

# SAMPLE AFFORDABLE HOUSING GRANT SECURITY AGREEMENT

File No.  

**THIS GRANT SECURITY AGREEMENT** (the "Grant Security Agreement") is made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

## BETWEEN:

**ALBERTA SOCIAL HOUSING CORPORATION**  
(the "Optionee")

- and -

\_\_\_\_\_  
(the "Optionor")

## RECITALS:

- A. The Optionor is or is entitled to become the registered owner of an estate in fee simple of the Lands as described in Schedule "A";
- B. The Optionor has requested financial assistance from the Optionee, for the purpose of assisting with the cost of construction of **XX** Affordable Housing units in the Development on the Lands;
- C. The Optionee has agreed to grant to the Optionor a capital grant under the Affordable Housing Partnership Program only for the purpose of providing Affordable Housing and related services in its community (the "**AHPP Grant**");
- D. The Optionee has agreed to enter into an operating agreement with the Optionor under the Affordable Housing Partnership Program for the purpose of providing Affordable Housing and related services in its community (the "**AHPP Operating Agreement**");
- E. Pursuant to the AHPP Grant, the Optionor has agreed to grant to the Optionee an option to purchase the Lands on the terms and conditions set out below; and
- F. Pursuant to the AHPP Grant, the Optionor has agreed that the Optionee will be entitled to register a caveat upon the Lands with respect to this Grant Security Agreement.

THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby confirmed, each of the parties hereto covenants and agrees with the other as follows:

### 1. DEFINITIONS

For the purposes of Grant Security Agreement, each of the following capitalized words and expressions will have the following meaning:

- 1.1 **“Affordable Housing”** means housing that meets basic household needs and that has rents or payments below Median Market Rent in the community or area in which it is located as determined by the Optionee;
- 1.2 **“AHPP Grant”** means the Affordable Housing Partnership Program Grant from the Optionee to the Optionor for the Optionor to build Affordable Housing on the Lands for their community, an executed copy of which is attached hereto as Schedule “D”;
- 1.3 **“AHPP Operating Agreement”** means the Affordable Housing Partnership Program Operating Agreement between the Optionee and the Optionor for the Optionor to operate the Affordable Housing built under the AHPP Grant for their community, an executed copy of which is attached hereto as Schedule “E”;
- 1.4 **“Business Day”** means a day upon which the Land Titles Office in the City of Edmonton is open to the general public for business;
- 1.5 **“Closing Date”** means that date which is 30 days following the date of receipt by the Optionor of the Optionee’s written notice exercising its Option (the **“Exercise Date”**);
- 1.6 **“Date of Execution”** means the date that the Optionee has fully executed this Land Use Agreement and, for clarity, the Optionee will be the last party to sign this Land Use Agreement;
- 1.7 **“Development”** means the multi-unit Affordable Housing development comprising XX self-contained residential units to be constructed on the Lands by the Optionor;
- 1.1. **“Fair Market Value”** means the fair market value for the Lands which would reasonably be obtained by the Optionor from an arm’s length purchaser in the market then prevailing determined as at the Exercise Date, in a manner that takes into account the intended use of the Lands for the provision of Affordable Housing as required under the AHPP Grant Agreement and the AHPP Operating Agreement, and which specifically takes into account the stipulated number of residential units to be provided as Affordable Housing therein, together with all premises, buildings, structures, fixtures, and improvements located thereon;
- 1.8 **“Grant Security Agreement”** means this Affordable Housing Grant Security Agreement, including the Recitals and the Schedules;
- 1.9 **“Hazardous Substances”** means, but is not limited to, any biological materials and agents; petroleum products and by-products; pollutants; contaminants; dangerous substances; hazardous, corrosive, or toxic substances; hauled liquid, industrial, or hazardous waste; hazardous materials or chemicals; or any other substance or material the storage, manufacture, disposal, treatment, generation, use, transport, or remediation of which is now or hereafter prohibited, controlled, regulated or licensed under any federal, provincial or municipal legislation;
- 1.10 **“Lands”** means the land legally described in Schedule “A” and includes, as of the Closing Date, all buildings, structures, fixtures and chattels situated or located thereon;
- 1.11 **“Median Market Rent”** means the residential rent or payment rate in the community where the Lands are located, as determined on an annual basis by the Canada Mortgage and Housing Corporation’s annual rental market survey, or in the case of rural communities,

refer to the annual Apartment Vacancy and Rental Cost survey prepared by the Government of Alberta, or equivalent;

