

 Director	 Municipal Manager/Deputy Municipal Manager
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<i>COUNCIL AGENDA</i>	
Date: <u>November 25, 2024</u>	Item: <u>10. (On-Table)</u>



DISTRICT OF WEST VANCOUVER
750 17TH STREET, WEST VANCOUVER BC V7V 3T3

COUNCIL REPORT

Date:	November 20, 2024
From:	John Wong, Senior Manager, Facilities & Assets
Subject:	Housing Agreement Authorization Bylaw No. 5352, 2024 for the Supportive Housing Units (201 to 211 – 723 Main Street) at the Park Royal Gateway Building
File:	1610-20-5352

RECOMMENDATION

RECOMMENDED THAT:

Proposed “Housing Agreement Authorization Bylaw No. 5352, 2024” be read a first, second and third time.

1.0 Purpose

The purpose of this report is to introduce a Housing Agreement Authorization Bylaw No. 5352, 2024 for the supportive housing units (201 to 211 – 723 Main Street) at the Park Royal Gateway Building.

2.0 Legislation/Bylaw/Policy

The goals of this report are supported through the District’s Housing Action Plan in providing supportive housing in the District.

3.0 Council Strategic Objective(s)/Official Community Plan

Official Community Plan (OCP) Policy 2.1.19 states “Work with non-profit housing groups ... in the ... creation of ... supportive housing, particularly in areas close to transit service”.

4.0 Financial Implications

Council authorized the sale of the supportive housing units for \$2,000,000 to VRS Community Services Society (VRS) to operate the units as supportive housing units, subject to adopting this Housing Agreement. The disposition will also alleviate the District from any future costs of ownership such as administration costs, maintenance and operating cost, capital improvements, common area costs, holding costs (if there is no operator in place), and the cost of securing future operators, but still providing the required supportive housing units to the community.

5.0 Background

5.1 Previous Decisions

No previous decisions with respect to this Housing Agreement.

5.2 History

Park Royal Shopping Centre Holdings Ltd. (Park Royal) applied for a comprehensive redevelopment of its freehold property at Park Royal South. The proposal involved a rezoning from commercial to mixed use and a development permit to implement the goals and objectives of the Marine Drive Local Area Plan (LAP) for this site.

As part of the Community Amenity Contribution agreement for the project, Park Royal provided 11 purpose built non-market rental units that the District was provided ownership. The units are located on the second floor of the west building, are move-in ready, and range in size from studios to 2-bedroom units.

6.0 Analysis

6.1 Discussion

VRS has agreed to purchase the housing units for \$2,000,000. The sale is subject to Mayor and Council adopting this Housing Agreement Authorization Bylaw.

The Housing Agreement would secure the commitment of VRS to operate all 11 dwelling units at 201 to 211 Main Street, comprising Air Space Parcel 3 (ASP3) in the Park Royal Gateway Building, as supportive housing to eligible occupants pursuant to funding grants from the Province. ASP3 will be strata subdivided into 11 strata lots, one for each of the 11 strata lots (ASP3 Strata Lots), but the Housing Agreement stipulates that the ASP3 Strata Lots may not be separately sold.

The Housing Agreement is not in perpetuity. Instead, it provides that after 20 years VRS may separately sell the ASP3 Strata Lots to arms length purchasers free and clear of the Housing Agreement, but only after VRS and the District agreed on a replacement property in the District of West Vancouver suitable for at least 11 replacement supportive housing dwelling units. The replacement property would have to be acceptable to the District. The net proceeds of sale of the ASP3 Strata Lots would have to be used for the purpose of acquiring the new replacement property, and only the balance of the net proceeds (if any) would be released to VRS. The replacement property would be subject to a new housing agreement in favour of the District on substantially the same terms as this Housing Agreement. This will ensure that there will be in perpetuity 11 supportive housing units in the District although not necessarily in the current location.

6.2 Climate Change & Sustainability

The agreement will provide a qualified and financially stable supportive housing operator to operate the housing units in West Vancouver.

6.3 Public Engagement and Outreach

A Notice of Disposition will be advertised in the North Shore News.

Date: November 20, 2024 Page 3
From: John Wong, Senior Manager, Facilities & Assets
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Housing Units (201 to 211 – 723 Main Street) at the Park Royal Gateway Building

6.4 Other Communication, Consultation, and Research

The District's Planning, Development & Environment, Parks, Culture & Community Services, and Financial & Corporate Services Divisions have been consulted on the subject matter of this report.

