

Schedule "A" To Bylaw No. 2208

HOUSING AGREEMENT

(Pursuant to section 483 of the *Local Government Act*)

This Housing Agreement (this "**Agreement**") is entered into by and

AMONG:

THE CORPORATION OF THE DISTRICT OF CENTRAL SAANICH
1903 Mount Newton Cross Road, Saanichton, British Columbia V8M 2A9

(the "**District**")

AND:

2515 HACKETT PROPERTY LTD.
1400 – 3280 Bloor Street West, Centre Tower, Toronto, Ontario M8X 2X3

(the "**Owner**")

AND:

THE BANK OF NOVA SCOTIA

(**"Scotiabank"**)

AND:

PORTAGE CAPITAL NOMINEE CORP.

(**"Portage"**)

(Scotiabank and Portage together the "**Lender**")

WHEREAS:

- A. Capitalized terms used herein will have the respective meanings ascribed to them in section 1.1 of this Agreement, unless the context otherwise clearly requires or they are elsewhere defined herein;
- B. Under section 483 of the *Local Government Act* the District may, by bylaw, 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*;
- C. The Owner is the registered owner in fee simple of lands in the District of Central Saanich, British Columbia, with a civic address of 2515 Hackett Crescent, Saanichton, British Columbia and legally described as:

Parcel Identifier 030-364-183
Lot 5, Section 5, Range 4 East, South Saanich District, Plan EPP69599

(the "**Lands**");

- D. The Owner wishes to construct, on the Lands, a new a multiple dwelling residential complex containing approximately 235 dwelling units (the “**Building**”); and
- E. The District and the Owner 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 provide eight Affordable Units for a period of ten (10) years, and that all Dwelling Units on the Lands will be used and held only as rental housing in perpetuity.

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act*, and in consideration of the premises and covenants contained in this Agreement, the parties agree each with the other as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

“**Affordable Rent**” means eighty (80%) percent of the average monthly rent for a dwelling of comparable size and location as set out in the Canada Mortgage and Housing Corporation Housing Market Outlook for Greater Victoria, set yearly in October;

For clarity, the following provides an overview of the average monthly rent set in October 2023:

Private Apartment Average Rents (\$)

Bachelor	1,222
1 Bedroom	1,427
2 Bedroom	1,839
3 Bedroom+	2,089

“**Affordable Units**” means eight Dwelling Units on the Lands, designated by the Owner; “**Business**

Day” means Monday to Friday, other than any such day which is a statutory holiday in Victoria, British Columbia;

“**CPI**” means the All-items Consumer Price Index for Victoria, British Columbia, published from time to time by Statistics Canada, or its successor in function;

“**Director**” means the District’s Director of Sustainable Planning and Development, and includes any person duly acting in his/her place and stead for the purposes of this Agreement;

“**Dwelling Unit**” or “**Dwelling Units**” means any or all, as the context may require, of the self-contained dwelling units on the Lands, and includes every Dwelling Unit that is on the Lands already as of the Effective Date and every Dwelling Unit that is developed on the Lands thereafter;

“**Effective Date**” means the effective date of this Agreement which is the date of the signature of the last party to sign;

“**Immediate Family**” includes a person’s spouse, child, grandchild, parent, grandparent, sibling, niece and nephew, and includes the Immediate Family of the person’s spouse;

“**Income Threshold**” means eighty (80%) percent of:

- (a) the median household income in Central Saanich published from time to time by Statistics Canada which the Owner and the District agree in 2020 was \$90,000.00;

- (b) in each year that Statistics Canada has not published the median household income in Central Saanich, Income Threshold will be calculated as the median household income in Central Saanich most recently published by Statistics Canada increased by the greater of \$1.00 and amount equal to the CPI in the current year divided by the CPI in the year of publication.

