



THE CORPORATION OF THE VILLAGE OF FRUITVALE BYLAW 962, 2023

Being a Bylaw to Authorize a Housing Agreement
Under Section 483 of the *Local Government Act*

WHEREAS Section 483 of the *Local Government Act*, R.S.B.C. 2015, c. 1, permits a local government to enter into a housing agreement for rental housing,

NOW THEREFORE, the Council of the Village of Fruitvale, in open meeting assembled, enacts as follows:

1. Title

This bylaw shall be cited as "Village of Fruitvale Housing Agreement (96 Deadmarsh Avenue) Bylaw No. 962, 2023."

2. Enactment

The Council hereby authorizes the agreement substantially in the form attached to this bylaw between the Corporation of the Village of Fruitvale and the Lower Columbia Affordable Housing Society as set out in Schedule A, attached hereto and forming part of this Bylaw (the "**Agreement**").

3. The lands identified in the Agreement are located at 96 Deadmarsh Avenue in the Village of Fruitvale and are legally described as: PID 031-641-547, Lot C District Lot 1236 Kootenay District Plan EPP116609.

4. The Mayor and Corporate Officer are authorized to execute any documents required to give effect to the Agreement.

READ a first time this 4th day of December, 2023.

READ a second time this 4th day of December, 2023.

READ a third time this 4th day of December, 2023

RECONSIDERED, FINALLY PASSED AND ADOPTED this 8th day of January, 2024.

Mayor

Chief Administrative Officer

CERTIFIED a true copy of Bylaw 962 cited as "Village of Fruitvale Housing Agreement (96 Deadmarsh Avenue) Bylaw No. 962, 2023."

DATED this 9th day of January, 2024.

Chief Administrative Officer

SCHEDULE A to Bylaw No. 962, 2023

HOUSING AGREEMENT AND COVENANT

(Section 483 *Local Government Act* and Section 219 *Land Title Act*)

THIS AGREEMENT is dated for reference the 20th day of November, 2023 is:

BETWEEN:

The Corporation of the Village of Fruitvale

Box 370
1947 Beaver Street
Fruitvale, B.C.
V0G 1L0

(the "**Village**")

AND:

Lower Columbia Affordable Housing Society

PO Box 44,
Trail, B.C.
V1R 4L3

(the "**Society**")

WHEREAS:

- A.** Section 483 of the *Local Government Act* permits the Village to enter into and note on title to lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units, and rent that may be charged for housing units;
- B.** Section 219 of the *Land Title Act* permits the registration of a covenant of a positive or a negative nature in favour of the Village in respect of the use of land, construction on land and the subdivision of land;
- C.** The Village is the owner of the property with a civic address of 96 Deadmarsh Avenue, Fruitvale, BC and legally described as:

PID 031-641-547
Lot C District Lot 1236 Kootenay District Plan EPP116609 (the "**Lands**");
- D.** The Village and the Society have entered into or intend to enter into a lease of the Lands, as such lease may be amended, renewed or extended from time to time (the "**Lease**");
- E.** The Society proposes to construct a residential building (the "**Building**") on the Lands, containing a total of 31 units (the "**Secured Rental Units**"), and to operate the Secured Rental Units as a mix of affordable rental and market rental accommodation;

- F. The Village adopted Village of Fruitvale Housing Agreement (96 Deadmarsh Avenue) Bylaw No. 962, 2023, authorizing the Village to enter into this Agreement on the terms and conditions contained herein; and
- G. The Society and the Village wish to enter into this Agreement to restrict the use of and construction on the Lands in accordance with 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 483 of the *Local Government Act*.

In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Society and the Village covenant and agree with each other pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions** – In this Agreement, the following words have the following meanings:

- (a) **Agreement**" means this agreement together with all Land Title Office forms, schedules, appendices, attachments and priority agreements attached hereto;
- (b) **“BC Housing”** means British Columbia Housing Management Commission or any successor organization or authority that assumes the powers and obligations of British Columbia Housing Management Commission;
- (c) **“Building”** has the meaning assigned in Recital E;
- (d) **"Eligible Tenant"** means a tenant, who, at the time they enter into a Tenancy Agreement, meets the eligibility guidelines outlined in the Operating Agreement;
- (e) **"Lease"** has the meaning assigned in Recital D;
- (f) **"Interpretation Act"** means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, as amended or re-enacted from time to time;
- (g) **"Lands"** has the meaning assigned in Recital C;
- (h) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250, as amended or re-enacted from time to time;
- (i) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, as amended or re-enacted from time to time;
- (j) **"LTO"** means the Land Title Office or its successor;
- (k) **“Operating Agreement”** means an agreement entered into between the Society and BC Housing, as available for viewing at BC Housing’s office;
- (l) **“Permanent Residence”** means that the Secured Rental Unit is used as the usual, main, regular, habitual, or principal residence, abode, or home of the Eligible Tenant;
- (m) **"Permitted Rent"** means the maximum monthly rent for each Secured Rental Unit as determined in accordance with section 3.4;

