

EXPLANATION

**Authorization to enter into a Housing Agreement
For Market Rental Housing
Re: 41 East Hastings Street**

The owner of the subject lands has applied to rezone them to permit development of a mixed-use building with commercial use at grade and in the mezzanine, with 12 storeys of residential use above, including social/supportive housing units and market rental housing units, which rezoning application was approved in principle after public hearing on October 22, 2013 subject to a number of preconditions, including that the Owner make arrangements to the satisfaction of the Managing Director of Social Development and the Director of Legal Services to enter into a housing agreement pursuant to section 565.2 of the *Vancouver Charter* securing not less than 67 residential units in this development as market rental housing and subject to such other terms and conditions as were set forth in the minutes of that public hearing

A Housing Agreement has been accepted and signed by the owner applicant and its mortgagees that satisfies the above conditions imposed by Council. Enactment of the attached By-law, as required by section 565.2 of the *Vancouver Charter*, will complete the process to implement Council's resolution regarding a Housing Agreement.

Director of Legal Services
May 13, 2015



41 East Hastings Street

BY-LAW NO. _____

**A By-law to enact a Housing Agreement
For Market Rental Housing at 41 East Hastings 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 of certain lands described as:

No PID Number	LOT A OF BLOCK 8 DISTRICT LOT 196 GROUP 1 NWD PLAN EPP47536
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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 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 _____, 2015

Mayor

City Clerk

LAND TITLE ACT
FORM C (Section 233) CHARGE

Schedule A

GENERAL INSTRUMENT - PART 1 Province of British Columbia

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)

GROSSMAN & STANLEY

Business Lawyers

#800-1090 West Georgia Street

Vancouver

BC V6E 3V7

Phone: 604-683-7454

File No.: 5324-007\Atira

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

NO PID NMBR LOT A OF BLOCK 8 DISTRICT LOT 196 GROUP 1 NWD PLAN EPP47536

STC? YES

Related Plan Number: **EPP47546**

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) 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~~

ATIRA DEVELOPMENT SOCIETY

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

CITY OF VANCOUVER

453 WEST 12TH AVENUE

VANCOUVER

V5Y 1V4

BRITISH COLUMBIA

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)

Execution Date

Transferor(s) Signature(s)

Roderick L. Pearce

Barrister & Solicitor

Grossman & Stanley

#800-1090 West Georgia Street

Vancouver, BC V6E 3V7

Phone: 604-683-7454

Y	M	D
15	05	11

ATIRA DEVELOPMENT SOCIETY
by its Authorized Signatory(ies):

Janice Abbott

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)

Execution Date

Transferor / Borrower / Party Signature(s)

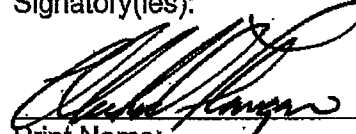
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CITY OF VANCOUVER by its
Authorized Signatory(ies):

Print Name:

Print Name:

PROVINCIAL RENTAL HOUSING
CORPORATION its Authorized
Signatory(ies):


 Print Name: **Michael Flanigan** Director
 Vice President, Development & Asset Strategies


 Print Name: **Dan Maxwell**
 Chief Financial Officer

BRITISH COLUMBIA HOUSING
MANAGEMENT COMMISSION by its
Authorized Signatory(ies):


 Print Name: **MICHAEL FLANIGAN**
 Vice President, Development & Asset Strategies


 Print Name: **Dan Maxwell**
 Chief Financial Officer

OLGA BOCHKARYOVA
BARRISTER & SOLICITOR
700 - 401 WEST GEORGIA STREET
VANCOUVER, B.C. V6B 5A1
TEL: (604) 682-3664

as to both signatures

OLGA BOCHKARYOVA
BARRISTER & SOLICITOR
700 - 401 WEST GEORGIA STREET
VANCOUVER, B.C. V6B 5A1
TEL: (604) 682-3664

as to both signatures

OFFICER CERTIFICATION:

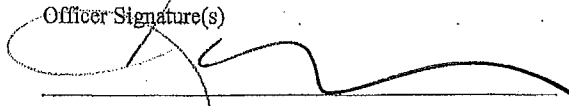
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution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

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

PAGE 3 of 21 pages

Officer Signature(s)


Katie M. McGowan
A Commissioner for Taking
Affidavits for British Columbia
Vancouver City Savings Credit Union
6th Floor, 183 Terminal Avenue
Vancouver, B.C. V6A 4G2
Tel: 604-877-6565
Expiry Date: June 30, 2016
As to ALL signatures

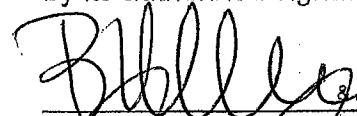
Execution Date

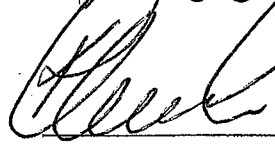
Y	M	D
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Transferor / Borrower / Party Signature(s)

VANCOUVER CITY SAVINGS CREDIT UNION

by its authorized signatory(ies):


Bruce Richter
Risk Manager
Community Credit
& Administration Department


Kersasp Bharucha
Risk Manager
Community Credit
& Administration Department

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
Covenant

CHARGE NO.

ADDITIONAL INFORMATION
Land Title Act Section 219

NATURE OF INTEREST
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION
Granting Covenant with one registration number less than this Priority Agreement priority over Option to Purchase BB1282110

NATURE OF INTEREST
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION
Granting Covenant with two registration numbers less than this Priority Agreement priority over Mortgage BB1282111, Assignment of Rents BB1282112, Right of First Refusal BB1282114, Mortgage CA4116256 and Assignment of Rents CA4116257

NATURE OF INTEREST
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION
Granting Covenant with three registration numbers less than this Priority Agreement priority over Mortgage CA3434529 and Assignment of Rents CA3434530

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

TERMS OF INSTRUMENT - PART 2

**HOUSING AGREEMENT AND BUILDING USE COVENANT
(Market Rental)**

41 EAST HASTINGS STREET

WHEREAS:

A. It is understood and agreed that this instrument and Agreement, dated for reference June 1, 2014, shall be read as follows:

- (i) the Transferor, Atira Development Society, is called the "Owner" as more particularly defined in Section 1.1; and
- (ii) the Transferee, City of Vancouver, is called the "City" or the "City of Vancouver" when referring to corporate entity and "Vancouver" when referring to geographic location;

B. The Owner is the registered and beneficial owner of the Lands;

C. The Owner has applied to rezone the Lands (the "Rezoning Application") from Downtown-Eastside/Oppenheimer District (DEOD) to CD-1 (Comprehensive Development) District to permit a mixed-use building with commercial use at grade and in the mezzanine, with 12 storeys of residential use above, including market rental housing units, which Rezoning Application was approved after public hearing on October 22, 2013 subject to a number of preconditions, including that the Owner make arrangements to the satisfaction of the Managing Director of Social Development and the Director of Legal Services to enter into a housing agreement pursuant to section 565.2 of the *Vancouver Charter* securing not less than 67 units in the Development for market rental housing and subject to such other terms and conditions as were set forth in the minutes of that public hearing (the "Market Rental Housing Condition"); and

D. The Owner and the City are now entering into this Agreement to satisfy the Market 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 and the City, pursuant to Section 565.2 of the *Vancouver Charter* and to Section 219 of the *Land Title Act*, agree as follows in respect of the use of the Lands and the Building:

**ARTICLE 1
DEFINITIONS AND INTERPRETATIONS**

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

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;

- (b) **"Building"** means each new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit; provided, however, that if the Lands and the Building 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 **"Building"** will thereafter mean only the part of the Building within the legal parcel(s) against which it remains registered;
- (c) **"City Manager"** means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (d) **"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;
- (e) **"Commencement Date"** means the date as of which this Agreement has been executed by all parties to it;
- (f) **"Development"** means the development on the Lands described in Recital C and approved by the Development Permit;
- (g) **"Development Permit"** means the development permit issued in respect of the Development and the Building contemplated by the Rezoning By-law;
- (h) **"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;
- (i) **"Land Title Act"** means the Land Title Act, R.S.B.C. 1996, c. 250;
- (j) **"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;
- (k) **"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;
- (l) **"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;

- (m) “**Market Rental Housing**” means Rental Housing that is rented at market rates, as the same may be determined from time to time by the Owner thereof;
- (n) “**Market Rental Housing Condition**” has the meaning ascribed to that term in Recital C;
- (o) “**Market Rental Housing Units**” has the meaning ascribed to that term in Section 2.1(b), and “**Market Rental Housing Unit**” means any one of such Units;
- (p) “**Occupancy Permit**” means a permit issued by the City authorizing the use and occupation of any Building, development or partial development on the Lands;
- (q) “**Owner**” means Atira Development Society and all of its assigns, successors and successors in title to the Lands or any part thereof, and if the Lands are subdivided by way of a strata plan under the *Strata Property Act*, then “Owner” includes the strata corporation thereby created;
- (r) “**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, 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, residential tenancy and human rights legislation in British Columbia;
- (s) “**Residential Tenancy Act**” means the Residential Tenancy Act, S.B.C. 2002, c. 78;
- (t) “**Rezoning By-law**” means the CD-1 By-law enacted as a result of the Rezoning Application;
- (u) “**Strata Property Act**” means the Strata Property Act, S.B.C. 1998, c. 43;
- (v) “**Term**” means the term of this Agreement, which will commence on the Commencement Date and will end on the 15 year anniversary of the date when the final Occupancy Permit is issued for the Building; and
- (w) “**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. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, 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 that:

- (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) it will construct, and throughout the Term will maintain, not less than 78 units for use only as Market Rental Housing (the “Market Rental Housing Units”) in accordance with the Market Rental Housing Condition, the Rezoning By-law, the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement;
- (c) throughout the Term, the Market Rental Housing Units will only be used for the purpose of providing Rental Housing;

- (d) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Market Rental Housing Unit to be sold or otherwise transferred unless title to every Market Rental Housing Unit is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and unless such transferee concurrently enters into an assumption agreement satisfactory to the City whereby it agrees to be and thereafter remain bound by each and every term and condition of this Agreement applicable to the Owner of the Market Rental Housing Units;
- (e) throughout the Term, it will not suffer, cause or permit the Lands 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 3;
- (f) throughout the Term, any sale of a Market Rental Housing Unit in contravention of the covenant in Section 2.1(d), and any subdivision 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 Building and all parts thereof to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands; and
- (h) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition. If 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.

ARTICLE 3 SUBDIVISION OF THE LANDS

3.1 By Air Space Subdivision Plan. 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, provided that all the Market Rental Housing Units will thereafter be contained within a single air space parcel (the "Market Rental Housing Units ASP"); and
- (b) following such a subdivision and the issuance of a final occupancy permit for the Market Rental Housing Units ASP, the Owner may apply to the City for a partial discharge of this Agreement with respect to any parcel other than the Market Rental Housing Units ASP, 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 agreements and obligations in respect of the Market Rental Housing Units, or in respect of the Market Rental Housing Units ASP, 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.

3.2 By Strata Plan. Further notwithstanding Section 2.1(e):

- (a) following creation of the Market Rental Housing Units ASP, the Owner may apply to further subdivide that ASP by the deposit of a strata plan, provided that this Agreement will thereafter charge title to each strata lot and the common property comprising such strata plan, including without limitation the *Land Title Act* Section 219(1)(d) covenant prohibiting the separate sale of any of the strata lots thereby created;
- (b) the strata corporation thereby created will:
 - (i) perform and observe the Owner's covenants herein at the expense of the strata corporation and the strata lots owner;
 - (ii) upon the registration of the strata plan, enter into an assumption agreement with the City, in form and contents satisfactory to the City, to assume all of the then ongoing and applicable obligations hereunder and benefit from all of the rights as provided herein, whereby the Owner of the stratified Market Rental Housing ASP (if different from the owner of the strata lots) will be released from all of its obligations hereunder in respect of such strata corporation and the strata lots and common property therein;
 - (iii) take into consideration the content of this Agreement when creating, amending or rescinding the bylaws, rules and regulations of the strata corporation, and will cause the strata lots owner to comply with the obligations, restrictions and limitations as provided herein;
 - (iv) be responsible for any breach arising from any action or omission of the strata lots owner of the obligations, restrictions and limitations as provided herein; and
 - (v) be entitled to give all permissions and consents permitted to be given by the Owner hereunder; and

- (c) the liability of the strata lots owner to pay any costs and expenses of the Owner pursuant to this Agreement, will be in proportion to the unit entitlement of each strata lot as established in accordance with the *Strata Property Act* or as otherwise determined by the strata corporation.

ARTICLE 4 OCCUPANCY RESTRICTION ON THE LANDS

- 4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the Building, that:
- (a) the Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for the Building until such time as the Owner is able to apply for an Occupancy Permit for the entire Building and all its component parts and facilities; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit permitting the use and occupation of the Building, notwithstanding completion of construction of the Building until such time as an Occupancy Permit can be issued for the entire Building and all its component parts and facilities; and
 - (b) without limiting the general scope of Article 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this Article 4.

ARTICLE 5 RECORD KEEPING

- 5.1 The Owner will keep accurate records pertaining to the use and occupancy of the Market Rental Housing Units, such records to be to the satisfaction of the City. At the request of the City, from time to time, the Owner will make such records available for inspection and copying by the City. The City will comply with the Owner's statutory obligations with respect to 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 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, the Owner hereby:

- (a) releases and discharges the City and all City 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 and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City 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 Owner's Works;
 - B. withholding any permit pursuant to this Agreement; or
 - C. exercising any of its rights under any Section 219 covenant, Vancouver Charter section 565.2 housing agreement or other right granted to the City 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 or the City Personnel; and

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City 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.

The indemnities in this Article 7 will be both personal covenants of the Owner 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 which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to

Section 7.2(b), the Owner will have the right, upon written notice to the City, 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, 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 remain effective, and 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 NOTICES

- 8.1 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:

Atira Development Society
 101 East Cordova Street
 Vancouver, British Columbia
 V6A 1K7

Attention: Executive Director

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

- (c) 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
- (d) 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 9 MISCELLANEOUS

- 9.1 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 3.
- 9.2 Enurement. This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.
- 9.3 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.

- 9.4 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner 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 Roads and the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 9.5 Waiver. The Owner acknowledges and agrees that no failure on the part of the City 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 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 herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 9.6 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 with priority over all other encumbrances except those in favour of the City.
- 9.7 Priority of Registration. 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.
- 9.8 Further Assurances. Each party shall 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.
- 9.9 Transfer of Lands. The Owner covenants and agrees with the City that upon any sale, transfer or conveyance of the Lands charged by this Agreement, or any portion thereof, to any person, trust, corporation, partnership or other entity, the Owner will obtain from such person, trust, corporation, partnership or entity and deliver to the City a duly executed acknowledgement of the terms of this Agreement and an assumption of the continuing obligations of the Owner pursuant to this Agreement

relative to that portion of the Lands sold, transferred or conveyed to such person, trust, corporation, partnership or entity.

9.10 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City 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 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.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charge" means the Option to Purchase registered under number BB1282110;
- (b) "Existing Chargeholder" means PROVINCIAL RENTAL HOUSING CORPORATION;
- (c) "New Charge" means 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 Lands in priority to the Existing Charge 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 Charge or the advance of any money under the Existing Charge.

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 BB1282111, the Assignment of Rents registered under number BB1282112, the Right of First Refusal BB1282114 (to mortgage, waiver as to Mortgage CA3434529 only, see CA3434438), the Mortgage registered under number CA4116256, and the Assignment of Rents registered under number CA4116257;
- (b) **"Existing Chargeholder"** means BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION;
- (c) **"New Charge"** means 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 Lands 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 CA3434529 and the Assignment of Rents registered under number CA3434530;
- (b) "Existing Chargeholder" means VANCOUVER CITY SAVINGS CREDIT UNION;
- (c) "New Charge" means 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 Lands 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