

VILLAGE OF PEMBERTON

BYLAW No. 949, 2023

Being a bylaw to Authorize the Village of Pemberton to Enter into a Housing Agreement.

Harrow Road Affordable Housing Project

WHEREAS Council may, by Bylaw, under Section 483 of the Local Government Act enter into a Housing Agreement which may include terms and conditions agreed to by the Village of Pemberton and the Owner respecting the occupancy of affordable housing units identified in the Agreement;

AND WHEREAS the Village of Pemberton intends to rezone the property at 7000 Harrow Road Pemberton, BC and legally described as LOT 2 DISTRICT LOT 203, LILLOOET DISTRICT PLAN KAP56640 (PID 023-384-018) to permit 9,000 square feet of commercial space on the 1st floor with residential units on floors 2-5;

AND WHEREAS the Owner has offered to enter into and register a Housing Agreement to ensure that the housing units are developed as proposed on the Lands described in this Bylaw, and the Village has deemed it expedient to require the Owner to enter into a Housing Agreement pursuant to Section 483 of the Local Government Act;

NOW THEREFORE, the Council of the Village of Pemberton, in open meeting assembled, **ENACTS AS FOLLOWS**:

1. The Municipality is authorized to enter into Housing Agreements pursuant to Section 483 of the Local Government Act, in substantially the form attached to this Bylaw as Schedule "B", with respect to the land located in the Village of Pemberton known as 7000 Harrow Road, LOT 2 DISTRICT LOT 203, LILLOOET DISTRICT PLAN KAP56640 as shown shaded on the map attached to this bylaw as Appendix "A".
2. The Mayor and the Chief Administrative Officer of the Municipality are authorized to execute the Housing Agreements on behalf of the Municipality.

1. CITATION

This Bylaw may be cited as "Village of Pemberton Housing Agreement Bylaw (Harrow Road Project) Bylaw No. 949, 2023."

READ A FIRST TIME this 12th day of September, 2023.

READ A SECOND TIME this 12th day of September, 2023.

READ A THIRD TIME this 12th day of September, 2023.

ADOPTED this 17th day of October, 2023.

Mayor

Corporate Officer

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND SECTION 219 COVENANT

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

THIS AGREEMENT made as of the ♦ day of ♦, 2023.

BETWEEN:

VILLAGE OF PEMBERTON

7400 Prospect Street
PO Box 100
Pemberton, BC V0N 2L0

(the “**Village**”)

AND:

SEA TO SKY COMMUNITY SERVICES SOCIETY

38024 Fourth Avenue
PO Box 949
Squamish, BC V8B 0A7

(the “**Owner**”)

WHEREAS:

- A. The Village may, pursuant to section 483 of the *Local Government Act*, enter into a housing agreement with an owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions referred to in section 483(2) of the *Local Government Act*;
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Village in respect of the use of land or construction on land;
- C. The Owner is the registered owner of those lands and premises located at the corner of Harrow Road and Portage Road in Pemberton, BC and legally described as:

PID 023-384-018
LOT 2 DISTRICT LOT 203
LILLOOET DISTRICT PLAN KAP56640

(the “**Lands**”);

- D. The Owner and the Village wish to enter into this Agreement to provide for affordable rental housing units on the Lands, on the terms and conditions set out in this Agreement,

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

- E. The Village has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of \$1.00 paid by each of the parties to the other (the receipt and sufficiency of which is acknowledged by each party) and in consideration of the promises exchanged below, the parties covenant and agree as follows:

1. Definitions

1.1 In this Agreement, unless otherwise defined, the following words have the following meanings:

- (a) **“Agreement”** means this agreement and includes all recitals, instruments, schedules, and amendments thereto;
- (b) **“BC Housing”** means British Columbia Housing Management Commission or its successor in function;
- (c) **“Building”** means the building(s) and all other structures to be constructed on the Lands, together with all alterations or repairs thereto and all improvements from time to time constructed upon or affixed or appurtenant to the Lands;
- (d) **“Deep Subsidy Unit”** has the meaning attributed to it in the Operating Agreement, and all such Units collectively, the **“Deep Subsidy Units”**;
- (e) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c. 250, together with all amendments thereto and replacements thereof;
- (f) **“Land Title Office”** means the applicable Land Title Office or its successor in function;
- (g) **“Local Government Act”** means the *Local Government Act*, R.S.B.C. 2015, c. 1, together with all amendments thereto and replacements thereof;
- (h) **“Low Income”** has the meaning attributed to it in the Operating Agreement;
- (i) **“Market Unit”** has the meaning attributed to it in the Operating Agreement, and all such Units collectively, the **“Market Units”**;
- (j) **“Moderate Income”** has the meaning attributed to it in the Operating Agreement;

