD Inc. No. 0817948
- o) Society: means a not for profit society incorporated pursuant to the *Society Act* RSBC 1996 c.433, having as one of its purposes the provision of affordable housing for households with moderate working incomes;
- p) Tenancy Agreement: means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*; and
- q) Tenant: means a Household occupying an Affordable Rental Unit pursuant to a Tenancy Agreement, and which Household has a Gross Annual Income equal to or less than the Maximum Allowable Income.

2. INTERPRETATION

- a) Statutory Foundation—This Housing Agreement is made pursuant to Section 12(1) and (2) of the *University Endowment Land Act*, and the Restrictive Covenants herein are granted by the Owner to the Crown pursuant to Section 219 of the *Land Title Act*; and in this Agreement and Covenant:
 - i) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - ii) reference to “This Agreement“ includes the Housing Agreement and the Restrictive Covenant;
 - iii) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
 - iv) 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;

- v) the word “enactment” has the meaning given in the *Interpretation Act* on the reference date of this Agreement;
- vi) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- vii) reference to any enactment is a reference to that enactment as consolidated, revised, amended, reenacted or replaced, unless otherwise expressly provided;
- viii) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- ix) time is of the essence;
- x) all provisions are to be interpreted as always speaking and reference to HILS is a reference to the HILS published in the year applicable to the then interpretation of this Housing Agreement;
- xi) reference to a “party” is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- xii) 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;
- xiii) HILS for the Vancouver Area will apply as of the date of execution by the parties of this Housing Agreement, and it is agreed by the parties that in each successive year, HILS for the ensuing year will be substituted in place of the previous year’s HILS.

3. PURPOSE AND REMEDIES

- a) The Owner and the Crown agree that:
 - i) this Agreement is intended to serve the public interest by providing for the construction, rental and occupancy of Affordable Rental Units to be owned and operated by a Society and rented to moderate income households in the workforce;
 - ii) performance of this Agreement by the Owner is a condition of the Owner becoming entitled to certain development entitlements on Block F which development entitlements the Owner acknowledges are a benefit to the Owner; and

- iii) damages are not an adequate remedy for the Crown in respect of any breach of this Agreement by the Owner.

4. HOUSING AGREEMENT AND S.219 COVENANT LAND USE RESTRICTIONS

- a) The Land must be used only in accordance with this Agreement.
- b) The Owner must design, and fully and completely construct a single building (the “Building”) having commercial uses on the ground floor (the “Commercial Floor”) and four upper storeys (the “Residential Floors”) providing Affordable Rental Units, none of which shall be less than 50 sq. m in area and all of which shall be built and completed in strict conformance with detailed design and construction plans which plans may provide for a minimum unit size of 75 sq. m for two bedroom units and 93 sq. m for three bedroom units all as first approved in writing by the Manager of the University Endowment Lands.
- c) Of the total number of residential units to be provided by the Owner in the Building, all shall be designed and constructed for use and occupancy as rental units, and the monthly rents for such units must not exceed 30% of the Household’s Annual Income.
- d) Pursuant to Section 219 of the *Land Title Act*, the Owner covenants that upon completion of construction of the Building, the Owner shall not permit any commercial use of the ground floor or any other floor of the Building until such time as the Owner has fully satisfied the requirements of Articles 5(a) and (b).

5. BUILDING CONSTRUCTION

- a) The Owner may not dispose of any interest in the Residential Floors except (a) by fee simple transfer of the title to all of the Residential Floors (the “Residential Component”), or (b) by lease of the Residential Component for a term of not less than 59 years and no more than 60 years (the “Lease”) to a single purchaser or Lessee that is a non-profit society approved by the Manager, (the “Society”), which Society has agreed in writing with the Owner and the Crown to manage the Residential Floors and has agreed to ensure that all of the Affordable Rental Units are available for rent in accordance with this Agreement.
- b) The construction of the Residential Floors must be situated within an Air Space parcel to facilitate the division of the Building into a separate commercial floor with Affordable Rental Units on floors 2, 3, 4 and 5 comprising the Residential Component.
- c) Management –The Owner will cause the Society to covenant and agree that it will furnish good and efficient management of the Affordable Rental Units and will permit representatives of the Crown to inspect the Residential Component

at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*. The Owner must also cause the Society to covenant and agree that it will maintain the Affordable Rental 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 and the Building. Notwithstanding the foregoing, the Owner will also cause the Society to acknowledge and agree that the Crown in its absolute discretion, may require the Owner, at the Owner's sole expense, to hire another person, society or company with the skill and expertise to manage the Affordable Rental Units if the then current Society is in breach of its agreement to manage the Residential Component in accordance with its covenant given to the Owner.

Upon any termination, assignment, or surrender of the Lease of the Residential Component or any re-leasing or resale of the Residential Component previously approved by the Manager pursuant to Article 5 (a) must first again be approved in writing by the Manager.