Author: 

John Wong, Senior Manager, Facilities & Assets

Appendices:

Appendix 1: Housing Agreement Authorization Bylaw No. 5352, 2024

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District of West Vancouver

Housing Agreement Authorization Bylaw No. 5352, 2024

Effective Date:

District of West Vancouver

Housing Agreement Authorization Bylaw No. 5352, 2024

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District of West Vancouver

Housing Agreement Authorization Bylaw No. 5352, 2024

A bylaw to enter into a housing agreement for the supportive housing units at 201 to 211 - 723 Main Street.

WHEREAS the Council of The Corporation of the District of West Vancouver deems it expedient to enter into a housing agreement with VRS Community Services Society, the owner of 201 to 211 - 723 Main Street in the District of West Vancouver.

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This bylaw may be cited as Housing Agreement Authorization Bylaw No. 5352, 2024.

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Authorization to Enter into an Agreement

- 3.1 The Council hereby authorizes a housing agreement between The Corporation of the District of West Vancouver and VRS Community Services Society substantially in the form attached to this Bylaw as Schedule A with respect to property in the District of West Vancouver at 201 to 211, 723 Main Street legally described as PID: 031-831-931, Air Space Parcel 3, District Lot 1040 Group 1 NWD Air Space Plan EPP113907.

Part 4 Execution of Documents

- 4.1 The Mayor and Corporate Officer are authorized to execute any documents required to give effect to the housing agreement.

Schedules

Schedule A – Section 219 Housing Agreement Covenant and Rent Charge

READ A FIRST TIME on [Date]

READ A SECOND TIME on [Date]

READ A THIRD TIME on [Date]

ADOPTED by the Council on [Date].

Mayor

Corporate Officer

**Schedule A – Section 219 Housing Agreement Covenant
and Rent Charge**

**SECTION 219 HOUSING AGREEMENT COVENANT
AND RENT CHARGE**

THIS AGREEMENT is dated for reference the 17th day of October, 2024

BETWEEN:

VRS COMMUNITIES SOCIETY, #310 – 2006 West 10th Avenue,
Vancouver, BC V6J 2B3

("VRS")

AND:

THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER,
750 17th Street, West Vancouver, BC V7V 3T3

(the "District")

WHEREAS:

- A. VRS is the registered owner in fee simple of the 11 strata lots in the District of West Vancouver, British Columbia legally described in Item 2 of the Form C General Instrument Part 1 to which this Agreement is attached and which forms part of this Agreement (collectively, the "Strata Lots");
- B. VRS acquired the Strata Lots from the District subject to VRS entering in this 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 Strata Lots, construction on land or the subdivisions of land;
- D. Section 483 of the *Local Government Act* permits the District to enter into a housing agreement with an owner of land, which agreement may include terms and conditions regarding the occupancy, tenure and availability of the Strata Lots; and
- E. The VRS and the District wish to enter into this Agreement to restrict the subdivision and use of, and construction on, the Strata Lots on the terms and conditions of this agreement, to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 905 of the *Local Government Act*.

NOW THEREFORE in consideration of the sum of \$10.00 now paid by the District to VRS and other good and valuable consideration, the receipt and sufficiency of which the Owner hereby acknowledges, the parties covenant and agree pursuant to section 219 of the *Land Title Act* (British Columbia) as follows:

- 1. **Definitions** – In this Agreement and the recitals hereto:
 - (a) "Affiliate" means an affiliate of the Owner, as defined in the *British Columbia Business Corporations Act* as of the date of this Agreement;

- (b) *"Air Space Easements Agreement"* means the agreement dated for reference October 6, 2022 and entitled *"Air Space Reciprocal Easements for Support, Access, Service Systems and other Uses, Section 219 Covenant and Statutory Right of Way"*, which said easements, covenants and statutory right of way are registered on title to the Strata Lots as Nos. CB296361 to CB296410;
- (c) *"Arm's Length"* means:
- (i) not in any other contractual relationship with the Owner or any director, officer or other senior employee of the Owner;
 - (ii) unrelated by blood, marriage or personal relationship to any director, officer or other senior employee of the Owner; and
 - (iii) not employed by any corporate entity that is an Affiliate of the Owner,
- provided that the Director may, in his or her sole discretion, relax the restrictions contained in this definition upon the written request of the Owner on a case-by-case basis. Any such relaxation in relation to any particular case is not to be construed as or constitute a waiver of the requirements in relation to any other residential tenancy agreement. No relaxation of the restrictions in this definition will be effective unless it is granted in writing by the Director prior to the execution and delivery of the residential tenancy agreement or agreement of purchase and sale to which the relaxation relates;
- (d) *"ASP 3 Owner's Easements"* has the meaning given to it in the Air Space Easements Agreement;
- (e) *"Business Day"* means a day that is not Saturday, Sunday or statutory holiday in British Columbia;
- (f) *"Conditional Expiry Date"* means ● ●, 2045;
- (g) *"Director"* means _____ and his or her designate;
- (h) *"Dwelling Unit"* means a room or set of rooms containing cooking and sanitary facilities and designed to be used for residential occupancy by one or more persons;
- (i) *"Eligible Occupant"* means:
- (i) if the Owner is VRS, a person who, during the time that such person is a Tenant in one of the Strata Lots, qualifies for the receipt of Supportive Housing Services; or
 - (ii) if the Owner is not VRS, a person who would have qualified for the receipt of Supportive Housing Services on the day before the Transfer from VRS to a Transferee;
- (j) *"LTO"* means the Lower Mainland Land Title Office and any successor of that office;

