



TOWN OF STONY PLAIN HAF INITIATIVES

TEMPLATE GROUND LEASE AFFORDABLE HOUSING PROGRAMS

A. Introduction

Several types of ownership structures and operating models have been examined and utilized for affordable housing purposes. Ultimately, the creation of more affordable housing involves the artificial reduction of capital and/or operating costs associated with the housing itself, or the amenities associated with it.

Reducing initial project costs can take many forms. One common strategy is to reduce land costs for the project by simply providing lands at a reduced cost or at below market cost, in exchange for restricting the permitted use to a form of affordable housing. In addition to selling land to private developers or non-profit operators/developers at reduced cost, landowners can also grant leasehold interests in lands, at reduced or no rental, for the purpose of constructing and operating housing.

In the interest of creating affordable housing, a leasehold ownership structure involves a landlord granting a long-term lease to a developer or non-profit (the "tenant") to allow for the construction of affordable accommodation. The main tenant can then either

- (i) provide the accommodation to qualified subtenants at rental rates that are generally below the average cost normally experienced within the applicable market; or
- (ii) set up a program where long-term subleases are "sold" and mortgaged to qualified sublessees. This is type of homeownership that can give individuals the opportunity to own a home and build equity, even if they cannot afford the large down payment that is required for a full fee simple purchase.

In either scenario, the initial long-term lease agreement (i.e. the head lease) generally contemplates the creation of a new "leasehold title", and perhaps a new "subleasehold title", which means that the tenant and subtenants are acquiring title for the affordable unit for the term of the lease (or sublease).

The main advantage of this model for tenants is that it allows non-profit organizations to utilize or monetize a parcel of land that may be cost-prohibitive to purchase. The main advantage for a landlord is that it is able to retain a certain amount of control over the final project that is developed, the rental rates and the eligibility criteria for the individuals and families that are entitled to reside in the project once complete (e.g. low-income individuals/families). If a tenant fails to operate the project for affordable housing as required by the landlord, the landlord is granted authority to terminate the lease, take over the project and find a new tenant that is willing to comply with the purpose and intent of the lease. This ability to terminate provides a strong incentive for tenants to continue operating the program as required by the lease. The other advantage is that it gives the landlord flexibility over future uses of the lands after the lifetime of the building comes to a close and the term of the lease expires.

B. The Draft Template Ground Lease

Upon review of the enclosed Agreement, you will note that we have prepared the Agreement in a way that will allow for ease of use by landowners, builders and non-profit groups. Space is provided within the Template Agreement to complete the necessary information. The information that must be inserted is, generally speaking, very self-explanatory.

Regarding the landlord's review of the Template Agreement, we provide the following comments:

1. **Front Page** – for ease of completion, we have created a template that allows for all of the property details and the important lease terms to be inserted on the page 1.
2. **Term and Renewal (Section 3.2)** – the term of a ground lease is generally equivalent to the useful life span of the proposed Project, and at a minimum it would be as long as a typical amortization of the loan that may be needed to fund/finance the Project. With renewals, the landlord will want to be certain that the Project is still serving its function before a renewal for an additional term. Plus, the life cycle of the Project may be coming to a close, unless substantial renovation is undertaken. To address this the Template Agreement requires an assessment of condition and the function of the Project before renewal.

Generally, 25-100 years total (including renewals) is reasonable as it reflects the life cycle of the typical building (i.e. before it needs substantial renovation or replacement).

3. **Permitted Use** – the use allowed under the Lease is the construction and operation of the Project for Affordable Housing. In order to provide flexibility and give developers the option of creating mixed-use developments where appropriate, the definition of "Affordable Housing" has been drafted as follows:

"**Affordable Housing**" means a development:

- (i) where the primary use is to provide residential housing for qualifying individuals that comply with the requirements outlined within **Schedule "A"** to this Lease and the Tenant's stated purpose, charter, governing principles and policies and principles implemented from time to time; and
- (ii) that may include, as a secondary or ancillary use, any combination of support services, retail, medical, recreational, or commercial components;

Schedule "A" is where the requirements of the program are to be provided. Eligibility requirements are difficult to draft, but very necessary when a land owner provides lands at reduced costs in order to facilitate affordable rents or subleases. For now, and as a starting point, Schedule "A" provides a summary of the common programs and eligibility criteria relied on by established programs in Alberta. Note that many organizations the Social Housing Accommodation Regulation (SHAR) which establishes the rules for accessing Community Housing and Affordable Housing and other Rent-Geared-To-Income programs. The legislation might be a good resource for the parties to rely on for the purposes of setting affordability parameters. Note as well that non-profit organizations are likely to come to a Project with eligibility criteria and program details already established by their board of directions. We expand on this in detail below.

