

# ATTACHMENT A: HOUSING AGREEMENT DRAFT

## TERMS OF INSTRUMENT – PART 2

### *Housing Agreement and Covenant*

THIS AGREEMENT is dated for reference as of the last date of execution by a party to this agreement (the “**Reference Date**”),

BETWEEN:

**CITY OF MISSION** of 8645 Stave Lake Street, Mission, B.C., V2V 4L9

(the “**City**”)

AND:

**Hope for Freedom Society** of 3237 Liverpool Street, Port Coquitlam, BC  
V3B 2V5

(the “**Owner**”)

WHEREAS:

- A. The Owner is the registered owner in fee simple of lands at 34641 Lougheed Highway in the City of Mission, British Columbia, legally described as:  
  
Parcel Identifier: 005-045-126, Lot 2 District Lot 6 Group 3 New Westminster District Plan 14228  
  
(the “**Lands**”);
- B. The Owner applied for a Temporary Use Permit to permit the use of the Lands for a Supportive Recovery Use with sleeping accommodations for not more than 15 persons, a use which is not permitted under the Zoning Bylaw;
- C. As a condition of the Temporary Use Permit, the Owner must enter into a housing agreement with the City, on the terms and conditions set out in this Agreement;
- D. Section 483 of the *Local Government Act* authorizes the Municipality, by bylaw, to enter into a Housing Agreement which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units, and rent that may be charged for housing units;
- E. Section 219 of the *Land Title Act* permits registration of a covenant in favour of a municipality in respect of the use of land or the use of a building on or to be erected on land and that land is or is not to be built on except in accordance with the covenant and that land is not to be subdivided except in accordance with the covenant;
- F. The Owner and the City wish to enter into this Agreement, as a Housing Agreement pursuant to section 483 of the *Local Government Act*, to secure the agreement of the Owner to ensure that the Lands will be used only in the manner provided in this Agreement, and this Agreement is both

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a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*; and

- G. The City has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized and executed this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of \$10.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the City and the Owner covenant and agree as follows:

### 1.0 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Agreement, the following words have the following meanings:

- (a) **“Agreement”** means this agreement and includes all recitals, instruments, schedules, and amendments thereto;
- (b) **“Building”** means any building or buildings constructed on the Lands, forming part of the Supportive Recovery Use;
- (c) **“Boarding Use”** has the same meaning as under the Zoning Bylaw;
- (d) **“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;
- (e) **“Daily Amount”** means \$100.00 per day as of January 1, 2023 adjusted thereafter by an amount determined by multiplying \$100.00 by the percentage change in the CPI from January 1, 2023 to January 1 of the year that a written notice is delivered to the Owner by the City pursuant to section 5.2;
- (f) **“Home Occupation”** has the same meaning as under the Zoning Bylaw;
- (g) **“Lands”** has the meaning set out in Recital A, as may be subdivided from time to time;
- (h) **“Land Title Office”** means the New Westminster Land Title Office or its successor;
- (i) **“Occupancy Date”** means the date on which the final occupancy permit is issued for the last of the Buildings constructed or to be constructed on the Lands;
- (j) **“Residential Care”** has the same meaning as under the Zoning Bylaw;
- (k) **“Residential Use”** has the same meaning as under the Zoning Bylaw;
- (l) **“Sign Bylaw”** means the City of Mission Sign Bylaw 1662-1987 as amended or replaced from time to time;

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- (m) **“Subdivide”** means to divide, apportion, consolidate or subdivide the Lands, the Building, or the ownership or right to possession or occupation of the Lands 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 interests” or “shared interests in land” as defined in the *Real Estate Development Marketing Act*;
- (n) **“Supportive Recovery House Policy”** means the City’s Business Licence Requirements – Supportive Recovery Housing Policy LIC.20;
- (o) **“Supportive Recovery Use”** has the same meaning as under the Zoning Bylaw;
- (p) **“Temporary Use Permit”** means the Temporary Use Permit TP22-013 issued by the City to allow the Supportive Recovery Home Use on the Lands;
- (q) **“Term”** has the meaning set out in section 2.1; and
- (r) **“Zoning Bylaw”** means the City of Mission Zoning Bylaw No. 5949-2020 as amended or replaced from time to time.

### 1.2 Interpretation

In this Agreement:

- (a) words importing the singular number include the plural and vice versa and words importing the neuter gender include the masculine and the feminine genders;
- (b) the division of this Agreement into articles and sections and the insertion of headings are for convenience only and will not affect the construction or the interpretation of this Agreement;
- (c) references to any article, section or schedule will, unless the context otherwise requires, mean that article, section or schedule of this Agreement;
- (d) every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows;
- (e) the words “include” and “including” are to be construed as meaning “include without limitation” and “including without limitation”;
- (f) all payments to be made will be deemed to be payments in lawful currency of Canada;
- (g) reference to “business day” means all days other than Saturday, Sunday and statutory holidays in the Province of British Columbia;
- (h) reference to “party” and “parties” means the one or more parties to this Agreement, as the context demands;
- (i) reference to a whole, for example, the “Lands”, includes reference to a portion thereof; and

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- (j) unless expressly stated otherwise, all references to enactments refer to enactments of the Province of British Columbia, as amended or replaced from time to time. All reference to bylaws and policies refers to the bylaws and policies of the City, as amended or replaced from time to time.

