

TEMPLATE – FOR INTERNAL USE ONLY

**Port Phillip City Council (Council)**

**[Insert Associate Legal Name] (Associate)**

# Affordable Housing Partnership Deed

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# Affordable Housing Partnership Deed

## Parties

Port Phillip City Council ABN  
(Council)

[Insert Associate Legal Name] ABN  
(Associate)

## Background

- A. In 2016, Council adopted its current affordable housing strategy, *In Our Backyard – Growing Community Housing in Port Phillip 2015 – 2025 (IOBY)*.
- B. The aims of IOBY include entering into strategic partnerships with community housing organisations, including the Associate.
- C. The purpose of the parties entering into this deed is to provide a governance mechanism for the strategic partnership between Council and the Associate, under which it is anticipated that Council funds and assets will be allocated, generally via a competitive process, to one or more projects providing affordable housing for very low and low-income households for persons with links to the City of Port Phillip.
- D. This deed sets out the objects, purposes and other requirements that will underpin each Subsidiary Agreement entered into between Council and the Associate in the furtherance of Council's affordable housing strategy and objectives.

## Agreed terms

### 1. Definitions and interpretation

#### 1.1 Definitions

In this deed

**Business Day** means a day on which banks are open for general banking business in Victoria, but does not include Saturdays, Sundays or public holidays.

**Council Contribution** means any of:

- (a) funds provided by Council to the Associate;
- (b) real property provided (whether by transfer of title, or lease) by Council to the Associate;

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- (c) the proceeds of a sale of an asset acquired using funds provided by Council to the Associate; and
- (d) the proceeds of a sale of an asset provided by Council to the Associate.

**GST** means goods and services tax under *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

**Housing Act** means the *Housing Act 1983* (Vic).

**Housing Provider** means a housing provider that is a "registered agency" within the meaning of the Housing Act.

**IOBY** has the meaning given in background item A.

**Laws** means any applicable law, whether Federal, State or local government, written or unwritten, including acts of parliament, ordinances, regulations, by-laws and any code of practice in so far as it imposes any mandatory requirement, and, to the extent it applies to the Associate, includes the Housing Act.

**Partner** means a Housing Provider, or other developer, corporation or entity to which Council Contributions may be made.

**Subsidiary Agreement** means a project-specific agreement between Council and the Associate, each of which is informed by the principles and understandings expressed in this deed (for example, a memorandum of understanding, a heads of agreement, a section 173 agreement, or a licence agreement).

## 1.2 Interpretation

In this deed:

- (a) headings and clause numbers are for convenience only and do not form part of the document or affect its interpretation;
- (b) the singular number includes the plural and vice versa, unless the context requires otherwise;
- (c) a reference to "includes" or "including" means "includes, without limitation" and "including, without limitation" respectively;
- (d) a reference to the whole includes a part of the whole;
- (e) a reference to a party includes that party's executors, administrators, trustees, successors and permitted assigns;
- (f) a reference to a person includes an individual, corporation, unincorporated association, partnership, joint venture or government body;
- (g) a reference to any statute, ordinance or other law includes all regulations and other instruments under it and all consolidations, amendments, re-enactments or replacements of it;
- (h) money references are in Australian dollars, unless otherwise provided; and

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- (i) if a party is a corporation, a reference to that party's authorised officer includes an "officer" of the corporation as defined in the *Corporations Act 2001* (Cth), or any other person authorised to act on its behalf.

## **2. Affordable Housing Partnership Structure**

### **2.1 Subsidiary Agreements**

- (a) The terms under which Council will fund and will provide assets to the Associate will be set out in Subsidiary Agreements.
- (b) Subsidiary Agreements will be agreed on a case-by-case basis between Council and the Associate, but will include:
  - (1) the conditions precedent that must be satisfied prior to funding or assets being provided to the Associate;
  - (2) the specifications (including sustainability, design and quality specifications) and objectives of the specific affordable housing project or initiative to which the Council funds or assets (as applicable) may be applied;
  - (3) agreed roles and responsibilities of each of Council and the Associate;
  - (4) any project delivery processes, milestones and deadlines;
  - (5) where Council assets are being transferred or leased to the Associate under a Subsidiary Agreement, the terms of the transfer or lease (as applicable);
  - (6) planning approvals and related requirements;
  - (7) any asset management requirements;
  - (8) agreed service levels (if applicable); and
  - (9) identified target household types for that specific project.

## **3. Guiding Principles and Purposes**

### **3.1 In Our Backyard**

The parties acknowledge that the relationship between the parties will be guided by the following principles:

- (a) transparency;
- (b) accountability;
- (c) agreed performance indicators that provide Council with the opportunity to review the performance of Partners operating in the City of Port Phillip; and
- (d) providing Partners operating in the City of Port Phillip with the opportunity to receive Council Contributions.