- (n) "**Residential Tenancy Act**" means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, as amended or re-enacted from time to time;
- (o) "**Secured Rental Units**" has the meaning assigned in Recital E, and any one, a "**Secured Rental Unit**";
- (p) "**Strata Property Act**" means the *Strata Property Act* S.B.C. 1998, Chapter 43, as amended or re-enacted from time to time;
- (q) "**Subdivision**" means to divide, apportion, consolidate or subdivide the Lands or any building on the Lands, or the ownership or right to possession or occupation of the Lands or any building on 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
- (r) "**Tenancy Agreement**" means a tenancy agreement granting the right to occupy a Secured Rental Unit.

1.2 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) 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;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (f) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (g) time is of the essence;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes a tenant, agent, officer and invitee of the party;
- (j) reference to a "day", "month", or "year" is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided; and
- (k) 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".

ARTICLE 2

USE AND CONSTRUCTION OF LANDS AND SECURED RENTAL UNITS

- 2.1 Use and Construction of Lands** – The Society covenants and agrees with the Village that the Lands and each Secured Rental Unit may only be used in accordance with this Agreement and as a Permanent Residence.
- 2.2 Short-Term Rentals Prohibited** – The Society covenants and agrees with the Village that no Secured Rental Unit may be rented to or tenanted by any person for a term of less than thirty (30) days.
- 2.3 Requirement for Statutory Declaration** – Within thirty (30) days after receiving notice from the Village, the Society must, in respect of each Secured Rental Unit, provide to the Village a statutory declaration, substantially in the form (with, in the Village’s discretion, such further amendments or additions as deemed necessary) attached as Appendix A, sworn by the Society, containing all of the information required to complete the statutory declaration. The Village may request such statutory declaration in respect to each Secured Rental Unit no more than once in any calendar year. If the Society has already provided such statutory declaration in the particular calendar year, then the Village may request and the Society shall provide to the Village such further statutory declarations as requested by the Village in respect to a Secured Rental Unit if, in the Village’s absolute determination, the Village believes that the Society is in breach of any of its obligations under this Agreement.
- 2.4 Village Authorized to Make Inquiries** – The Society hereby irrevocably authorizes the Village to make such inquiries as the Village considers necessary in order to confirm that the Society is complying with this Agreement.
- 2.5 Termination** – This Agreement expires and is of no force and effect as of the date the Lease, including any renewal terms, terminates or expires.

ARTICLE 3

ADDITIONAL TERMS FOR USE AND OCCUPATION OF SECURED RENTAL UNITS

- 3.1 Use of Secured Rental Units** – The Society covenants and agrees with the Village that each Secured Rental Unit may only be used as a residence occupied by an Eligible Tenant.
- 3.2 Tenant Screening and Records** – The Society covenants and agrees with the Village as follows:
- (a) the Society shall review the income of a prospective tenant prior to each tenancy to determine whether the prospective tenant is an Eligible Tenant, and to determine the Permitted Rent; and
 - (b) the Society shall maintain a system of records indicating the incomes of and rent paid by each past and current Eligible Tenant.
- 3.3 Occupancy and Tenure of Secured Rental Units** – The Society must not rent, lease, license or otherwise permit occupancy of any Secured Rental Unit except in accordance with the following additional conditions:
- (a) the Secured Rental Unit will be used or occupied only pursuant to a Tenancy Agreement;

- (b) every Tenancy Agreement with an Eligible Tenant shall be a fixed term tenancy for a period of not less than thirty (30) days and not more than twelve months, and shall provide that the Society may end the tenancy by giving notice to end the tenancy if the tenant ceases to be an Eligible Tenant;
- (c) the Society will not require the Eligible Tenant to pay any extra charges or fees for sanitary sewer, storm sewer, water or property or similar tax;
- (d) the Society will attach a copy of this Agreement to every Tenancy Agreement; and
- (e) the Society will forthwith deliver a certified true copy of the Tenancy Agreement to the Village upon demand.

3.4 Permitted Rent of Secured Rental Units – The Society shall charge the Permitted Rent for each Secured Rental Unit as required in the Operating Agreement.

3.5 Occupants to Vacate Rental Unit Upon Termination – If the Society has terminated any Tenancy Agreement, then the Society shall use best efforts to cause the tenant and all other persons that may be in occupation of the Secured Rental Unit to vacate the Secured Rental Unit on or before the effective date of termination.

ARTICLE 4

DEMOLITION OF SECURED RENTAL UNIT

4.1 Demolition – The Society will not demolish a Secured Rental Unit unless:

- (a) the Society has obtained the written opinion of a professional engineer or architect who is at arm's length to the Society that it is no longer reasonable or practical to repair or replace any structural component of the Secured Rental Unit, and the Society has delivered to the Village a copy of the engineer's or architect's report; or
- (b) the Secured Rental Unit is damaged or destroyed, to the extent of 40% or more of its replacement value above its foundations, as determined by the Village, in its sole discretion,

and, in each case, a demolition permit for the Secured Rental Unit has been issued by the Village. Upon issuance of such demolition permit, the Society will completely demolish the Secured Rental Unit.

4.2 Post Demolition – If demolition occurs under section 4.1, the Society will use and occupy any replacement Secured Rental Unit in compliance with this Agreement to the same extent and in the same manner as this Agreement applies to the original Secured Rental Unit, and the Secured Rental Unit must be approved by the Village in accordance with this Agreement.

ARTICLE 5

DEFAULT AND REMEDIES

5.1 Notice of Default. The Village may give to the Society written notice to cure a default under this Agreement within thirty (30) days of receipt of such notice or such longer period as reasonably required if such default cannot be cured by the Society acting diligently. The notice must specify the nature of the default. The Society must act with diligence to correct the default within the time specified.

- 5.2 Costs.** The Society will pay to the Village on demand by the Village all the Village's costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.
- 5.3 No Penalty or Forfeiture.** The Society acknowledges and agrees that:
- (a) it is entering into this Agreement to benefit the public interest in providing Secured Rental Units for Eligible Tenants;
 - (b) the Village's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out; and
 - (c) the Village's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.
- 5.4 Cumulative Remedies.** No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit, or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right to remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination. The Society acknowledges that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for a default by the Society under this Agreement.

ARTICLE 6

MISCELLANEOUS

- 6.1 Housing Agreement/Section 219 Covenant.** The Society acknowledges and agrees that this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act*.
- 6.2** The Society agrees, pursuant to section 219 of the *Land Title Act*, that:
- (a) the terms and conditions of this Agreement constitute a covenant in respect of the use of the Lands, and that the Lands shall only be used in accordance with the terms of this Agreement; and
 - (b) the Village may register this Agreement in the LTO against title to the Lands as a covenant pursuant to section 219 of the *Land Title Act*.
- 6.3 No Compensation.** The Society acknowledges and agrees that no compensation is payable, and the Society is not entitled to and will not claim any compensation from the Village, for any decrease in the market value of the Lands or for any obligations on the part of the Society and its successors in title which at any time may result directly or indirectly from the operation of this Agreement.
- 6.4 Modification.** This Agreement may be modified or amended from time to time, if all of the following occur:
- (a) the Council of the Village duly passes a bylaw authorizing the modification or amendment; and

- (b) the Village and the Society each execute an addendum agreement setting out the modification or addendum.

6.5 Management and Long-Term Maintenance. The Society covenants and agrees that:

- (a) the Secured Rental Units will be managed and operated by a non-profit or charitable organization with a mission related to and experience in the provision of affordable housing, and without limiting the foregoing, the Society may engage the services of a third party property manager if required;
- (b) the Society shall furnish good and efficient management of the Secured Rental Units;
- (c) the Society shall permit representatives of the Village to inspect the Secured Rental Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*;
- (d) the Society shall maintain the Secured Rental Units in a good state of repair and fit for habitation; and
- (e) the Society shall comply with all laws, including health and safety standards applicable to the Lands, and without limiting the generality of the foregoing, including the *Residential Tenancy Act*.

6.6 Indemnity. The Society will indemnify and save harmless the Village and each of its elected officials, officers, directors, employees, and agents, and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, actions, loss, damage, costs, and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- (a) the use or occupancy of any Secured Rental Unit;
- (b) any negligent act or omission of the Society, or its officers, directors, agents, contractors, or other persons for whom at law the Society is responsible relating to this Agreement;
- (c) the Village refusing to issue any development authorization, building permit, or refusing to permit occupancy of the Building, or any portion thereof, constructed on the Lands;
- (d) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands, the Building or any Secured Rental Unit or the enforcement of any Tenancy Agreement; and
- (e) without limitation, any legal or equitable wrong on the part of the Society or any breach of this Agreement by the Society.

6.7 Release. The Society hereby releases and forever discharges the Village and each of its elected officials, officers, employees, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for any of the following:

- (a) construction, maintenance, repair, ownership, lease, license, operation, or management of the Lands, the Building or any Secured Rental Unit under this Agreement; or

(b) the exercise by the Village of any of its rights under this Agreement or an enactment.

6.8 Survival. The obligations of the Society set out in sections 6.6 and 6.7 of this Agreement will survive termination or discharge of this Agreement.

6.9 Priority. The Society will do everything necessary, at the Society's expense, to ensure that this Agreement will be registered against title to the Lands in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Lands save and except those in favour of the Village and that a notice under section 483(5) of the *Local Government Act* will be filed on the title to the Lands.

6.10 Village's Powers Unaffected. This Agreement does not:

(a) affect or limit the discretion, rights, duties, or powers of the Village under any enactment or at common law, including in relation to the use or Subdivision of the Lands;

(b) impose on the Village 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 or Subdivision of the Lands; or

(d) relieve the Society from complying with any enactment, including in relation to the use or Subdivision of the Lands.

6.11 Agreement for Benefit of Village Only. The Society and the Village agree that:

(a) this Agreement is entered into only for the benefit of the Village; and

(b) this Agreement is not intended to protect the interests of the Society, any Eligible Tenant, or any future owner, lessee, occupier, or user of the Lands or the Building or any portion thereof, including any Secured Rental Unit.

6.12 No Public Law Duty. Where the Village is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination, or give its consent, the Society agrees that the Village is under no public law duty of fairness or natural justice in that regard and agrees that the Village may do any of those things in the same manner as if it were a private party and not a public body.

6.13 Notice. Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered to the postal address of the Society set out in the records at the LTO. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

6.14 Enuring Effect. This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

6.15 Severability. If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

6.16 Waiver. All remedies of the Village will be cumulative and may be exercised by the Village in any order or concurrently in case of any breach and each remedy may be exercised any number of times

with respect to each breach. Waiver of or delay in the Village exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

- 6.17 Sole Agreement.** This Agreement and any documents signed by the Society contemplated by this Agreement, including the Lease, represent the whole agreement between the Village and the Society respecting the use and occupation of the Secured Rental Units, and there are no warranties, representations, conditions, or collateral agreements made by the Village except as set forth in this Agreement and such other documents signed by the Society, including the Lease. In the event of any conflict between this Agreement and any other agreement, this Agreement shall, to the extent necessary to resolve such conflict, prevail.
- 6.18 Further Assurance.** Upon request by the Village, the Society will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the Village to give effect to this Agreement.
- 6.19 Covenant Runs with the Lands.** This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided containing the Building. All of the covenants and agreements contained in this Agreement are made by the Society for itself, its personal administrators, successors, and assigns, and all persons who after the date of this Agreement, acquire an interest in the Lands.
- 6.20 Equitable Remedies.** The Society acknowledges and agrees that damages would be an inadequate remedy for the Village for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.
- 6.21 No Joint Venture.** Nothing in this Agreement will constitute the Society as the agent, joint venturer, or partner of the Village or give the Society any authority to bind the Village in any way.
- 6.22 Applicable Law.** Unless the context otherwise requires, the laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.
- 6.23 Joint and Several.** If the Society is composed of more than one person, firm, or body corporate, then the covenants, agreements, and obligations of the Society shall be joint and several.
- 6.24 Limitation on Society's Obligations.** The Society is only liable for breaches of this Agreement that occur while the Society is the lessee of the Lands, provided however that notwithstanding that the Society may no longer be the lessee of the Lands, the Society will remain liable for breaches of this Agreement that occurred while the Society was the lessee of the Lands.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the General Instrument - Part 1, which is a part hereof.

APPENDIX "A"
STATUTORY DECLARATION

I, _____, of _____, DO SOLEMNLY DECLARE THAT:

1. I am an _____ for the Lower Columbia Affordable Housing Society, a society pursuant to the *Societies Act*, SBC 2015, c. 18, and as such have personal knowledge of the facts and matters hereinafter sworn to, except where the same are stated to be on information and belief, and as to such latter mentioned facts I verily believe them to be true.

2. The Tenant occupying the Secured Rental Unit at _____ meets all criteria in the definition of an Eligible Tenant as defined in the Housing Agreement registered in the LTO under charge number _____.

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

DECLARED BEFORE ME at the _____ of _____, in the Province of British Columbia, this ____ day of _____, _____.

_____)
A Commissioner for taking Affidavits for British Columbia)
)
)
)
)
