

EXPLANATION

Authorization to enter into a Housing Agreement Re: 5809 – 5811 Main Street

After the Public Hearing on July 17, 2018, Council approved in principle a Housing Agreement to be entered into by the City and the land owner, on terms satisfactory to the General Manager of Community Services and the Director of Legal Services, prior to enactment of the CD-1 By-law. The Housing Agreement was accepted and executed by the applicant, 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 the Housing Agreement with the land owner.

Director of Legal Services
September 10, 2019

**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)
Allison Godey, TERRA LAW CORPORATION
 Suite 2800 - 650 West Georgia Street
 Vancouver BC V6B 4N7
 Phone 604-628-8996
 Client No. 12544 Doc No. 1211683
 File No. 503240
 Housing Agreement - Affordable Home Ownership
 Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
 [PID] [LEGAL DESCRIPTION]
SEE SCHEDULE
 STC? YES

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION
Covenant Sec 219 Covenant / Entire Instrument

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):
TOMO SPACES (ALPHA) INC. (INC. NO. BC1014162)

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)

Allison Godey
 Barrister & Solicitor
 Terra Law Corporation
 Suite 2800 - 650 West Georgia St.
 Vancouver, BC V6B 4N7
 604-628-8996

Execution Date		
Y	M	D
19	08	30

Transferor(s) Signature(s)
TOMO SPACES (ALPHA) INC.
 by its authorized signatory(ies):

 Name: **Wilmer Lau**
 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)

Execution Date

Y	M	D
19		

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.

LAND TITLE ACT
FORM E

SCHEDULE

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

013-987-038 **LOT 1, EXCEPT (A) THE WEST 8 FEET NOW LANE AND (B) PART IN
PLAN 4457, OF LOT 2 BLOCK C DISTRICT LOT 643 PLAN 2175**

STC? YES

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

013-987-046 **LOT 2, EXCEPT (A) THE WEST 8 FEET NOW LANE AND (B) PART IN
PLAN 4457, OF LOT 2 BLOCK C DISTRICT LOT 643 PLAN 2175**

STC? YES

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

STC? YES

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT
AFFORDABLE HOME OWNERSHIP

5809 - 5811 Main Street (198 Ontario Place)

WHEREAS:

- A. It is understood and agreed that this Agreement will be read as follows:
 - I. the Transferor, TOMO SPACES (ALPHA) INC., is called the "Owner"; and
 - II. the Transferee, the CITY OF VANCOUVER, is called the "City";
- B. The Owner is the beneficial and registered owner of the Lands;
- C. The Owner made an application to rezone the Lands from RT-2 (Two-Family Dwelling) District to CD-1 (Comprehensive Development) District to permit the development of a 3½ - storey residential building with 12 co-housing units including three affordable home ownership units (the "Rezoning") and, after a public hearing to consider the rezoning application, the rezoning application was approved by City Council, in principle, subject to, *inter alia*, fulfilment of the condition that, prior to enactment of the rezoning bylaw, the Owner make arrangements to the satisfaction of the Director of Planning to enter into a Housing Agreement and Section 219 Covenant with the City to secure 1 one bedroom unit, 1 two-bedroom unit and 1 three-bedroom unit as below market affordable home ownership units which units will only be sold for approximately 35% below market value to income tested buyers with a secure mechanism for maintaining that level of affordability over time; and
- D. The Owner and the City are entering into this Agreement to satisfy the foregoing 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 Section 219 of the *Land Title Act*, agree as follows in respect of the use of the Lands and the New Building:

Terms of Agreement

ARTICLE 1
DEFINITIONS AND INTERPRETATIONS

- 1.1 **Defined Terms.** Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:
 - (a) "Affordable Home Ownership Units" has the meaning ascribed to such term in Section 2.1(b), and "Affordable Home Ownership Unit" means any one of such Units;

- (b) **"Agreement"** means this agreement, including the foregoing Recitals, and any schedules attached hereto;
- (c) **"Building Permit"** means a building permit issued by the City at any time following the date that this Agreement is fully executed by the parties authorizing the construction of the New Building as contemplated by the Rezoning and the Development Permit;
- (d) **"City"** means the City of Vancouver in its capacity as a corporate entity;
- (e) **"City Manager"** means the chief administrator, from time to time, of the City and his or her successors in function and their respective nominees;
- (f) **"City of Vancouver"** means, save only for its use in Section 1.1(d), the City of Vancouver as a geographical location;
- (g) **"City Personnel"** means any and all of the City's elected and appointed officials, officers, employees, agents, nominees, delegates, permittees, contractors, licensees, subcontractors and invitees;
- (h) **"Commencement Date"** means the date as of which this Agreement has been executed by all parties to it;
- (i) **"CPI"** means the Consumer Price Index for the Vancouver Metropolitan Area published from time to time by Statistics Canada or its successor in function;
- (j) **"Development Permit"** means a 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 thereof as contemplated by the Rezoning;
- (k) **"Director of Legal Services"** means the chief administrator, from time to time, of the City's Legal Services Department and his or her successors in function and their respective nominees;
- (l) **"Discharge"** has the meaning set out in Section 8.2 of this Agreement;
- (m) **"Discharge Date"** means the date on which the Discharge is filed at the Land Title Office;
- (n) **"General Manager of Planning, Urban Design and Sustainability"** means the chief administrator, from time to time, of the City's Planning, Urban Design and Sustainability Department and his or her successors in function and their respective nominees;
- (o) **"Housing Unit"** means a self-contained residential unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (p) **"Immediate Family"** means grandparent, parent, sibling, spouse, son or daughter;

- (q) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments or replacements thereof;
- (r) **"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;
- (s) **"Losses"** means all actions, causes of action, claims, compensation, costs, demands, damages, expenses, fines, judgements, legal obligations, liabilities, losses, orders, penalties, suits and builders liens of every nature or kind whatsoever (whether direct, indirect or consequential, including, without limitation, in respect of, incidental to or resulting from any consequential injuries to or death of persons or damage to property or loss of profits and loss of use and damages arising out of delays) and all legal costs on a solicitor-and-own-client basis;
- (t) **"Maximum Sale Price"** means for any sale of an Affordable Home Ownership Unit, a sale price not to exceed the respective reference sale price for such Affordable Home Ownership Unit, excluding taxes and fees, shown in Schedule B hereto, as adjusted by any increase in the CPI from November 2017 to the month immediately prior to the date on which the sale completes;
- (u) **"New Building"** means any new building or structure built on the Lands as contemplated by the Rezoning 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 and the Development Permit;
- (v) **"Occupancy Permit"** means an occupancy permit issued by the City at any time following the date on which this Agreement is fully executed by the parties authorizing the use or occupation of any New Building or any other development or partial development on the Lands or any portion thereof as contemplated by the Rezoning and the Development Permit;
- (w) **"Option/RFR Agreement"** means an agreement, on terms satisfactory to the Director of Legal Services and the Transferor, the Transferor acting reasonably, registrable at the Land Title Office against title to each of the Affordable Home Ownership Units, having a term equal to the Term of this Agreement and providing for, *inter alia*, the following:
 - (i) a right of first refusal granted by the Owner to the Sponsor;
 - (ii) an option to purchase granted by the Owner to the Sponsor wherein the Sponsor will have the right to purchase the respective Affordable Home Ownership Unit at the Maximum Sale Price if the Owner is in default of the terms of this Agreement; and

