

This **HOUSING AGREEMENT** dated for reference the ____ day of ____, 202*,

BETWEEN:

1237932 BC LTD.

(Incorporation No. BC1237932)

a company incorporated under the laws of British Columbia, and
having a registered office at 4566 Cordova Bay Road, Victoria, BC V8X 3V5

(the "Owner")

OF THE FIRST PART

AND:

CORPORATION OF THE TOWNSHIP OF ESQUIMALT,

a municipality incorporated under the laws of British Columbia, and
having an office at 1229 Esquimalt Road, Esquimalt, BC V9A 3P1

(the "Township")

OF THE SECOND PART

WHEREAS:

- A. The Township 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. The Owner and the Township wish to enter into this Agreement to require the use of the Lands, during the Term, as a 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*;
- C. The Township 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 Township to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the Township and the Owner covenant and agree as follows:

1.0 DEFINITIONS AND INTERPRETATION

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

- (a) "**Affordable Rental Unit**" means a Rental Unit referred to in section 3.2, the rent for which shall be determined in accordance with Part 4.0 of this Agreement;
- (b) "**Agreement**" means this agreement and includes all recitals, instruments, schedules, and amendments thereto;

- (c) **“Development Covenant”** means the covenant pursuant to section 219 of the *Land Title Act* that the Owner has granted to the Township and that restricts the use, subdivision and development of the Lands, and that is registered against title to the Lands;
- (d) **“Director”** means the Township’s Director of Development Services;
- (e) **“Dwelling Unit”** has the same meaning as under the Zoning Bylaw;
- (f) **“Eligible Occupants”** means individuals who meet the eligibility criteria for the applicable category of Rental Unit as set out in Schedule “A”;
- (g) **“Fair Market Rent”** means the monthly rental amount for a Rental Unit that would be paid as between persons dealing in good faith and at arm’s length for similar rental dwelling units of comparable size, number of bedrooms in buildings similar in location (within a five-kilometre radius of the Housing Project), age, quality and materials and offering similar amenities and services, including Transportation Demand Measures (as defined in the Development Covenant), in the private (non-subsidized) residential rental market;
- (h) **“Family”** has the same meaning as under the Zoning Bylaw;
- (i) **“Housing Income Limits”** means the maximum Income for eligibility in affordable housing programs in the Planning Area Vancouver Island, Victoria, as determined for any Year by the British Columbia Housing Management Commission, or its successor in function;
- (j) **“Housing Project”** means the housing development to be constructed on the Lands by the Owner consisting of a building containing 42 Dwelling Units that will be Rental Units, and 3 Dwelling Units that may be owner-occupied, and includes all parking, services, utilities, heating, ventilating, air-conditioning, plumbing, electrical and mechanical systems and equipment, and landscaping, required for and connected with the Housing Project;
- (k) **“Income”** means the total Income from all sources, before tax, of all persons residing together in an Affordable Rental Unit;
- (l) **“Lands”** means the land legally described as:
 PID 030-353-556
 LOT 1 SECTION 10 ESQUIMALT DISTRICT PLAN EPP78715
- (m) **“Land Title Office”** means the Victoria Land Title Office or its successor;
- (n) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250;
- (o) **“Local Government Act”** means the *Local Government Act*, S.B.C. 2015, Chapter 1;
- (p) **“Market Affordable Rental Unit”** means a Rental Unit referred to in section 3.3, the rent for which shall be determined in accordance with Part 4.0 of this Agreement;

- (q) **“Market Rental Unit”** means a Rental Unit referred to in section 3.4, the rent for which shall be determined in accordance with Part 4.0 of this Agreement;
- (r) **“Occupancy Permit”** means a permit permitting occupancy of the Project as issued pursuant to the Township of Esquimalt Building Regulation Bylaw, 2017, No. 2899;
- (s) **“Owner-occupied Dwelling Units”** means the three Dwelling Units within the Housing Project that are not Rental Units, and that are not subject to the requirements of this Agreement;
- (t) **“Qualified Appraiser”** means an independent professional appraiser who is a member in good standing with the Appraisal Institute of Canada, or whose qualifications are otherwise acceptable to the Director and the Owner, and who has a minimum of two years’ experience working as an appraiser in the Greater Victoria residential real estate market;
- (u) **“Records”** means all of the Owner’s documentation relating to the use and occupation of the Lands and the Project including tenancy agreements, information confirming Eligible Occupant status, books of account and receipts;
- (v) **“Rental Unit”** means a Dwelling Unit within the Project that is to be rented to, and occupied by, an Eligible Occupant under the terms of a Tenancy Agreement;
- (w) **“Strata Corporation”** means, if the Housing Project has been subdivided under the *Strata Property Act* in accordance with the Development Covenant, the strata corporation established under section 2 of the *Strata Property Act*;
- (x) **“Strata Property Act”** means the *Strata Property Act*, S.B.C. 1998, c. 43;
- (y) **“Tenancy Agreement”** means a tenancy agreement within the meaning of, and that complies with the requirements of, the *Residential Tenancy Act*, S.B.C. 2002, c. 78;
- (z) **“Tenant”** means a tenant of a Rental Unit;
- (aa) **“Term”** means that period of time commencing on the day that this Agreement is registered in the Land Title Office, and ending on the day that is twenty-five years after the day on which the Occupancy Permit for the Project is issued;
- (bb) **“Township”** means the Corporation of the Township of Esquimalt;
- (cc) **“Year”** means a calendar year, commencing on January 1 and ending on December 31;
- (dd) **“Year One”** means the Year during which the Occupancy Permit is issued; and
- (ee) **“Zoning Bylaw”** means the Township of Esquimalt Zoning Bylaw, 1992, No. 2050, 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 the *Interpretation Act* with respect to the calculation of time apply;
- (i) 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;
- (j) 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
- (k) 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 NUMBER AND CATEGORY OF RENTAL UNITS

2.1 The Owner hereby covenants and agrees with the Township that following the issuance of the Occupancy Permit, and for the remainder of the Term, the Lands and the Project shall be used to provide residential rental accommodation in each of the Rental Units referred to in sections 3.2 through 3.4.

2.2 The following Rental Units must be provided within the Project, as Affordable Rental Units:

- (a) ten one-bedroom Rental Units;
- (b) three two-bedroom Rental Units;
- (c) one three-bedroom Rental Units.

- 2.3 The following Rental Units must be provided within the Project, as Market Affordable Rental Units:
- (a) ten one-bedroom Rental Units;
 - (b) three two-bedroom Rental Units;
 - (c) one three-bedroom Rental Units;
- 2.4 The following Rental Units must be provided within the Project, as Market Rental Units:
- (a) ten one-bedroom Rental Units;
 - (b) three two-bedroom Rental Units;
 - (c) one three-bedroom Rental Units.
- 2.5 Each Rental Unit may only be used to provide rental housing, under a Tenancy Agreement, to individuals who meet the eligibility criteria with respect the category of that Rental Unit, as set out in Schedule “A”.

3.0 RESTRICTIONS ON RENTS CHARGED

- 3.1 Before entering into the first Tenancy Agreement for any of the Market Affordable Units, the Owner must submit to the Township’s Director of Development Services (the “Director”), for his or her review and approval, an appraisal prepared by a Qualified Appraiser acceptable to the Owner and the Director as to the then-current Market Rent for each Market Affordable Rental Unit (the “Initial Rental Appraisal”).
- 3.2 If either the Director or the Owner disagrees with the appraisal of Market Rent in the Initial Rental Appraisal, then the person who disagrees with the appraisal, whether the Director or the Owner, may retain a second Qualified Appraiser to prepare an appraisal of the then-current Market Rent for each Market Affordable Rental Unit, and the Market Rent shall be the average of the two appraisal values.
- 3.3 In the event that the Owner and the Director of Development Services are unable to agree on the choice of a Qualified Appraiser under section 3.1, the Owner and the Director shall each retain a Qualified Appraiser to prepare an appraisal of the then-current Market Rent for each Market Affordable Rental Unit, and the Market Rent shall be the average of the two appraisal values.
- 3.4 The rent charged by the Owner under the first Tenancy Agreement for each Market Affordable Rental Unit must not exceed 90% of the Market Rent for that Market Affordable Rental Unit as stated in the Initial Rental Appraisal, or if either section 3.2 or 3.3 applies, the Market Rent determined in accordance with the applicable section.
- 3.5 No later than 30 days before the commencement of each Year following Year One, the Owner must submit to the Township’s Director of Development Services, for his or her review and approval, an appraisal prepared by a Qualified Appraiser acceptable to the Owner and the Director as to the then-current Market Rent for each Market Affordable Rental Unit (the “Annual Rent Appraisal”).

- 3.6 If either the Director or the Owner disagrees with the appraisal of Market Rent in the Annual Rental Appraisal, then the person who disagrees with the appraisal, whether the Director or the Owner, may retain a second Qualified Appraiser to prepare an appraisal of the then-current Market Rent for each Market Affordable Rental Unit, and the Market Rent for the Year in question shall be the average of the two appraisal values.
- 3.7 In the event that the Owner and the Director of Development Services are unable to agree on the choice of a Qualified Appraiser under section 3.6, the Owner and the Director shall each retain a Qualified Appraiser to prepare an appraisal of the then-current Market Rent for each Market Affordable Unit, and the Market Rent for the Year in question shall be the average of the two appraisal values.
- 3.8 The rent charged by the Owner under a Tenancy Agreement for a vacant Market Affordable Rental Unit that the Owner enters into during any Year after Year One must not exceed 90% of the Market Rent for that Rental Unit as stated in the Annual Rent Appraisal for that Year, or if either section 3.6 or 3.7 applies, the Market Rent determined in accordance with the applicable section.
- 3.9 The rent charged by the Owner for an Affordable Rental Unit under a Tenancy Agreement that the Owner enters into during any Year must not exceed 30 per cent of the Housing Income Limits for that Year as applicable to that Rental Unit.
- 3.10 The rent charged by the Owner under each Tenancy Agreement for a Rental Unit may be increased annually by an amount that does not exceed the rent increase permitted under the *Residential Tenancy Act*.
- 3.11 The Owner shall pay the costs of each appraisal that is obtained under sections 3.1, 3.2 and 3.3, and sections 3.5, 3.6 and 3.7.
- 3.12 The Owner must not require a Tenant to pay all or any portion of a strata fee or special levy that is imposed on the Owner by the Strata Corporation under the authority of the *Strata Property Act*.
- 3.13 For certainty, the Owner may require a Tenant under the applicable Tenancy Agreement to pay all applicable utility charges for water, electricity, gas, cable, telephone, internet and similar services supplied to that Tenant's Rental Unit by a third-party utility or service provider.

4.0 MANAGEMENT OF RENTAL UNITS

- 4.1 The Owner covenants and agrees that:
- (a) it will maintain the Rental Units in a good state of maintenance and repair to a standard consistent with the standards of a reasonable Landlord in the Greater Victoria area, and so that the Rental Units are fit for habitation; and
 - (b) it will comply with all laws, including health and safety standards, applicable to the maintenance of the Rental Units.

- 4.2 All Tenants of the Rental Units shall have access to all common amenities and common areas of the Housing Project that is equal to the access provided to the owners of the Owner-occupied Dwelling Units.

5.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- 5.1 The Owner acknowledges and agrees that:
- (a) notice of this Agreement shall be registered in the Land Title Office by the Township at the cost of the Owner in accordance with section 483 of the *Local Government Act*, and
 - (b) this Agreement shall be binding on all persons who acquire an interest in the Lands after registration of this notice, and this Agreement shall run with and bind the Lands in accordance with section 11 herein.

6.0 REPORTING AND COMPLIANCE WITH AGREEMENT

- 6.1 The Owner hereby irrevocably authorizes the Township to make such inquiries as it considers reasonably necessary in order to confirm that the Owner is complying with this Agreement.
- 6.2 The Owner covenants and agrees to provide the Director of Planning with a written report, to be submitted to the Director by no later than November 30 of each Year, confirming:
- (a) the rents being charged to the Tenant of each Rental Unit, including any increases in rent over the previous 12 months;
 - (b) for each Tenancy Agreement that the Owner entered into for an Affordable Rental Unit within the 12-month period preceding the date of the report, the household Income of the Tenants at move-in, in order to demonstrate that the Tenants meet the eligibility criteria for that Rental Unit as set out in Schedule "A";
 - (c) subject to the provisions of any applicable statute, for each Tenancy Agreement that the Owner entered into for an Affordable Rental Unit before the 12 month period referred to in section 6.2(b), confirmation that the Tenants continue to meet the income eligibility criteria for that Rental Unit as set out in Schedule "A", and if the Owner has been unable to obtain that information from any of the Tenants, confirmation of the best efforts made by the Owner to secure that income information; and
 - (d) for each Tenancy Agreement that the Owner entered into for a Market Affordable Rental Unit within the 12-month period preceding the date of the report, confirmation that the Owner has made best efforts to rent the Market Affordable Rental Unit to Tenants who at move-in meet the eligibility criteria for Market Affordable Rental Units that is set out in Schedule "A".
- 6.3 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.

- 6.4 The Township shall have the right to inspect the Records at any time after the delivery of written notice to the Owner, and shall have the right to make extracts from and take copies of the Records, subject to:
- (a) the Owner first obtaining consent from the Tenants for the disclosure of their personal information in the provision of the Records to the Township; or
 - (b) the Owner's disclosure of the personal information of a Tenant to the Township being otherwise permitted under the provisions of the *Personal Information Protection Act* (British Columbia).

7.0 ENFORCEMENT AND WAIVER

- 7.1 The rights given to the Township by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the Township to anyone, or obliges the Township 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 Township 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.
- 7.2 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.
- 7.3 The parties agree that the Township is not obligated to inspect the Lands or to otherwise ensure compliance with this Agreement, nor is the Township obligated to remedy any default of this Agreement. A failure by the Township to enforce this Agreement shall not constitute a waiver of any of the Township's rights herein.
- 7.4 Notwithstanding any provision to the contrary in this Agreement, if the Owner is in default of its obligations in this Agreement then the Township 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 Township, without limiting any other right it might have, may pursue a remedy consistent with the provisions described in sections 7.5 and 7.6 below.
- 7.5 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.
- 7.6 The Owner covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the Township 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.

7.7 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.

8.0 TERM

8.1 This Agreement shall continue in effect throughout the Term.

9.0 AMENDMENT

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

9.2 Pursuant to section 483(4) of the *Local Government Act*, this Agreement may be amended only by a bylaw adopted by the Township, with the consent of the Owner.

10.0 INDEMNITY AND RELEASE

10.1 The Owner hereby releases and indemnifies and saves harmless the Township 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 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 Township of any of its rights under this Agreement or an enactment; and
- (e) the Township 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 Township.

10.2 The indemnity and release under section 10.1 shall survive the termination of this Agreement.

10.3 For certainty, indemnity and release under section 10.1 do not apply to legal proceedings under which a decision of the Corporation of the Township of Esquimalt is challenged

based on an alleged lack of statutory authority.

11.0 BINDING AND BINDING EFFECT

11.1 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. Once a notice of this Agreement is filed in the Land Title Office, 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 NO COMPENSATION

12.1 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 Township, 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.

13.0 NO PUBLIC LAW DUTY

13.1 Where the Township 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 Township is under no public law duty of fairness or natural justice in that regard and agrees that the Township may do any of those things in the same manner as if it were a private party and not a public body.

14.0 NOTICE

14.1 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 Land Title Office, 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.

15.0 SEVERABILITY

15.1 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.

16.0 ENTIRE AGREEMENT

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

17.0 PRIORITY

17.1 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 Township or in favour of the Township, and that a notice under section 483(5) of the *Local Government Act* will be filed on the title on the Land.

18.0 LIMITATION ON OWNER'S OBLIGATIONS

18.1 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.

19.0 NO JOINT VENTURE

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

20.0 JOINT AND SEVERAL

20.1 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.

21.0 APPLICABLE LAW

21.1 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.

22.0 FURTHER ACTS

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

23.0 ENUREMENT

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

24.0 DEED AND CONTRACT

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

25.0 COUNTERPARTS

25.1 This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which, taken together, will be deemed to constitute one and the same instrument.

26.0 DELIVERY BY ELECTRONIC TRANSMISSION

26.1 Delivery of an executed copy of this Agreement by any party by electronic transmission will be as effective as personal delivery of an originally executed copy of this Agreement by such party.

[Remainder of page left blank intentionally. Signature page follows.]

DRAFT

IN WITNESS whereof the Parties have executed this Agreement as of the day and year first above written.

1237932 BC LTD.,)
by its authorized signatories:)

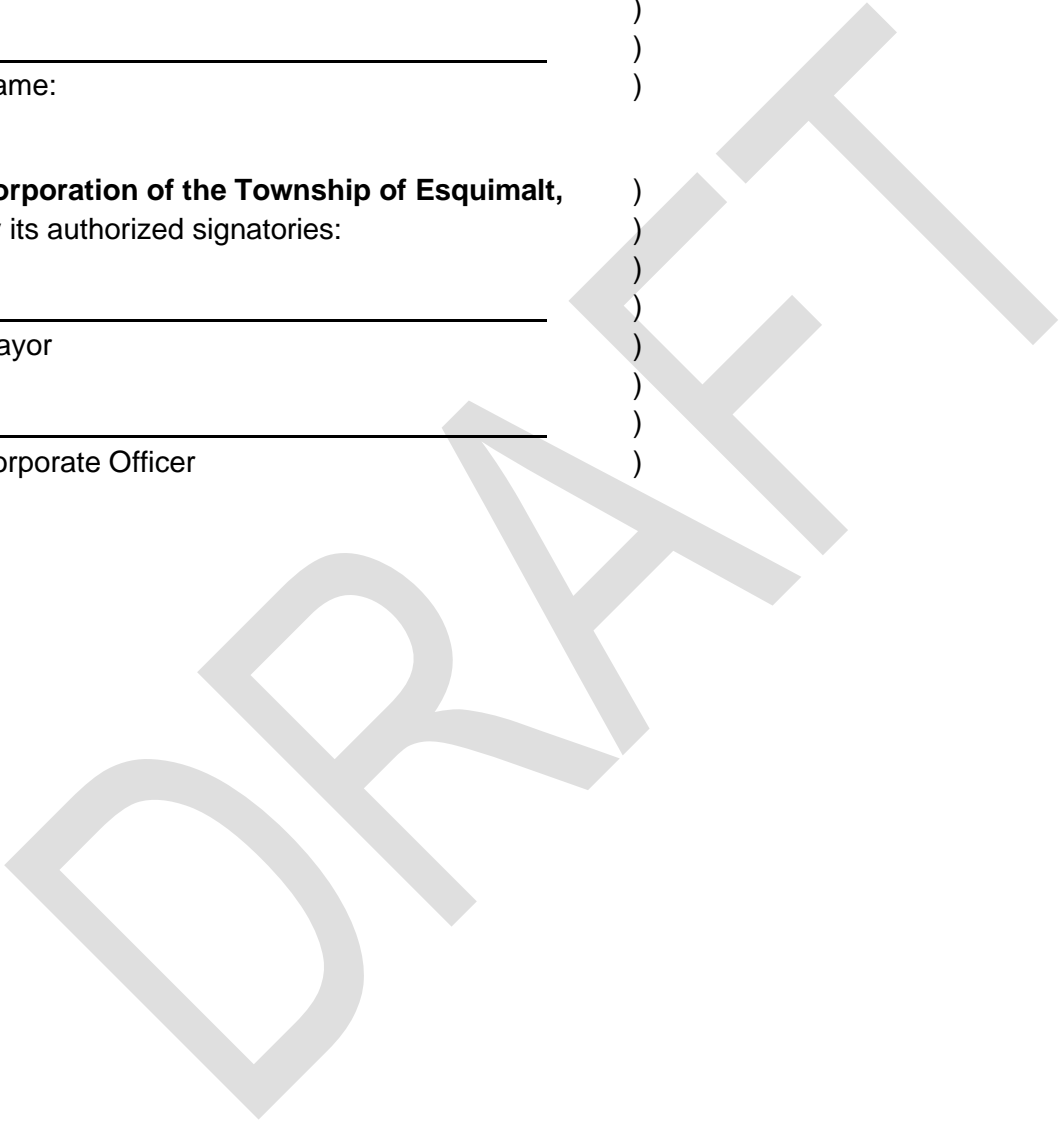
_____)
Name:)

_____)
Name:)

Corporation of the Township of Esquimalt,)
by its authorized signatories:)

_____)
Mayor)

_____)
Corporate Officer)



Schedule "A"

Eligible Occupants

"Eligible Occupants" means:

- a) for an Affordable Rental Unit, persons residing together who collectively have an Income that does not exceed the Housing Income Limits for that Affordable Rental Unit;
- b) for a Market Affordable Rental Unit, but subject always to the "best efforts" obligation of the Owner under section 6.2(d) of this Agreement, that:
 - i. at least one of the persons residing in the Market Affordable Rental Unit has full time employment within the geographical boundaries of the Township of Esquimalt; or
 - ii. if the Owner is not able to rent the Market Affordable Rental Unit to a Tenant that meets the criteria in sub-paragraph (i), that at least one of the persons residing in the Market Affordable Rental Unit has lived in the Township of Esquimalt for a minimum of ten years;
- c) for a Market Rental Unit, there shall be no eligibility requirements whatsoever.