

## TERMS OF INSTRUMENT – PART 2

### *Housing Agreement and Covenant*

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

BETWEEN:

**THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER**, a  
municipal corporation pursuant to the *Local Government Act* and having  
its offices at 750 17<sup>th</sup> Street, West Vancouver BC V7V 3T3

(the “**District**”)

AND:

**KIWANIS NORTH SHORE HOUSING SOCIETY INC.** NO. S0004376, a  
society having its offices at 100 975 21st Street, West Vancouver, BC  
V7V 0B5

(“**Kiwanis**”)

WHEREAS:

- A. Kiwanis leases from the District certain lands and premises with the civic address of 990 22<sup>nd</sup> Street, legally described as \_\_\_\_\_ (the “**Lands**”), pursuant to a lease dated \_\_\_\_\_ registered against title to the Lands under No. \_\_\_\_\_ (the “**Lease**”);
- B. In accordance with the Lease, Kiwanis intends to construct and operate on the Lands one or more buildings containing affordable rental housing units and an adult day services facility, complete with soft and hard landscaping, on-site and off-site servicing, parking and loading (the “**Development**”);
- C. Section 483 of the *Local Government Act*, permits municipalities to enter into a housing agreement with an owner regarding the occupancy of the housing units, including the form of tenure, the availability of units, the administration and the rents;
- D. Section 219 of the *Land Title Act* permits registration of a covenant in favour of a municipality in respect of the use of land or the use of a building on or to be erected on land and that land is or is not to be built on except in accordance with the covenant and that land is not to be subdivided except in accordance with the covenant;
- E. Kiwanis and the District wish to enter into this Agreement, with respect to Kiwanis’ interest under the Lease (the “**Leasehold Interest**”) to require that, with the exception of the Adult Day Care Facility, all Dwellings in the Development be Affordable Rental Units, during the Term. This

{00744247; 19 }

990 22nd Street  
*Housing Agreement and Covenant*  
*Affordable Rental Housing*

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

- F. The District has, by bylaw, authorized the execution of this Agreement and Kiwanis has duly authorized and executed this Agreement.

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

## **1.0 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

- (a) **“Adult Day Care Facility”** means a facility forming part of the Development and intended to provide day care services to eligible program participants;
- (b) **“Affordable Rent”** means rent within the range set out in Schedule A, subject to increases contemplated in this Agreement;
- (c) **“Affordable Rental Unit”** means a Dwelling that is rented to an Eligible Tenant at Affordable Rent;
- (d) **“Agreement”** means this agreement and includes all recitals, instruments, schedules, and amendments thereto;
- (e) **“Building”** means any building or buildings constructed on the Lands. **“Buildings”** means all buildings constructed on the Lands from time to time;
- (f) **“Canadian National Occupancy Standard”** means the Canadian National Occupancy Standard, or an alternate standard used by the Canadian Mortgage and Housing Corporation (CMHC), from time to time, as a measure of crowding, all as amended or replaced from time to time;
- (g) **“Certificate of Occupancy”** means certificate of occupancy issued by the District of West Vancouver pursuant to Building Bylaw 4400, 2004, as amended or replaced from time to time;
- (h) **“Chief Administrative Officer”** means the person appointed from time to time as the Chief Administrative Officer of the District, or their delegate;
- (i) **“CPI”** means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function;
- (j) **“Daily Amount”** means \$100.00 per day as of January 1, 2022 adjusted thereafter by an amount determined by multiplying \$100.00 by the percentage change in the CPI from January 1, 2022 to January 1 of the year that a written notice is delivered to Kiwanis by the District pursuant to section 5.1;

- (k) **“Development”** has the meaning assigned to that term in Recital B;
- (l) **“Dwelling”** has the same meaning as in the District of West Vancouver Zoning Bylaw No. 4662, 2010, as amended or replaced from time to time. Without limiting the foregoing, at the date of this Agreement, the term “Dwelling” under the Zoning Bylaw means “a building or portion of a building having 2 or more rooms used or intended to be used together for the domestic purposes of one or more persons and including at least one living room, one cooking facility and one bathroom and not rented or available for rent or occupation for periods of less than 30 days”;
- (m) **“Eligible Tenant”** means a Tenant who meets all the qualifications set out in Schedule B;
- (n) **“Existing Tenant”** means a Tenant continuing tenancy of a Dwelling they are renting;
- (o) **“First Occupancy”** means first occupancy for a Building on the Lands permitted by the District of West Vancouver, as evidenced by a Certificate of Occupancy;
- (p) **“Initial Tenant”** means the first New Tenant of a newly constructed Dwelling that has not previously been rented or occupied;
- (q) **“Initial Occupancy Period”** means one calendar year after First Occupancy;
- (r) **“Lands”** has the meaning set out in Recital A;
- (s) **“Lease”** has the meaning set out in Recital A;
- (t) **“Leasehold Interest”** has the meaning set out in Recital E;
- (u) **“Over-housing”** means a situation in which a Tenant is residing in a Dwelling where the number of bedrooms is greater than the number of persons as established under the Canadian National Occupancy Standard; **“Over-housed”** has a corresponding meaning;
- (v) **“Over-housing Charge”** means the amount calculated as follows:
- the difference between rent for the Dwelling that is occupied and the rent for the Dwelling that should be occupied, based on this Agreement. For the purpose of the calculation, the rent for both Dwellings will be based on rents to be imposed on New Tenants. For example, if a Tenant lives in a 3-bedroom Dwelling but should live in a 2-bedroom Dwelling, and the current rent for New Tenants of the Existing Tenant’s 3-bedroom Dwelling is \$700, and the current rent for New Tenants of the 2-bedroom Dwelling being offered to the Existing Tenant is \$500, then the calculation of the Over-housing Charge is as follows: \$700 - \$500 = \$200;
- (w) **“New Tenant”** means a Tenant commencing a new tenancy in a Dwelling;
- (x) **“Permanent Residence”** means that the Affordable Rental Unit is used as the usual, main, regular, habitual, principal residence, abode or home of the Eligible Tenant;
- (y) **“Pet”** has the same meaning as in the District of West Vancouver Animal Control and License Bylaw, No. 4545, 2008, as amended or replaced from time to time. Without limiting the foregoing, at

