

DISTRICT OF SEHELDT

**Bylaw No. 612, 2022**

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

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**WHEREAS** Section 483 of the Local Government Act provides that Council may enter into a Housing Agreement with an owner that may include terms and conditions agreed to regarding the occupancy of the housing units identified in the Agreement; and

**WHEREAS** the Council wishes to enter into such an Agreement with respect to certain housing units located in the District of Sechelt;

**NOW THEREFORE** the Council of the District of Sechelt in open meeting assembled enacts as follows:

**TITLE**

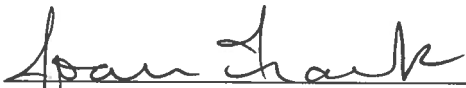
1. This Bylaw may be cited as "Housing Agreement Bylaw No, 612, 2022 (TELUS Living)".

**PROVISIONS**

2. Subject to Section 3 of this Bylaw, the Council of the District of Sechelt hereby authorizes the Mayor and Corporate Officer to enter into an Agreement, on behalf of the District of Sechelt, in substantially the form attached hereto as Schedule A, which sets out the terms and conditions of the occupancy of the housing units identified in the Agreement. The land identified in the Agreement is legally described as "PARCEL C (BEING A CONSOLIDATION OF LOTS 20, 21, 22 AND 23, SEE CA9795348) BLOCK 11 DISTRICT LOTS 303 AND 304 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 8643".
3. Upon execution of the Agreement by the Mayor and Corporate Officer and application of the seal of the District of Sechelt, this Agreement shall be validly entered into as authorized by this Bylaw.

READ A FIRST TIME THIS	7TH	DAY OF SEPTEMBER,	2022
READ A SECOND TIME THIS	7TH	DAY OF SEPTEMBER,	2022
READ A THIRD TIME THIS	7TH	DAY OF SEPTEMBER,	2022
ADOPTED THIS	21ST	DAY OF SEPTEMBER,	2022

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
Corporate Officer

**TERMS OF INSTRUMENT – PART 2**

*Housing Agreement and Covenant*

THIS AGREEMENT is dated for reference as of the last date of execution by a party to this agreement (the "**Reference Date**"),

BETWEEN:

**THE DISTRICT OF SEHEL**T, a municipal corporation pursuant to the *Local Government Act* and having its offices at 2nd Floor, 5797 Cowrie Street, PO Box 129, Sechelt, BC V0N 3A0

(the "**District**")

AND:

**TELUS COMMUNICATIONS INC.** Inc. No. BC1101218, a British Columbia corporation having its offices at 7th Floor, 685 Centre Street SW, Calgary, Alberta, T2G 1S5

(the "**Owner**")

WHEREAS:

- A. The Owner is the registered and the only beneficial owner of the Lands located at 5528 and 5536 Inlet Avenue, Sechelt, legally described as: Parcel Identifier 031-658-407, Parcel C (being a consolidation of Lots 20, 21, 22 and 23, see CA9795348) Block 11 District Lots 303 and 304 Group 1 New Westminster District Plan 8643 (the "**Lands**");
- B. The Owner intends to construct and operate on the Lands one six-storey purpose built residential building, with 59 Dwelling Units (defined below), together with one level of surface, covered parking, street front commercial space, landscaping and servicing (collectively, the "**Development**");
- C. The Lands also contain the existing TELUS Infrastructure (defined below) which shall remain on and within the Lands during construction of, and following completion of, the Development;
- D. Section 483 of the *Local Government Act*, permits municipalities to enter into a housing agreement with an owner regarding the occupancy of the housing units, including the form of tenure, the availability of units, the administration and the rents;
- E. Section 219 of the *Land Title Act* permits registration of a covenant in favour of a municipality in respect of the use of land or the use of a building on or to be erected on land and that land is or is not to be built on except in accordance with the covenant and that land is not to be subdivided except in accordance with the covenant;
- F. The Owner and the District wish to enter into this Agreement, in respect to the Lands to require that all Dwelling Units in the Development be Rental Units. This Agreement is a housing agreement

under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*; and

- G. The District has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized and executed this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of \$10.00 paid by the District to the Owner (the receipt of which is acknowledged by The Owner) and in consideration of the promises exchanged below, the District and the Owner covenant and agree as follows:

## **1.0 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement, the following words have the following meanings:

- (a) "**Agreement**" means this agreement and includes all recitals, instruments, schedules, and amendments thereto;
- (b) "**Building**" means any building or buildings constructed on the Lands, forming part of the Development;
- (c) "**CPI**" means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function;
- (d) "**Daily Amount**" means \$100.00 per day as of January 1, 2022 adjusted thereafter by an amount determined by multiplying \$100.00 by the percentage change in the CPI from January 1, 2022 to January 1 of the year that a written notice is delivered to the Owner by the District pursuant to section 5.2;
- (e) "**Development**" has the meaning assigned to that term in Recital B;
- (f) "**Dwelling Unit**" means a suite of rooms which provides accommodations for one family, has its respective entrance, and contains sleeping, toilet facilities and not more than one set of cooking facilities;
- (g) "**Lands**" has the meaning set out in Recital A;
- (h) "**Records**" means all documentation relating to the use and occupation of the Dwelling Units on the Lands and Building, including the Tenancy Agreements;
- (i) "**Rental Purpose**" means an occupancy or intended occupancy which is or would be governed by a tenancy agreement as defined in Section 1 of the RTA;
- (j) "**Rental Unit**" means a Dwelling Unit that is rented to a Tenant at market rental rate set by the Owner;

- (k) "**RTA**" means the *Residential Tenancy Act* [SBC 2002] c. 78 and all related regulations, policies and procedures;
- (l) "**Subdivide**" means to divide, apportion, consolidate or subdivide the Lands, the Building, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative interests" or "shared interests in land" as defined in the *Real Estate Development Marketing Act*;
- (m) "**TELUS Infrastructure**" means the Owner's regional switching unit and all related buildings (including the electrical room on the Lands), structures, systems, equipment (including the generator on the Lands) and infrastructure on or within the Lands;
- (n) "**TELUS Infrastructure Parcel**" has the meaning set out in section 3.1;
- (o) "**Tenant**" means an occupant of a Dwelling Unit pursuant to a Tenancy Agreement;
- (p) "**Tenancy Agreement**" means a tenancy agreement pursuant to the RTA that is regulated by the RTA;
- (q) "**Term**" has the meaning set out in section 2.1; and
- (r) "**Zoning Bylaw**" means the District of Sechelt Zoning Bylaw No. 25, 1987, as amended by Zoning Amendment Bylaw No. 25-315, 2021, and as further amended from time to time.

## 1.2 Interpretation

In this Agreement:

- (a) words importing the singular number include the plural and vice versa and words importing the neuter gender include the masculine and the feminine genders;
- (b) the division of this Agreement into articles and sections and the insertion of headings are for convenience only and will not affect the construction or the interpretation of this Agreement;
- (c) references to any article, section or schedule will, unless the context otherwise requires, mean that article, section or schedule of this Agreement;
- (d) every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows;
- (e) the words "include" and "including" are to be construed as meaning "include without limitation" and "including without limitation";
- (f) all payments to be made will be deemed to be payments in lawful currency of Canada;

- (g) reference to "business day" means all days other than Saturday, Sunday and statutory holidays in the Province of British Columbia;
- (h) reference to "party" and "parties" means the one or more parties to this Agreement, as the context demands;
- (i) reference to a whole, for example, the "Lands" and the "Development", includes reference to a portion thereof; and
- (j) unless expressly stated otherwise, all references to enactments refer to enactments of the Province of British Columbia, as amended or replaced from time to time. All reference to bylaws and policies refers to the bylaws and policies of the District, as amended or replaced from time to time.

### **1.3 Acknowledgements**

The Owner acknowledges and agrees that:

- (a) except as expressly provided, nothing in this Agreement will relieve the Owner from any obligation or requirement arising under any applicable statute, by-law or regulation in respect of the use, Subdivision and development of the Lands;
- (b) nothing contained or implied in this Agreement will prejudice or affect the District's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Local Government Act*, the *Community Charter* or other statutes, bylaws, orders and regulations; and
- (c) all obligations of the Owner under this Agreement will be at the cost of the Owner.

