

CITY OF SURREY

BYLAW NO. 18403

A bylaw 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 party:

THE SEMIAHMOO FOUNDATION, S-002 6008
15306 24th Avenue, Surrey, British Columbia V4A 2J1

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: 001-754-441
South Half Lot 27 Section 14 Township 1 New Westminster District Plan 8492
2360 - 153 Street

Parcel Identifier: 011-392-827
North Half Lot 26 Section 14 Township 1 New Westminster District Plan 8492
2350 - 153 Street

Parcel Identifier: 003-659-984
North Half Lot 17 Section 14 Township 1 New Westminster District Plan 8492
2353- 153A Street

Parcel Identifier: 005-120-713
South Half Lot 16 Section 14 Township 1 New Westminster District Plan 8492

2359- 153A Street

(the "Lands")

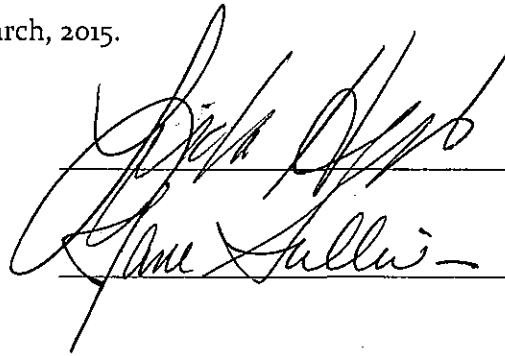
2. The Mayor and Clerk are hereby empowered to execute the Housing Agreement on behalf of the City of Surrey.
3. The City of Surrey shall file in the Land Title Office a notice against the Lands in accordance with Section 905 of the *Local Government Act*, that the Lands are subject to the Housing Agreement.
4. This Bylaw shall be cited for all purposes as "The Semiahmoo Foundation Housing Agreement, Authorization By-law, 2015, No. 18403"

PASSED FIRST READING on the 12th day of January, 2015.

PASSED SECOND READING on the 12th day of January, 2015.

PASSED THIRD READING on the 12th day of January, 2015.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 23rd day of March, 2015.



MAYOR

CLERK

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TERMS OF INSTRUMENT - PART II

SECTION 219 COVENANT AND HOUSING AGREEMENT

(Occupancy and Parking)

BETWEEN:

CITY OF SURREY, a Municipal Corporation having its municipal offices at
13450 104 Avenue, Surrey, British Columbia V3T 1V8
(the "City")

OF THE FIRST PART

AND:

THE SEMIAHMOO FOUNDATION, S-002 6008 15306 24th Ave, Surrey,
British Columbia V4A 2J1
(the "Covenantor")

OF THE SECOND PART

WHEREAS:

- A. The Covenantor is the current registered owner of those certain lands and premises located at 2360, 2350, 2353, and 2359 153A Street, Surrey, B.C. and respectively legally described as follows:
- (a) PID: 001-754-441
The South Half Lot 27 S14 T1 NWD Plan 8492;
 - (b) PID: 011-392-827
North Half Lot 26 S14 T1 NWD Plan 8492;
 - (c) PID: 003-659-984
North Half Lot 17 S14 T1 NWD Plan 8492; and
 - (d) PID: 005-120-713
South Half Lot 16 S14 T1 NWD Plan 8492;
- (collectively, the "Lands");
- B. Section 219 of the *Land Title Act*, (RSBC 1996, c. 250) provides, inter alia, that a covenant, whether of a negative or positive nature, may be registered as a charge against the title to land, in favour of a municipality or the Crown, and that the covenant is enforceable against the Covenantor and the successors in title of the Covenantor;
- C. Section 905 of the *Local Government Act*, (R.S.B.C. 1996, c. 323) authorizes the City by by-law to enter into a housing agreement;

- D. The Covenantor desires to construct a building on the Lands (the "Development") containing affordable rental Dwelling Units (as hereinafter defined) for occupancy by Eligible Occupants (as hereinafter defined);
- E. The Covenantor and the City wish to enter into this Agreement to restrict the use and occupancy of the Development, on the terms and conditions set out herein, to have effect as both a covenant under section 219 of the *Land Title Act* and as a housing agreement under section 905 of the *Local Government Act*.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT pursuant to section 219 of the *Land Title Act* and section 905 of the *Local Government Act*, and in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration and the sum of One Dollar (\$1.00) now paid by the City to the Covenantor (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto covenant and agree that the Lands shall not be used or built on except in accordance with this Covenant as follows:

1. DEFINED TERMS

- 1.1 In and for the purpose of this Agreement, the following terms shall have the following meaning:
 - (a) "Agreement" means this document and any amendments to or modifications of the same;
 - (b) "Dwelling Unit" means any private dwelling space within the Development that is occupied or available for occupancy by an Eligible Occupant;
 - (c) "Eligible Occupant" means a person who:
 - i. is identified by the Covenantor as someone who has developmental disabilities and who can live independently in the Development (a "Client"); or
 - ii. is not a Client but is someone of "low to moderate income" (defined as having a gross household income equal to or less than the median household income for the type of dwelling occupied, as determined by the B.C. Housing Management Commission using data released by Statistics Canada - Income Statistics Division: T1 Family File) (an "Affordable Housing Occupant") throughout the period that they are a tenant of the Development.

2. RESTRICTIONS ON OCCUPANCY OF DWELLING UNITS

- 2.1 Only Eligible Occupants may occupy Dwelling Units.
- 2.2 The allocation by the Covenantor of Dwelling Units to Eligible Occupants shall be prioritized as follows:
 - (a) amongst Clients, on the basis of need;
 - (b) amongst Affordable Housing Occupants, to residents of Surrey first; and

- (c) as between Clients and Affordable Housing Occupants, to Clients first.
- 2.3 The Covenantor shall determine the number of Dwelling Units made available to Clients from time to time, but shall not let the number of Dwelling Units made available to or occupied by Clients at any given time be less than 15 Dwelling Units.
- 2.4 Of the minimum 15 Dwelling Units specified above, a maximum of 10 Dwelling Units may be leased to Clients for a term of 60 years.
- 2.5 The Covenantor shall be solely responsible for allocating and leasing the Dwelling Units from time-to-time on such terms as the Covenantor determines, provided such terms are in accordance with this Agreement.
- 2.6 The Covenantor may lease Dwelling Units of any size to any one or more Clients or to any one or more Affordable Housing Occupants as the Covenantor determines.
- 2.7 The rent payable by Affordable Housing Occupants for a Dwelling Unit shall not be greater than 30% of the median household income for that type of dwelling as determined from time to time by the B.C. Housing Management Commission using data released by Statistics Canada - Income Statistics Division: T1 Family File.
- 2.8 The Covenantor covenants and agrees to operate the Development in a safe and orderly manner in accordance with the B.C. Housing Management Commission's standards for multiple unit residential buildings and to cooperate with the City to deal expeditiously with any complaints concerning the Development.
- 2.9 The Development shall not be stratified.
- 2.10 The City may from time to time require that the Covenantor provide written proof of compliance with section 2 of this Agreement and the Covenantor agrees to provide the City with such proof in a form reasonably satisfactory to the City.

3. RESTRICTIONS ON PARKING

- 3.1 The Covenantor will take reasonable steps to ensure that parking by the residents and staff of, and visitors to, the Development will occur on the Lands, such steps to include the following:
 - (a) The Covenantor will designate and reserve a minimum of 15 of the Development's underground parking stalls for staff use from 7:00 AM to 2:00 PM every Monday through Friday. Each such reserved on-site parking stall shall be made available for visitor parking after 2:00 PM on weekdays and all-day on weekends.
 - (b) In addition to the foregoing, the Covenantor will designate and reserve a minimum of 10 of the Development's underground parking stalls for use at any time by Eligible Occupants' visitors and their families on a first-come basis.
 - (c) The Covenantor will designate and reserve the remainder of the Development's underground parking stalls for use in connection with specific Dwelling Units, such parking stalls to be allocated by the Covenantor according to the needs of each resident of the Development and the size of their particular Dwelling Unit.

