

HOUSING AGREEMENT

(Pursuant to Section 483 of the *Local Government Act*)

THIS AGREEMENT is made the ____ day of _____, 2021.

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Esquimalt, BC V9A 3P1

(the “**TOWNSHIP**”)

AND

AVENIR CONSTRUCTION (2018) INC., INC. NO. BC1161971

220-7565 132nd Street
Surrey, BC V3W 1K5

[Legal description to be confirmed against updated title searches]

(the “**OWNER**”)

RECITALS:

- A. Under Section 483 of the *Local Government Act*, R.S.B.C. 2015 c.1 (“*LGA*”) the Township may, by bylaw, enter into a Housing Agreement with an owner regarding the occupancy of the housing units identified in the Agreement, including but not limited to terms and conditions referred to in Section 483(2) of the *Local Government Act*.
- B. The Owner is the registered owner in fee-simple of those lands with a current civic address of respectively 823 Esquimalt Road, 821 Esquimalt Road, and 819 Esquimalt Road in the Township of Esquimalt in the Province of British Columbia, and legally described as:

PID: 006-854-940, Lot 18, Section 11, Esquimalt District, Plan 265;

PID: 009-205-276, Lot 19, Section 11, Esquimalt District, Plan 265; and

PID: 009-205-292, Lot 20, Section 11, Esquimalt District, Plan 265

(collectively, the “**Lands**”)

[Legal descriptions to be confirmed against updated title searches]

- C. The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 136 (819 Esquimalt Road) CD No. 136 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 3027, (the “**Amendment Bylaw**”) to authorize the development of a commercial mixed-use building on the Lands, which is planned to include retail commercial space, residential amenity and service spaces and two seniors dwelling units on the first storey, 90 seniors rental dwelling units on the second to eighth storeys and a roof top patio including weather protection (all secured by Housing Agreement for 20 years) to be constructed in one 9-storey building on the Lands, with a 62 space underground parking garage (the “**Development**”). Acknowledging that the restrictions and requirements contained herein are in the public interest, the Owner has offered and voluntarily provided this agreement to the Township, and the Township has accepted this agreement as a condition of the Amendment Bylaw.
- D. The Owner and the Township wish to enter into this Agreement, as a Housing Agreement pursuant to Section 483 of the *Local Government Act*, to secure the agreement of the Owner with respect to the matters noted herein (the “**Agreement**” or “**Housing Agreement**”), the parties acknowledging that Notice of this Housing Agreement shall be placed on title to the Lands and shall be binding on future owners in accordance with *LGA s.483(6)*.

NOW THIS AGREEMENT WITNESSES that pursuant to Section 483 of the *Local Government Act*, and in consideration of the promises and covenants contained in this Agreement, the parties agree each with the other as follows:

1. DEFINITIONS

- 1.1. Unless otherwise stated, the definitions of the Township’s ZONING BYLAW, 1992, NO. 2050 (“**Zoning Bylaw**”), apply to this Agreement, as amended and replaced from time to time.
- 1.2. The following words and terms have the following meanings:
- (a) “**Individual with Special Needs**” means an individual who requires additional or specialized services or accommodations by reason of one or more difficulties such as physical, emotional, behavioral, developmental or otherwise, as evidenced in writing by the appropriate Federal or Provincial ministry or agency;
 - (b) “**Dwelling Units**” means one or more habitable rooms used for the residential accommodation of one Family when such rooms contain or provide for the installation of only one (1) set of cooking facilities and one or more sets of sanitary facilities and includes any accessory home occupation uses;
 - (c) “**Senior Person**” means a person of the age of fifty-five (55) years or older.