- (k) *"Mortgagee"* means the Canada Mortgage and Housing Corporation, a Canadian chartered bank or other institutional lender doing business in British Columbia with an office in Vancouver;
- (l) *"Owner"* means VRS and any other person or persons registered in the LTO as owner of the Strata Lots from time to time;
- (m) *"Purchase Money Mortgage"* means a mortgage over all of the Strata Lots for the purpose of securing of financing or refinancing of VRS's cost of acquiring the Strata Lots from the District and/or the cost of major capital repairs, replacements, alterations or improvements to the Strata Lots, but not otherwise, provided that, as a condition of any financing that is not the financing or refinancing of the cost of acquiring the Strata Lots, the total amounts secured must not exceed in aggregate \$2,000,000, being the purchase price paid by the Owner to the District for acquisition of the Strata Lots;
- (n) *"Strata Corporation"* means The Owners, EPS ● ;
- (o) *"Strata Lots"* has the meaning given to it in Recital A;
- (p) *"Supportive Housing Services"* means:
 - (i) if the Owner is VRS or an Affiliate, the support services provided by a delegate of the Province of British Columbia or the Owner that assist an Eligible Occupant with active daily living so as to allow the Eligible Occupant to reside in a Strata Lot; and
 - (ii) if the Owner is not VRS or an Affiliate, the support services provided to Tenants in the Strata Lots, which will include regular ongoing supports provided onsite that include personal care or assistance with daily decision making that are essential to allow the individual to live independently in the community, all as approved by the Director in accordance with Schedule "A" and B attached hereto; and
- (q) *"Tenant"* means one or more persons named as the tenant in a residential tenancy agreement in respect of individual Strata Lots; and
- (r) *"Transfer"* shall mean any transfer of the fee simple interest in the Strata Lots or any estate or interest, legal or beneficial, therein or any part thereof, including without limitation a transfer by operation of law.

2. **No Separate Sale**

- (a) Except as set out in sections 2, 10 and 11, the Strata Lots are not to be sold or otherwise transferred separately.
- (b) This section 2 does not preclude the Owner from entering into residential tenancy agreements with Tenants in respect of individual Strata Lots, provided that said residential tenancy agreements comply with sections 3 and 6 herein.

- (c) Notwithstanding subsection 2(a), but subject to subsection 2(d), if:
- (i) a Mortgagee holds a Purchase Money Mortgage registered in the LTO against the Strata Lots;
 - (ii) the Owner defaults under the Purchase Money Mortgage;
 - (iii) the Mortgagee commences foreclosure proceedings under the Purchase Money Mortgage; and
 - (iv) the Mortgagee obtains Order(s) for Sale in respect of one or more of the Strata Lots in the said foreclosure proceeding (collectively, the "**Order(s) for Sale**", or singularly, the "**Order for Sale**");

then the Strata Lots may be separately sold in accordance with the said Order(s) for Sale.

- (d) In the event that any portion of the proceeds from the sale of a Strata Lot pursuant to subsection 2(c) are payable to the Owner pursuant to the Order for Sale (the "**Equity of Redemption Fund**"), then said Equity of Redemption Fund must be paid to and held by a lawyer retained by the Owner on the trust condition that it not be released to the Owner except in accordance with the following terms and conditions:
- (i) the Owner and the District must, prior to release of any part of the Equity of Redemption Fund, enter into a agreement with the District (the "**Equity of Redemption Agreement**"), meeting the requirements set out in subsections 2(d)(ii) to (iv) and in a form satisfactory to the District's municipal solicitor, acting reasonably;
 - (ii) the Equity of Redemption Agreement must specify a property in a location in the District of West Vancouver suitable for rental housing containing at least 11 Dwelling Units acceptable to the Director, acting reasonably (for the purpose of this subsection 2(d), the "**Replacement Property**");
 - (iii) the Equity of Redemption Agreement must stipulate that the Equity of Redemption Fund must be used firstly for the purchase of the Replacement Property and secondly for paying the Owner's lawyer's legal fees, and the balance, if any, payable to the Owner for its own use absolutely;
 - (iv) the Equity of Redemption Agreement must further stipulate that the Owner will grant to the District a new housing agreement substantially on the same terms and conditions as this Agreement (the "**New Housing Agreement**"), and that the New Housing Agreement will be registered in favour of the District against the Owner's title to the Replacement Property in priority to all financial charges concurrently with and immediately after acceptance for registration of the Form A Transfer transferring title to the Replacement Property title to the Owner; and