4. **Section 7 – Construction** – as the reason for leasing the lands is to see the Project happen, some milestones and development deadlines are needed. Note as well that we have made it clear that during the Term, the Project is owned by the tenant; however, upon termination or expiry, the asset will, at the option of the landlord, transfer to the landlord. Legally, at the end of a lease term, the land and all improvements will revert to the landowner, unless the lease states otherwise. So this section is merely a reflection of the current law.
5. **Section 9 - Management, Operation, Maintenance** – detailed obligations are included to ensure that the Project and use of the lands fulfills the identified need generally, but also to ensure that the Project remains an asset and is not allowed to deteriorate over time.
6. **Section 11 Subletting and Assignment** – given the nature of the Project, subletting must be authorized, but the requirements of any sublease should be set by the landlord and the landlord should retain a certain level of oversight.

Project Financing – in all likelihood, a tenant will require financing to construct an affordable housing project on the lands. For simplicity, this section authorizes the mortgaging of the leasehold interest of the tenant as long as certain conditions are met including that the mortgage financing must relate specifically to the construction of the Project. The section also limits the landlord's liability for the necessary financing.

7. **Execution** – please note that we have provided execution lines for both corporate purchasers under corporate seal as well as individual purchasers.
8. **Schedule "A" – Affordable Housing Program Guidelines** – as noted above, Schedule "A" is where the details of the tenant's program will be outlined. It is difficult to provide one set standard or recommendation regarding what will qualify as affordable housing given the myriad of options available. Many organizations, programs and even mortgage lenders consider housing affordable if it costs no more than 30% of household income before taxes. This measure is a useful tool that can be used to define the programs that must be operated on a specific site, but housing affordability is often based on a combination of factors, and every situation is different.

For now, and if needed, the Schedule provides some initial guidance for the parties to review and determine the type of program and eligibility criteria that must be implemented on the lands in order to ensure it is always being operated as "affordable housing".

1. DEFINITIONS

1.1 In this Lease:

- (a) **"Affordable Housing"** means a development:
 - (i) where the primary use is to provide residential housing for qualifying individuals that comply with the requirements outlined within **Schedule "A"** to this Lease and the Tenant's stated purpose, charter, governing principles and policies and principles implemented from time to time; and
 - (ii) that may include, as a secondary or ancillary use, any combination of support services, retail, medical, recreational, or commercial components;
- (a) **"Applicable Laws"** means all statutes, laws, bylaws, regulations, ordinances, orders, requirements, licenses and permits of governmental or other public authorities having jurisdiction, and all amendments thereto, at any time and from time to time in force;
- (b) **"Hazardous Substance"** means any pollutants, materials, hazardous, corrosive, or toxic substances, special waste or waste of any kind, or any other substance which is now or hereafter prohibited, controlled or regulated under any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits, and other lawful requirements of any governmental authority having jurisdiction over the Lands and the Project now or hereafter in force relating in any way to the environment, health, occupational health and safety, or transportation of dangerous goods, including the principles of common law and equity; and
- (c) **"Project"** means the Affordable Housing Project to be constructed and maintained on the Lands, consisting of:
 - (i) insert number of units;
 - (ii) insert square area requirements for units and Project as a whole;
 - (iii) insert amenity requirements;
 - (iv) insert parking requirements;
 - (v) Etc.

2. PURPOSE OF THIS LEASE

2.1 **Grant:** The Tenant and the Landlord wish to enter into a lease agreement for the Lands to allow for the Tenant's construction and operation of an Affordable Housing facility as well as related improvements located upon the Lands, subject to the terms on page 1 of this Lease and the following terms and conditions:

2.2 **Purpose of Lease and Conditions:** The parties acknowledge and agree that the Landlord is entering into this Lease for the purpose of ensuring that the Lands are used solely and exclusively for the purposes of alleviating the problem of a lack of Affordable Housing for low income individuals in the community where the Lands are located. The Tenant acknowledges and covenants that it will use the Lands solely and exclusively for the purpose of providing Affordable Housing which will be managed by the Tenant during the term of this Lease and under the conditions expressly set forth

in this Section. The Tenant acknowledges that it will be required to sublease the lands and improvements on a non-profit basis and that it will not be entitled to earn an amount in excess of the amount which represents the fair market value of the services it provides. The Tenant will provide an annual report to the Landlord setting for the following information:

- (a) The names of the sub-tenants;
- (b) The terms of the sub-leases;
- (c) The qualifications of such parties to receive sub-leases;
- (d) An officer's certificate confirming that the Project is being operated and managed in accordance with the purpose, intent, terms and conditions of this Lease.

