

EXPLANATION

**Authorization to enter into a Housing Agreement
Re: 1119 Hornby Street**

Atira Women's Resource Society applied for grants from each of British Columbia Housing Management Commission and the City to fund specified renovations to the Single Room Accommodation designated Murray Hotel which is located on the subject lands, and which hotel Atira Women's Resource Society will lease from the registered owner prior to disbursement of the said grants. The said grants were approved by the City's elected Council and the Executive Board of British Columbia Housing Management Commission subject to a number of conditions, including a condition that the registered owner, Atira Women's Resource Society as lessee, British Columbia Housing Management Commission and the City execute a Housing Agreement (to thereafter be entered into by the City by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter*) in respect of all dwelling units in the Murray Hotel on the terms and conditions set forth by the City's elected Council.

A Housing Agreement has been accepted and signed by the lessee, the owner, the owner's mortgagee and British Columbia Housing Management Commission. Enactment of the attached By-law, as required by section 565.2 of the *Vancouver Charter*, will complete the process to implement the condition as set by the City's elected Council regarding a Housing Agreement.

Director of Legal Services
June 27, 2017

1119 Hornby Street

804

BY-LAW NO. _____

**A By-law to enact a Housing Agreement
for 1119 Hornby Street**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a Housing Agreement with the owner and lessee of certain lands described as:

PID: 029-078-555

Lot 1 Block 90 District Lot 541 Group 1 New Westminster
District Plan EPP31030

in substantially the form and substance of the Housing Agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the Housing Agreement on behalf of the City, and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2017

Mayor

City Clerk

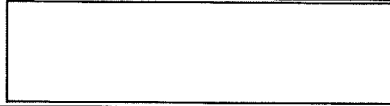
Schedule A

FORM C_V22 (Charge)

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 22 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)
Roderick L. Pearce, Grossman & Stanley
Barristers & Solicitors
Box 55, Suite 800 - 1090 West Georgia Street
Vancouver BC V6E 3V7

Telephone No. (604) 683-7454
#15-1252 (Housing Agreement)

Deduct LTSA Fees? Yes [checked]

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]
029-078-555 LOT 1 BLOCK 90 DISTRICT LOT 541 GROUP 1 NEW WESTMINSTER
DISTRICT PLAN EPP31030

STC? YES []

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION
SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)
(a) [] Filed Standard Charge Terms D.F. No. (b) [checked] Express Charge Terms Annexed as Part 2
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):
SEE SCHEDULE

6. TRANSFEREE(S): (including postal address(es) and postal code(s))
CITY OF VANCOUVER
453 WEST 12TH AVENUE
VANCOUVER BRITISH COLUMBIA
V5Y 1V4 CANADA

7. ADDITIONAL OR MODIFIED TERMS:
N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

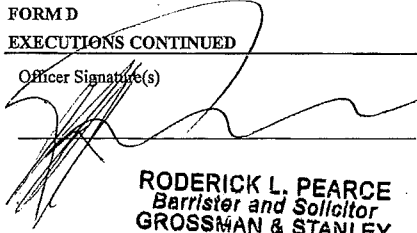
Officer Signature(s)
BRIAN J. GREGORY, NOTARY PUBLIC
2425 BURRARD ST.
VANCOUVER, B.C. V6J 3J3
Tel: 604-736-7668

Table with 3 columns: Y, M, D. Values: 17, 06, 05

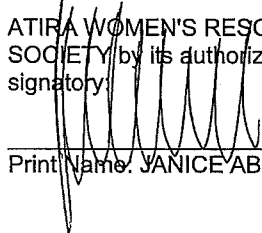
Transferor(s) Signature(s)
KENSTONE PROPERTIES LTD. by its authorized signatory(ies):
Print Name: Edwin Hwang
n/a

OFFICER CERTIFICATION:
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Officer Signature(s)

RODERICK L. PEARCE
Barrister and Solicitor
GROSSMAN & STANLEY
 800 - 1090 W. GEORGIA ST.
 VANCOUVER, B.C. V6E 3V7
 PHONE: 604-683-7454

Execution Date		
Y	M	D
17	06	01
17		
17	06	20


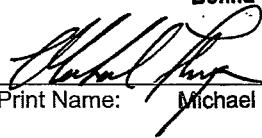
Transferor / Borrower / Party Signature(s)
 ATIRA WOMEN'S RESOURCE
 SOCIETY by its authorized
 signatory

 Print Name: JANICE ABBOTT, CEO

CITY OF VANCOUVER by its
 authorized signatory:

 Print Name:

 CHARLOTTE K. WONG
Barrister & Solicitor
 2110 Burquitlam Drive
 Vancouver, BC V5P 2P1

(AS TO BOTH SIGNATURES)

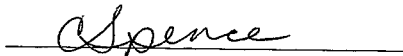
BRITISH COLUMBIA HOUSING
 MANAGEMENT COMMISSION by its
 authorized signatory(ies):

 Print Name: **Donna Evans**

 Print Name: **Michael Flanigan**

OFFICER CERTIFICATION:
 Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)



KENNA CHRISTINE SPENCE
A Commissioner for taking
Affidavits for British Columbia
22nd Floor 666 Burrard Street
Vancouver, B.C. V6C 2X8
Expires June 30, 2019



Corneliu Peana
Barrister & Solicitor
Travelers Canada
2500-650 West Georgia St.
Vancouver, BC V6B 4N7

Execution Date

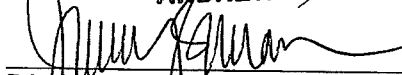
Y	M	D
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Transferor / Borrower / Party Signature(s)

CANADIAN WESTERN BANK by its
authorized signatory(ies):

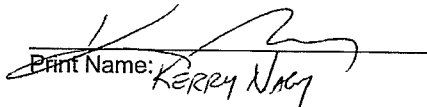


Print Name: **ANDREW BUTLER**



Print Name: **JENNY SIMAN**

TRAVELERS INSURANCE COMPANY
OF CANADA by its authorized
signatory(ies):



Print Name: **KERRY NACY**

Print Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM E

SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Entire Instrument Transferor: Kenstone Properties Ltd. as to its fee simple interest as registered owner of PID: 029-078-555
Priority Agreement		granting above Covenant priority over Mortgage CA3669203 and Assignment of Rents CA3669204
Priority Agreement		granting above Covenant priority over Mortgage CA5289636 and Assignment of Rents CA5289637
Covenant		Entire Instrument Transferor: Atira Women's Resource Society as to its leasehold interest in PID: 029-078-555 as lessee in the Lease six registration numbers less than this Covenant

LAND TITLE ACT
FORM E

SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. TRANSFEROR(S):

KENSTONE PROPERTIES LTD., INC. NO. 741004 (as registered owner of PID: 029-078-555)
ATIRA WOMEN'S RESOURCE SOCIETY, INC. NO. S-17967), (as to its leasehold interest in PID:
029-078-555)
CANADIAN WESTERN BANK (as to Priority)
TRAVELERS INSURANCE COMPANY OF CANADA, INC. NO. A0064831 (as to Priority)

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
(MURRAY HOTEL - 1119 HORNBY STREET)

WHEREAS:

A. Capitalized terms used in this Agreement will have the respective meanings ascribed to them in Section 1.1, unless otherwise defined herein or the context otherwise requires;

B. It is understood and agreed that this instrument and Agreement, dated for reference March 1, 2017, shall be read as follows:

- (i) the Transferor, KENSTONE PROPERTIES LTD., as more particularly defined in Section 1.1, is called the "Owner";
- (ii) the Transferor, ATIRA WOMEN'S RESOURCE SOCIETY, as more particularly defined in Section 1.1, is called the "Lessee";
- (iii) the Transferee, CITY OF VANCOUVER, is called the "City" or the "City of Vancouver" when referring to the corporate entity and "Vancouver" when referring to geographic location; and
- (iv) the Funder, BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION, as more particularly defined in Section 1.1, is called "BC Housing" or the "Funder";

C. The Owner is the registered owner of the Lands;

D. The Owner has leased, or will lease, the Lands and the Building to the Lessee pursuant to the Lease;

E. The Lessee applied for a grant from the City and BC Housing to enable it to fund renovations of the Single Room Accommodation designated Murray Hotel (referred to herein as the Building), located on the Lands at 1119 Hornby Street, comprised of upgrades to the common washrooms including new piping/plumbing, fixtures and finishes;

F. On July 21, 2015, the City's elected Council approved a grant of \$530,000 (the "City Grant") to the Lessee subject to: (1) the Lessee first entering into a lease with the owner of the Building on terms and conditions satisfactory to the City; (2) all required development and building permits having been issued by the City; and (3) a Housing Agreement be entered into pursuant to Section 565.2 of the *Vancouver Charter* and registered on title, which Housing Agreement:

- (i) secures all 106 residential rooms in the Building for the term of the lease (15 years);
- (ii) maximizes affordability of all rooms;

- (iii) targets the tenant contribution to rent to the shelter component of income assistance (currently \$375 for a single person) for not less than one third (35) of the rooms; and
 - (iv) includes such other terms and conditions as the Director of Legal Services and the Chief Housing Officer may require;
- (the "Affordable Rental Housing Condition");

G. On August 10, 2016, BC Housing's Executive Board approved a grant of \$250,000 (the "Funding Grant") to the Lessee subject to: (1) the Lessee first entering into a lease with the owner of the Building on terms and conditions satisfactory to BC Housing; (2) all required development and building permits having been issued by the City; (3) a Housing Agreement to be entered into between the Owner, Lessee, the City and BC Housing; and (4) an Operator Agreement with BC Housing; and

H. The Owner, the Lessee, the Funder and the City are now entering into this Agreement to satisfy the Affordable Rental Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner (in respect of its fee simple interest in the Lands), the Lessee (in respect of its leasehold interest in the Lands) and the City, agree as follows in respect of the use of the Lands and the Building pursuant to Section 565.2 of the *Vancouver Charter* and to Section 219 of the *Land Title Act*:

ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. In this Agreement the following terms have the definitions now given:

- (a) "Affordable Rental Housing Condition" is defined in Recital F;
- (b) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (c) "BC Housing" is defined in Recital B;
- (d) "BC Housing Personnel" means each of the board members, officers, directors, employees and agents of BC Housing;
- (e) "Building" means the Murray Hotel building on the Lands as of the Commencement Date;
- (f) "Chief Housing Officer" means the person appointed from time to time as the City's Chief Housing Officer and his/her successors in function (which includes the Managing Director of Social Development) and their respective nominees;

- (g) "City" and "City of Vancouver" are defined in Recital B;
- (h) "City Grant" is defined in Recital F;
- (i) "City Manager" means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (j) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (k) "Commencement Date" means the date as of which this Agreement has been executed by all parties to it;
- (l) "Development Permit" means any development permit issued by the City in respect of the renovations contemplated to be made to the Building with the City Grant;
- (m) "Director of Legal Services" means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (n) "Funder" means British Columbia Housing Management Commission, a Crown Corporation established in 1967 with a mandate to develop, manage and administer housing options for low and moderate income households. BC Housing works in partnership with the private and non-profit sectors, provincial health authorities and ministries, other levels of government and community groups to develop a range of housing options;
- (o) "Funder Agreement" is defined in Recital G;
- (p) "Land Title Act" means the Land Title Act, R.S.B.C. 1996, c. 250;
- (q) "Lands" means the lands described in Item 2 in the Form C attached hereto; provided, however, that if the Lands are at any time subdivided by air space parcel subdivision, and this Agreement is thereafter discharged from one or more of the resulting legal parcels, then "Lands" will thereafter mean only the part of the Lands within the legal parcel(s) against which it remains registered;
- (r) "Lease" means a lease of the Lands and the Building by the Owner to the Lessee dated for reference March 1, 2017 entered into as of the Commencement Date for an identical Term;
- (s) "Lessee" is defined in Recital B(ii) , and includes all of its successors and permitted assigns;
- (t) "Lessee Personnel" means each of the board members, officers, directors, employees and agents of the Lessee;

- (u) "Losses" means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (v) "Managing Director of Social Development" means the chief administrator from time to time of the City's Social Development Department and his/her successors in function and their respective nominees;
- (w) "Murray Hotel Air Space Parcel" is defined in Section 4.1(a);
- (x) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of the Building, development or partial development on the Lands;
- (y) "Operator Agreement" is an agreement between the Lessee and BC Housing outlining the obligations of the Lessee to manage the day-to-day operations of the Rental Housing to which this Agreement applies and meeting the affordability requirements of BC Housing;
- (z) "Owner" means the registered owner of the Lands as of the Commencement Date, namely Kenstone Properties Ltd., and during the Term includes all of its successors, permitted assigns and successors in title to the Lands, and if the Lands are subdivided by air space subdivision plan, then "Owner" will thereafter refer to the respective owner of each such legal parcel against which this Agreement remains registered after subdivision, as applicable;
- (aa) "Rental Housing" means a dwelling unit which is not occupied by the registered or beneficial owner of the same, but which is made available by such owner to the general public (subject to Article 2), at arms' length, for use as rental accommodation on a month-to-month or longer basis in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, the *Residential Tenancy Act*;
- (bb) "*Residential Tenancy Act*" means the Residential Tenancy Act S.B.C. 2002, c. 78;
- (cc) "Shelter Rate" means a rate equal to the then-current "shelter allowance" portion of the Government of British Columbia social assistance payment (or any equivalent payment pursuant to a successor social assistance program) for a single person, which is \$375 per month as of the Commencement Date, as the same may be changed from time to time during the Term;
- (dd) "Term" means the term of this Agreement, which will commence on the Commencement Date and will end on the earlier of 15th anniversary of the Commencement Date or the termination of the Lease in accordance with its terms; and
- (ee) "Vancouver" is defined in Recital B; and

(ff) "*Vancouver Charter*" means the Vancouver Charter S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) Party. Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) Singular; Gender. Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References. References to the or this "Agreement" and the words "hereof" "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto in force on the Commencement Date, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

**ARTICLE 2
RESTRICTIONS ON USE AND SUBDIVISION**

- 2.1 The Owner covenants and agrees in respect of its fee simple interest in the Lands, and the Lessee covenants and agrees in respect of its leasehold interest in the Lands, that subject to Section 2.1(h):

- (a) throughout the Term, the Lands and the Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) throughout the Term, cause to be provided, or will provide, respectively, not less than 106 residential units within the Building, of which one may be used as a caretaker suite and the remaining 105 units will be used only to provide Rental Housing (such 105 units collectively, the "Rental Housing Units"), in accordance with the Affordable Rental Housing Condition, the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement;
- (c) throughout the Term:
 - (i) not less than 35 of the Rental Housing Units will be rented for no more than the Shelter Rate; and
 - (ii) reasonable efforts will be made to maximize affordability of all other Rental Housing Units, in accordance with the terms of this Agreement and the terms of the Lease;
- (d) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies or the Lease, the Owner will not suffer, cause or permit, beneficial or registered title to any Rental Housing Unit to be sold or otherwise transferred unless:
 - (i) the Building as a whole, including the caretaker suite and every Rental Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner; and
 - (ii) the transferee complies with Section 10.8;
- (e) throughout the Term, except as otherwise provided in Section 4.1, the Owner will not suffer, cause or permit the Lands, or any part thereof, to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld, subject to Article 4;
- (f) throughout the Term, any sale or other transfer of title to a Rental Housing Unit in contravention of the covenant in Section 2.1(d), and any subdivision of the Lands in contravention of Section 2.1(e), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (g) throughout the Term, it will insure, or cause to be insured, the Lands and the Building and all parts thereof to not less than the actual cash value, against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands; provided, however, that the Owner covenants and agrees to use reasonable commercial efforts to replace such insurance with, and to thereafter maintain, full replacement cost insurance, it being

understood that the same may only be available after the Building has been upgraded as contemplated by the City Grant and the Funder Grant; and

- (h) throughout the Term, the Owner and the Lessee will keep and maintain the Lands and the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, in accordance with their respective obligations as provided for pursuant to the terms of the Lease. If the Lands or the Building or any part thereof is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred; provided however, that in the event of damage or destruction to the extent described in Section 12.3 of the Lease, the Owner may elect not to repair or rebuild the Building if the Owner or Tenant elects to terminate the Lease as provided for in Section 12.03 of the Lease.

ARTICLE 3 CITY GRANT AND FUNDER AGREEMENT

- 3.1 Subject to the Owner and the Lessee performing their respective obligations in accordance with the Lease, the City will disburse the City Grant and BC Housing will disburse the Funder Grant to the Lessee after full registration of this Agreement in the Land Title Office, subject to the presentation of invoices evidencing expenditure of monies by the Lessee or the Owner for the purposes of the City Grant or Funder Grant, namely for upgrades to common washrooms including new piping/plumbing, fixtures and finishes.

ARTICLE 4 SUBDIVISION OF THE LANDS AND THE BUILDING

- 4.1 Notwithstanding Section 2.1(e):
- (a) subject to compliance by the Owner with all applicable requirements of the City's Approving Officer and the City's elected Council, this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands by the deposit of an air space subdivision plan, to enable a separate legal lot or airspace parcel comprising just the Building (or just the Building together with the land below the Building and/or just the Building together with the airspace above the Building) to be created (the "Murray Hotel Air Space Parcel");
- (b) following such a subdivision, the Owner may apply to the City for a partial discharge of this Agreement with respect to any legal parcel other than the Murray Hotel Air Space Parcel, and the City will on request of the Owner execute and deliver a registrable discharge of this Agreement in respect of such other parcel(s) provided, that:
- (i) the Director of Legal Services is satisfied that such discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's

and/or the Lessee's agreements and obligations in respect of the Murray Hotel Air Space Parcel or the Rental Housing Units pursuant to this Agreement;

- (ii) any such discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
 - (iii) the City will have a reasonable amount of time to execute and return any such discharge; and
 - (iv) the preparation and registration of any such discharge will be without cost to the City.
- 4.2 Following such subdivision and partial discharge, this Agreement will be read and applied so that the obligations herein will apply only to the Murray Hotel Air Space Parcel, and not to any other legal parcel created as a result of such subdivision.

ARTICLE 5 RECORD KEEPING

- 5.1 The Owner and the Lessee, as applicable, will keep accurate records pertaining:
- (a) to the use, occupancy and rental rates charged of/for the Rental Housing Units;
 - (b) following subdivision of the Lands by air space subdivision plan, to the use, occupancy and rental rates charged of/for the units within the Murray Hotel Air Space Parcel; and
 - (c) to expenditure of the City Grant and Funder Grant,

in each case, as applicable. Such records will be to the satisfaction of the City and BC Housing. At the request of the City or BC Housing, from time to time, the Owner and the Lessee, as applicable, will make such records available for inspection and copying by the City or BC Housing. The City or BC Housing will comply with the Owner's and the Lessee's, as applicable, statutory obligations with respect to the privacy of such information.

ARTICLE 6 ENFORCEMENT

- 6.1 This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City or BC Housing is entitled to court costs, it shall be entitled to court costs on a solicitor and own client basis.