- (v) the Equity of Redemption Agreement must contain provisions satisfactory to the District municipal solicitor to secure the above requirements.
 - (e) Provided that: (i) the Equity of Redemption Agreement, executed by the Owner, is delivered by the Owner to the District, and (ii) the security required pursuant to the Equity of Redemption Agreement is lodged with the District, then the District will provide to the Owner's solicitor an executed *Land Title Act* Form C to discharge this Agreement as against the Strata Lot(s) being sold pursuant to the Order for Sale and a letter to discharge the related notice of housing agreement on a solicitor's undertaking that said discharge and letter are only to be submitted for registration at the LTO concurrently with and immediately before the completion of the said sale.
3. **Owner is VRS Communities Society** – All of this Housing Agreement, other than sections 6 and 7, apply to each of the Strata Lots if the Owner is VRS or an Affiliate.
 4. **Owner is not VRS Communities Society** – All of this Housing Agreement, other than sections 5 and 8, apply to each of the Strata Lots if the Owner is not VRS or an Affiliate.
 5. **Permitted Use (Owner is VRS Communities Society)** – If the Owner is VRS or an Affiliate, the Strata Lots and all of the common property and all other property of the Strata Corporation, including without limitation the ASP 3 Owner's Easements, may not be used for any purpose whatsoever save and except for the purposes of:
 - (a) providing rental accommodation to Eligible Occupants pursuant to Arm's Length residential tenancy agreements; and
 - (b) administrative and support services associated with the foregoing.
 6. **Permitted Use (Owner is not VRS Communities Society)** – If the Owner is not VRS or an Affiliate, the Strata Lots and all of the common property and all other property of the Strata Corporation, including without limitation the ASP 3 Owner's Easements, may not be used for any purpose whatsoever save and except for the purposes of:
 - (a) providing rental accommodation in accordance with the terms and conditions set out in Schedule "A" to Eligible Occupants meeting the income eligibility requirements set out in Schedule "A"; and
 - (b) the provision of Supportive Housing Services to the Eligible Occupants.
 7. **Additional Covenants if Owner is not VRS Communities Society** – If the Owner is not VRS, then the Owner must comply with the additional covenants set out Schedule "A".
 8. **Occupancy Restriction (Owner is VRS Communities Society)** – If the Owner is VRS or an Affiliate, the Strata Lots may not be occupied except by the following:
 - (a) an Eligible Occupant pursuant to a residential tenancy agreement that complies with subsection 5(a); and

- (b) one other individual, not an Eligible Occupant, who is living in a single domestic unit with an Eligible Occupant referred to in subsection 6(a) above.
9. **Supportive Housing Services** – The Owner must provide the Supportive Housing Services to all Eligible Occupants.
10. **Conditional Expiry of Housing Agreement**
- (a) On or at any time after the Conditional Expiry Date the Owner may enter into an agreement of purchase and sale with an Arm's Length transferee (the "Transferee") to sell, convey or otherwise transfer the Owner's fee simple interest in one or more of the Strata Lots free and clear of this Agreement, provided that the Owner, prior to entering into said agreement of purchase and sale, enters into a separate agreement with the District (the "Replacement Agreement"), in form and substance satisfactory to the District's municipal solicitor, acting reasonably, containing *inter alia* at least the following terms and conditions:
 - (i) the Replacement Agreement must specify a property in a suitable location in the District of West Vancouver containing at least 11 Dwelling Units, with the decision to construct or acquire any greater number of Dwelling Units to be in the Owner's sole discretion, all as acceptable to the Director, acting reasonably (for the purpose of this subsection 10(a), the "Replacement Property");
 - (ii) the Replacement Agreement must stipulate that the proceeds of sale, after paying off and discharging any Purchase Money Mortgage and after normal adjustments on closing (the "Net Proceeds") must be used first on account of the purchase of the Replacement Property, with only the balance of the Net Proceeds to be released to the Owner for its own use absolutely;
 - (iii) the Replacement Agreement must further stipulate that the Owner will grant to the District a New Housing Agreement (as defined in subsection 2(d)(iv)), and that the New Housing Agreement will be registered in favour of the District against the Owner's title to the Replacement Property in priority to all financial charges concurrently with and immediately after acceptance for registration of the Form A Transfer transferring title to the Replacement Property title to the Owner; and
 - (iv) the Replacement Agreement must contain provisions satisfactory to the District municipal solicitor to secure the requirements in this section 10.
 - (b) Provided that the Replacement Agreement executed by the Owner is delivered by the Owner to the District, then the District will provide to the Owner's solicitor an executed *Land Title Act* Form C to discharge this Agreement as against the Strata Lot(s) being sold to the Transferee and a letter to discharge the related notice of housing agreement on an appropriate solicitor's undertaking satisfactory to the municipal solicitor that said discharge and letter are only to be submitted for registration at the LTO concurrently with and immediately before the completion of the said sale and that the Net Proceeds are only to be used in accordance with the Replacement Agreement.

11. **Certificate** – This section 11 applies, and not section 12, if the Owner is VRS or an Affiliate. Within 5 Business Days after receiving written notice from the District, which notice may not be given by the District to the Owner more than once a year, the Owner must deliver to the District a Certificate, substantially in the form attached as Schedule “C”, executed by a director, officer or the executive director of the Owner, containing all of the information required to complete the Certificate.
12. **Statutory Declaration** – This section 12 applies, and not section 11, if the Owner is not VRS or an Affiliate. Within 10 Business Days after receiving written notice from the District, which notice may not be given by the District to the Owner more than once a year, the Owner must deliver to the District a statutory declaration, substantially in the form attached as Schedule “D”, sworn by the Owner under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration.
13. **Duty to Account and Report** – In addition to the other covenants and obligations to be performed by the Owner hereunder, the Owner covenants and agrees that it will:
 - (a) keep or cause to be kept separate true and accurate records and accounts in accordance with generally accepted accounting principles regarding the rental income earned from the Strata Lots; and
 - (b) deliver to the District, on request of the District, to be made not more than once a year, copies of all current tenancy agreements in respect of the Strata Lots.
14. **Specific Performance** – The Owner agrees that, without affecting any other rights or remedies the District may have in respect of any breach of this Agreement, the District is entitled to obtain an order for specific performance of this agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement. The Owner agrees that this is reasonable given the public interest in restricting occupancy of the Strata Lots in accordance with this Agreement.
15. **Notice of Housing Agreement** – For clarity, the Owner acknowledges and agrees that:
 - (a) this Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 905 of the *Local Government Act*;
 - (b) the District is required to file a notice of housing agreement in the LTO against title to the Strata Lots; and
 - (c) once such a notice is filed, this Agreement, as a housing agreement under section 905 of the *Local Government Act*, binds all persons who acquire an interest in the Strata Lots in perpetuity.
16. **Compliance with Laws** – The Owner will at times ensure that the Strata Lots are used and occupied in compliance with all statutes, laws, regulations, bylaws, and orders of the District and other authorities having jurisdiction, including all rules, regulations, policies, guidelines and the like under or pursuant to them.

17. **Modification Procedure** – Non-material modifications to this Agreement may be considered and approved by the Director in his or her discretion. All other modifications must be approved by the Council in its sole and unfettered discretion. The Director in his or her discretion shall determine whether or not a proposed modification is “material”. For greater certainty, any modification of this Agreement must be agreed to in writing by the Owner. All approvals must be in writing. Any proposed modifications must:
 - (a) be consistent with the District’s Official Community Plan Bylaw 7900, 2011 as amended or replaced from time to time; and
 - (b) comply with the Zoning Bylaw.
18. **Cost** – The Owner shall comply with all requirements of this Agreement at its own cost and expense, and the costs of registration of this Agreement or any Replacement Agreement shall be for the account of the Owner.
19. **Interpretation** – 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 correspondingly numbered or lettered article, section or Schedule of this Agreement;
 - (d) reference to the “Strata Lots” or to any other parcel of land is a reference also to any parcel into which they are subdivided or consolidated by any means (including the removal of interior parcel boundaries) and to each parcel created by any such subdivision or consolidations;
 - (e) 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;
 - (f) reference to any enactment includes any regulations, orders, permits or directives made or issued under the authority of that enactment;
 - (g) unless otherwise expressly provided, referenced to any enactment is a reference to that enactment as consolidated, revised, amended, re enacted or replaced;
 - (h) time is of the essence;
 - (i) all provisions are to be interpreted as always speaking;
 - (j) reference to a “party” is a reference to a party to this Agreement and the their respective heirs, executors, successors (including successors in title), trustees, administrators and receivers;

- (k) reference to the District is a reference also to is elected and appointed official, officer, employees and agents;
 - (l) 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;
 - (m) 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"; and
 - (n) any act, decision, determination, consideration, opinion, consent or exercise of discretion by a party or person as provided in this Agreement must be preformed, made, formed or exercised acting reasonably, except that any act, decision, determination, consideration, consent, opinion or exercise of discretion that is said to be within the "sole discretion" of a party or person may be preformed, made, formed or exercised by that party or person in the sole, unfettered and absolute discretion of that party or person.
20. **Notice** – All notices and other communications required or permitted to be given under this Agreement must be in writing and must be sent by registered mail or delivered as follows:
- (a) if to the Owner, as follows:

VRS Communities Society
#310 – 2006 West 10th Avenue
Vancouver, BC V6J 2B3

Attention: Ken Fraser, Executive Director
Email: ken@vrs.org
 - (b) if to the District, as follows:

The Corporation of the District of West Vancouver
750 17th Street,
West Vancouver, BC V7V 3T3

Attention:
Email:

Any notice or other communication that is delivered is considered to have been given on the next business day after it is dispatched for delivery. Any notice or other communication that is sent by registered mail is considered to have been given five days after the day on which it is mailed at a Canada Post office. If there is an existing or threatened strike or labour disruption that has caused, or may cause, an interruption in the mail, any notice or other communication must be delivered until ordinary mail services is restored or assured. If a party changes its address it must immediately give notice of its new address to the other party as provided in this section.

21. **No Waiver** – No provision or breach of this Agreement, or any default, is to be considered to have been waived or acquiesced in by a party unless the waiver is express and is in writing by the party. The waiver by a party of any breach by the other party of any provision, or default, is not to be construed as or constituted a waiver of any further or other breach or the same or any other provision or default.
22. **Rights are Cumulative** – All rights and remedies of a party under or in respect of this Agreement (including its breach) are cumulative and are in addition to, and do not exclude or limit any other right or remedy. All rights and remedies may be exercised concurrently.
23. **Third Party Beneficiaries** – Except as may be expressly provided in this Agreement, this Agreement is not to be interpreted to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty or obligation created by this Agreement.
24. **No Effect on Laws or Powers** – This Agreement and the Owner’s contributions, obligations and agreements set out in this Agreement do not:
 - (a) affect or limit the discretion, rights, duties or powers of the District under any enactment or at common law, including in relation to the use, development, servicing or subdivision of the Strata Lots;
 - (b) impose on the District any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - (c) affect or limit any enactment relating to the use, development or subdivision of the Strata Lots; or
 - (d) relieve the Owner from complying with any enactment, including in relation to the use, development, servicing or subdivision of the Strata Lots.
25. **Binding Effect** – This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, trustees, receivers and successors (including successors in title).
26. **Covenant Runs With the Strata Lots** – Every provision of this Agreement and every obligation and covenant of the Owner in this Agreement, constitutes a deed and a contractual obligation, and also a covenant granted by the Owner to the District in accordance with section 219 of the *Land Title Act*, and this Agreement burdens the Strata Lots to the extent provided in this Agreement, and runs with them and binds the Owner’s successors in title. This Agreement also burdens and runs with every parcel into which the Strata Lots are subdivided or consolidated (including by the removal of interior parcel boundaries) by any means.
27. **Voluntary Agreement** – The Owner acknowledges that the Owner has entered into this Agreement voluntarily and has taken legal advice with regard to the entry of this Agreement and the development of the Strata Lots.

28. **Agreement for Benefit of District Only** – The Owner and the District agree that:
- (a) this Agreement is entered into only 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 property, the Strata Lots or the building or any portion thereof, including any Suite; and
 - (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.
29. **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 Strata Lots. Notwithstanding the foregoing, if the Owner is VRS or an Affiliate and provided VRS or its Affiliate has used and continues to use commercially reasonable efforts, including taking all necessary steps under all residential tenancy dispute hearing processes, to evict a Tenant who is not an Eligible Occupant, the District will not declare VRS or its Affiliate in default of this Agreement.
30. **Further Acts** – The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
31. **Joint Obligations of Owner** – If two or more persons execute this Agreement as Owner, the liability of each such person to observe and perform all of the Owner's obligations pursuant to this Agreement will be deemed to be joint and several.
32. **Severance** – 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 and unaffected by that holding or by the severance of that part.
33. **No Joint Ventureship** – Nothing in this Agreement shall constitute the Owner as the agent, joint venturer or partner of the District or give the Owner any authority or power to bind the District in any way.
34. **Amendment** – This Agreement may be amended from time to time by agreement between the Owner and the District. Except as otherwise expressly provided in this Agreement, the amendment agreement must be by an instrument in writing duly executed by the Owner and the District.
35. **Deed and Contract** – By executing and delivering this Agreement each of the parties intends to create both a new contract and a deed of covenant executed and delivered under seal.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

Schedule "A"
Eligibility Requirements, Rent Restrictions and Use Conditions
if Owner is not VRS Communities Society

1. **The Housing Society** – No Strata Lot shall be occupied for any purpose, and the Owner shall not offer for rent any Strata Lot or enter into any residential tenancy agreements in respect of any Strata Lot, unless and until the Owner has:
 - (a) entered into a lease, licence or operating agreement with a Housing Society (as defined in this Schedule "A") in respect of all of the Strata Lots, said agreement to be in form and substance acceptable to the District; and
 - (b) caused the Housing Society to enter into a separate agreement with the District in form and substance acceptable to the District regarding the operation of the Strata Lots.

2. **Occupancy Restriction** – No Strata Lot may be occupied except by:
 - (a) a person meeting the Income Eligibility Requirements (as defined in this Schedule "A") pursuant to month-to-month residential tenancy agreements or residential tenancy agreements with terms not exceeding three years in duration (including all periods in respect of which any rights or renewal, contingent or otherwise have been granted, other than a right to continue in possession on a month-to-month basis after expiry of the initial term) between, as landlord, the Owner or the Housing Society, and, as tenant, a person who meets the Income Eligibility Requirements and who is At Arm's Length (as defined in this Schedule "A") from the Owner and the Housing Society, where said tenancy agreements comply with all of the requirements of section 3 of this Schedule "A"; and
 - (b) the other members of the person's household, provided that the income of all members (other than income of legal dependents up to a maximum of \$10,000 per year per dependent) is included in the determination of eligibility under the Income Eligibility Requirements.

3. **Tenancy Agreements** - The Owner shall not suffer, cause or permit occupancy of any Strata Lot except pursuant to a residential tenancy agreement that:
 - (a) does not, in relation to the Strata Lot, require payment of rent or any other consideration for the Strata Lot or for the Supportive Services directly or indirectly that exceeds the Maximum Rate (as defined in this Schedule "A") for the Strata Lot, but the tenant may be required to pay:
 - (i) additional consideration for parking, storage and bicycle storage provided that the additional consideration does not exceed the following amounts:
 - (i) for a storage locker: an amount not exceeding the amount charged from time to time for a storage locker to tenants in the Strata Lots; and

- (ii) for a parking stall: an amount that does not exceed the amount charged from time to time for a parking stall to tenants in the Strata Lots; and
 - (ii) third party providers directly for utilities, internet services and, if approved by the Director acting reasonably, other services not usually included in rent except the cost of hydronic heat, air conditioning or hot water which must be included in the Maximum Rate no matter who may be providing these services;
 - (b) does not require the rent to be prepaid at an interval greater than monthly;
 - (c) prohibits the tenant from subletting the unit, assigning the tenancy agreement, or operating the unit on a short-term rental basis (less than one month), except to the extent that the *Residential Tenancy Act* restricts or prohibits such prohibitions;
 - (d) requires the tenant to provide within 30 days of demand true copies of the most recent filed income tax returns or assessment notices from Canada Revenue Agency for each occupant of the unit; and
 - (e) contains a provision that, if the tenant ceases to qualify for the Strata Lot because he or she no longer meets the Income Eligibility Requirements, the Owner or the Society may end the tenancy agreement by giving the tenant a clear six months' notice to end the tenancy in accordance with section 49.1 of the *Residential Tenancy Act* (or successor legislation).
4. **Rental Application Process – The Owner and the Housing Society must:**
- (a) accept applications for residential occupancy of the Strata Lots from all applicants meeting the Income Eligibility Requirements;
 - (b) maintain a housing list of all eligible applicants from whom the Owner or the Housing Society has accepted applications;
 - (c) where Strata Lots become available for occupancy, offer the units to persons on the housing list in the order in which their applications were made, unless:
 - (i) the person no longer meets the Income Eligibility Requirements; or
 - (ii) the Owner or the Housing Society does not consider the person to be an acceptable candidate for occupancy of that Strata Lot because the person does not satisfy other reasonable and fair criteria established by the Owner or the Society from time to time; and
 - (b) make the housing list available to the District upon request.
5. **Relaxation of Arm's Length Requirement –** The provisions in this Agreement that require a tenant to be At Arm's Length may be relaxed by the Director, in his or her sole discretion, upon the written request of the Owner on a case-by-case basis. Any such relaxation in relation to any particular residential tenancy agreement is not to be construed as or constitute a waiver of the requirements in relation to any other residential tenancy agreement. No relaxation of the

restrictions in this subsection 5 will be effective unless it is granted in writing by the Director prior to the execution and delivery of the residential tenancy agreement to which the relaxation relates.

6. **Definitions** – For the purpose of this Schedule “A”:

- (a) *“Annual Allowable Adjustment”* means an increase in the Maximum Rate once each calendar year by the yearly rent increase limit as set by the British Columbia Residential Tenancy Branch, or successor agency, provided that if the British Columbia Residential Tenancy Branch, or successor agency, ceases to set yearly rent increase limits then Annual Allowable Adjustment shall mean an increase in the Maximum Rate once each calendar year by the 12-month average percent increase in the Consumer Price Index for the previous calendar year. If the rate of change is less than zero then the Maximum Rent for the following year must not be increased, but may be decreased at the Owner’s discretion.
- (b) *“At Arm’s Length”* means:
 - (i) not in any other contractual relationship with the Owner or any director, officer or other senior employee of the Owner;
 - (ii) unrelated by blood, marriage or personal relationship to any director, officer or other senior employee of the Owner; and
 - (iii) not employed by any corporate entity that is an affiliate of the Owner, as that term is defined in the *British Columbia Business Corporations Act* as of the date of this Agreement,
- (c) *“Below Market Adjustment”* means an increase or decrease (as applicable) in the Maximum Rate at the commencement of a Subsequent Occupancy of each Strata Lot, such that the Maximum Rate on the commencement of said Subsequent Occupancy will be equal to ___% of the then most current median rent published by the Canadian Mortgage and Housing Corporation (or by a successor or replacement organization) in the Vancouver CMA primary rental market for 1 bedroom apartments;
- (d) *“Consumer Price Index”* means the all-items consumer price index published by Statistics Canada, or its successor in function, for Vancouver all items consumer price index;
- (e) *“Income Eligibility Requirements”* means:
 - (i) aggregate annual household gross income that is less than or equal to 333% of the annual rent for the Strata Lot proposed to be rented (which rent, for greater certainty, may not be greater than the Maximum Rate for the unit), where said aggregate income is established by way of true copies of the previous year’s income tax returns for each household member or individual who will reside in the Strata Lot provided, however, a person will be deemed not to meet this income eligibility requirement if the Owner has reasonable grounds to believe that such person is not in need of subsidized housing (e.g. seniors with a substantial assets or students with financial support from

parents) even if such person would otherwise meet the criteria set out above;
and

(ii) a household size and composition that is commensurate with and justifies the size of the subject Strata Lot;

(f) *"Initial Occupancy"* means:

(i) the occupancy of each Strata Lot on the date of the Transfer from VRS Communities Society to a Transferee pursuant to residential tenancy agreements in accordance with section 3 of this Schedule "A"; or

(ii) for any strata lot that is vacant on such date, the first occupant after such date,

which said Initial Occupancy continues until the tenant vacates the Strata Lot whether or not the tenant has entered into a new or revised residential tenancy agreement with the Owner or the Society and whether or not the term of the residential tenancy agreement is otherwise extended or renewed;

(g) *"Housing Society"* means a registered housing society approved in writing by the District;

(b) *"Maximum Rent"* means for each Strata Lot:

(i) for the calendar year following the date that the Transfer from VRS Communities Society to a Transferee is accepted for registration at the LTO (the *"Transfer"*), 75% of the market rent for the Strata Lot as determined by a then current appraisal prepared by a qualified appraiser with AACI designation retained by VRS Communities Society and accepted by the Director, acting reasonably; and

(ii) for each subsequent calendar year, an amount not greater than the rent for the preceding calendar year increased by the Annual Allowable Adjustment for such preceding calendar year and increased or decreased (as applicable) by the Below Market Adjustment on the date that a Subsequent Occupancy of the Strata Lot commences.

(c) *"Subsequent Occupancy"* means any occupancy of a Strata Lot after the Initial Occupancy pursuant to residential tenancy agreements in accordance with section 3 of this Schedule "A", which said Subsequent Occupancy continues until the tenant vacates the Strata Lot whether or not the tenant has entered into a new or revised residential tenancy agreement with the Owner or the Society and whether or not the term of the residential tenancy agreement is otherwise extended or renewed; and

(d) *"Transfer"* shall mean any transfer of the fee simple interest in the Strata Lots or any estate or interest, legal or beneficial, therein or any part thereof, including without limitation a transfer by operation of law.