

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 509 East 11th Avenue**

The owner made an application to the City for a Development Permit to permit certain work to be done on the property which included the addition of one (1) additional dwelling unit to the existing Multiple-Conversion Dwelling for a total of five (5) dwellings. The Director of Planning did not approve the Development Permit application and the owner appealed the decision to the Board of Variance and at the January 10, 2018 meeting of the Board of Variance, the Board of Variance allowed for the development on the above noted property to proceed, subject to, among other things, the five (5) dwelling units be secured as rental units. The owner agreed at the January 10, 2018 Board of Variance meeting to secure the five (5) dwelling units as rental units prior to the issuance of a Development Permit. Such a Housing Agreement has been accepted and signed by the owner, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the *Vancouver Charter* to authorize such Housing Agreement and to authorize the City to enter into that Housing Agreement with the owner.

Director of Legal Services
February 12, 2019

HC.

509 East 11th Avenue

BY-LAW NO. _____

**A By-law to enact a Housing Agreement
for 509 East 11th Avenue**

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:

030-612-705

Lot A District Lot 264A Group 1 New Westminster
District Plan EPP85213

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 _____, 2019

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)
Kim Giuricich, Agent
City of Vancouver
453 West 12th Avenue
Vancouver BC V5Y 1V4

LTO Client number: 10647
Phone number: 604.873.7505
Matter number: LS-18-03523-000

Deduct LTSA Fees? Yes

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

030-612-705 LOT A DISTRICT LOT 264A GROUP 1 NEW WESTMINSTER DISTRICT
PLAN EPP85213

STC? YES

3. NATURE OF INTEREST
SEE SCHEDULE

CHARGE NO. ADDITIONAL INFORMATION

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):

FOUR CORNERS HOMES LTD., INC. NO. BC0677885
CANADIAN WESTERN BANK (AS TO PRIORITY)

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:
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)

Raymond P. Barreto
RJD Law Corporation
Barrister and Solicitor
113-12830-80th Avenue
Surrey, BC V3W 3A8
Tel: 778-564-1300
Fax: 778-564-1307

Execution Date

Y	M	D
19	01	29

Transferor(s) Signature(s)

FOUR CORNERS HOMES LTD. by
its authorized signatory(les):

Print Name: BALJIT DADWAL

Print Name:

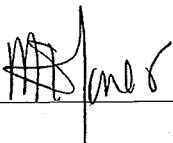
OFFICER CERTIFICATION:

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

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)



Maureen Kelly Jones
A Commissioner for taking
Affidavits for British Columbia
Unit 310 - 101 Schoolhouse Street
Coquitlam BC V3K 4X8
Expiration Date: September 30, 2021

Execution Date

Y	M	D
19		
19	01	31

Transferor / Borrower / Party Signature(s)

CITY OF VANCOUVER by its
authorized signatory:

CANADIAN WESTERN BANK by its
authorized signatory(ies):

Andrew Kinnee
Account Manager
Coquitlam Branch



Print Name:



Print Name:

DAVE MCGREGOR
AVP & BRANCH MANAGER
COQUITLAM BRANCH

OFFICER CERTIFICATION:

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

LAND TITLE ACT
FORM E

SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Entire Instrument

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Covenant priority over Mortgage CA5079497 and Assignment of Rents CA5079498

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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TERMS OF INSTRUMENT - PART 2
HOUSING AGREEMENT AND BUILDING USE COVENANT
FOR MARKET RENTAL HOUSING
509 EAST 11TH AVENUE

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement shall be read as follows:
- (i) the Transferor, Four Corners Homes Ltd., is herein called the "Owner" as more particularly defined in Section 1.1; and
 - (ii) the Transferee, City of Vancouver, is called the "City" or the "City of Vancouver" when referring to corporate entity, and "Vancouver" when referring to geographic location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner, under Development Application DP-2017-00263 (the "Development Application") intends to perform exterior and interior alterations, to add approximately 230 square feet of floor area, add 1 additional dwelling unit, for a total of 5 units in the existing Multiple Conversion Dwelling and to develop a new detached accessory building (garage) having 2 parking spaces at the rear of the Lands and having vehicular access from the lane.
- D. The Development Application, or part thereof, was initially rejected by the Director of Planning, but pursuant to Appeal No. Z35212, the Board of Variance allowed the Development Application to proceed, subject to, among other things, fulfillment of the condition that, prior to issuance of the Development Permit the 5 dwelling units will be secured as rental units (the "Market Rental Housing Condition");
- E. The Owner agreed at the January 10, 2018 meeting of the Board of Variance to the Market Rental Housing Condition; and
- F. The Owner and the City are now entering into this Agreement to satisfy the Market Rental Housing Condition.

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

ARTICLE 1
DEFINITIONS AND INTERPRETATION

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

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) "Board of Variance" means the Board of Variance established pursuant to section 572 of the *Vancouver Charter*;
- (c) "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;
- (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) "Commencement Date" means the date as of which this Agreement has been executed by all parties to it;
- (h) "Development Application" has the meaning ascribed to that term in Recital C;
- (i) "Development Permit" means any permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing development on the Lands (or any portion of the Lands) as contemplated by the Development Permit;
- (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) "Director of Planning" means the chief administrator from time to time of the City's Planning, Urban Design and Sustainability Department and her/his successors in function and their respective nominees;
- (l) "General Manager of Arts, Culture and Community Services" means the chief administrator, from time to time, of the City's Arts, Culture and Community Services Department and her/his successors in function and their respective nominees;
- (m) "*Land Title Act*" means the Land Title Act, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (n) "Lands" means the parcel of land situate in the City of Vancouver, British Columbia, and legally described in Item 2 of the General Instrument - Part 1 to

which these Terms of Instrument - Part 2 are attached, and includes any parcels into which such land is consolidated or further subdivided (including, without limitation, a subdivision pursuant to the *Land Title Act* and a subdivision pursuant to the *Strata Property Act*);

- (o) "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;
- (p) "Market Rental Housing" means a dwelling 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 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;
- (q) "Market Rental Housing Condition" has the meaning ascribed to that term in Recital D;
- (r) "Market Rental Housing Units" has the meaning ascribed to that term in Section 2.1(b);
- (s) "Occupancy Permit" means a permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing the use and occupation of any Building, development or partial development on the Lands or any portion of the Lands;
- (t) "Owner" means the Transferor, Four Corners Homes Ltd. (Incorporation No. BC0677885), and all assigns, successors and successors in title to the Lands or any part thereof;
- (u) "Related Person" means, where the registered or beneficial owner of the Market Rental Housing Units is:
 - (i) a corporation (as that term is defined in the *Business Corporations Act* (British Columbia)), 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;
- (v) "*Residential Tenancy Act*" means the Residential Tenancy Act, S.B.C. 2002, c. 78;

- (w) "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 Building is demolished or substantially destroyed; or
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the Market Rental Housing Units Parcel;
- (x) "Vancouver" has the meaning ascribed to that term in Recital A(ii); and
- (y) "*Vancouver Charter*" means the Vancouver Charter, S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) **Party.** Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) **Singular; Gender.** Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) **Captions and Headings.** The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) **References.** References to the or this "Agreement" and the words "hereof" "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.
- (e) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.
- (f) **Legislation.** Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) **Time.** Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may

reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

**ARTICLE 2
RESTRICTIONS ON USE AND SUBDIVISION**

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) when and if it carries out the development on the Lands after the date of this Agreement as contemplated in the Development Permit, it will construct, and throughout the Term will maintain all residential units on the Lands in accordance with the Market Rental Housing Condition, the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement (the "Market Rental Housing Units");
- (c) throughout the Term, the Market Rental Housing Units will only be used for the purpose of providing Rental Housing;
- (d) throughout the Term, the Market Rental Housing Units will only be rented on a month-to-month or longer basis, and in no case for less than at least 30 consecutive days;
- (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 Market Rental Housing Unit to be sold or otherwise transferred unless title to every Market Rental Housing Unit is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and unless such transferee concurrently enters into an assumption agreement satisfactory to the City whereby it agrees to be and thereafter remain bound by each and every term and condition of this Agreement applicable to the Owner of the Market Rental Housing Units;
- (f) throughout the Term, it will not suffer, cause or permit the Building to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld;
- (g) throughout the Term, any sale of a Market Rental Housing Unit in contravention of the covenant in Section 2.1(e), and any subdivision 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 Building, the Market Rental Housing Units 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;

- (i) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If the Market Rental Housing Units or any part of any thereof are/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; and
- (j) in the event of the substantial or complete destruction of the Building prior to the 60 year anniversary of the issuance of the final Occupancy Permit, it will 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 Building pursuant to this Agreement for the duration of the Term.

ARTICLE 3 RECORD KEEPING

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

ARTICLE 4 ENFORCEMENT

4.1 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.

RELEASE AND INDEMNITY

5.1 **Release and Indemnity.** Subject to Section 5.2, the Owner hereby:

- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:
 - (i) by reason of the City or City Personnel:
 - (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Owner's Works;
 - (B) withholding any permit pursuant to this Agreement; or
 - (C) exercising any of its rights under any Section 219 covenant 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 5 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

5.2 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 5.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 5.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 5.2(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 5.2(b); and

- (c) Regardless of whether the claim is being defended under Section 5.2(a) or Section 5.2(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.

5.3 Survival of Release and Indemnities. The release and indemnities in this ARTICLE 5 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 6 NOTICES

6.1 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: If to the City:

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

Attention: City Clerk, with concurrent copies to the General Manager of Arts, Culture and Community Services and the Director of Legal Services

- (b) If to the Owner:

Four Corners Homes Ltd.
1780 Prestwick Drive
Vancouver, British Columbia
V5P 2E6

Attention: Director

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

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

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

ARTICLE 7 MISCELLANEOUS

7.1 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.

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

7.3 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants will remain and be binding.

7.4 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

7.5 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.

7.6 Priority of Registration. The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and

- (c) which the Director of Legal Services has determined, in her/his sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

7.7 Further Assurances. Each party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.

7.8 Transfer of Lands. The Owner covenants and agrees with the City that upon any sale, transfer or conveyance of the Lands charged by this Agreement, or any portion thereof, to any person, trust, corporation, partnership or other entity, the Owner will obtain from such person, trust, corporation, partnership or entity and deliver to the City a duly executed acknowledgement, in form and substance satisfactory to the Director of Legal Services, of the terms of this Agreement and an assumption of the continuing obligations of the Owner pursuant to this Agreement relative to that portion of the Lands sold, transferred or conveyed to such person, trust, corporation, partnership or entity. Provided any such purchaser/transferee enters in to an assumption agreement as provided in this Section 7.8, the selling/transferring Owner shall not be bound by the continuing obligations of the Owner pursuant to this Agreement following such sale, transfer or conveyance relative to that portion of the Lands sold, transferred or conveyed.

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

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

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority Agreement:

- (a) **"Existing Charges"** means the Mortgage registered under number CA5079497 and the Assignment of Rents registered under number CA5079498;
- (b) **"Existing Chargeholder"** means CANADIAN WESTERN BANK;
- (c) **"New Charges"** means the Section 219 Covenants and the Statutory Right of Way contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) 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