

CITY OF SURREY

BY-LAW NO. 16044

A by-law to authorize the City of Surrey to enter into a housing agreement
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WHEREAS the City of Surrey has received an application to enter into a housing agreement;

AND WHEREAS Section 905 of the Local Government Act, R.S.B.C. 1996 c. 323, as amended (the "*Local Government Act*"), empowers the Council or the City of Surrey to enter into a housing agreement;

NOW, THEREFORE, the Council of the City of Surrey, in open meeting assembled, ENACTS AS FOLLOWS:

1. The City of Surrey is hereby authorized and empowered to enter into a housing agreement in the form attached hereto as Schedule A and forming part of this By-law (the "Housing Agreement") with the following parties:

Pacifica Retirement Inc.,
78-15715-34 Avenue
Surrey, BC

and with respect to the following real property:

ALL AND SINGULAR that certain parcel of tract of lands and premises, situate lying and being in the City of Surrey, in the Province of British Columbia and being more particularly known and described as:

Parcel Identifier: 026-503-999
Lot 1 Section 23 Township 1 NWD Plan BCP21053

2515 King George Highway

(the "*Lands*")

2. The Mayor and Clerk are hereby empowered to execute the Housing Agreement on behalf of the City of Surrey.

3. The City of Surrey shall file in the Land Title Office a notice against the Lands in accordance with Section 905 of the *Local Government Act*, that the Lands are subject to the Housing Agreement.

4. This By-law shall be cited for all purposes as "Pacifica Housing Agreement, Authorization By-law, 2006, No. 16044."

PASSED THREE READINGS on the 26th day of June, 2006.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 10th day of July, 2006.

_____ MAYOR

_____ CLERK

HOUSING AGREEMENT

THIS AGREEMENT is made as of the _____ day of July, 2006.

BETWEEN: **PACIFICA RETIREMENT INC.**
Incorporation Number: 0716663
#78 - 15715 - 34th Avenue, Surrey, B.C., V3S 0J6

(the "Owner")

OF THE FIRST PART:

AND: **CITY OF SURREY**, a municipal corporation under the Local Government Act of the Province of British Columbia, and having its City Offices at 14245 - 56th Avenue, Surrey, British Columbia, V3X 3A2.

(the "City")

OF THE SECOND PART;

WHEREAS:

- A. The Owner is the registered owner of those lands and premises in the City of Surrey, in the Province of British Columbia, more particularly known and described as:
- Parcel Identifier: 026-503-999
Lot 1, Section 23, Township 1, NWD
Plan BCP21053
- (the "Lands").
- B. The Owner proposes to re-develop the Lands with resident units or seniors residential units for occupancy by Qualified Occupants as hereinafter defined.
- C. The Owner has requested the City to issue a Development Permit for the Lands and to rezone the Lands to Comprehensive Development Zone and it is a condition of approving Development Permit 7904-0422-00 that the parties enter into this Agreement in order to restrict the occupancy of the dwelling units to be constructed on the Lands as provided in this Agreement.
- D. Section 905 of the *Local Government Act*, R.S.B.C. 1996, Chapter 323, as amended, authorizes the City, by by-law, to enter into a housing agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH in consideration of the premises, the respective covenants and agreements of the Parties as hereinafter set out and the sum of \$1.00 and other good and valuable consideration paid by the City to the Owner (the receipt and sufficiency of which is hereby acknowledged), the Parties hereto covenant and agree each with the other as follows:

1. DEFINED TERMS AND SCHEDULES

1.1 In and for the purposes of this Agreement, the following terms shall have the following respective meanings:

- (a) "Care-giver" means a person, other than a spouse of a Qualified Occupant, who provides ongoing living assistance and care to a Qualified Occupant and who may stay in a Housing Unit from time to time to provide assistance and care to a Qualified Occupant and "Care-givers" means all persons who qualify as a Care-giver;
- (b) "Housing Unit" means any dwelling unit constructed by the Owner upon the Lands;
- (c) "Person with Disability" means a person who, in the written opinion of a medical doctor or registered psychologist, has a significant permanent disability that cannot be significantly permanently improved by medical treatment, and that produces a loss or impairment of physical or mental ability and who, together with any person residing with him or her or together with other members of his or her family, has an aggregate household income which satisfies the eligibility criteria established by B.C. Housing and Management Corporation for affordable housing;
- (d) "Qualified Occupant" means a Senior (as hereinafter defined), a Person with a Disability, a spouse of a Person with a Disability and "Qualified Occupants" means all persons who qualify as a Qualified Occupant;
- (e) "Senior" means a person who is at least 65 years of age; or a Spouse of a Qualified Occupant;
- (f) "Spouse of a Qualified Occupant" means a person living in a spousal relationship with a Qualified Occupant and includes a person who was the spouse of a Qualified Occupant who resided in a Housing Unit at the time of the Qualified Occupant's death and "Spouses of Qualified Occupants" means all persons who qualify as a spouse of a Qualified Occupant;
- (g) "Term" means the period commencing on the date of this Agreement and continuing in full force and effect in perpetuity or until this Agreement is set aside by the mutual consent, in writing, of the Parties or by the operation of law; and

(h) "this Agreement" means this Housing Agreement and any amendments or modifications of same.

1.2 The captions, section numbers and article numbers appearing in this Agreement are inserted for convenience of reference and shall in no way define, limit, construe or describe the scope or intent of this Agreement or in any way affect this Agreement.

1.3 Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and words importing persons shall include firms and corporations and vice versa.

