

DISTRICT OF SEHELDT

Housing Agreement Bylaw 571, 2018 (BC Housing- Hightide Avenue)

A Bylaw to authorize the District of Sechelt to enter into a Housing Agreement with the Provincial Rental Housing Corporation, pursuant to section 483 of the Local Government Act.

WHEREAS

- A. The owner of the land wishes to develop the land in the District of Sechelt to provide affordable housing on which land is legally described as follows:

Lot 1, District Lot 304, Plan BCP36628 PID: 027-536-998;

and has the civic address of 5656 Hightide Avenue.

- B. The District wishes to enter into a housing agreement in order to secure forty (40) affordable housing rental apartment units.

NOW THEREFORE the Council of the District of Sechelt, in open meeting assembled, enacts as follows:

1. TITLE

This Bylaw may be cited for all purposes as "District of Sechelt Housing Agreement Bylaw 571, 2018 (BC Housing- Hightide Avenue)".

2. PROVISIONS

- (a) By this Bylaw, Council authorizes the District to enter into a housing agreement with the Provincial Rental Housing Corporation (BC Housing) in respect to land legally described as:

Lot 1, District Lot 304, Plan BCP36628 - PID: 027-536-998;


in the form of the Section 219 Covenant and Housing Agreement attached as "Schedule A" to this Bylaw.

- (b) The Mayor and the Corporate Officer of the District are authorized to execute the Housing Agreement.

READ A FIRST TIME THIS	17 th	DAY OF	OCTOBER	2018
READ A SECOND TIME THIS	17 th	DAY OF	OCTOBER	2018
READ A THIRD TIME THIS	17 th	DAY OF	OCTOBER	2018
ADOPTED THIS	21 st	DAY OF	NOVEMBER	2018



Mayor



Corporate Officer

SCHEDULE A
to Housing Agreement Bylaw 571, 2018 (BC Housing- Hightide Avenue)

PART 2 - TERMS OF INSTRUMENT

HOUSING AGREEMENT AND SECTION 219 COVENANT
(Section 483 of the *Local Government Act* and Section 219 of the *Land Title Act*)

THIS AGREEMENT made this _____ day of _____, 2018.

BETWEEN:

DISTRICT OF SECHELT
2nd Floor, 5797 Cowrie St
P.O. Box 129
Sechelt, British Columbia
V0N 3A0

(the "**District**")

OF THE FIRST PART

AND:

PROVINCIAL RENTAL HOUSING CORPORATION
1701-4555 Kingsway
Burnaby, British Columbia
V5H 4V8

(the "**Owner**")

OF THE SECOND PART

WHEREAS:

- A. The District may, under Section 483 of the *Local Government Act*, enter into a housing agreement with an owner regarding the occupancy of the housing 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. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the District in respect of the use of land or construction on land;
- C. The Owner is the registered owner in fee simple of the parcel described as:

Legal Description: Lot 1, District Lot 304, New Westminster District, Plan BCP36628
PID: 027-536-998
Civic Address: 5656 Hightide Avenue, Sechelt, BC, V0N 3A0

(the "**Land**");

- D. Pursuant to proposed Zoning Amendment Bylaw No. 25-293, 2018 (BC Housing) the award of density bonusing is subject to the Owner entering into a housing agreement with the District;
- E. The Owner and the District wish to enter into this Agreement to provide 40 dwelling units of affordable rental supportive housing on the terms and conditions set out in this Agreement, and agree that this Agreement is a housing agreement under Section 483 of the *Local Government Act* and a covenant under Section 219 of the *Land Title Act*;
- F. The District has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of \$1.00 paid by the District to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the District and the Owner covenant and agree as follows:

1. DEFINITIONS AND INTERPRETATION

- i. In this Agreement, unless otherwise defined, words have the same meanings as in the Zoning Bylaw, and the following words have the following meanings:
 - (a) "**Agreement**" means this agreement and includes all recitals, instruments, schedules, and amendments thereto;
 - (b) "**Dwelling Unit**" means a suite of rooms which provides accommodations for one family, has its respective entrance and contains sleeping, toilet and bathing facilities and not more than one set of cooking facilities;
 - (c) "**Independent Affordable Rental Housing**" means rental housing for low-income individuals who wish to live independently;
 - (d) "**Land**" means the land described in Item 2 of the Land Title Act Form C to which this agreement is attached, and any part into which the land is subdivided;
 - (e) "**LTO**" means the Land Title Office for the jurisdiction in which the Land is situate;
 - (f) "**Maximum Rent**" means an amount equal to 30% of an individual tenant's gross income;
 - (g) "**Occupancy Date**" means the date that an occupancy permit is issued by the District in respect of the Dwelling Units on the Land;
 - (h) "**Residency Agreement**" means an agreement, lease, license or other agreement granting rights to occupy a Dwelling Unit or Supportive Housing Dwelling Unit;

- (i) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
 - (j) **"Shelter Rate"** for any tenant means the shelter allowance paid by the Province of British Columbia to the tenant pursuant to the *Employment and Assistance Act* or the *Employment and Assistance for Persons with Disabilities Act* or any successor legislation;
 - (k) **"Subdivided"** 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*;
 - (l) **"Support and Amenity Services"** means meal preparation, meal service, administration services, and may include any of the following: counselling, medical services, social and recreation uses, house cleaning, and laundry service; provided to tenants in conjunction with their Supportive Housing;
 - (m) **"Supportive Housing"** means housing for low-income individuals who receive Support and Amenity Services in order to live independently;
 - (n) **"Supportive Housing Dwelling Units"** means Dwelling Units for low-income individuals who receive Support and Amenity Services in order to live independently;
 - (o) **"Term"** means the term of this Agreement, as set out in section 7; and
 - (p) **"Zoning Bylaw"** means the District of Sechelt Zoning Bylaw No. 25, 1987, as amended from time to time.
- ii. 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) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the corresponding numbered or lettered article, section or Schedule of this Agreement;
 - (d) 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;
 - (e) the word "enactment" has the meaning given in the *Interpretation Act* on the reference date of this Agreement;

- (f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (g) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (h) the provisions of Section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (i) all provisions are to be interpreted as always speaking;
- (j) 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;
- (k) 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
- (l) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement must be performed, made or exercised acting reasonably.

2. SECTION 219 COVENANT – LAND USE RESTRICTIONS

- i. The Owner and the District hereby covenant and agree as follows:
 - (a) the Land must be used only in accordance with this Agreement;
 - (b) the Dwelling Units on the Land must be used for the provision of Independent Affordable Rental Housing or Supportive Housing;
 - (c) the Land must be used for the provision of approximately forty (40) Dwelling Units, in a manner consistent with this Agreement;
 - (d) no Dwelling Unit or Supportive Housing Dwelling Unit on the Land will be rented for more than the Maximum Rent or the Shelter Rate;
 - (e) the Owner shall not require a tenant 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 and similar services;
 - (f) Dwelling Units and Supportive Housing Dwelling Units on the Land shall only be used for rental purposes, pursuant to a Residency Agreement, in compliance with governing legislation;
 - (g) no Dwelling Unit or Supportive Housing Dwelling Unit on the Land may be rented to, or tenanted by, any person for a term of less than thirty (30) days;