2. USE AND OCCUPATION

- 2.1. Subject to this Agreement, the Owner covenants and agrees that it must only use or permit the use and occupancy of the Dwelling Units on the Lands to rental apartment units for Senior Persons, or accessory uses to such residential use and occupation.
- 2.2. Use and occupancy of a Dwelling Unit by a Senior Person may include residential occupancy by a Senior Person together with their spouse or partner who may be less than fifty-five (55) years of age.
- 2.3. In the case of the death of a Senior Person occupying a Dwelling Unit, any spouse or partner less than fifty-five (55) years of age occupying the same Dwelling Unit may continue to occupy the Dwelling Unit for up to six (6) months.
- 2.4. The Owner will construct not less than five (5) units for Individual with Special Needs such that they will accommodate or are capable of being adapted to accommodate an Individual with Special Needs in accordance with the minimum requirements set out in Schedule A, all to the satisfaction of the Director of Development Services and with such amendments as may be agreed upon by the Director of Development Services.
- 2.5. Units for an Individual with Special Needs are intended for occupancy by an Individual with Special Needs however the Township acknowledges that there may be times when such occupancy is not possible following the good faith effort of the Owner to secure such occupancy.
- 2.6. All common areas located within the proposed development and a minimum of five (5) dwelling units, intended for an Individual with Special Needs, will be designed and constructed for wheelchair accessibility.

3. RENTAL UNITS (92) FOR 20 YEARS

- 3.1 The Owner presented the Development as a purpose-built rental apartment-style building (containing 1 commercial unit located on the first storey) where all units are owned by a single entity, and acknowledges that the Lands and building cannot be subdivided or stratified, as further secured by Covenant under Section 219 of the *Land Title Act*, and therefore the Owner cannot and will not make application to deposit a strata plan for the building that is to be constructed on the Lands, or undertake other ownership structures that would restrict or compromise the rental of the residential units.
- 3.2 Without limiting the generality of Section 3.1, the Owner further covenants and agrees
 - (a) the tenancy agreements or leases for the Dwelling Units must not be of a term inconsistent with rental tenure and any assignments or subletting of those tenancy or lease agreements shall be approved by the Owner and not be in a manner that is inconsistent with this

Agreement, registered encumbrances or bylaws of the Township existing as at the date of registration of this Agreement;

- (b) the tenancies and occupancies for the Dwelling Units must be provided at or above market rental rates, based on the most recent applicable Canada Mortgage and Housing Corporation rental market or housing report;
 - (c) the Dwelling Units must be of the following types:
 - (1) 43 One-bedroom Units;
 - (2) 21 One-bedroom and den Units;
 - (3) 28 Two-bedroom Units;for a total of ninety-two (92) Dwelling Units;
 - (d) the tenancies and occupancies for the Dwelling Units must be at all times available to all classes of persons, and must not be institutional in nature, however the parties acknowledge and agree that this provision does not:
 - (1) restrict units built for an Individual with Special Needs from being restricted to those persons with disabilities requiring such units,
 - (2) restrict rental of individual units to an Individual with Special Needs,
 - (3) prohibit one allocation of up to ten (10) units in the Development to a single individual, governmental agency or corporation for use by that individual, governmental agency or corporation, and for clarity, not more than 10 units in the Development may be so allocated at any given time,provided all other provisions of this Agreement and Township Bylaws are satisfied.
- 3.3 For greater certainty, the parties acknowledge and agree that the parties may agree, in writing but with or without modification of this Agreement, to adjust the unit type allocation.
- 3.4 The parties acknowledge and agree the restriction on stratification of Section 3.1 is only intended to be operative for twenty (20) years from the date that the building in which the Dwelling Units are located, are granted an Occupancy Certificate, and thereafter Dwelling Units may be owner-occupied or rental but otherwise in accordance with this Agreement.

4. ADMINISTRATION & MANAGEMENT - REPORTING

- 4.1 Within thirty (30) days of receipt of request from the Township, the Owner or Strata Corporation must provide a report in writing that identifies the following for the Development or portions thereof, respectively:

- (a) The the number, type, and location by suite number, of units developed and maintained for an Individual with Special Needs including identification of any modified Dwelling Units that would alter their classification as a Unit for an Individual with Special Needs;
 - (b) The number, type (e.g., one-bedroom, one-bedroom + den, two-bedroom), and location, by suite number, of all Dwelling Units that are being rented to individuals (i.e., not owner-occupied) or are available for rent or lease to individuals, including identifying those that are vacant and the reason for vacancy;
 - (c) Number of Occupants of each Dwelling Unit, and confirmation that at least one Occupant meets the criteria set out in section 2 of this Housing Agreement;
 - (d) Name and contact information of all companies and/or societies that manage or operate the Dwelling Units;
 - (e) Copy of the standard form(s) of tenancy or occupancy agreement for each rented Dwelling Unit, including term of that agreement (but without the personal information of each individual agreement); and
 - (f) Such further information identified in the request from the Township, provided such is relevant to the interpretation, administration, or enforcement of this Housing Agreement.
- 4.2 The parties acknowledge that reporting requirements will not be imposed more than once per year, unless there are reasonable grounds to believe that there may be a breach, in fact or in spirit, of this Housing Agreement (as determined in the Township's sole discretion, for the purposes of reporting).
- 4.3 For greater certainty, there are no reporting requirements unless the Township so requests, but when the Township requests a report the Township may request the information for the year in which such report is requested and for previous years not previously reported.

5 NOTICE IN LAND TITLE OFFICE

- 5.1 Notice of this Agreement will be filed in the Land Title Office by the Township at the cost of the Owner in accordance with Section 483 of the *Local Government Act*, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in the Lands after filing of the Notice.
- 5.2 The parties agree that the provisions of Part 3 are intended only for 20 years, as determined in accordance with that Part, and that this Agreement or the Notice on Title need not be amended or modified for such expiration to be effective for that Part only. The remainder of the provisions are intended to be effective for the life of the building constructed on the Lands in accordance with the Amendment Bylaw.

6 RELEASE AND INDEMNITY

- 6.1 The Owner covenants and agrees to indemnify and save harmless the Township from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which anyone has or may have against the Township or which the Township incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use, occupancy and tenure of the Lands contemplated under this Agreement, but the Owner is not responsible for claims arising from dishonesty, gross negligence or malicious or willful misconduct of Township officials.
- 6.2 The Owner releases and forever discharges the Township of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which the Owner can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use, occupancy and tenure of the Lands contemplated under this Agreement, but the Owner is not responsible for claims arising from dishonesty, gross negligence or malicious or willful misconduct of Township officials.

7 GENERAL PROVISIONS

- 7.1 **NOTICE:** Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address of which the party has given the other party notice in writing expressly for the purposes of this Agreement.
- 7.2 **CONFLICT:** In the event of a conflict between the terms of this Agreement and the provisions of Township Bylaws in relation to use or density, the bylaws will prevail in accordance with Section 483(3) of the *Local Government Act*.
- 7.3 **BINDING EFFECT:** This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees, and in accordance with Section 483(6) of the *Local Government Act*, this Agreement is binding on all who acquire an interest in the Lands, and the Owner only during the Owner's ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the Owner has an interest.
- 7.4 **TIME:** Time is to be the essence of this Agreement.
- 7.5 **WAIVER:**
- (a) No provision of this Housing Agreement is to be waived by a party unless the waiver is expressed in writing by the party.

- (b) 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 is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 7.6 **HEADINGS:** the headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.
- 7.7 **LANGUAGE:** Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
- 7.8 **CUMULATIVE REMEDIES:** No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity. Damages will be an inadequate remedy for the Township, and the Township is entitled to an order for specific performance or a prohibitory or mandatory injunction in order to compel performance of the obligations in this Housing Agreement.
- 7.9 **RELATIONSHIP OF PARTIES:**
- (a) No provision of this Agreement may be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.
- (b) The Owner is solely responsible for all costs and expenditures required to fulfill its obligations under this Agreement, whether those costs and expenses are specifically referred to in this Agreement.
- 7.10 **FURTHER ASSURANCES:** The Owner will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Housing Agreement.
- 7.11 **ENTIRE AGREEMENT:**
- (a) This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.
- (b) No representations, warranties or conditions, express or implied, oral or otherwise, have been made other than those expressed in this Agreement.
- 7.12 **NO RESTRICTION ON TOWNSHIP AUTHORITY:** Except as required by Section 483 of the *Local Government Act*, nothing contained or implied in this Agreement:
- (a) prejudices or affects the rights, powers or discretion of the Township in the exercise of its functions under any public or private statutes, bylaws,

orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Owner;

- (b) imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement or the breach of any provision in this Agreement; or
- (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Township with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.

7.13 **SEVERABILITY:** Each article of this Agreement is severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity must not affect the validity of the remainder of this Agreement.

7.14 **ACKNOWLEDGEMENT:** The Owner acknowledges having been directed to obtain independent legal advice and having read and fully understood all the terms and conditions of this Agreement. The Owner confirms that this Agreement has been entered into voluntarily. The Owner acknowledges and agrees that any information submitted to the Township is subject to the *BC Freedom of Information and Protection of Privacy Act*.

7.15 **COUNTERPARTS:** This Agreement may be executed and delivered in counterparts with the same effect as if both parties had signed the same document. Each counterpart is deemed to be an original. All counterparts are construed together and constitute one and the same Agreement.

7.16 **AMENDMENT:**

- (a) This Agreement may be amended from time to time upon terms and conditions acceptable to the parties.
- (b) The Owner acknowledges that it is within the Township's sole discretion to consent or not to consent to modifications of this Agreement and that such consent may be withheld for any reason.

7.17 **APPLICABLE LAW:** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

IN WITNESS WHEREOF the parties have set their hands and seals as of the day and year first above written.

TOWNSHIP OF ESQUIMALT

by its authorized signatories

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Mayor

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Chief Administrative Officer

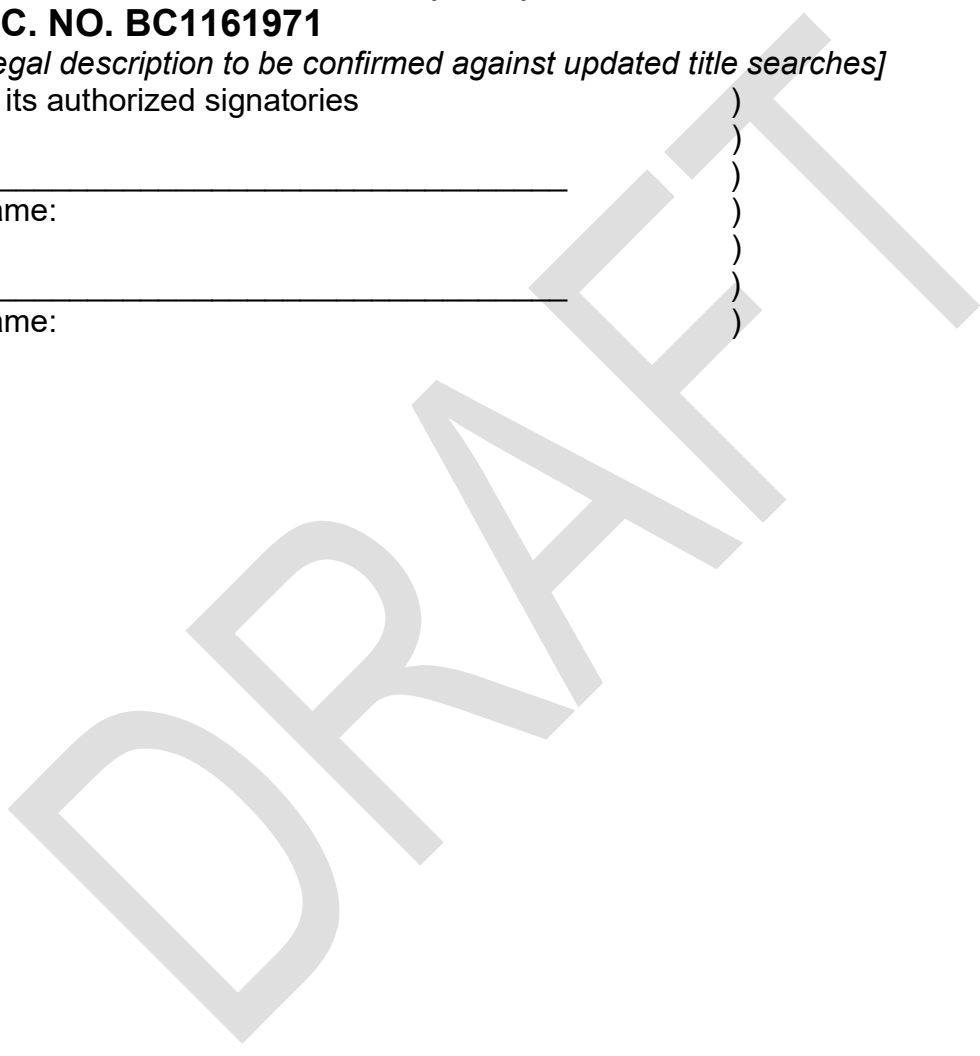
**AVENIR CONSTRUCTION (2018) INC.,
INC. NO. BC1161971**

[Legal description to be confirmed against updated title searches]
by its authorized signatories

Name:

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SCHEDULE A

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BASIC ADAPTABLE HOUSING

BASIC ADAPTABLE HOUSING

The following Basic Adaptable Housing features are required in all newly-constructed buildings serviced by an elevator containing apartment or congregate housing uses.

The requirements of Schedule "F" Section (g) do not apply to non-congregate housing apartment units smaller than 42 m (450 ft) provided that a bathroom consistent with Section (g)(iii) of this Schedule "F" is available to all occupants within the building.

(A) Building Access

- i. Barrier-free access from the street shall be provided to each dwelling unit and to each type of common amenity space.
- ii. Barrier-free access from a private parking area shall be provided to each dwelling unit and to each type of common amenity space.
- iii. Access to the elevator shall be provided from both the street entry and a private parking area entry.
- iv. A covering over a level building entry area, of 1500mm by 1500mm shall be provided.
- v. No intercom user functions shall be higher than 1220mm above the finished paved area.
- vi. Wiring for an automatic door opener shall be provided at each of the required barrier-free entries.

(B) Doors and Doorways

- i. The minimum clear opening for all suite entry doors and doors in common areas shall be no less than 850 mm. (See Figure 1)
- ii. The minimum clear opening for all interior doors within a dwelling unit shall be no less than 800mm. (See Figure 1)
- iii. Doors in all suites and common areas shall be operable by devices that do not require tight grasping or twisting of the wrist.

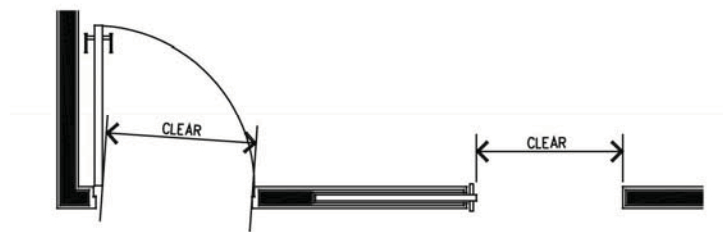


FIGURE 1 – CLEAR OPENING MEASUREMENT FROM DOORS

BASIC ADAPTABLE HOUSING

(C) Manoeuvring Space at Doorways

- i. Suite entry doors and door assemblies in common areas (except those which are not self-closing) shall have a clear and level area which is not less than the following:
 1. Where the door swings toward the area (pull door), 1220mm long by the width of the door plus at least 300mm clear space on the latch side. (See Figure 2)

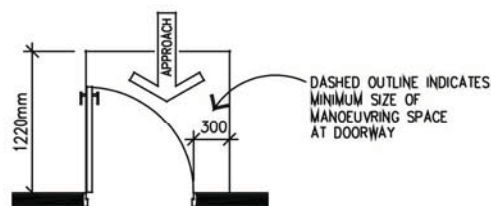


FIGURE 2 – FRONT APPROACH, PULL SIDE

2. Where the door swings away from the area (push door), 1220mm long by the width of the door plus at least 300mm clear space on the latch side. (See Figure 3)

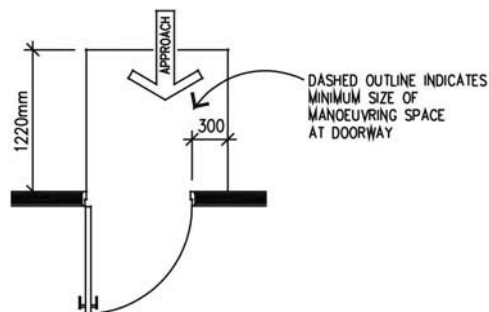


FIGURE 3 – FRONT APPROACH, PUSH SIDE

BASIC ADAPTABLE HOUSING

3. Where there are doors in a series in common areas, there must be separation of at least 1220mm plus the width of the door. (See Figure 4)

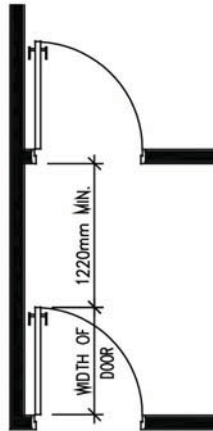


FIGURE 4 – SEPARATION OF DOORS IN SERIES

(D) Corridor widths

Common corridors shall be no less than 1220mm wide.

(E) Thresholds

Thresholds shall be kept to a minimum, and in all suites and common areas shall not exceed 13mm.

(F) Outlets and Switches

- i. Light switches shall be located between 1015mm and 1120mm from the floor.
- ii. Electrical outlets, cable outlets, and telephone jacks shall be located not less than 450mm from the floor.

BASIC ADAPTABLE HOUSING

(G) Bathrooms

- i. There shall be at least one bathroom with toilet and sink on the main entry level of each suite which provides enough floor space to be the following space requirements:

1. Clear floor area of 760mm by 1220mm beyond the swing of the door. (See Figure 5)

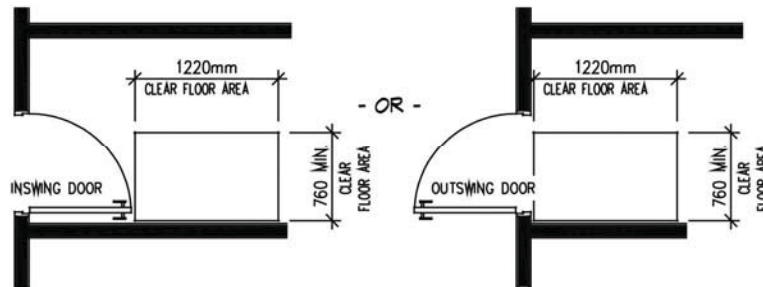


FIGURE 5 – CLEAR FLOOR AREA BEYOND SWING OF DOOR

2. Clear floor area at the tub of 760mm by 1220mm, or 1220mm by 760mm, measured from the foot end of the tub. (See Figure 6)

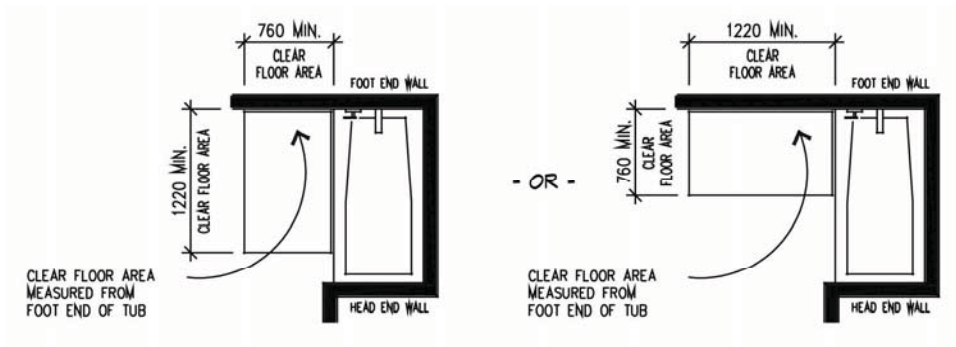


FIGURE 6 – CLEAR FLOOR AREA AT TUB

BASIC ADAPTABLE HOUSING

3. Clear floor area at the sink of 760mm by 1220mm positioned for a parallel approach and centred on the sink. (See Figure 7)

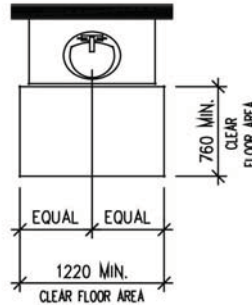


FIGURE 7 – CLEAR AREA AT SINK

4. Toilets shall meet the following space provisions: (See Figure 8)
 - a. Lateral distance from the centre line of the toilet to a bathtub or sink shall be 455mm minimum on one side and 380mm minimum on the other. Where the toilet is adjacent to a wall, the lateral distance from the centre line of the toilet to the wall shall be 455mm with 380mm minimum on the other side.
 - b. Clear floor area at the toilet of 1420mm minimum (measured from the wall behind the toilet) by 1220mm minimum (measured from a point 455mm from the centre line of the toilet on the side designated for future grab bars.)
 - c. The vanity or sink on the wall behind the toilet may overlap the clear floor required for the toilet.

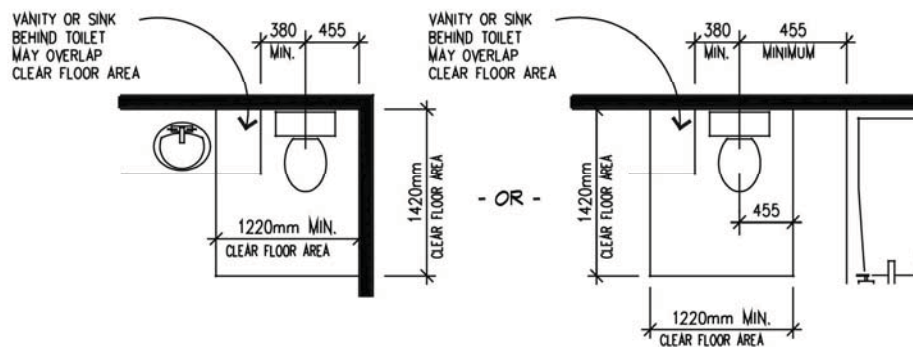
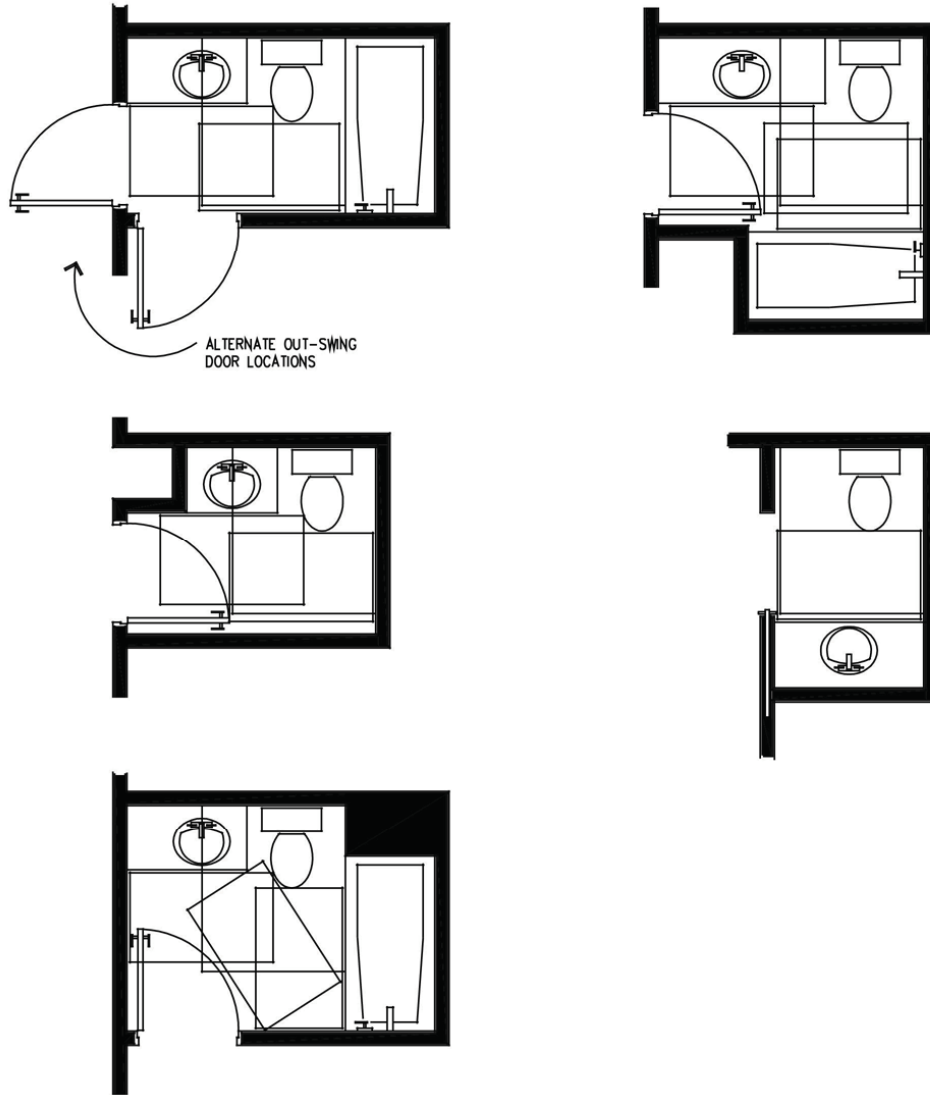


FIGURE 8 – CLEAR FLOOR AREA AT TOILET

BASIC ADAPTABLE HOUSING



**FIGURE 9 – EXAMPLES OF BATHROOMS WITH FLOOR AREA TO SUITE
“MINIMALLY ACCESSIBLE” REQUIREMENTS**

BASIC ADAPTABLE HOUSING

- ii. Solid blocking in walls around toilets, tub/shower, and behind towel bars shall be provided in all bathrooms as illustrated in Figure 10.
- iii. Where bathrooms are provided to serve common amenity spaces, at least one shall be wheelchair accessible as described in the B.C. Building Code (1998) Sentence 3.7.4.8.(1)

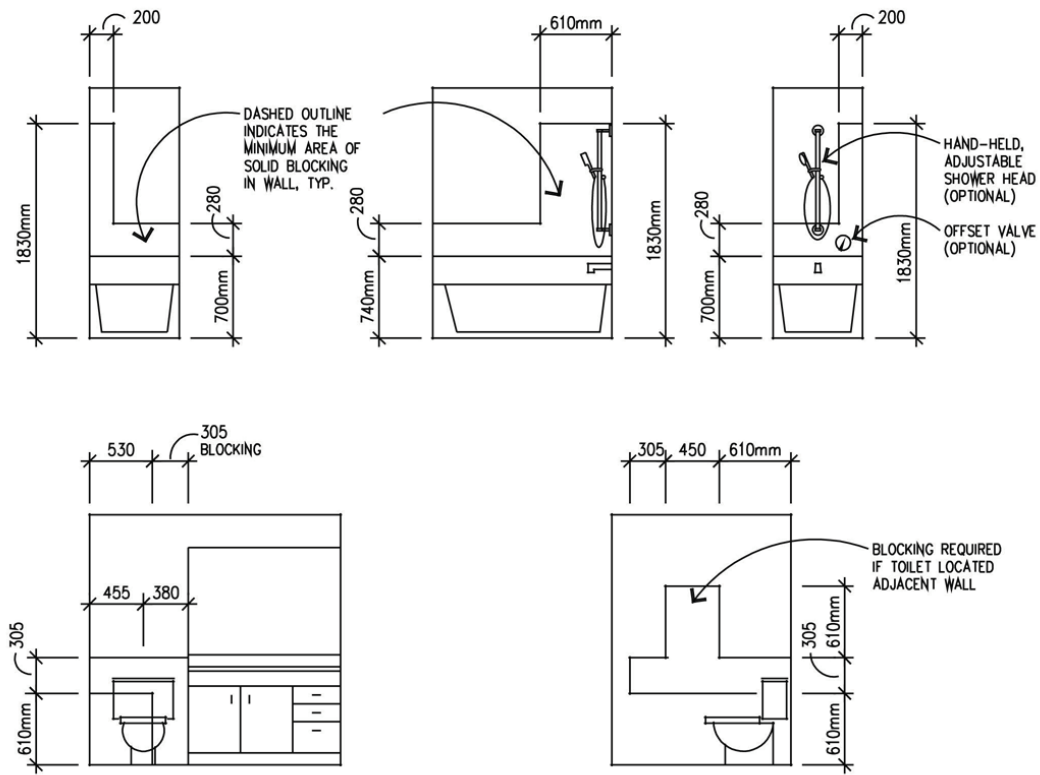


FIGURE 10 – BLOCKING REQUIREMENTS