{00744247; 19 }

the date of this Agreement, the term “Pet” under the Animal Control and License Bylaw means “a domesticated dog, cat, rabbit, ferret, hamster, guinea pig, gerbil, or bird, and includes reptiles and other animals if they are kept inside a dwelling unit, but does not include livestock, poultry, or wildlife as defined by the *Wildlife Act*”;

(z) “**Records**” means all documentation relating to the use and occupation of the Lands and Buildings including tenancy agreements, information confirming Eligible Tenant status, books of account and receipts;

(aa) “**Subdivide**” means to divide, apportion, consolidate or subdivide the Lands, the Building, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or “shared interests in land” as defined in the *Real Estate Development Marketing Act*; “**Subdivision**” has a corresponding meaning;

(bb) “**Tenant**” means one or more individuals that occupy or propose to occupy a Dwelling pursuant to a Tenancy Agreement;

(cc) “**Tenancy Agreement**” means a tenancy agreement pursuant to the *Residential Tenancy Act* that is regulated by the *Residential Tenancy Act*;

(dd) “**Term**” has the meaning set out in section 2.1; and

(ee) “**Zoning Bylaw**” means the District of West Vancouver Zoning Bylaw No. 4662, 2010, as amended by Amendment Bylaw No. 5068, 2020, and as further amended from time to time.

## 1.2 Interpretation

In this Agreement:

(a) words importing the singular number include the plural and vice versa and words importing the neuter gender include the masculine and the feminine genders;

(b) the division of this Agreement into articles and sections and the insertion of headings are for convenience only and will not affect the construction or the interpretation of this Agreement;

(c) references to any article, section or schedule will, unless the context otherwise requires, mean that article, section or schedule of this Agreement;

(d) every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows;

(e) the words “include” and “including” are to be construed as meaning “include without limitation” and “including without limitation”;

(f) all payments to be made will be deemed to be payments in lawful currency of Canada;

{00744247; 19 }

990 22nd Street  
Housing Agreement and Covenant  
Affordable Rental Housing

- (g) reference to “business day” means all days other than Saturday, Sunday and statutory holidays in the Province of British Columbia;
- (h) reference to “party” and “parties” means the one or more parties to this Agreement, as the context demands;
- (i) reference to a whole, for example, the “Lands” and the “Development”, includes reference to a portion thereof; and
- (j) unless expressly stated otherwise, all references to enactments refer to enactments of the Province of British Columbia, as amended or replaced from time to time. All reference to bylaws and policies refers to the bylaws and policies of the District, as amended or replaced from time to time.

### **1.3 Acknowledgements**

Kiwanis acknowledges and agrees that:

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

### **1.4 Schedules**

Schedule A, Schedule B and Schedule C are attached to and form part of this Agreement.

## **2.0 TERM**

### **2.1 Term**

This Agreement will commence on the Reference Date and will continue until the Lease has expired or is terminated (the “Term”).

## **3.0 SECTION 219 COVENANT**

### **3.1 Grant**

Kiwanis, as the holder of the Leasehold Interest, hereby covenants and agrees with the District, as a covenant in favour of the District pursuant to section 219 of the *Land Title Act*, it being the intention and agreement of Kiwanis that the provisions in this Agreement be annexed to, and run with and be a charge upon the Leasehold Interest, that:

{00744247; 19 }

- (a) the Lands will be built on in the manner that includes the following, in the location and configuration satisfactory to the District, as more particularly detailed through the development permit process:

(1) the Adult Day Care Facility; and

(2) Affordable Rental Units in the following unit mix and size:

Unit Type	% Mix (which % mix may vary up or down by no more than 2%)	Number of Units (which number of units may vary up or down by no more than 2 units)	Average Unit Size (Square Feet) (which average size may vary up or down by no more than 3%)
Studio	13%	20	415.8
1-Bedroom	35%	55	603.1
2-Bedroom	37%	58	803.7
3-Bedroom	15%	23	1020.4
TOTAL	100%	156	N/A