"**Non-owner**" means a person other than a Related Person or the Owner;

"**Owner**" includes a person who acquires an interest in the Lands or any part of the Lands and is thereby bound by this Agreement, as referred to in section 5.1;

"**Related Person**" includes, where the registered or beneficial owner of the Lands or Dwelling Unit, as applicable, is:

- (a) a corporation (excluding a public corporation or a corporation held by a public corporation, pension fund, or real estate investment trust):
 - (i) an officer, director, shareholder, or member of such corporation, or of another entity which is a shareholder or member of such corporation; or
 - (ii) an Immediate Family of a person to whom paragraph (i) applies, or
- (b) an individual, an Immediate Family of the registered or beneficial owner; and

"**Tenancy Agreement**" means a tenancy agreement regulated under the *Residential Tenancy Act*.

2.0 DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS RENTAL UNITS

2.1 The Owner covenants and agrees that in perpetuity:

- (a) all the Dwelling Units will only be used as rental housing; and
- (b) each Dwelling Unit will only be occupied by one or more Non-owners under the terms of a Tenancy Agreement between the Owner and the Non-owner(s) who occupies the Dwelling Unit.

3.0 AFFORDABLE HOUSING

3.1 The Owner covenants and agrees that for a period of ten (10) years following the first occupancy of each such Dwelling Unit:

- (a) Eight (8) Dwelling Units will be designated as Affordable Units and subject to any limitations set out in the *Residential Tenancy Act*, will only be occupied and used as Affordable Units for a period ex.
- (b) The combined annual household Income for the occupants of each Affordable Units will not exceed the Income Threshold.
- (c) Monthly rent for each Affordable Unit will not exceed the Affordable Rent. If the Canada

Mortgage and Housing Corporation ceases to publish the Housing Market Outlook with information for Central Saanich, and such determination is not replaced by a similar publication, then the Affordable Rent with respect to an Affordable Unit will be determined by reference to the last published Affordable Rent and increased annually by an amount equal to the lesser of the maximum annual rent increase permitted under the *Residential Tenancy Act* and the increase in the CPI commencing January 1 following the year the Canada Mortgage and Housing Corporation ceased such publication.

4.0 REPORTING

- 4.1 The Owner covenants and agrees to provide to the Director, within 30 days of the Director's written request, a report in writing confirming that all Dwelling Units are being rented to Non-owners.
- 4.2 The Owner hereby authorizes the District to make such lawful inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.
- 4.3 The Owner acknowledges that it is within the District's sole discretion to consent or not to consent to modifications of this Agreement and that such consent may be withheld for any reason.

5.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- 5.1 Notice of this Agreement (the "**Notice**") will be registered in the Land Title Office by the District at the cost of the Owner in accordance with section 483 of the *Local Government Act*, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in the Lands after registration of the Notice.

6.0 LIABILITY

- 6.1 The Owner agrees to indemnify and save harmless the District and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from all claims, demands, actions, damages, 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 failure of the Owner to comply with the terms and conditions of this Agreement, or otherwise that would not have arisen "but for" this Agreement.
- 6.2 The Owner hereby releases and forever discharges the District and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from any and all claims, demands, actions, damages, economic loss, costs and liabilities which the Owner now has or hereafter may have with respect to or by reason of or arising out of the fact that the Lands are encumbered by and affected by this Agreement, or otherwise that would not have arisen "but for" this Agreement.

7.0 PRIORITY AGREEMENT

- 7.1 **THE BANK OF NOVA SCOTIA**, as the registered holder of a mortgage and assignment of rents registered against title to the Lands respectively under numbers CB316451 and CB316452

(collectively, the “**Scotiabank Financial Charges**”), for and in consideration of the sum of One Dollar (\$1.00) paid by the District (the receipt whereof is hereby acknowledged), agrees with the District that upon filing of a Notice with the Land Title Office that the Lands are subject to this Agreement, pursuant to section 483(5) of the *Local Government Act*, this Agreement will be an encumbrance upon the Lands in priority to the Scotiabank Financial Charges in the same manner and to the same effect as if Notice had been filed before the Scotiabank Financial Charges.