- (k) “**Operating Agreement**” means an agreement entered into or to be entered into between the Owner and BC Housing in substantially the same form reviewed by the Village, a copy of which can be obtained from BC Housing, that provides for, amongst other things, the roles and responsibilities of the Owner with respect to the operation of the Building and the Units, as the same may be amended from time to time;
- (l) “**Real Estate Act**” means the *Real Estate Act*, S.B.C. 1979, c. 356, together with all amendments thereto and replacements thereof;
- (m) “**Residential Tenancy Act**” means the *Residential Tenancy Act*, S.B.C. 2002, c. 78, together with all amendments thereto and replacements thereof;
- (n) “**RGI Unit**” has the meaning attributed to it in the Operating Agreement, and all such Units collectively, the “**RGI Units**”;
- (o) “**Strata Property Act**” means the *Strata Property Act*, S.B.C. 1998, c. 43, together with all amendments thereto and replacements thereof;
- (p) “**Subdivide**” or “**Subdivision**” means to divide, apportion, consolidate or subdivide the Lands, 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 units” or “shared interests in land” as defined in the *Real Estate Act*;
- (q) “**Tenancy Agreement**” means a tenancy agreement, lease, license or other agreement granting rights to occupy a Unit;
- (r) “**Termination Date**” means sixty (60) years from the date of execution of this Agreement by the Owner; and
- (s) “**Units**” means collectively, the sixty-three (63) units to be constructed on the Lands, and any one, a “**Unit**”.

2. Section 219 Covenant – Land Use Restrictions

2.1 The Owner hereby covenants and agrees as follows with respect to the Lands and Building up to the Termination Date:

- (a) once the Units have been constructed and the Village has issued an occupancy permit(s) for the Units, the Units shall be used only in accordance with this Agreement;
- (b) any development on the Lands shall include the Units to be used in a manner consistent with this Agreement;

- (c) the Owner must select tenants in a manner that achieves the following Unit mix to the extent reasonably possible:
 - (i) 20% of the Units in the Building being Deep Subsidy Units;
 - (ii) 30% of the Units in the Building being Market Units; and
 - (iii) 50% of the Units in the Building being RGI Units,provided that for greater certainty, a deviation in the Unit mix arising from a change in household income of tenants shall not be considered a breach of this Agreement so long as the Owner acts reasonably in filling future vacancies in a manner that achieves the above Unit mix;
- (d) each Unit shall only be used for rental purposes, pursuant to a Tenancy Agreement;
- (e) every Tenancy Agreement shall identify all permanent occupants of a Unit;
- (f) no Unit on the Lands may be rented to or tenanted by any person for a term of less than thirty (30) days; and
- (g) the Owner shall operate the Units in compliance with the terms, conditions, requirements and restrictions contained in this Agreement and the Operating Agreement.

2.2 The Owner acknowledges that the Village will not allow the Units to be sold independently of each other. The Village may permit the Owner to Subdivide the Lands to Subdivide any excess lands within the Lands (which are not required as part of the Building in which the Units will be built), provided that the Owner will be able to ensure that the Units can be built within current bylaws on the remainder portion of the Lands (the “**Remainder Lands**”), in which case the Village will upon Subdivision in this manner, discharge this Agreement from title to the excess lands, with this Agreement remaining in full force and effect against the Remainder Lands. The Owner may Subdivide the Building pursuant to the *Strata Property Act*, in which case, the Village will, upon Subdivision in this manner, discharge this Agreement from title to all strata lots other than those strata lots that comprise the Units.

2.3 The Owner hereby covenants and agrees that the Owner must not sell or transfer, or agree to sell or transfer, any interest in the Units, other than a full interest in the Owner’s freehold title, to a purchaser that agrees to assume the terms and conditions of this Agreement. This section does not restrict the Owner from granting easements, rights of way and similar interests in land subject to this Agreement having priority over such interests.

