

TERMS OF INSTRUMENT – PART 2

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 _____, 2021.

BETWEEN:

DISTRICT OF MISSION

P.O. Box 20
8645 Stave Lake Street
Mission, BC V0N 3A0

(the “**District**”)

OF THE FIRST PART

AND:

MISSION OAK DEVELOPMENT LTD.

Inc. No. BC1227570
610 - 718 - 333 Brooksbank Avenue
North Vancouver, BC V7J 3V8

(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 a building on land;
- C. The Owner is the registered owner in fee-simple of those lands and premises located within the District of Mission, in the Province of British Columbia, more particularly described as

PID: 031-338-488

Legal Description: LOT 1 DISTRICT LOT 411 GROUP 1 NEW WESTMINSTER DISTRICT
PLAN EPP108227

(the "**Lands**");

- D. The Owner has applied for an amendment to the District of Mission Zoning Bylaw 5949-2020, to rezone the Lands from the Mission City Downtown One Zone (DT1) to Mission City Downtown Two Zone (DT2) in order to permit the construction of an apartment building with 92 Dwelling Units and with commercial uses on the ground floor (the "**Development**");
- E. The Zoning Bylaw permits the Lands to be developed with a higher density if the Owner enters into a Housing Agreement with the District that requires that all of the Dwelling Units in the Development are Affordable Rental Units as herein defined;
- F. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature, may be granted in favour of the municipality and may be registered as a charge against the title to land, and may contain provisions respecting the following:
- the use of land or the use of a building on or to be erected on land;
 - that land is to be built on in accordance with the covenant;
- G. The Owner and the District wish to enter into this Agreement to require the use of the Lands, during the Term, as an affordable rental housing development 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*;
- H. The District 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 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:

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 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) "**Affordable Rental Unit**" has the meaning given to that term in section 3.1(a);
 - (b) "**Agreement**" means this agreement and includes all recitals, instruments, schedules, and amendments thereto;
 - (c) "**Development**" has the meaning assigned to that term in Recital "D";
 - (d) "**District**" means the District of Mission;

- (e) “**Dwelling Unit**” has the same meaning as under the Zoning Bylaw;
- (f) “**Eligible Occupants**” means individuals who meet the eligibility criteria set out in Schedule “A”;
- (g) “**Improvements**” means those improvements, structures, buildings, fixtures, equipment and systems which now exist, or which are constructed on the Lands from time to time including heating, ventilating, air-conditioning, plumbing, electrical and mechanical systems and equipment;
- (h) “**Income**” has the meaning assigned to that term in Schedule “A”;
- (i) “**Lands**” means the land described in Recital “C” and 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;
- (j) “**Land Title Office (LTO)**” means the New Westminster Land Title Office or its successor;
- (k) “**Land Title Act**” means the *Land Title Act*, R.S.B.C. 1996, Chapter 250;
- (l) “**Local Government Act**” means the *Local Government Act*, S.B.C. 2015, Chapter 1;
- (m) “**Occupancy Permit**” has the same meaning as under the District of Mission Building Bylaw 3590-2003, as amended or replaced from time to time;
- (n) “**Records**” means all documentation relating to the use and occupation of the Lands and Improvements including tenancy agreements, information confirming Eligible Occupant status, books of account and receipts;
- (o) “**Subdivide**” means to divide, apportion, consolidate or subdivide the Lands, 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*;
- (p) “**Tenancy Agreement**” means a tenancy agreement pursuant to the *Residential Tenancy Act* that is regulated by that Act;
- (q) “**Term**” means the period of time commencing on the date when this Agreement is registered at the Land Title Office and ending on the later of the date that is twenty-one (21) years from when:
 - a. this agreement is registered at the Land Title Office; or

- b. the final Occupancy Permit for the Improvements is issued by the applicable Statutory Authority; and
- (r) **“Zoning Bylaw”** means the District of Mission Zoning Bylaw No. 5949-2020, as amended or replaced from time to time.

1.2 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.