- (b) all parking spaces and loading spaces constructed on the Lands will be used for the Affordable Rental Units and the Adult Day Care Facility, in the manner satisfactory to the District, as more particularly detailed through the development permit process;
- (c) the Lands and the Buildings will be used only in accordance with this Agreement;
- (d) except to the extent contained within the Adult Day Care Facility, all Dwellings constructed on the Lands will be used only as Affordable Rental Units; and
- (e) the Lands, the Leasehold Interest, and the Buildings will not be Subdivided in any manner without the prior written consent of the District, acting reasonably. As a condition of Subdivision, the District may require Kiwanis to register against the Leasehold Interest one or more covenants pursuant to section 219 of the *Land Title Act* that limits separate sale or sublease of all or some of the Affordable Rental Units.

### 3.2 Indemnity

As an indemnity pursuant to section 219(6) of the *Land Title Act*, and an integral part of the covenant contained in section 3.1, Kiwanis will indemnify and save harmless the District and each of its elected officials, officers, directors, and agents, and their respective heirs, executors, administrators, personal

{00744247; 19 }

990 22nd Street  
Housing Agreement and Covenant  
Affordable Rental Housing

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 one or more of the following:

- (a) any act or omission of Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible, relating to this Agreement;
- (b) construction, maintenance, operation, management or financing of the Lands, the Development, the Buildings, the Adult Day Care Facility, or any Affordable Rental Unit by Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible;
- (c) any breach of this Agreement by Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible; and
- (d) the exercise by the District of any of its rights under this Agreement,

without any exceptions.

### **3.3 Release**

As a release pursuant to section 219(6) of the *Land Title Act*, and an integral part of the covenant contained in section 3.1, Kiwanis releases and forever discharges the District and each of its elected officials, officers, directors, and agents, and its and their respective heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of one or more of the following:

- (a) any act or omission of Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible, relating to this Agreement;
- (b) construction, maintenance, operation, management or financing of the Lands, the Development, the Buildings, the Adult Day Care Facility, or any Affordable Rental Unit by Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible;
- (c) any breach of this Agreement by Kiwanis, its officers, directors, agents, contractors, or other persons for whom at law Kiwanis is responsible; and
- (d) the exercise by the District of any of its rights under this Agreement,

without any exceptions.

### **3.4 Impact on Market Value**

Kiwanis acknowledges and agrees that no compensation is payable, and Kiwanis is not entitled to and will not claim any compensation from the District, for any decrease in the market value of the Lands, or the Leasehold Interest, which at any time results directly or indirectly from the existence, registration, or operation of this Agreement.

### 3.5 Release and Indemnity Survival

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

## 4.0 USE AND OCCUPANCY OF AFFORDABLE RENTAL UNITS

### 4.1 Rent and Tenure

#### General

(a) Kiwanis will not lease, rent, license or permit occupancy of an Affordable Rental Unit except as follows:

- (1) to an Eligible Tenant;
- (2) at Affordable Rent;
- (3) as a Permanent Residence; and
- (4) pursuant to a Tenancy Agreement.

#### Number of occupants

(b) Kiwanis will ensure that the number of individuals who permanently reside in an Affordable Rental Unit will conform to the suitable minimum and maximum number of occupants pursuant to the Canadian National Occupancy Standard in effect from time to time, as necessary to avoid overcrowding and Over-housing. For clarity, as of the date of this Agreement, the Canadian National Occupancy Standard assesses the bedroom requirements of a household based on the following criteria:

- (1) there should be no more than 2 and no less than 1 persons per bedroom;
- (2) children less than 5 years of age of different sexes may reasonably share a bedroom;
- (3) children 5 years of age or older of opposite sex should have separate bedrooms;
- (4) children less than 18 years of age and of the same sex may reasonably share a bedroom;
- (5) single household members 18 years or older should have a separate bedroom, as should parents or couples; and
- (6) a household of one individual may occupy a bachelor unit (i.e., a unit with no bedroom).

(c) The Tenancy Agreement for an Affordable Rental Unit will identify all occupants of the Affordable Rental Unit and will stipulate that anyone not identified in the Tenancy Agreement will be



prohibited from residing in the Affordable Rental Unit for more than 30 consecutive days or more than 45 days total in any calendar year.

Subleasing/assignment not permitting

- (d) Kiwanis will not permit the Affordable Rental Unit to be subleased, or the Tenancy Agreement for an Affordable Rental Unit to be assigned.

Determining and confirming eligibility and suitability

- (e) To determine eligibility of a prospective Tenant of an Affordable Rental Unit, Kiwanis may reasonably rely on information provided by the prospective Tenant, provided that Kiwanis will require all reasonable information necessary to confirm eligibility (including without being exhaustive income tax records, employment records, school records, residence and/or employment history, and other). Unless Kiwanis' reliance is unreasonable, negligent or in wilful misconduct, Kiwanis will have no liability nor will have breached this Agreement if the prospective Tenant intentionally or unintentionally provides inaccurate information.
- (f) Kiwanis will collect the following information on an annual basis or as otherwise requested by the District to ensure compliance with eligibility requirements of the Affordable Rental Unit as set out in Schedule B:
  - (1) gross annual income from all sources (including employment, disability, retirement, investment, and other) of all members of the Tenant's household who are 18 years of age and over and who reside in the Affordable Rental Unit;
  - (2) a statement of asset ownership; and
  - (3) number of occupants of the Affordable Rental Unit.
- (g) Subject to the requirements of the *Residential Tenancy Act*, Kiwanis will ensure that each Tenancy Agreement includes the following provision:

"By entering into this Tenancy Agreement, the Tenant hereby consents to Kiwanis collecting, retaining and disclosing to the District of West Vancouver personal information required to confirm the Tenant's eligibility to reside in the rental unit, including the following personal information:

  - (1) a statement of gross annual income from all sources (including employment, disability, retirement, investment, and other) of all members of the Tenant's household who are 18 years of age and over and who reside in the Affordable Rental Unit;
  - (2) a statement of asset ownership;
  - (3) details of connection to the community of the District of West Vancouver (including employment, school enrollment, past residence); and
  - (4) number of occupants of the Affordable Rental Unit.

The foregoing personal information may be collected at the beginning of the tenancy and on an annual basis and may be used to confirm the Tenant's eligibility to reside in the rental unit, and to confirm Kiwanis' compliance with the District of West Vancouver affordable housing eligibility requirements."

*Terminating if cease to be eligible, or if Dwelling has too many occupants*

(h) Subject to any contrary provisions in the *Residential Tenancy Act*, Kiwanis will include in the Tenancy Agreement a clause entitling Kiwanis to terminate the Tenancy Agreement if:

- (1) an Affordable Rental Unit is occupied by a person or persons other than an Eligible Tenant;
- (2) the Tenant subleases the Affordable Rental Unit or assigns the Tenancy Agreement in whole or in part;
- (3) the Affordable Rental Unit is occupied by more than the number of people acceptable under the Canadian National Occupancy Standard; or
- (4) the Affordable Rental Unit remains vacant for four (4) consecutive months or longer, notwithstanding the timely payment of rent.

*Over-housing relocation and Over-housing Charge*

(i) Subject to any contrary provisions of the *Residential Tenancy Act*, if an Affordable Housing Unit becomes occupied by less than the number of people than acceptable under the Canadian National Occupancy Standard (also known as "Over-housing"), the following will apply:

- (1) if a Dwelling of the correct size is available, Kiwanis will forthwith, in writing, offer that Dwelling to the Tenant and the Tenant will have the maximum of 30 days from the date of the offer to accept or to refuse the offered Dwelling;
- (2) a Tenant that accepts the offered Dwelling will not be charged any additional amount from the time when the Tenant is Over-housed until the time the Tenant moves into the suitable Dwelling offered;
- (3) a Tenant that refuses the offer of a suitable Dwelling will have a period of six (6) consecutive months, starting from the date of the offer, with no Over-housing Charge. If the Tenant is still living in the Dwelling after this period, the Over-housing Charge may be levied on the Tenant, in addition to the rent;
- (4) if a Dwelling of the correct size is not available, the Tenant may continue to occupy their rented Dwelling, and no Over-housing Charge will be applied until such time that:
  - (i) a Dwelling of correct size is available and is offered to the Tenant, in which case section 4.1(i)(1) will govern; and
  - (ii) the Tenant has refused the offer of the suitable Dwelling, in which case section 4.1(i)(3) will govern;

- (5) if Kiwanis has no Dwellings that meet the Canadian National Occupancy Standard, the Dwelling of the closest size will be considered the one that is suitable for the purpose of this section 4.1(i);
- (6) to avoid frequent moving expenses, a Tenant that accepts a housing offer that does not meet the Canadian National Occupancy Standard may refuse a new, more adequate housing offer submitted by Kiwanis within the following twenty-four (24) consecutive months without having to pay the Over-housing Charge; and
- (7) a Tenant will be fully responsible for all relocation and moving expenses.
- (j) If there is more than one Tenant that is in a situation of Over-housing, Kiwanis will offer a Dwelling of the correct size when it becomes available to Tenants in order of longest tenure.

Pets

- (k) Kiwanis will not prohibit Tenants from having Pets in an Affordable Rental Unit, subject to all applicable provincial, federal and municipal laws and bylaws. Kiwanis may make reasonable rules and regulations with respect to security deposit requirements, size and number of Pets.

Age

- (l) Kiwanis will not impose age-based restrictions on Tenants of Affordable Rental Units.