- 2.4 The Units may not be occupied on the Lands or used for any purpose and the Village shall not be obligated to issue any occupancy permit until and unless:
- (a) the Owner has constructed the required number of Units in accordance with section 2.1(b);
 - (b) the Units have received an inspection granting occupancy; and
 - (c) the Owner has entered into an Operating Agreement with BC Housing with respect to the Units.

3. Notice to be Registered in the Land Title Office

3.1 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 483 of the *Local Government Act*;
- (b) notice of this Agreement shall be registered in the Land Title Office by the Village at the cost of the Owner in accordance with section 483 of the *Local Government Act*; and
- (c) pursuant to section 483(6) of the *Local Government Act*, this Agreement shall be binding on all persons who acquire an interest in the Lands from the Owner after registration of this notice, and unless discharged in accordance with this Agreement, shall run with and bind the Lands in perpetuity.

4. Compliance with Agreement

- 4.1 The Owner hereby irrevocably authorizes the Village to make such inquiries as it considers reasonably necessary in order to confirm that the Owner is complying with this Agreement.
- 4.2 The Owner agrees that it will, upon request from time to time, provide to the Village a report in writing, to the reasonable satisfaction of the Village, describing compliance with this Agreement.

5. Enforcement and Waiver

- 5.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of the Village in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner. The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this

Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

- 5.2 The parties agree that the Village is not obligated to inspect the Lands or to otherwise ensure compliance with this Agreement, nor is the Village obligated to remedy any default of this Agreement. A failure by the Village to enforce this Agreement shall not constitute a waiver of any of the Village's rights herein.
- 5.3 Notwithstanding any provision to the contrary in this Agreement, if the Owner is in default of its obligations in this Agreement then the Village may, by written notice to the Owner:
- (a) require such default to be corrected within thirty (30) days after receipt of such notice; and
 - (b) if within the thirty (30) days after receipt of such notice the default has not been corrected or reasonable steps to correct the default have not been taken, the Village, without limiting any other right it might have, may, but is under no obligation to, enter onto the Lands and rectify such default to the extent considered necessary by the Village, or pursue any other remedy consistent with the provisions described in sections 5.4 and 5.5.
- 5.4 No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available at law or in equity.
- 5.5 The Owner covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the Village is entitled to all equitable remedies, including specific performance, injunction and declarative relief to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

6. Demolition

- 6.1 The Owner will not demolish any Building in which a Unit is located, unless:
- (a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length from the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Building without demolishing the same, and the Owner has delivered to the Village a copy of the engineer's or architect's report; or
 - (b) the Building 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 Building has been issued by the Village. Upon the issuance of such demolition permit, the Owner will completely demolish the Building and remove all portions of the Building, including all foundations and debris, from the Lands and restore the Lands to a neat and level condition.

- 6.2 If the Building in which a Unit is located is demolished, this Agreement shall continue to apply to the Lands and any construction on the Lands shall continue to be subject to the requirements of this Agreement.

7. Termination Date, Discharge or Amendment

- 7.1 This Agreement shall be discharged or amended only by an instrument duly executed by both the Owner and the Village. Notwithstanding the foregoing, a unilateral discharge is the right of the Village under section 9.1(c).
- 7.2 Pursuant to section 483(4) of the *Local Government Act*, this Agreement may be amended only by a bylaw adopted with the consent of the Owner.
- 7.3 Notwithstanding any provision to the contrary in this Agreement, all of the covenants of the Owner to the Village contained herein (including with respect to the Units) will expire on the Termination Date and upon such expiry, the Village agrees to execute a discharge of this Agreement from title to the Lands (or any lands Subdivided from the Lands).

8. Indemnity and Release

- 8.1 The Owner hereby releases, indemnifies and saves harmless the Village from all loss, damage, costs (including without limitation legal costs), expenses, actions, suits, debts, accounts, claims and demands (collectively, the “**Claims and Losses**”), including without limitation any and all claims of third parties (and including personal injury, death or damage occurring in or on the Lands), which the Village may suffer, incur or be put to arising directly or indirectly out of or in connection with this Agreement, including:
- (a) any breach by the Owner of any covenant or agreement contained in or related to this Agreement;
 - (b) any negligent act or omission of the Owner or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible;
 - (c) the exercise of discretion by any Village employee or official for any matter relating to this Agreement;

- (d) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands, the Building or any portion thereof, including any Unit;
- (e) the exercise by the Village of any of its rights under this Agreement or an enactment; and/or
- (f) the Village withholding any demolition, building or occupancy permit in accordance with the terms of this Agreement.

Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the indemnity being granted by the Owner hereunder shall exclude such Claims and Losses arising from the negligent acts or omissions, bad faith or willful misconduct of the Village.

8.2 The indemnity and release set forth in section 8.1 shall survive the termination of this Agreement.

9. Agreement for Benefit of Village Only

9.1 The parties agree that:

- (a) this Agreement is entered into only for the benefit of the Village;
- (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 Lands, the Building or any portion thereof, including any Unit; and
- (c) the Village 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.

10. Miscellaneous

10.1 Time will be of the essence of this Agreement and will remain of the essence notwithstanding the extension of any of the dates under this Agreement.

10.2 This Agreement represents the whole agreement between the Village and the Owner, and there are no warranties, representations, conditions or collateral agreements made by the Village or the Owner except as set forth in this Agreement.

10.3 The captions and headings throughout this Agreement are for convenience and reference only and the words and phrases contained therein will in no way be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Agreement or in any way affect this Agreement.

- 10.4 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 remainder of this Agreement will remain in full force and effect.
- 10.5 Each of the parties shall at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents for the purpose of evidencing and giving full force and effect to the covenants, agreements and provisions in this Agreement.
- 10.6 All notices, demands and requests which may or are required to be given pursuant to this Agreement will be in writing and will be sufficiently given if served personally upon the party for which it is intended, or mailed prepaid and double registered:

- (a) in the case of the Village, addressed to:

Village of Pemberton
7400 Prospect Street
PO Box 100
Pemberton, BC V0N 2L0

Attention: Chief Administrative Officer

- (b) in the case of the Owner, addressed to:

Sea to Sky Community Services Society
38024 Fourth Avenue
PO Box 949
Squamish, BC V8B 0A7

Attention: Executive Director

or at such other addresses as each of the parties may from time to time advise by notice in writing. The date of receipt of any such notice, demand or request will be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed as aforesaid on the fifth business day next following the date of such mailing; provided, however, that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down of postal service or other labour dispute which affects the delivery of such notice, then such notice will be deemed to be received when actually delivered.

- 10.7 Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. Without limiting the above, in the event of any conflict between any provision of this Agreement and the *Residential Tenancy Act*, this Agreement is without effect to the extent of the conflict, except that the Owner

shall be responsible for ensuring that every Tenancy Agreement fairly reflects the material terms of this Agreement.

- 10.8 Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made from time to time to such statute and regulations and as they are in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- 10.9 The Owner will do everything necessary, at the Owner's expense, to ensure that a notice under section 483(5) of the *Local Government Act* will be filed on the title to the Lands and that this Agreement will be noted and registered against title to the Lands in priority to all financial charges and financial encumbrances which may have been registered or are pending registration against title to the Lands save and except those specifically approved in advance in writing by the Village or in favour of the Village.
- 10.10 The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the freehold interest in the Lands provided however that notwithstanding that the Owner is no longer the registered owner of the freehold interest in the Lands, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the freehold interest in the Lands.
- 10.11 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assignees.

By signing the General Instrument Part I, the parties have agreed to be bound by their respective obligations contained in this Agreement.

PRIORITY AGREEMENT

BC HOUSING (the “**Chargeholder**”) is the holder of a Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the Land Title Office under numbers CB446881 and CB446882, respectively (the “**Chargeholder Charges**”).

The Chargeholder, being the holder of the Chargeholder Charges, by signing the General Instrument attached hereto as Part I, in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder), hereby consents to the granting of this covenant under section 219 of the *Land Title Act* (the “**Covenant**”) and hereby covenants that this Covenant shall bind the Chargeholder Charges in the Lands and shall rank in priority upon the Lands over the Chargeholder Charges as if the Covenant had been registered prior to the Chargeholder Charges and prior to the advance of any monies pursuant to the Chargeholder Charges. The grant of priority is irrevocable, unqualified, and without reservation or limitation.