2.3 Audits: The Tenant agrees that the Landlord may audit the Tenant's records in respect of the Project annually to ensure that the purpose and related conditions of this Lease are being met.

2.4 Landlord's Right to Terminate: The Tenant also acknowledges and agrees that if at any time after the start of the Term, the Landlord determines that the Tenant has failed to honour its commitment to develop and manage the Lands for the purpose and in the manner set forth above, the Landlord shall provide a 90 day written notice of termination of this Lease. In the event the Tenant fails to cure any defaults within the said 90 day period, the Landlord shall terminate this Lease and replace the Tenant with a new party who will operate and manage the Project on the Lands in accordance with the purpose and the intent of this Lease.

3. THE TERM

3.1 Term: The Term of this Lease shall be as outlined on page 1 of this Lease Agreement, subject always to earlier termination or renewal as provided for within this Lease Agreement.

3.2 Option to Renew: Provided that the Tenant has duly and punctually performed its obligations under this Lease, and:

- (a) the Project is in a condition and state of repair that will allow for the continued use and enjoyment of the Project by the Tenant for Affordable Housing throughout the renewal term, as determined by the Landlord acting reasonably; or
- (b) the Tenant has provided Plans for the completion of upgrades, alterations or improvements to the Project to be performed during the renewal term to ensure the required condition and state of repair of the Project throughout the renewal term;

then on the expiration of the Term, the Tenant shall have _____ option(s) to renew this Lease for an additional term of _____ years each, upon the same terms and conditions as contained within this Lease save and except that:

- (c) there shall be no further option to renew;
- (d) the Rent payable during the renewal term shall be \$_____ per year;
- (e) insert other necessary restrictions or terms for the renewal period.

4. THE LANDS

- 4.1 **"As Is, Where Is":** The Landlord shall provide, and the Tenant shall accept, the Lands in an "as is, where is" condition, including without restriction with respect to topography, vegetation, geotechnical and hydrological conditions, and subject to all those registrations noted upon the title to the Lands prior to the commencement of this Lease.
- 4.2 **Satisfactory Condition:** Without limiting the foregoing, the Tenant agrees:
- (a) that no warranties or representations whatsoever respecting the Lands (including, without restriction, the condition or quality of the Lands, or its suitability for the purposes and use intended by the Tenant) have been made by the Landlord or its agents or employees; and
 - (b) that the Tenant has examined the Lands and as at the date of this Lease, the Lands are in good order and in satisfactory condition.
- 4.3 **Creation of Leasehold Title:** Within 30 days the Start Date of this Lease, the Tenant shall apply to the Land Titles Office for the creation of a distinct leasehold title to be registered in the Tenant's name (the "Leasehold Title"), representing the Tenant's leasehold interest arising by virtue of this Lease, with the Landlord retaining freehold title to the Lands (the "Freehold Title"). The Landlord shall provide whatever further documents are required for the registration of the Leasehold Title.

5. RENT

- 5.1 **Rent:** The Rent, as shown on page 1 of this Lease, payable by the Tenant to the Landlord for the first year of the Term shall be paid on or before the Start Date of the Term and thereafter shall be paid on each anniversary date of the Start Date throughout the Term without any deductions or set-off whatsoever.
- 5.2 **Net Lease:** The Landlord and the Tenant hereby covenant and agree that for all purposes that this Lease shall be a net lease for the Landlord, and that save and except for as specifically set forth within this Lease, the Landlord shall not be responsible for any cost, charge, expense or outlay of any nature whatsoever arising from or relating to the Lands, the Project, or any impositions, costs and expenses of every nature and kind relating to the Lands and the Project whether or not specifically provided for within this Lease. All such costs shall be the responsibility of the Tenant to pay promptly when due. To the extent that any such costs are paid by the Landlord, the Tenant shall reimburse the Landlord immediately upon demand, such sums being collectable in the same manner as rent.
- 5.3 **The Tenant's Taxes:** The Tenant shall pay, when and if they shall become due and payable, all real estate taxes, assessments, rates and charges and other government impositions, general or special, ordinary or extraordinary, foreseen or unforeseen, of every kind, including assessments for local or public improvements and school taxes which may at any time during the Term be imposed, assessed or levied, in respect of the Project and Tenant's leasehold interest in the Lands and all fixtures and improvements from time to time located thereon, or which, howsoever imposed, might constitute a lien on the Project or any part thereof or a liability of the Landlord. The Tenant shall furnish to the Landlord, within 30 days of receipt of a written request from the Landlord, official receipts or other proof satisfactory to the Landlord evidencing the payment of the taxes.
- 5.4 **Adjustments:** An adjustment shall be made between the Landlord and the Tenant for taxes for the year of commencement of the Term and the year of termination.
- 5.5 **Goods and Services Tax:** The Tenant shall be responsible for the payment of any and all goods and services tax pursuant to the *Excise Tax Act* (Canada), or other value-added tax which may be

imposed in place of or in addition to the goods and services tax, which may become payable in respect of any sums to be paid pursuant to the terms of this Lease.

