

PART 2 - TERMS OF INSTRUMENT

AFFORDABLE HOUSING AGREEMENT, SECTION 219 COVENANT AND RENT CHARGE, INDEMNITY, OPTION TO PURCHASE, AND RIGHT OF FIRST REFUSAL

THIS AGREEMENT dated for reference the day of , 2019 is

BETWEEN:

DISTRICT OF TOFINO, 121 Third Street, PO Box 9, Tofino, B.C., V0R 2Z0

(the "District")

AND:

Tofino Housing Corporation, 121 Third Street, PO Box 9, Tofino, B.C., V0R 2Z0

(the "Owner")

WHEREAS:

- A. The Owner is the registered owner of the Land (as hereinafter defined);
- B. Pursuant to section 483 of the *Local Government Act*, the District may, by bylaw, enter into a housing agreement, which agreement may include terms and conditions agreed to by the District and the Owner regarding the occupancy of the housing units identified in the agreement;
- C. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the District in respect of the use of land or construction on land;
- D. The Owner and the District wish to enter into this Agreement to provide for restricted affordable housing on the terms and conditions set out in this Agreement, and this Agreement is both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*;

THIS AGREEMENT is evidence that, in consideration of the mutual promises contained herein and the payment of \$1.00 by the District to the Owner (the receipt and sufficiency of which the Owner hereby acknowledges), the parties agree as follows:

PART I – DEFINITIONS

- 1. In this Agreement, the following words have the following meanings:
 - (a) "Affordable Housing Funder" means an institution or agency who provides a grant or preferential rate loan to support the development of Affordable Rental Housing on the Land.
 - (b) "Affordable Rental Housing " means dwelling units rented as Affordable Rental Housing in accordance with Part II herein, to be used and occupied in accordance with

this Agreement;

- (c) “Dispose” means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, divest, and agree to do any of those things;
- (d) “Full-time” means an average of at least 26 hours per week, year-round, and in the case of self-employment, means employment from which an individual earns at least 90% of his or her annual income
- (e) “General Instrument” means the Form C under the Land Title (Transfer Forms) Regulation, as amended, and all schedules and addenda to the Form C charging the Land and attaching this Agreement;
- (f) “Gross Annual Household Income” means the total before tax income of all adults (19 years and older) living in the Affordable Rental Housing unit.
- (g) “Land” means the land legally described as Parcel Identifier: 000-251-861, Lot 1, District Lot 132, Clayoquot District, Plan 33516
- (h) “Qualified Person” means an individual who:
 - (i) has lived in the Alberni Clayoquot Regional District for a minimum of 24 months out of the previous 36 months;
 - (ii) has been working Full-Time for more than one (1) year with one or more businesses or institutions within the District of Tofino, provided the businesses or institutions hold, if required, a valid business license from the District of Tofino, or with Island Health or with Parks Canada at Pacific Rim National Park or with BC Parks in the Parks and Protected Areas in the Tofino area, or he or she is a Senior or is receiving disability assistance under the *Employment and Assistance for Persons with Disabilities Act*;
 - (iii) he, she, or his or her spouse or common law partner does not own, either directly or indirectly through a trust, business asset, or otherwise, any interest in real property anywhere in the world; and
 - (iv) has a gross annual household income of not more than:
 - (A) \$48,400, to qualify for occupancy in respect of a one bedroom unit; and
 - (B) \$53,900 to qualify for occupancy in respect of a one bedroom and den unit; and
 - (C) \$77,000 to qualify for occupancy in respect of a two bedroom unit; and
 - (D) \$85,500 to qualify for occupancy in respect of a two bedroom and den or larger unit; andexcept that the amounts in A through D above can be adjusted by the percentage change in the Housing Income Limits for Nanaimo (as published by BC Housing) from 2019 to the calendar year preceding the day a Tenancy Agreement is entered into in respect of a unit.

- (i) "Senior" means an individual 55 years of age or older.
- (j) "Tenancy Agreement" means a tenancy agreement, lease, license, or other agreement granting rights to occupy an Affordable Rental Housing unit;
- (k) "Tenant" means an occupant of an Affordable Rental Housing unit by way of a Tenancy Agreement.