2.0 SECTION 219 COVENANT - LAND USE RESTRICTIONS

2.1 The Owner hereby covenants and agrees with the District that during the Term:

- (a) the Lands must be used only in accordance with this Agreement;
- (b) except as permitted under section 2.2, the District will not be required to support applications to stratify or subdivide buildings on the Lands, nor allow any Dwelling Unit to be sold independently of any other Dwelling Unit;
- (c) except as permitted under section 2.2, the Owner will not cause or permit the Lands, or any part thereof, or any building on the Lands, to be Subdivided.

2.2 Following the issuance of the Occupancy Permit for the Development, the Owner may deposit a strata plan over the Development that separates all of the Affordable Rental Units into single strata lot, and the commercial units that are located on the ground floor of the Development into one or more strata lots.

3.0 HOUSING AGREEMENT - TRANSFER AND RENTAL RESTRICTIONS

3.1 The Owner hereby covenants and agrees with the District that during the Term:

- (a) the Lands and the Improvements on the Lands, including the Development, must be used to provide all of the following:
 - (i) Thirty-two (32) studio Dwelling Units;
 - (ii) Thirty-two (32) one-bedroom Dwelling Units;
 - (iii) Eight (8) two-bedroom plus den Dwelling Units;
 - (iv) Twenty (20) two-bedroom Dwelling Units,
 at the rental rates set out in section 3.1 (b) (the “**Affordable Rental Units**”);
- (b) the total monthly rent charged for an Affordable Rental Unit shall not exceed:
 - (i) \$900 for studio Dwelling Units;
 - (ii) \$1,100 for one-bedroom Dwelling Units;

(iii) \$1,450 for two-bedroom plus den Dwelling Units;

(iv) \$1,350 for two-bedroom Dwelling Units;

- (c) without limiting the foregoing, each Affordable Rental Unit may only be used to provide rental accommodation, under a Tenancy Agreement, to Eligible Occupants;
- (d) the rents set out in section 3.1(b) may be increased annually, commencing the year after the registration of this Agreement, by a percentage amount equal to the increase in the Consumer Price Index (All Items) reported for British Columbia for the previous year, provided such increase is not greater than the amount permitted by the *Residential Tenancy Act* and if it is greater, the amount that the rent may be increased will not be greater than the increase permitted by the *Residential Tenancy Act*;
- (e) the Development shall be managed and operated by a professional property manager that is a corporation registered pursuant to the laws of British Columbia, or by an affordable housing provider approved by the District;
- (f) all tenants of the Dwelling Units, including the tenants of the Affordable Rental Units shall have access to the building amenities and common spaces of the Improvements;
- (g) every year, or as otherwise requested by the District from time to time, the Transferor will submit to the District:
 - (i) move-in date of the current tenants of all Affordable Rental Units;
 - (ii) household Income of the current tenants of the Affordable Rental Units at move-in; and
 - (iii) the current monthly rent for all Affordable Rental Units;
- (h) the Owner shall not sell or transfer, or agree to sell or transfer, any permanent interest in the Lands or any building thereupon, other than as a full interest in the fee simple title to a purchaser that agrees to assume the obligations of the Owner under this Agreement. This section does not restrict the Owner from granting easements, rights of way and similar interests in land provided this Housing Agreement and section 219 Covenant retains priority over such interests.

4.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

4.1 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 section 219 of the *Land Title Act*; and
- (c) this Agreement shall be binding on all persons who acquire an interest in the Lands after registration of this notice, and unless discharged in accordance with this Agreement, run with and bind the Lands in accordance with section 18 herein.

5.0 COMPLIANCE WITH AGREEMENT

- 5.1 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.
- 5.2 The Owner agrees that upon a written request being made by the District, it will provide to the District a report in writing, to the reasonable satisfaction of the District, demonstrating the Owner's compliance with this Agreement.
- 5.3 The Owner will retain all Records that pertain to its obligations under this Agreement for not less than seven (7) years following the date of receipt or production of the Records.
- 5.4 The District shall have the right to inspect the Records including the right to enter any premises used by the Transferor to keep or store the Records at any time after the delivery of notice to the Transferor, and shall have the immediate right to make extracts from and take copies of the Records.