6. INSURANCE

6.1 Tenant Insurance: The Tenant covenants and agrees with the Landlord that:

- (a) General Liability Insurance** - The Tenant shall in the name of the Landlord and the Tenant maintain comprehensive general liability insurance covering claims for personal injury and property damage arising out of all occupation and use of the Lands, including liability assumed under this Lease, and including a cross-liability term, with limits of Two Million Dollars (\$2,000,000.00) inclusive of any one occurrence, or such other amount as the Landlord may from time to time reasonably require;
- (b) Co-Insurance** - If any policy or policies for such insurance shall contain any co-insurance clause, to maintain at all times a sufficient amount of such co-insurance clause so as to prevent the Landlord or the Tenant from becoming a co-insurer under the terms of such policy or policies and to permit full recovery up to the amount insured in the event of loss;
- (c) Approvals** - All such insurance shall be in terms and amounts from time to time specified by the Landlord and shall be placed with insurers selected by the Tenant and approved by the Landlord provided that the Landlord shall give notice of any objections to the said terms, amounts or insurers within 30 days of receipt of notice of the same and failing such notice of objection, the terms, amounts or insurers in question shall be deemed to be approved by the Landlord. Each policy of insurance shall be signed by the insurer or insurers responsible for the risks insured against;
- (d) Special Endorsements** - Each of the policies for such insurance will contain an agreement by the insurer to the effect that it will not cancel or materially alter such policy or permit it to lapse except after 60 days prior written notice to the Landlord and that such policies of insurance shall be automatically renewed unless the insurer has given 60 days prior written notice to the Landlord and the Tenant that such insurance will be cancelled on its expiry. Each of the policies of such insurance will also contain &waiver of subrogation in favour of the Landlord, the Tenant and any subtenant of the Tenant, an endorsement confirming that the coverage in each such policy is primary to any other coverage carried by the Landlord and the Tenant, and an endorsement confirming that a breach of condition by one named insured shall not prevent recovery by any other named insured who is innocent of such act or breach;
- (e) Premiums** - The Tenant shall duly and punctually pay all premiums and other sums of money payable for maintaining any such insurance as aforesaid; and
- (f) Evidence** - The Tenant will produce to the Landlord evidence of the payment of all premiums and other sums of money payable for maintaining such insurance on the date when such premiums and monies are due and payable and shall deposit promptly with the Landlord every policy of and renewal certificate for such insurance (or a certified copy thereof at the option of the Tenant).

7. THE PROJECT

- 7.1 Construction of the Project:** The Tenant shall be responsible for the design, construction, and commissioning of the Project upon the Lands, including the supervision of any and all design and construction activities, in accordance with Applicable Laws and the following terms of conditions:
- (a) Construction Commencement** – the Tenant shall commence construction of the Project (for clarify, consisting of the commencement of the pouring of foundation and basement structure), on or before ____ 20____;
 - (b) Completion of Construction** – the Tenant shall complete construction of the Project to the point of occupancy and use of the Project by residents on or before ____ 20____;
- 7.2 Landlord Cooperation:** During the Term, the Landlord shall consent as owner to any application or applications required to obtain any and all approvals required by the Applicable Laws respecting the Lands and the Project and shall cooperate with and/or assist the Tenant from time to time with respect thereto and in that regard, the Landlord shall promptly execute all necessary applications, consents, and authorizations as may be required. The Tenant further agrees to keep the Landlord informed in reasonable detail as to the status and progress of the matters referred to in this Article 7.
- 7.3 Construction Liens:** The Tenant shall not suffer or permit any lien under the *Prompt Payment and Construction Lien Act* (Alberta) or any like statute to be filed or registered against the Lands by reason of work, labour, services or materials supplied or claimed to have been supplied to the Tenant or anyone holding any interest in the Lands or any part thereof or under the Lease. Should the Tenant desire to contest in good faith the amount or validity of any claim for payment for work or materials supplied to the Lands, and shall have so notified the Landlord, then the Tenant may defer payment of such claim for a period of time sufficient to enable the Tenant to contest the claim with due diligence, provided always that neither the Lands nor any part thereof, nor the Tenant's leasehold interest therein, shall thereby become liable to forfeiture or sale. The Landlord may, but shall not be obliged to secure the removal of any lien filed or registered at any time if in the Landlord's judgment the Lands or any party thereof of the Tenant's interest therein becomes liable to any forfeiture or sale or is otherwise in jeopardy, and any amount paid by the Landlord in doing so, together with all reasonable costs and expenses of the Landlord, shall be reimbursed to the Landlord by the Tenant on demand. Nothing herein contained shall authorize the Tenant, or imply any consent or agreement on the part of the Landlord, to subject the Landlord's estate and interest in the Lands to any lien.
- 7.4 Conditions to Occupancy and Permitted Use of Buildings.** Final occupancy of the buildings on the Lands, and the commencement of operations of Affordable Housing within the buildings upon the Lands, shall be conditional upon completion of all required onsite servicing.
- 7.5 Ownership of Project:** During the Term, the Project shall be owned by the Tenant. Upon the expiration of the Term or renewal term, as the case may be, or upon the earlier termination of this Lease, the Project shall, at the option of the Landlord, be surrendered to the Landlord together with the Lands. The rights and obligations of the parties contained within this Section shall survive the expiration or termination of this Lease for any reason whatsoever.
- 7.6 Removal of Project and Restoration:** Upon the expiration of the Term or renewal term, as the case may be, or upon the earlier termination of this Lease, at the option of the Landlord, the Tenant shall at its sole cost and expense demolish the Project (or any portion thereof, at the direction of the Landlord), remove all resultant debris, and restore the Lands to a substantially similar condition they were in prior to the construction of the Project, to the sole satisfaction of the Landlord, acting reasonably. The rights and obligation of the parties contained within this Section shall survive the expiration or termination of this Lease for any reason whatsoever.

8. QUIET ENJOYMENT

8.1 The Tenant's Quiet Enjoyment: Subject to the terms, covenants and conditions contained in this Lease, the Landlord covenants that upon duly performing and observing all its covenants and obligations contained in this Lease, the Tenant shall and may peaceably possess and enjoy the Lands for the Term without any disturbance or interruption from the Landlord or any other person using the Lands, other than through the reciprocal use agreement between the Landlord and the Tenant.

9. OPERATION OF THE PROJECT

9.1 Management: The Tenant shall operate, maintain and manage the Project in a manner consistent with Affordable Housing, in a safe, efficient, and good and workmanlike manner, in substantially the same manner as a prudent owner would operate, maintain and manage the Project, and shall take such action as appropriate to ensure that the Project is properly and adequately supervised including, without limiting the generality of the foregoing, the Tenant shall:

- (a) supply all necessary equipment and personnel reasonably required with respect to the management, operation, and maintenance of the Project;
- (b) provide annual reports to the Landlord relating to operational details reasonably required by the Landlord;
- (c) maintain reasonable records of maintenance, repairs, warranties, and capital replacements;
- (d) undertake all activities and provide all services reasonably required for the efficient management, operation and maintenance of the Project as a prudent owner would in similar circumstances;
- (e) promptly pay when due any and all charges, impositions, costs and expenses of every nature and kind relating to the Project and the maintenance, operation, cleaning, repair and replacement of all structures, capital components and improvements located thereon including, without restriction, all costs relating to cleaning the interior and exterior portion of the Project, window cleaning, garbage disposal, repairing damaged components of the Project and the term of hot and cold water and electricity;
- (f) keep and maintain all reasonably required business records and provide to the Landlord, its accountants and auditors reasonable access, during normal business hours throughout the Term, to the Lands and the Project and to the books, contracts, commitments and records of the Tenant relating to the management and operation of the Lands and the Project pursuant to this Lease and shall furnish to the Landlord all such information directly relating to the Lands and the Project as the Landlord may reasonably request;
- (g) throughout the Term, continuously use the Project solely for Affordable Housing, and shall not use or permit or suffer the use of the Project or any part thereof for any other business or purpose;
- (h) not cause or suffer or permit any Hazardous Substances to be located in or upon the Project, or discharged into the Project or into any driveways, ditches, water courses, culverts, drains or sewers in or adjacent to the Project;
- (i) not do, omit to do, permit to be done, or omit to permit to be done, any act or thing which may render void or voidable or conflict with the requirements of any policy or policies of insurance, including any regulations of fire insurance underwriters applicable to such policy

or policies, under which the Project or the contents of the Project are insured;

- (j) promptly perform all snow removal, dust abatement, erosion protection, seeding, grassing, weed control and routine yard maintenance required upon the Lands;
- (k) maintain (including, without limitation, the performance of regular and periodic servicing, maintenance and inspections, together with periodic replacement where reasonably required by the Landlord) in good operating condition and to the reasonable satisfaction of the Landlord, all equipment, pipes, wiring and electrical apparatus and all plumbing fixtures, ice making equipment and all other mechanical systems and electrical systems in or about the Project in accordance with the standards established from time to time by applicable land use bylaws and safety codes requirements; and
- (l) maintain (including, without limitation, the performance of regular and periodic servicing, maintenance and inspections) in good operating condition and to the reasonable satisfaction of the Landlord, all structural components and roofs comprising the Project in accordance with the standards established from time to time by applicable land use bylaws and safety codes requirements.

9.2 Utilities. The Tenant shall pay promptly when due all rates, levies and charges (including installation charges) for water, gas, sewer, electricity, telephone, cable, telecommunication, and any and all other services and utilities supplied to or used within the Project, and shall indemnify the Landlord against any and all liability or damages pertaining thereto.

9.3 Evidence of Payments: The Tenant shall produce upon the reasonable request of the Landlord, satisfactory evidence of the due payment by the Tenant of all payments required to be made by the Tenant under this Lease.

9.4 No Nuisance: The Tenant shall not at any time during the Term, use, exercise or carry on or permit or suffer to be used, exercised or carried on, in, about or upon the Project or any part thereof any waste or any offensive act, trade, business, occupation or calling, and no act, matter or thing whatsoever shall at any time during the Term or renewal thereof, be done in, about or upon the Project or any part thereof which shall be inconsistent or incompatible with the intended use of the Project, or which may be or grow to the annoyance, nuisance, damage or disturbance of the occupants and other users of the Project, as well as occupants of lands and property owners in the vicinity of the Project.

9.5 Comply with Applicable Laws: The Tenant shall comply promptly at its expense with all laws, bylaws, ordinances, regulations, requirements and recommendations of any and all federal, provincial, civic, municipal and other lawful authorities, which may be applicable to the Tenant, to the construction of the Project, to the manner of use or operation of the Project, or the making by the Tenant of any repairs, alterations, changes or improvements to the Project.

9.6 Alterations: The Tenant shall not without the prior written consent of the Landlord, which consent may not be unreasonably withheld, excavate, drill, install, erect, or permit to be excavated, drilled, installed or erected over, under or through the Project, any pit, foundation, pavement, building, fence, sidewalk, installation, addition, partition, sign, alteration, or other structure or improvement. For clarity, the Landlord may impose conditions upon its consent.

10. INDEMNITY

10.1 Indemnity to Landlord: The Tenant covenants with the Landlord that, except where the same arises out of the negligence or willful misconduct of the Landlord, or those for whom the Landlord is responsible in law, the Tenant shall indemnify and save harmless the Landlord from any and all

manner of actions, causes of action, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to or arising during the Term hereof out of any breach, violation or non-performance of any obligation on the part of the Tenant under any agreement affecting the development or use of the Lands, or any covenants, conditions or agreements of this Lease set forth and contained on the part of the Tenant to be fulfilled, kept, observed or performed or otherwise arising out of the use by the Tenant of the Lands and in addition, without limiting the generality of the foregoing, notwithstanding any terms of Article 6 hereof, the Tenant shall indemnify and save harmless the Landlord from any and all manner of actions, causes of action, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to and arising during the Term hereof out of:

- (a) Any injury to person or persons, including death resulting at any time therefrom, occurring in or about the Lands; and
- (b) Any damage to or loss of property occasioned by the use and occupation by the Tenant of the Lands; excepting where such injury or damage arises out of the negligence or willful misconduct of the Landlord, or those for whom the Landlord is responsible in law. The obligations of the Tenant to indemnify the Landlord under the terms of this Article 10 with respect to liability by reason of any matter arising prior to the termination of this Lease shall survive any termination of this Lease, anything in this Lease to the contrary notwithstanding.

10.2 Defending Claims: The Tenant shall, in any and every event in which the Landlord is made a party to any action, suit or proceeding in respect of a claim to which the Tenant's obligation to indemnify the Landlord under the term of this Article 10 extends, if so requested by the Landlord, defend such action, suit or proceeding in the name of the Landlord; PROVIDED THAT the Tenant may, in any such event, elect to pay and satisfy any such claim. In no such event shall the Landlord settle or compromise any such claim, and in each such event the Landlord shall inform the Tenant fully of such claims and shall afford the Tenant every co-operation in the defence of such action, suit or proceeding.