6. USE AND OCCUPANCY OF AFFORDABLE RENTAL UNIT

- a) The Society may in the event that a Tenant uses or occupies, or allows the use or occupation of an Affordable Rental Unit in breach of this Agreement terminate that Tenant's lease, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).
- b) The Society must specify in every Tenancy Agreement the existence of this Agreement and the occupancy restrictions applicable to the Affordable Rental Unit, and attach a copy of this Agreement to every Tenancy Agreement.
- c) The Society will deliver a copy of any or each current Tenancy Agreement to the Manager upon demand.
- d) Prior to the Owner either selling or leasing the Residential Component in the Building on the Lands to the Society, the Society will execute this Housing Agreement and be bound by Articles 1 through 8 where such provisions apply to the management of the Affordable Dwelling Units, and the Society will thereafter manage the rental of the Affordable Rental Units to Households having a Maximum Annual Income equal to or lesser than the Maximum Allowable Income and at an Affordable Rent. Such tenancy to be on a month to month term or by a lease agreement having a term not to exceed six years, including any right of renewal.
- e) Within 30 days of written demand by the Crown, the Society must deliver to the Manager a statutory declaration sworn under oath by an Officer of the Society that the Society has not permitted occupation of an Affordable Rental Unit contrary to this Housing Agreement. The Crown may only require such Declaration once a year.

- f) If the Household Annual Income of a household occupying an Affordable Rental Unit in the Building exceeds the Maximum Allowable provided by HILS for that year, the Society must thereafter at the earliest date on which the then current rental agreement may be lawfully amended increase the annual rent to 30% of the then Household Annual Income of the household occupying the Affordable Rental Unit.
- g) In the event that HILS ceases to be published for the Vancouver Area, the Society and the Manager must in each successive year determine a formula to provide for reasonable increases or decreases of Maximum Allowable Household Income.

7. REGISTRATION AND NOTICE

- a) This Agreement constitutes both a covenant under s. 219 of the *Land Title Act* charging the Land and a housing agreement entered into pursuant to the University Endowment Land Act RSBC 1996 c.469.
- b) The Crown may file a notice of this Housing Agreement in the Land Title Office as a notice against title to the Land and may similarly register the Section 219 Covenant as a charge against the Lands, both of which will have priority over all other charges of whatsoever nature except for those charges approved by the Crown.
- c) This Agreement does not affect nor limit the discretion, right, duties or powers of the Crown under any enactment or at common law, including in relation to the use or subdivision of land, or impose on the Crown any legal duty or obligation, including any duty of care or contractual or other duty to enforce this Agreement.
- d) This Agreement does not impose on the Crown any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Housing Agreement.
- e) This Agreement does not affect or limit any enactment relating to the use or subdivision of land.
- f) This Agreement does not relieve the Owner or Society from complying with any enactment, including in relation to the use or subdivision of land.

8. GENERAL PROVISIONS

- a) Amendment – This Agreement may be discharged, or amended only by an instrument duly executed by the Owner, and the Crown prior to the Society becoming a party pursuant to Article 6(d) and thereafter may only be amended or discharged by an instrument duly executed by all of the Parties. The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement, and the 219 covenant herein, are registered against title to the Land

with priority over all other charges, liens and encumbrances registered or pending at the time of application for registration of these agreements.

- b) **Covenant Runs With the Land** – Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the Crown in accordance with section 219 of the *Land Title Act* in respect of the Land and this Agreement burdens the Land and runs with it and binds the Owner’s successors in title and binds every parcel into which it is consolidated or subdivided by any means, including by subdivision or by strata plan under the *Strata Property Act*.
- c) **Deed and Contract** – By executing and delivering this agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.
- d) **Enurement** – This Agreement binds the parties to their respective agreements herein and binds their respective successors, heirs, executors and administrators. Reference in this Agreement to the “Crown” is a reference also to the elected and appointed officials, employees and agents of the Crown.
- e) **Equitable Remedies** – The Owner and the Society acknowledge and agree that damages would be an inadequate remedy for the Crown 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.
- f) **Further Acts** – The Owner and the Society shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments, and both agree that if any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of the Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- g) **Joint Venture** – Nothing in this Agreement will constitute the Owner or the Society as the agent, joint venturer, or partner of the Crown or give the Owner any authority to bind the Crown in any way.
- h) **Limitation on Owner’s Obligations** – The Owner is not liable for breaches of this Agreement that are caused by the Society.
- i) **No Other Agreements** – This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

- j) Notice – Any notice which may be or is required to be given under this Agreement must be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by facsimile transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it must promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.
- k) Release – The Owner and the Society by this Agreement both release and forever discharge the Crown and each of its elected officials, officers, directors, employees 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 advice or direction respecting the ownership, lease, operation or management of the Land or the Dwelling Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination of the Agreement.
- l) Waiver – An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

As evidence of their agreement to be bound by the Housing Agreement and by the Section 219 Covenants herein, the Owner as Transferor and the Crown as Transferee have each executed and delivered this Agreement by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.