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### **3.2 Objects**

The objects of this deed are to ensure:

- (a) that Council's investment in affordable housing is protected through retention of the affordable housing purposes;
- (b) quality housing is provided;
- (c) appropriate periodic reporting by the Associate on all projects with Council contributions, on matters including:
  - (1) the Associate's performance, measured by reference to agreed performance measures set out in clause 4.3;
  - (2) the use and long-term utilisation and leverage of Council Contributions; and
  - (3) opportunities for leveraging Council Contributions to drive affordable housing growth in the City of Port Phillip.

### **3.3 Purposes**

Purposes to which Council Contributions may be applied must:

- (a) be for housing located in the City of Port Phillip;
- (b) satisfy an identified "need" in the City of Port Phillip, including:
  - (1) households of very low and low income, in accordance with income ranges published from time to time in the Victorian Government Gazette under section 3AB of the Planning and Environment Act 1987;
  - (2) households who had significant links to the City of Port Phillip, whose housing allocation had been prioritised by length (number of years) of current or past residency in Port Phillip; or
  - (3) persons on the Port Phillip Zero "By-Name List"; and
- (c) be housing that is fit for purpose and suitable for the household types being housed.

## **4. Affordable Housing Partnership Principles**

### **4.1 No continuing obligation**

Nothing in this deed will be construed as imposing on Council any obligation to provide capital or ongoing or recurrent funding, to transfer to the Associate any Council assets or cash contributions, or to provide any other support.

### **4.2 Sale or redevelopment of assets**

Council intends that housing provided by the Associate, using Council Contributions, must be retained in perpetuity to ensure that the value of the public benefit created is retained in the City of Port Phillip and captured for future generations.

This will not require that the physical structure or location of housing funded by a Council Contribution be permanent. Instead, it will enable Council Contributions to be applied to the redevelopment, sale and reinvestment of and in real property in Port Phillip, and if required, in agreement with Council, where:

- (a) buildings have reached the end of their "economic life";
- (b) buildings are no longer fit for purpose, do not meet current housing standards, or require asset renewal or upgrade which will achieve an increase in the dwelling yield and / or improved quality of housing stock or an alignment of housing type with housing needs; or
- (c) properties are no longer in a suitable location for affordable housing.

With this intention, assets provided by Council to the Associate and assets acquired or funded using funds provided by Council to the Associate may be subsequently sold or redeveloped by the Associate, subject to the Associate:

- (a) collaborating with Council to identify target household types to receive the benefit of any proceeds received from the transfer, redeveloped asset, or replacement assets to be acquired;
- (b) giving at least 6 months' notice to Council of the proposed redevelopment or transfer of the relevant asset;
- (c) applying any proceeds received as a result of that transfer of the relevant asset to existing Associate projects, or to the acquisition of suitable replacement assets, located in the City of Port Phillip;
- (d) committing to a timeframe for replacement of any asset transferred by the Associate; and
- (e) entering into any lease or related agreements required by Council relating to a redeveloped asset provided by Council to the Associate, or an asset acquired by the Associate using Council funds or the proceeds received by the Associate as a result of a transfer of an asset provided by Council to the Associate.

#### **4.3 Performance measures**

The Associate's performance under a Subsidiary Agreement will be measured by agreed key performance indicators relating to the following matters:

- (a) Housing quality: housing must be appropriate for low income and very-low income households, with respect to:
  - (1) Location: housing should be accessible (generally within a 500m walk) to public transport, shops, services and employment opportunities;
  - (2) Type: housing type and tenure must be appropriate for the target needs group/s. Consideration will be given to the size (number of bedrooms) and standard of accessible design;
  - (3) Quality: housing must be designed, constructed and maintained to a high standard, demonstrating:

- (A) housing design excellence through early pre-application consultation with Council to develop an appropriate site-specific design response;
  - (B) a high standard of residential amenity for every dwelling, communal facilities, outdoor spaces and for the adjoining neighbourhood;
  - (C) a high standard of landscape and vegetation, e.g. through a minimum Green Factor tool score of 0.50;
  - (D) Universal Design principles, which is a high standard of accessibility integrated to all aspects of design;
  - (E) that integrity of the design is not compromised through construction stage, including the quality of building and landscaping; and
  - (F) construction with robust, durable and long-lasting materials that protect the asset value and reduce ongoing maintenance costs;
- (4) Environmental sustainability: the proposed housing must demonstrate leadership in sustainability, and help to achieve Council's goals related to sustainability and address climate vulnerability for affordable housing tenants, including:
- (A) Achieving net zero carbon in operation, achieved by:
    - (i) highly efficient building fabric, including passive design principles;
    - (ii) electrification of all services (no reticulated gas);
    - (iii) on-site renewable generation; and
    - (iv) commitment to using green power in operation;
  - (B) The matters listed at clause 4.3(a)(4)(A) can be demonstrated at:
    - (i) the planning permit stage, with a Built Environment Sustainability Scorecard assessment (or equivalent tool and rating) that achieves at least a 70% excellence overall rating, including the State Government's Big Housing Build requirement minimum NatHERS 7 Star ratings for all dwellings, or a 20% improvement on National Construction Code standards for non-residential development. These Environmentally Sustainable Design requirements should be cross-referenced with the ESD planning requirements (Port Phillip Planning Scheme) and Victorian Government's Housing Design Guidelines (2018), as periodically updated, to ensure they are most relevant standards at the time; and