Payments additional to rent

- (m) Kiwanis will not require Tenants of the Affordable Rental Units to pay any of the following:
  - (1) extra fees or charges for use of common property, limited common property or other common property, facilities or amenities;
  - (2) extra fees or charges for use of sanitary sewer, storm sewer or water;
  - (3) property taxes or similar taxes,provided that Kiwanis may charge the following in addition to the Affordable Rent:
  - (4) providing cable television, telephone, other telecommunications, or electricity fees;
  - (5) electricity fees associated with electrical vehicle charging;
  - (6) security and pet deposit and fees for lockers, parking stalls, key and fob replacements and the use of common rooms, amenity rooms, or similar facilities, if any; and
  - (7) if applicable, the Over-housing Charge.

#### Use of common amenities

- (n) Kiwanis will ensure that occupants of Affordable Rental Units in the Development will have access to and use of all common indoor and outdoor facilities and amenities located in the Development from time to time, except for access to and use of the Adult Day Care Facility.
- (o) Kiwanis will ensure that all occupants of Affordable Rental Units will have access to and use of loading facilities allocated for the use of the Affordable Rental Units in accordance with the Zoning Bylaw, development permit or building permit issued for the Development.

#### **4.2 Starting Affordable Rent and Affordable Rent Increases**

The District and Kiwanis acknowledge that the Affordable Rent set out in Schedule A constitutes Affordable Rent as of January 1, 2021. Acknowledging that Occupancy of the Development will commence after the rates in Schedule A have been established, the parties agree that the following will apply to establishing starting Affordable Rent for New Tenants (including Initial Tenants) and increasing Affordable Rent for Existing Tenants, during the Term:

- (a) for Initial Tenants commencing tenancy within the Initial Occupancy Period: the starting Affordable Rent may be increased from the rental rates set out in Schedule A by the maximum amount permitted by the *Residential Tenancy Act*, as if the Affordable Rental Unit was first rented out on January 1, 2021. For example, if the Initial Tenant moves in between January 1, 2023 and December 31, 2023, rental rates in Schedule A may be increased on January 1, 2022 (in accordance with rate of increase in effect on that date), and on January 1, 2023 (in accordance with rate of increase in effect on that date). In this example, the starting Affordable Rent will be: [Schedule A Affordable Rent] + [January 1, 2022 increase] + [January 1, 2023 increase]. For greater certainty, this section 4.2(a) only applies to Initial Tenants whose tenancy commences within the Initial Occupancy Period and does not apply to: (i) Initial Tenants commencing Tenancy after Initial Occupancy Period has expired; and (ii) New Tenants, but not Initial Tenants, commencing tenancy within the Initial Occupancy Period;
- (b) for Initial Tenants commencing tenancy after the Initial Occupancy Period has expired, and for New Tenants commencing tenancy during or after the Initial Occupancy Period: the starting Affordable Rent will be established as follows:
  - (1) every three (3) years beginning 2025, as early as reasonably possible in the beginning of the calendar year, Kiwanis will engage an independent third-party appraiser to establish market rent for different unit types (comparable to the unit types in the Development) in effect at the time in the District of West Vancouver (the “**Market Rent**”). The starting Affordable Rent for New Tenants (including Initial Tenants) commencing tenancy in the calendar year of the appraisal will equal the percentage of the Market Rent as set out in the applicable column in Schedule A titled “% of Market Rent Rate” for each unit type;
  - (2) during years when there has been no update to Market Rent pursuant to 4.2(b)(1), the starting Affordable Rent for New Tenants (including Initial Tenants) will be established by applying the percentage rent as set out in Schedule A as indicated in the applicable

column titled “% of Market Rent Rate” for each unit types using the most recent Market Rent appraisal, provided that this rent may be increased by the maximum amount permitted by the *Residential Tenancy Act*, from the date of the most recent Market Rent appraisal to the time the tenancy commences;

(3) if the District, acting reasonably, determines that Market Rent has decreased by more than 10% from the most recent Market Rent appraisal, Kiwanis shall obtain an appraisal for Market Rent within 60 days of the District’s written request. In this instance, the starting Affordable Rent for New Tenants (including Initial Tenants) will be calculated in accordance with section 4.2(b)(1), based on Market Rent appraisal; and

(4) with respect to section 4.2(b)(1) and section 4.2(b)(2):

i. a reduction in the Market Rent will result in a corresponding reduction in the starting Affordable Rent for New Tenants (including Initial Tenants); and

ii. an increase in the Market Rent may result in an increase in the starting Affordable Rent for New Tenants (including Initial Tenants); and

(c) for Existing Tenants: Affordable Rent may be increased as permitted from time to time by the *Residential Tenancy Act*, irrespective of the basis on which the starting Affordable Rent was established.

#### **4.3 Operation and Management**

(a) Kiwanis will be fully responsible for complying with all applicable laws and regulations, including the *Residential Tenancy Act*.

(b) Kiwanis will be fully responsible for the management and administration of the Affordable Rental Units, and all associated costs.

(c) Kiwanis will furnish good and efficient management and operation of the Development, the Buildings and the Affordable Rental Units and will permit representatives of the District to inspect the Development, the Buildings and the Affordable Rental Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*.

(d) Kiwanis will maintain the Development (including soft and hard landscaping, servicing, parking and loading), the Buildings and the Affordable Rental 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 Lands.

(e) Kiwanis will not assign or delegate management and operation of the Affordable Rental Units to any entity, except with the prior written consent of the District, acting reasonably. When considering whether to provide consent, the District may consider (without being exhaustive) whether the proposed entity is a society or a non-profit organization experienced in providing affordable housing. As an exception to the foregoing, Kiwanis may retain contractors to assist with repair, facility maintenance, janitorial services, and similar activities, on the Lands, provided

that Kiwanis will remain primarily responsible for the operation and management of the Affordable Rental Units.

#### **4.4 District Inquiries and Inspections**

- (a) On or before December 31 of every calendar year during the Term, and otherwise at the request of the District, acting reasonably, Kiwanis will deliver to the District:
  - (1) a statutory declaration in the form attached as Schedule C;
  - (2) as applicable, the Market Rent appraisal report contemplated in section 4.2(b)(1) or in section 4.2(b)(3);
  - (3) such Records as the District may reasonably require confirming that a Tenant of an Affordable Rental Unit is an Eligible Tenant under this Agreement; and
  - (4) such other information as may be reasonably requested by the District from time to time to confirm Kiwanis' compliance with this Agreement.
- (b) Kiwanis hereby irrevocably authorizes the District to make such inquiries as the District reasonably considers necessary in order to confirm Kiwanis is complying with this Agreement.
- (c) Kiwanis 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.
- (d) The District will have the right to inspect the Records including the right to enter any premises used by Kiwanis to keep or store the Records at any time after the delivery of notice to Kiwanis and will have the immediate right to make extracts from and take copies of the Records.

#### **4.5 District's Administration**

Unless otherwise stated from time to time in a District bylaw, this Agreement will be administered for the District by the Chief Administrative Officer. To that effect:

- (a) all notices addressed to the District pursuant to this Agreement will be addressed to the Chief Administrative Officer and delivered in accordance with section 6.2(h);
- (b) all reports, declarations, and other deliverables that Kiwanis is obligated to deliver or submit to the District under this Agreement will be addressed and delivered to the Chief Administrative Officer;
- (c) except in the context of Subdivision, development permit, building permit, or occupancy approval (in which case ordinary District process will govern) all approvals, consents, and expressions of District's satisfaction, or refusal thereof, as applicable, pursuant to the Agreement will be delivered to Kiwanis by the Chief Administrative Officer; and
- (d) all determinations of the District contemplated in this Agreement (including pursuant to section 4.2) will be delivered to Kiwanis by the Chief Administrative Officer.

Nothing in this section precludes the Chief Administrative Officer from referring a matter, approval, consent, or determination to the District's Council.

## **5.0 DEFAULT AND REMEDIES**

### **5.1 Notice**

- (a) In the event of a default under this Agreement, the District may give to Kiwanis a written notice of default (the “**Notice**”) requiring Kiwanis to cure a default under this Agreement. The Notice must specify the nature of the default.
- (b) Kiwanis will cure the default:
  - (1) within 30 days of receipt of the Notice; or
  - (2) within such longer period as may reasonably be required to cure such default, provided that Kiwanis has advised the District in writing of the time reasonably required to cure the default and is diligently pursuing same.
- (c) In the event of a real or a reasonable perceived emergency, no Notice is required, and Kiwanis will immediately cure the default upon being advised verbally or in writing by the District.

### **5.2 Daily Amount**

If Kiwanis fails to correct a default as contemplated in section 5.1, Kiwanis will pay to the District, as a rent charge pursuant to section 5.3, in respect to each incidence of default, within 30 days of receiving a written request by the District, the Daily Amount for every day that the default continues. The Daily Amount will be increased on January 1 of each year by an amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase in the CPI during the immediately preceding calendar year. The Daily Amount is due and payable immediately upon receipt by Kiwanis of an invoice from the District for the same. This section is without prejudice to any other remedy available to the District under this Agreement and at law or in equity.

### **5.3 Rent Charge**

Kiwanis hereby grants to the District, with respect to the Leasehold Interest, a rent charge under section 5.2 and section 5.3 of this Agreement and under Section 219 of the *Land Title Act*, and at common law, securing payment by Kiwanis to the District of any amount payable by Kiwanis pursuant to this Agreement. Kiwanis agrees that the District, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the District at law or in equity.

### **5.4 Damages Inadequate**

Notwithstanding section 5.2 and section 5.3, Kiwanis acknowledges and agrees that in case of a breach of this Agreement which is not fully remediable by the mere payment of money and promptly so remedied, the harm sustained by the District and to the public interest will be irreparable and not susceptible of adequate monetary compensation. The District may, in its discretion, seek any other remedy that may be available to the District at law or in equity.

