

CITY OF SURREY

BY-LAW NO. 17088

A by-law to amend provisions of Rosemary Housing Agreement
Authorization By-law, 2006, No. 15951"

.....

WHEREAS the City of Surrey has received an application to amend 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 amend 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 amend the housing agreement authorized by Rosemary Housing Agreement Authorization By-law, 2006, No. 15951 in the form attached hereto as Schedule A and forming part of this By-law (the "Housing Amendment Agreement") with the following party:

Rosemary Heights Seniors Village Holdings (Inc. No. BC0721894)
1160-1090 West Georgia Street
Vancouver, BC
V6C 3G2

and with respect to that certain parcel or 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: 026-887-771
Lot A Section 26 Township 1 New Westminster District Plan BCP27316

15240 - 34 Avenue

2. The Mayor and Clerk are hereby empowered to execute the Housing Amendment 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 Amendment Agreement.

4. This By-law shall be cited for all purposes as "Rosemary Housing Agreement, Authorization By-law, 2006, No. 15951, Amendment By-law, 2009, No. 17088."

PASSED THREE READINGS on the 30th day of November, 2009.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 11th day of January, 2010.

_____ MAYOR

_____ CLERK

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TERMS OF INSTRUMENT – PART 2

EXPRESS CHARGE TERMS

THIS AGREEMENT made this 25 day of January, 20~~09~~¹⁰.

BETWEEN:

CITY OF SURREY, having its City offices at 14245 – 56th
Avenue, Surrey, British Columbia, V3X 3A2

(hereinafter called the "**City**")

OF THE FIRST PART

AND:

ROSEMARY HEIGHTS SENIORS VILLAGE HOLDINGS
(Inc. No. BC0721894), a company duly incorporated under the
laws of the Province of British Columbia and having its registered
and records office at 2900 – 550 Burrard Street, Vancouver, British
Columbia, V6C 0A3

(hereinafter called "**Rosemary**")

OF THE SECOND PART

WHEREAS:

- A. Rosemary is the registered owner of those certain lands and premises located at 15240 - 34th Avenue and 15260 – 34th Avenue, in the City of Surrey, in the Province of British Columbia, and legally described as:

PID: 026-887-771

Lot A Section 26 Township 1 New Westminster
District Plan BCP27316

(hereinafter called the "**Lands**");

- B. Rosemary proposes to develop the Lands with buildings having 63 assisted living units and 90 residential care units for Qualified Occupants (as hereinafter defined);
- C. Rosemary has requested the City to enact Surrey Zoning By-law 1993, No. 12000, Amendment By-Law 200_, No. _____ (the "**CD By-law**") changing the zoning of the Lands to a Comprehensive Development Zone and it is a condition of the

CD By-law 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; and

- 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.

WITNESSETH THAT in consideration of the premises and their respective covenants and agreements hereinafter set out, the parties hereto covenant and agree each with the other as follows:

I. DEFINED TERMS

1. In and for the purposes of this Agreement, the following terms shall have the following respective meanings:
 - (a) **"Housing Unit"** means any single residential dwelling unit constructed by Rosemary upon the Lands;
 - (b) **"Qualified Occupant"** means any person sixty-five (65) years of age or older and **"Qualified Occupants"** means all persons who qualify as a Qualified Occupant;
 - (c) **"Registered Owner of the Lands"** means, at any given time, the then registered owner, or if more than one registered owner, the then registered owners of the Lands;
 - (d) **"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;
 - (e) **"Term"** shall mean the period commencing on the date of this Agreement and continuing in full force and effect in perpetuity; and
 - (f) **"the Agreement"** means this Housing Agreement and any amendments or modifications of same.
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 of intent of this Agreement or in any way affect this Agreement.
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.

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.
5. The words "hereof", "herein", "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.

II. OCCUPANCY RESTRICTED TO QUALIFIED OCCUPANTS

1. During the Term no person may reside in a Housing Unit who is not a Qualified Occupant or a Spouse of a Qualified Occupant. The City may from time to time request the Registered Owner of the Lands, or Rosemary, to provide written proof of compliance with this paragraph and the Registered Owner of the Lands, and Rosemary, agree to provide the City with such proof in a form reasonably satisfactory to the City.
2. If the Registered Owner of the Lands or Rosemary fails to enforce compliance with the terms and conditions of paragraph II.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 paragraph II.1. For the purpose of this Agreement, the Registered Owner of the Lands or Rosemary, without the need for further authorization, writings or documents, hereby irrevocably appoints the City as its or their 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 Registered Owner of the Lands or Rosemary.
3. Without in any way limiting the provisions of paragraph II.2. above, the City shall be entitled to charge and the Registered Owner of the Lands and Rosemary jointly and severally agree to pay for each Housing Unit a monthly penalty equal to the average monthly fair market rental rate for dwelling units of similar size in the City of Surrey, as determined from time to time by the British Columbia Housing Corporation, for each month or portion thereof during which a person resides in a Housing Unit and such person is not a Qualified Occupant or a Spouse of a Qualified Occupant, in addition to all other remedies available at law to the City.

III. LIABILITY

1. The Registered Owner of the Lands, Rosemary, Qualified Occupants and Spouses of Qualified Occupants 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 an 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 failure of any person to comply with the terms and conditions of this Agreement.
2. Provided the City is in compliance with the terms and conditions of this Agreement, the Registered Owner of the Lands, Rosemary, Qualified Occupants and Spouses of Qualified Occupants hereby release and forever discharge 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.

IV. NOTICES

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 Rosemary:

Suite 1160 – 1090 West Georgia Street
Vancouver, British Columbia V6E 3V7

Attention: Azim Jamal

or such other address in the Greater Vancouver area as such party may direct by five (5) business days notice in writing to the other parties. 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. 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.