- 7.2 **PORTAGE CAPITAL NOMINEE CORP.**, as the registered holder of a mortgage and assignment of rents registered against title to the Lands respectively under numbers CB316453 and CB316454 (collectively, the “**Portage Financial Charges**”), for and in consideration of the sum of One Dollar (\$1.00) paid by the District (the receipt whereof is hereby acknowledged), agrees with the District that upon filing of a Notice with the Land Title Office that the Lands are subject to this Agreement, pursuant to section 483(5) of the *Local Government Act*, this Agreement will be an encumbrance upon the Lands in priority to the Portage Financial Charges in the same manner and to the same effect as if Notice had been filed before the Portage Financial Charges.

8.0 GENERAL PROVISIONS

- 8.1 **NOTICE.** Any notice, approval or request required or permitted to be given under this Agreement will be in writing and may be given by delivering such notice, approval, or request to a representative of the party for whom it is intended, either by personal delivery, or by mailing such notice, approval, or request by prepaid registered mail from any post office in British Columbia:

- (a) in the case of the Transferor, addressed to it at:

2515 HACKETT PROPERTY LTD.
 1400 – 3280 Bloor Street West, Centre Tower
 Toronto, Ontario M8X 2X3
 Attention: Daniel Drimmer

- (b) and in the case of the Transferee, addressed to it at:

THE DISTRICT OF CENTRAL SAANICH
 1903 Mount Newton Cross Road
 Saanichton, British Columbia V8M 2A9

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery of such notice, approval or request, or on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.

- 8.2 **TIME.** Time is of the essence of this Agreement.

- 8.3 **BINDING EFFECT.** This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees. In accordance with section 483(6) of the *Local Government Act*, this Agreement and all obligations hereunder is binding on all who acquire an interest in the Lands, and the Owner only during the Owner's ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the Owner has an interest.
- 8.4 **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 is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 8.5 **HEADINGS.** The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 8.6 **LANGUAGE.** Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.
- 8.7 **LEGISLATION.** Reference to any enactment includes any regulations, orders or directives made under the authority of that enactment, and is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.
- 8.8 **EQUITABLE REMEDIES.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the District 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.
- 8.9 **CUMULATIVE REMEDIES.** No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
- 8.10 **ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 8.11 **FURTHER ASSURANCES.** Each of the parties will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.
- 8.12 **AMENDMENT.** This Agreement may be amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the District and thereafter if it is signed by the District and the Owner.
- 8.13 **LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 8.14 **NO DEROGATION FROM STATUTORY AUTHORITY.** Nothing in this Agreement will:

- (a) limit, impair, fetter or derogate from the statutory powers of the District all of which powers may be exercised by the District from time to time and at any time to the fullest extent that the District is enabled and no permissive bylaw enacted by the District, or permit, licence or approval, granted, made or issued thereunder, or pursuant to statute, by the District will estop, limit or impair the District from relying upon and enforcing this Agreement; or
- (b) relieve the Owner from complying with any enactment, including the District's bylaws, or any obligation of the Owner under any other agreement with the District.

8.15 **SEVERABILITY.** If any section, term or provision of this Agreement is found to be partially or wholly illegal or unenforceable, then such sections or parts will be considered to be separate and severable from this Agreement and the remaining sections or parts of this Agreement, as the case may be, will be unaffected thereby and will remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.

8.16 **JOINT AND SEVERAL.** The Owner, if more than one, are jointly and severally obligated to perform and observe each of the covenants, warranties and agreements herein contained by the Owner to be observed and performed.

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8.17 **COUNTERPARTS.** This Agreement may be executed in counterparts and delivered by emailed PDF file, each of which will have the same effect as if all parties had signed the same document. Each counterpart will be deemed to be an original. All counterparts will be construed together and will constitute one and the same Agreement.

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