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- (ii) prior to occupation, through implementation of sustainable design initiatives in construction and operation.

Partners may suggest comparable, alternative sustainable design performance measures, for negotiation with Council in its capacity as project contributor.

- (5) Integration: the proposed affordable housing should be integrated within:
  - (A) any broader development (where mixed tenure is proposed), ensuring the design of any private dwellings (to which Council is not contributing) and the affordable housing development is not appreciably different; and
  - (B) the local neighbourhood.

Management Plans should be approved as a condition of a planning permit.

- (6) Housing support: demonstrated access to appropriate support services:
  - (A) relevant to the proposed tenant mix; and
  - (B) integrated with tenancy management.

Council expects that the above performance measures, and any specific performance measures in a relevant Subsidiary Agreement, will be met. Council may require an agreed process to be determined for remedying the Associate's failure to meet performance measures set out in this deed and any project specific requirements set out in the relevant Subsidiary Agreement..

## **5. Associate Obligations**

### **5.1 Reporting commitment**

In consideration for Council entering into Subsidiary Agreements, the Associate agrees to provide reporting:

- (a) on an annual basis, in respect of all projects the subject of a Subsidiary Agreement;
- (b) in the format set out at Schedule 1 or as otherwise notified by Council from time to time, acting reasonably; and
- (c) any other aspects of specific projects referred to in a relevant Subsidiary Agreement.

### **5.2 Compliance and notification**

The Associate must:

- (a) comply with all applicable Laws; and

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- (b) notify Council, as soon as practicable, if the Associate receives notice of any allegation, investigation, or other breach, in relation to the Associate's compliance with any applicable Law.

### 5.3 Leveraging Council Contributions

It is Council's expectation that the Associate will:

- (a) use Council Contributions to leverage additional funding or finance to increase the supply of social housing located in the City of Port Phillip;
- (b) commit to one additional project of an agreed scale, tenure, housing type and target housing need group or groups within an agreed timeframe for each project completed using Council Contributions, unless otherwise agreed in writing between the parties;
- (c) agree to detailed leveraging and additional project specifications in the relevant Subsidiary Agreement; and
- (d) leverage the value of any portfolio of projects with Council contributions over time to grow the supply of social housing in the City of Port Phillip.

Council and the Associate will specify details of 5.3(a) - 5.3(c) (inclusive) in a relevant Subsidiary Agreement.

## 6. GST

### 6.1 Consideration GST-exclusive

It is the intention of the parties that any consideration for a supply under this deed be received by the supplier exclusive of GST.

### 6.2 Payment of GST

The recipient of a supply must pay the supplier an amount equal to the supplier's GST on the consideration at the same time as the consideration is paid. The supplier must issue a tax invoice before the recipient is obliged to pay the GST.

## 7. Notices

### 7.1 Form

A notice or other communication connected with this deed (**Notice**) must be in writing and given by a party, its authorised officer or its lawyer.

### 7.2 Delivery

A Notice must be:

- (a) delivered to the recipient's address or registered office;
- (b) posted to the recipient's address or registered office by prepaid ordinary post (or airmail, if posted to or from a place outside Australia).

as set out in this deed, or notified from time to time.

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### 7.3 Address for service

Details of the parties addresses for service of notices are set out below:

(a) Council:

Address: [insert]

Attention: [insert]

Email: [insert]

(b) [Insert Associate Legal Name]:

Address: [insert]

Attention: [insert]

Email: [insert]

### 7.4 Service

(a) Service of a Notice is deemed to have occurred, if sent:

- (1) as a delivered letter – at the time it is delivered;
- (2) as a posted letter – on the 2nd Business Day after posting (or the 7th, if posted to or from a place outside Australia);
- (3) by email – on the next Business Day, unless the sender receives a failure of delivery notification.

(b) If a Notice is served after 5.00 pm on a Business Day, it is deemed to have been served on the next Business Day.

## 8. General

### 8.1 Relationship between parties

This deed is not intended to create a partnership, joint venture or relationship of principal and agent between the parties.

### 8.2 Assignment

- (a) Rights arising out of or under this deed may only be assigned by a party with the prior written consent of the other party.
- (b) A party must not unreasonably withhold its consent to assignment.

### 8.3 Consent

A party may give or withhold its approval or consent under this deed in its absolute discretion, unless otherwise stated.

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**8.4 Severance**

If a clause is void, illegal or unenforceable, it may be severed without affecting the other provisions in this deed.

**8.5 Entire agreement**

This deed replaces all previous agreements about its subject matter and constitutes the entire agreement between the parties.

**8.6 Variation**

A variation of this deed must be in writing and signed by the parties.

**8.7 Waiver**

- (a) No right under this deed is waived or deemed to be waived, except by written notice signed by the party waiving the right, or its authorised officer.
- (b) A party does not waive its rights under this deed by granting an extension or forbearance to another party.

**8.8 Governing law and jurisdiction**

- (a) This deed is governed by the laws of Victoria.
- (b) The parties submit to the jurisdiction of the courts of Victoria and of the Federal Court of Australia.

**8.9 Confidentiality**

The terms of this deed are confidential and must not be disclosed (without the prior written consent of the parties) to any person other than the parties professional advisers or as required by law.

**8.10 Costs and expenses**

Each party must pay its own costs and expenses arising from this deed and any related documents, unless otherwise set out in this.

**8.11 Time of performance**

- (a) If a payment is made or something is done after 5.00 pm on any Business Day, it is deemed to have been made or done on the next Business Day.
- (b) If this deed requires something to be done on a day that is not a Business Day, it must be done on the next Business Day.

**8.12 Further action**

Each party must take all necessary further action to give full effect to this deed.

**8.13 Counterparts**

This deed may be executed in any number of counterparts.

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**8.14 Survival**

The terms of this deed survive its termination to the extent permitted by law.

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**Executed on** [insert year]

**Signed, sealed and delivered** for and on behalf of the  
**Port Phillip City Council** under delegated authority:

\_\_\_\_\_  
Peter Smith  
Chief Executive Officer

**DELETE COMMITTEE SIGNING SECTION IF NOT AN INCORPORATED ASSOCIATION**

**Signed, sealed and delivered** by **Associate** in accordance with section 38 of the *Associations Incorporation Reform Act 2012* (Vic) by:

.....  
Committee member signature

.....  
Committee member name

.....  
Committee member / secretary signature

.....  
Committee member / secretary name

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**DELETE TABLE IF NOT A COMPANY**

Signed, sealed and delivered by **Name of Company** [ACN] in accordance with section 127 of the *Corporations Act 2001*:

Signature: .....

Signature: .....

Name: .....

Name: .....

PLEASE PRINT

PLEASE PRINT

**Director**

**Director/Secretary \***

**\* Delete as appropriate**

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### Schedule 1 – Reporting Format

To provide annual reporting to Council in order to monitor and ensure that the objects in clause 3.2 and the purposes in clause 3.3 are being met in respect to:

- the combined total of all housing projects to which the Council has made a Council Contribution to the Associate (if more than one project utilises Council Contributions);

individual projects to which a Council Contribution has been made, including any project specific key performance indicators or reporting required in a Subsidiary Agreement. Council requires reporting on the following parameters of these projects, as well as any other project specific parameters or deliverables outlined in Subsidiary Agreements:

- 1) The composition of housing, specifically:
  - a) the type of housing, e.g. community housing, supported social housing;
  - b) the total number of units;
  - c) the profile of unit sizes, e.g. number of bedsitter, 1 bedroom, 2 bedroom and 3 bedroom units; and
  - d) the profile and number of units that are accessible for persons with a disability.
- 2) Evidence on the following, and how the composition of housing in the Associate's projects aligns with:
  - a) target needs – any target housing needs group or groups as set out under Subsidiary Agreements, e.g. older single women, families, persons who were homeless and sleeping rough;
  - b) tenant income profile – number and percentage of households accommodated with incomes in the very low and low income ranges, as defined in section 3AB of the Planning and Environment Act 1987, and published from time to time in the Victorian Government Gazette, or against an alternative profile defined in any Subsidiary Agreement; and
  - c) persons housed having significant links to the City of Port Phillip - details of housing allocation having been prioritised by length (number of years) of current or past residency in Port Phillip; or be persons on the Port Phillip Zero "By-Name List".
- 3) Advice on how the building asset value is being maintained, such as an overview of the general strategic program for cyclical maintenance and long-term upgrading.
- 4) Progress on any specific project leveraging that may be required from a Subsidiary Agreement, and any general leveraging of project growth in Port Phillip from any portfolio projects with Council Contributions, which is set out as part of the organisation's strategic growth plan.
- 5) Trends in local housing needs demand that can inform the targeting of Council Contributions to new projects, such as priority housing needs groups and dwelling types / sizes (number of bedrooms).
- 6) Any other information on which that the Associate wishes to report.