10.3 Liability for Hazardous Substances: The Tenant hereby indemnifies and saves harmless the Landlord and its successors and assigns from and against any and all losses, liabilities, damages, costs and expenses of any kind whatsoever which at any time or from time to time may be paid, incurred or asserted against the Landlord as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Substance from or on to the Lands either into or from the atmosphere or in to or from any water, or from or on to any lands whether or not subject to this Lease. This indemnification shall survive the Termination of this Lease.

11. ASSIGNMENT AND SUBLETTING

11.1 Permitted Subleases: The Landlord and Tenant covenant with each other that the Tenant may sublet the whole or any part of the Lands without the consent of the Landlord; provided that:

- (a) At all times during the Term (and any and all renewals thereof), the Lands shall be utilized for the sole purpose of providing Affordable Housing;
- (b) No sublease shall release the Tenant from its obligations under this Lease Agreement;
- (c) All such subleases shall:
 - (i) be in a form and content approved by the Landlord;

- (ii) have a term no longer than _____ months/years at a time, and in any event may not extend beyond the expiration or earlier termination of this Lease;
- (iii) require that the subtenants and all invitees conform to the Landlord's rules and regulations imposed from time-to-time; and
- (iv) contain any standard terms or conditions stipulated by the Landlord from time to time.

11.2 Project Financing: The Tenant shall have the right, without requiring the consent of the Landlord, to assign, sublet or mortgage its interest under this Lease, by way of and for the purposes of financing the Project; PROVIDED THAT the financing is a bona fide mortgage that:

- (a) provides for advances of funds based upon the progress of construction of the Project on the Lands on a cost to complete basis;
- (b) is non-recourse as against the Landlord regardless of whether the Landlord exercises its rights hereunder;
- (c) provides for a rate of interest which is a market rate of interest appropriate for a construction loan on a project such as is contemplated by this Lease Agreement; and
- (d) is open for prepayment at any time without notice, bonus or penalty.

The Landlord shall not be obliged to subordinate or mortgage its fee simple interest in the Lands nor shall it be obliged in any way to join in any mortgage or charge with respect to the financing.

12. DEFAULT

12.1 Notice of Default: If at any time during the Term the Tenant shall default in payment of Rent or any other sums required to be paid by the Tenant by any term of this Lease, or if the Tenant shall default in performing or observing any of its other covenants or obligations under this Lease, the Landlord shall give notice of such default to the Tenant.

12.2 Termination if Default Not Cured: If, after the expiration of a period of 90 days the Landlord has provided notice to the Tenant under Article 12.1, the default shall continue to exist (or in the case of a default, not being a default in payment, which cannot with due diligence be cured within such ninety 90 day period, the curing of the default has not been proceeded with promptly after the giving of such notice), then and in every event, at the option of the Landlord, this Lease shall, after the conclusion of such period of 90 days, be terminated 30 days after a further notice to the Tenant, but the Tenant shall remain liable for any loss or damage suffered by the Landlord. Notwithstanding the-foregoing terms, if the default, not being a default in payment, reasonably requires more time to cure than such 90 days period, the Landlord shall not have the option to terminate this Lease if the curing of the default is promptly commenced upon giving the said notice and with due diligence is thereafter completed.

13. REMEDIES

13.1 Landlord May Perform the Tenant's Covenants: If the Tenant shall fail to perform or cause to be performed any of the covenants or obligations of the Tenant in this Lease contained on the part of the Tenant to be observed or performed, the Landlord shall have the right, but shall not be obligated, to perform or cause the same to be performed, and to do or cause not to be done such things as may be necessary or incidental thereto, including without limiting the foregoing, the right to make repairs, installations, erections and expend monies, and all payments, expenses, costs,

charges, fees, including all legal fees on a solicitor and his own client full indemnity basis, and disbursements incurred or paid by or on behalf of the Landlord in respect thereof shall be immediately due and payable to the Landlord as rent.

- 13.2 Remedies Generally:** Mention in this Lease of any particular remedy of the Landlord in respect of the default by the Tenant does not preclude the Landlord from any other remedy in respect of any such default, whether available at law or in equity or by statute or expressly provided for in this Lease. No remedy shall be exclusive or dependent upon any other remedy, but the Landlord may from time to time exercise any one of more of such remedies generally or in combination, such remedies being cumulative and not alternative. Whenever the Tenant seeks a remedy in order to enforce the observance or performance of one of the terms, covenants, agreements and conditions contained in this Lease on the part of the Landlord to be observed or performed, the Tenant's only remedy, if any, shall be for such damages as the Tenant shall be able to prove in a court of competent jurisdiction that it has suffered as a result of a breach of this Lease by the Landlord.