- 1.12 **“Option”** means the exclusive and irrevocable option granted by the Optionor to the Optionee to purchase the Lands, and as further described herein;
- 1.13 **“Option Exercise Period”** means that period of time commencing on the Date of Execution up to and including that date which is **20 years** from the Date of Execution, unless further extended;
- 1.14 **“Permitted Encumbrances”** means those interests and encumbrances set forth in Schedule “B”;
- 1.15 **“Purchase Price”** means the purchase price to be paid by the Optionee to the Optionor hereunder for the exercise of the Option as calculated pursuant to section 4;
- 1.16 **“Schedules”** means the following schedules attached to this Land Use Agreement:
- 1.16.1 Schedule “A”: The Lands;
  - 1.16.2 Schedule “B”: Permitted Encumbrances;
  - 1.16.3 Schedule “C” Dispute Resolution Procedure;
  - 1.16.4 Schedule “D” copy of AHPP Grant; and
  - 1.16.5 Schedule “E” copy of AHPP Operating Agreement;
- 1.17 **“Triggering Events”** means:
- 1.17.1 the Optionor fails to fully comply with any of the provisions of this Grant Security Agreement, including but not limited to, any failure to comply with the obligations of the Optionor under sections 2 or 3;
  - 1.17.2 the Optionor is in default of the AHPP Grant as defined in that agreement;
  - 1.17.3 the Optionor is in default of the AHPP Operating Agreement as defined in that agreement;
  - 1.17.4 the Optionor is not the registered owner of the Lands;
  - 1.17.5 the Optionor enters into any agreement that could result in the disposition of any interest in the Lands to a third party without the prior written consent of Optionee;
  - 1.17.6 there is a registration against the Lands other than the Permitted Encumbrances, without the prior written consent of Optionee; or
  - 1.17.7 the Optionor no longer requires the Lands for the purpose of providing Affordable Housing.

## **2. OPTIONEE’S INVESTMENT**

- 2.1. The Optionor and the Optionee each acknowledge that it is the shared goal of the parties to ensure that the Affordable Housing units in the Development on the Lands are used for

the purposes of providing Affordable Housing throughout the Option Exercise Period. In order to secure this shared goal and as additional consideration for the AHPP Grant and the AHPP Operating Agreement to be made by the Optionee in the manner contemplated in those Agreements, the Optionor expressly agrees:

- 2.1.1. to carry out and to be bound by all the terms and conditions as stated in AHPP Grant and the AHPP Operating Agreement; and
  - 2.1.2. to grant to the Optionee an Option to purchase as provided for herein, and that the Optionee has the right to protect its rights under this Grant Security Agreement by registering a caveat against the title to the Lands.
- 2.2. In the event of any form of subdivision of the Lands, the Optionee's caveats will be registered on all future titles to the Lands, and it is expressly acknowledged by the Optionor that:
- 2.2.1. each title is separate and the Optionee's rights and remedies under this Grant Security Agreement may be exercised individually in relation to one title or collectively in relation to some or all of the titles;
  - 2.2.2. the exercise of the Optionee's rights and remedies in relation to only one or some of the titles will not have the effect of operating as a merger, election, waiver, or otherwise preclude the Optionee from making any claim or exercising any rights and remedies in relation to the other title or titles of the Lands, and the Optionee has a continued right to pursue further recovery against the Optionor in accordance with the terms of this Grant Security Agreement; and
  - 2.2.3. the Optionee may release one or some of the titles of the Land from this Grant Security Agreement at any time, but such release will not relieve the Optionor from the obligations of this Grant Security Agreement as they relate to any remaining title or titles of the Land that are the subject of this Grant Security Agreement.
- 2.3. The Optionee may at its sole discretion, postpone its interest under such caveats in favour of the Optionor's bonafide construction mortgage financing used to finance the construction of the Development on the Lands.
- 2.4. The Optionor will take no steps to challenge or remove the caveats registered in favour of the Optionee pursuant to the terms of this Grant Security Agreement until the expiration or termination of this Grant Security Agreement.