**ARTICLE 7
RELEASE AND INDEMNITY**

7.1 Release and Indemnity. Subject to Section 7.2:

- (a) each of the Owner and the Lessee hereby releases and discharges the City, BC Housing and all City Personnel and BC Housing Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City, BC Housing and all City Personnel and BC Housing Personnel from and against all Losses which may arise, accrue or be incurred by the City, BC Housing or any City Personnel or BC Housing Personnel or which are made by any person, firm or corporation against the City, BC Housing or any City Personnel or BC Housing Personnel or which the City, BC Housing or any City Personnel or BC Housing Personnel may pay, incur, sustain or be put to:
- (i) by reason of the City or City Personnel:
- A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the Building;
- B. validly withholding any permit pursuant to this Agreement; or
- C. exercising any of its rights under any Section 219 covenant or other right granted to the City or BC Housing pursuant to this Agreement; or
- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;
- whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City, BC Housing, City Personnel or BC Housing Personnel;
- (b) the Owner covenants and agrees to indemnify and save harmless the City, BC Housing, City Personnel and BC Housing Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City, BC Housing or any City Personnel or BC Housing Personnel or which the City, BC Housing or any City Personnel or BC Housing Personnel may pay, incur, sustain or be put to, by reason of:
- (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
- (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement; and
- (c) the Lessee covenants and agrees to indemnify and save harmless the City, BC Housing, City Personnel and BC Housing Personnel, from and against all Losses

which may arise or accrue to any person, firm or corporation against the City, BC Housing or any City Personnel or BC Housing Personnel or which the City, BC Housing or any City Personnel or BC Housing Personnel may pay, incur, sustain or be put to, by reason of:

- (i) any negligent act or omission or wilful misconduct of the Lessee or any Lessee Personnel in connection with the observance and performance of the obligations of the Lessee under this Agreement; or
- (ii) any default in the due observance and performance of the obligations and responsibilities of the Lessee under this Agreement.

The indemnities in Section 7.1(b) and 7.1(c) will be personal covenants of the Owner and the Lessee, respectively, and integral parts of the Section 219 covenants granted in this Agreement.

7.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City or BC Housing which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City, BC Housing, City Personnel or BC Housing Personnel, then the City or BC Housing will give notice of such claim to the Owner and the Lessee and, subject to Section 7.2(b), the Owner or the Lessee, as applicable, will have the right, upon written notice to the City or BC Housing, to conduct the proceedings in defence of the claim.
- (b) Section 7.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 7.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided, however, that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner and/or the Lessee, as applicable, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 7.2(b); and

- (c) Regardless of whether the claim is being defended under Section 7.2(a) or Section 7.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

- 7.3 Survival of Release and Indemnities. The release and indemnities in this Article 7 will, subject to the relevant provisions of Section 219 of the *Land Title Act*, remain effective, and (with respect to issues of liability that remain unresolved on the date that the Owner ceases to be the registered Owner of the Lands) will survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 8 CITY'S RIGHT IF LESSEE DEFAULTS ON LEASE

- 8.1 It is understood and agreed that in the event of a default by the Lessee of its obligations in the Lease, the Owner will, prior to taking any action to terminate the Lease, give the City notice of such default and an opportunity to cure the default on behalf of the Lessee. The City will be given not less than 30 days to cure such default or if it cannot reasonably be cured within 30 days, then the cure period will be extended for as long as the City continues to take reasonable steps to effect a cure. In the alternative, the City may consent to the termination of the Lease by the Owner, provided that the City will then have the option to itself become the lessee or, with the prior consent of the Owner not to be unreasonably withheld, conditioned or delayed, to appoint another entity to do so, for the remainder of the term of the Lease.

ARTICLE 9 NOTICES

- 9.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, shall be in writing and shall be given by registered mail or personal delivery, addressed as follows:
- (a) If to the City:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: City Clerk, with concurrent copies to the Managing Director of Social Development and the Director of Legal Services

(b) If to the Owner:

Kenstone Properties Ltd.
 #201-1926 West Broadway
 Vancouver, BC,
 V6J 1Z2

Attention: President

(c) If to the Lessee:

Atira Women's Resource Society
 101 East Cordova Street
 Vancouver, British Columbia
 V6A 1K7

Attention: Janice Abbott

(d) If to the Funder:

BC Housing Management Commission
 1701 - 4555 Kingsway
 Burnaby, British Columbia
 V5H 4V8

Attention: Michael Flanigan

and any such notice, demand or request will be deemed given:

- (e) if made by registered mail, on the earlier of the day receipt is acknowledged by the addressee or the third day after it was mailed, except when there is a postal service disruption during such period, in which case delivery will be deemed to be completed upon actual delivery of the notice, demand or request; and
- (f) if personally delivered, on the date when delivered,

or to such other address in Canada as either party may specify in writing to the other party in the manner described above, provided that if and when the owner of the Land or any part thereof should change, in the absence of any such specification, then to the address as set out in the State of Title Certificate for that particular parcel of land.

ARTICLE 10 MISCELLANEOUS

- 10.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated, subject to Article 4. For greater

certainly, it is understood and agreed that upon the subdivision of the Lands so as to create the Murray Hotel Air Space Parcel, the covenants and agreements set forth herein will not bind or attach to any portion of the Lands save and except the Murray Hotel Air Space Parcel. Upon the sale or transfer of any legal or beneficial interest in the Lands and/or the Building or any part thereof in accordance with the provisions of Section 10.8, the parties agree that the covenants and agreements herein contained shall only be binding upon the transferring party in respect of a breach or acts or omissions occurring during its ownership.

- 10.2 Agreement to be a First Charge. The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
 - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 10.3 Enforcement. This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it will be entitled to court costs on a solicitor and own client basis.
- 10.4 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 10.5 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner or the Lessee under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner, the Lessee and the City.
- 10.6 Waiver. The Owner and the Lessee each acknowledges and agrees that no failure on the part of the City or BC Housing to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City or BC Housing of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City or BC Housing herein will be deemed to

be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City or BC Housing at law or in equity.

- 10.7 Further Assurances. The Owner and the Lessee will each execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 10.8 Sale of Lands or Building. Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the Building or any part thereof (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the Director of Legal Services, over its mortgage), subject always to Sections 2.1(d), 2.1(e) and 4.1, the Owner will cause the purchaser/transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the applicable obligations, agreements and indemnities of the Owner under this Agreement. The provisions in this Section 10.8 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the Director of Legal Services, over its mortgage).
- 10.9 Perfection of Intention. The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter* and also registered as a charge against title to the Lands, as well as the Lessee's leasehold interest in the Lands, with priority over all other encumbrances except those in favour of the City.
- 10.10 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City, BC Housing and the Lessee that:
- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
 - (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby vis-à-vis the Owner will encumber all legal and beneficial interests in the title to the Lands;
 - (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
 - (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

10.11 Lessee's Representations and Warranties. The Lessee represents and warrants to and covenants and agrees with the City, BC Housing and the Owner that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind its leasehold interest in the title to the Lands with the interests in land created hereby;
- (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby vis-à-vis the Lessee will encumber its leasehold interests in the title to the Lands;
- (c) this Agreement will be fully and completely binding upon the Lessee in accordance with its terms and the Lessee will perform all of its obligations under this Agreement in accordance with its terms; and
- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Lessee with regard to the Lands or any other matter whatsoever.

10.12 Enurement. This Agreement shall enure to the benefit of and be binding upon the City and BC Housing and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner, the Lessee and their respective successors and assigns.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C or D which is a part hereof.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA3669203 and the Assignment of Rents registered under number CA3669204;
- (b) "Existing Chargeholder" means CANADIAN WESTERN BANK;
- (c) "New Charge" means the Housing Agreement and the Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder hereby:

- (i) consents to the Owner granting the New Charge to the City; and
- (ii) agrees with the City that the New Charge charges the Land in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charge, and it had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA5289636 and the Assignment of Rents registered under number CA5289637;
- (b) "Existing Chargeholder" means TRAVELERS INSURANCE COMPANY OF CANADA;
- (c) "New Charge" means the Housing Agreement and the Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder hereby:

- (i) consents to the Owner granting the New Charge to the City; and
- (ii) agrees with the City that the New Charge charges the Land in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charge, and it had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT