

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 1405 East 15th Avenue and 3047-3071 Maddams Street**

After a public hearing on July 6, 2021, Council approved in principle the land owner's application to rezone the above noted property from RT-2 (Residential) to a new CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. 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
June 7, 2022

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 1405 East 15th Avenue and 3047-3071 Maddams 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:

009-057-536	Lot A of Lot D Block 171 District Lot 264A Plan 11513
007-707-801	Lot B of Lot D Block 171 District Lot 264A Plan 11513
006-945-694	Lot C of Lot D Block 171 District Lot 264A Plan 12591
008-055-122	Lot D of Lot D Block 171 District Lot 264A Plan 12591

which lands are to be consolidated to create a parcel with a legal description of Lot 1 of Lot D Block 171 District Lot 264A Group 1 New Westminster District Plan EPP120598 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 , 2022

Mayor

City Clerk



Land Title Act

Charge

General Instrument – Part 1

1. Application

Lawson Lundell LLP, Barristers and Solicitors
1600 - 925 West Georgia Street
Vancouver BC V6C 3L2
(604) 685-3456

Attention: Stephanie Wong (Peggy Chau)
File No.: 36972-151561

1405 East 15th Avenue & 3047 - 3071 Maddams Street
Housing Agreement and Building Use Covenant (Secured Market Rental)

2. Description of Land

PID/Plan Number	Legal Description
EPP120598	LOT 1 OF LOT D BLOCK 171 DISTRICT LOT 264A GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP120598

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Entire Agreement
PRIORITY AGREEMENT		Granting the Covenant with one registration number less than this priority agreement priority over Mortgages CA9885530, CA8061927 and Assignment of Rents CA9885531, CA8061928

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

CAULFIELD ROCK (CLARK PARK) HOLDINGS INC., NO.BC1241428

NATIONAL BANK OF CANADA, AS TO PRIORITY

1239957 B.C. LTD., NO.BC1239957, AS TO PRIORITY

6. Transferee(s)

CITY OF VANCOUVER
453 WEST 12TH AVENUE
VANCOUVER BC V5Y 1V4

7. Additional or Modified Terms



8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

Execution Date

Transferor Signature(s)


STEPHANIE F. WONG
Barrister & Solicitor
1600 - 925 WEST GEORGIA ST.
VANCOUVER, B.C. V6C 3L2
(604) 685-3456

YYYY-MM-DD
2022-05-11

**CAULFIELD ROCK (CLARK PARK)
HOLDINGS INC.**

By their Authorized Signatory


Print Name: Jordan MacDonald

(as to all signatures)

Print Name: _____

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor Signature(s)

YYYY-MM-DD

**VANCOUVER CITY SAVINGS CREDIT
UNION**

By their Authorized Signatory

Print Name: _____

(as to all signatures)

Print Name: _____

Officer Certification

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8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

Execution Date

Transferor Signature(s)

YYYY-MM-DD

**CAULFIELD ROCK (CLARK PARK)
HOLDINGS INC.**
By their Authorized Signatory

Print Name:

(as to all signatures)

Print Name:

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor Signature(s)

YYYY-MM-DD

2020-05-20

NATIONAL BANK OF CANADA
By their Authorized Signatory

Print Name: Eleanor Tom


CHERIE L.W. MAH
Barrister & Solicitor
1200 Waterfront Centre, 200 Burrard Street
P.O. Box 48600, Vancouver, Canada V7X 1T2
604-632-3532
(as to all signatures)

Print Name: Gabriel Chung

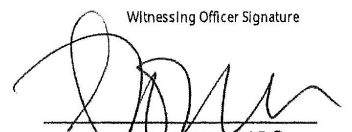
Officer Certification

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Land Title Act
Charge
General Instrument – Part 1

Witnessing Officer Signature



SHAUNA TOWRISS
Barrister & Solicitor
Cassels Brock and Blackwell LLP
#2200 - 885 West Georgia Street
Vancouver, B.C. V6C 3E8
(as to all parties) 372-7664
BC Law Society No. 506436

Execution Date

YYYY-MM-DD
2022-05-18

Transferor Signature(s)

1239957 B.C. LTD.
By their Authorized Signatory


Print Name: **Hubert Eros**

Print Name: _____

Officer Certification

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

Witnessing Officer Signature

(as to all signatures)

Execution Date

YYYY-MM-DD

Transferor Signature(s)

CITY OF VANCOUVER
as Transferee
By their Authorized Signatory

Print Name: _____

Print Name: _____

Officer Certification

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



Land Title Act

Charge

General Instrument – Part 1

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
(SECURED MARKET RENTAL)

1405 EAST 15TH AVENUE AND 3047 - 3071 MADDAMS STREET

WHEREAS:

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

- (i) the Transferor, CAULFIELD ROCK (CLARK PARK) HOLDINGS INC., is herein called the "Owner" as more particularly defined in Section 1.1; and
- (ii) the Transferee, CITY OF VANCOUVER, is called the "City" or the "City of Vancouver" when referring to corporate entity, and "Vancouver" when referring to geographic location;

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

C. The Owner made an application to rezone the Lands from RT-2 (Residential) District to CD-1 (Comprehensive Development) District to increase the floor space ratio (FSR) from 0.75 to 2.71, and building height from 9.2 m (30.18 ft.) to 21 m (68.89 ft.) to permit the development of 82 secured market rental units and, after a public hearing to consider the rezoning application, the rezoning application was approved by City Council, in principle, subject to, *inter alia*, fulfillment of the condition that the Owner:

"2.8 Make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services to enter into a Housing Agreement and Section 219 Covenant securing all 82 residential units as secured market rental housing units pursuant to the City's Affordable Housing Choices Interim Rezoning Policy, for the longer of 60 years and life of the building, subject to the following additional conditions:

- (a) A no separate-sales covenant;*
- (b) A no stratification covenant;*
- (c) Such other terms and conditions as the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services may in their sole discretion require.*

Note to applicant: This condition will be secured by a Housing Agreement to be entered into by the City at by-law enactment pursuant to Section 565.2 of the Vancouver Charter and/or a Section 219 Covenant."

the ("Market Rental Housing Condition"); and

D. The Owner and the City are now entering into this Agreement to satisfy the Market Rental Housing Condition.

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

ARTICLE 1 DEFINITIONS AND INTERPRETATION

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

- (a) **"Agreement"** means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) **"Building"** means each new building or structure to be built on the Lands as contemplated by the Rezoning or 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 or 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/his successors in function and their respective nominees;
- (e) **"City Personnel"** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) **"Commencement Date"** means the date as of which this Agreement has been executed by all parties to it;
- (g) **"Development Permit"** means any permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing development on the Lands (or any portion of the Lands) as contemplated by the Rezoning;
- (h) **"Director of Legal Services"** means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (i) **"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 her/his successors in function and their respective nominees;

- (j) **"High-Density Housing for Families With Children Guidelines"** means the City's High-Density Housing for Families With Children Guidelines adopted by the City's elected council on March 24, 1992, as the same may be amended, supplemented and/or replaced from time to time;
- (k) **"Housing Unit"** means a self-contained residential unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (l) **"Land Title Act"** means the Land Title Act, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (m) **"Lands"** means the parcel of land situate in the City of Vancouver, British Columbia, and legally described in Item 2 of the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and includes any parcels into which such land is consolidated or further subdivided (including, without limitation, a subdivision pursuant to the *Land Title Act* and a subdivision pursuant to the *Strata Property Act*);
- (n) **"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;
- (o) **"Market Rental Housing"** means a dwelling unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arm's length, for use as rental accommodation in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (p) **"Market Rental Housing Condition"** has the meaning ascribed to that term in Recital C;
- (q) **"Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(b);
- (r) **"Occupancy Permit"** means a permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing the use and occupation of any Building, development or partial development on the Lands or any portion of the Lands;
- (s) **"Owner"** means the Transferor, CAULFIELD ROCK (CLARK PARK) HOLDINGS INC., and all assigns, successors and successors in title to the Lands or any part thereof;
- (t) **"Related Person"** means, where the registered or beneficial owner of the Market Rental Housing Units is:

- (i) a corporation (as that term is defined in the *Business Corporations Act* (British Columbia), then a Related Person is:
 - (A) an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - (B) the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and
- (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (u) **"Replacement Rental Housing Unit"** has the meaning ascribed to that term in Section 2.1(k) and **"Replacement Rental Housing Units"** means all of such units;
- (v) **"Residential Tenancy Act"** means the Residential Tenancy Act, S.B.C. 2002, c. 78;
- (w) **"Rezoning"** means the rezoning of the Lands described in Recital C of this Agreement;
- (x) **"Term"** means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
 - (i) the date as of which the Building is demolished or substantially destroyed; or
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the Market Rental Housing Units Parcel;
- (y) **"Vancouver"** has the meaning ascribed to that term in Recital A(ii); and
- (z) **"Vancouver Charter"** means the Vancouver Charter, S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) **Party.** Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) **Singular; Gender.** Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) **Captions and Headings.** The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.