V. GENERAL

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 uses or subdivision of land; or

(b) relieves the Registered Owner of the Lands, Rosemary, Qualified Occupants and Spouses of Qualified Occupants from complying with any enhancement, including the City's By-laws, in relation to the use or subdivision of the Lands.

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.

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.
4. This Agreement shall be construed in accordance with and governed by the laws of the Province of British Columbia.
5. In 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.
6. Upon request by the City, the Registered Owner of the Lands, Rosemary, Qualified Occupants and Spouses of Qualified Occupants (as the case may be) will promptly do such acts and execute such documents as the City may reasonably require, in this opinion of the City, to give effect to this Agreement.
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.
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.
9. This Agreement shall enure to the benefit of and be binding upon the Registered Owner of the Lands and its successors and trustees and all parties claiming through them and this Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns. This Agreement shall charge and run with the Lands and enure to the benefit of and be binding upon the owners from time to time of the Lands and all parties claiming through such owners and their respective heirs, executors, administrators, trustees and successors. Upon and after subdivision of the Lands by way of strata plan, this Agreement shall charge and run against each strata lot and all parties claiming through such strata lot owners and their respective heirs, executors, administrators, trustees and successors. Upon and after subdivision of the Lands by way of strata plan, this Agreement shall charge and run with the common property and shall enure to the benefit of and be binding upon the Strata Corporation and all parties claiming through the Strata Corporation. Neither the Registered Owner of the Lands, Rosemary nor the owners from time to time of the Lands and the strata lots shall be liable for any default in

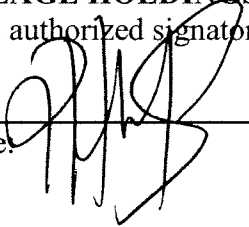
the performance or observances of this Agreement occurring after such party ceases to hold an ownership in the Lands or the strata lots.

IN WITNESS WHEREOF Rosemary Heights Seniors Village Holdings Ltd. and the City of Surrey have executed this Agreement under seal of their duly authorized officers as of the reference date of this Agreement.

**ROSEMARY HEIGHTS SENIORS
VILLAGE HOLDINGS LTD.**

by its authorized signatory:

Name: _____



CITY OF SURREY

by its authorized signatories:

Name: _____

Nicholas Lai
General Manager, Planning and Development
by his authorized designate,
Nicholas Lai, Manager, Area Planning & Development - South Division

Name: _____

Jane Sullivan
Jane Sullivan, City Clerk

END OF DOCUMENT

1. **APPLICATION:**

Reference #257735.00195

David Martin of FASKEN MARTINEAU DuMOULIN LLP,
Barristers and Solicitors, 2900 – 550 Burrard Street,
Vancouver, B.C., V6C 0A3, 604 631 4885
Client No.: 11565

Signature of David Martin

2. **PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND*:**
(PID) (LEGAL DESCRIPTION)

026-887-771

Lot A Section 26 Township 1 New Westminster District Plan BCP27316

3. **NATURE OF INTEREST*:**

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Housing Agreement	Entire Agreement	Transferee

4. **TERMS:** Part 2 of this Instrument consists of (select one only)

- (a) Filed Standard Charge Terms D.F. Number
(b) Express Charge Terms Annexed as Part 2
(c) Release There is no Part 2 to this Instrument

A selection of (a) or (b) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. **TRANSFEROR(S)*:**

ROSEMARY HEIGHTS SENIORS VILLAGE HOLDINGS LTD. (Inc. No. BC0721894)

6. **TRANSFeree(S)*** (including postal address(es) and postal code(s)):

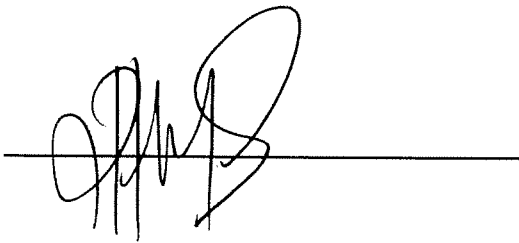
CITY OF SURREY, a city under the Municipal Act of the Province of British Columbia, and having its City Office at 14245 – 56th Avenue, in the city of Surrey, in the Province of British Columbia V3X 3A2

7. **ADDITIONAL OR MODIFIED TERMS:***

N/A

8. **EXECUTIONS:**** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

OFFICER SIGNATURE(S)



EXECUTION DATE

Y	M	D
09		

TRANSFEROR(S) SIGNATURE(S)

ROSEMARY HEIGHTS SENIORS VILLAGE HOLDINGS, by its authorized signatory

ZAHRA MOUSA
Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to execution of this instrument.

*If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

**If space insufficient, continue executions on additional page(s) in Form D

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

OFFICER SIGNATURE(S)



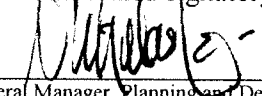
~~AS TO THE SIGNATURE
OF THE CITY CLERK~~
CARMELA BONNEVILLE
14245 - 56 Avenue
Surrey, B.C. V3X 3A2 591-4210
A Commissioner for taking Affidavits
for British Columbia

EXECUTION DATE

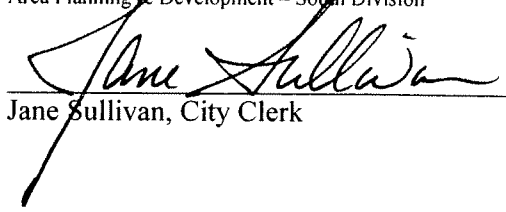
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TRANSFEREE SIGNATURE

CITY OF SURREY,
by its authorized signatory(ies):



General Manager, Planning and Development
By his authorized designate,
Nicholas Lai, Manager,
Area Planning & Development – South Division



Jane Sullivan, City Clerk

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to execution of this instrument