### 1.3 Acknowledgements

The Owner acknowledges and agrees that:

- (a) except as expressly provided, nothing in this Agreement will relieve the Owner from any obligation or requirement arising under any applicable statute, bylaw or regulation in respect of the use, subdivision and development of the Lands;
- (b) nothing contained or implied in this Agreement will prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act*, the *Community Charter* or other statutes, bylaws, orders and regulations; and
- (c) all obligations of the Owner under this Agreement will be at the cost of the Owner.

### 2.0 TERM AND TERMINATION

#### 2.1 Term

This Agreement will commence on the Reference Date and will continue until the earlier of the following:

- (a) the date the Temporary Use Permit expires; or
- (b) the date this Agreement is discharged or terminated in accordance with sections 2.4 – 2.6.

(the "Term").

#### 2.2 Amendment

Prior to the expiry of the Term, this Agreement may amended or affected only by an instrument duly executed by both the Owner and the City.

#### 2.3 Renewal

Upon expiry of the Temporary Use Permit, the owner may apply to the City for a one-time renewal of the Temporary Use Permit, which may be granted at the City's discretion.

#### 2.4 Release

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.

#### 2.5 Demolition of Building

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This Agreement will terminate immediately upon the demolition, removal or destruction of the Building, provided that the Building is not repaired following the destruction.

### 2.6 Effect of Termination

After the termination of this Agreement, this Agreement will be at an end and of no further force and effect, except as expressly set out in section 3.5. The City will discharge the notation of this Agreement and the covenant (the “**Supportive Recovery Use Discharges**”) forming part of this Agreement from title to the Lands, provided that:

- (a) the Owner has requested the Supportive Recovery Use Discharges in writing;
- (b) the Owner’s lawyer has prepared the Supportive Recovery Use Discharges in the form registrable in the Land Title Office;
- (c) the Owner will be fully responsible for all costs associated with the City’s review and execution of the Supportive Recovery Use Discharges in the Land Title Office (including legal fees and disbursements); and
- (d) the Owner will be responsible to file the Supportive Recovery Use Discharges in the Land Title Office.

### 3.0 SECTION 219 COVENANT

#### 3.1 Grant

The Owner hereby covenants and agrees with the City, as a covenant in favour of the City pursuant to Section 219 of the *Land Title Act*, it being the intention and agreement of the Owner that the provisions in this Agreement be annexed to, and run with and be a charge upon the Lands, that:

#### Land Use Restrictions

- (a) the Lands and the Building will be used only in accordance with this Agreement;
- (b) the Lands will be used only for a Supportive Recovery Use which may include sleeping accommodations for no more than 15 persons, which persons include both residents and employees of the Owner;
- (c) while the Lands are used for a Supportive Recovery Use, the Lands will not be used for Residential Care, Boarding Use or for a Home Occupation;
- (d) the exterior of the Building will have no indication that the Building is used for a purpose other than a Residential Use;
- (e) the Owner will not cause or permit the Lands, or any part thereof, or any Building to be Subdivided;

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## Licences and Approvals

- (f) the Owner will obtain a building permit from the City that certifies the existing Building is suitable for the Supportive Recovery Use, including suitability for overnight sleeping accommodations;
- (g) the Owner will fulfill all requirements under the Supportive Recovery House Policy, as required as part of the City's business licence application process;
- (h) any business licence issued by the City in connection with the Lands will have expiry dates that will not exceed the term of the Temporary Use Permit; and
- (i) all proposed signage on the Lands will be in accordance with the Sign Bylaw and approved by the City's Development Services Department.

## **3.2 Indemnity**

As an indemnity pursuant to section 219(6) of the *Land Title Act*, the Owner will indemnify and save harmless the City and each of its elected officials, officers, directors, and agents, and their respective 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 act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) the Owner's construction, maintenance, ownership, lease, operation, management or financing of the Lands, the Building, or anything in connection to the Supportive Recovery Use;
- (c) any breach of this Agreement by the Owner; and
- (d) the exercise by the City of any of its rights under this Agreement,  
without any exceptions.

## **3.3 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 respective 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:

- (a) any act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) the Owner's construction, maintenance, ownership, lease, operation, management or financing of the Lands, the Building, or anything in connection to the Supportive Recovery Use;
- (c) any breach of this Agreement by the Owner; and

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(d) the exercise by the City of any of its rights under this Agreement,  
without any exceptions.