4. ENFORCEMENT

- 4.1 If the Covenantor fails to enforce compliance with the terms and conditions of sections 2 and 3 of this Agreement, then it is specifically understood and agreed that the City will be entitled, but will not be obliged, to enforce the terms and conditions of sections 2 and 3 of this Agreement.
- 4.2 For the purpose of this Agreement, the Covenantor, without the need for further authorization, writing, or documents, hereby irrevocably appoint 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 Covenantor that relate to this Agreement.

5. LIABILITY

- 5.1 The Covenantor will indemnify and save harmless the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from all claims, demands, actions, 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 reasons of or arising out of failure of the Covenantor to comply with the terms and conditions of this Agreement.
- 5.2 Provided that the City is in compliance with the terms and conditions of this Agreement, the Covenantor hereby releases and forever discharges the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from any and all claims, demands, actions, damages, economic loss, costs and liabilities which the Covenantor now has or hereafter may have with respect to or by reasons of or arising out of the fact that the Lands are encumbered by this Agreement.

6. NOTICE

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

as to the City:

City of Surrey
14245 56th Avenue
Surrey, B.C. V3X 3A2
Attention: General Manager, Planning & Development Dept.

as to the Covenantor:

The Semiahmoo Foundation
15306 24th Avenue
Surrey, B.C. V4A 2J1
Attention: Executive Director

or such other address as such party may direct. Any notice or other documents 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 section and shall be deemed complete two (2) days after the day of delivery.

- 6.2 It is specifically agreed that for any notice or document to be validly given or delivered pursuant to this Agreement, such notice or document must be hand delivered and not mailed.

7. MISCELLANEOUS

7.1 The Covenantor acknowledges and agrees that:

- (a) this Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 905 of the *Local Government Act*;
- (b) the City is required to file a notice of housing agreement in the Land Title Office against title to the Lands; and
- (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Lands as a housing agreement.

7.2 The burden of the covenants herein provided for shall run with the Lands and will be personal and binding upon the Covenantor during the Covenantor's seisen of or ownership of any interest in the Lands;

7.3 Notwithstanding anything to the contrary, the Covenantor shall not be liable under any breach of any covenants and agreements contained herein after the Covenantor ceases to have any further interest in the Lands;

7.4 The fee simple estate in and to the Lands will not pass or vest in the City under or by virtue of these presents and the Covenantor may fully use and enjoy the Lands except only for the requirements provided for in this Agreement;

7.5 The covenants and agreements on the part of the Covenantor and herein provided for have been made by the Covenantor as contractual obligations as well as having been made pursuant to Section 219 of the *Land Title Act* and Section 905 of the *Local Government Act* and as such will be binding on the Covenantor.

8. GENERAL

8.1 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.

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

- 8.3 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.
- 8.4 The words "hercof", "herein" 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.
- 8.5 Nothing in this Agreement:
- (d) 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 the Lands; or
 - (e) relieves the Covenantor from complying with any enactment, including the City's by-laws.
- 8.6 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.
- 8.7 Time is of the essence of this Agreement. If any party waives this requirement, that party may reinstate it by delivering notice to the other party.
- 8.8 This agreement shall be construed in accordance with and governed by the laws of the Province of British Columbia.
- 8.9 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.
- 8.10 Upon request by the City, the Covenantor 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.
- 8.11 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.
- 8.12 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.
- 8.13 This Agreement shall enure to the benefit of and be binding upon the parties and their successors and assigns.

END OF DOCUMENT