- (h) the term of a Residency Agreement shall not exceed 1 year, however the tenancy may continue on a month-to-month basis after the expiry of the initial term;
- (i) the Owner will advise all tenants and potential tenants of the limited parking on the Land and will not enter into a Residency Agreement with tenants who create parking demands that cannot be met on the Land;
- (j) the Residency Agreement shall provide that the tenant is required to obtain the consent of the Owner in order to sublease any Dwelling Unit or Supportive Housing Dwelling Unit on the Land or assign the Residency Agreement sublease to another person;
- (k) the Owner shall include in the Residency Agreement a clause entitling the Owner to terminate the Residency Agreement in accordance with the *Residential Tenancy Act* if the tenant uses or occupies, or allows use or occupation of, the Dwelling Unit or Supportive Housing Dwelling Unit in breach of any of the use and occupancy restrictions contained in this Agreement;
- (l) at least four (4) of the eight (8) Dwelling Units or Supportive Housing Dwelling Units on the ground floor, as well as interior and exterior common areas, are to be fully constructed for wheelchair accessibility to provide for residential accommodation for persons with disabilities in wheelchairs; and the remaining four (4) dwelling units on the ground floor, if not constructed to a wheelchair standard, must be adaptable so that they are constructed in a manner that makes them easily changed into wheelchair Dwelling Units or Supportive Housing Dwelling Units (i.e. wider doorways, bathroom and kitchen wall blocking, larger bathrooms, electrical outlets and light switches at wheelchair heights);
- (m) the residential building on the Land will meet BC Energy Step 3 Code energy-efficiency performance standards;
- (n) the District will not support applications to stratify or subdivide buildings on the Land, nor allow Dwelling Units or Supportive Housing Dwelling Units to be sold independently of each other; and
- (o) the Owner will not cause or permit the Land, or any part thereof, or any building on the Land, to be Subdivided.

3. HOUSING AGREEMENT – TRANSFER RESTRICTIONS

- i. The Owner and the District hereby covenant and agree that the Owner must not sell or transfer, or agree to sell or transfer, any interest in the Land or any building thereupon, other than a full interest in the fee simple title to a purchaser that agrees to assume the terms and conditions of this Agreement. This section does not restrict the Owner from granting easements, rights of way and similar interests in land subject to this Housing Agreement and Section 219 Covenant having priority over such interests.

4. NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- i. The Owner acknowledges and agrees that:
 - (a) this Agreement constitutes both a covenant under Section 219 of the *Land Title Act* and a housing agreement entered into under Section 483 of the *Local Government Act*;
 - (b) this Agreement shall be registered in the LTO by the District at the cost of the Owner in accordance with Section 483 of the *Local Government Act*; and
 - (c) this Agreement shall be binding on all persons who acquire an interest in the Land after registration of this notice, and unless discharged in accordance with this Agreement, run with and bind the Land in accordance with Section 18 herein.

5. COMPLIANCE WITH AGREEMENT

- i. The Owner hereby irrevocably authorizes the District to make such inquiries as it considers reasonably necessary in order to confirm that the Owner is complying with this Agreement.
- ii. The Owner agrees that it will provide to the District a report in writing, to the reasonable satisfaction of the District, describing compliance with this Agreement.

6. ENFORCEMENT AND WAIVER

- i. The rights given to the District by this agreement are permissive only and nothing in this agreement imposes any legal duty of any kind on the District to any one, or obliges the District to enforce this agreement, to perform any act or to incur any expense in respect of this agreement.
- ii. Nothing contained or implied herein shall prejudice or affect the rights and powers of the District 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 Owner. 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.
- iii. The parties agree that the District is not obligated to inspect the Land or to otherwise ensure compliance with this Agreement, nor is the District obligated to remedy any default of this Agreement. A failure by the District to enforce this Agreement shall not constitute a waiver of any of the District's rights herein.

- iv. Notwithstanding any provision to the contrary in this Agreement, if the Owner is in default of its obligations in this Agreement then the District may, by written notice to the Owner, require such default to be corrected within thirty (30) days after receipt of such notice. If within the thirty (30) days after receipt of such notice the default has not been corrected or reasonable steps to correct the default have not been taken, the District, without limiting any other right it might have, may pursue a remedy consistent with the provisions described in Section 6 (v) and (vi) below.
- v. 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.
- vi. The Owner covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the District is entitled to all equitable remedies, including specific performance, injunction and declarative relief to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.
- vii. 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.

7. TERM

- i. This Agreement shall expire on the date that is forty (40) years after the Occupancy Date.
- ii. This Agreement shall run with and bind the Land in accordance with Section 18 herein for the Term of this Agreement.
- iii. If this Agreement is discharged in accordance with Section 9 (i) or Section 12 (i) (c), both parties shall execute the discharge for filing in the LTO.