6.0 ENFORCEMENT AND WAIVER

- 6.1 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. 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 Lands as if this Agreement had not been executed and delivered by the Owner.
- 6.2 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.
- 6.3 The parties agree that the District is not obligated to inspect the Lands 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.
- 6.4 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 6.6 below.

- 6.5 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.
- 6.6 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.
- 6.7 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.

7.0 TERM

- 7.1 This Agreement shall run with and bind the Lands in accordance with section 11.1 herein for the Term of this Agreement.
- 7.2 If this Agreement is discharged in accordance with section 9.1, both parties shall execute the discharge for filing in the LTO.

8.0 MANAGEMENT

- 8.1 The Owner further covenants and agrees that it or its operator will maintain the 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.

9.0 DISCHARGE OR AMENDMENT

- 9.1 Prior to the expiry of the Term, and subject to section 9.2, this Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the District.
- 9.2 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.

10.0 INDEMNITY AND RELEASE

- 10.1 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 Lands) (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 Lands or any Dwelling Unit or the enforcement of any Tenancy Agreement;
- (d) the exercise by the District of any of its rights under this Agreement or an enactment; and
- (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 Lands 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. Indemnity and release shall survive the termination of this Agreement.

11.0 BINDING EFFECT

11.1 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.

12.0 AGREEMENT FOR BENEFIT OF DISTRICT ONLY

12.1 The Owner and the District agree that this Agreement is not intended to protect the interests of the Owner, any resident, or any future owner, lessee, occupier or user of the Lands or the building or any portion thereof.

13.0 NO COMPENSATION

13.1 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 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 operation of this Agreement.

14.0 NO PUBLIC LAW DUTY

14.1 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.

15.0 NOTICE

15.1 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.

16.0 SEVERABILITY

16.1 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.

17.0 SOLE AGREEMENT

17.1 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.

18.0 AGREEMENT RUNS WITH THE LAND

18.1 This Agreement burdens and runs with the Lands 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.

19.0 PRIORITY

19.1 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 Lands in priority to all financial charges and financial encumbrances which may have been registered or are pending registration against title to the Lands 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.

20.0 LIMITATION ON OWNER'S OBLIGATIONS

20.1 The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands 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.

21.0 NO JOINT VENTURE

21.1 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.

22.0 JOINT AND SEVERAL

22.1 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.

23.0 APPLICABLE LAW

23.1 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.

24.0 FURTHER ACTS

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

25.0 ENUREMENT

25.1 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.

26.0 DEED AND CONTRACT

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

27.0 PRIORITY AGREEMENT

27.1 Bradley Emil Johnson and Mary Angeline Johnson, the registered holder of charges by way of a Mortgage against the Lands and registered under No. CA8062288 and an Assignment of Rents against the Lands and registered under No. CA8062289 (the "**Charges**") in the Land Title Office at Victoria, British Columbia, for and in consideration of the sum of One (\$1.00) Dollar paid by the District to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the District, its successors and assigns, that the within section 219 Covenant shall be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if it had been dated and registered prior to the Charges.

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

Schedule “A”

Eligible Occupants

“**Eligible Occupants**” are limited to those persons residing together in a dwelling unit who collectively have an Income, as defined below, that does not exceed the Housing Income Limits (HILs) determined from time to time by the British Columbia Housing Management Commission for the City of Abbotsford. For illustrative purposes, the HILs for 2021 that apply to this Agreement are set out in the Table below. For the purpose of this Agreement, the HILs for a two-bedroom plus den Dwelling Unit will be the average of the HILs for a two-bedroom Dwelling Unit and a three-bedroom Dwelling Unit.

“**Income**” means the total Income from all sources, before tax, of all persons residing together in a Dwelling Unit.

	Studio unit	1 bdrm unit	2 bdrm unit	2 bdrm + den unit	3 bdrm unit
Housing Income Limit	\$37,000	\$37,000	\$44,000	\$55,250	66,500