- (d) References. References to the or this “**Agreement**” and the words “**hereof**” “**herein**” and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

ARTICLE 2 RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) when and if it carries out the development on the Lands after the date of this Agreement as contemplated in the Development Permit, it will construct, and throughout the Term will maintain all residential units on the Lands in accordance with the Market Rental Housing Condition, the Rezoning, the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement (the “**Market Rental Housing Units**”), all to the satisfaction of the City;
- (c) throughout the Term, not less than thirty-five percent (35%) of the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) will have at least two (2) bedrooms and will be designed to be suitable for families with children in accordance with the High-Density Housing for Families With Children Guidelines in force at the time of issuance of a building permit for the Market Rental Housing Units or Replacement Rental Housing Units, as applicable;

- (d) throughout the Term, not less than all the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) will only be used for the purpose of providing Market Rental Housing;
- (e) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licensed to use or sublet, any Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) for a term of less than 30 consecutive days;
- (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 Market Rental Housing Unit (or Replacement Rental Housing Units, as applicable) to be sold or otherwise transferred unless title to every Market Rental Housing Unit (or Replacement Rental Housing Units, as applicable) is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and unless such transferee concurrently enters into an assumption agreement satisfactory to the City whereby it agrees to be and thereafter remain bound by each and every term and condition of this Agreement applicable to the Owner of the Market Rental Housing Units subject further to Section 7.8;
- (g) throughout the Term, it will not suffer, cause or permit the Building to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld;
- (h) throughout the Term, any sale of a Market Rental Housing Unit (or Replacement Rental Housing Units, as applicable) in contravention of the covenant in Section 2.1(f), and any subdivision 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) it will insure, or cause to be insured, the Building, the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) 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;
- (j) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) or any part of any thereof are/is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred; and
- (k) if the Building is destroyed or demolished before the end of the 60th anniversary of the date when the final Occupancy Permit is issued for the Building, then any replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building(s)) will also contain not less than the same number and type of replacement Market Rental Housing Units as the Building formerly contained, which replacement Market Rental

Housing Units will also be used only for the purpose of providing Market Rental Housing (each such replacement Market Rental Housing Unit is herein referred to as a “**Replacement Rental Housing Unit**”), in accordance with the terms of this Agreement and the applicable by-laws of the City.

ARTICLE 3 RECORD KEEPING

3.1 During the Term, the Owner will keep accurate copies of all tenancy agreements pertaining to the use and occupancy of the Market Rental Housing Units including any amendments thereto or renewals thereof, all to the satisfaction of the City. At the request of the City, from time to time during the Term, the Owner will make copies of such tenancy agreements and any amendments thereto or renewals thereof 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.

ENFORCEMENT

4.1 This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it shall be entitled to court costs on a solicitor and own client basis.

RELEASE AND INDEMNITY

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

- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:

- (i) by reason of the City or City Personnel:

- (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Owner’s Works;
 - (B) withholding any permit pursuant to this Agreement; or
 - (C) exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or

- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel; and

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

firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of:

- (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
- (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.

The indemnities in this ARTICLE 5 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

5.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 5.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 5.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 5.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 5.2(b); and

- (c) Regardless of whether the claim is being defended under Section 5.2(a) or Section 5.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a

timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

5.3 Survival of Release and Indemnities. The release and indemnities in this ARTICLE 5 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 6 NOTICES

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

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

Attention: General Manager of Planning, Urban Design and Sustainability, with a concurrent copy to the Director of Legal Services

(b) If to the Owner:

Caulfield Rock (Clark Park) Holdings Inc.
#308 - 837 West Hastings Street
Vancouver, British Columbia
V6C 3N6

Attention: Director

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

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

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

ARTICLE 7 MISCELLANEOUS

7.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated.

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

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

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

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

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

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Rezoning or the Development Permit; and
- (c) which the Director of Legal Services has determined, in her/his sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

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

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

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

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

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Chargeholder"** means NATIONAL BANK OF CANADA;
- (b) **"Existing Charges"** means the Mortgage registered under number CA9885530 and the Assignment of Rents registered under number CA9885531;
- (c) **"New Charges"** means the registrable charges and encumbrances created by and 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:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Chargeholder" means 1239957 B.C. LTD.;
- (b) "Existing Charges" means the Mortgage registered under number CA8061927 and the Assignment of Rents registered under number CA8061928;
- (c) "New Charges" means the registrable charges and encumbrances created by and 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:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT

EXPLANATION

**Authorization to enter into a Housing Agreement
Re: 1059 - 1075 Nelson Street
(Social Housing)**

After the public hearings on June 25 and 30, 2020, Council approved in principle the land owner's application to rezone the above noted property from RM-5B (Multiple Dwelling) to CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement (applicable to the social housing air space parcel) being entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. 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
June 7, 2022

BY-LAW NO.

**A By-law to enact a Housing Agreement
1059 - 1075 Nelson Street
(Social Housing)**

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:

005-605-946 Lot 11 Block 7 District Lot 185 Plan 92

015-749-916 Lot 12 Block 7 District Lot 185 Plan 92

which lands are to be consolidated to create a parcel with a legal description of Lot A Block 7 District Lot 185 Group 1 New Westminster District Plan EPP118708 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 , 2022

Mayor

City Clerk



1. Application

Michelle Paul
Suite 2400-745 Thurlow Street
Vancouver BC V6C 0E5
604.643.5878

File: 223407-555432
1059 - 1075 Nelson Housing Agreement (Social Housing)

2. Description of Land

PID/Plan Number	Legal Description
EPP118708	LOT A BLOCK 7 DISTRICT LOT 185 GROUP 1 NWD PLAN EPP118708

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Entire Agreement
PRIORITY AGREEMENT		Granting the above Covenant priority over Mortgage CA8965975 and Assignment of Rents CA8965976 (Kingsett Mortgage Corporation)
PRIORITY AGREEMENT		Granting the above Covenant priority over Mortgage CA9760141 and Assignment of Rents CA9760142 (Brivia Group Inc.)

4. Terms

Part 2 of this instrument consists of:
(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

1075 NELSON DEVELOPMENT HOLDINGS INC., NO.BC0979494
KINGSETT MORTGAGE CORPORATION, NO.A0081500
BRIVIA GROUP INC.

6. Transferee(s)

CITY OF VANCOUVER
453 WEST 12TH AVENUE
VANCOUVER BC V5Y 1V4

7. Additional or Modified Terms




8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)



lawyer in the Province of
Quebec
503-1245, Rene-Levesque W. Blvd
Montreal (QC) H3G 1T7
Amelie Fahey

YYY-MM-DD

2022 - 05 - 10

**1075 NELSON DEVELOPMENT
HOLDINGS INC.**

By their Authorized Signatory


Print Name: Kheng Ly

Print Name:

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)


David Vernon
Chief Legal Officer
and ESG Lead

YYY-MM-DD

2022-05-13

**KINGSETT MORTGAGE
CORPORATION**

By their Authorized Signatory


Print Name: **Tanya Lee**
Executive Director,
Mortgage Operations

Print Name:

Officer Certification

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



Land Title Act
Charge
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

Amelie Fahey
Lawyer in the Province of
Quebec
503-1245, Rene-Levesque W. Blvd
Montreal (QC) H3G 1T7
Amelie Fahey

YYYY-MM-DD
2022 - 05 - 10

BRIVIA GROUP INC.
By their Authorized Signatory

Print Name: Kheng Ly

Print Name:

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

CITY OF VANCOUVER
By their Authorized Signatory

Print Name:

Print Name:

Officer Certification

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

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
FOR SOCIAL HOUSING

1059 - 1075 NELSON STREET

WHEREAS:

- A. Capitalized terms used in this Agreement will have the respective meanings ascribed to them in Section 1.1, unless otherwise defined herein or the context otherwise requires;
- B. It is understood and agreed that this instrument and Agreement shall be read as follows:
- (i) the Transferor, **1075 NELSON DEVELOPMENT HOLDINGS INC.**, 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 the corporate entity continued under the *Vancouver Charter*, and "**Vancouver**" when referring to geographic location;
- C. The Owner is the registered owner of the Lands;
- D. The Owner made an application to rezone the Lands from RM-5B (Multiple Dwelling) to CD-1 (Comprehensive Development) District to allow for *inter alia* 60-storey residential building which would contain 102 social housing units, 50 secured market rental units and 328 market strata units (the "**Rezoning Application**");
- E. After a public hearing, the Rezoning Application was approved by the City's Council in principle subject to, among other things, fulfillment of the following condition by the Owner:
- "2.8 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 applicable to the social housing air space parcel for 60 years or the life of the building, whichever is greater, which will contain the following terms and conditions:**
- (a) *A no separate sales covenant;*
 - (b) *A no stratification covenant;*
 - (c) *A provision that none of such units will be rented for less than one month at a time;*
 - (d) *A requirement that all units comply with the definition of "social housing" in the applicable DCL By-law; and*
 - (e) *Such other terms and conditions as the General Manager of Arts, Culture and Community Services and the Director of Legal Services may in their sole discretion require.*

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Housing Agreement (Social Housing)
1059 - 1075 Nelson Street

Note to Applicant: This condition will be secured by a Housing Agreement to be entered into by the City by by-law enacted pursuant to section 565.2 of the Vancouver Charter.”,

(the “**Social Housing Condition**”); and

F. 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 and all Schedules hereto;
- (b) **“Building Permit”** means a building permit issued by the City after the full execution of this Agreement which authorizes construction of the Development on the Lands;
- (c) **“City”** and **“City of Vancouver”** have the meaning ascribed to those terms in Recital B(ii);
- (d) **“City Manager”** means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (e) **“City Personnel”** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) **“Commencement Date”** means the date as of which this Agreement has been executed by all parties to it;
- (g) **“Development”** means the development on the Lands described in Recital D and approved by the Development Permit;
- (h) **“Development Permit”** means a development permit issued by the City after the full execution of this Agreement to develop the Lands, as contemplated by the Rezoning 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;

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Housing Agreement (Social Housing)
1059 - 1075 Nelson Street

- (j) **"General Manager of Planning, Urban Design and Sustainability"** means the City's General Manager of Planning, Urban Design and Sustainability from time to time, and her/his successors in function and their respective nominees;
- (k) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250;
- (l) **"Lands"** means the lands describe d 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;
- (m) **"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;
- (n) **"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;
- (o) **"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;
- (p) **"Owner"** means the registered owner of the Lands as of the Commencement Date, namely 1075 Nelson Development Holdings Inc., and includes all of its successors, assigns and successors in title to the Lands, and if the Lands are subdivided by air space subdivision plan, then **"Owner"** will thereafter refer to the respective owner of each such legal parcel against which this Agreement remains registered after subdivision, as applicable;
- (q) **"Owner's Personnel"** means any and all of the officers, employees, agents, nominees, delegates, permittees, contractors and subcontractors of the Owner;
- (r) **"Rental Housing"** means a dwelling unit which is not occupied by the registered or beneficial owner of the same, but which is made available by such owner to the general public (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, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto;
- (s) **"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;

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Housing Agreement (Social Housing)
1059 - 1075 Nelson Street

- (t) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, c. 78;
- (u) **"Rezoning Application"** has the meaning ascribed to that term in Recital D;
- (v) **"Social Housing"** has the meaning ascribed to that term in Vancouver Development Cost Levy By-law No. 9755;
- (w) **"Social Housing Air Space Parcel"** means an air space parcel in the New Building which will contain, *inter alia*:
 - (i) Social Housing Units comprising no less than 25 percent of the total floor area of all uses that are included in the calculation of the floor space ratio for the Development, excluding the floor space used for secured market rental housing, and
 - (ii) storage lockers, vehicle parking and bicycle parking and storage for use by the occupants of the Social Housing Units,

all in accordance with the Development Permit and any building permit issued pursuant thereto;
- (x) **"Social Housing Condition"** has the meaning ascribed to that term in Recital E;
- (y) **"Social Housing Units"** has the meaning ascribed to that term in section 2.1(b) and, **"Social Housing Unit"** means any one of such;
- (z) **"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;
- (aa) **"Vancouver"** has the meaning ascribed to that term in Recital B(ii); and
- (bb) **"Vancouver Charter"** means the *Vancouver Charter*, S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) **Party.** Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) **Singular; Gender.** Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.

- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References. References to the or this “**Agreement**” and the words “**hereof**” “**herein**” and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto in force on the Commencement Date, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

ARTICLE 2 RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) if it carries out any development on the Lands after the Commencement Date, it will design, construct, equip and finish within the New Building the Social Housing Air Space Parcel which will contain residential units for use only as Social Housing (the “**Social Housing Units**”), in accordance with the Social Housing Condition, the Development Permit, any building permit issued pursuant and the requirements of this Agreement, and if the 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(s) will contain not less than the same number and type of replacement Social Housing Units as the New Building formerly contained (each such replacement Social Housing Unit hereinafter referred to as a “**Replacement Social Housing Unit**”) and will be subject, for the duration of the Term, to the same use restrictions as the Social Housing Units and the New Building are pursuant to this Agreement;

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Housing Agreement (Social Housing)
1059 - 1075 Nelson Street

- (c) throughout the Term, the Social Housing Units (or Replacement Social Housing Units, as applicable) will be used only in a manner that ensure its continued compliance with the definition of Social Housing;
- (d) throughout the Term, the Social Housing Units (or Replacement Social Housing Units, as applicable) will only be used for the purpose of providing Rental Housing;
- (e) throughout the Term, the Owner 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;
- (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 (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) unless 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 subject further to Section 9.9;
- (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 3;
- (h) throughout the Term, any sale or other transfer of title to a Social Housing Unit (or Replacement Social Housing Unit, 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 insure, or cause to be insured, the Lands and the New Building and all parts thereof to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands; and
- (j) 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. If the Social Housing Units (or Replacement Social Housing Units, as applicable) or any part thereof are/is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred;

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

ARTICLE 3 SUBDIVISION OF THE LANDS AND THE NEW BUILDING

3.1 Air Space Subdivision. 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 by the deposit of an air space subdivision plan, to enable:
 - (i) all of the Social Housing Units to be contained within the Social Housing Air Space Parcel;
 - (ii) other components of the Development to be contained within one or more other air space parcel(s) or a remainder parcel;
- (b) following such a subdivision and the issuance of a final Occupancy Permit for the Social Housing Air Space Parcel, the Owner may apply to the City for a partial discharge of this Agreement with respect to any legal parcel other than the Social Housing Air Space Parcel, and the City will on request of the Owner execute and deliver a registrable discharge of this Agreement in respect of such other parcel(s) provided, that:
 - (i) any such discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
 - (ii) the City will have a reasonable amount of time to execute and return any such discharge; and
 - (iii) the preparation and registration of any such discharge will be without cost to the City.

3.2 Partial Discharge. Notwithstanding anything else contained herein, following the subdivision and partial discharge contemplated in Section 3.1, this Agreement will be read and applied so that the obligations and restrictions contained herein will apply only to the Social Housing Air Space Parcel and this Agreement and the obligations and restrictions contained herein will not apply to any other portion of the Lands.

ARTICLE 4 RECORD KEEPING

4.1 Record Keeping. The Owner will keep accurate records pertaining to the use and occupancy of the Social Housing Units. 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

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Housing Agreement (Social Housing)
1059 - 1075 Nelson Street

available for inspection and copying by the City. The City will comply with the Owner's statutory obligations with respect to the privacy of such information

ARTICLE 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 OCCUPANCY RESTRICTION ON THE LANDS

- 6.1 **No Occupancy.** The Owner covenants and agrees with the City in respect of the use of the Lands, that the Lands will not be used or occupied except as follows:
- (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 Development and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for any part of the Development until such time as the Owner is able to apply for an Occupancy Permit for the entire Development and all its component parts and facilities; and
 - (b) the City will be under no obligation to issue any Occupancy Permit permitting the use and occupation of any part of the Development, notwithstanding completion of construction of the Development until such time as an Occupancy Permit can be issued for the entire Development and all its component parts and facilities.
- 6.2 **Release.** 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 6.

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:

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Housing Agreement (Social Housing)
1059 - 1075 Nelson Street

- A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building;
 - B. withholding any permit pursuant to this Agreement; or
 - C. exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or
- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

whether or not such Losses are the result of, or relate in any way to, any negligent acts or omissions on the part of the City or the City Personnel, other than wrongful intentional acts or gross negligence 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 NOTICES

- 8.1 **Notices.** 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:

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

Attention: City Clerk, with concurrent copy to the Director of Legal Services; or

if to the Owner:

1075 Nelson Development Holdings Inc.
 1425 Rene-Levesque Boulevard West, Suite 503
 Montreal, Quebec H3G 1T7

Attention: Director

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

ARTICLE 9 MISCELLANEOUS

- 9.1 **Agreement Runs With the Lands.** Subject to ARTICLE 3, 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.
- 9.2 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.
- 9.3 **Severability.** All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 9.4 **Vancouver Charter.** Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 9.5 **Waiver.** The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 9.6 **Perfection of Intention.** The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter* and also registered as a charge against title to the Lands.

{01542470v4}

Housing Agreement (Social Housing)
 1059 - 1075 Nelson Street

- 9.7 **Priority of Registration.** The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
 - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 9.8 **Further Assurances.** The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 9.9 **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 9.9 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the Director of Legal Services, over its mortgage).
- 9.10 **Owner's Representations and Warranties.** The Owner represents and warrants to and covenants and agrees with the City that:
- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
 - (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
 - (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and

- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

- 9.11 **Enforcement.** This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it will be entitled to court costs on a solicitor and own client basis.
- 9.12 **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 9.9, 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 the General Instrument - Part 1, which is a part hereof.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Chargeholder"** means KINGSETT MORTGAGE CORPORATION;
- (b) **"Existing Charges"** means the Mortgage and Assignment of Rents registered under numbers CA8965975 and CA8965976, respectively;
- (c) **"New Charges"** means the registrable charges and encumbrances created by and 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:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Chargeholder"** means BRIVIA GROUP INC.;
- (b) **"Existing Charges"** means the Mortgage and Assignment of Rents registered under numbers CA9760141 and CA9760142, respectively;
- (c) **"New Charges"** means the registrable charges and encumbrances created by and 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:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT

EXPLANATION

**Authorization to enter into a Housing Agreement
Re: 1059 - 1075 Nelson Street
(Market Rental Housing)**

After a public hearings on June 25 and 30, 2020, Council approved in principle the land owner's application to rezone the above noted property from RM-5B (Multiple Dwelling) to CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, applicable to the secured market rental units on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. 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
June 7, 2022

BY-LAW NO.

**A By-law to enact a Housing Agreement
1059 - 1075 Nelson Street
(Market Rental Housing)**

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:

005-605-946 Lot 11 Block 7 District Lot 185 Plan 92

015-749-916 Lot 12 Block 7 District Lot 185 Plan 92

which lands are to be consolidated to create a parcel with a legal description of Lot A Block 7 District Lot 185 Group 1 New Westminster District Plan EPP118708 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 , 2022

Mayor

City Clerk



Land Title Act

Charge

General Instrument – Part 1

1. Application

Michelle Paul
Suite 2400-745 Thurlow Street
Vancouver BC V6C 0E5
604.643.5878

File: 223407-555432
1059 - 1075 Nelson Housing Agreement and Building Use Covenant (Market Rental)

2. Description of Land

PID/Plan Number	Legal Description
EPP118708	LOT A BLOCK 7 DISTRICT LOT 185 GROUP 1 NWD PLAN EPP118708

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Entire Agreement
PRIORITY AGREEMENT		Granting the above Covenant priority over Mortgage CA8965975 and Assignment of Rents CA8965976 (Kingsett Mortgage Corporation)
PRIORITY AGREEMENT		Granting the above Covenant priority over Mortgage CA9760141 and Assignment of Rents CA9760142 (Brivia Group Inc.)

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

1075 NELSON DEVELOPMENT HOLDINGS INC., NO.BC0979494
KINGSETT MORTGAGE CORPORATION, NO.A0081500
BRIVIA GROUP INC.

6. Transferee(s)

CITY OF VANCOUVER
453 WEST 12TH AVENUE
VANCOUVER BC V5Y 1V4

7. Additional or Modified Terms

8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

Amelie Fahey
Lawyer in the Province
of Quebec
503-1425, Rene-Levesque W. Blvd
Montreal (QC) H3G 1T7
Amelie Fahey

YYY-MM-DD
2022 - 05 - 10

**1075 NELSON DEVELOPMENT
HOLDINGS INC.**
By their Authorized Signatory

[Signature]
Print Name: Kheng Ly

Print Name:

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

[Signature]
David Vernon
Chief Legal Officer
and ESG Lead

YYY-MM-DD

2022-05-12

**KINGSETT MORTGAGE
CORPORATION**
By their Authorized Signatory

[Signature]
Print Name: Tanya Lee
Executive Director,
Mortgage Operations

Print Name:

KingSett Capital
Scotia Plaza, 40 King Street West
Suite 3700
Toronto, ON M5H 3Y2

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
Charge
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

Amelie Fahey
lawyer in the province
of Quebec
503-1425 Rene-Levesque W. Blvd
Montreal (QC) H3G 1T7
Amelie Fahey

YYYY-MM-DD

2022 - 05 - 10

BRIVIA GROUP INC.

