

EXPLANATION

Authorization to enter into a Housing Agreement Re: 6505, 6507 and 6541 Main Street

The owner of the subject lands has applied to rezone the subject lands to permit the development of a six-storey mixed-use building with 75 secured for-profit affordable rental housing units. After a public hearing on April 5, 2016 to consider this rezoning application, the application was approved by Council in principle, subject to fulfilment of the condition, among others, that prior to enactment of the Rezoning By-law, the owner of the lands make arrangements to the satisfaction of the Chief Housing Officer and the Director of Legal Services to enter into a Housing Agreement pursuant to Section 565.2 of the *Vancouver Charter* securing all residential units on the lands as for-profit affordable rental housing units for the longer of 60 years and the life of the Building and subject to other conditions set forth in the minutes of that public hearing.

Such a Housing Agreement has been accepted and signed by the owner applicant and its mortgagee. 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
March 28, 2017

6505, 6507 and 6541 Main Street

ABF

BY-LAW NO. _____

**A By-law to enact a Housing Agreement
for 6505, 6507 and-6541 Main 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, Block 2, District Lot 651, Group 1 NWD, Plan EPP63886
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in the form and substance of the Housing Agreement attached to this By-law as Schedule A, and also authorizes the execution by the Director of Legal Services of the agreement on behalf of the City, and the delivery of the agreement to the owner on such terms and conditions as the Director of Legal Services deemed fit.

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

ENACTED by Council this _____ day of _____, 2017

Mayor

City Clerk

Schedule A

FORM C_V21 (Charge)

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

PAGE 1 OF 19 PAGES

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

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

BEECHINOR BAKER HALL

Barristers & Solicitors

300 - 1681 Chestnut Street

Vancouver

BC V6J 4M6

Tel: 604-714-5150 / File No. 19897

Housing Agreement

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

LOT A BLOCK 2 DISTRICT LOT 651 GROUP 1 NWD PLAN EPP63886

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

4. TERMS: Part 2 of this Instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.E. 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):

ORR DEVELOPMENT (1980) CORP., INC. NO. 0972928

BANK OF MONTREAL, AS TO PRIORITY

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

CITY OF VANCOUVER

453 WEST 12TH AVENUE

VANCOUVER

BRITISH COLUMBIA

V5Y 1V4

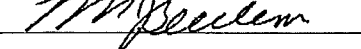
CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

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

Officer Signature(s)



THOMAS J. BEECHINOR

Barrister & Solicitor

Suite 300 - 1681 Chestnut Street

Vancouver, B.C. V6J 4M6

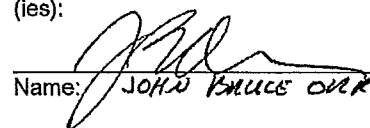
Direct Line: (604) 714-5152

Execution Date

Y	M	D
17	02	18

Transferor(s) Signature(s)

**ORR DEVELOPMENT (1980)
CORP., by its authorized signatory
(ies):**



Name: **JOHN BRUCE ORR**

Name:

OFFICER CERTIFICATION:

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

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

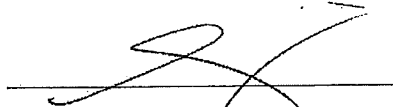
PAGE 2 of 19 PAGES

Officer Signature(s)



Bradley W. Bloccum
8th Floor, 608 Burrard Street
P.O. Box 49400, Vancouver, B.C. V7X 1L6
Commissioner for taking
Affidavits in British Columbia
"As to both signatures"

Exp. 6-30-19.



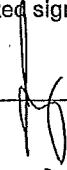
GINNY TSAI
453 WEST 12TH AVENUE
VANCOUVER, B.C. V5Y 1V4
BARRISTER & SOLICITOR

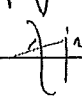
Execution Date

Y	M	D
17	3	1
17	03	03

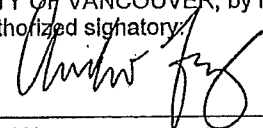
Transferor / Borrower / Party Signature(s)

BANK OF MONTREAL, by its
authorized signatory(ies):

Name:  Jay Waller
Account Manager

Name:  Anuja Rashmi
Account Manager

CITY OF VANCOUVER, by its
authorized signatory:

Name:  Andrew Francis

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 ESCHEDULE

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 219 Covenant Entire Instrument
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Covenant priority over Mortgage CA2327770 and Assignment of Rents CA2327771 Page 19
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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
FOR-PROFIT AFFORDABLE RENTAL HOUSING
6505, 6507 and 6541 Main Street

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, Orr Development (1980) Corp., 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 owner of the Lands;
- C. The Owner made an application to rezone the Lands (the "Rezoning Application") from C-2 (Commercial) District to CD-1 (Comprehensive Development) District to permit the development of a six-storey mixed-use building with 75 secured for-profit affordable rental housing units, and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, among other things, fulfilment of the condition that, prior to enactment of the rezoning by-law (upon enactment, the "Rezoning By-law"), the Owner make arrangements to the satisfaction of the Chief Housing Officer and the Director of Legal Services to enter into a Housing Agreement by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter* securing all 75 residential units as for-profit affordable rental housing units pursuant to Section 3.1A of the Vancouver DCL By-law for the longer of 60 years and life of the New Building, and subject to other conditions set forth in the minutes of the public hearing; and
- D. The Owner is entering into this Agreement to satisfy the foregoing conditions.

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:

- (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 Rezoning By-law and 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) "Development Permit" means any development permit issued by the City authorizing the development of the Lands contemplated by the Rezoning By-law;
- (h) "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;
- (i) "Effective Date" means the date as of which this Agreement has been executed by all parties to it;
- (j) "For-Profit Affordable Rental Housing" means a building containing multiple Housing Units which meets the requirements of Section 3.1A of the Vancouver 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 Vancouver DCL By-law application;
- (k) "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;
- (l) "For-Profit Affordable Rental Housing Units Parcel" has the meaning ascribed to that term in Section 7.1(a);
- (m) "Housing Unit" means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (n) "Land Title Act" means the *Land Title Act*, R.S.B.C. 1996, c. 250;

- (o) "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;
- (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, 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;
- (q) "New Building" means any new building or structure to be built on the Lands as contemplated by the Rezoning By-law and 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 Rezoning By-law and the Development Permit;
- (r) "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;
- (s) "Owner" means the registered owner of the Lands as of the Effective Date, namely, Orr Development (1980) Corp., and its successors and permitted assigns;
- (t) "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;
- (u) "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;
- (v) "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;

- (w) "*Residential Tenancy Act*" means the *Residential Tenancy Act* S.B.C. 2002, c. 78;
- (x) "Rezoning Application" has the meaning ascribed to that term in Recital C;
- (y) "Rezoning By-law" has the meaning ascribed to that term in Recital C;
- (z) "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;
- (aa) "Vancouver" has the meaning ascribed to that term in Recital A(ii);
- (bb) "*Vancouver Charter*" means the *Vancouver Charter* S.B.C. 1953, c. 55; and
- (cc) "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. Any reference to a statute is to the statute and its regulations in force on the Effective Date and to subsequent amendments to or replacements of the statute or regulations.

- (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, 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, during the Term:

- (a) the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) at its sole cost and expense, it will construct, fit and finish the New Building containing commercial units at grade and 75 Housing Units on floors 2 to 6 above, and related amenity and parking spaces, in accordance with this Agreement, the conditions of enactment of the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
- (c) as of Issuance of the Occupancy Permit for the New Building, all 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 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) not less than 25% of the For-Profit Affordable Rental Housing Units (or Replacement For-Profit Affordable Rental Housing Units, as applicable) will have two or more bedrooms and be designed to meet the City's "High Density Housing for Families with Children Guidelines";
- (e) 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) 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) 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) 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), 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) it will keep and maintain the New Building 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) if the New Building or any part thereof, is 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) it will insure, or cause to be insured, the New Building 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 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 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;

- (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;
- (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:
 - (iii) 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

(iv) 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 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 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 For-Profit Affordable Rental Housing Units, or in respect of the For-Profit Affordable Rental Housing Units 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.

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 12th 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:

Orr Development (1980) Corp.
#310 - 1847 West Broadway
Vancouver, British Columbia
V6J 1Y6

Attention: President

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.

- 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 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 City, over its mortgage), subject always to Sections 2.1(f) and 2.1(g), 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 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 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 #	Type of Unit (no. of bedrooms)	Size of Unit (net area)	Monthly Rental Rate (\$)
201	1 Bed	569	1675
202	2 Bed	762	1950
203	2 Bed	762	1950
204	3 Bed	982	2525
205	1 Bed	572	1600
206	1 Bed	572	1600
207	Studio	440	1200
208	1 Bed	618	1600
209	Studio	440	1200
210	1 Bed	618	1600
211	2 Bed	789	2000
212	Studio	465	1300
213	1 Bed	587	1675
214	1 Bed	587	1675
215	2 Bed	777	2000
216	1 Bed	586	1675
301	1 Bed	569	1625
302	2 Bed	762	1900
303	2 Bed	762	1900
304	3 bed	982	2500
305	1 Bed	572	1625
306	1 Bed	572	1625
307	Studio	440	1200
308	1 Bed	618	1625
309	Studio	440	1200
310	1 Bed	618	1625
311	2 Bed	789	1900
312	Studio	472	1260
313	Studio	465	1260
314	1 Bed	587	1650
315	1 Bed	587	1650
316	2 Bed	777	1875
317	1 Bed	586	1625
401	1 Bed	569	1675
402	2 Bed	762	2000
403	2 Bed	762	2000
404	3 bed	982	2630
405	1 Bed	572	1675
406	1 Bed	572	1675
407	Studio	440	1300
408	1 Bed	618	1675
409	Studio	440	1300
410	1 Bed	618	1675
411	2 Bed	789	2000

Unit #	Type of Unit (no. of bedrooms)	Size of Unit (net area)	Monthly Rental Rate (\$)
412	Studio	472	1320
413	Studio	465	1320
414	1 Bed	587	1675
415	1 Bed	587	1675
416	2 Bed	777	2000
417	1 Bed	586	1675
501	1 Bed	527	1725
502	2 Bed	762	2150
503	3 Bed	982	2650
504	1 Bed	572	1725
505	1 Bed	572	1725
506	2 Bed	846	2150
507	2 Bed	846	2150
508	2 Bed	789	2150
509	2 Bed	757	2150
510	1 Bed	518	1725
511	1 Bed	518	1725
512	2 Bed	777	2150
513	2 Bed	890	2150
601	1 Bed	527	1750
602	2 Bed	762	2300
603	3 Bed	982	2725
604	1 Bed	572	1730
605	1 Bed	572	1730
606	2 Bed	846	2300
607	2 Bed	846	2300
608	1 Bed	518	1750
609	1 Bed	518	1750
610	1 Bed	518	1750
611	2 Bed	777	2300
612	2 Bed	890	2300

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA2327770 and the Assignment of Rents registered under number CA2327771;
- (b) "Existing Chargeholder" means Bank of Montreal;
- (c) "New Charges" means the Section 219 Covenants 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 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (a) consents to the Owner granting the New Charges to the City; and
- (b) agrees with the City that the New Charges charge 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 Charges, and they 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