## 5.5 No Remedy is Exclusive

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

## 6.0 GENERAL

### 6.1 Registration

Kiwanis acknowledges and agrees that:

- (a) The covenants and agreements on the part of Kiwanis in this Agreement have been made by Kiwanis as contractual obligations as well as being made pursuant to section 483 of the *Local Government Act* and as a covenant pursuant to section 219 of the *Land Title Act*;
- (b) Kiwanis will cause the registration of the section 219 covenant contained in this Agreement against the Leasehold Interest in priority to all financial charges and encumbrances (including mortgages, assignments of rents, liens, options to purchase, and rights of first refusal); and
- (c) this Agreement will be registered as a charge against the Leasehold Interest on title to the Lands, pursuant to section 219 of the *Land Title Act*, and will be noted as a notation on title to the Lands pursuant to section 483 of the *Local Government Act*.

### 6.2 Miscellaneous

- (a) Kiwanis and the District agree that:
  - (1) this Agreement is entered into only for the benefit of the District;
  - (2) this Agreement is not intended to protect the interests of Kiwanis, any tenant, or any future owner, lessee, occupier or user of the Lands, the Development, the Buildings, or any Affordable Rental Unit; and
  - (3) 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 Kiwanis.
- (b) This Agreement burdens and runs with the Lands and any part into which any of them may be Subdivided. All covenants and agreements contained in this Agreement are made by Kiwanis for itself, its successors and assigns, and all persons who acquire an interest in the Lands after the date of this Agreement. Without limiting the foregoing, Kiwanis will not be liable for any breach of any covenant, promise or agreement herein in respect of any portion of the Lands sold, assigned, considered or otherwise disposed of, occurring after Kiwanis has ceased to hold the Leasehold Interest in the Lands.
- (c) This Agreement may only be modified in writing, signed by both parties, in registrable form. The modification will only be effective if it is approved both as a modification of a housing agreement pursuant to section 483 of the *Local Government Act* (which requires a bylaw), and

{00744247; 19 }



as a modification of a covenant pursuant to section 219 of the *Land Title Act*. Any modification will be filed in the Land Title Office as a modification of a covenant and as a modification of the housing agreement.

- (d) 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 anyone, or obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
- (e) The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement will not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- (f) 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 will not constitute a waiver of any of the District's rights herein.
- (g) If a Court of competent jurisdiction finds that any part of this Agreement is invalid, illegal, or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that finding or by the severance of that part.
- (h) All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, or by personal service, to the address written on page 1 of this Agreement. All notices to the District must be addressed to the Chief Administrative Officer. Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the other parties, may designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.
- (i) Upon request by the District, Kiwanis will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the District, to give effect to this Agreement.
- (j) This Agreement will ensure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.
- (k) This Agreement, and any documents signed by Kiwanis contemplated by this Agreement, represents the whole agreement between the District and Kiwanis, and there are no warranties, representations, conditions or collateral agreements made by the District or Kiwanis except as set forth in this Agreement.
- (l) Nothing in this Agreement will constitute Kiwanis as the agent, joint venturer, or partner of the District or give Kiwanis any authority to bind the District in any way.

(m) A reference in this Agreement to approval or consent of the District shall be a reference to approval by the District's Chief Administrative Officer or their designate. Nothing in this section precludes the Chief Administrative Officer from referring an approval or consent to the District's Council.

(n) This Agreement can be signed in counterpart and delivered electronically.

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

**SCHEDULE A**  
**AFFORDABLE RENT**

Unit Mix	Average Size (sq. ft) (which may vary up or down by 3%)	Average L1 Rent****	Average Rent/sq. ft.	% of Market Rent Rate
Studio*	415.8	\$1,141.29	\$2.74	75%
1-bd.*	603.1	\$1,479.28	\$2.45	75%
2-bd.**	803.7	\$2,035.85	\$2.53	75%
3-bd.***	1020.4	\$2,689.06	\$2.64	75%

\*Floor level adjustment of \$20 per floor for Studio and 1-bd units

\*\*Floor level adjustments of \$30 per floor for 2-bd

\*\*\*Floor level adjustment of \$50 per floor for 3-bd units

\*\*\*\*Rent will reflect square footage of the unit (on the basis of average rent/square foot)

**SCHEDULE B  
ELIGIBLE TENANT**

An Eligible Tenant is a Tenant who meets all the following qualifications:

- (1) has a cumulative household gross annual income from all sources (including employment, disability, retirement, investment, and other) that does not exceed the limits set out below:
  - i. for Dwellings with less than two (2) bedrooms, a gross household income that does not exceed 1.25 multiplied by BC Housing's Low and Moderate Income Limits for couples without children in BC, as determined by BC Housing from time to time. For 2022, this calculation amounts to:
    - 1.25 multiplied by \$77,430, for a gross household income limit of \$96,787; and
  - ii. for Dwellings with two (2) or more bedrooms, a gross household income that does not exceed 1.20 multiplied by BC Housing's Low and Moderate Income Limits for families with children in BC, as determined by BC Housing from time to time. For 2022, this calculation amounts to:
    - 1.20 multiplied by \$120,990, for a gross household income limit of \$145,188.

For clarity, "**Low and Moderate Income Limits**" in this Schedule B has the same meaning as set by BC Housing from time to time. As of the date of this Agreement, "Low and Moderate Income Limits" refers to a gross household income that does not exceed the median income [*being 50<sup>th</sup> percentile*], for couples with or without children in BC, as applicable, all as determined by BC Housing from time to time;

- (2) do not currently own an interest in residential real property anywhere in the world, and are living in rental housing or another non-ownership tenure (e.g. living with family);
- (3) do not own assets (including stocks, bonds, term deposits, mutual funds and cash, real estate equity (net of debt), business equity in a private incorporated company, and such other assets as are valued by BC Housing from time to time to determine eligibility for supportive housing) in excess of:
  - i. for 2-bedroom units and for 3-bedroom units: \$400,000.00; and
  - ii. for studios and for 1-bedroom units: \$300,000.00;
- (4) can demonstrate a substantial connection to the West Vancouver community, including (without being exhaustive) in one or more of the following ways:

- i. at least one member of the Tenant's household has resided in West Vancouver for at least 12 months;
- ii. at least one member of the Tenant's household is employed in West Vancouver; and
- iii. at least one member of the Tenant's household is enrolled in a school within the boundaries of the District of West Vancouver,

provided that if, despite reasonable efforts, Kiwanis is unable to find Eligible Tenants who meet the qualification in this paragraph (4), then, upon prior written approval of the District, which will not be unreasonably withheld, Kiwanis may accept otherwise Eligible Tenants who do not have a substantial connection to the West Vancouver community but have a substantial connection to the North Shore community in the ways outlined immediately above. For the purpose of this section "North Shore" refers to the cumulative geographic area of the District of West Vancouver, the District of North Vancouver and the City of North Vancouver.

The District and Kiwanis will meet periodically to discuss if any amendments or adjustments to this Schedule B – Eligible Tenant may be warranted, with the first meeting to take place within the first two years after initial occupancy of the Development.

**SCHEDULE C**

**STATUTORY DECLARATION**

	)	
CANADA	)	
	)	IN THE MATTER OF Unit Nos. _____ - _____ (collectively,
	)	the " <b>Affordable Rental Units</b> ") located at
	)	_____
PROVINCE OF BRITISH	)	( <i>street address</i> ), British Columbia, and Housing Agreement
COLUMBIA	)	dated _____, 20____ (the " <b>Housing</b>
	)	<b>Agreement</b> ") between Kiwanis North Shore Housing Society
	)	and the District of West Vancouver (the " <b>City</b> ")
TO WIT:	)	
	)	

I, \_\_\_\_\_ (*full name*),

of \_\_\_\_\_ (*address*) in the Province

of British Columbia, DO SOLEMNLY DECLARE that:

I am \_\_\_\_\_ of Kiwanis North Shore Housing Society and have personal knowledge of the matters set out herein;

This declaration is made pursuant to the terms of the Housing Agreement in respect of the Affordable Housing Units for each of the 12 months for the period from January 1, 20\_\_\_\_ to December 31, 20\_\_\_\_ (the "Period");

Throughout the Period:

- (a) the Affordable Rental Units, if occupied, were occupied only by Eligible Tenants (as defined in the Housing Agreement);
- (b) all Affordable Rental Units have been rented at Affordable Rent (as defined in the Housing Agreement);
- (c) Affordable Rent has not exceeded 75 % of average market rent in the District of West Vancouver for equivalent units, except as expressly permitted in the Housing Agreement; and

- (d) subject to availability, all Affordable Rental Units have been rented to suitable Tenants, in accordance with the Canadian National Occupancy Standards, as reasonably necessary to avoid overcrowding and Over-housing.

Appendix 1 is attached to this declaration setting out: the Affordable Rent for each rented Affordable Rental Unit as of the date of this declaration, the date of tenancy commencement, the time and rate of last increase in the Affordable Rent, and the list of Affordable Rental Units not rented as of the date of this declaration.

[To be included during the years in which Market Rent appraisal is carried out pursuant to section 4.2(b)(1) or section 4.2(b)(3)] The average market rent in the District of West Vancouver for equivalent units in the same time period is set out in the report attached as Appendix 2.

I make this solemn declaration, conscientiously believing it to be true and knowing that it is of same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

DECLARED BEFORE ME at )  
\_\_\_\_\_ in the )  
Province of British Columbia, Canada, this )  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ )

\_\_\_\_\_  
(Signature of Declarant)

Name:

\_\_\_\_\_  
A Notary Public and a Commissioner for taking )  
Affidavits in and for the Province of British )  
Columbia )

*Declarations should be signed, stamped, and dated and witnessed by a lawyer, notary public, or commissioner for taking affidavits.*

Appendix 1

<b>Unit #</b>	<b>Rented (R) or Unrented (UR)</b>	<b>If rented: Current rent</b>	<b>If rented: Date current tenancy commenced</b>	<b>If rented: Date of last rent increase</b>	<b>If rented: % of last rent increase</b>	<b>Number of occupants</b>



*Appendix 2*

*[report to be attached, as and when applicable]*