8. MANAGEMENT

- i. The Owner further covenants and agrees that it or its operator will maintain the Dwelling Units and Supportive Housing Dwelling Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands.

9. DISCHARGE OR AMENDMENT

- i. Prior to the expiry of the Term, this Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the District. A unilateral discharge is the right of the District under Section 12 (i) (c).
- ii. Pursuant to Section 483 (4) of the *Local Government Act*, this Agreement may be amended only by a bylaw adopted by the District, with the consent of the Owner.

10. INDEMNITY AND RELEASE

- i. The Owner hereby releases and indemnifies and saves harmless the District and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all liabilities, loss, damage, costs (including without limitation, reasonable outside legal costs), expenses, actions, suits, debts, accounts, claims and demands, including without limitation, any and all claims of third parties (and including personal injury, death or damage occurring in or on the Land) (collectively the "**Claims**"), which all or any of them may suffer, incur or be put to arising directly or indirectly out of or in connection with this Agreement, including:
 - (a) any breach by the Owner of any covenant or agreement contained in or related to this Agreement;
 - (b) 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;
 - (c) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Land or any Dwelling Unit or Supportive Housing Dwelling Unit or the enforcement of any Residency Agreement;
 - (d) the exercise by the District of any of its rights under this Agreement or an enactment; and/or
 - (e) the District refusing to issue a development permit, building permit or refusing to permit occupancy of any building, or any portion thereof, constructed on the Land under the terms of this Agreement,provided the foregoing indemnity and release shall not apply to any Claims arising out of the negligence or willful misconduct of the District.
- ii. Indemnity and release shall survive the termination of this Agreement.

11. BINDING AND BINDING EFFECT

- i. This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, administrators and permitted assignees.
- ii. Once a notice of this Agreement is filed in the LTO, the Agreement and, if applicable, any amendment to it, is binding on all persons who acquire an interest in the land affected by the Agreement, including all amendments thereto.

12. AGREEMENT FOR BENEFIT OF DISTRICT ONLY

- i. The Owner and the District agree that:
 - (a) this Agreement is entered into only for the benefit of the District;

- (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 Supportive Housing Dwelling Unit; and
- (c) the District 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.

13. NO COMPENSATION

- i. The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the District, for any decrease in the market value of the Land or for any obligations on the part of the Owner and its successors in interest or title which at any time results directly or indirectly from the operation of this Agreement.

14. NO PUBLIC LAW DUTY

- i. Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, make a determination or give its consent, the Owner agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.

15. NOTICE

- i. 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, 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 date of delivery.

16. SEVERABILITY

- i. 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.

17. SOLE AGREEMENT

- i. This Agreement, and any documents signed by the Owner contemplated by this Agreement, represents the whole agreement between the District and the Owner, and there are no warranties, representations, conditions or collateral agreements made by the District or the Owner except as set forth in this Agreement.

18. COVENANT RUNS WITH THE LAND

- i. This Agreement burdens and runs with the Land and every parcel into which it is Subdivided. 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.

19. PRIORITY

- i. The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be noted and registered against title to the Land in priority to all financial charges and financial encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in advance in writing by the District or in favour of the District, and that a notice under Section 483(5) of the *Local Government Act* will be filed on the title on the Land.

20. LIMITATION ON OWNER'S OBLIGATIONS

- i. The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land provided however that notwithstanding that the Owner is no longer the registered owner of the Land, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Land.

21. NO JOINT VENTURE

- i. Nothing in this Agreement constitutes the Owner as the agent, joint venturer, or partner of the District or gives the Owner any authority to bind the District in any way.

22. JOINT AND SEVERAL

- i. If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

23. APPLICABLE LAW

- i. Unless the context otherwise requires, the laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. 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, except that the Owner shall be responsible for ensuring that every Residency Agreement fairly reflects the material terms of this Agreement.

24. FURTHER ACTS

- i. The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

25. ENUREMENT

- i. This agreement binds the parties to it and their respective successors, heirs, executors and administrators.

26. DEED AND CONTRACT

- i. By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Form C or Form D which is a part hereof.