## **2.0 TERM**

### **2.1 Term**

This Agreement will remain in effect, as a charge and notation against the Lands for the term commencing on the Reference Date and ending on the date that is 20 years from the date that final occupancy permit is issued for the last Building forming part of the Development (the "**Term**"), provided that the Owner shall be entitled to request a discharge, over all or a specific number of Dwelling Units, of the section 219 covenant contained in this Agreement and the notation of housing agreement contained in this Agreement, from title to the Lands in the following circumstances:

- (a) Further to good faith discussions and negotiations between the Owner and the District, which the Owner may request from time to time, acting reasonably; or
- (b) If the Owner can demonstrate that vacancy rates for the District of Sechelt remain above 5% for a continuous period of one year or more, as such vacancy rates are published by Canada Mortgage and Housing Corporation (CMHC) or similar governmental agency, or if such rates are not published by CMHC or similar government agency at the relevant time, as determined by a qualified, independent consultant, such consultant to be agreed to by the District, acting reasonably, and engaged at the Owner's cost.

### 3.0 SECTION 219 COVENANT – RESTRICTS SUBDIVISION AND USE

#### 3.1 Grant

The Owner hereby covenants and agrees with the District, as a covenant in favour of the District pursuant to section 219 of the *Land Title Act*, it being the intention and agreement of the Owner that the provisions in this Agreement be annexed to, and run with and be a charge upon the Lands, that:

- (a) the Lands and the Building will be used only in accordance with this Agreement;
- (b) during the Term, all Dwelling Units constructed on the Lands will be used only as Rental Units and will be used only for Rental Purposes;
- (c) during the Term, the Owner will not sell or otherwise dispose (other than by way of lease, sub-lease, or mortgage) of its interest in any Dwelling Unit to be constructed on the Lands, except together with all Dwelling Units to be constructed on the Lands. The restriction in this section 3.1(c) will not apply to the TELUS Infrastructure Parcel (as defined below), provided that the TELUS Infrastructure Parcel does not contain any Dwelling Units, or any portion of the Building or the Development;
- (d) if the Owner Subdivides the Lands such that the TELUS Infrastructure is contained in a separate legal parcel from the rest of the Development (the "**TELUS Infrastructure Parcel**"), then notwithstanding section 6.2(b) of this Agreement, the District will execute a registrable discharge of the section 219 covenant contained in this Agreement, and will discharge the notation of housing agreement contained in this Agreement, from title to the TELUS Infrastructure Parcel, provided that:
  - (i) the TELUS Infrastructure Parcel does not contain any Dwelling Units, or any portion of the Building or the Development;
  - (ii) this Agreement will remain registered as a notation and a charge against title to the remainder parcel on which the Building and the Development will be situated; and
  - (iii) the subdivision to create the TELUS Infrastructure Parcel will remain subject to all other applicable laws and bylaws, including the *Land Title Act* and the *Local Government Act*.

#### 3.2 Indemnity

As an indemnity pursuant to section 219(6) of the *Land Title Act*, the Owner will indemnify and save harmless the District and each of its elected officials, officers, directors, and agents, and their respective heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of one or more of the following:

- (a) any act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) the Owner' construction, maintenance, operation, management or financing of the Lands, the Development, the Building, or any Rental Unit;
- (c) any breach of this Agreement by the Owner; and
- (d) the exercise by the District of any of its rights under this Agreement,

in each case except where the same arises in whole or in part as a result of the negligence, wilful misconduct or breach of this Agreement by the District.

### **3.3 Release**

As an integral part of the covenant pursuant to section 219 of the *Land Title Act*, the Owner releases and forever discharges the District and each of its elected officials, officers, directors, and agents, and its and their respective heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of one or more of the following:

- (a) any act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) the Owner' construction, maintenance, operation, management or financing of the Lands, the Development, the Building, or any Rental Unit;
- (c) any breach of this Agreement by The Owner; and
- (d) the exercise by the District of any of its rights under this Agreement,

in each case except where the same arises in whole or in part as a result of the negligence, wilful misconduct or breach of this Agreement by the District.

### **3.4 Impact on Market Value**

The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the District, for any decrease in the market value of the Lands, or for any obligations on the part of the Owner and its successors in title to the Lands which at any time results directly or indirectly from the existence, registration, or operation of this Agreement in accordance with its terms.

### **3.5 Release and Indemnity Survival**

The release and indemnity in sections 3.2, 3.3 and 3.4 will survive the termination or expiration of this Agreement, and the release of this Agreement from title to the Lands.

## **4.0 USE AND OCCUPANCY OF RENTAL UNITS**

### **4.1 Rent and Tenure**

- (a) The Owner will not lease, rent, license or permit occupancy of a Rental Unit except as follows:
  - (1) to a Tenant;
  - (2) as a tenancy pursuant to RTA; and
  - (3) pursuant to a Tenancy Agreement.
- (b) The Owner will enter into Tenancy Agreements for Rental Units such that, at the time such Tenancy Agreement is entered into, the number of individuals disclosed to the Owner at such time by the relevant Tenant who are intended to permanently reside in a Rental Unit shall be equal to or less than the number of individuals the District's building inspector determines may reside in the Rental Unit given the number and size of bedrooms in the Rental Unit and in light of any relevant standards set by the District in any bylaws of the District, in each case, as at the time the Tenancy Agreement is entered into.
- (c) At the time that a Tenancy Agreement for a Rental Unit is entered into, the Owner will ask the Tenant to disclose, and include in such Tenancy Agreement, all occupants of the Rental Unit.

### **4.2 Operation and Management**

- (a) The Owner will be fully responsible for complying with all applicable laws and regulations, including the RTA.
- (b) The Owner will be fully responsible for the management and administration of the Rental Units, and all associated costs, provided, however, that the Owner may delegate or sub-contract such management and administration.
- (c) The Owner will furnish good and efficient management and operation of the Development, the Building and the Rental Units and will permit representatives of the District to inspect the Development, the Building and the Rental Units at any reasonable time, subject to the notice provisions in the RTA.
- (d) The Owner will maintain the Development, the Building and the Rental Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands, the Building and the Rental Units.

### **4.3 District Inquiries and Inspections**

- (a) At the request of the District, the Owner will deliver to the District such Records as the District may reasonably require confirming that the Rental Units that are rented at the time are being rented in accordance with this Agreement, together with such other information as may be reasonably requested by the District from time to time.

- (b) The Owner will permit representatives of the District to inspect the Development, the Building and the Rental Units for compliance with this Agreement at any reasonable time, subject to the notice provisions in the RTA.

#### **4.4 Strata Corporation is Subject to Agreement**

- (a) This Agreement will be binding upon all strata corporations ("**Strata Corporations**") created upon the strata title Subdivision of the Lands, or any Subdivided parcel of the Lands.
- (b) Any Strata Corporation bylaw which prevents, restricts, or abridges the right to use the Rental Units for Rental Purposes will have no force and effect.

#### **4.5 Statutory Limitations on Owner's Obligations and Liabilities**

Notwithstanding any other provision of this Agreement, the District acknowledges and agrees that the Owner's obligations and liabilities under this Agreement are subject to the obligations and limitations under all applicable laws, including the RTA and the BC *Personal Information Protection Act*. The Owner shall bear no liability and will not be in breach of this Agreement to the extent that the non-performance of its obligations hereunder are due to compliance with the foregoing applicable laws. With respect to the *Personal Information Protection Act* in particular, all provisions of this Agreement pertaining to the disclosure of any personal information of Tenants to the District is strictly subject to the provisions and limitations of the *Personal Information Protection Act*, and the Owner reserves the right to restrict any disclosures to the District in compliance therewith.

#### **5.1 Notice**

The District may, acting reasonably, give to The Owner a written notice (the "**Notice**") requiring the Owner to cure a default under this Agreement within 30 days of receipt of the Notice or such longer period as may reasonably be required to cure such default provided the Owner is diligently pursuing same. The Notice must specify the nature of the default. The Owner must act with diligence to correct the default within the time specified.

#### **5.2 Daily Amount**

If the Owner fails to correct a default as contemplated in section 5.1, the Owner will pay to the District, within 30 days of receiving a written request by the District, the Daily Amount for every day that the default continues. The Daily Amount will be increased on January 1 of each year by an amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase in the CPI during the immediately preceding calendar year. The Daily Amount is due and payable immediately upon receipt by the Owner of an invoice from the District for the same. This section is without prejudice to any other remedy available to the District under this Agreement and at law or in equity.

#### **5.3 Equitable Remedies**

Notwithstanding section 5.2, the Owner acknowledges and agrees that damages would be an inadequate remedy for the District for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

#### **5.4 No Remedy is Exclusive**

No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available under this Agreement, at law or in equity.

#### **5.0 GENERAL**

##### **6.1 Registration and Subdivision**

The Owner acknowledges and agrees that:

- (a) this Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 483 of the *Local Government Act*;
- (b) if required by the District, the Owner will cause the registration of the section 219 covenant contained in this Agreement against the Lands in priority to all financial charges and encumbrances (including mortgages, assignments of rents, liens, options to purchase, and rights of first refusal);
- (c) this Agreement will be registered as a charge on title to the Lands, pursuant to section 219 of the *Land Title Act*, and will be noted as a notation on title to the Lands pursuant to section 483 of the *Local Government Act*;
- (d) if the Lands or the Building on the Lands is Subdivided pursuant to the *Strata Property Act*, this Agreement will remain on title to the common property sheet of the strata corporation stored in the Land Title Office and on title to the Rental Units; and
- (e) if the Lands or the Building are Subdivided in any manner other than as contemplated in section 3.1 or section 6.1(d), this Agreement will remain on title to all interests into which the Lands are Subdivided, unless otherwise agreed to by the District in writing in advance.

##### **6.2 Miscellaneous**

- (a) The Owner and the District agree that:
  - (1) this Agreement is entered into only for the benefit of the District;
  - (2) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier or user of the Lands, the Development, the Building, or any Rental Unit; and
  - (3) the District may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
- (b) This Agreement burdens and runs with the Lands and any part into which any of them may be Subdivided. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its successors and assigns, and all persons who acquire an interest in the Lands after the date of this Agreement. Without limiting the foregoing, the Owner will not be liable

for any breach of any covenant, promise or agreement herein in respect of any portion of the Lands sold, assigned, considered or otherwise disposed of, occurring after the Owner has ceased to hold the Lands.

- (c) The covenants and agreements on the part of the Owner in this Agreement have been made by the Owner as contractual obligations as well as being made pursuant to section 483 of the *Local Government Act* and as a covenant pursuant to section 219 of the *Land Title Act*.
- (d) This Agreement may only be modified in writing, signed by both parties, in registrable form. The modification will only be effective if it is approved both as a modification of a housing agreement pursuant to section 483 of the *Local Government Act* (which requires a bylaw), and as a modification of a covenant pursuant to section 219 of the *Land Title Act*. Any modification will be filed in the Land Title Office as a modification of a covenant and as a modification of the housing agreement.
- (e) The rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the District to anyone, or obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
- (f) The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement will not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- (g) The District is not obligated to inspect the Lands or to otherwise ensure compliance with this Agreement, nor is the District obligated to remedy any default of this Agreement. A failure by the District to enforce this Agreement will not constitute a waiver of any of the District's rights herein.
- (h) 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.
- (i) All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, or by personal service, to the address written on page 1 of this Agreement. Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the other parties, may designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.
- (j) Upon request by the District, the Owner will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the District, to give effect to this Agreement.

- (k) This Agreement will enure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.
- (l) If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.
- (m) This Agreement, and any documents signed by the Owner contemplated by this Agreement, represents the whole agreement between the District and the Owner, and there are no warranties, representations, conditions or collateral agreements made by the District or the Owner except as set forth in this Agreement.
- (n) Nothing in this Agreement will constitute the Owner as the agent, joint venture, or partner of the District or give the Owner any authority to bind the District in any way.
- (o) This Agreement can be signed in counterpart and delivered electronically.

**IN WITNESS WHEREOF**, the parties have executed the Form C to which this Agreement is attached to these Term of Instrument.