- (iii) a covenant pursuant to Section 219 of the *Land Title Act*, granted by the Owner to the City, restricting the modification or discharge of the Option/RFR Agreement without the prior consent of the City;

and the foregoing charges shall be first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:

- (iv) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (v) 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 subdivision or rezoning of the Lands; and
 - (vi) 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 the Option/RFR Agreement;
- (x) **“Owner”** means the Transferor and any successors in title to the Lands or any portion of the Lands;
 - (y) **“Qualified Buyer”** means an individual or individuals who have been approved in writing by the Sponsor as having met the criteria stated in Schedule A and, subsequent to such approval, who has purchased the Affordable Home Ownership Unit for a purchase price not greater than the Maximum Sale Price;
 - (z) **“Person”** means any individual, society, corporation, partnership, trustee, administrator, legal representative or other legal entity;
 - (aa) **“Rezoning”** means the rezoning of the Lands described in Recital C of this Agreement;
 - (bb) **“Sponsor”** means the Strata Corporation, or such other Person, as determined by the General Manager of Planning, Urban Design and Sustainability, or his or her successor in title or function from time to time, in his or her sole discretion (with the intent that the Strata Corporation will be automatically released from its obligations as Sponsor under this Agreement and the Option/RFR Agreement if another Person is appointed as the Sponsor), who will be responsible for the administration of the ownership, use and occupancy of the Affordable Home Ownership Units, including, but not limited to, verifying whether potential buyers of Affordable Home Ownership Units are Qualified Buyers, requesting the City for its consent for the sale or disposition of an Affordable Home Ownership Unit in accordance with Section 2.1(d)(ii) and keeping accurate records pertaining therewith and the use and occupancy of the Affordable Home Ownership Units;
 - (cc) **“Strata Corporation”** has the meaning set out in Section 8.2(b);
 - (dd) **“Strata Plan”** has the meaning set out in Section 8.1 of this Agreement;

- (ee) **"Strata Property Act"** means the *Strata Property Act*, S.B.C. 1998, c.43, and all amendments thereto and re-enactments or replacements thereof;
- (ff) **"Term"** means the term of this Agreement, which will commence on the Commencement Date and in respect of each Affordable Home Ownership Unit, will end on the later of:
 - (i) the date on which the respective Affordable Home Ownership Unit is demolished or substantially destroyed; and
 - (ii) 60 years from the date of issuance of the final Occupancy Permit for the Affordable Home Ownership Unit; and
- (gg) **"Vancouver Charter"** means the *Vancouver Charter*, S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof.

1.2 Interpretation.

- (a) Any interest in land created hereby, including the interests noted in the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and found in certain articles, sections, paragraphs or parts of this Agreement, will be construed, interpreted and given force in the context of those portions of this Agreement:
 - (i) that define the terms used in this Agreement;
 - (ii) that deal with the interpretation of this Agreement; and
 - (iii) that are otherwise of general application.
- (b) The word "including" when following any general statement, term, or matter is not to be construed to limit such general statement, term, or matter to the specific items set forth immediately following such word or to similar items whether or not non-limiting language such as "without limitation" or "but not limited to" or words of similar import are used with reference thereto, but rather such general statement, term, or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of such general statement, term, or matter.
- (c) Any schedules attached to this Agreement constitute an integral part of this Agreement.
- (d) The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular article, section or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to articles and sections are to articles and sections of this Agreement.

- (e) Words importing the singular number only will include the plural and *vice versa*, words importing the masculine gender will include the feminine and neuter genders and *vice versa*, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and *vice versa*.
- (f) 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.
- (g) 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 General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached is fully executed and to subsequent amendments to or re-enactments or replacements of such statute or regulations.

ARTICLE 2
RESTRICTIONS ON USE, SALE AND SUBDIVISION

2.1 Restrictions. The Owner covenants and agrees with the City, in respect of the use of the Lands and the New Building that:

- (a) prior to the Discharge Date, the Lands and the New Building and on and after the Discharge Date, the Affordable Home Ownership Units, will not be used in any way that is inconsistent with the terms of this Agreement and all applicable City by-laws;
- (b) it will design, construct and finish within the New Building, *inter alia*, three (3) Housing Units, comprised of one 1-bedroom Housing Unit, one 2-bedroom Housing Units and one 3-bedroom Housing Unit (collectively, the "**Affordable Home Ownership Units**"), in accordance with the Development Permit, any Building Permit issued pursuant thereto and the requirements of this Agreement;
- (c) throughout the Term, it will not suffer, cause or permit the Lands or the New Building or any part thereof, to be subdivided, except by way of a strata plan pursuant to the *Strata Property Act* and Section 8.1 of this Agreement provided that each Affordable Home Ownership Unit will be contained within a separate strata lot within such strata plan;
- (d) each Affordable Home Ownership Unit shall not be sold or disposed of by the Owner:
 - (i) to any Person other than a Qualified Buyer or the Sponsor and for a price not to exceed the Maximum Sale Price of the respective Affordable Home Ownership Unit, except with the prior written consent of the City, which consent may be withheld by the City in its sole discretion; and

- (ii) without the prior written consent of the City, provided that the City will not withhold its consent if the transferee of the Affordable Home Ownership Unit is a Qualified Buyer or the Sponsor;
- (e) throughout the Term, any sale or other transfer of title to an Affordable Home Ownership Unit in contravention of the covenant in Section 2.1(d), and any subdivision of the Lands in contravention of Section 2.1(c), 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;
- (f) throughout the Term:
 - (i) each Affordable Home Ownership Unit will not be occupied or used in any way by any Person other than:
 - (A) the Person executing this Agreement as Owner;
 - (B) a Qualified Buyer (and the Immediate Family of a Qualified Buyer); or
 - (C) the Sponsor; and
 - (ii) the Affordable Home Ownership Unit will not be unoccupied as the principal residence of a Person or Qualified Buyer referred to in Section 2.1(f) for a continuous or aggregate period of more than three (3) months per calendar year while such Person or Qualified Buyer is a registered owner of the Affordable Unit,

without the prior written approval of the City, which approval the City may withhold in its sole and absolute discretion; and
- (g) subject to Section 8.2(c), after completion of construction of the New Building, if any Affordable Home Ownership Unit is damaged or destroyed before the end of the Term, the Owner will promptly restore and repair the same whenever and as often as such damage or destruction occurs, to at least as good a state and condition as existed before such damage or destruction occurred.

2.2 Improvements. If capital improvements have been made to an Affordable Home Ownership Unit that required the issuance of a building permit by the City, then the City may, in its sole discretion, permit the Owner thereof to increase the sale price for the Affordable Home Ownership Unit at the time of resale above the Maximum Sale Price up to an amount commensurate with the then actual value of the capital improvements approved by such building permit. If the Owner of such Affordable Home Ownership Unit is dissatisfied with the then value of the improvements as determined by the City, such Owner may, at its expense, engage an accredited B.C. Quantity Surveyor to establish the then value of such improvements and the City will give due consideration to the value established by such Quantity Surveyor, but will in no way be bound by such value, and the City will, in its sole discretion, determine the permitted increase, if any, in the Maximum Sale Price. For greater certainty, the City

will not permit any increase in the Maximum Sale Price for improvements that have been made without a building permit issued therefor by the City.

ARTICLE 3 OCCUPANCY RESTRICTION ON THE LANDS

- 3.1 No Occupancy.** The Owner covenants and agrees with the City, in respect of the use of the Lands and the New Building, that:
- (a) 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 New Building, and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for any part of the New Building, until such time as the Owner has:
 - (i) subdivided the Lands and New Building by way of the Strata Plan, as described in Section 8.1; and
 - (ii) entered into and registered at the Land Title Office the Option/RFR Agreement; and
 - (b) the City will be under no obligation to issue any Occupancy Permit for the New Building or any part thereof, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 3.1(a).
- 3.2 Release.** 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 for the New Building and compliance with all other prerequisites to the issuance of any Occupancy Permit set forth in this Agreement until there is compliance with the provisions of this ARTICLE 3.

ARTICLE 4 RECORD KEEPING

- 4.1 Record Keeping.** The Sponsor will keep accurate records pertaining to the use and occupancy of the Affordable Home Ownership Units and the eligibility of potential buyers of an Affordable Home Ownership Units as Qualified Buyers, such records to be to the satisfaction of the City. At the request of the City, from time to time, the Sponsor will make such records available for inspection and copying by the City. The City will comply with the Sponsor's statutory obligations in respect of the protection of privacy in relation to such information.

ARTICLE 5 ENFORCEMENT

- 5.1 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 shall be entitled to court costs on a solicitor and own client basis.

ARTICLE 6 RELEASE AND INDEMNITY

6.1 Release and Indemnity. Subject to Section 6.4, the Owner hereby:

(a) releases and discharges the City and all City Personnel from 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) withholding any permit pursuant to this Agreement; or

(B) 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 a result of, or relate in any way to any negligent acts or omissions on the part of the City or City Personnel, except to the extent that any such Losses are the result of gross negligence or wilful misconduct by the City or any 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 those for whom the Owner is responsible at law 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,

except to the extent that any such Losses are the result of gross negligence or wilful misconduct by the City or any City Personnel.

6.2 Nature of Indemnities. 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.

6.3 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.

6.4 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 in writing of such claim to the Owner and, subject to Section 6.4(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 6.4(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.4(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 written 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 6.4(b); and

- (c) Regardless of whether the claim is being defended under Section 6.4(a) or Section 6.4(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.

**ARTICLE 7
NOTICES**

7.1 Notice. Any notice, approval or request required or permitted to be given under this Agreement will be in writing and may be given by delivering such notice, approval or request, or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia, or by e-mailing such notice, approval or request, if an e-mail contact is provided:

(a) in the case of the Owner addressed to it at:

Tomo Spaces (Alpha) Inc.
816-675 West Hastings Street
Vancouver, BC
V6B 1N2

Attention: President
E-mail: manager@tomospaces.com

(b) and in the case of the City addressed to it at:

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

Attention: City Clerk

with concurrent copies to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services,

or at such other address or e-mail address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery or e-mail of such notice, approval or request or, on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.

**ARTICLE 8
SUBDIVISION**

8.1 By Strata Plan. The Owner shall subdivide the Lands by the deposit of a strata plan (the "Strata Plan") pursuant to the *Strata Property Act*, whereby each of the Affordable Home Ownership Units shall be contained within its own strata lot.

8.2 Strata Corporation. If and when the Lands are subdivided by way of the Strata Plan:

(a) each of the registered owners of the Affordable Home Ownership Units will be responsible for performing the covenants and obligations of the Owner herein

as they pertain to their respective Affordable Home Ownership Units in accordance with the *Strata Property Act*;

- (b) the strata corporation (the "**Strata Corporation**") established by the Strata Plan will be responsible for performing the covenants and obligations of the Owner herein insofar as they pertain to the New Building as a whole or the common property of any such Strata Plan in accordance with the *Strata Property Act* and, if and for so long as the Strata Corporation is the Sponsor, the obligations of the Owner under Section 4.1; and
- (c) the obligation to restore and repair the Affordable Home Ownership Units in Section 2.1(g) will be satisfied by the registered owner(s) of the affected Affordable Home Ownership Unit(s) if such registered owner(s) votes its interest in the Strata Corporation in favour of restoring or replacing the affected Affordable Home Ownership Unit(s) and/or the New Building that has or have been damaged or destroyed, as the case may be.

8.3 Partial Discharge. Following subdivision of the Lands by the Strata Plan and the issuance of a final occupancy permit for the New Building, the Owner may apply to the City for a partial discharge of this Agreement (the "**Discharge**") with respect to any strata lot other than the strata lots comprising the Affordable Home Ownership Units, but for clarity, this Agreement shall not be discharged and remain registered on the common property established by the Strata Plan, and the City will on request of the Owner execute and deliver a registrable Discharge in respect of such other strata lots provided that:

- (a) the Director of Legal Services is satisfied that such partial discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the Affordable Home Ownership Units, pursuant to this Agreement;
- (b) the Strata Corporation enters into an assumption agreement in form and content satisfactory to the Director of Legal Services with respect to the obligations of the Strata Corporation under Section 8.2(b) in its capacity as the Sponsor;
- (c) 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;
- (d) the City will have a reasonable amount of time to execute and return the Discharge; and
- (e) the preparation and registration of the Discharge will be without cost to the City.

ARTICLE 9 MISCELLANEOUS

9.1 Agreement for Benefit of City. The Owner and the City hereby acknowledge, agree and declare that this Agreement is entered into for the sole purpose of benefiting the City and, in particular, acknowledge, agree and declare that this Agreement is not

designed to protect or promote the interests of the Owner or any mortgagee of the Owner, or any future owner or occupier of the Lands and any improvements on the Lands or any other person or corporation whatsoever, and the City may, at its sole option, execute a release of this Agreement at any time without liability to anyone for so doing.

- 9.2 **Agreement Runs with the Lands.** This Agreement will run with the Lands and will bind the Lands and will attach thereto and run with each and every part into which the same may be subdivided or consolidated whether by strata plan, subdivision plan or otherwise.
- 9.3 **Amendments.** Any amendment to this Agreement will have no force or effect unless in writing and the City and the Owner have signed the amendments.
- 9.4 **Assignment by City.** The City, upon prior written notice to the Owner, may assign all or any part of this Agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing such public facilities and services as are contemplated by this Agreement; and the City may designate licensees and permittees for any and all purposes of this Agreement.
- 9.5 **City Court Costs.** In an action to enforce this Agreement in respect of which the Court determines that the position of the City will prevail, the City will be entitled to court costs on a solicitor-client basis.
- 9.6 **City's Other Rights Unaffected.** 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.
- 9.7 **Damages Insufficient.** The Owner acknowledges that damages may be an inadequate remedy for the City for any breach by the Owner of its obligations under this Agreement and the Owner agrees that the City is entitled to seek and obtain an order for specific performance, injunctive relief (whether prohibitory, mandatory or otherwise) or other equitable relief in connection with any default by the Owner under this Agreement.
- 9.8 **Design and Construction Responsibility.** Despite the rights of approval and inspection given to the City and the City Engineer in this Agreement, none of those things will:
- (a) remove any design, construction or supervisory responsibility for the Owner's Works from the Owner, all of which will remain exclusively with the Owner, or impose any responsibility for such design, construction or supervision on the City or City Personnel;
 - (b) relieve or be deemed to relieve the Owner from observing or performing its obligations under this Agreement; or

- (c) constitute a waiver or release, or be deemed to constitute a waiver or release, by the City of any obligation of the Owner under this Agreement, or of any liability of the Owner.
- 9.9 Entire Agreement.** This is the entire agreement between the City and the Owner concerning its subject and it may be changed only in a document executed by the City and the Owner.
- 9.10 Enurement.** This Agreement will enure to the benefit of and will be binding upon the parties hereto and their respective successors, administrators and permitted assigns.
- 9.11 Further Assurances.** The parties to this Agreement will do such things and execute such documents and in such form as may reasonably be necessary in order to perfect the intention of this Agreement. Without limiting the generality of the foregoing, the Owner will, 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.
- 9.12 Joint and Several.** Any covenants, agreements, conditions, or promises made by two or more persons hereunder shall be construed as joint as well as several, including any payments or compensation to be paid pursuant to this Agreement. If the Owner consists of more than one person, each such person will be jointly and severally liable to perform the Owner's obligations under this Agreement.
- 9.13 No Assignment.** The Owner shall not assign this Agreement or any of its rights or obligations hereunder except in strict accordance with this Agreement.
- 9.14 No Waiver.** No consent or waiver, expressed or implied, by the City of any default by the Owner in observing or performing its obligations under this Agreement will be effective unless given in writing, or be deemed or construed to be a consent or waiver of any other default. 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. Failure on the part of the City to complain of any act or failure to act by the Owner or to declare the Owner in default, irrespective of how long such failure continues, will not constitute a waiver by the City of its rights under this Agreement or at law or in equity. No waiver by the City of any breach of this Agreement operates as a waiver of any other breach of this Agreement.
- 9.15 Owner's Costs.** Unless otherwise provided, the Owner will be responsible for all costs and expenses incurred to comply with its obligations under this Agreement.
- 9.16 Owner's Duties as Occupier.** Nothing in this Agreement will abrogate or limit the Owner's duties and liability as occupier of the Lands.

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

- (a) it has the corporate 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.

9.18 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 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.

9.19 Remedies Cumulative. The remedies provided for in this Agreement will be cumulative and not exclusive of any other remedies provided at law or in equity and all remedies stipulated for the City in this Agreement 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. No reference to nor exercise of any specific right or remedy under this Agreement or at law or in equity by the City will prejudice, limit or preclude the City from exercising any other such right or remedy. No such right or remedy will be exclusive or dependent upon any other such right or remedy, but the City may, from time to time, exercise any one or more of such rights or remedies independently, successively, or in combination.

9.20 Severability. If a court of competent jurisdiction finds that any provision contained in this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement which will be construed as if such invalid, illegal, or unenforceable provision had never been

contained herein and such other provisions will be binding and enforceable to the fullest extent permitted at law or in equity.

9.21 Time of Essence. Time will be of the essence of this Agreement. If either party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached.

SCHEDULE A

QUALIFIED BUYER CRITERIA

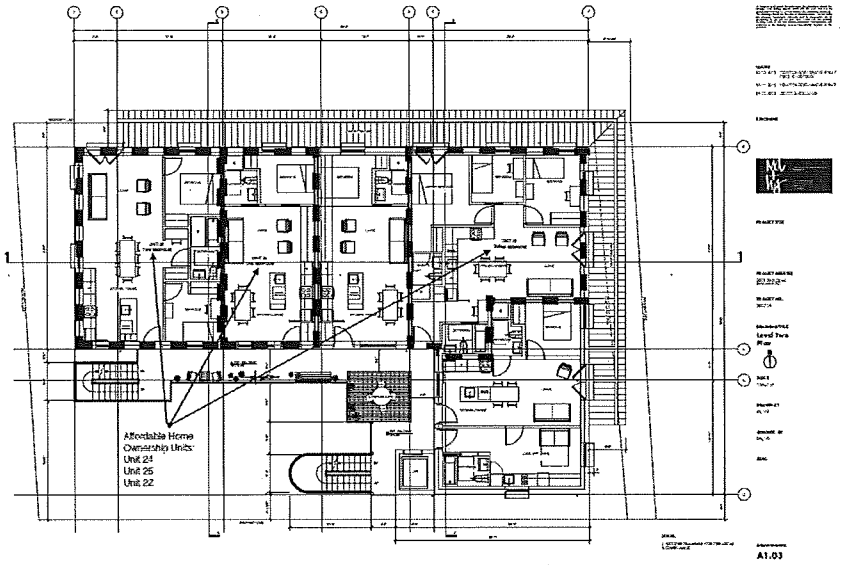
At the time of transfer of title of an Affordable Home Ownership Unit, the Qualified Buyer will:

1. together with all Immediate Family intending to occupy the Affordable Home Ownership Unit, have a gross household annual income of not more than:
 - a. For the 2-bedroom and 3-bedroom Affordable Home Ownership Units: the 75th income percentile for families with children, as determined by BC Housing from time to time based on the data released by Statistics Canada - Income Statistics Division: T1 Family File - Custom Tabulation British Columbian Couple Families (With Children) or if such publication ceases to exist, such other data as may be approved by the General Manager of Planning, Urban Design and Sustainability from time to time; and
 - b. For the 1-bedroom Affordable Home Ownership Unit: the 75th income percentile for families without children as determined by BC Housing from time to time based on the data released by Statistics Canada - Income Statistics Division: T1 Family File - Custom Tabulation British Columbian Couple Families (Without Children) or if such publication ceases to exist, such other data as may be approved by the General Manager of Planning, Urban Design and Sustainability from time to time;
2. be a Canadian citizen or permanent resident who has resided in British Columbia for the past twelve (12) consecutive months;
3. not be the registered or beneficial owner of any interest in real property anywhere in the world;
4. with respect to the 2-bedroom and 3-bedroom Affordable Home Ownership Units, together with his or her Immediate Family (which must include one dependent child for the 3-bedroom Affordable Home Ownership Unit), occupy the Affordable Home Ownership Unit with the number of Persons being equal to or greater than the number of bedrooms in the Affordable Home Ownership Unit; and
5. agree to become a member of the cohousing group whose members occupy the strata lots to be created upon subdivision of the Lands by the Strata Plan.

SCHEDULE B
REFERENCE SALE PRICE

Unit Number*	Type	Reference Sale Price (November 2017)
24	1 Bedroom	\$365,000
25	2 Bedroom	\$576,000
22	3 Bedroom	\$611,000

*The unit numbers referred to in this Schedule B are the unit numbers assigned to the Affordable Home Ownership Units on Drawing A1.03 submitted by the Transferor to the City on May 13, 2019 as part of the Owner's Issued for Development Permit Prior-to Response drawings, a copy of which is reproduced on the immediately following page of this Schedule B.



END OF DOCUMENT

(251527-503240-01196861;13)
 August 1, 2019

Housing Agreement - Affordable Home Ownership
 5809-5811 Main Street (198 Ontario Place)

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 1485 Davie Street**

On October 15, 2018, the Development Permit Board approved in principle a development on the above noted property, subject to, among other things, a Housing Agreement to be entered into by the City and the land owner, on terms satisfactory to the Director of Legal Services and the General Manager of Community Services, prior to the issuance of a Development Permit.

A Housing Agreement has been accepted and signed by the applicant land owner. Enactment of the attached By-law, as required by section 565.2 of the *Vancouver Charter*, will authorize the City to enter into such Housing Agreement with the land owner and complete the process to implement Council's condition regarding a Housing Agreement.

Director of Legal Services
September 10, 2019

HO.

1485 Davie Street

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 1485 Davie 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:

030-726-948

Lot A District Lot 185 Group 1 New Westminster District
Plan EPP87867

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)
- Elizabeth Yip, TERRA LAW CORPORATION
Suite 2800 - 650 West Georgia Street
- Vancouver BC V6B 4N7
- Phone 604-628-8998
Client No. 12544 Doc No. 1211092
File No. 503462
Housing Agreement (Social Housing)
- Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
- [PID] [LEGAL DESCRIPTION]
030-726-948 LOT A DISTRICT LOT 185 GROUP 1 NEW WESTMINSTER DISTRICT
PLAN EPP87867
- STC? YES

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

4. TERMS: Part 2 of this instrument consists of (select one only)
- (a) Filed Standard Charge Terms D.F. No. (b) 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):
- 1034907 B.C. LTD. (INC. NO. BC1034907)
ROMSPEN INVESTMENT CORPORATION (INC. NO. A0067154)

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)

Nicholas Cosulich
Barrister & Solicitor
Terra Law Corporation
Suite 2800 - 650 West Georgia St.
Vancouver, BC V6B 4N7
604-628-8989

Execution Date		
Y	M	D
19	08	30

Transferor(s) Signature(s)
1034907 B.C. LTD.
by its authorized signatory:

John Liang

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

**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

Officer Signature(s)

Execution Date		
Y	M	D
19		

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.

LAND TITLE ACT
FORM E

SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Sec 219 Covenant Entire Instrument

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Page 20

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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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
(Social Housing)

1485 DAVIE STREET

WHEREAS:

A. It is understood and agreed that this instrument and Agreement shall be read as follows:

- (i) the Transferor, 1034907 B.C. LTD., is called the "Owner" as more particularly defined in Section 1.1; and
- (ii) the Transferee, CITY OF VANCOUVER, is called the "City" or the "City of Vancouver" when referring to corporate entity and "Vancouver" when referring to geographic location;

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

C. The Owner made an application to develop the Lands pursuant to Development Application DP-2017-01183 (the "Development Application") to permit the development of a 21-storey building on the west side containing 128 market dwelling units and a 6-storey social housing building containing 51 units on the east side all over four levels of underground parking all with vehicular access from the lane, and after the Development Permit Board considered the Development Permit Application, the Development Permit Application was approved by the Development Permit Board in principle, subject to, *inter alia*, fulfilment of the conditions that, prior to issuance of the Development Permit, the Owner, at its sole cost and expense comply with the following condition:

"A.1.35 *make arrangements to the satisfaction of the Director of Legal Services and the General Manager of Arts, Culture and Community Services, to enter into a Housing Agreement for 60 years or the life of the building, whichever is greater, which will contain the following terms and conditions:*

- (i) *a no separate-sales covenant;*
- (ii) *a no stratification covenant;*
- (iii) *a provision that none of the dwelling units in the building will be rented for less than one month at a time;*
- (iv) *a requirement that all units comply with the definition of "social housing" in the applicable DCL By-law,*

(the "Social Housing Condition"); and

D. 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) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) "City" and "City of Vancouver" are defined in Recital A(ii);
- (c) "City Manager" means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (d) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (e) "Commencement Date" means the date as of which this Agreement has been fully executed and delivered by all parties to it;
- (f) "Development" means the development on the Lands described in Recital C and approved by the Development Permit;
- (g) "Development Application" has the meaning set out in Recital C;
- (h) "Development Permit" means a development permit issued by the City at any time following the Commencement Date authorizing development on the Lands or any portion of the Lands as contemplated by the Development Application;
- (i) "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;
- (j) "Discharge" has the meaning ascribed to that term in Section 8.1(b);
- (k) "Discharge Date" means the date upon which the Owner files the Discharge with the Land Title Office;
- (l) " Dwelling Unit" means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (m) "Eligible Tenants" means the tenants who are listed as residents in the applicant's Tenant Relocation Plan in any of the existing units that will be demolished if the Development proceeds and are identified in the Tenant

Relocation Plan as eligible for the benefits set out therein, and "Eligible Tenant" means any one of them;

- (n) "Existing Building" means the building situated on the Lands as of the date of this Agreement and which will be replaced by the New Building, as contemplated by the Development Application;
- (o) "General Manager of Arts, Culture and Community Services" means the chief administrator from time to time of the Arts, Culture and Community Services Department of the City and his/her successors in function and their respective nominees;
- (p) "Housing Income Limit" or "HIL" means the income required to pay the average market rent for an appropriately sized unit in the private market in Vancouver, determined annually by the British Columbia Housing Management Commission or its successors in function, which is derived from the Canada Mortgage and Housing Corporation's Annual Rental Market Survey or an equivalent publication (as may be approved by the General Manager of Arts, Culture and Community Services);
- (q) "Land Title Act" means the Land Title Act, R.S.B.C. 1996, c. 250;
- (r) "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;
- (s) "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;
- (t) "Low End of Market" or "LEM" means the rent to be charged to a low-end of market unit occupant which shall not exceed 90% of the appraised market rent for a comparable unit in the local area and shall be no more than 30% of the low and moderate income limit as determined by BC Housing from time to time based on data provided by Statistics Canada;
- (u) "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;

- (v) "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;
- (w) "Owner" means the registered owner of the Lands as of the Commencement Date, namely 1034907 B.C. Ltd., and includes all of its successors, assigns and successors in title to the Lands or a portion of the Lands; and if the Lands are subdivided by an 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;
- (x) "Owner's Personnel" means any and all of the officers, employees, agents, nominees, delegates, permittees, contractors and subcontractors of the Owner;
- (y) "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 arm's length, for use as rental accommodation on a month-to-month or longer basis in accordance with this Agreement, and pursuant to reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto;
- (z) "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;
- (aa) "*Residential Tenancy Act*" means the Residential Tenancy Act S.B.C. 2002, c. 78;
- (bb) "Returning Tenants" means the Eligible Tenants who accept the Owner's offer to relocate to the New Building after completion of its construction, and "Returning Tenant" means any one of them;
- (cc) "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 30% of the dwelling units are occupied by households with incomes below Housing Income Limits, as set out in the current "Housing Income Limits" table published by the British Columbia Housing Management Commission, or equivalent publication;
 - (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;

- (dd) "Social Housing Condition" has the meaning ascribed to that term in Recital C;
- (ee) "Social Housing Units" has the meaning ascribed to that term in Section 2.1(b), and "Social Housing Unit" means any one of such Social Housing Units;
- (ff) "Social Housing Parcel" has the meaning ascribed to that term in Section 8.1(a);
- (gg) "Tenant Relocation Plan" means the Owner's Tenant Relocation Plan submitted and approved by the City;
- (hh) "Tenant Relocation Report" means a report which outlines the names of Eligible Tenants and updated contact information; indicates the outcome of their search for alternate accommodation; summarizes the total monetary value given to each Eligible Tenant (moving costs, rent and any other compensation); and includes a summary of all communication provided to the Eligible Tenants prior to issuance of that report;
- (ii) "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 after the date on which the final Occupancy Permit is issued for the New Building; and
- (jj) "*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 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; and
 - (b) if it carries out any development of the Lands after the Commencement Date, it will design, construct, equip and finish within the Social Housing Parcel a New Building which will contain such number of Dwelling Units as approved in the Development Permit, all of which will be for use only as Social Housing (the "Social Housing Units"), in accordance with the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement, and if such New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit, then it will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired New Building or 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, the Social Housing Parcel and the New Building are pursuant to this Agreement;

- (c) throughout the Term, the Social Housing Units (or Replacement Social Housing Units, as applicable) will be used only in a manner that ensures their continued compliance with the definition of Social Housing;
- (d) throughout the Term, not less than 30% of the Social Housing Units will be:
 - (i) occupied only by households with incomes below the then current applicable HIL; and
 - (ii) each rented at a rate no higher than 30% of the aggregate household income of the members of the household occupying such Social Housing Unit;
- (e) throughout the Term, the Social Housing Units (or Replacement Social Housing Units, as applicable) will only be used for the purpose of providing Social Housing;
- (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 Social Housing Unit (or Replacement Social Housing Unit, as applicable) to be sold or otherwise transferred unless:
 - (i) every Social Housing Unit (or Replacement Social Housing Unit, as applicable) is sold or otherwise transferred together and as a block to the same legal and beneficial owner; and
 - (ii) the sale or transfer is to the City or it otherwise obtains the express written consent of the City;
- (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 by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld, subject to Article 8;
- (h) throughout the Term, any sale or other transfer of title to a Social Housing Unit (or Replacement Social Housing Units, as applicable) in contravention of the covenant in Section 2.1(f), and any subdivision of the Lands in contravention of 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 not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any Social Housing Unit (or Replacement Social Housing Unit, as applicable) for a term of less than one month at a time;
- (j) 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;

- (k) 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, reasonable wear and tear excepted; and
- (l) if the Social Housing Units (or Replacement Social Housing Units, as applicable) 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 8, 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 RETURNING TENANTS

- 3.1 **Returning Tenants.** The Owner covenants and agrees with the City in respect of the use of the Lands:
- (a) it will provide each Eligible Tenant with a right of first refusal to occupy a Social Housing Unit of a similar type (number of bedrooms) to their current unit in the Existing Building or a Social Housing Unit that is otherwise suitable to their housing needs, in the New Building following issuance of the Occupancy Permit and with a starting rent at the HIL rent or at a LEM rent level;
 - (b) it will provide all Eligible Tenants with the notice, moving expenses and assistance and other benefits and assistance set out in the Tenant Relocation Plan;
 - (c) any Eligible Tenant that was occupying a pet friendly unit in the demolished building will be offered a pet friendly unit in the New Building; and
 - (d) it will in all other respects comply with and fulfil the terms and conditions set out in the Tenant Relocation Plan.

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:
- (a) 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 for the New Building, until such time as the Owner has delivered, to the General

Manager of Arts, Culture and Community Services, in form and substance satisfactory to the General Manager of Arts, Culture and Community Services:

- (i) proof of the insurance, consistent with the requirements of Section 2.1(j), is in force and effect, in form and content satisfactory to the City;
 - (ii) a final Tenant Relocation Report; and
 - (iii) a final rent roll confirming the rents to be charged to the first occupants of the Social Housing Units following issuance of the Occupancy Permit on either a per unit or a per square foot basis, and the unit type mix and size, which rents, unit type mix and size will comply with those criteria applicable to the Social Housing Units as set out in the Development Permit; and
- (b) the City will be under no obligation to issue any Occupancy Permit for the New Building or any part thereof, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 4.1(a).
- 4.2 Without limiting the general scope of Article 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this Article 4.

ARTICLE 5 RECORD KEEPING

- 5.1 The Owner will keep accurate records pertaining to the use and occupancy of the Social Housing Units (or Replacement Social Housing Units, 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 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. withholding any permit pursuant to this Agreement; or
 - B. 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, other than wrongful intentional acts 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 written 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 SUBDIVISION OF THE LANDS

8.1 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 Social Housing Units will thereafter be contained within a single air space parcel or remainder parcel (the "Social Housing Parcel"); and
- (b) following such a subdivision and the issuance of a final occupancy permit for the Social Housing Parcel, the Owner may apply to the City for a partial discharge of this Agreement (the "Discharge") with respect to any legal parcel other than the Social Housing 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 Social Housing Units or in respect of the Social Housing 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.

8.2 **Partial Discharge.** Notwithstanding anything else contained herein, following the subdivision and partial discharge contemplated in Section 8.1, this Agreement will be read and applied so that the obligations and restrictions contained herein will apply only to the Social Housing Parcel and this Agreement and the obligations and restrictions contained herein will not apply to any other portion of the Lands.

ARTICLE 9 NOTICES

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

(a) If to the City:

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

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

(b) If to the Owner:

1034907 B.C. Ltd.
#550 - 601 West Broadway
Vancouver, British Columbia
V5Z 4C2

Attention: John Liang

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 10
MISCELLANEOUS**

- 10.1 Agreement Runs With the Lands. Subject to Article 8, 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. Upon the sale or transfer of the legal or beneficial interest in the Lands, 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 of the Lands, and the transferring party shall otherwise be released from all covenants and agreements herein contained following such sale or transfer of the legal or beneficial interest in the Lands.
- 10.2 Agreement to be a First Charge. The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
 - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 10.3 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 10.4 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.

- 10.5 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.
- 10.6 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*.
- 10.7 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.
- 10.8 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(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 applicable obligations, agreements and indemnities of the Owner under this Agreement. The provisions in this Section 10.8 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the Director of Legal Services, over its mortgage).
- 10.9 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.

10.10 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.

10.11 No Liability. Notwithstanding any other term or provision of this Agreement, and subject to the Owner causing a purchaser / transferee to enter into an assumption agreement with the City in accordance with Section 10.8, the parties agree that neither the Owner nor any successor in title to the Lands, or portions thereof, will be liable for breaches or non-observance or non-performance of covenants herein occurring as the same relate to any portion of the Lands after it has ceased to be the registered owner of such portion, but the Owner, or its successors in title, as the case may be, will remain liable after ceasing to be the registered owner of any portion of the Lands for all breaches of and non-observance of covenants herein as the same relate to such portion that occur prior to the Owner, or any successor in title, as the case may be, ceasing to be the registered owner of such portion.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA6607313 and the Assignment of Rents registered under number CA6607314;
- (b) "Existing Chargeholder" means ROMSPEN INVESTMENT CORPORATION;
- (c) "New Charges" means the Housing Agreement and Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (e) consents to the Owner granting the New Charges to the City; and
- (f) 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

EXPLANATION

**Authorization to enter into a Housing Agreement
Re: 928 Commercial Drive**

The Director of Planning approved Development Application No. DE420216 on August 19, 2016 to develop the Lands which application was approved by the Director of Planning in principle, subject to a number of conditions including that the Owner make arrangements to the satisfaction of the General Manager of Arts, Culture and Community Services 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 residential units in the New Building as market rental housing units for the longer of 60 years and life of the New Building.

The applicant land owner and the City entered into a Housing Agreement, to satisfy the original condition, which was registered at the Land Title Office under registration numbers CA5854196 to CA5854197 on March 6, 2017 (the "**Original Housing Agreement**").

The applicant land owner has requested and the Director of Planning has agreed to amend the Development Permit issued pursuant to Development Application No. DE420216 on the condition that the Original Housing Agreement be replaced with a new Housing Agreement to secure all residential units in the New Building as For-Profit Affordable Rental Housing. A replacement Housing Agreement has been accepted and signed by the applicant land owner. Enactment of the attached By-law, as required by section 565.2 of the *Vancouver Charter* and Section 3.1A of the Vancouver DCL By-law will authorize the City to enter into such Housing Agreement with the land owner and complete the process to implement the condition regarding a Housing Agreement.

Director of Legal Services
September 10, 2019

**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)

Deduct LTSA Fees? Yes

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

030-080-720 LOT A BLOCK 22 DISTRICT LOT 264A NEW WESTMINSTER DISTRICT PLAN EPP69520

STC? YES

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

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

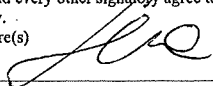
5. TRANSFEROR(S):
SEE SCHEDULE

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

453 WEST 12TH AVENUE
VANCOUVER BRITISH COLUMBIA
V5Y 1V4 CANADA

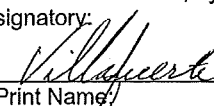
7. ADDITIONAL OR MODIFIED TERMS:
N/A

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

Officer Signature(s)


Claudia Leca
Notary Public
303-9940 Lougheed Hwy.
Burnaby, BC, V3J 1N3
604-931-2855

Execution Date		
Y	M	D
19	08	02

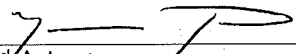
Transferor(s) Signature(s)
MESTISOS PET SPA AND SUPPLIES CORP., by its authorized signatory:


Print Name
MICHAEL ANTONIO VILAFUERTE

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)


Mark A. Janetka
Commissioner for Taking Affidavits
for the Province of British Columbia
Expiry: February 28, 2022

BLUESHORE FINANCIAL CREDIT UNION
1250 LONSDALE AVE
NORTH VANCOUVER BC
V7M 2H8

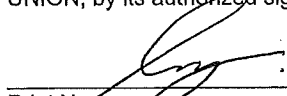
Execution Date		
Y	M	D
19		
19	08	07

Transferor / Borrower / Party Signature(s)

CITY OF VANCOUVER, by its
authorized signatory:

Print Name: _____

BLUESHORE FINANCIAL CREDIT
UNION, by its authorized signatory(ies):


Print Name: **IMTIAZ CHAUDHRY**


Print Name: **GOLDEN MA**

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		Section 219, Entire Instrument

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting Covenant herein priority over Mortgage CA5093162 and Assignment of Rents CA5093163

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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LAND TITLE ACT
FORM E

SCHEDULE

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

5. TRANSFEROR(S):

MESTISOS PET SPA AND SUPPLIES CORP. (INC.NO. BC0699412)

BLUESHORE FINANCIAL CREDIT UNION (INC. NO. FI 18) (as to priority)

TERMS OF INSTRUMENT - PART 2
HOUSING AGREEMENT AND BUILDING USE COVENANT
FOR-PROFIT AFFORDABLE RENTAL HOUSING
928 COMMERCIAL DRIVE

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, MESTISOS PET AND SUPPLIES CORP., as more particularly defined in Section 1.1 is called the "Owner"; 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 made an application for a development permit pursuant to Development Application No. DE420216 (the "Development Application") to develop the Lands to construct a five-storey mixed use building with Retail on the first floor and ten residential rental dwelling units (third to fifth floors) with three parking spaces having vehicular access from the lane, which application was approved by the Director of Planning in principle, subject to a number of conditions including that the Owner make arrangements to the satisfaction of the General Manager of Arts, Culture and Community Services 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 residential units in the New Building as market rental housing units for the longer of 60 years and life of the New Building (the "Original Housing Agreement Condition");
- D. The Owner and the City entered into a Housing Agreement (the "Original Housing Agreement") to satisfy the Original Housing Agreement Condition, which Original Housing Agreement was registered at the Land Title Office under registration nos. CA5854196 to CA5854197; and
- E. The Owner has requested and the City has agreed to amend (the "Amendment") the Development Permit issued pursuant to the Development Application for the purpose of replacing the Original Housing Agreement with the housing agreement herein to be enacted by a by-law pursuant to Section 565.2 of the *Vancouver Charter* securing all residential units in the New Building as For-Profit Affordable Rental Housing pursuant to Section 3.1A of the Vancouver DCL By-law for the longer of 60 years and life of the New Building.

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 Development Permit;
 - (c) "City" and "City of Vancouver" have the meaning ascribed to those terms in Recital A(ii);
 - (d) "City Manager" means the chief administrator from time to time of the City and 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) "Development Application" means the development application described in Recital C;
 - (g) "Development Permit" means any development permit issued by the City authorizing the development of any portion of the Lands pursuant to the Development Application;
 - (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;
 - (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) "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 his/her successors in function and their respective nominees;
- (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 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;
- (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 MESTISOS PET SPA AND SUPPLIES CORP., and its successors and permitted assigns;
- (t) "Related Person" means, where the registered or beneficial owner of the For-Profit Affordable 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) "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;
- (y) "Vancouver" has the meaning ascribed to that term in Recital A(ii);
- (z) "*Vancouver Charter*" means the Vancouver Charter, S.B.C. 1953, c. 55; and
- (aa) "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:
- (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) if the Owner carries out any development on the Lands after the Effective Date, the Owner will construct, fit and finish, at its sole cost and expense, and throughout the Term, will maintain not less than ten residential Housing Units on the Lands, 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, 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;
 - (d) the average initial monthly starting rents for each unit type after Occupancy Permit issuance will be at or below the following amounts:
 - (i) for a studio -\$1,496;
 - (ii) for a one-bedroom -\$1,730;
 - (iii) for a two-bedroom -\$2,505; and
 - (iv) for a three-bedroom -\$3,365,

being the average rents established for 2018 (the year in which the Owner requested the Amendment) pursuant to Section 3.1A(d) of the Vancouver DCL By-

law, and the rents proposed to be charged for each For-Profit Affordable Rental Housing Unit are as set forth in the rent roll attached hereto as Schedule A, all of which are subject to such annual increases as may be authorized by the Vancouver DCL By-law (see Section 3.1B(c));

- (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 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 is sold or otherwise transferred together and as a block to the same legal and beneficial owner, as applicable, and subject to Section 8.8;
- (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;
- (h) throughout the Term, that any sale of any For-Profit Affordable Rental Housing Unit 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) throughout the Term, 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 during the Term, 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, 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) 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
- (m) in the event of the substantial or complete destruction of the New Building 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) (together with any remaining

undestroyed or undemolished portion of the New Building building) will also contain not less than the same number and type of replacement Housing Units as the New Building formerly contained, unless the City then otherwise agrees in its absolute and unfettered discretion, which replacement Housing Units will also be used only for the purpose of providing For-Profit Affordable Rental Housing (each such replacement Housing Unit, referred to as a "Replacement For-Profit Affordable Rental Housing Unit"), for the duration of the Term in accordance with the terms of this Agreement and the applicable by-laws of the City.

**ARTICLE 3
OCCUPANCY 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 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 General Manager of Arts, Culture and Community Services:
 - (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 sizes, which rents, unit type mix and sizes shall comply with this Agreement as of the date when the Occupancy Permit is issued; 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 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 an Occupancy Permit until there is compliance with the provisions of this Article 3.

**ARTICLE 4
RECORD KEEPING**

- 4.1 The Owner will keep accurate records pertaining to the use, occupancy and rental rates charged of/for the For-Profit Affordable Rental Housing Units such records to be to the satisfaction of the General Manager of Arts, Culture and Community Services. At the request of the General Manager of Arts, Culture and Community Services, 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 5
ENFORCEMENT**

- 5.1 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 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; and

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; and
- (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 6.1(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.1(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 6.1(b); and

- (c) Regardless of whether the claim is being defended under Section 6.1(a) or Section 6.1(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
NOTICES**

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

If to the Owner, addressed to:

Mestisos Pet Spa and Supplies Corp.
1740 East 14th Avenue
Vancouver, British Columbia
V5N 2E2

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 8
MISCELLANEOUS**

8.1 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.

- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 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*.
- 8.8 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 8.8 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).

8.9 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.

8.10 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

Unit #	Bedroom Type (select from drop-down menu)	Starting Monthly Rental Rate (\$)
301	Residential - Studio	\$1,495.00
302	Residential - 1-bedroom	\$1,730.00
303	Residential - 1-bedroom	\$1,730.00
304	Residential - Studio	\$1,495.00
401	Residential - Studio	\$1,495.00
402	Residential - 1-bedroom	\$1,730.00
403	Residential - 2-bedroom	\$2,505.00
501	Residential - Studio	\$1,495.00
502	Residential - 1-bedroom	\$1,730.00
503	Residential - 2-bedroom	\$2,505.00

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA5093162 and the Assignment of Rents registered under number CA5093163;
- (b) "Existing Chargeholder" means BLUESHORE FINANCIAL CREDIT UNION;
- (c) "New Charges" means the Housing Agreement and Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10 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