### **3. THE OPTION**

- 3.1. In consideration of the AHPP Grant and the AHPP Operating Agreement, the Optionor hereby grants to the Optionee the exclusive and irrevocable Option to purchase the Lands, free and clear of all encumbrances, liens, estates and interests whatsoever except for the Permitted Encumbrances on and subject to the terms and conditions set out in this Grant Security Agreement.
- 3.2. During the Option Exercise Period, upon and any time after the occurrence of a Triggering Event as per section 1.17, the Optionee may exercise the Option by providing written notice to the Optionor. The date of such notice from the Optionee will be the "**Exercise Date**". If, during the Option Exercise Period, a Triggering Event occurs,

notwithstanding any delay in exercising the Option for any reason, the Optionee will remain entitled to exercise its Option in the manner provided for herein.

Optionor's Initials:

- 3.3. Should any Triggering Event occur, or should the Optionor no longer require the Lands for the sole purpose of providing Affordable Housing, during the Option Exercise Period, it will forthwith notify the Optionee in writing. If a Triggering Event occurred during the Option Exercise Period that the Optionee had no knowledge of by the end of the Option Exercise Period, the Optionee will remain entitled to exercise its Option, upon 90 days of becoming aware of such Triggering Event, notwithstanding that the Option Exercise Period has ended. This section survives this Grant Security Agreement.
- 3.4. Subject to section 3.3 herein, if the Option is not exercised during the Option Exercise Period in accordance with this Grant Security Agreement, then the Option will expire and will thereafter be null and void. The Optionee will forthwith thereafter discharge from the title to the Lands any caveat or other instrument, lien, charge, encumbrance, or registration filed or registered by the Optionee or by others on behalf of the Optionee respecting the Option.

#### **4. PURCHASE PRICE**

- 4.1. If the Optionee exercises the Option at any time from commencement of the Date of Execution up to and including the date of the issuance of the occupancy permit for the last Affordable Housing unit in the Development, the Purchase Price for the Lands will be a sum equal to the Fair Market Value of the Lands on the Exercise Date less a credit to the Optionee, as purchaser, with such of the following as are applicable:
- 4.1.1. a sum equal to the total of all funding paid by the Optionee for the Development in any fashion to date, less any amounts repaid to the Optionee by the Optionor under the AHPP Grant;
  - 4.1.2. a sum equal to any costs or expenses incurred by the Optionee in enforcing this Grant Security Agreement;
  - 4.1.3. any and all sums owing and required to payout a mortgage or mortgages registered against the title to the Lands; and
  - 4.1.4. any and all sums necessary to discharge all liens, caveats, charges, instruments, and encumbrances registered against the title to the Lands.
- 4.2. If the Optionee exercises the Option at any time after the date of issuance of the occupancy permit for the last Affordable Housing unit in the Development up and including the end of the Option Exercise Period, the Purchase Price for the Lands will be a sum equal to the Fair Market Value of the Lands on the Exercise Date less a credit to the Optionee, as purchaser, with such of the following as are applicable:
- 4.2.1. a sum equal to the balance remaining on the pro-rated amount of the total of all funding paid by the Optionee for the Development, in any fashion to date, less any amounts repaid to the Optionee by the Optionor, based on the number of years remaining in the Option Exercise Period at the time the Option is exercised, such amount to be calculated as follows (with such formula to be adjusted to reflect any renewals or extensions of the Option Exercise Period):

( 
$$\frac{\text{Number of years remaining in the Option Exercise Period}}{\text{Total Years in Option Exercise Period after issuance of the occupancy permit for the last Affordable Housing unit in the Development}}$$
 )

X the total of all funding paid by the Optionee for the Development, less any amounts repaid to the Optionee by the Optionor under the AHPP Grant

= sum credited to the Optionee

- 4.2.2. a sum equal to any costs or expenses incurred by the Optionee in enforcing this Grant Security Agreement;
  - 4.2.3. any and all sums owing and required to payout a mortgage or mortgages registered against the title to the Lands; and
  - 4.2.4. any and all sums necessary to discharge all liens, caveats, charges, instruments, and encumbrances registered against the title to the Land.
- 4.3. From the Exercise Date until that date which is 60 days from the Exercise Date (the “**Appraisal Date**”), the Optionee and the Optionor will, acting reasonably and in good faith, attempt to determine and agree upon the Fair Market Value for the Lands. If the Optionee and the Optionor are unable to agree upon the Fair Market Value for the Land by the Appraisal Date, the Fair Market Value will be determined by the agreement of 2 appraisers who are members of the Appraisal Institute of Canada and have been ordinarily engaged in the business of commercial real estate appraisal in the Province of Alberta for a period of at least 10 years, one to be appointed by each of the Optionee and the Optionor. The Optionee and the Optionor will appoint their respective appraisers within 20 days of the Appraisal Date. If the 2 appraisers appointed by the Optionee and the Optionor cannot agree on the Fair Market Value within 60 days after the date of the latest appointment, then the 2 appraisers appointed by the Optionee and the Optionor will within 10 days thereafter select a third appraiser who is a member of the Appraisal Institute of Canada and has been ordinarily engaged in the business of commercial real estate appraisal in the Province of Alberta for a period of at least 10 years to provide a Fair Market Value appraisal within 60 days and the Fair Market Value of the Lands will be the average of the Fair Market Value as determined by each of the 3 appraisers which average will be final and binding on the Optionee and the Optionor.
- 4.4. If the 2 appraisers are required to appoint a third appraiser under section 4.3 and cannot agree upon the appointment of such third appraiser within the aforesaid 10 days, the appointment of such appraiser will be determined by arbitration pursuant to the provisions of the *Arbitration Act*, RSA 2000 c. A-43 (Alberta) as amended and replaced and either the Optionee and the Optionor may initiate proceedings thereunder to appoint such appraiser by arbitration. The costs of such arbitration will be borne equally by the Optionee and the Optionor unless otherwise determined by the arbitrator. The costs of determining the Fair Market Value of the Lands by the appraisers will be borne equally by the Optionee and the Optionor.

## **5. INSURANCE AND INDEMNITY**

- 5.1. The Optionor will, at its own expense and without limiting its liabilities herein, obtain and maintain the following minimum insurance coverage and conditions in accordance with the *Insurance Act*, RSA 2000, c. I-3 (Alberta) as amended and replaced from time to time, for the duration of the Option Exercise Period, as may be extended:
  - 5.1.1. general liability insurance, in an amount not less than \$5,000,000.00 inclusive per occurrence, insuring against bodily injury, personal injury and property damage including loss of use thereof;
  - 5.1.2. "all risks" property insurance, on a replacement cost basis, covering all property owned by the Optionor, or for which the Optionor has an obligation to insure, in forms and amount sufficient to cover the value of the destroyed property or the cost of its repairs; and
  - 5.1.3. standard comprehensive equipment breakdown insurance in an amount not less than the replacement value of the property covering objects normally insurable under an equipment breakdown policy.
- 5.2. All insurance policies will be in effect for the term of Option Exercise Period and all insurance policies will be endorsed to provide 30 days' advance written notice of cancellation, including for non-payment of premium, to the Optionee.
- 5.3. Evidence of all required insurance, in the form of a detailed certificate of insurance, acceptable to the Optionee, must be promptly provided to the Optionee at inception of the Agreement, annually thereafter and at any other time requested by the Optionee. Upon the Optionee's request, the Optionor must provide the Optionee with certified copies of all required insurance policies
- 5.4. The Optionor agrees to indemnify and hold harmless both His Majesty the King in Right of Alberta as represented by the Minister for Seniors, Community and Social Services and the Optionee, as well as their respective employees, agents, insurers, and successors from any and all third party claims, demands, actions, or costs (including legal costs on a solicitor-client full indemnity basis), to the extent arising from the Optionor's breach of this Grant Security Agreement, personal injury, property loss, or damages resulting from any person's presence on the Lands, or the negligence, other tortious or willful misconduct of the Optionor, or those for whom it is legally responsible in relation to its obligations under this Grant Security Agreement and the Lands. This obligation will survive the termination of this Grant Security Agreement.

## **6. CLOSING**

- 6.1. If the Option is exercised within the time and in the manner stated in Section 3 herein, the parties agree that the Optionor will be bound to sell and the Optionee will be bound to purchase the Lands on the terms and conditions set out below:
  - 6.1.1. the Lands will be sold to the Optionee for the Purchase Price, subject to adjustments, which transaction will close on the Closing Date, notwithstanding when the Purchase Price is determined pursuant to section 4, if the Purchase Price is determined after the Closing Date, it will be paid by the Optionee to the Optionor within 30 days of such final determination;

- 6.1.2. all expenses and adjustable items with respect to the Lands including without limitation all taxes, local improvement charges, levies, assessments, and utilities will be adjusted and paid between the parties as of the Closing Date;
- 6.1.3. on or before the Closing Date, subject to performance of the Optionee's obligations hereunder, the Optionor covenants to deliver to the Optionee:
  - 6.1.3.1. a registerable Transfer of Land containing an acknowledgement that the Optionor is not a non-resident of Canada for all purposes arising under the *Income Tax Act*, including, but not limited to section 116 thereof; and
  - 6.1.3.2. a statement of adjustments.
- 6.1.4. The Optionor and Optionee agree to promptly execute and deliver all necessary documents and do all things necessary in order to fully carry out and perform the intent of this Grant Security Agreement.
- 6.1.5. The transfer and other conveyancing documents will be prepared at the expense of the Optionor and will be registered at the expense of the Optionee.
- 6.1.6. The Optionor covenants that as of the Closing Date the Lands will be free of any Hazardous Substances. The Optionor is expressly be liable and responsible for any such contamination. This section survives this Grant Security Agreement.
- 6.1.7. The Optionor warrants that as at the Closing Date, the Lands will be free and clear of all encumbrances, liens, estates and interests whatsoever except for the Permitted Encumbrances.

## 7. **NOTICE**

- 7.1. For the purposes of giving and receiving, any notice referred to in this Grant Security Agreement communication must be in writing and must be either mailed by registered mail, or delivered by a recognized courier service, receipt acknowledged to the address described below. Any notices delivered as stated above by 4:00 p.m. (M.S.T.) on any Business Day will be deemed to be received on that day, and if delivered after such time or on a non-Business Day will be deemed to be received by 9:00 a.m. (M.S.T.) on the next following Business Day.

To the Optionor:

To the Optionee: Alberta Social Housing Corporation  
c/o Alberta Seniors, Community and Social Services  
3<sup>rd</sup> Floor, 44 Capital Boulevard  
10044 – 108 Street  
Edmonton, Alberta T5J 5E6  
Attention: Executive Director, Housing Capital Programs  
Email: [SH.ASHCRealEstate@gov.ab.ca](mailto:SH.ASHCRealEstate@gov.ab.ca)



**8. CAVEAT**

- 8.1. The Optionee shall be entitled to register a caveat against the Lands in respect of this Grant Security Agreement.

**9. GENERAL**

- 9.1. Time is in every respect of the essence of this Grant Security Agreement.
- 9.2. This Grant Security Agreement is governed by the laws in force in the Province of Alberta and the parties hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Alberta.
- 9.3. Headings used in this Grant Security Agreement are for convenience of reference only and will not affect the construction or interpretation of this Grant Security Agreement.
- 9.4. Any dispute that arises under this Grant Security Agreement will be determined in accordance with the dispute resolution procedure set out in Schedule "C".
- 9.5. All Schedules are incorporated into and form part of this Grant Security Agreement.
- 9.6. Delivery of the transfer of the Lands and the subsequent issuance of title in the name of the Optionee will not merge or affect any of the terms, covenants and conditions herein contained.
- 9.7. The terms and conditions of this Grant Security Agreement are the full and complete terms of the purchase and sale of the Lands from the Optionor to the Optionee as of the date hereof and there are no collateral warranties, representations or conditions, whether implied or not, other than those contained herein. The parties hereto agree that only those amendments to this Grant Security Agreement and further agreements in writing signed by the parties will be binding on them.
- 9.8. In the event that a court of competent jurisdiction finds that any term of this Grant Security Agreement is void for uncertainty or otherwise unenforceable, then that term will be severed and the remainder of this Grant Security Agreement will survive and be of full force and effect.
- 9.9. No waiver by the Optionor or the Optionee of the strict performance of any term, covenant or condition herein contained will be effective unless such waiver is in writing signed by the party granting the waiver.
- 9.10. This Grant Security Agreement enures to the benefit of and be binding upon the parties hereto, the Optionor, its successors and assignees and the Optionee's successors, and will where required by context be read with all changes of gender or number.
- 9.11. This Grant Security Agreement may be signed or executed in several counterparts, may be executed electronically, and may be delivered originally, by portable document format or by other electronic transmission and each such counterpart, when so executed and delivered, will be deemed to be an original and all of which taken together will constitute one and the same Grant Security Agreement.

Executed at \_\_\_\_\_ in the Province of Alberta this \_\_\_ day of \_\_\_\_\_, 20\_\_.

**OPTIONOR**

**[OPTIONOR'S NAME]**

Per: \_\_\_\_\_

Signature of the duly authorized  
representative of the Optionor who has the  
authority to bind the Optionor

\_\_\_\_\_  
Name and title of person signing above

**OPTIONEE**

Executed at Edmonton in the Province of Alberta this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_(the "**Date of Execution**").

**ALBERTA SOCIAL HOUSING CORPORATION**

Per: \_\_\_\_\_

Name:

Title: Assistant Deputy Minister

**SCHEDULE "A"**

**The "Lands"**

**Certificate of Title No.:**

**PLAN**  
**BLOCK**  
**LOT**

EXCEPTING THEREOUT ALL MINES AND MINERALS

SAMPLE

**SCHEDULE "B"**

**Permitted Encumbrances**

1. Grant Security Agreement

SAMPLE

## SCHEDULE "C"

### DISPUTE RESOLUTION PROCEDURE

1. The following terms and expressions have the meaning set out below:
  - (a) "**Dispute**" means any disagreement, failure to agree, or other difference of opinion in respect of the application or interpretation of any provision of the Grant Security Agreement;
  - (b) "**Dispute Notice**" means a notice from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute; and
  - (c) "**Dispute Resolution Procedure**" means the steps set out in clause 2 herein.
  
2. Dispute Notice

The Dispute Resolution Procedure will be started by delivery of a notice (the "**Dispute Notice**") in writing and expressly referring to this Section 2, from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute. Any Dispute Notice issued by the Optionor to the Optionee must be sent to:

Alberta Social Housing Corporation  
Box 927  
Edmonton, AB T5J 2L8  
Attention: Housing Capital Programs
  
3. Settlement Meeting

Within 20 days from the receipt of the Dispute Notice, officials designated by Optionee will meet with the officials designated by the Optionor (the "**Settlement Meeting**") at a mutually acceptable time and place to make all reasonable efforts to attempt to resolve the Dispute (all negotiations held pursuant to the Settlement Meeting are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding).
  
4. If the Settlement Meeting does not result in resolution of the Dispute, either party may refer the Dispute to a Court of law of competent jurisdiction.

**SCHEDULE "D"**

**copy of AHPP Grant Agreement**

SAMPLE

**SCHEDULE "E"**

**copy of AHPP Operating Agreement**

SAMPLE