1.4 Unless otherwise stated, a reference in this Agreement to a numbered or lettered article, section, paragraph or clause refers to the article, section, paragraph or clause bearing that number or letter in this Agreement.

1.5 The words "hereof", "hereunder", and similar expressions used in any section, paragraph or clause of this Agreement shall relate to the whole of this Agreement and not to that section, paragraph or clause only unless otherwise expressly provided.

2. OCCUPANCY OF UNITS RESTRICTED TO QUALIFIED OCCUPANTS

2.1 During the Term, no Housing Unit may be occupied by any person who is not a Qualified Occupant, a Spouse of a Qualified Occupant or a Care-giver. The City may from time to time request the Owner to provide written proof of compliance with this paragraph and the Owner agrees to provide the City with such proof in a form reasonably satisfactory to the City.

2.2 If the Owner fails to enforce compliance with terms and conditions of paragraph 2.1, then it is specifically understood and agreed that the City shall be entitled, but shall not be obliged, to enforce the terms and conditions of Section 2.1. For the purpose of this Agreement, the Owner, without the need of further authorization, writings or documents, hereby irrevocably appoints the City as its agent with respect to the enforcement of this Agreement and with respect to exercising all remedies set out in this Agreement and all other remedies available at law to the Owner.

2.3 Without in any way limiting the provisions of paragraph 2.2 above, the City shall be entitled to charge and the Owner agrees to pay, for each Housing Unit, a monthly charge equal to the average monthly fair market rental rate for dwelling units of similar size in the City of Surrey for each month or portion thereof during which a Housing Unit is occupied by a person other than a person or persons qualified to occupy a Housing Unit under the terms of this Agreement, in addition to all other remedies available at law to the City.

3. LIABILITY

3.1 The Owner will indemnify and save harmless the City and each of its elected officials, board members, officers, directors, employees and agents and their respective administrators, successors and assigns, of and from all claims, demands, actions, loans, damages, costs and liabilities, which all or any of them shall or may be liable for or suffer or incur or be put to by

reason of or arising out of the failure of any person to comply with the terms and conditions of this Agreement.

3.2 Provided the City is in compliance with the terms and conditions of this Agreement, the Owner hereby releases and forever discharges the City and each of its elected officials, board members, officers, directors, employees and agents and their respective administrators, successors and assigns, of and from any and all claims, demands, loans, damages, economic loss, costs and liabilities which any of them now has or hereafter may have with respect to or by reason of or arising out of the fact that the Lands are encumbered by and affected by this Agreement.

4. NOTICES

4.1 Any notices or other documents to be given or delivered pursuant to this Agreement will be addressed to the proper party as follows:

- (a) as to the City:
14245 - 56th Avenue
Surrey, British Columbia V3X 3A2

Attention: General Manager of Planning and Development Department

- (b) as to the Owner

PACIFICA RETIREMENT INC.
#78 - 15715 - 34th Avenue
Surrey, B.C., V3S 0J6

or such other address as such party may direct by five (5) business days notice in writing to the other party. Any notice or other document to be given or delivered pursuant to this Agreement will be sufficiently given or delivered if delivered to the particular party at its address set out or determined in accordance with this paragraph and shall be deemed complete two (2) days after the day of delivery.

It is specifically agreed that for any notice or document to be validly given or delivered pursuant to this Agreement such document or notice shall be delivered and not mailed.

5. GENERAL

5.1 Nothing in this Agreement:

- (a) affects or limits any discretion, rights, powers, duties or obligations of the City under any enactment or at common law, including in relation to the use or subdivision of land; or
- (b) relieves the Owner, Qualified Occupants, Spouses of Qualified Occupants and Care-givers from complying with any enactment, including the City's by-laws, in

relation to the use or subdivision of the Lands, save as excepted in this Agreement.

5.2 An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.

5.3 Time is of the essence in this Agreement. If any party waives this requirement, that party may reinstate it by delivering notice to another party.

5.4 This Agreement shall be construed in accordance with and governed by the law of the Province of British Columbia.

5.5 If a court of competent jurisdiction finds that any part of this Agreement is invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

5.6 Upon request by the City, the Owner, Qualified Occupants, Spouses of Qualified Occupants and Care-givers (as the case may be) will promptly do such acts and execute such documents as the City may reasonably require, in the opinion of the City, to give effect to this Agreement.

5.7 This is the entire Agreement between and among the parties concerning the subject matter of this Agreement and there are no warranties, representations, conditions or collateral agreements relating to this Agreement, except as included in this Agreement.

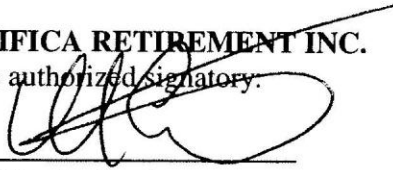
5.8 This Agreement may be enforced by prohibitory and mandatory court order of the Court. In any action to enforce this Agreement, the City shall be entitled to Court costs on a solicitor and own client basis.

5.9 This Agreement shall enure to the benefit of and be binding upon the Owner and its successors, trustees and assigns and all parties claiming through them and this Agreement shall ensure to the benefit of and be binding upon the City and its administrators, successors and assigns.

AS EVIDENCE OF THEIR AGREEMENT the parties have executed this Agreement as of the date and year first above written.

PACIFICA RETIREMENT INC.

by its authorized signatory.



David Leslie Craik

CITY OF SURREY

by its authorized signatory(ies):

Marg Jones, City Clerk