

## EXPLANATION

**Authorization to enter into a Housing Agreement  
Re: 288 East Hastings Street**

Pursuant to Development Permit Application number DE419659, the City's Development Permit Board approved the development of the referenced lands subject to a number of conditions, including the condition that the owner of these lands first make arrangements to the satisfaction of the Chief Housing Officer and the Director of Legal Services to secure 104 of the 172 dwelling units in the development as social housing in order to secure rent levels, for the life of the building or 60 years, whichever is longer, and to include registrable covenants prohibiting stratification and the separate sale of those rental units and other terms and conditions stipulated by the Development Permit Board.

A Housing Agreement entered into pursuant to section 565.2 of the *Vancouver Charter* has been accepted and signed by the owner applicant in order to satisfy the foregoing conditions. Enactment of the attached By-law, as required by section 565.2 of the *Vancouver Charter*, will complete the process to implement the Development Permit Board's condition regarding a Housing Agreement.

Director of Legal Services  
June 28, 2016

288 East Hastings Street

ABE

**BY-LAW NO.**

**A By-law to enact a Housing Agreement  
for 288 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:

PID: 029-768-446

Lot 1 Block 11 District Lot 196 Group 1  
New Westminster District Plan EPP59251

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          , 2016

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

**LAND TITLE ACT  
FORM C (Section 233) CHARGE  
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)  
**Scott J. Anderson, Lawson Lundell LLP**  
Barristers and Solicitors  
1600 - 925 West Georgia Street  
Vancouver BC V6C 3L2  
Housing Agreement and Building Use Covenant (Social Housing)  
Tel. No.: (604) 666-3456  
File No.: 30706-130259  
Document No. 12846417

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]  
**029-768-446 LOT 1 BLOCK 11 DISTRICT LOT 196 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP59251**  
STC? YES

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION  
**Covenant** Section 219, Entire Agreement

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):  
**PROVINCIAL RENTAL HOUSING CORPORATION (INCORPORATION NO.: BC0052129)**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))  
**CITY OF VANCOUVER**  
  
453 WEST 12TH AVENUE  
  
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)  
  
**ALLISON K. GODEY**  
Barrister & Solicitor  
SINGLETON URQUHART LLP  
LEGAL COUNSEL  
1200 - 925 West Georgia Street  
Vancouver BC V6C 3L2  
  
(as to all signatures)

Execution Date		
Y	M	D
16	06	20

Transferor(s) Signature(s)  
PROVINCIAL RENTAL HOUSING CORPORATION, by its authorized signatory(ies)  
  
Name: **Michael Flanagan**  
  
Name: **Dan Maxwell**

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)

\_\_\_\_\_

(as to all signatures)

\_\_\_\_\_

\_\_\_\_\_

Execution Date

Y	M	D
16		

Transferor / Borrower / Party Signature(s)

CITY OF VANCOUVER, by its  
authorized signatory(ies):

Name: \_\_\_\_\_

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.

**TERMS OF INSTRUMENT - PART 2**  
**HOUSING AGREEMENT AND BUILDING USE COVENANT**  
**(Social Housing)**  
**288 EAST HASTINGS STREET**

**WHEREAS:**

- A. It is understood and agreed that this instrument and Agreement, dated for reference June 21, 2016, shall be read as follows:
- (i) the Transferor, PROVINCIAL RENTAL HOUSING CORPORATION, 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 the 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 under Development Application number DE419659 (the "Development Permit Application") to develop on the Lands a 12 storey mixed use building with retail on the ground floor and 172 dwelling units (104 social housing and 68 secured market rental) above two levels of underground parking having vehicular access from the lane;
- D. The Development Permit Application was approved by the Development Permit Board in principle subject to, among other things, fulfillment of the condition that the Owner enter into a Housing Agreement with the City to secure 104 of such dwelling units as social housing, on the terms and conditions set out in the City's prior-to development permit issuance letter of January 26, 2016 to Endall Elliot and Associates, by By-law pursuant to Section 565.2 of the *Vancouver Charter* (the "Social Housing Condition"); and
- E. The Owner and the City are now entering into this Agreement to satisfy the Social 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 New Building:

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATIONS**

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

- (a) "Affordable Market Rents" means the average market rents posted by Canada Mortgage and Housing Corporation applicable to the location of the Lands;

(00508873v3)

Housing Agreement (Social Housing)  
 288 East Hastings Street

30706.130269.SJA1.12863103.2

- (b) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (c) "Chief Housing Officer" means the person appointed from time to time as the City's Chief Housing Officer and his/her successors in function and their respective nominees;
- (d) "City Manager" means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (e) "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;
- (f) "Commencement Date" means the date as of which this Agreement has been executed by all parties to it;
- (g) "Development" means the development on the Lands described in Recital C and approved by the Development Permit;
- (h) "Development Permit" means a development permit issued by the City as a result of the Development Permit Application;
- (i) "Development Permit Application" has the meaning ascribed to that term in Recital C;
- (j) "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;
- (k) "Guaranteed Income Supplement" means an additional benefit that may be added to the Old Age Security pension received by a person aged 65 and older if he/she has a low income and meets other specified criteria, which is administered and paid by the Government of Canada;
- (l) "Housing Income Limit" or "HIL" means the income limit for subsidized housing (for each category of dwelling unit) in Vancouver, determined annually by British Columbia Housing Management Commission which is derived from Canada Mortgage and Housing Corporation's Annual Rent Market Survey;
- (m) "Income Assistance" means financial assistance for a person in financial need who has no other resources and meets other specified criteria, which is administered and paid by the Government of British Columbia;
- (n) "Land Title Act" means the Land Title Act, R.S.B.C. 1996, c. 250;
- (o) "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;

- (p) "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;
- (q) "New 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 New 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 "New Building" will thereafter mean only the part of the New Building within the legal parcel(s) against which it remains registered;
- (r) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of the New Building, development or partial development on the Lands;
- (s) "Old Age Security" is a monthly pension payment available to most persons aged 65 and older who meet specified legal status, residence and other requirements, which is administered and paid by the Government of Canada;
- (t) "Owner" means the registered and beneficial owner of the Lands as of the Commencement Date, namely the Provincial Rental Housing Corporation, and includes all of its successors, 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;
- (u) "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;
- (v) "Replacement Social Housing Unit" has the meaning ascribed to that term in section 2.1(b) and "Replacement Social Housing Units" means all of such units;
- (w) "Residential Tenancy Act" means the Residential Tenancy Act S.B.C. 2002, c. 78;
- (x) "Social Housing" has the meaning ascribed to that term in the Vancouver Development Cost Levy By-law No. 9755, namely Rental Housing;

- (i) in which at least one third of the dwelling units are occupied by persons eligible for either income assistance or a combination of basic old age security pension and guaranteed income supplement and are rented at rates no higher than the shelter component of income assistance;
  - (ii) which is owned by a non-profit corporation, by a non-profit co-operative association, or by or on behalf of the City, the Province of British Columbia or Canada; and
  - (iii) in respect of which the registered owner or ground lessee of the freehold or leasehold title to the land on which the housing is situate has granted to the City a section 219 covenant, housing agreement, or other security for the housing commitments required by the City, registered against the freehold or leasehold title, with such priority of registration as the City may require;
- (y) "Social Housing Condition" has the meaning ascribed to that term in Recital D;
  - (z) "Social Housing Units" has the meaning ascribed to that term in Section 2.1(b), and "Social Housing Unit" means any one of such Units;
  - (aa) "Social Housing Units Air Space Parcel" has the meaning ascribed to that term in Section 3.1(a)(i);
  - (bb) "Term" means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
    - (i) the date as of which the New Building is demolished or substantially destroyed; or
    - (ii) 60 years from the date when the final Occupancy Permit is issued for the New Building; and
  - (cc) "*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 that:

- (a) throughout the Term, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) it will design, construct, equip and finish within the New Building not less than 104 units for use only as Social Housing (the "Social Housing Units"), in accordance with the Social Housing Condition, the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement, and if the New Building is destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building, then it will promptly take all steps reasonably necessary to enable it to build a replacement building or buildings on the Lands, which replacement building(s) will contain not less than the same number and type of replacement Social Housing Units as the New Building formerly contained (each such replacement Social Housing Unit hereinafter referred to as a "Replacement Social Housing Unit") and will be subject, for the duration of the Term, to the same use restrictions as the Social Housing Units and the New Building are pursuant to this Agreement;
- (c) throughout the Term:

- (i) not less than 35 of the Social Housing Units, will be occupied only by persons eligible for either Income Assistance or a combination of Old Age Security pension and the Guaranteed Income Supplement, at rental rates no higher than the shelter component of Income Assistance; and
- (ii) the target rents and affordability for the remaining Social Housing Units will be for:
  - A. 35 to be rented at rates no higher than the applicable HIL; and
  - B. the remaining 34 to be rented at Affordable Market Rents;
- (d) throughout the Term, the Social Housing Units will only be used for the purpose of providing Rental Housing;
- (e) 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 Social Housing Unit to be sold or otherwise transferred unless:
  - (i) every Social 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 9.8;
- (f) throughout the Term, it 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 3;
- (g) throughout the Term, any sale or other transfer of title to a Social Housing Unit in contravention of the covenant in Section 2.1(e), and any subdivision of the Lands in contravention of Section 2.1(f), 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;
- (h) throughout the Term, it will insure, or cause to be insured, the Lands and the New 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
- (i) throughout the Term, it will keep and maintain the Lands and the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition. If the Lands or the New 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 notwithstanding the foregoing, following subdivision of the

Lands and the New Building by air space parcel subdivision in accordance with Article 3, the Owner of each parcel will become responsible only for insuring, managing and maintaining the units in its parcel, and the definition of New Building will thereupon be amended to apply only to that portion of the New Building within each such parcel.

**ARTICLE 3  
SUBDIVISION OF THE LANDS AND THE NEW BUILDING**

3.1 Notwithstanding Section 2.1(f)2.1(f):

- (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:
    - (i) all of the Social Housing Units to be contained within one air space parcel (the "Social Housing Units Air Space Parcel");
    - (ii) other components of the Development to be contained within one or more other air space parcel(s) or a remainder parcel, subject to the terms of the For-Profit Affordable Rental Housing Agreement separately entered by the Owner and the City also as a condition of Development Permit issuance;
  - (b) following such a subdivision and the issuance of a final occupancy permit for the Social Housing Units Air Space Parcel, the Owner may apply to the City for a partial discharge of this Agreement with respect to any legal parcel other than the Social Housing Units 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 agreements and obligations in respect of the Social Housing Units or in respect of the Social Housing Units Air Space Parcel 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 Following such subdivision and partial discharge, this Agreement will be read and applied so that the obligations herein will apply only to any parcel in which Social Housing Units are contained.

**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, that:
- (a) the Lands 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, any part of the Development and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for any part of the Development until such time as the Owner is able to apply for an Occupancy Permit for the entire Development 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 any part of the Development, notwithstanding completion of construction of the Development until such time as an Occupancy Permit can be issued for the entire Development 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:
- (a) the Social Housing Units; and
  - (b) following subdivision by air space subdivision plan, the units within the Social Housing Units Air Space Parcel,

In each case, as applicable. Such records will 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 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 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 New Building;
- B. 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 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 Chief Housing Officer and the Director of Legal Services

(b) If to the Owner:

Provincial Rental Housing Corporation,  
 #1701 - 4555 Kingsway  
 Burnaby, British Columbia  
 V5H 4V8

Attention: Manager, Real Estate Services

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. Upon the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof in accordance with the provisions of Section 9.8, 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.
- 9.2 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.
- 9.3 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.
- 9.4 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.
- 9.5 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 Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 9.6 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.
- 9.7 Further Assurances. The Owner will 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*.
- 9.8 Sale of Lands or New Building. Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the New 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(e) and 2.1(f), 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 9.8 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).

- 9.9 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 with priority over all other encumbrances except those in favour of the City.
- 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.
- 9.11 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.

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

END OF DOCUMENT

## EXPLANATION

**Authorization to enter into a Housing Agreement  
Re: 288 East Hastings Street**

Pursuant to Development Permit Application number DE419659, the City's Development Permit Board approved the development of the referenced lands subject to a number of conditions, including the condition that the owner of these lands first make arrangements to the satisfaction of the Chief Housing Officer and the Director of Legal Services to secure 68 of the 172 dwelling units in the development as rental housing, for the life of the building or 60 years, whichever is longer, and to include registrable covenants prohibiting stratification and the separate sale of those rental units and other terms and conditions stipulated by the Development Permit Board.

A Housing Agreement entered into pursuant to section 565.2 of the *Vancouver Charter* has been accepted and signed by the owner applicant in order to satisfy the foregoing conditions. Enactment of the attached By-law, as required by section 565.2 of the *Vancouver Charter*, will complete the process to implement the Director of Planning's condition regarding a Housing Agreement.

Director of Legal Services  
June 28, 2016

288 East Hastings Street

BY-LAW NO. ABF

**A By-law to enact a Housing Agreement  
for 288 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:

PID: 029-768-446                      Lot 1 Block 11 District Lot 196 Group 1  
New Westminster District Plan EPP59251

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                      , 2016

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

LAND TITLE ACT  
FORM C (Section 233) CHARGE  
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)

Scott J. Anderson, Lawson Lundell LLP  
Barristers and Solicitors  
1600 - 925 West Georgia Street  
Vancouver BC V6C 3L2

For-Profit Affordable Rental Housing Agreement  
Tel. No.: (604) 685-3456  
File No.: 30706-130259  
Document No.: 12844644

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID] [LEGAL DESCRIPTION]  
029-768-446 LOT 1 BLOCK 11 DISTRICT LOT 196 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP59251

STC? YES

3. NATURE OF INTEREST

Covenant

CHARGE NO.

ADDITIONAL INFORMATION

Section 219, Entire Agreement

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):

PROVINCIAL RENTAL HOUSING CORPORATION (INCORPORATION NO.: BC0052129)

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

CITY OF VANCOUVER

453 WEST 12TH AVENUE  
VANCOUVER

BRITISH COLUMBIA  
CANADA

V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:

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)

ALLISON K. GODEY  
Barrister & Solicitor  
SINGLETON URQUHART LLP  
LEGAL COUNSEL  
1200 - 925 West Georgia Street  
Vancouver BC V6C 3L2

(as to all signatures)

Execution Date

Y	M	D
16	06	20

Transferor(s) Signature(s)

PROVINCIAL RENTAL HOUSING CORPORATION, by its authorized signatory(ies).

Name: Michael Flanigan

Name: Dan Maxwell

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)

\_\_\_\_\_

(as to all signatures)

\_\_\_\_\_

\_\_\_\_\_

Execution Date		
Y	M	D
16		

Transferor / Borrower / Party Signature(s)

CITY OF VANCOUVER, by its  
authorized signatory(ies):

Name: \_\_\_\_\_

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.

**TERMS OF INSTRUMENT - PART 2**  
**HOUSING AGREEMENT AND BUILDING USE COVENANT**  
**FOR-PROFIT AFFORDABLE RENTAL HOUSING**  
**288 EAST HASTINGS STREET**

**WHEREAS:**

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, PROVINCIAL RENTAL HOUSING CORPORATION, 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 continued under the *Vancouver Charter*, and "Vancouver" when referring to geographic location;
- B. The Owner is the registered and beneficial owner of the Lands;
- C. The Owner has applied under Development Application number DE419659 (the "Development Permit Application") to develop on the Lands a 12 storey mixed use building with retail on the ground floor and 172 dwelling units (104 social housing and 68 secured market rental) above two levels of underground parking having vehicular access from the lane;
- D. The Development Permit Application was approved by the Development Permit Board in principle subject to, among other things, fulfillment of the condition that the Owner enter into a Housing Agreement with the City to secure 68 of such dwelling units as market rental housing, on the terms and conditions set out in the City's prior-to development permit issuance letter of January 26, 2016 to Endall Elliot and Associates, by By-law pursuant to Section 565.2 of the *Vancouver Charter* (the "For-Profit Affordable Housing Condition"); and
- E. The Owner and the City are now entering into this Agreement to satisfy the For-Profit Affordable 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, in satisfaction of the requirements of Section 3.1A of the *Vancouver DCL By-law* and pursuant to Section 565.2 of the *Vancouver Charter* and Section 219 of the *Land Title Act*, agree as follows, in respect of the use of the Lands and the New Building:

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATION**

- 1.1 Definitions. Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:

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Rental 100 Housing Agreement and Building Use Covenant  
288 East Hastings

30706.130259.SJA1.12838898.1

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;
- (b) "Building Permit" means any building permit issued by the City authorizing the building of a New Building as contemplated by the Development Permit;
- (c) "Chief Housing Officer" means the person appointed from time to time as the City's Chief Housing Officer and his/her successors in function and their respective nominees;
- (d) "City" and "City of Vancouver" have the meaning ascribed to those terms in Recital A(ii);
- (e) "City Manager" means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (f) "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;
- (g) "DCL By-law" means Vancouver Development Cost Levy By-law No. 9755;
- (h) "Development Permit" means a development permit issued by the City as a result of the Development Permit Application;
- (i) "Development Permit Application" has the meaning ascribed to that term in Recital C;
- (j) "Director of Legal Services" means the chief administrator from time to time of the City's Legal Services Department and her/his successors in function and their respective nominees;
- (k) "Discharge" has the meaning ascribed to that term in Section 7.1(b);
- (l) "Discharge Date" means the date upon which the Owner files the Discharge with the Land Title Office;
- (m) "Effective Date" means the date as of which this Agreement has been executed by all parties to it;
- (n) "For-Profit Affordable Rental Housing" means a building containing multiple Housing Units which meets the requirements of Section 3.1A of the DCL By-law to be for-profit affordable rental housing, but does not include alterations of or extensions to those Housing Units; PROVIDED, HOWEVER, that if the definition of For-Profit Affordable Rental Housing applicable at the time when a Building Permit is issued differs from the foregoing, the definition applicable at the time of Building Permit issuance will apply unless otherwise provided in the DCL By-law;

- (o) "For-Profit Affordable Housing Condition" has the meaning ascribed to that term in Recital D;
- (p) "For-Profit Affordable Rental Housing Units" has the meaning ascribed to that term in section 2.1(c) and "For-Profit Affordable Rental Housing Unit" means any one of such units;
- (q) "For-Profit Affordable Rental Housing Units Parcel" has the meaning ascribed to that term in Section 7.1(a);
- (r) "Housing Unit" means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (s) "*Land Title Act*" means the Land Title Act, R.S.B.C. 1996, c. 250;
- (t) "Lands" means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 of the Form C - General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided;
- (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, judgements, builders liens, 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) "New Building" means any 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;
- (w) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of any New Building, development or partial development on the Lands issued after the Effective Date;
- (x) "Owner" means the registered owner of the Lands as of the Effective Date, namely Provincial Rental Housing Corporation, and its successors and assigns;
- (y) "Related Person" means, where the registered or beneficial owner of the Rental Housing Units is:
  - (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c.57, then a Related Person is:
    - (A) an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
    - (B) the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and



- (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (z) "Rental Housing" means a Housing Unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arm's length, for use as rental accommodation on a month-to-month basis or longer 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;
- (aa) "Replacement For-Profit Affordable Rental Housing Unit" has the meaning ascribed to that term in section 2.1(c) and " Replacement For-Profit Affordable Rental Housing Units" means all of such units;
- (bb) "*Residential Tenancy Act*" means the Residential Tenancy Act S.B.C. 2002, c. 78;
- (cc) "Term" means the term of this Agreement, which will commence on the Effective Date and will end on the later of:
  - (i) the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building; or
  - (ii) the date as of which the New Building is demolished or substantially destroyed;
- (dd) "Vancouver" has the meaning ascribed to that term in Recital A(ii);
- (ee) "*Vancouver Charter*" means the Vancouver Charter S.B.C. 1953, c. 55; and
- (ff) "*Vancouver DCL By-law*" means the City's Vancouver Development Cost Levy By-law No. 9755.

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 or by-law includes and is a reference to such statute or by-law and to the regulations made pursuant thereto in force on the Effective Date, with all amendments made thereto and as in force from time to time, and to any statute, by-law and regulations that may be passed which have the effect of supplementing or superseding such statutes, by-laws and regulations.
- (g) Time. Time will 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 will be local Vancouver, British Columbia time.

## ARTICLE 2 RESTRICTIONS ON USE OF LANDS AND SUBDIVISION

- 2.1 The Owner covenants and agrees with the City, in respect of the use of the Lands and the construction and use of the New Building, that:
- (a) throughout the Term:
    - (i) prior to the Discharge Date, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement; and
    - (ii) after the Discharge Date, the For-Profit Affordable Rental Housing Units and the For-Profit Affordable Rental Housing Units Parcel will not be used in any way that is inconsistent with the terms of this Agreement;
  - (b) if it carries out any development on the Lands after the Effective Date, it will construct, fit and finish, at its sole cost and expense, the New Building, in accordance with this Agreement, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
  - (c) when the New Building is completed and an Occupancy Permit has been issued and thereafter throughout the Term, not less than 68 of the Housing Units in the New Building will be used only for the purpose of providing For-Profit Affordable Rental Housing (the "For Profit Affordable Rental Housing Units") in accordance with the terms of this Agreement, and if the New Building is destroyed or demolished before the end of the Term, then any replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than the same number and type of replacement Housing Units as the New Building formerly contained, which replacement Housing Units,

during the remainder of the Term, will also be used only for the purpose of providing For-Profit Affordable Rental Housing (each such replacement Housing Unit hereinafter referred to as a "Replacement For-Profit Affordable Rental Housing Unit"), in accordance with the terms of this Agreement and the applicable by-laws of the City;

- (d) throughout the Term, the For-Profit Affordable Rental Housing Units will only be used for the purpose of providing Rental Housing;
- (e) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any For-Profit Affordable Rental Housing Unit (or Replacement For-Profit Affordable Rental Housing Unit, as applicable) for a term of less than one month at a time;
- (f) 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 For-Profit Affordable Rental Housing Unit (or Replacement For-Profit Affordable Rental Housing Unit, as applicable) to be sold or otherwise transferred unless title to every one of the For-Profit Affordable Rental Housing Units (or Replacement For-Profit Affordable Rental Housing Units, as applicable) is sold or otherwise transferred together and as a block to the same legal and beneficial owner, as applicable, and subject to Section 9.8;
- (g) throughout the Term, it will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld, subject to Article 7;
- (h) throughout the Term, that any sale of any For-Profit Affordable Rental Housing Unit (or Replacement For-Profit Affordable Rental Housing Unit, as applicable) in contravention of the covenant in Section 2.1(f)(f), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(g), 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;
- (i) throughout the Term, it will:
  - (i) prior to the Discharge Date, keep and maintain the New Building and all parts thereof; and
  - (ii) after to the Discharge Date, keep and maintain the For-Profit Affordable Rental Housing Units and the For-Profit Affordable Rental Housing Units Parcel and all parts thereof,

in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings;
- (j) during the Term, if:

- (i) prior to the Discharge Date, the New Building or any part thereof, is damaged; and
- (ii) after the Discharge Date, the For-Profit Affordable Rental Housing Units are damaged,

it 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;

- (k) throughout the Term, it will insure, or cause to be insured:

- (i) prior to the Discharge Date, the New Building; and
- (ii) after the Discharge Date, the For-Profit Affordable Rental Housing Units Parcel;

to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands;

- (l) as of the Effective Date, the rents proposed to be charged by the Owner to the first occupants of the For-Profit Affordable Rental Housing Units in the New Building following issuance of the Occupancy Permit are as set forth in rent roll attached hereto as Schedule A;
- (m) the rent charged for each For-Profit Affordable Rental Housing Unit as of initial occupancy of each such Unit will not be increased before the one year anniversary of that date even if there is a change in occupancy during that year; and
- (n) in the event of the substantial or complete destruction of the New Building (by cause or causes beyond the reasonable control of the Owner) prior to the 60 year anniversary of the issuance of the final Occupancy Permit, it will promptly take all steps reasonably necessary to enable it to build a replacement building or buildings on the Lands, which building(s) will be subject to the same use restrictions as the New Building and/or the For-Profit Affordable Rental Housing Units Parcel, as applicable, pursuant to this Agreement for the duration of the Term.

### ARTICLE 3 DEVELOPMENT PERMIT RESTRICTION ON THE LANDS

- 3.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:

- (a) the Lands and the New Building will not be used or occupied except as follows:
  - (i) the Owner will not apply for any Development Permit, and will take no action, directly or indirectly, to compel the issuance of any Development Permit, until such time as the Owner has delivered a rent roll to, and to the satisfaction of, the Chief Housing Officer confirming the rents proposed

to be charged to the first occupants of the For-Profit Affordable Rental Housing Units (or Replacement For-Profit Affordable Rental Housing Units, as applicable) following issuance of the Occupancy Permit, and the unit type mix and size, which rents, unit type mix and size shall comply with those applicable to For-Profit Affordable Rental Housing when the Development Permit is issued; and

- (ii) the City will be under no obligation to issue any Development Permit until such time as the Owner has complied with Section 3.1(a)(i); and
- (b) without limiting the general scope of Article 6, 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 a Development Permit until there is compliance with the provisions of this Article 3.

#### 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 New Building, that:
- (a) the Lands and the New 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 New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the Chief Housing Officer:
      - (A) a final rent roll confirming the rents to be charged to the first occupants of the For-Profit Affordable Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and size, which rents, unit type mix and size shall comply with those applicable to For-Profit Affordable Rental Housing; and
      - (B) proof of the insurance, consistent with the requirements of Section 2.1(k), is in force and effect, in form and substance satisfactory to the City; and
    - (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 4.1(a)(i); and
  - (b) without limiting the general scope of Article 6, 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, occupancy and rental rates charged of/for the For-Profit Affordable Rental Housing Units (or Replacement For-Profit Affordable Rental Housing Units, as applicable) such records to be to the satisfaction of the Chief Housing Officer. At the request of the Chief Housing Officer, from time to time, the Owner will:
- (a) make such records available for inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and
  - (b) provide evidence of the insurance required to be taken out pursuant to Section 2.1(k).

**ARTICLE 6  
RELEASE AND INDEMNITY**

- 6.1 Release and Indemnity. Subject to Section 6.2, 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 New Building or any part thereof;
    - B. withholding any permit pursuant to this Agreement; or
    - C. exercising any of its rights under any Section 219 covenant, *Vancouver Charter* Section 562.2 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.
- (c) The indemnities in this Article 6 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

6.2 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 6.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 6.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.2(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 6.2(b); and

- (c) Regardless of whether the claim is being defended under Section 6.2(a) or Section 6.2(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.

- 6.3 Survival of Release and Indemnities. The release and indemnities in this Article 6 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 7 SUBDIVISION OF THE LANDS

7.1 By Air Space Subdivision Plan. Notwithstanding Section 2.1(g):

- (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 and the New Building by the deposit of an air space subdivision plan, provided that all the For-Profit Affordable Rental Housing Units will thereafter be contained within a single air space parcel (the "For-Profit Affordable Rental Housing Units Parcel"); and
- (b) following such a subdivision and the issuance of a final occupancy permit for the For-Profit Affordable Rental Housing Units Parcel, the Owner may apply to the City for a partial discharge of this Agreement (the "Discharge") with respect to any parcel other than the For-Profit Affordable Rental Housing Units Parcel, and the City will on request of the Owner execute and deliver a registrable Discharge in respect of such other parcel(s) provided, that:
  - (i) the Director of Legal Services is satisfied that the Discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the For-Profit Affordable Rental Housing Units, or in respect of the For-Profit Affordable Rental Housing Units Parcel, pursuant to this Agreement;
  - (ii) the 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 the Discharge; and
  - (iv) the preparation and registration of the Discharge will be without cost to the City.

#### 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, will be in writing and will be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:
- (a) 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



- (b) if personally delivered, on the date when delivered.

If to the City, addressed to:

City of Vancouver  
453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia  
V5Y 1V4

Attention: Chief Housing Officer with a concurrent copy to the Director of Legal Services

If to the Owner, addressed to:

Provincial Rental Housing Corporation,  
#1701 - 4555 Kingsway  
Burnaby, British Columbia  
V5H 4V8

Attention: Manager, Real Estate Services

with a copy to:

200 Hastings Street Developments Limited Partnership  
#3502 - 1088 Burrard Street  
Vancouver, British Columbia  
V6Z 2R9

Attention: Bruno Wall

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 will be covenants the burden of which will run with and will bind the Lands and will attach thereto subject to Article 7. Upon the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof in accordance with the provisions of Section 9.8, 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.
- 9.2 Agreement to be a First Charge. The Owner agrees to cause, at its sole cost and expense, 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 any rezoning or any 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.
- 9.3 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.
- 9.4 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.
- 9.5 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 Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 9.6 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.
- 9.7 Further Assurances. The Owner will 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*.
- 9.8 Sale of Lands and New Building or Part Thereof. Prior to the sale or transfer of any legal or beneficial interest (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 City, over its mortgage), and subject always to Sections 2.1(f) and 2.1(g):

- (a) prior to the Discharge Date, the Owner of the Lands and the New Building; or
- (b) after the Discharge Date, the Owner of the For-Profit Affordable Rental Housing Units Parcel and the For-Profit Affordable Rental Housing Units;

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 obligations, agreements and indemnities of such Owner under this Agreement. The provisions in this Section 9.8 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 City, over its mortgage).

9.9 Owner's Representations. 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.

9.10 Enurement. This Agreement will enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement will enure to the benefit of and be binding upon the Owner and its successors and assigns.

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

## SCHEDULE A - RENT ROLL

## Rent Roll

Unit #	Suite #	Type of Unit (no. of BRS)	Size of Unit (sq. ft.)	Monthly Rental Rate
1	602	2BD	680	\$1,972
2	603	Studio	374	\$1,242
3	604	2BD	599	\$1,972
4	605	1BD	456	\$1,561
5	606	1BD	456	\$1,561
6	607	1BD	456	\$1,561
7	608	1BD	478	\$1,561
8	609	Studio	351	\$1,242
9	610	Studio	351	\$1,242
10	611	Studio	350	\$1,242
11	612	Studio	275	\$1,242
12	601	2BD	611	\$1,972
13	702	2BD	680	\$1,972
14	703	Studio	374	\$1,242
15	704	2BD	599	\$1,972
16	705	1BD	456	\$1,561
17	706	1BD	456	\$1,561
18	707	1BD	456	\$1,561
19	708	1BD	478	\$1,561
20	709	Studio	351	\$1,242
21	710	Studio	351	\$1,242
22	711	Studio	350	\$1,242
23	712	Studio	275	\$1,242
24	701	2BD	611	\$1,972

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Rental 100 Housing Agreement and Building Use Covenant  
288 East Hastings

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25	802	2BD	680	\$1,972
26	803	Studio	374	\$1,242
27	804	2BD	599	\$1,972
28	805	1BD	456	\$1,561
29	806	1BD	456	\$1,561
30	807	1BD	456	\$1,561
31	808	1BD	478	\$1,561
32	809	Studio	351	\$1,242
33	810	Studio	351	\$1,242
34	811	Studio	350	\$1,242
35	812	Studio	275	\$1,242
36	801	2BD	611	\$1,972
37	902	2BD	680	\$1,972
38	903	Studio	374	\$1,242
39	904	2BD	599	\$1,972
40	905	1BD	456	\$1,561
41	906	1BD	456	\$1,561
42	907	1BD	456	\$1,561
43	908	1BD	478	\$1,561
44	909	Studio	351	\$1,242
45	910	Studio	351	\$1,242
46	911	Studio	350	\$1,242
47	912	Studio	275	\$1,242
48	901	2BD	611	\$1,972
49	1002	2BD	680	\$1,972
50	1003	Studio	374	\$1,242
51	1004	2BD	599	\$1,972

52	1005	1BD	457	\$1,561
53	1006	1BD	457	\$1,561
54	1007	1BD	457	\$1,561
55	1008	1BD	478	\$1,561
56	1009	2BD	752	\$1,972
57	1010	2BD	671	\$1,972
58	1001	2BD	611	\$1,972
59	1102	2BD	680	\$1,972
60	1103	Studio	374	\$1,242
61	1104	2BD	599	\$1,972
62	1105	1BD	457	\$1,561
63	1106	1BD	457	\$1,561
64	1107	1BD	457	\$1,561
65	1108	1BD	478	\$1,561
66	1109	2BD	752	\$1,972
67	1110	2BD	671	\$1,972
68	1101	2BD	611	\$1,972
			32,820 sq.ft.	\$108,172

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