### 3.4 Impact on Market Value

Without limiting sections 3.2 and 3.3, 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 City, for any decrease in the market value of the Lands 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 existence, registration, or operation of this Agreement.

### 3.5 Release and Indemnity Survival

The release and indemnity in sections 3.2, 3.3 and 3.4 will survive the termination or expiration of this Agreement and the release of this Agreement from title to the Lands.

### 3.6 Management

The Owner will operate and maintain the Lands and Building, including all Building amenities and common spaces 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.

### 3.7 City Inquiries and Inspections

The Owner acknowledges and agrees that:

- (a) at the request of the City, the Owner will deliver to the City a report in writing, to the reasonable satisfaction of the City, describing compliance with this Agreement, together with such other information as may be reasonably requested by the City from time to time;
- (b) the Owner hereby irrevocably authorizes the City to make such inquiries as the City reasonably considers necessary in order to confirm the Owner is complying with this Agreement; and
- (c) the Owner will permit representatives of the City to inspect the Lands and Building for compliance with this Agreement at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*.

### 3.8 Registration

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) if required by the City, the Owner will cause the registration of the section 219 covenant contained in this Agreement in priority to all financial charges and encumbrances (including mortgages, assignments of rents, liens, options to purchase, leases and rights of first refusal);

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- (c) this Agreement will be registered as a charge on title to the Lands, pursuant to section 219 of the *Land Title Act*, and will be noted as a notation on title to the Lands pursuant to section 483 of the *Local Government Act*;

### 4.0 ENFORCEMENT AND WAIVER

#### 4.1 Enforcement

The rights given to the City by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the City to anyone, or obliges the City to enforce this Agreement, to perform any act or to incur any expense in respect of this agreement. 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 Owner.

#### 4.2 Waiver

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 will not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

#### 4.3 Inspections

The City is not obligated to inspect the Lands 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 herein.

### 5.0 DEFAULT AND REMEDIES

#### 5.1 Notice

The City may, acting reasonably, give to the Owner a written notice (the "**Notice**") requiring the Owner to cure a default under this Agreement within 30 days of receipt of the Notice or such longer period as may reasonably be required to cure such default provided the Owner is diligently pursuing same. The Notice must specify the nature of the default. The Owner must act with diligence to correct the default within the time specified.

#### 5.2 Daily Amount

If the Owner fails to correct a default as contemplated in section 5.1, the Owner will pay to the City, within 30 days of receiving a written request by the City, the Daily Amount for every day that the default continues. The Daily Amount will be increased on January 1 of each year by an amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase in the CPI during the immediately preceding calendar year. The Daily Amount is due and payable immediately upon receipt by the Owner of an invoice from the City for the same. This section is without prejudice to any other remedy available to the City under this Agreement and at law or in equity.



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### 5.3 Damages Inadequate

Notwithstanding section 5.2, the Owner acknowledges and agrees that in case of a breach of this Agreement which is not fully remediable by the mere payment of money and promptly so remedied, the harm sustained by the City and to the public interest will be irreparable and not susceptible of adequate monetary compensation.

### 5.4 No Remedy is Exclusive

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

### 5.5 Waiver of Breach

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.

## 6.0 GENERAL

### 6.1 Binding Effect

This Agreement burdens and runs with the Lands and any part into which any of them may be Subdivided. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its successors and assigns, and all persons who acquire an interest in the Lands after the date of this Agreement. Without limiting the foregoing, the Owner will not be liable for any breach of any covenant, promise or agreement herein in respect of any portion of the Lands sold, assigned, considered or otherwise disposed of, occurring after the Owner has ceased to be the owner of the Lands.

### 6.2 Enurement

This Agreement will enure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.

### 6.3 Agreement for Benefit of City Only

The Owner and 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 Lands, the Building, or anything in connection to the Supportive Recovery Use; and
- (a) The covenants and agreements on the part of the Owner in this Agreement have been made by the Owner as contractual obligations as well as being made pursuant to section 483 of the *Local Government Act* and as a covenant pursuant to section 219 of the *Land Title Act*.

### 6.4 Severability

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If a Court of competent jurisdiction finds that any part of this Agreement is invalid, illegal, or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in full force unaffected by that holding or by the severance of that part.

### **6.5 Sole Agreement**

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

### **6.6 Further Assurance**

Upon request by the City, the Owner will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the City, to give effect to this Agreement.

### **6.7 Notices**

All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, or by personal service, to the following address for each party:

City of Mission: at 8645 Stave Lake Street, Mission, B.C., V2V 4L9

Owner: At the address set out on the registered title to the Lands, from time to time.

Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the other parties, may designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.

### **6.8 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.

### **6.9 Counterpart and Electronic Delivery**

This Agreement can be signed in counterpart and delivered electronically.

### **6.10 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.

### **6.11 Deed and Contract**

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

**IN WITNESS WHEREOF**, the parties have executed the Form C to which this Agreement is attached to these Term of Instrument.

DRAFT