14. GENERAL

- 14.1 Notices:** All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Lease shall be in writing and may be served upon the Tenant or the Landlord, as the case may be, by delivering it personally or by sending the notice by registered mail to the Tenant and the Landlord, addressed to their respective addresses on page 1 of this Lease. Any notice delivered personal shall be deemed to have been duly given and received by the Tenant or the Landlord, as the case may be, on the date of delivery. Any notice sent by registered mail shall be deemed to have been duly given and received by the Tenant or the Landlord, as the case may be, on the 5th business day following the day of mailing.
- 14.2 Captions:** The headings and the index in this Lease are for convenience of reference only and shall not affect the scope, intent or interpretation of any term.
- 14.3 Governing Law:** This Lease shall be governed by the laws of the Province of Alberta.
- 14.4 Time of Essence:** Time shall be of the essence throughout this Lease.
- 14.5 Captions:** The headings, captions, paragraph numbers, subparagraph numbers, article numbers and indices appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, construct or enlarge the scope or meaning of this Lease or any terms of this Lease.
- 14.6 Relationship Between Parties:** Nothing contained herein shall be deemed or construed by the Landlord or the Tenant, nor by any third party, as creating the relationship of principal and agent or of partnership, or of a joint venture agreement between the Landlord and the Tenant, it being understood and agreed that none of the terms contained in this Lease nor any act of the parties shall be deemed to create any relationship between the Landlord and the Tenant other than the relationship of a landlord and tenant.
- 14.7 Lease Entire Relationship:** The Tenant acknowledges that there are no covenants, representations, warranties, agreements or conditions expressed or implied, collateral or otherwise forming part of or in any way affecting or relating to this Lease save as expressly set out in this Lease and that this Lease constitutes the entire agreement between the Landlord and the Tenant and may not be modified except by subsequent agreement in writing of equal formality executed by the Landlord and the Tenant.
- 14.8 Binding Effect:** This Lease and everything contained within this Lease shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors, permitted assigns and other

**GROUND LEASE
(AFFORDABLE HOUSING)**

legal representatives, as the case may be, of each of the Landlord and the Tenant, subject to the granting of consent by the Landlord as provided to any assignment or sublease. Where Tenant is comprised of more than one legal entity, this Lease shall be binding upon all such parties on a joint and several basis.

The parties have executed this Lease Agreement to be effective the date first above written, notwithstanding the actual date of execution hereof.

(insert name of corporate Landlord)

Per: _____ (c/s)

Per: _____

(insert name of corporate Tenant)

Per: _____ (c/s)

Per: _____

[OR]

Witness: _____

(insert name of individual parties; repeat as needed)

Schedule "A"

AFFORDABLE HOUSING PROGRAM GUIDELINES

[SAMPLE PROGRAM OPTIONS AND GUIDELINES AND OPTIONS]

A. PROGRAMS:

Options Include:

1. Near Market Housing (Rental, Sale or Sublease)

- Subsidized housing for people with moderate incomes. Rent or purchase price for near market affordable homes is set at approximately 10-20% below market rent for a similar sized unit in the area.

2. Community (Social) Housing (Rentals)

- Rent is typically set at approximately 20-30% below market rent for a similar sized unit in the area. Rent may also be calculated as 20-30% of tenant's gross monthly household income.
- Generally requires tenant to have a minimum income amount that allows them to only spend 30% of their income on rent.
- An annual income verification is generally required.

B. ELIGIBILITY CRITERIA

Options Include:

1. Income Level

- Requires that total household income be below certain income threshold limits for unit size (# of bedrooms).
- Consider relying on the Housing Income Limits set annually by the Province of Alberta (see <https://open.alberta.ca/publications/income-thresholds>).

2. Citizenship and Immigration Status

- Require tenant to either:
 - a Canadian Citizen;
 - a Permanent Resident; or
 - a Refugee sponsored by the Canadian Government or have applied for Refugee Status and received confirmation of acceptance of Immigration Status.

3. Asset Limits

- Set asset limits (up to \$25,000 for example)

- May be based on the Alberta Social Housing Accommodation Regulation (SHAR) which establishes the rules for accessing Community Housing and Affordable Housing and other Rent-Geared-To-Income programs.
- Assets include, but are not limited to:
 - Bank Accounts;
 - Investments (excluding RRSPs and RESPs);
 - Equity in Property; and
 - Equity in Motor Vehicles – First vehicle is exempt, equity in second and subsequent vehicles (current Canadian Red Book value) is included in asset calculation

4. Number of Minor Children in the Household

- May require that household has at least 1 or more minor children.

5. Employment

- May require that at least one member of household has steady full-time employment.
- May require proof of work history.

6. Debt-Service Ratio

- May require that the household debt-service ratio is below a certain percent (i.e. 40%).