PART II – USE OF LAND AND CONSTRUCTION OF AFFORDABLE RENTAL HOUSING UNITS

- 2. The Owner covenants and agrees with the District that:
 - (a) the Land will only be used for Affordable Rental Housing;
 - (b) the Owner will design and construct the Affordable Rental Housing to completion in accordance with District of Tofino Building Bylaw No. 940, 2003, as amended or replaced from time to time;
 - (c) the Owner will at all times ensure that the Land is used and occupied in compliance with all statutes, laws, regulations, and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of the District and all federal, provincial, municipal, or local laws, statutes, or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria, or the like promulgated under or pursuant to any such laws; and
 - (d) the Owner will make reasonable commercial efforts, at the Owner's expense, to ensure that this Agreement will be registered against title to the Land in priority to all charges and encumbrances which may have been registered or are pending registration against title to the Land, save and except those specifically approved in writing by the District or in favour of the District.

PART III – USE AND OCCUPANCY OF AFFORDABLE RENTAL HOUSING

- 3. The Owner agrees that any dwelling unit on the Land may only be used as a permanent residence occupied by one or more Qualified Persons or persons as defined by agreement with an Affordable Housing Funder, and by one or more additional persons who are not Qualified Persons but who are residing with the Qualified Person(s) in a single domestic unit and related by blood, marriage or other spousal relationship, adoption, or foster parenthood. The Owner further agrees that the number of Qualified Persons who permanently reside in the Affordable Rental Housing unit must be equal to or less than the number of Qualified Persons that the District's building inspector determines (acting reasonably) can reside in the Affordable Housing Unit given the number and size of bedrooms in the Affordable Rental Housing unit and in light of any relevant standards set by the District in any bylaws of the District.
- 4. Notwithstanding anything to the contrary contained in this Agreement, if there are no Qualified Persons prepared to rent an Affordable Rental Housing unit then the unit may be occupied by a person who meets clause iii of the Qualified Person definition and who has

full-time employment with one or more businesses or institutions within the District of Tofino, provided the businesses or institutions hold, if required, a valid business license from the District of Tofino, or with Parks Canada at Pacific Rim National Park, or with Island Health, or with BC Parks in the Parks and Protected Areas in the Tofino area, provided that in selecting tenants under this section the Owner shall give priority to potential tenants who have lived in the Alberni Clayoquot Regional District for at least 24 out of the previous 36 months, and provided further that the Affordable Housing Unit must be rented or leased in accordance with all other requirements of this Agreement and any maximum income or other eligibility requirements stipulated by an Affordable Housing Funder.

5. Notwithstanding anything to the contrary contained in this Agreement, if there are no Qualified Persons as herein defined nor any persons as defined by clause 4 prepared to rent an Affordable Rental Housing unit then the unit may be occupied by a person who meets both clause iii of the Qualified Person definition, and the maximum household income thresholds stipulated by clause iv of Qualified Person definition, and who is currently working in the Alberni Clayoquot Regional District, is a Senior or is receiving disability assistance under the *Employment and Assistance for Persons with Disabilities Act*, provided that the Affordable Rental Housing unit is rented or leased in accordance with all other requirements of this Agreement and any maximum income or other eligibility requirements stipulated by an Affordable Housing Funder.
6. Notwithstanding anything to the contrary contained in this Agreement, if there are no Qualified Persons as herein defined nor any persons as defined by clause 4 or 5 prepared to rent an Affordable Rental Housing unit then the the unit may be occupied by any person, provided that the Affordable Rental Housing unit is rented or leased in accordance with all other requirements of this Agreement and any maximum income or other eligibility requirements stipulated by an Affordable Housing Funder.
7. Within five (5) business days after receiving notice from the District, the Owner will in respect of each Affordable Rental Housing unit, deliver, or cause to be delivered, to the District a statutory declaration, substantially in the form attached as Schedule C, sworn by the Owner, containing all of the information required to complete the statutory declaration. The District may request such a statutory declaration in respect of an Affordable Rental Housing unit no more than two (2) times in any calendar year. The Owner agrees to provide, when so requested by the District, all information it has obtained from Tenants to satisfy the Owner that the Tenant is eligible as per the terms of this Agreement to rent and occupy the Affordable Rental Housing unit, as well as documentation to confirm it followed the tenant screening procedures as outlined in this Agreement. The Owner hereby irrevocably authorizes the District to make such inquiries as it considers necessary and reasonable in order to confirm that the Owner is complying with this Agreement, and irrevocably authorizes and directs the recipient, including but not limited to the provincial issuing authority for drivers licenses, of the request for information from the District to provide such information to the District.
8. If the Owner cannot comply with the occupancy requirements for any Affordable Rental Housing unit for reasons of hardship, the Owner may request that the District alter the Owner's obligations with respect to that Affordable Rental Housing unit on terms acceptable to the District, but no such request may be made later than thirty (30) days after the District has delivered to the Owner a notice of breach of this Agreement under Part XI herein. The Owner must deliver the request in writing in accordance with section 23

of this Agreement. The request must set out the circumstances of the hardship involved and the reasons why the Owner cannot comply with the occupancy requirements, and must describe the hardship to the Owner that compliance would cause. The Owner agrees that the District is under no obligation to grant any relief, and may proceed with its remedies under this Agreement and at law and in equity, despite the Owner's request or the hardship involved, and the Owner agrees that relief, if any, is to be determined by the District in its sole discretion.

PART IV – RENTAL OF AFFORDABLE RENTAL HOUSING

9. The Owner must not rent or lease any Affordable Rental Housing except to a Qualified Person in accordance with section 3, or another person in accordance with section 4, 5 or 6, and except in accordance with the following additional conditions:
 - (a) the Affordable Housing Unit will be used or occupied only pursuant to a Tenancy Agreement;
 - (b) the monthly rent payable for the Affordable Rental Housing will not exceed:
 - (i) \$1100 for a one bedroom unit; and
 - (ii) \$1225 for a one bedroom and den unit; and
 - (iii) \$1750 for a two bedroom unit; and
 - (iv) \$1950 for a two bedroom and den or larger unit,
provided that the amounts in (i) through (iv) above may be increased for a vacant unit by the percentage change from the 2019 Housing Income Limits for Nanaimo ("Nanaimo HILs"), as published annually by BC Housing, to the most recently published Nanaimo HILs.
 - (c) the Owner will not require the Tenant to pay any extra charges or fees for use of any common property, limited common property, or other common area, or for sanitary sewer, storm sewer, or property taxes. For clarity, this section does not apply to cablevision, telephone, Internet, water, hot water, parking or electric utility fees or charges;
 - (d) The owner may raise rental rates of occupied Affordable Rental Housing units in accordance with the rules and procedures of the *Residential Tenancy Act*, provided the percent the rents can be raised for occupied units cannot exceed the percent change from the two most recently published Nanaimo HILs. For clarity, rental rates of vacant units may only be raised subject to the conditions of 9(b).
 - (e) the Owner will include in the Tenancy Agreement a clause requiring the Tenant to comply with the use and occupancy restrictions contained in Part III of this Agreement;
 - (f) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement in accordance with the *Residential Tenancy Act* if the Tenant uses or occupies, or allows use or occupation of, the Affordable Rental Housing unit in breach of the use and occupancy restrictions contained in this Agreement;

- (g) the Tenancy Agreement will identify all occupants of the Affordable Rental Housing unit, and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Affordable Rental Housing unit for more than seven (7) consecutive days or more than a total of fifteen (15) days in any calendar year;
 - (h) the Tenancy Agreement will provide for termination of the Tenancy Agreement by the Owner in situations where the Affordable Rental Housing unit is occupied by more than the number of people the District's building inspector determines (acting reasonably) can reside in the Affordable Rental Housing unit given the number of size of bedrooms in the Affordable Rental Housing unit and in light of any relevant standards set by District bylaw;
 - (i) the Tenancy Agreement will provide that the Owner will have the right, at the Owner's option, to terminate the Tenancy Agreement should the Tenant remain absent from the Affordable Rental Housing unit for three (3) consecutive months or longer, notwithstanding the timely payment of rent;
 - (j) the Tenancy Agreement will provide that the Tenant will not sublease the Affordable Rental Housing unit or assign the Tenancy Agreement; and
 - (k) the Tenancy Agreement will provide that the Tenant agrees for the Owner to release, if required, all information provided by the Tenant to confirm his or her and his or her household's eligibility to rent the Affordable Rental Housing unit to the District of Tofino.
 - (l) the Owner will deliver a copy of the Tenancy Agreement to the District upon demand, providing it is permitted to do so under applicable privacy laws.
10. The Owner will terminate the Tenancy Agreement where the Tenant uses or occupies, or allows use or occupation of an Affordable Rental Housing unit in breach of this Agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act*. Notwithstanding, in the event that an existing Tenant's income exceeds the maximum gross household income the Owner will be entitled to allow that Tenant to remain in occupancy under the Tenancy Agreement for a further 12 months. If upon expiry of this period the Tenants income for the previous year still exceeds the maximum gross household income then the Owner will terminate the Tenancy Agreement and providing the Tenant with notice as required under the Residential Tenancy Act.
11. The District may, in its sole discretion, provide written consent to the Owner from time to time to do something that is otherwise not permitted under this Agreement, on such terms and conditions as the District considers desirable.
12. The Owner will be solely responsible for screening Tenants to determine whether or not they qualify to occupy the Affordable Rental Housing in accordance with this Agreement and the Tenant Screening and Selection Procedures attached as Schedule D.

PART V - INTERPRETATION

13. 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 each of reference only and are not to be used in interpreting this Agreement;
- (c) 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 meaning;
- (d) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted, or replaced, unless otherwise expressly provided;
- (e) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (f) time is of the essence;
- (g) all provisions are to be interpreted as always speaking;
- (h) 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. Wherever the context so requires, reference to a “party” also includes agents, officers, employees, and invitees of the party;
- (i) 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
- (j) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

PART VI – MISCELLANEOUS

14. Housing Agreement – The Owner acknowledges and agrees that:

- (a) this Agreement constitutes 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) where an Affordable Rental Housing unit is a separate legal parcel, the District may file notice of housing agreement under section 483 of the *Local Government Act* in the LTO against title to the Affordable Rental Housing unit; and

15. Modification – This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the District, if it is signed by the District and a person who is the current registered owner of the Land.

16. Management – The Owner covenants and agrees that it will furnish good and efficient management of the Affordable Rental Housing units and will permit representatives of the District to inspect the Affordable Housing Rental units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further

covenants and agrees that it will maintain the Affordable Rental Housing units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land.

17. **Indemnity** – The Owner will indemnify and save harmless the District and each of its elected officials, officers, directors, employees, and agents, and their 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, employees, agents, contractors, or other persons for whom the Owner is responsible at law;
 - (b) the Owner’s ownership, lease, operation, management, or financing of the Land or any Affordable Rental Housing unit; or
 - (c) any act or omission of the District or any of its elected officials, officers, directors, employees, agents, or contractors in carrying out or enforcing this Agreement, except where such act or omission constitutes a breach of this Agreement by the District or by any other person for whom the District is responsible at law.
18. **Release** – The Owner by this Agreement releases and forever discharges the District and each of its elected officials, officers, directors, employees, and agents, and its and their 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 advice or direction respecting the ownership, lease, operation or management of the Land or any Affordable Housing Unit which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them.
19. **Survival** – The obligations of the Owner set out in sections 17 and 18 will survive termination of this Agreement.
20. **District Powers Unaffected** – This Agreement does not:
 - (a) affect or limit the discretion, rights, duties or powers of the District or the approving officer for the District under the common law or any statute, bylaw or other enactment nor does this agreement date or give rise to, nor do the parties intend this agreement to create, any implied obligations concerning such discretionary rights, duties or powers;
 - (b) impose on the District any legal duty or obligation, including any duty or care or contractual or other legal duty or obligation, to enforce this Agreement;
 - (c) affect or limit the common law or any statute, bylaw or other enactment applying to the Land or an Affordable Rental Housing unit; or
 - (d) relieve the Owner from complying with any common law or any statute, regulation, bylaw or other enactment.
21. **Agreement for Benefit of District Only** – The Owner and the District agree that:

- (a) this Agreement is entered into for the benefit of the District;
- (b) this Agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier, or user of the Land or any Affordable Rental Housing unit;
- (c) the District may at any time execute a release and discharge of this Agreement without liability to anyone for doing so, and without obtaining the consent of the Owner.

22. **No Public Law Duty** – Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, 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.

23. **Notice** – 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, and in the case of the District addressed as follows:

District of Tofino
121 Third Street
PO Box 9
Tofino, B.C. V0R 2Z0

Attention: Manager of Community Sustainability

or to the most recent postal address provided in a written notice given each of the parties to the other. Any notice that is delivered is considered to have been given on the first day after it is dispatched for delivery.

- 24. **Enurement** – This Agreement binds the parties to it and their respective successors, assigns, heirs, executors, administrators and personal representatives.
- 25. **Severability** – If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 26. **Waiver** – All remedies of the District will be cumulative and may be exercised by the District in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the District exercising any or all remedies will not prevent the later exercise of any remedy for the same breach of any similar or different breach.
- 27. **Sole Agreement** – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the District and the Owner respecting the use and occupation, of the Affordable Rental Housing units, and there are no warranties, representations, conditions, or collateral agreements made by the District except as set forth in this Agreement.

28. **Further Assurances** – Upon request by the District the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the District to give effect to this Agreement.
29. **Covenant Runs with the Land** – This Agreement burdens and runs with the Land and every parcel into which it is Subdivided. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Land.
30. **Limitation on Owner's Obligations** – The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
31. **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.
32. **No Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the District or give the Owner any authority to bind the District in any way.
33. **Applicable Law** – Unless the context requires otherwise, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. Without limiting the above, in the event of any conflict between any provision of this Agreement and the *Residential Tenancy Act*, this Agreement is without effect to the extent of the conflict.
34. **Deed and Contract** – By executing and delivering this Agreement, the Owner intends to create both a contract and a deed executed and delivered under seal.

SCHEDULE D

TENANT SCREENING AND SELECTION PROCEDURES

1. From the commencement of construction the availability of the rental housing at the Project will be promoted by way of on-site signage and other marketing channels including the Owner and partner websites and a project specific website. Interested parties will be able to register their interest on-line.
2. Between three and six months prior to anticipated project completion all parties who have registered their interest will be contacted and invited to submit an application. Applications received by a specified application deadline will be randomly ordered and screened in that order and all subsequent applications will be screened in the order received. After one month from the date of notifying those who have registered interest, an on-line application form will be made available for interested parties who have not yet registered.
3. When applications are received they will be screened for all eligibility requirements including residency, employment, income, and occupancy guidelines. For any applicant who is a Qualified Person, whose household meets occupancy guidelines and whose credit and reference checks are satisfactory, then an offer of tenancy will be made. Screening order will determine tenant selection priority where credit and reference checks are acceptable and household size is identical.
4. Offers of tenancy will only be made to non-Qualified Persons if all units have not been allocated to Qualified Persons two-months prior to the planned date of initial occupancy. Tenancy offers will be made to these applicants based first on the prioritisation of non-Qualified Persons specified in Sections 4, 5 and 6 and second based on screening order.
5. Following the initial occupancy, a wait list of interested parties will be maintained and when a home becomes available those on the waitlist will be contacted. Operation procedures will be established that provide Qualified Persons the first opportunity for a new tenancy with non-Qualified Persons provided subsequent opportunities as per the prioritisation in Section 4,5,6. These procedures must not be overly burdensome to administer and should do not result in units being empty while there are still interested parties on the waitlist.