By their Authorized Signatory

Print Name: Kheng Ly

Print Name:

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

CITY OF VANCOUVER

By their Authorized Signatory

Print Name:

Print Name:

Officer Certification

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

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
(SECURED MARKET RENTAL)

1059 - 1075 NELSON STREET

WHEREAS:

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

- (i) the Transferor, 1075 NELSON DEVELOPMENT HOLDINGS INC., is herein called the "**Owner**" as more particularly defined in Section 1.1; and
- (ii) the Transferee, CITY OF VANCOUVER, is called the "**City**" or the "**City of Vancouver**" when referring to corporate entity, and "**Vancouver**" when referring to geographic location;

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

C. The Owner made an application to to rezone the Lands from RM-5B (Multiple Dwelling) District to CD-1 (Comprehensive Development) District to increase the floor space ratio from 2.75 to 24.70 and building height from 18.3 m to 178.46 m to permit the development of a 60-storey residential building which would contain 102 social housing units, 50 secured market rental units and 328 market strata units and, after a public hearing to consider the rezoning application, the rezoning application was approved by City Council, in principle, subject to, *inter alia*, fulfillment of the condition that the Owner make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services to enter into an agreement securing all residential units as market rental housing for the longer of 60 years and the life of the building, and subject to the following additional conditions:

- (i) A no separate-sales covenant;
- (ii) A no-stratification covenant;
- (iii) That none of such units will be rented for less than one month at a time; and
- (iv) Such other terms and conditions as the General Manager of Planning, Urban, Design and Sustainability and the Director of Legal Services may in their sole discretion require

(the "**Market Rental Housing Condition**"); and

D. The Owner and the City are now entering into this Agreement to satisfy the Market Rental Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner

and the City, pursuant to Section 219 of the *Land Title Act*, agree as follows in respect of the use of the Lands and the Building:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

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

- (a) **"Agreement"** means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) **"Building"** means each new building or structure to be built on the Lands as contemplated by the Rezoning or 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 or 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/his successors in function and their respective nominees;
- (e) **"City Personnel"** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) **"Commencement Date"** means the date as of which this Agreement has been executed by all parties to it;
- (g) **"Development Permit"** means any permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing development on the Lands (or any portion of the Lands) as contemplated by the Rezoning;
- (h) **"Director of Legal Services"** means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (i) **"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 her/his successors in function and their respective nominees;
- (j) **"High-Density Housing for Families With Children Guidelines"** means the City's High-Density Housing for Families With Children Guidelines adopted by the City's elected council on March 24, 1992, as the same may be amended, supplemented and/or replaced from time to time;

- (k) **"Housing Unit"** means a self-contained residential unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (l) **"Land Title Act"** means the Land Title Act, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (m) **"Lands"** means the parcel of land situate in the City of Vancouver, British Columbia, and legally described in Item 2 of the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and includes any parcels into which such land is consolidated or further subdivided (including, without limitation, a subdivision pursuant to the *Land Title Act* and a subdivision pursuant to the *Strata Property Act*);
- (n) **"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;
- (o) **"Market 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 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;
- (p) **"Market Rental Housing Condition"** has the meaning ascribed to that term in Recital C;
- (q) **"Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(b);
- (r) **"Occupancy Permit"** means a permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing the use and occupation of any Building, development or partial development on the Lands or any portion of the Lands;
- (s) **"Owner"** means the Transferor, 1075 Nelson Development Holdings Inc., and all assigns, successors and successors in title to the Lands or any part thereof;
- (t) **"Related Person"** means, where the registered or beneficial owner of the Market Rental Housing Units is:
 - (i) a corporation (as that term is defined in the *Business Corporations Act* (British Columbia)), then a Related Person is:
 - (A) an officer, director or shareholder of such corporation or of another entity which is a shareholder of such corporation; 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) **“Replacement Rental Housing Unit”** has the meaning ascribed to that term in Section 2.1(k) and **“Replacement Rental Housing Units”** means all of such units;
- (v) **“Residential Tenancy Act”** means the Residential Tenancy Act, S.B.C. 2002, c. 78;
- (w) **“Rezoning”** means the rezoning of the Lands described in Recital C of this Agreement;
- (x) **“Term”** means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
 - (i) the date as of which the Building is demolished or substantially destroyed; or
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the Market Rental Housing Units Parcel;
- (y) **“Vancouver”** has the meaning ascribed to that term in Recital A(ii); and
- (z) **“Vancouver Charter”** means the Vancouver Charter, S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) **Party.** Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) **Singular; Gender.** Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) **Captions and Headings.** The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) **References.** References to the or this **“Agreement”** and the words **“hereof”** **“herein”** and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.

- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto in force on the Commencement Date, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

ARTICLE 2 RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) when and if it carries out the development on the Lands after the date of this Agreement as contemplated in the Development Permit, it will construct, and throughout the Term will maintain not less than 50 residential units in the Building (the “**Market Rental Housing Units**”) in accordance with the Market Rental Housing Condition, the Rezoning, the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement, all to the satisfaction of the City;
- (c) throughout the Term, not less than thirty-five percent (35%) of the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) will have at least two (2) bedrooms and will be designed to be suitable for families with children in accordance with the High-Density Housing for Families With Children Guidelines in force at the time of issuance of a building permit for the Market Rental Housing Units or Replacement Rental Housing Units, as applicable;
- (d) throughout the Term, all the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) will only be used for the purpose of providing Market Rental Housing;
- (e) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licensed to use or sublet, any Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) for a term of less than 30 consecutive days;

- (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 Market Rental Housing Unit (or Replacement Rental Housing Units, as applicable) to be sold or otherwise transferred (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) unless title to every Market Rental Housing Unit (or Replacement Rental Housing Units, as applicable) is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and unless such transferee concurrently enters into an assumption agreement satisfactory to the City whereby it agrees to be and thereafter remain bound by each and every term and condition of this Agreement applicable to the Owner of the Market Rental Housing Units subject further to Section 7.8;
- (g) throughout the Term, it will not suffer, cause or permit the Building to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld;
- (h) throughout the Term, any sale of a Market Rental Housing Unit (or Replacement Rental Housing Units, as applicable) in contravention of the covenant in Section 2.1(f), and any subdivision 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 insure, or cause to be insured, the Building, the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) 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;
- (j) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) or any part of any thereof are/is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred; and
- (k) if the Building is destroyed or demolished before the end of the 60th anniversary of the date when the final Occupancy Permit is issued for the Building, then any replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building(s)) will also contain not less than the same number and type of replacement Market Rental Housing Units as the Building formerly contained, which replacement Market Rental Housing Units will also be used only for the purpose of providing Market Rental Housing (each such replacement Market Rental Housing Unit is herein referred to as a "**Replacement Rental Housing Unit**"), in accordance with the terms of this Agreement and the applicable by-laws of the City.

ARTICLE 3 RECORD KEEPING

3.1 During the Term, the Owner will keep accurate copies of all tenancy agreements pertaining to the use and occupancy of the Market Rental Housing Units including any amendments thereto or renewals thereof, all to the satisfaction of the City. At the request of the City, from time to time during the Term, the Owner will make copies of such tenancy agreements and any amendments thereto or renewals thereof 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.

ENFORCEMENT

4.1 This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it shall be entitled to court costs on a solicitor and own client basis.

RELEASE AND INDEMNITY

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

- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:

- (i) by reason of the City or City Personnel:

- (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Building;
 - (B) withholding any permit pursuant to this Agreement; or
 - (C) exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or

- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

whether or not such Losses are the result of, or relate in any way to, any negligent acts or omissions on the part of the City or the City Personnel, but specifically excluding Losses caused by the gross negligence or wilful misconduct of the City or City Personnel; and

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of:

- (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
- (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.

The indemnities in this ARTICLE 5 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

5.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 5.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 5.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 5.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior 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 5.2(b); and

- (c) Regardless of whether the claim is being defended under Section 5.2(a) or Section 5.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

5.3 Survival of Release and Indemnities. The release and indemnities in this ARTICLE 5 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 6 NOTICES

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

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

Attention: General Manager of Planning, Urban Design and Sustainability,
with a concurrent copy to the Director of Legal Services

(b) If to the Owner:

1075 Nelson Development Holdings Inc.
1425 Rene-Levesque Boulevard West, Suite 503
Montreal, Quebec
H3G 1T7

Attention: Director

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

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

(d) if personally delivered, on the date when delivered,

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

ARTICLE 7 MISCELLANEOUS

7.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the

Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated.

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

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

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

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

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

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Rezoning or the Development Permit; and
- (c) which the Director of Legal Services has determined, in her/his sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

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

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

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

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

7.8 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 7.8, 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 which is a part hereof.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Chargeholder"** means KINGSETT MORTGAGE CORPORATION;
- (b) **"Existing Charges"** means Mortgage and Assignment of Rents registered under numbers CA8965975 and CA8965976, respectively;
- (c) **"New Charges"** means the registrable charges and encumbrances created by and 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:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Chargeholder"** means BRIVIA GROUP INC.;
- (b) **"Existing Charges"** means Mortgage and Assignment of Rents registered under numbers CA9760141 and CA9760142, respectively;
- (c) **"New Charges"** means the registrable charges and encumbrances created by and 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:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT

EXPLANATION

**Authorization to enter into a Housing Agreement
Re: 8460 Ash Street and 8495 Cambie Street
(Lot A – For Profit Affordable Rental Housing)**

After a public hearing on November 17 and 25, 2021, Council approved in principle the land owner's application to rezone the above noted property from RT-2 (Residential) District to CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. 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. Separate Housing Agreements will be entered into for each of Lot C Plan EPP115039, comprising the other secured rental housing and for Lot B Plan EPP115039, comprising social housing, all as required as a condition of this rezoning.

Director of Legal Services
June 7, 2022

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 8460 Ash Street and 8495 Cambie Street
(Lot A – For Profit Affordable Rental Housing)**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a Housing Agreement with the owner of certain lands described as:

NO PID

Lot A Block 7 District Lot 311 Group 1 New Westminster
District Plan EPP115039

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 , 2022

Mayor

City Clerk



Land Title Act

Charge

General Instrument -- Part 1

1. Application

Esther Cho, TERRA LAW CORPORATION
2800 - 650 West Georgia Street
Vancouver BC V6B 4N7
604.628.2800

File No. 502836 / CL
Form C Housing Agreement and Building Use Covenant For-Profit Affordable
Rental Housing (Lot A)

2. Description of Land

PID/Plan Number	Legal Description
-----------------	-------------------

EPP115039	LOT A BLOCK 7 DISTRICT LOT 311 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP115039
------------------	---

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 Covenant Entire Instrument
PRIORITY AGREEMENT		granting the section 219 covenant registered under the number that is one less than this priority agreement priority over mortgage CA6548722 in favour of Intracorp Ash Street (Nominee) Ltd.

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

ASHLEY MAR HOUSING CO-OPERATIVE

INTRACORP ASH STREET (NOMINEE) LTD., NO.BC1144480

6. Transferee(s)

CITY OF VANCOUVER
453 WEST 12TH AVENUE
VANCOUVER BC V5Y 1V4

7. Additional or Modified Terms



8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)


PATRICK J. JULIAN
Barrister & Solicitor
19th Floor
885 West Georgia Street
Vancouver, B.C.
V6C 3H4

YYYY-MM-DD
2022-05-10

**ASHLEY MAR HOUSING CO-
OPERATIVE**
By their Authorized Signatory


Name: **AZIZ IBRAHIM**

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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

CITY OF VANCOUVER
By their Authorized Signatory

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
Charge
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

**INTRACORP ASH STREET (NOMINEE)
LTD.**

By their Authorized Signatory

Shengyin Gui
Name: Shengyin Gui
A Commissioner for Taking
Affidavits for British Columbia
Commission Expiry: April 30, 2025

YYY-MM-DD
2022-05-16

Evan Allegretto
Name: Evan Allegretto

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.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, R.S.B.C. 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.



TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
FOR-PROFIT AFFORDABLE RENTAL HOUSING (LOT A)
8460 ASH STREET AND 8495 CAMBIE STREET

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, ASHLEY MAR HOUSING CO-OPERATIVE, 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 to rezone, *inter alia*, the Lands from RT-2 (Residential) District to CD-1 (Comprehensive Development) District (the "Rezoning Application") to permit the development of a mixed-use development with ground floor commercial space and 524 secured market rental units on the Lands and on lands adjacent to the Lands, and further 125 social housing units on other lands adjacent to the Lands (the "Social Housing Units"), and after public hearing to consider the Rezoning Application, the City approved the Rezoning Application in principle, subject to a number of conditions including that the Owner make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services to enter into one or more Housing Agreements by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter* securing all of the rental residential units in the Ash Street and Cambie Street market rental buildings as for-profit affordable rental housing units pursuant to Section 3.1A of the Vancouver DCL By-law for the longer of 60 years and life of the New Building, and subject to other conditions set forth in the minutes of the said public hearing; and
- D. The Owner and the City are now 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, 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 at any time following the date this Agreement is fully executed by the parties, authorizing the building of a New Building as contemplated by the Rezoning By-law and 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 Permit"** means any development permit issued by the City at any time following the date this Agreement is fully executed by the parties, authorizing the development of the Lands contemplated by the Rezoning By-law;
- (g) **"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;
- (h) **"Dwelling Unit"** has the meaning set out in the City's Zoning and Development By-law No. 3575, as amended or replaced from time to time;
- (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 Dwelling 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 Dwelling Units and for greater certainty, does not include Social 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 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/her successors in function and their respective nominees;

- (m) **"Land Title Act"** means the Land Title Act, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (n) **"Lands"** means the parcel of land situate in 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;
- (o) **"Losses"** means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, 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;
- (p) **"New Building"** means any new building or structure to be built on the Lands as contemplated by the Rezoning By-law and the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Rezoning By-law and the Development Permit;
- (q) **"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;
- (r) **"Owner"** means **ASHLEY MAR HOUSING CO-OPERATIVE** and its successors and permitted assigns and any successors in title to the Lands or portion of the Lands;
- (s) **"Prior-to Letter"** means the letter from the City to the Owner providing the conditions that must be satisfied prior to the issuance of the Development Permit;
- (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 Dwelling Unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arm's length, for use as rental accommodation 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, and all amendments thereto and re-enactments thereof;
- (x) **"Rezoning Application"** has the meaning ascribed to that term in Recital C;
- (y) **"Rezoning By-law"** means the CD-1 by-law enacted upon satisfaction of the prior-to conditions imposed by the City following, and as a result of, the Rezoning Application;
- (z) **"Social Housing Units"** has the meaning ascribed to that term in Recital C;
- (aa) **"Social Housing Building"** means the new building or structure to be built on the lands adjacent to the Lands, as contemplated by the Rezoning By-law containing the Social Housing Units;
- (bb) **"Social Housing Building Occupancy Permit"** means a permit issued by the City authorizing the use and occupation of the Social Housing Building, issued after the Effective Date;
- (cc) **"Term"** means the term of this Agreement, which will commence on the Effective Date and will end on the later of:
 - (i) the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building; and
 - (ii) the date as of which the New Building is demolished or substantially destroyed;
- (dd) **"Vancouver"** has the meaning ascribed to that term in Recital A(ii);
- (ee) **"Vancouver Charter"** means the Vancouver Charter, S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof; and
- (ff) **"Vancouver DCL By-law"** means the City's Vancouver Development Cost Levy By-law No. 9755, and all amendments thereto and re-enactments thereof.

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 it 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 such number of Dwelling Units as approved in the Development Permit in the New Building, in accordance with this Agreement, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;

- (c) when the New Building is completed and an Occupancy Permit has been issued and thereafter throughout the Term, all Dwelling 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) not less than 35% of the For-Profit Affordable Rental Housing Units will have two or more bedrooms and be designed to meet the City’s High Density Housing for Families with Children Guidelines;
- (e) the average initial monthly starting rents for each unit type of the For-Profit Affordable Rental Units after Occupancy Permit issuance will be at or below the respective amounts per unit type computed pursuant to Section 3.1A(e) of the Vancouver DCL By-law as of the date when the Prior-to Letter is issued by the City to the Owner and the Owner will submit a rent roll setting out the initial rents proposed to be charged for each For-Profit Affordable Rental Unit, as described in Section 3.1(a)(i), for approval by the General Manager of Planning, Urban Design and Sustainability, prior to the issuance of a Development Permit, a Building Permit and an Occupancy Permit, all of which are subject to such annual increases as may be authorized by the Vancouver DCL By-law (see Section 3.1B(c) of the Vancouver DCL By-law). For greater certainty, the starting rent limits per unit type computed pursuant to Section 3.1A(e) of the Vancouver DCL By-law as of the date when the Prior-to Letter is issued by the City to the Owner and the proposed rents set forth in the rent roll as described in Section 3.1(a)(i) only apply in respect of the initial tenant of each For-Profit Affordable Rental Housing Unit, for a minimum of one year after the Occupancy Permit has been issued (as set out in Section 2.1(n)), and do not apply in respect of subsequent tenants, which subsequent tenants will pay then-current market rent as determined by the Owner;
- (f) 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;
- (g) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies:
 - (i) the Owner will not suffer, cause or permit registered title to any For-Profit Affordable Rental Housing Unit within the New Building to be sold or otherwise transferred unless registered title to every one of the For-Profit Affordable Rental Housing Units within the New Building is sold or otherwise transferred together to the same registered owner; and
 - (ii) the Owner will not suffer, cause or permit beneficial title to any For-Profit Affordable Rental Housing Unit within the New Building to be sold or otherwise transferred unless beneficial title to every one of the For-Profit Affordable Rental Housing Units within the New Building is sold or otherwise transferred together to the same beneficial owner,

and in each case the Owner will comply with Section 9.8. For greater certainty, and without limitation, this Section 2.1(g) does not preclude the Owner from doing any of the following from time to time: (1) transferring beneficial title to the Lands to a limited partnership formed to develop the For-Profit Affordable Rental Housing

Units, and/or (2) transferring registered title to the Lands to a separate company that holds legal title to the Lands as nominee, agent and bare trustee for the beneficial owner of the Lands;

- (h) 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;
- (i) throughout the Term, that any sale of any For-Profit Affordable Rental Housing Unit in contravention of the covenant in Section 2.1(g), 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(h), 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;
- (j) 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 in the area;
- (k) excluding reasonable wear and tear, 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;
- (l) 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;
- (m) the average size of the For-Profit Affordable Rental Housing Units (per unit type) will be at or below the following sizes:

<u>UNIT TYPE</u>	<u>AVERAGE SIZE (APARTMENT)</u>	<u>AVERAGE SIZE (TOWNHOUSE)</u>
Studio	42 square metres	N/A
1 Bedroom	56 square metres	56 square metres
2 Bedrooms	77 square metres	90 square metres
3 Bedrooms	97 square metres	112 square metres
4 Bedrooms	N/A	125 square metres

except that the floor area used for stairways within the townhouse units of two or more storeys is excluded from the calculation of maximum unit size;

- (n) 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
- (o) 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) will also contain not less than the same number and type of replacement Dwelling Units as the New Building formerly contained, unless the City then otherwise agrees in its absolute and unfettered discretion, which replacement Dwelling Units will also be used only for the purpose of providing For-Profit Affordable Rental Housing (each such replacement Dwelling 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 DEVELOPMENT PERMIT RESTRICTION ON THE LANDS

- 3.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Development Permit, and will take no action, directly or indirectly, to compel the issuance of any Development Permit, until such time as the Owner has delivered a rent roll to, and to the satisfaction of, the General Manager of Planning, Urban Design and Sustainability, confirming the rents proposed to be charged to the first occupants of the For-Profit Affordable Rental Housing Units following issuance of the Occupancy Permit (subject to such annual increases as may be authorized by the Vancouver DCL By-law (see Section 3.1B(c) of the Vancouver DCL By-law)), and the unit type mix and sizes, which rents, unit type, mix and sizes shall comply with this Agreement when the Development Permit is issued; and
 - (ii) the City will be under no obligation to issue any Development Permit until such time as the Owner has complied with Section 3.1(a)(i); and
 - (b) without limiting the general scope of ARTICLE 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 a Development Permit until there is compliance with the provisions of this ARTICLE 3.

**ARTICLE 4
OCCUPANCY RESTRICTION ON THE LANDS**

- 4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as:
 - (A) the Owner has delivered, to the satisfaction of the General Manager of Planning, Urban Design and Sustainability:
 - I. a final rent roll confirming the rents to be charged to the first occupants of the For-Profit Affordable Rental Housing Units in the New Building following issuance of the Occupancy Permit, and the unit type mix and sizes for the New Building, which rents, unit type mix and sizes shall comply with this Agreement as of the date when the Occupancy Permit is issued; and
 - II. proof of the insurance for the New Building, consistent with the requirements of Section 2.1(l), is in force and effect, in form and substance satisfactory to the City; and
 - (B) the Social Housing Building Occupancy Permit has been issued; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit for the New Building, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 4.1(a)(i) with respect to the New Building; and
 - (b) without limiting the general scope of ARTICLE 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this ARTICLE 4.

**ARTICLE 5
RECORD KEEPING**

- 5.1 The Owner will keep accurate records pertaining to the use, 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 Planning, Urban Design and Sustainability. At the request of the General Manager of Planning, Urban Design and Sustainability, from time to time, the Owner will:
- (a) make such records available for inspection and copying by City staff, subject to

applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and

- (b) provide evidence of the insurance required to be taken out pursuant to Section 2.1(k).

**ARTICLE 6
ENFORCEMENT**

- 6.1 This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it shall be entitled to court costs on a solicitor and own client basis.

**ARTICLE 7
RELEASE AND INDEMNITY**

- 7.1 Release and Indemnity. Subject to Section 7.2, the Owner hereby:

- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:

- (i) by reason of the City or City Personnel:

- A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building 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,

except in each case to the extent that such Losses are attributable to the wrongful intentional acts or gross negligence of the City or the City Personnel.

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 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 7.1(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 7.1(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 8.2(b) ; and

- (c) Regardless of whether the claim is being defended under Section 8.1(a) or Section 8.1(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.

7.3 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 8
NOTICES**

- 8.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, will be in writing and will be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:
- (a) if made by registered mail, on the earlier of the day receipt is acknowledged by the addressee or the third day after it was mailed, except when there is a postal service disruption during such period, in which case delivery will be deemed to be completed upon actual delivery of the notice, demand or request; and
 - (b) if personally delivered, on the date when delivered.

If to the City, addressed to:

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

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

If to the Owner, addressed to:

Ashley Mar Housing Co-Operative
c/o Koffman Kalef LLP
1900 - 885 West Georgia Street
Vancouver, BC
V6C 3H4

Attention: Pat Julian

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

**ARTICLE 9
MISCELLANEOUS**

- 9.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner will be covenants the burden of which will run with and will bind the Lands and will attach thereto.

- 9.2 Agreement to be a First Charge. The Owner agrees to cause, at its sole cost and expense, the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of any rezoning or any Development Permit; and
 - (c) which the Director of Legal Services has determined, in his/her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 9.3 Enforcement. This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it will be entitled to court costs on a solicitor and own client basis.
- 9.4 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 9.5 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 9.6 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 9.7 Further Assurances. The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 9.8 Sale of Lands or New Building. Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219

Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), subject always to Sections 2.1(f) and 2.1(g), the Owner will cause the purchaser/ transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of the Owner under this Agreement. The provisions in this Section 9.8 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage).

- 9.9 No Liability. 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.
- 9.10 Owner's Representations. The Owner represents and warrants to and covenants and agrees with the City that:
- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
 - (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
 - (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
 - (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.
- 9.11 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.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority Agreement:

- (a) **"Existing Charges"** means the Mortgage registered under number CA6548722;
- (b) **"Existing Chargeholder"** means INTRACORP ASH STREET (NOMINEE) LTD.;
- (c) **"New Charges"** means the Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT

EXPLANATION

**Authorization to enter into a Housing Agreement
Re: 8460 Ash Street and 8495 Cambie Street
(Lot B – Social Housing)**

After a public hearing on November 17 and 25, 2021, Council approved in principle the land owner's application to rezone the above noted property from RT-2 (Residential) District to CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement (for Social Housing) being entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. 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. Separate Housing Agreements will be entered into for each of Lots A and C Plan EPP115039, comprising the other secured rental housing required as a condition of this rezoning.

Director of Legal Services
June 7, 2022

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 8460 Ash Street and 8495 Cambie Street
(Lot B – Social Housing)**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a Housing Agreement with the owner of certain lands described as:

NO PID

Lot B Block 7 District Lot 311 Group 1 New Westminster
District Plan EPP115039

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 , 2022

Mayor

City Clerk



Land Title Act

Charge

General Instrument – Part 1

1. Application

Esther Cho, TERRA LAW CORPORATION
2800 - 650 West Georgia Street
Vancouver BC V6B 4N7
604.628.2800

File No. 502836 / CL

Form C Housing Agreement and Building Use Covenant (Social Housing)

2. Description of Land

PID/Plan Number Legal Description

EPP115039 LOT B BLOCK 7 DISTRICT LOT 311 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP115039

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 Covenant Entire Instrument
PRIORITY AGREEMENT		granting the section 219 covenant registered under the number that is one less than this priority agreement priority over mortgage CA6548722 in favour of Intracorp Ash Street (Nominee) Ltd.

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

ASHLEY MAR HOUSING CO-OPERATIVE

INTRACORP ASH STREET (NOMINEE) LTD., NO.BC1144480

6. Transferee(s)

CITY OF VANCOUVER
453 WEST 12TH AVENUE
VANCOUVER BC V5Y 1V4

7. Additional or Modified Terms



Land Title Act

Charge

General Instrument – Part 1

8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

PATRICK J. JULIAN
Barrister & Solicitor
19th Floor
885 West Georgia Street
Vancouver, B.C.
V6C 3H4

Execution Date

YYYY-MM-DD
2022-05-10

Transferor / Transferee / Party Signature(s)

**ASHLEY MAR HOUSING CO-
OPERATIVE**

By their Authorized Signatory

Name: **AZIZ IBRAHIM**

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.

Witnessing Officer Signature

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

CITY OF VANCOUVER

By their Authorized Signatory

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
Charge

General Instrument – Part 1

Witnessing Officer Signature

Execution Date

YYY-MM-DD

2022-05-16

Transferor / Transferee / Party Signature(s)

**INTRACORP ASH STREET (NOMINEE)
LTD.**

By their Authorized Signatory

Name: Evan Allegretto

Name:

Shengyin Gui
Name: Shengyin Gui
A Commissioner for Taking
Affidavits for British Columbia
Commission Expiry: April 30, 2025

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.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
(Social Housing)

8460 ASH STREET AND 8495 CAMBIE STREET

WHEREAS:

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

- (i) the Transferor, ASHLEY MAR HOUSING CO-OPERATIVE, is called the "Owner" as more particularly defined in Section 1.1; and
- (ii) the Transferee, CITY OF VANCOUVER, is called the "City" or the "City of Vancouver" when referring to corporate entity and "Vancouver" when referring to geographic location;

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

C. The Owner made an application (the "Rezoning Application") to rezone, *inter alia*, the Lands from RT-2 (Residential) District to a CD-1 (Comprehensive Development) District (the "Rezoning") to permit the development of a mixed-use development with 125 social housing units on the Lands and ground-floor commercial space and 524 secured market rental units on lands adjacent to the Lands, and after a public hearing (the "Public Hearing") to consider the Rezoning Application, the Rezoning Application was approved by City Council in principle subject to, *inter alia*, fulfilment of the following condition:

"2.8 Make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability (or successor in function), and the Director of Legal Services to enter into a Housing Agreement and Section 219 Covenant securing all of the social housing units in the Ash Street building for the greater of 60 years and life of the building, which will contain the following terms and conditions:

- (a) A no separate sales covenant.
- (b) A no stratification covenant.
- (c) That such social housing units will be legally and beneficially owned by a non-profit corporation, a non-profit co-operative association, or by or on behalf of the City, the Province of British Columbia, or Canada as a single legal entity.
- (d) A provision that none of such social housing units will be rented or have an occupancy tenure for less than one month at a time.

- (e) *Requiring such social housing units be used for and comply with the definition of "social housing", as that term is defined in the Vancouver Development Cost Levy By-law No. 9755.*
- (f) *Not less than 85% of the social housing units will be occupied by households with incomes below the then current applicable Housing Income Limits, as set out in the current "Housing Income Limits" table published by the British Columbia Housing Management Commission or equivalent publication, and each rented or permitted to be occupied at a rate no higher than 30% of the aggregate household income of the members of the household occupying such social housing unit, and subject to further provisions as described in Appendix E: Term Sheet.*
- (g) *A maximum of 15% of the social housing units shall be rented to or permitted to be occupied by households with incomes at or below "Middle Income Limits" as established by the British Columbia Housing Management Commission or equivalent publication, or the equivalent program available through the Province of British Columbia, as determined and approved by the General Manager of Planning, Urban Design and Sustainability, at a housing charge which is no more than 30% of household income.*
- (h) *Such other provisions as described in Appendix E: Term Sheet relating to the operation of the social housing (co-op) building, including, but not limited to, the following: assessment of housing charges, building maintenance and operation, operating surplus, occupant selection process, occupancy guidelines, and monitoring and compliance, which provisions and the terms of same to be included at the discretion of the General Manager of Planning Urban Design and Sustainability.*
- (i) *A hold on the Occupancy Permit until such time as the owner provides the City with confirmation, to the satisfaction of the Director of Legal Services, that the legal and beneficial title of the parcel on which the social housing units are located is owned by the Ashley Mar Housing Co-operative.*
- (j) *Such other terms and conditions as the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services may in their sole discretion require.*

Note to Applicant: This condition will be secured by a covenant pursuant to Section 219 of the Land Title Act and a Housing Agreement to be entered into by the City by by-law enacted pursuant to section 565.2 of the Vancouver Charter."

(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) **"Building Permit"** means a building permit issued by the City authorizing construction of any Building on the Lands, or any portion of the Lands, at any time following the date this Agreement is fully executed by the parties;
- (c) **"City"** and **"City of Vancouver"** are defined in Recital A(ii);
- (d) **"City Manager"** means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (e) **"City Personnel"** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) **"Commencement Date"** means the date as of which this Agreement has been submitted to the Land Title Office;
- (g) **"Cooperative Association Act"** means the *Cooperative Association Act*, S.B.C. 1999 c.28, and amendments thereto and re-enactments thereof;
- (h) **"Declaration of Income and Assets"** means a declaration to be completed as evidence of the income and assets of each New Occupant including proof the total monetary income and current value of assets from all sources of each person with income and assets in the unit and signed by all New Occupants aged 19 years or older living in a Social Housing Unit;
- (i) **"Development"** means the development on the Lands described in Recital C as contemplated by the Rezoning;
- (j) **"Development Permit"** means a development permit issued by the City authorizing development on the Lands or any portion of the Lands as contemplated by the Rezoning at any time following the date this Agreement is fully executed by the parties;
- (k) **"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;

- (l) **"Dwelling Unit"** has the meaning set out in the City's Zoning and Development By-law No. 3575, as amended or replaced from time to time;
- (m) **"Existing Building"** means the buildings and improvements located on the Lands as of the date of the Public Hearing and which buildings and improvements are intended to be demolished and redeveloped as contemplated in the Rezoning;
- (n) **"General Manager of Planning, Urban Design and Sustainability"** means the chief administrator from time to time of the Planning, Urban Design and Sustainability Department of the City and his/her successors in function and their respective nominees;
- (o) **"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 approved by the General Manager of Planning, Urban Design and Sustainability);
- (p) **"Independent Audit Report"** means a written report prepared by an auditing firm, as approved by the City, containing, *inter alia*, the following in respect of the preceding fiscal year of the Owner:
 - (i) a report on the housing charges and household income with respect to the Social Housing Units, including a list of housing charges for each Social Housing Unit, aggregate household incomes for each Social Housing Unit and information regarding any vacant Social Housing Units;
 - (ii) a report on annual revenue and annual expenses of the Owner; and
 - (iii) the financial statements of the Owner (including information on the Capital Reserve and Operating Reserve);
 - (iv) the amount of any Operating Surpluses (net of any requirements for contributions to Capital Reserve and Operating Reserve)
- (q) **"Land Title Act"** means the Land Title Act, R.S.B.C. 1996, c. 250, and amendments thereto and re-enactments thereof;
- (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) **"Middle Income Limit" or "MIL"** means:

- (i) for Social Housing Units with less than two (2) bedrooms, a gross household income that does not exceed the 75th income percentile for couples without children in British Columbia; and,
- (ii) for Social Housing Units with two (2) or more bedrooms, a gross household income that does not exceed the 75th income percentile for families with children in British Columbia,

as determined annually by the British Columbia Housing Management Commission or its successors in function from time to time, except if the foregoing is no longer determined by the British Columbia Housing Management Commission as aforesaid, then such other similar metric, as approved by the General Manager of Planning, Urban Design and Sustainability

(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;

(v) **"New Occupants"** means any occupants of the Social Housing Units who are not Returning Occupants;

(w) **"Occupancy Permit"** means a permit issued by the City authorizing the use and occupation of any New Building, development or partial development on the Lands;

(x) **"Operating Budget"** means a reasonable estimate of revenues and expenditures of the Owner for the upcoming fiscal year and will consist of, *inter alia*, the following:

- (i) operating, maintenance and repair costs for the New Building and the Lands and any other expenses of a nature typically incurred by prudent owners of properties similar to the New Building;
- (ii) all real property, sewer, municipal and other property taxes, rates, levies, duties and assessments whatsoever (including local improvement rates and assessments) whether general or special, of any nature whatsoever, including school and local improvement taxes and rates, levied or assessed by any lawful authority in respect of the Lands;
- (iii) insurance costs for the insurance carried over the New Building and the Lands, against the risks and hazards typically covered by policies by prudent owners of properties similar to the New Building;

- (iv) a management fee not to exceed 3.5% of the New Building's estimated revenue;
- (v) a contribution to the Capital Reserve equal to the greater of three percent (3%) of the New Building's estimated revenue, and such other amount as required by the Owner's lender;
- (vi) membership costs typically associated with membership in the Owner, including educational and committee activities and meetings;
- (vii) balance of Capital Reserves and Operating Reserves and the allocations to each, respectively;
- (viii) housing charge reductions provided to occupants of the Social Housing Units (calculated based on twenty percent of Social Housing Units in the New Building receiving a seventy percent housing charge reduction); and
- (ix) balance of subsidy pool for the housing charge reductions referred to in Section 1.1(x)(viii), after allocations of such reductions;
- (y) "Operating Reserve" has the meaning ascribed to it in Section 2.1(n)(ii);
- (z) "Operating Surpluses" has the meaning ascribed to it in Section 2.1(n);
- (aa) "Owner" means the Transferor, Ashley Mar Housing Co-operative, and any successors in title to the Lands or a portion of the Lands;
- (bb) "Permit" means any Development Permit or Building Permit or Occupancy Permit applied for in respect of any Building to be constructed on the Lands, or any portion thereof, following the execution of this Agreement;
- (cc) "Public Hearing" has the meaning ascribed to it in Recital C;
- (dd) "Related Person" means, where the registered or beneficial owner of the Social 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;

- (ee) **"Rental Housing"** means a Dwelling Unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public (subject to Article 2), at arm's length, for use as rental accommodation or non-profit co-operative housing 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 (if used for rental accommodation) or reasonably prudent non-profit co-operative occupant practices for non-profit co-operative housing accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (ff) **"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;
- (gg) **"Returning Occupant"** means a former occupant of a unit in the Existing Building who has remained a member of the Owner and has agreed to enter into an agreement for occupancy of a Social Housing Unit;
- (hh) **"Rezoning"** means the rezoning of the Lands as described in Recital C;
- (ii) **"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;
- (jj) **"Social Housing Condition"** has the meaning ascribed to that term in Recital C;
- (kk) **"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;
- (ll) **"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; and

- (ii) 60 years from the date when the final Occupancy Permit is issued for the New Building; and
- (mm) “**Vancouver Charter**” means the Vancouver Charter S.B.C. 1953, c. 55, and amendments thereto and re-enactments thereof.

1.2 Interpretation. In this Agreement:

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

ARTICLE 2
RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) it will design, construct, equip and finish within the New Building 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 the 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 and the New Building are pursuant to this Agreement;
- (c) throughout the Term the New Building will be used only in a manner that ensures its continued compliance with the definition of Social Housing;
- (d) throughout the Term:
 - (i) not less than 85% of the Social Housing Units will be:
 - A. occupied only by households with incomes below the then current applicable HIL; and
 - B. each rented at a rate (or permitted to be occupied pursuant to the *Cooperative Association Act* at an occupancy charge) no higher than 30% of the aggregate household income of the members of the household occupying such Social Housing Unit; and,

provided that if the aggregate income of the occupants of one of the above noted Social Housing Units increases, resulting in the income exceeding the then current applicable HIL, the Owner will ensure that the next occupants of a vacant Social Housing Unit will have an aggregate household income below the then current applicable HIL; and
 - (ii) up to a maximum of 15% of the Social Housing Units will be:
 - A. occupied only by households with incomes below the then current applicable MIL; and

- B. each rented at a rate (or permitted to be occupied pursuant to the *Cooperative Association Act* at an occupancy charge) no higher than 30% of the aggregate household income of the members of the household occupying such Social Housing Unit and,

provided that if the aggregate income of the occupants of one of the above noted Social Housing Units increases, resulting in the income exceeding the then current applicable MIL, the Owner will ensure that the next occupants of a vacant Social Housing Unit will have an aggregate household income below the then current applicable MIL;

if the Owner is not able to comply with the requirement set out in Section 2.1(d)(i) and/or (ii), for a period exceeding two consecutive years due to limited turnover in occupancy of the Social Housing Units, without derogating from such requirement and without prejudice to any of the City's rights hereunder, the Owner will work in good faith with the City to formulate and implement a plan to remedy its non-compliance;

- (e) throughout the Term, the Social Housing Units will only be used for the purpose of providing Social Housing;
- (f) throughout the Term, except by way of an occupancy pursuant to the *Cooperative Association Act*, it will not suffer, cause or permit, beneficial or registered title to any Social Housing Unit to be sold or otherwise transferred unless:
 - (i) every Social Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner; and
 - (ii) the 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 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;
- (h) throughout the Term, any sale or other transfer of title to a Social Housing Unit 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, the Social Housing Units will only be rented or will have an occupancy tenure on a month-to-month or longer basis and in no case for less than one month;

- (j) throughout the Term, the Social Housing Units will only be legally and beneficially owned by a non-profit corporation, a non-profit co-operative association or by or on behalf of the City, the Province of British Columbia or Canada as a single legal entity;
- (k) 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;
- (l) with respect to determining the rent or occupancy charges for the Social Housing Units:
 - (i) subject to this Agreement, the rent or occupancy charges for the Social Housing Units will be established by the Owner at its general meeting and will be set at rates sufficient to provide for an Operating Budget for the New Building at a minimum of 1.1 debt coverage ratio;
 - (ii) members of the Owner may be eligible for an occupancy charge reduction in accordance with the Owner's *Subsidy Policy Qualifications & Procedures*;
 - (iii) income ranges or banding for Returning Occupants not receiving a rent or an occupancy charge reduction will be reported using the Canada Revenue Agency Notice of Assessments or a declaration of income and assets for each such Returning Occupant and all adult household members living in a Social Housing Unit with such Returning Occupant, and the Owner will provide a written report to the General Manager of Planning, Urban Design and Sustainability prior to or within a reasonable time following the issuance of an Occupancy Permit for the New Building;
 - (iv) for New Occupants, the Owner will establish policies and procedures for establishing its rental rates or occupancy charges and for income calculations for determining a potential occupant's eligibility to rent or occupy a Social Housing Unit, which policies and procedures will be submitted by the Owner to the General Manager of Planning, Urban Design and Sustainability for review and approval prior to their implementation;
 - (v) the Owner will require that all New Occupants of the Social Housing Unit will submit to the Owner a Declaration of Income and Assets on an annual basis, which will be used to determine such resident's housing charge, in accordance with Section 2.1(d);
- (m) with respect to the operation and maintenance of the New Building, the Owner will, as a reasonable and prudent owner:
 - (i) plan and carry out the property management, maintenance and capital replacement of the New Building in an effective and efficient manner

and in that regard, it will keep and maintain the Lands and the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition. If the Lands or the New Building or any part thereof is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred;

- (ii) ensure financial viability and sustainability of the New Building by ensuring adequate income/funds are allocated to meet the costs of operation, maintenance, repair and replacement over the life of the New Building;
 - (iii) ensure appropriate staffing and resourcing of the New Building;
 - (iv) maintain a capital replacement reserve (the “**Capital Reserve**”) that is adequately funded from the Operating Budget (such that it does not rely on government funding); and
 - (v) prepare, implement and comply with a capital asset plan for the Building, which plan will include provisions for, inter alia, the foregoing items listed in Sections 2.1(m)(i) to 2.1(m)(iv);
- (n) with respect to any of the Owner’s operating surpluses (the “**Operating Surpluses**”), being the surplus operating income remaining after payment of all operating expenses, the Owner will allocate such Operating Surpluses as follows:
- (i) to ensure the Capital Reserve is funded in accordance with Section 2.1(m)(iv);
 - (ii) to build up an operating reserve (the “**Operating Reserve**”) up to a maximum of one year’s Operating Budget for the New Building;
 - (iii) to maintain and enhance affordability of the Social Housing Units throughout the life of the New Building, by increasing the percentage of Social Housing Units rented in accordance with Sections 2.1(d)(i)A and 2.1(d)(i)B above;
 - (iv) to contribute to the Capital Reserve to prepare for the end of the useful life of the New Building up to and including the cost of full capital replacement of the New Building;
 - (v) to pay down any loan secured against the Lands early and/or over and above the regularly scheduled payment amounts under an amortization schedule; and
 - (vi) to increase or expand affordable co-op housing by buying or operating co-op housing units in other buildings in the City of Vancouver;

provided that if the Operating Surpluses exceed those reasonably determined by the Owner (in consultation with the General Manager of Planning, Urban Design and Sustainability) to be needed to fund the items referred to in this Section 2.1(n), the Owner, at the direction of the General Manager of Planning, Urban Design and Sustainability, will invest the Operating Surpluses towards:

- (vii) the Owner or a non-profit organization affiliated with the Owner for the purpose of creating or acquiring net new, affordable housing within the City of Vancouver; and
- (viii) deepening levels of affordability of other non-market buildings in the City of Vancouver;
- (o) with respect to the Owner's selection process for occupants of the Social Housing Units:
 - (i) the Owner will offer a right of first refusal of the Social Housing Units to former occupants of the units in the Existing Building who have remained members of the Owner; and
 - (ii) the Owner will select New Occupants of the Social Housing Units based on its membership selection criteria, provided that such New Occupants are selected through a transparent selection process and by way of:
 - A. the BC Housing Registry, being the centralized registry of persons interested in applying for occupancy in social or co-operative housing, maintained by the British Columbia Housing Management Commission; or
 - B. a plan for occupant selection that has been approved by the General Manager of Planning, Urban Design and Sustainability, which plan may include co-ordination by the Owner with other non-profit co-operative associations, non-profit housing providers and/or other community organizations in Vancouver if there are no longer any candidates on the Owner's then current waitlist that meet the occupancy criteria under this Agreement,
- (p) with respect to the occupancy of the Social Housing Units:
 - (i) for any Returning Occupants, the Owner will arrange for such Returning Occupant to occupy a Social Housing Unit appropriate to their household size (based on the guidelines in Section 2.1(p)(iii) below), provided that a maximum of six (6) two-bedroom Social Housing Units may be occupied by single Returning Occupants;
 - (ii) for any New Occupants of the Social Housing Units, the Owner will place such New Occupants in a Social Housing Unit appropriate to their household size and in accordance with the National Occupancy Standard developed by the Canada Mortgage and housing Corporation; and

- (iii) in determining the appropriateness of a Social Housing Unit in relation to the household size, the Owner will apply the following guidelines:
 - A. no more than two and no less than one person per bedroom;
 - B. spouses and couples are deemed to share a bedroom;
 - C. parents do not share a bedroom with their children; and
 - D. dependents aged 18 or over do not share a bedroom with anyone else.

If the Owner is not able to comply the requirements set out in Section 2.1(p), with respect to the occupancy requirements of the Social Housing Units, for a period exceeding two consecutive years, without derogating from such requirement and without prejudice to any of the City's rights hereunder, the Owner will work in good faith with the City to formulate and implement a plan to remedy its non-compliance.

ARTICLE 3 DEVELOPMENT 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 Owner will not construct, nor permit to be constructed any Building on the Lands or any portion of the Lands;
- (b) the Owner will not apply for any Permit other than the Development Permit and the Building Permit;
- (c) the Owner will take no action nor cause any direct or indirect action to be taken to compel the issuance of any Permit; and
- (d) the City will not be under any obligation to issue any Permit;

until such time as the Owner has delivered, to the General Manager of Planning, Urban Design and Sustainability, in form and substance satisfactory to the General Manager of Planning, Urban Design and Sustainability, an interim rent roll confirming the rents (or occupancy charges) to be charged to the first occupants of the Social Housing Units following issuance of the Occupancy Permit, the unit type mix and size, which rents, unit type mix and size will comply with those applicable to the Social Housing Units.

- 3.2 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 for the New Building until there is compliance with the provisions of this ARTICLE 3.

ARTICLE 4
OCCUPANCY RESTRICTION ON THE LANDS

- 4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the 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 Planning, Urban Design and Sustainability, in form and substance satisfactory to the General Manager of Planning, Urban Design and Sustainability:
 - (i) proof of the insurance, consistent with the requirements of Section 2.1(k), is in force and effect;
 - (ii) confirmation satisfactory to the Director of Legal Services, that the legal and beneficial ownership of the Lands complies with the definition of "Social Housing" herein; and
 - (iii) a final rent roll confirming the rents to be charged (or occupancy charges if occupancy of the Social Housing Unit is pursuant to the *Cooperative Association Act*) to the first occupants of the Social Housing Units following issuance of the Occupancy Permit, the unit type mix and size, which rents (or occupancy charges), unit type mix and size will comply with those applicable to the Social Housing Units; 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 for the New Building until there is compliance with the provisions of this ARTICLE 4.

ARTICLE 5
RECORD KEEPING AND REPORTING

- 5.1 The Owner will keep accurate records pertaining to the use and occupancy of the Social Housing Units by New Occupants, including a declaration completed by the New Occupants of each Social Housing Unit on an annual basis and immediately prior to the initial occupancy of a Social Housing Unit by such New Occupant, of the aggregate income and assets of the New Occupant and his or her household. Such records will be to the satisfaction of the City. At the request of the City, the Owner will make such records available for inspection and copying by the City.

- 5.2 Annually, and not less than ninety (90) days after the end of the fiscal year of the Owner, the Owner will submit to the City:
- (a) the Independent Audit Report; and
 - (b) the Operating Budget.
- 5.3 At the request of the City, and from time to time at certain time intervals to be determined by the City and the Owner, the Owner will provide to the City a report on its capital maintenance plans and building condition assessments of the New Building.
- 5.4 The City will comply with the Owner's statutory obligations with respect to privacy of such information in the foregoing records and reports.

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) will not make any claims against the City or City Personnel and releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner in connection with this Agreement, including without limitation:
 - (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. performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement;
 - C. withholding any permit pursuant to this Agreement; or
 - D. 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, except in each case to the extent that such Losses are attributable to the wrongful intentional acts or gross negligence 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 or which could not have been sustained "but for" any of the following:
 - (i) this Agreement;
 - (ii) the release by the City or any or all of the City's rights under this Agreement or the loss of any rights purported to be granted hereby;
 - (iii) 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;
 - C. performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement; or
 - D. exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement;
 - (iv) 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
 - (v) any default in the due observance and performance of the obligations and responsibilities of the Owner under 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, except in each case to the extent that such Losses are attributable to the wrongful intentional acts or gross negligence of the City or the City Personnel.

The indemnities in this ARTICLE 7 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

7.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel,

then the City will give notice of such claim to the Owner and, subject to Section 7.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.

- (b) Section 7.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 7.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 7.2(b); and

- (c) Regardless of whether the claim is being defended under Section 7.2(a) or Section 7.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

- 7.3 Survival of Release and Indemnities. The release and indemnities in this Article 5 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 8 NOTICES

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

- (a) If to the City:

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

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

(b) If to the Owner:

Ashely Mar Housing Co-operative
c/o Koffman Kalef LLP
1900 - 885 West Georgia Street
Vancouver, BC
V6C 3H4

Attention: Pat Julian

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

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

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

ARTICLE 9 MISCELLANEOUS

- 9.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated. 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.
- 9.2 Agreement to be a First Charge. The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as

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

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
- (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

- 9.3 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 9.4 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 9.5 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 9.6 Further Assurances. The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 9.7 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.

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

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

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

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority Agreement:

- (a) **"Existing Charges"** means the Mortgage registered under number CA6548722;
- (b) **"Existing Chargeholder"** means INTRACORP ASH STREET (NOMINEE) LTD.;
- (c) **"New Charges"** means the Section 219 Covenants contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT