

## EXPLANATION

**Authorization to enter into a Housing Agreement  
Re: 1332 Thurlow Street and 1065 Harwood Street**

After a public hearing held on June 21, 2022, Council approved in principle the land owner's application to rezone the above noted property from RM-5A (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 land owner intends to seek a waiver of the development cost levies for this development, pursuant to the *Vancouver Development Cost Levy* By-law No. 9755 (the "**DCL By-law**") by securing all of the residential dwelling units in the new development for use as "for-profit affordable rental housing". The terms of the Housing Agreement provide, among other things, that the initial rents for 30% of the units being reserved as "below market housing" will be rented at or below an amount that is 50% below the average market rent applicable to the respective unit type for Zone 2 according to the CMHC Rental Market Survey and the remaining units being reserved as "below market housing" will be rented at or below an amount that is 20% below the average market rent applicable to the respective unit type for Zone 2. The foregoing is consistent with the requirements for for-profit affordable rental housing under Section 3.1A(d) of the DCL By-law, effective as of the date hereof and replaces the rental requirements for the units being reserved as "below market housing" described in Rezoning Condition 2.10 for the rezoning of the development property, which were consistent with the DCL By-law prior to its amendment on September 30, 2022.

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  
November 15, 2022

**BY-LAW NO.**

**A By-law to enact a Housing Agreement  
for 1332 Thurlow Street and 1065 Harwood 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:

007-679-033  
004-712-455

Lot 10 Block 12 District Lot 185 Plan 92  
Lot 11 Block 12 District Lot 185 Plan 92

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

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





Land Title Act  
**Charge**  
General Instrument – Part 1

1. Application

Christy Jordaan, Paralegal, BOSA PROPERTIES INC.  
1201 - 838 West Hastings Street  
Vancouver BC V6C 0A6  
604.299.1363

HARWOOD | Housing Agreement 1332 Thurlow

2. Description of Land

PID/Plan Number	Legal Description
007-679-033	LOT 10 BLOCK 12 DISTRICT LOT 185 PLAN 92
004-712-455	LOT 11 BLOCK 12 DISTRICT LOT 185 PLAN 92

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 Covenant
PRIORITY AGREEMENT		Granting the above Covenant herein priority over Mortgage CA4800641 and Assignment of Rents CA4800642

4. Terms

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

5. Transferor(s)

BOSA4RENT 1332 THURLOW INC., NO.BC1049031  
HSBC BANK CANADA, 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 / Transferee / Party Signature(s)

  
**ANNA POGOSJAN**  
*Barrister & Solicitor*  
**#1100 - 838 WEST HASTINGS STREET**  
**VANCOUVER, B.C. V6C 0A6**  
**TEL: 604.299.1363**

YYYY-MM-DD  
**2022-11-04**

**BOSA4RENT 1332 THURLOW INC.**  
By their Authorized Signatory

  
PRINT NAME: **DALE ROSA**

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

**HSBC BANK CANADA**  
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

Witnessing Officer Signature

\_\_\_\_\_

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

**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 RENTAL AND BELOW MARKET RENTAL HOUSING

1332 THURLOW STREET AND 1065 HARWOOD STREET

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
  - (i) the Transferor, BOSA4RENT 1332 THURLOW INC., is called the "**Owner**", as more particularly defined in Section 1.1; and
  - (ii) the Transferee, City of Vancouver, is called the "**City**" or the "**City of Vancouver**" when referring to corporate entity continued under the *Vancouver Charter*, and "**Vancouver**" when referring to geographic location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands (the "**Rezoning Application**") from RM-5A (Residential) District to CD-1 (Comprehensive Development) District, and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, among other things, fulfilment of the condition that, prior to enactment of the rezoning by-law (upon enactment, the "**Rezoning By-law**"), the Owner make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services to enter into a Housing Agreement by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter* securing all of the residential units as secured rental housing units with at least 20 percent of the residential floor areas counted in the calculation of the floor space ratio secured as Below Market Rental Housing Units, pursuant to Section 3.1A of the Vancouver DCL Bylaw, for the longer of 60 years and life of the New Building, and subject to other conditions set forth in the minutes of the public hearing (collectively, the "**Housing Condition**"); and
- D. The Owner is entering into this Agreement to satisfy the Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, in satisfaction of the requirements of Section 3.1A of the Vancouver DCL Bylaw 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) **"Approving Officer"** means the person appointed pursuant to the provisions of the Land Title Act as the approving officer for land within the City of Vancouver and includes the deputy to the Approving Officer and any employee of the City acting, or who has acted, as the nominee, delegate or agent of that person;
- (c) **"Below Market Rental Housing"** means a portion of the For-Profit Affordable Rental Housing in a building that is comprised of at least 20% of the residential floor area that is counted in the calculation of the Floor Space Ratio that includes the Dwelling Units with rents per unit type that meet the requirements of Section 2.1(p) of this Agreement, are made available for rent only to Eligible Persons in accordance with this Agreement and is operated in accordance with the Criteria for 100% Secured Rental and Below-Market Housing as an Alternative to Inclusionary Social Housing in the Burrard Corridor of the West End Community Plan;
- (d) **"Below Market Rental Housing Air Space Parcel"** means the air space parcel that will, following the Subdivision, contain all or substantially all of the Below Market Rental Housing Units;
- (e) **"Below Market Rental Housing Rent Roll"** means a rent roll report providing information regarding each of the Below Market Rental Housing Units, including the unit number, unit type, unit size and rent;
- (f) **"Below Market Rental Housing Report"** means a notarized annual report prepared by the Owner and delivered to the City providing information regarding each of the Below Market Rental Housing Units, including but not limited to the following:
  - (i) unit number for the Below Market Rental Housing Unit;
  - (ii) monthly rent rate;
  - (iii) aggregate household Income of the Occupants, based on the most current information available to the Owner pursuant to Section 2.1(g);
  - (iv) number of Occupants residing therein;
  - (v) number of bedrooms contained therein;
  - (vi) length of occupancy of the current Tenant; and
  - (vii) the results of the verification conducted by the Owner pursuant to Section 2.1(g); and

such report shall not include the names or information of any Tenants or Occupants and shall otherwise be satisfactory to the General Manager of Planning, Urban Design and Sustainability in form and substance;
- (g) **"Below Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Below Market Rental Housing Unit"** means any one of such units;
- (h) **"Building Permit"** means any building permit issued by the City authorizing the

building of a New Building as contemplated by the Rezoning By-law and the Development Permit;

- (i) **"City"** and **"City of Vancouver"** have the meaning ascribed to those terms in Recital A(ii);
- (j) **"City Manager"** means the chief administrator from time to time of the City and his or her successors in function and their respective nominees;
- (k) **"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;
- (l) **"CMHC Rental Market Survey"** means the then current annual Rental Market Survey conducted by the Canada Mortgage and Housing Corporation, or if such Rental Market Survey is not available or has ceased publication, a comparable alternative publication published by a successor in function to the Canada Mortgage and Housing Corporation as approved by the General Manager of Planning, Urban Design and Sustainability;
- (m) **"Criteria for 100% Secured Rental and Below-Market Housing as an Alternative to Inclusionary Social Housing in the Burrard Corridor of the West End Community Plan"** means the Criteria for 100% Secured Rental and Below-Market Housing as an Alternative to Inclusionary Social Housing in the Burrard Corridor of the West End Community Plan approved by City Council on November 24, 2020;
- (n) **"Development Permit"** means any development permit issued by the City authorizing the development of the Lands contemplated by the Rezoning By-law;
- (o) **"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;
- (p) **"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;
- (q) **"Effective Date"** means the date as of which this Agreement has been executed by all parties to it;
- (r) **"Eligible Person"** means a person who:
  - (i) at the beginning of such person's tenancy of a Below Market Rental Housing Unit, together with all other Occupants of such Below Market Rental Housing Unit, have an aggregate annual household Income that is less than or equal to four (4) times the annual rent of such Below Market Rental Housing Unit;
  - (ii) thereafter throughout such person's tenancy of a Below Market Rental Housing Unit, together with all other Occupants of such Below Market Rental Housing Unit, have an aggregate annual household Income that is less than or equal to five (5) times the annual rent of such Below Market Rental Housing Unit; and

- (iii) throughout such person's tenancy of a Below Market Rental Housing Unit, will:
  - (A) not permit such Below Market Rental Housing Unit to be occupied by a person or persons other than those persons identified in the Tenancy Agreement for more than 60 consecutive days or more than 90 days in total in any calendar year, without the prior written consent of the Owner;
  - (B) not permit such Below Market Rental Housing Unit to be occupied by a total number of Occupants less than the total number of bedrooms therein;
  - (C) occupy such Below Market Rental Housing Unit as his or her Principal Residence and not permit any Occupant to occupy such Below Market Rental Housing Unit unless such Below Market Rental Housing Unit is the Occupant's Principal Residence;
  - (D) not permit such Below Market Rental Housing Unit to be vacant for a period of six months or longer, cumulatively within a calendar year, without the prior written consent of the Owner; and
  - (E) not sublet such Below Market Rental Housing Unit or assign the Tenancy Agreement in whole or in part;
- (s) **"Floor Space Ratio"** means the figure obtained when the area of the floors of the New Building is divided by the area of the Lands;
- (t) **"For-Profit Affordable Rental Housing"** means multiple Dwelling Units within a building for use as Rental Housing which meets the requirements of Section 3.1A of the Vancouver DCL By-law to be "for-profit affordable rental housing" (as defined therein);
- (u) **"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;
- (v) **"General Manager of Planning, Urban Design and Sustainability"** means the person appointed from time to time as the City's General Manager of Planning, Urban Design and Sustainability and his/her successors in function and delegates and their respective nominees;
- (w) **"Income"** of an Occupant means the total annual world-wide income before income tax from all sources of the Occupant and includes without limitation, the following income sources:
  - (i) income assistance;
  - (ii) employment, including regular overtime, vacation pay and gratuities;

- (iii) self-employment, including commission sales;
- (iv) seasonal employment;
- (v) Employment Insurance and WorkSafe BC insurance;
- (vi) training allowances;
- (vii) income from the Resettlement Assistance Program;
- (viii) child support, maintenance payments or support from family/friends/community;
- (ix) rental income from real estate or dividends from stocks or bonds, if the real monthly income is greater than the imputed income from the Asset; and
- (x) pension incomes including:
  - (A) old Age Security, Guaranteed Income Supplement, Allowance, and Allowance for the Survivor (formerly Spousal Allowance);
  - (B) senior's supplement;
  - (C) private pension plans including Registered Retirement Income Funds;
  - (D) Canada Pension Plan, including retirement, disability, orphans, widows, disability for child, etc.
  - (E) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada (included for calculations with an effective date prior to January, 2013); and
  - (F) foreign pensions,

but does not include:

- (xi) earnings of dependent children aged 18 and under (regardless of student status);
- (xii) student loans, equalization payments, student grants and scholarships;
- (xiii) taxable benefits, including living out or travel allowances, medical coverage, uniform allowance, etc.;
- (xiv) Shelter Aid for Elderly Renters and Rental Assistance Program payments;
- (xv) Canada Child Tax Benefits, including the National Child Benefit Supplement, Child Disability Benefit, BC Family Bonus, and BC Earned Income Benefit;
- (xvi) Universal Child Care Benefits;



- (xvii) BC Childcare Subsidy;
- (xviii) income from foster parenting;
- (xix) Child in Home of Relative and Extended Family Program;
- (xx) income from approved live-in care givers;
- (xxi) GST and Income Tax rebates; and
- (xxii) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada;
- (x) "**Land Title Act**" means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (y) "**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;
- (z) "**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;
- (aa) "**New Building**" means any new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;
- (bb) "**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;
- (cc) "**Occupants**" means persons for whom a For-Profit Affordable Rental Housing Unit serves as their Principal Residence and an "**Occupant**" means any one of them, as the context requires;
- (dd) "**Owner**" means the registered owner of the Lands as of the Effective Date, namely, **BOSA4RENT 1332 THURLOW INC.**, and its successors and assigns;
- (ee) "**Personal Information Protection Act**" means the *Personal Information Protection Act*, S.B.C. 2003, c.63, and all amendments thereto and re-enactments thereof;
- (ff) "**Principal Residence**" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes,

including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this agreement, a person may only have one principal residence;

- (gg) **"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;
- (hh) **"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;
- (ii) **"Replacement For-Profit Affordable Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Replacement For-Profit Affordable Rental Housing Unit"** means one such unit;
- (jj) **"Replacement Below Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Replacement Below Market Rental Housing Unit"** means one such unit;
- (kk) **"Residential Tenancy Act"** means the *Residential Tenancy Act* S.B.C. 2002, c. 78 and all amendments thereto and re-enactments thereof;
- (ll) **"Residential Tenancy Regulation"** means the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 and all amendments thereto and re-enactments thereof;
- (mm) **"Rezoning Application"** has the meaning ascribed to that term in Recital C;
- (nn) **"Rezoning By-law"** has the meaning ascribed to that term in Recital C;
- (oo) **"Statement of Below Market Rental Housing Unit Eligibility"** means a notarized statement, prepared by the Owner and delivered to the City, that states the following in respect of a Below Market Rental Housing Unit:

- (i) confirmation that, to the best of the Owner's knowledge based on the most current information available to the Owner pursuant to Section 2.1(g), the Tenant of such Below Market Rental Housing Unit is an Eligible Person;
- (ii) description of all of the actions and procedures that the Owner has undertaken to verify that the Tenant of such Below Market Rental Housing Unit is an Eligible Person; and
- (iii) such other information regarding such Below Market Rental Housing Unit and its Occupants as the General Manager of Planning, Urban Design and Sustainability may otherwise require;

provided that such statement shall not include the names or information of any Tenants or Occupants and shall otherwise be satisfactory to the General Manager of Planning, Urban Design and Sustainability in form and substance;

- (pp) "**Subdivision**" means the subdivision of the Lands by the deposit of an air space subdivision plan to enable all or substantially all of the Below Market Rental Housing Units to be contained within the Below Market Rental Housing Air Space Parcel;
- (qq) "**Tenancy Agreement**" means a residential tenancy agreement, lease, licence or other agreement prepared in accordance with the *Residential Tenancy Act*, granting rights to occupy a Below Market Rental Housing Unit;
- (rr) "**Tenant**" means an Eligible Person who is a tenant of a Below Market Rental Housing Unit by way of a Tenancy Agreement;
- (ss) "**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;
- (tt) "**Vancouver**" has the meaning ascribed to that term in Recital A(ii);
- (uu) "**Vancouver Charter**" means the *Vancouver Charter* S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof; and
- (vv) "**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.
- (f) Legislation. Any reference to a statute or by-law includes and is a reference to such statute or by-law and to the regulations made pursuant thereto in force on the Effective Date, with all amendments made thereto and as in force from time to time, and to any statute, by-law and regulations that may be passed which have the effect of supplementing or superseding such statutes, by-laws and regulations.
- (g) Time. Time will be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time will be local Vancouver, British Columbia time.

## ARTICLE 2 RESTRICTIONS ON USE OF LANDS AND SUBDIVISION

- 2.1 The Owner covenants and agrees with the City, in respect of the use of the Lands and the construction and use of the New Building, that throughout the Term:
  - (a) the Lands, the New Building and the For-Profit Affordable Rental Housing Units (including the Below Market Rental Housing Units) will not be used in any way that is inconsistent with the terms of this Agreement;
  - (b) at its sole cost and expense, it will construct, fit and finish the New Building, the For-Profit Affordable Rental Housing Units (including the Below Market Rental Housing Units) any amenities and parking spaces, in accordance with this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
  - (c) all of the 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**"), provided that the For-Profit Affordable Rental Housing Units

comprising not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below Market Rental Housing (the "**Below Market Rental Housing Units**"), all in accordance with the terms of this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building, then, it will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired or replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than the same number and type of replacement Dwelling Units as the New Building formerly contained, which replacement Dwelling Units during the remainder of the Term, will also be used only for the purpose of providing For-Profit Affordable Rental Housing (such replacement Dwelling Units hereinafter referred to as a "**Replacement For-Profit Affordable Rental Housing Units**") including Below Market Rental Housing (such replacement Dwelling Units hereinafter referred to as a "**Replacement Below Market Rental Housing Units**"), in the same percentages as set out in this Section and in accordance with the terms of this Agreement and the applicable by-laws of the City and such Replacement For-Profit Affordable Rental Housing Units (including Replacement Below Market Rental Housing Units) will be subject, for the remaining duration of the Term, to the same use restrictions, respectively, as the For-Profit Affordable Rental Housing Units, including the Below Market Rental Housing Units, are pursuant to this Agreement;

- (d) not less than:
  - (i) 35% of the For-Profit Affordable Rental Housing Units; and
  - (ii) 35% of the Below Market Rental Housing Units;
 will have two or more bedrooms;
- (e) each of the Below Market Rental Housing Units shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Eligible Person and except in accordance with the following conditions:
  - (i) each Below Market Rental Housing Unit shall be rented only pursuant to a Tenancy Agreement, which Tenancy Agreement shall include a copy of this Agreement;
  - (ii) each Below Market Rental Housing Unit shall be rented for a monthly rent not exceeding the rent permitted to that type of Below Market Rental Housing Unit, as described in Section 2.1(p);
  - (iii) each Below Market Rental Housing Unit shall be occupied only by an Eligible Person who is occupying such Below Market Rental Housing Unit as his or her Principal Residence and the Principal Residence of such other Occupants of the Eligible Person's household as specified in the Tenancy Agreement between the Owner and the Eligible Person for the rental thereof;

- (iv) each Below Market Rental Housing Unit shall have at least one Occupant per bedroom thereof;
- (v) each Tenancy Agreement shall include:
  - (A) a clause requiring the Tenant and each permitted Occupant of the respective Below Market Rental Housing Unit to comply with this Agreement;
  - (B) the names of all Occupants of the respective Below Market Rental Housing Unit;
  - (C) a term that is either on a month-to-month basis or for a fixed term of less than six (6) months;
  - (D) one or more clauses providing that the Tenant acknowledges and agrees that, among other terms, the following are material terms of the Tenancy Agreement:
    - I. the Tenant is and remains an Eligible Person at all times during the term of the Tenancy Agreement;
    - II. any person not identified in the Tenancy Agreement as a Tenant or Occupant shall not reside at the Below Market Rental Housing Unit for more than 60 consecutive days or more than 90 days total in any calendar year, unless the Tenant receives prior written consent from the Owner;
    - III. the Below Market Rental Housing Unit will have at least one Occupant per bedroom thereof;
    - IV. the Below Market Rental Housing Unit will not be vacant for six months or longer, cumulatively, within a calendar year, without the prior written consent of the Owner;
    - V. the Below Market Rental Housing Unit will at all times during the term of the Tenancy Agreement be the Principal Residence of the Tenant and the other Occupants in the Tenant's household as specified in the Tenancy Agreement; and
    - VI. the Tenant will not sublease the Below Market Rental Housing Unit or assign the Tenancy Agreement in whole or in part; and
  - (E) a clause:
    - I. wherein the Tenant consents to the collection, use and retention by the Owner and disclosure to the City of information, documentation and evidence described in Section 2.1(g); and

- II. requiring the Tenant to deliver to the Owner the information, documentation and evidence described in Section 2.1(g)(ii) every five (5) years following the date on which the Tenant first occupies the Below Market Rental Housing Unit,

unless otherwise permitted by the General Manager of Planning, Urban Design and Sustainability in his or her sole discretion; and

- (vi) subject to any contrary provisions in the *Residential Tenancy Act*, as determined to be contrary by a ruling or decision of any judicial body having jurisdiction, if the Tenant is in breach of any of the material terms described in Section 2.1(e)(v)(D), the Owner will take all necessary steps to end the tenancy of the Tenant in the respective Below Market Rental Housing Unit, which steps will include:
  - (A) providing the Tenant with a written notice specifying the breach forthwith upon the Owner becoming aware of any breach;
  - (B) providing the Tenant with a reasonable time to remedy the breach after such written notice has been provided;
  - (C) if the Tenant does not remedy the breach within the time specified in Section 2.1(e)(vi)(B), providing the Tenant with a written notice of termination of the Tenancy Agreement that will be effective two (2) months, except in respect of a breach of the material terms specified in Sections 2.1(e)(v)(D)I to 2.1(e)(v)(D)III in which case the termination will be effective six (6) months, following the date that the Owner has delivered such written termination notice to the Tenant; and
  - (D) causing all Occupants of the respective Below Market Rental Housing Unit to vacate the Below Market Rental Housing Unit upon the effective date of termination;
- (f) if the Owner has terminated a Tenancy Agreement for the reasons specified in Sections 2.1(e)(v)(D)I to 2.1(e)(v)(D)III, the Owner shall offer another For-Profit Affordable Rental Housing Unit for rent to the former Tenant, subject to availability of such For-Profit Affordable Rental Housing Unit, and:
  - (i) in the case of a For-Profit Affordable Rental Housing Unit that is not a Below Market Rental Housing Unit, at the then market rents as determined by the Owner in its sole discretion and subject to the Owner's standard tenant qualification screening; and
  - (ii) in the case of another Below Market Rental Housing Unit, eligibility of the former Tenant in respect of such other Below Market Rental Housing Unit;
- (g) in connection with Section 2.1(e), throughout the Term, the Owner shall:

- (i) prior to renting a Below Market Rental Housing Unit to a prospective tenant, or upon the change of any Occupants residing within a Below Market Rental Housing Unit from the Occupants listed in the Tenancy Agreement, verify, by obtaining all information, documentation or evidence necessary or such other information, documentation or evidence that the General Manager of Planning, Urban Design and Sustainability may deem necessary, that such prospective tenant is an Eligible Person and that there will be at least one Occupant per bedroom for such Below Market Rental Housing Unit upon occupancy; and
  - (ii) not less than once every five (5) years after the date on which a Below Market Rental Housing Unit was rented to a Tenant (or sooner in the event of a change in Occupant or a receipt by the Owner of a request of the General Manager of Planning, Urban Design and Sustainability), verify, by all information, documentation or evidence necessary or such other information, documentation or evidence that the General Manager of Planning, Urban Design and Sustainability may deem necessary, that such prospective tenant is an Eligible Person and that such Below Market Rental Housing Unit continues to have at least one Occupant per bedroom;
- (h) the Owner 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;
- (i) except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any For-Profit Affordable Rental Housing Unit to be sold or otherwise transferred unless title to every one of the For-Profit Affordable Rental Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner, as applicable, and subject to Section 11.9;
- (j) the Owner 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;
- (k) any sale of any For-Profit Affordable Rental Housing Unit in contravention of the covenant in Section 2.1(i), 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(j), 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;
- (l) the Owner 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;
- (m) if the New Building or any part thereof, is damaged, it will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state



and condition as existed before such damage occurred reasonable wear and tear excepted;

- (n) the Owner 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;
- (o) the average size of the For-Profit Affordable Rental Housing Units 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 average sizes for townhouse units of two or more storeys with stairways may add 4 square metres to the maximums listed in the above table;

- (p) with respect to the Below Market Rental Housing Units:
  - (i) not less than 30% of the Below Market Rental Housing Units will be rented at rates at or below an amount that is 50% below the average market rent applicable to the respective unit type for Zone 2 (or equivalent zone which includes the location of the Building) according to the CMHC Rental Market Survey:
    - (A) for the initial tenancy, at the time when the Occupancy Permit is issued; and
    - (B) for all subsequent tenancies, at the time when the respective tenancy of a Below Market Rental Housing Unit commences;
  - (ii) the balance of the Below Market Rental Housing Units will be rented at rates at or below an amount that is 20% below the average market rent applicable to the respective unit type for Zone 2 (or equivalent zone which includes the location of the Building) according to the CMHC Rental Market Survey:
    - (A) for the initial tenancy, at the time when the Occupancy Permit is issued; and
    - (B) for all subsequent tenancies, at the time when the respective tenancy of a Below Market Rental Housing Unit commences;

- (iii) the unit numbers, unit type, unit size and rents to be charged by the Owner to the first Tenants of each of the Below Market Rental Housing Units in the New Building following issuance of the Occupancy Permit will be set out in a Below Market Rental Housing Rent Roll and delivered by the Owner to the City for approval by the General Manager of Planning, Urban Design and Sustainability, in his or her sole discretion, prior to the issuance of each of the Development Permit, the Building Permit and the Occupancy Permit;
- (iv) following the issuance of the Occupancy Permit, subject to the terms of this Agreement, including, without limitation, that not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below Market Rental Housing and provided the Owner has received approval in writing from the General Manager of Planning, Urban Design and Sustainability, in his or her sole discretion, if a Below Market Rental Housing Unit is occupied by a Tenant who was formerly an Eligible Person but no longer meets the eligibility requirements therefor, the Owner may substitute and re-assign the designation of such Dwelling Unit as a Below Market Rental Housing Unit to another Dwelling Unit in the New Building, which is the same unit type and is equal to or greater in size to the Dwelling Unit being substituted, on a one-for-one basis, such that the unit type mix and number of Below Market Rental Housing Units in the New Building remain unchanged and the initial rent for the newly assigned Below Market Rental Housing Unit will be the same as the rent for the former Below Market Rental Housing Unit; and
- (v) the Owner shall not increase the rents for any of the Below Market Rental Housing Units during a tenancy, except for annual increases in rent by an amount not to exceed the annual allowable increase in rent permitted under the provisions of the *Residential Tenancy Act* and the *Residential Tenancy Regulation*, which as of the date of this Agreement, are Section 43(1) (a) of the *Residential Tenancy Act* and Section 22 of the *Residential Tenancy Regulation*, respectively (as each such section may be amended or replaced from time to time).

### 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 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 Below Market Rental Housing 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 tenants of the Below Market Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and size,

which rents, unit type mix and size shall comply with those applicable to the Below Market Rental Housing Units in accordance with this Agreement; 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 8, 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 BUILDING 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 Building Permit, and will take no action, directly or indirectly, to compel the issuance of any Building Permit, until such time as the Owner has delivered a Below Market Rental Housing 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 tenants of the Below Market Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and size, which rents, unit type mix and size shall comply with those applicable to the Below Market Rental Housing Units in accordance with this Agreement and the Development Permit; and
  - (ii) the City will be under no obligation to issue any Building Permit until such time as the Owner has complied with Section 4.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 8, 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 Building Permit until there is compliance with the provisions of this ARTICLE 4.

#### ARTICLE 5 OCCUPANCY RESTRICTION ON THE LANDS

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

- (a) the Lands and the New Building will not be used or occupied except as follows:
  - (i) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the General Manager of Planning, Urban Design and Sustainability:

- (A) a Below Market Rental Housing Rent Roll confirming the rents to be charged to the first tenants of the Below Market Rental Housing Units following issuance of the Occupancy Permit and the unit type mix and size, which rents, unit type mix and size shall comply with those applicable to the Below Market Rental Housing Units in accordance with this Agreement and the Development Permit; and
  - (B) proof of the insurance, consistent with the requirements of Section 2.1(n), is in force and effect, in form and substance satisfactory to the City;
- (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 5.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 8, 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 5.

#### ARTICLE 6 RECORD KEEPING

- 6.1 The Owner will keep accurate records pertaining to the use, occupancy and rental rates charged of/for the Below Market Rental Housing Units, such records to be to the satisfaction of the General Manager of Planning, Urban Design and Sustainability. The Owner will:
- (a) on each anniversary of the date of issuance of the first Occupancy Permit for any portion of the New Building or at the request of the City, provide an updated Below Market Rental Housing Report to the General Manager of Planning, Urban Design and Sustainability;
  - (b) within ninety (90) days of:
    - (i) the Owner becoming aware of a change in any Occupant of a Below Market Rental Housing Unit having occurred;
    - (ii) the date that is the fifth anniversary of the date on which a Below Market Rental Housing Unit was rented to a Tenant and every five (5) years thereafter; and
    - (iii) a request of the General Manager of Planning, Urban Design and Sustainability,
- complete and deliver to the City a Statement of Below Market Rental Housing Unit Eligibility in respect of such Below Market Rental Housing Unit;

- (c) at the request of the General Manager of Planning, Urban Design and Sustainability, from time to time:
  - (i) make such records available for audit, inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and
  - (ii) provide evidence of the insurance required to be taken out pursuant to Section 2.1(n); and
- (d) comply with the *Personal Information Protection Act* in collecting, using, retaining and disclosing the information of any person, Tenant or Occupant pursuant to its obligations under this Agreement and any Tenancy Agreement.

#### ARTICLE 7 ENFORCEMENT

- 7.1 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 8 RELEASE AND INDEMNITY

- 8.1 Release and Indemnity. Subject to Section 8.2, 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, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
  - (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel, except to the extent that any such Losses are the result of the wrongful intentional acts by 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 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, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
  - (iii) 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
  - (iv) 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 to the extent that any such Losses are the result of the wrongful intentional acts by the City or the City Personnel.

The indemnities in this Article 6 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

## 8.2 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 8.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.

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

(c) Regardless of whether the claim is being defended under Section 8.2(a) or Section 8.2(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.

8.3 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 9 SUBDIVISION

9.1 Subdivision of the Lands: Notwithstanding Section 2.1(j), 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 the Subdivision to enable, *inter alia*, all or substantially all of the Below Market Rental Housing Units to be contained within the Below Market Rental Housing Air Space Parcel. For greater certainty, following the Subdivision,

the covenants and agreements set forth herein will run with and will bind each of the parcels created by the Subdivision.

#### ARTICLE 10 NOTICES

10.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, will be in writing and will be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:

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

If to the City, addressed to:

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

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

If to the Owner, addressed to:

BOSA4RENT 1332 THURLOW INC.  
1201 - 838 West Hastings Street  
Vancouver, British Columbia  
V6C 0A6

Attention: President

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

#### ARTICLE 11 MISCELLANEOUS

11.1 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. Upon the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof in accordance with the provisions of Section 11.9, 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.

- 11.2 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 His Majesty the King in Right of the Province of British Columbia respecting the Lands;
  - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of any rezoning or any Development Permit; and
  - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 11.3 Application of Residential Tenancy Act to Termination Notice. The City agrees that, in the event the Owner delivers a termination notice to a Tenant pursuant to Section 2.1(e)(vi), and such termination notice is found to be ineffective by a ruling or decision of any judicial body having jurisdiction in connection with the *Residential Tenancy Act*, provided that the termination notice was not found to be ineffective by reason of an error by or the negligence of the Owner, including any error by the Owner in delivering the termination notice in accordance with, or complying with the applicable time limits in, the *Residential Tenancy Act* or *Residential Tenancy Regulation*, the Owner shall not be in breach of its obligation to ensure that:
- (a) not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below Market Rental Housing, as set out in Section 2.1(c) as a result of such termination notice being ineffective and for clarity, the Below Market Rental Housing Unit to which such ineffective termination notice relates shall continue to count towards the aforementioned twenty (20) percent of the residential floor areas, for the remainder of the period that such Below Market Rental Housing Unit is rented to the applicable Tenant; and
  - (b) the Below Market Rental Housing Unit to which such ineffective termination notice relates shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Eligible Person, for the remainder of the period that such Below Market Rental Housing Unit is rented to the applicable Tenant.
- 11.4 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.
- 11.5 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.

- 11.6 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.
- 11.7 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.
- 11.8 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*.
- 11.9 Sale of Lands and New Building or Part Thereof. Prior to the sale or transfer of any legal or beneficial interest (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), and subject always to Sections 2.1(i) and 2.1(j), the Owner of the Lands and the New Building will cause the purchaser/ transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of such Owner under this Agreement. The provisions in this Section 11.9 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 City, over its mortgage).
- 11.10 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.

11.11 Liability. Notwithstanding anything to the contrary contained herein, the Owner shall not be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Owner ceases to have any further interest in the Lands.

11.12 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 instrument:

- (a) **"Existing Charges"** means the Mortgage registered under number CA4800641 and the Assignment of Rents registered under number CA4800642;
- (b) **"Existing Chargeholder"** means HSBC BANK CANADA;
- (c) **"New Charges"** means the Housing Agreement and Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

- (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: 1066-1078 Harwood Street**

After a public hearing held on June 21, 2022, Council approved in principle the land owner's application to rezone the above noted property from RM-5A (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 land owner intends to seek a waiver of the development cost levies for this development, pursuant to the *Vancouver Development Cost Levy* By-law No. 9755 (the "**DCL By-law**") by securing all of the residential dwelling units in the new development for use as "for-profit affordable rental housing". The terms of the Housing Agreement provide, among other things, that the initial rents for 30% of the units being reserved as "below market housing" will be rented at or below an amount that is 50% below the average market rent applicable to the respective unit type for Zone 2 according to the CMHC Rental Market Survey and the remaining units being reserved as "below market housing" will be rented at or below an amount that is 20% below the average market rent applicable to the respective unit type for Zone 2. The foregoing is consistent with the requirements for for-profit affordable rental housing under Section 3.1A(d) of the DCL By-law, effective as of the date hereof and replaces the rental requirements for the units being reserved as "below market housing" described in Rezoning Condition 2.10 for the rezoning of the development property, which were consistent with the DCL By-law prior to its amendment on September 30, 2022.

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  
November 15, 2022

**BY-LAW NO.**

**A By-law to enact a Housing Agreement  
for 1066-1078 Harwood 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:

004-345-410

Lot 8 Block 13 District Lot 185 Plan 92

015-749-053

Lot 9 Block 13 District Lot 185 Plan 92

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

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Mayor

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Acting City Clerk



Land Title Act

## Charge

General Instrument – Part 1

### 1. Application

**Christy Jordaan, Paralegal, BOSA PROPERTIES INC.**  
**1201 - 838 West Hastings Street**  
**Vancouver BC V6C 0A6**  
**604.299.1363**

HARWOOD | Housing Agreement 1066-1078 Harwood

### 2. Description of Land

PID/Plan Number	Legal Description
<b>004-345-410</b>	<b>LOT 8 BLOCK 13 DISTRICT LOT 185 PLAN 92</b>
<b>015-749-053</b>	<b>LOT 9 BLOCK 13 DISTRICT LOT 185 PLAN 92</b>

### 3. Nature of Interest

Type	Number	Additional Information
<b>COVENANT</b>		<b>Section 219 Covenant</b>
<b>PRIORITY AGREEMENT</b>		<b>Granting the above Covenant herein priority over Mortgage CA5770508 and Assignment of Rents CA5770509</b>

### 4. Terms

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

### 5. Transferor(s)

**BOSA4RENT 1066 - 1078 HARWOOD INC., NO.BC1039611**  
**CANADIAN IMPERIAL BANK OF COMMERCE, AS TO PRIORITY**

### 6. Transferee(s)

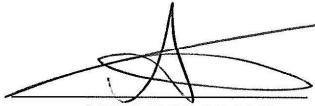
**CITY OF VANCOUVER**  
**453 WEST 12TH AVENUE**  
**VANCOUVER BC V5Y 1V4**

### 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  
  
**ANNA POGOSJAN**  
*Barrister & Solicitor*  
**#1100 - 838 WEST HASTINGS STREET**  
**VANCOUVER, B.C. V6C 0A6**  
**TEL: 604.299.1363**

Execution Date  
YYYY-MM-DD  
**2022-11-04**

Transferor / Transferee / Party Signature(s)  
**BOSA4RENT 1066 - 1078 HARWOOD INC.**  
By their Authorized Signatory  
  
PRINT NAME: **DALE BOSA**

**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)

**CANADIAN IMPERIAL BANK OF COMMERCE**  
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

Witnessing Officer Signature

\_\_\_\_\_

Execution Date

YYY-MM-DD

Transferor / Transferee / Party Signature(s)

**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 RENTAL AND BELOW MARKET RENTAL HOUSING

1066 - 1078 HARWOOD STREET

## WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, BOSA4RENT 1066 - 1078 HARWOOD INC., is called the "Owner", as more particularly defined in Section 1.1; and
  - (ii) the Transferee, City of Vancouver, is called the "City" or the "City of Vancouver" when referring to corporate entity continued under the *Vancouver Charter*, and "Vancouver" when referring to geographic location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands (the "Rezoning Application") from RM-5A (Residential) District to CD-1 (Comprehensive Development) District, and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, among other things, fulfilment of the condition that, prior to enactment of the rezoning by-law (upon enactment, the "Rezoning By-law"), the Owner make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services to enter into a Housing Agreement by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter* securing all of the residential units as secured rental housing units with at least 20 percent of the residential floor areas counted in the calculation of the floor space ratio secured as Below Market Rental Housing Units, pursuant to Section 3.1A of the Vancouver DCL Bylaw, for the longer of 60 years and life of the New Building, and subject to other conditions set forth in the minutes of the public hearing (collectively, the "Housing Condition"); and
- D. The Owner is entering into this Agreement to satisfy the Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, in satisfaction of the requirements of Section 3.1A of the Vancouver DCL Bylaw 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) **"Approving Officer"** means the person appointed pursuant to the provisions of the Land Title Act as the approving officer for land within the City of Vancouver and includes the deputy to the Approving Officer and any employee of the City acting, or who has acted, as the nominee, delegate or agent of that person;
- (c) **"Below Market Rental Housing"** means a portion of the For-Profit Affordable Rental Housing in a building that is comprised of at least 20% of the residential floor area that is counted in the calculation of the Floor Space Ratio that includes the Dwelling Units with rents per unit type that meet the requirements of Section 2.1(p) of this Agreement, are made available for rent only to Eligible Persons in accordance with this Agreement and is operated in accordance with the Criteria for 100% Secured Rental and Below-Market Housing as an Alternative to Inclusionary Social Housing in the Burrard Corridor of the West End Community Plan;
- (d) **"Below Market Rental Housing Air Space Parcel"** means the air space parcel that will, following the Subdivision, contain all or substantially all of the Below Market Rental Housing Units;
- (e) **"Below Market Rental Housing Rent Roll"** means a rent roll report providing information regarding each of the Below Market Rental Housing Units, including the unit number, unit type, unit size and rent;
- (f) **"Below Market Rental Housing Report"** means a notarized annual report prepared by the Owner and delivered to the City providing information regarding each of the Below Market Rental Housing Units, including but not limited to the following:
  - (i) unit number for the Below Market Rental Housing Unit;
  - (ii) monthly rent rate;
  - (iii) aggregate household Income of the Occupants, based on the most current information available to the Owner pursuant to Section 2.1(g);
  - (iv) number of Occupants residing therein;
  - (v) number of bedrooms contained therein;
  - (vi) length of occupancy of the current Tenant; and
  - (vii) the results of the verification conducted by the Owner pursuant to Section 2.1(g); and

such report shall not include the names or information of any Tenants or Occupants and shall otherwise be satisfactory to the General Manager of Planning, Urban Design and Sustainability in form and substance;
- (g) **"Below Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Below Market Rental Housing Unit"** means any one of such units;
- (h) **"Building Permit"** means any building permit issued by the City authorizing the

building of a New Building as contemplated by the Rezoning By-law and the Development Permit;

- (i) "City" and "City of Vancouver" have the meaning ascribed to those terms in Recital A(ii);
- (j) "City Manager" means the chief administrator from time to time of the City and his or her successors in function and their respective nominees;
- (k) "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;
- (l) "CMHC Rental Market Survey" means the then current annual Rental Market Survey conducted by the Canada Mortgage and Housing Corporation, or if such Rental Market Survey is not available or has ceased publication, a comparable alternative publication published by a successor in function to the Canada Mortgage and Housing Corporation as approved by the General Manager of Planning, Urban Design and Sustainability;
- (m) "Criteria for 100% Secured Rental and Below-Market Housing as an Alternative to Inclusionary Social Housing in the Burrard Corridor of the West End Community Plan" means the Criteria for 100% Secured Rental and Below-Market Housing as an Alternative to Inclusionary Social Housing in the Burrard Corridor of the West End Community Plan approved by City Council on November 24, 2020;
- (n) "Development Permit" means any development permit issued by the City authorizing the development of the Lands contemplated by the Rezoning By-law;
- (o) "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;
- (p) "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;
- (q) "Effective Date" means the date as of which this Agreement has been executed by all parties to it;
- (r) "Eligible Person" means a person who:
  - (i) at the beginning of such person's tenancy of a Below Market Rental Housing Unit, together with all other Occupants of such Below Market Rental Housing Unit, have an aggregate annual household Income that is less than or equal to four (4) times the annual rent of such Below Market Rental Housing Unit;
  - (ii) thereafter throughout such person's tenancy of a Below Market Rental Housing Unit, together with all other Occupants of such Below Market Rental Housing Unit, have an aggregate annual household Income that is less than or equal to five (5) times the annual rent of such Below Market Rental Housing Unit; and

- (iii) throughout such person's tenancy of a Below Market Rental Housing Unit, will:
  - (A) not permit such Below Market Rental Housing Unit to be occupied by a person or persons other than those persons identified in the Tenancy Agreement for more than 60 consecutive days or more than 90 days in total in any calendar year, without the prior written consent of the Owner;
  - (B) not permit such Below Market Rental Housing Unit to be occupied by a total number of Occupants less than the total number of bedrooms therein;
  - (C) occupy such Below Market Rental Housing Unit as his or her Principal Residence and not permit any Occupant to occupy such Below Market Rental Housing Unit unless such Below Market Rental Housing Unit is the Occupant's Principal Residence;
  - (D) not permit such Below Market Rental Housing Unit to be vacant for a period of six months or longer, cumulatively within a calendar year, without the prior written consent of the Owner; and
  - (E) not sublet such Below Market Rental Housing Unit or assign the Tenancy Agreement in whole or in part;
- (s) **"Floor Space Ratio"** means the figure obtained when the area of the floors of the New Building is divided by the area of the Lands;
- (t) **"For-Profit Affordable Rental Housing"** means multiple Dwelling Units within a building for use as Rental Housing which meets the requirements of Section 3.1A of the Vancouver DCL By-law to be "for-profit affordable rental housing" (as defined therein);
- (u) **"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;
- (v) **"General Manager of Planning, Urban Design and Sustainability"** means the person appointed from time to time as the City's General Manager of Planning, Urban Design and Sustainability and his/her successors in function and delegates and their respective nominees;
- (w) **"Income"** of an Occupant means the total annual world-wide income before income tax from all sources of the Occupant and includes without limitation, the following income sources:
  - (i) income assistance;
  - (ii) employment, including regular overtime, vacation pay and gratuities;

- (iii) self-employment, including commission sales;
- (iv) seasonal employment;
- (v) Employment Insurance and WorkSafe BC insurance;
- (vi) training allowances;
- (vii) income from the Resettlement Assistance Program;
- (viii) child support, maintenance payments or support from family/friends/community;
- (ix) rental income from real estate or dividends from stocks or bonds, if the real monthly income is greater than the imputed income from the Asset; and
- (x) pension incomes including:
  - (A) old Age Security, Guaranteed Income Supplement, Allowance, and Allowance for the Survivor (formerly Spousal Allowance);
  - (B) senior's supplement;
  - (C) private pension plans including Registered Retirement Income Funds;
  - (D) Canada Pension Plan, including retirement, disability, orphans, widows, disability for child, etc.
  - (E) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada (included for calculations with an effective date prior to January, 2013); and
  - (F) foreign pensions,

but does not include:

- (xi) earnings of dependent children aged 18 and under (regardless of student status);
- (xii) student loans, equalization payments, student grants and scholarships;
- (xiii) taxable benefits, including living out or travel allowances, medical coverage, uniform allowance, etc.;
- (xiv) Shelter Aid for Elderly Renters and Rental Assistance Program payments;
- (xv) Canada Child Tax Benefits, including the National Child Benefit Supplement, Child Disability Benefit, BC Family Bonus, and BC Earned Income Benefit;
- (xvi) Universal Child Care Benefits;

- (xvii) BC Childcare Subsidy;
- (xviii) income from foster parenting;
- (xix) Child in Home of Relative and Extended Family Program;
- (xx) income from approved live-in care givers;
- (xxi) GST and Income Tax rebates; and
- (xxii) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada;
- (x) "**Land Title Act**" means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (y) "**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;
- (z) "**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;
- (aa) "**New Building**" means any new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;
- (bb) "**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;
- (cc) "**Occupants**" means persons for whom a For-Profit Affordable Rental Housing Unit serves as their Principal Residence and an "**Occupant**" means any one of them, as the context requires;
- (dd) "**Owner**" means the registered owner of the Lands as of the Effective Date, namely, **BOSA4RENT 1066 - 1078 HARWOOD INC.**, and its successors and assigns;
- (ee) "**Personal Information Protection Act**" means the *Personal Information Protection Act*, S.B.C. 2003, c.63, and all amendments thereto and re-enactments thereof;
- (ff) "**Principal Residence**" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes,

including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this agreement, a person may only have one principal residence;

- (gg) **"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;
- (hh) **"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;
- (ii) **"Replacement For-Profit Affordable Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Replacement For-Profit Affordable Rental Housing Unit"** means one such unit;
- (jj) **"Replacement Below Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Replacement Below Market Rental Housing Unit"** means one such unit;
- (kk) **"Residential Tenancy Act"** means the *Residential Tenancy Act* S.B.C. 2002, c. 78 and all amendments thereto and re-enactments thereof;
- (ll) **"Residential Tenancy Regulation"** means the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 and all amendments thereto and re-enactments thereof;
- (mm) **"Rezoning Application"** has the meaning ascribed to that term in Recital C;
- (nn) **"Rezoning By-law"** has the meaning ascribed to that term in Recital C;
- (oo) **"Statement of Below Market Rental Housing Unit Eligibility"** means a notarized statement, prepared by the Owner and delivered to the City, that states the following in respect of a Below Market Rental Housing Unit:



- (i) confirmation that, to the best of the Owner's knowledge based on the most current information available to the Owner pursuant to Section 2.1(g), the Tenant of such Below Market Rental Housing Unit is an Eligible Person;
- (ii) description of all of the actions and procedures that the Owner has undertaken to verify that the Tenant of such Below Market Rental Housing Unit is an Eligible Person; and
- (iii) such other information regarding such Below Market Rental Housing Unit and its Occupants as the General Manager of Planning, Urban Design and Sustainability may otherwise require;

provided that such statement shall not include the names or information of any Tenants or Occupants and shall otherwise be satisfactory to the General Manager of Planning, Urban Design and Sustainability in form and substance;

- (pp) "**Subdivision**" means the subdivision of the Lands by the deposit of an air space subdivision plan to enable all or substantially all of the Below Market Rental Housing Units to be contained within the Below Market Rental Housing Air Space Parcel;
- (qq) "**Tenancy Agreement**" means a residential tenancy agreement, lease, licence or other agreement prepared in accordance with the *Residential Tenancy Act*, granting rights to occupy a Below Market Rental Housing Unit;
- (rr) "**Tenant**" means an Eligible Person who is a tenant of a Below Market Rental Housing Unit by way of a Tenancy Agreement;
- (ss) "**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;
- (tt) "**Vancouver**" has the meaning ascribed to that term in Recital A(ii);
- (uu) "**Vancouver Charter**" means the *Vancouver Charter* S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof; and
- (vv) "**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.
- (f) Legislation. Any reference to a statute or by-law includes and is a reference to such statute or by-law and to the regulations made pursuant thereto in force on the Effective Date, with all amendments made thereto and as in force from time to time, and to any statute, by-law and regulations that may be passed which have the effect of supplementing or superseding such statutes, by-laws and regulations.
- (g) Time. Time will be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time will be local Vancouver, British Columbia time.

## ARTICLE 2

### RESTRICTIONS ON USE OF LANDS AND SUBDIVISION

- 2.1 The Owner covenants and agrees with the City, in respect of the use of the Lands and the construction and use of the New Building, that throughout the Term:
  - (a) the Lands, the New Building and the For-Profit Affordable Rental Housing Units (including the Below Market Rental Housing Units) will not be used in any way that is inconsistent with the terms of this Agreement;
  - (b) at its sole cost and expense, it will construct, fit and finish the New Building, the For-Profit Affordable Rental Housing Units (including the Below Market Rental Housing Units) any amenities and parking spaces, in accordance with this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
  - (c) all of the 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"), provided that the For-Profit Affordable Rental Housing Units

comprising not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below Market Rental Housing (the "**Below Market Rental Housing Units**"), all in accordance with the terms of this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building, then, it will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired or replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than the same number and type of replacement Dwelling Units as the New Building formerly contained, which replacement Dwelling Units during the remainder of the Term, will also be used only for the purpose of providing For-Profit Affordable Rental Housing (such replacement Dwelling Units hereinafter referred to as a "**Replacement For-Profit Affordable Rental Housing Units**") including Below Market Rental Housing (such replacement Dwelling Units hereinafter referred to as a "**Replacement Below Market Rental Housing Units**"), in the same percentages as set out in this Section and in accordance with the terms of this Agreement and the applicable by-laws of the City and such Replacement For-Profit Affordable Rental Housing Units (including Replacement Below Market Rental Housing Units) will be subject, for the remaining duration of the Term, to the same use restrictions, respectively, as the For-Profit Affordable Rental Housing Units, including the Below Market Rental Housing Units, are pursuant to this Agreement;

- (d) not less than:
  - (i) 35% of the For-Profit Affordable Rental Housing Units; and
  - (ii) 35% of the Below Market Rental Housing Units;
 will have two or more bedrooms;
- (e) each of the Below Market Rental Housing Units shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Eligible Person and except in accordance with the following conditions:
  - (i) each Below Market Rental Housing Unit shall be rented only pursuant to a Tenancy Agreement, which Tenancy Agreement shall include a copy of this Agreement;
  - (ii) each Below Market Rental Housing Unit shall be rented for a monthly rent not exceeding the rent permitted to that type of Below Market Rental Housing Unit, as described in Section 2.1(p);
  - (iii) each Below Market Rental Housing Unit shall be occupied only by an Eligible Person who is occupying such Below Market Rental Housing Unit as his or her Principal Residence and the Principal Residence of such other Occupants of the Eligible Person's household as specified in the Tenancy Agreement between the Owner and the Eligible Person for the rental thereof;

- (iv) each Below Market Rental Housing Unit shall have at least one Occupant per bedroom thereof;
- (v) each Tenancy Agreement shall include:
  - (A) a clause requiring the Tenant and each permitted Occupant of the respective Below Market Rental Housing Unit to comply with this Agreement;
  - (B) the names of all Occupants of the respective Below Market Rental Housing Unit;
  - (C) a term that is either on a month-to-month basis or for a fixed term of less than six (6) months;
  - (D) one or more clauses providing that the Tenant acknowledges and agrees that, among other terms, the following are material terms of the Tenancy Agreement:
    - I. the Tenant is and remains an Eligible Person at all times during the term of the Tenancy Agreement;
    - II. any person not identified in the Tenancy Agreement as a Tenant or Occupant shall not reside at the Below Market Rental Housing Unit for more than 60 consecutive days or more than 90 days total in any calendar year, unless the Tenant receives prior written consent from the Owner;
    - III. the Below Market Rental Housing Unit will have at least one Occupant per bedroom thereof;
    - IV. the Below Market Rental Housing Unit will not be vacant for six months or longer, cumulatively, within a calendar year, without the prior written consent of the Owner;
    - V. the Below Market Rental Housing Unit will at all times during the term of the Tenancy Agreement be the Principal Residence of the Tenant and the other Occupants in the Tenant's household as specified in the Tenancy Agreement; and
    - VI. the Tenant will not sublease the Below Market Rental Housing Unit or assign the Tenancy Agreement in whole or in part; and
  - (E) a clause:
    - I. wherein the Tenant consents to the collection, use and retention by the Owner and disclosure to the City of information, documentation and evidence described in Section 2.1(g); and

- II. requiring the Tenant to deliver to the Owner the information, documentation and evidence described in Section 2.1(g)(ii) every five (5) years following the date on which the Tenant first occupies the Below Market Rental Housing Unit,

unless otherwise permitted by the General Manager of Planning, Urban Design and Sustainability in his or her sole discretion; and

- (vi) subject to any contrary provisions in the *Residential Tenancy Act*, as determined to be contrary by a ruling or decision of any judicial body having jurisdiction, if the Tenant is in breach of any of the material terms described in Section 2.1(e)(v)(D), the Owner will take all necessary steps to end the tenancy of the Tenant in the respective Below Market Rental Housing Unit, which steps will include:
  - (A) providing the Tenant with a written notice specifying the breach forthwith upon the Owner becoming aware of any breach;
  - (B) providing the Tenant with a reasonable time to remedy the breach after such written notice has been provided;
  - (C) if the Tenant does not remedy the breach within the time specified in Section 2.1(e)(vi)(B), providing the Tenant with a written notice of termination of the Tenancy Agreement that will be effective two (2) months, except in respect of a breach of the material terms specified in Sections 2.1(e)(v)(D)I to 2.1(e)(v)(D)III in which case the termination will be effective six (6) months, following the date that the Owner has delivered such written termination notice to the Tenant; and
  - (D) causing all Occupants of the respective Below Market Rental Housing Unit to vacate the Below Market Rental Housing Unit upon the effective date of termination;
- (f) if the Owner has terminated a Tenancy Agreement for the reasons specified in Sections 2.1(e)(v)(D)I to 2.1(e)(v)(D)III, the Owner shall offer another For-Profit Affordable Rental Housing Unit for rent to the former Tenant, subject to availability of such For-Profit Affordable Rental Housing Unit, and:
  - (i) in the case of a For-Profit Affordable Rental Housing Unit that is not a Below Market Rental Housing Unit, at the then market rents as determined by the Owner in its sole discretion and subject to the Owner's standard tenant qualification screening; and
  - (ii) in the case of another Below Market Rental Housing Unit, eligibility of the former Tenant in respect of such other Below Market Rental Housing Unit;
- (g) in connection with Section 2.1(e), throughout the Term, the Owner shall:

- (i) prior to renting a Below Market Rental Housing Unit to a prospective tenant, or upon the change of any Occupants residing within a Below Market Rental Housing Unit from the Occupants listed in the Tenancy Agreement, verify, by obtaining all information, documentation or evidence necessary or such other information, documentation or evidence that the General Manager of Planning, Urban Design and Sustainability may deem necessary, that such prospective tenant is an Eligible Person and that there will be at least one Occupant per bedroom for such Below Market Rental Housing Unit upon occupancy; and
  - (ii) not less than once every five (5) years after the date on which a Below Market Rental Housing Unit was rented to a Tenant (or sooner in the event of a change in Occupant or a receipt by the Owner of a request of the General Manager of Planning, Urban Design and Sustainability), verify, by all information, documentation or evidence necessary or such other information, documentation or evidence that the General Manager of Planning, Urban Design and Sustainability may deem necessary, that such prospective tenant is an Eligible Person and that such Below Market Rental Housing Unit continues to have at least one Occupant per bedroom;
- (h) the Owner 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;
- (i) except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any For-Profit Affordable Rental Housing Unit to be sold or otherwise transferred unless title to every one of the For-Profit Affordable Rental Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner, as applicable, and subject to Section 11.9;
- (j) the Owner 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;
- (k) any sale of any For-Profit Affordable Rental Housing Unit in contravention of the covenant in Section 2.1(i), 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(j), 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;
- (l) the Owner 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;
- (m) if the New Building or any part thereof, is damaged, it will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state

and condition as existed before such damage occurred reasonable wear and tear excepted;

- (n) the Owner 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;
- (o) the average size of the For-Profit Affordable Rental Housing Units 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 average sizes for townhouse units of two or more storeys with stairways may add 4 square metres to the maximums listed in the above table;

- (p) with respect to the Below Market Rental Housing Units:
  - (i) not less than 30% of the Below Market Rental Housing Units will be rented at rates at or below an amount that is 50% below the average market rent applicable to the respective unit type for Zone 2 (or equivalent zone which includes the location of the Building) according to the CMHC Rental Market Survey:
    - (A) for the initial tenancy, at the time when the Occupancy Permit is issued; and
    - (B) for all subsequent tenancies, at the time when the respective tenancy of a Below Market Rental Housing Unit commences;
  - (ii) the balance of the Below Market Rental Housing Units will be rented at rates at or below an amount that is 20% below the average market rent applicable to the respective unit type for Zone 2 (or equivalent zone which includes the location of the Building) according to the CMHC Rental Market Survey:
    - (A) for the initial tenancy, at the time when the Occupancy Permit is issued; and
    - (B) for all subsequent tenancies, at the time when the respective tenancy of a Below Market Rental Housing Unit commences;

- (iii) the unit numbers, unit type, unit size and rents to be charged by the Owner to the first Tenants of each of the Below Market Rental Housing Units in the New Building following issuance of the Occupancy Permit will be set out in a Below Market Rental Housing Rent Roll and delivered by the Owner to the City for approval by the General Manager of Planning, Urban Design and Sustainability, in his or her sole discretion, prior to the issuance of each of the Development Permit, the Building Permit and the Occupancy Permit;
- (iv) following the issuance of the Occupancy Permit, subject to the terms of this Agreement, including, without limitation, that not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below Market Rental Housing and provided the Owner has received approval in writing from the General Manager of Planning, Urban Design and Sustainability, in his or her sole discretion, if a Below Market Rental Housing Unit is occupied by a Tenant who was formerly an Eligible Person but no longer meets the eligibility requirements therefor, the Owner may substitute and re-assign the designation of such Dwelling Unit as a Below Market Rental Housing Unit to another Dwelling Unit in the New Building, which is the same unit type and is equal to or greater in size to the Dwelling Unit being substituted, on a one-for-one basis, such that the unit type mix and number of Below Market Rental Housing Units in the New Building remain unchanged and the initial rent for the newly assigned Below Market Rental Housing Unit will be the same as the rent for the former Below Market Rental Housing Unit; and
- (v) the Owner shall not increase the rents for any of the Below Market Rental Housing Units during a tenancy, except for annual increases in rent by an amount not to exceed the annual allowable increase in rent permitted under the provisions of the *Residential Tenancy Act* and the *Residential Tenancy Regulation*, which as of the date of this Agreement, are Section 43(1) (a) of the *Residential Tenancy Act* and Section 22 of the *Residential Tenancy Regulation*, respectively (as each such section may be amended or replaced from time to time).

### 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 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 Below Market Rental Housing 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 tenants of the Below Market Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and size,



which rents, unit type mix and size shall comply with those applicable to the Below Market Rental Housing Units in accordance with this Agreement; 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 8, 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 BUILDING 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 Building Permit, and will take no action, directly or indirectly, to compel the issuance of any Building Permit, until such time as the Owner has delivered a Below Market Rental Housing 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 tenants of the Below Market Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and size, which rents, unit type mix and size shall comply with those applicable to the Below Market Rental Housing Units in accordance with this Agreement and the Development Permit; and
  - (ii) the City will be under no obligation to issue any Building Permit until such time as the Owner has complied with Section 4.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 8, 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 Building Permit until there is compliance with the provisions of this ARTICLE 4.

#### ARTICLE 5 OCCUPANCY RESTRICTION ON THE LANDS

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

- (a) the Lands and the New Building will not be used or occupied except as follows:
  - (i) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the General Manager of Planning, Urban Design and Sustainability:

- (A) a Below Market Rental Housing Rent Roll confirming the rents to be charged to the first tenants of the Below Market Rental Housing Units following issuance of the Occupancy Permit and the unit type mix and size, which rents, unit type mix and size shall comply with those applicable to the Below Market Rental Housing Units in accordance with this Agreement and the Development Permit; and
  - (B) proof of the insurance, consistent with the requirements of Section 2.1(n), is in force and effect, in form and substance satisfactory to the City;
- (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 5.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 8, 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 5.

#### ARTICLE 6 RECORD KEEPING

- 6.1 The Owner will keep accurate records pertaining to the use, occupancy and rental rates charged of/for the Below Market Rental Housing Units, such records to be to the satisfaction of the General Manager of Planning, Urban Design and Sustainability. The Owner will:
- (a) on each anniversary of the date of issuance of the first Occupancy Permit for any portion of the New Building or at the request of the City, provide an updated Below Market Rental Housing Report to the General Manager of Planning, Urban Design and Sustainability;
  - (b) within ninety (90) days of:
    - (i) the Owner becoming aware of a change in any Occupant of a Below Market Rental Housing Unit having occurred;
    - (ii) the date that is the fifth anniversary of the date on which a Below Market Rental Housing Unit was rented to a Tenant and every five (5) years thereafter; and
    - (iii) a request of the General Manager of Planning, Urban Design and Sustainability,
 complete and deliver to the City a Statement of Below Market Rental Housing Unit Eligibility in respect of such Below Market Rental Housing Unit;

- (c) at the request of the General Manager of Planning, Urban Design and Sustainability, from time to time:
  - (i) make such records available for audit, inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and
  - (ii) provide evidence of the insurance required to be taken out pursuant to Section 2.1(n); and
- (d) comply with the *Personal Information Protection Act* in collecting, using, retaining and disclosing the information of any person, Tenant or Occupant pursuant to its obligations under this Agreement and any Tenancy Agreement.

#### ARTICLE 7 ENFORCEMENT

- 7.1 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 8 RELEASE AND INDEMNITY

- 8.1 Release and Indemnity. Subject to Section 8.2, 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, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
  - (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel, except to the extent that any such Losses are the result of the wrongful intentional acts by 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 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, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
  - (iii) 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
  - (iv) 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 to the extent that any such Losses are the result of the wrongful intentional acts by the City or the City Personnel.

The indemnities in this Article 6 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

## 8.2 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 8.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.

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

- (c) Regardless of whether the claim is being defended under Section 8.2(a) or Section 8.2(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.

- 8.3 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 9 SUBDIVISION

- 9.1 Subdivision of the Lands: Notwithstanding Section 2.1(j), 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 the Subdivision to enable, *inter alia*, all or substantially all of the Below Market Rental Housing Units to be contained within the Below Market Rental Housing Air Space Parcel. For greater certainty, following the Subdivision,

the covenants and agreements set forth herein will run with and will bind each of the parcels created by the Subdivision.

#### ARTICLE 10 NOTICES

10.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, will be in writing and will be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:

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

If to the City, addressed to:

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

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

If to the Owner, addressed to:

BOSA4RENT 1066 - 1078 HARWOOD INC.  
1201 - 838 West Hastings Street  
Vancouver, British Columbia  
V6C 0A6

Attention: President

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

#### ARTICLE 11 MISCELLANEOUS

11.1 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. Upon the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof in accordance with the provisions of Section 11.9, 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.

- 11.2 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 His Majesty the King in Right of the Province of British Columbia respecting the Lands;
  - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of any rezoning or any Development Permit; and
  - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 11.3 Application of Residential Tenancy Act to Termination Notice. The City agrees that, in the event the Owner delivers a termination notice to a Tenant pursuant to Section 2.1(e)(vi), and such termination notice is found to be ineffective by a ruling or decision of any judicial body having jurisdiction in connection with the *Residential Tenancy Act*, provided that the termination notice was not found to be ineffective by reason of an error by or the negligence of the Owner, including any error by the Owner in delivering the termination notice in accordance with, or complying with the applicable time limits in, the *Residential Tenancy Act* or *Residential Tenancy Regulation*, the Owner shall not be in breach of its obligation to ensure that:
- (a) not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below Market Rental Housing, as set out in Section 2.1(c) as a result of such termination notice being ineffective and for clarity, the Below Market Rental Housing Unit to which such ineffective termination notice relates shall continue to count towards the aforementioned twenty (20) percent of the residential floor areas, for the remainder of the period that such Below Market Rental Housing Unit is rented to the applicable Tenant; and
  - (b) the Below Market Rental Housing Unit to which such ineffective termination notice relates shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Eligible Person, for the remainder of the period that such Below Market Rental Housing Unit is rented to the applicable Tenant.
- 11.4 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.
- 11.5 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.

- 11.6 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.
- 11.7 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.
- 11.8 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*.
- 11.9 Sale of Lands and New Building or Part Thereof. Prior to the sale or transfer of any legal or beneficial interest (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), and subject always to Sections 2.1(i) and 2.1(j), the Owner of the Lands and the New Building will cause the purchaser/ transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of such Owner under this Agreement. The provisions in this Section 11.9 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 City, over its mortgage).
- 11.10 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.

11.11 Liability. Notwithstanding anything to the contrary contained herein, the Owner shall not be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Owner ceases to have any further interest in the Lands.

11.12 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 instrument:

- (a) **"Existing Charges"** means the Mortgage registered under number CA5770508 and the Assignment of Rents registered under number CA5770509;
- (b) **"Existing Chargeholder"** means CANADIAN IMPERIAL BANK OF COMMERCE;
- (c) **"New Charges"** means the Housing Agreement and Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

- (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: 8420 Ash Street**

After a public hearing on November 17 and 25, 2021, Council approved in principle the land owner's application to rezone the development property located at 8460 Ash Street and 8495 Cambie Street (of which the above noted property is a part) from RT-2 (Residential) District to CD-1 (Comprehensive Development) District), subject to, among other things, a Housing Agreements for all three lots comprising the development property 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 for the above noted lot was approved by Council under By-law No. 13361 and registered on title to the above noted lot under land title registration numbers CB10619 to CB10620 (the "**Original Housing Agreement**").

The Original Housing Agreement included provisions to secure all residential dwelling units on the above noted lot for use as "for-profit affordable rental housing" on the basis that the land owner intended to seek a waiver of the development cost levies ("**DCLs**") for the above noted lot, in accordance with the *Vancouver Development Cost Levy By-law* No. 9755. The land owner is now electing not to seek a waiver of the DCLs for the above noted lot, and accordingly, the residential dwelling units on the above noted lot will be secured as market rental housing instead of "for-profit affordable rental housing" for the longer of 60 years and the life of the building by way of a new housing agreement (the "**New Housing Agreement**"). For additional details, please read the forthcoming memo from the General Manager of Planning, Urban Design and Sustainability.

The New 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 New Housing Agreement and to authorize the City to enter into the New Housing Agreement with the land owner. Upon registration of this New Housing Agreement on title to the above noted lot, the City will seek a repeal of By-law No. 13361 to effect a discharge of the Original Housing Agreement.

Director of Legal Services  
November 15, 2022

**BY-LAW NO.**

**A By-law to enact a Housing Agreement  
for 8420 Ash 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:

031-969-163

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

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



Land Title Act

**Charge**

General Instrument – Part 1

1. Application

**Andrea Shaw, TERRA LAW CORPORATION  
2800 - 650 West Georgia Street  
Vancouver BC V6B 4N7  
604-628-8975**

File no. 502836

2. Description of Land

PID/Plan Number      Legal Description

**031-696-163      LOT A BLOCK 7 DISTRICT LOT 311 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP115039**

3. Nature of Interest

Type	Number	Additional Information
<b>COVENANT</b>		<b>Section 219 Covenant Entire Instrument</b>
<b>PRIORITY AGREEMENT</b>		<b>granting the section 219 covenant granted herein priority over mortgage CB252552 in favour of Ashley Mar Housing Co-Operative</b>

4. Terms

Part 2 of this instrument consists of:

**(b) Express Charge Terms Annexed as Part 2**

5. Transferor(s)

**SOUTH CAMBIE RESIDENTIAL (NOMINEE) LTD., NO.BC1144480**

**ASHLEY MAR HOUSING CO-OPERATIVE**

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)

YYYY-MM-DD  
2022-11-07

**SOUTH CAMBIE RESIDENTIAL  
(NOMINEE) LTD.**

By their Authorized Signatory

Name: Evan Allegretto

**Shengyin Gui**  
A Commissioner for Taking Affidavits  
for British Columbia  
600-660 Burnard Street  
Vancouver BC V6C 2B6  
Commission Expires April 30, 2026

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: \_\_\_\_\_

**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

Shengyin Gui

Shengyin Gui  
A Commissioner for Taking Affidavits  
for British Columbia  
600-550 Burrard Street  
Vancouver BC V6C 2B5  
Commission Expires April 30, 2025

Execution Date

YYYY-MM-DD

2022-11-04

Transferor / Transferee / Party Signature(s)

**ASHLEY MAR HOUSING CO-  
OPERATIVE**

By their Authorized Signatory

[Signature]

Name: Abdelaziz Jovanovic

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 RENTAL HOUSING

8420 ASH STREET

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- I. the Transferor, **SOUTH CAMBIE RESIDENTIAL (NOMINEE) LTD. (INC. NO. BC1144480)**, is called the “Owner”, as more particularly defined in Section 1.1(q); and
  - II. the Transferee, **CITY OF VANCOUVER**, is called the “City” or the “City of Vancouver” when referring to corporate entity continued under the *Vancouver Charter*, and “Vancouver” when referring to geographic location;
- B. The Owner is the registered Owner of the Lands;
- C. The Owner made an application to rezone, *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 a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, among other things, fulfilment of the following condition prior to enactment of the rezoning by-law (the “**Rezoning By-law**”): that the Owner will 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 (the “**For-Profit Affordable Rental Housing Agreement**”) 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;
- D. The For-Profit Affordable Rental Housing Agreement was subsequently entered into and registered on title to the Lands in the Land Title Office on June 16, 2022 under registration number CB10619 (together with a Housing Agreement Notice registered under registration number CB10621); and
- E. Subsequently the Owner has elected, pursuant to the Vancouver DCL By-law, not to receive a waiver of the Development Cost Levies payable in respect of the portion of the Development situated on the Lands, and accordingly, the Owner and City have agreed for the Housing Agreement herein to secure all of the rental residential units as being used only for the purpose of providing Rental Housing for the longer of 60 years and the life of the New Building.

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



City, 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 INTERPRETATION**

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

- (a) **“Agreement”** means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;
- (b) **“Building Permit”** means any building permit issued by the City authorizing the building of a New Building as contemplated by the Development Permit;
- (c) **“City”** and **“City of Vancouver”** have the meaning ascribed to those terms in Recital A(ii);
- (d) **“City Manager”** means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (e) **“City Personnel”** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) **“Development”** means the development on the Lands described in Recital C and approved by a Development Permit;
- (g) **“Development Permit”** means any development permit issued by the City authorizing the development of any portion of the Lands contemplated by the Rezoning By-law;
- (h) **“Director of Legal Services”** means the chief administrator from time to time of the City’s Legal Services Department and her/his successors in function and their respective nominees;
- (i) **“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;
- (j) **“Effective Date”** means the date as of which this Agreement has been executed by all parties to it;
- (k) **“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;
- (l) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c. 250, as may be amended or replaced from time to time;

- (m) **"Lands"** means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 of the General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided;
- (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, 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;
- (o) **"New Building"** means any new building or structure to be built on the Lands and any building or structure on the Lands being renovated, upgraded or refurbished as contemplated by any 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 any Development Permit;
- (p) **"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;
- (q) **"Owner"** means the registered owner of the Lands as of the Effective Date, namely, SOUTH CAMBIE RESIDENTIAL (NOMINEE) LTD., and its successors and permitted assigns;
- (r) **"Related Person"** means, where the registered or beneficial owner of the Rental Housing Units is:
  - (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c. 57), then a Related Person is:
    - (A) an officer, director or shareholder of such 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 referred to in paragraph (A); and
  - (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (s) **"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;
- (t) **"Rental Housing Units"** means the new residential units of Rental Housing to be contained within the New Building upon its completion, as part of the Development, which units will comply with the terms in this Agreement and the Development Permit applicable to the same, and **"Rental Housing Unit"** means any one of them;

- (u) **"Replacement Rental Housing Unit"** has the meaning ascribed to that term in Section 2.1(c) 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, as may be amended or replaced from time to time;
- (w) **"Rezoning"** means the rezoning of the Lands as described in Recital C;
- (x) **"Rezoning By-law"** has the meaning ascribed to it in Recital C;
- (y) **"Social Housing Units"** has the meaning ascribed to that term in Recital C;
- (z) **"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;
- (aa) **"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;
- (bb) **"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;
- (cc) **"Vancouver"** has the meaning ascribed to that term in Recital A(ii); and
- (dd) **"Vancouver Charter"** means the *Vancouver Charter*, S.B.C. 1953, c. 55, as may be amended or replaced from time to time.

**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.
- (h) **Replacement of For-Profit Affordable Rental Housing Agreement.** For greater certainty, upon the discharge from title of the For-Profit Affordable Rental Housing Agreement, this Agreement will supersede and replace the For-Profit Affordable Rental Housing Agreement and the For-Profit Affordable Rental Housing Agreement will be of no further force or effect.

## ARTICLE 2 RESTRICTIONS ON USE OF LANDS AND SUBDIVISION

2.1 **Use of Lands.** 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) it will construct, fit and finish, at its sole cost and expense, the New Building containing not less than the number of Rental Housing Units approved in the Development Permit, 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 of the Rental Housing Units in the New Building will be used only for the purpose of providing Rental Housing in accordance with the terms 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 for the New Building, then 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 or replacement building(s) on the Lands (together with any remaining undestroyed or undemolished building) will also

contain not less than the same number and type of replacement Rental Housing Units as the New Building formerly contained, which replacement Rental Housing Units will also be used only for the purpose of providing Rental Housing (each such replacement Rental Housing Unit hereinafter referred to as a “**Replacement Rental Housing Unit**”), in accordance with the terms of this Agreement and the applicable by-laws of the City and which Replacement Rental Housing Units will be subject, for the remaining duration of the Term, to the same use restriction as the Rental Housing Units are pursuant to this Agreement;

- (d) not less than 35% of the 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) 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 Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) for a term of less than one month at a time;
- (f) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies:
  - (i) the Owner will not suffer, cause or permit registered title to any Rental Housing Unit within the New Building to be sold or otherwise transferred unless registered title to every one of the 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 Rental Housing Unit within the New Building to be sold or otherwise transferred unless beneficial title to every one of the 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 7.8. For greater certainty, and without limitation, this Section 2.1(f) 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 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;

- (g) throughout the Term, it will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld;
- (h) throughout the Term, that any sale of any Rental Housing Unit in contravention of the covenant in Section 2.1(f), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(g), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;

- (i) throughout the Term, it will keep and maintain the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings in the area;
- (j) 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 a state and condition that is equal to or greater than the state and condition thereof as existed before such damage occurred; and
- (k) throughout the Term, it will insure, or cause to be insured, the New Building to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands.

### **ARTICLE 3 OCCUPANCY RESTRICTION ON THE LANDS**

3.1 **No Occupancy.** The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:

- (a) the 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 General Manager of Planning, Urban Design and Sustainability, in form and substance satisfactory to the General Manager of Planning, Urban Design and Sustainability, proof of the insurance, consistent with the requirements of Section 2.1(k), is in force and effect; and
    - (B) the Social Housing Building Occupancy Permit has been issued;
  - (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 3.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 5, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this ARTICLE 3.

### **ARTICLE 4 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.

**ARTICLE 5  
RELEASE AND INDEMNITY**

5.1 **Release and Indemnity.** Subject to Section 5.2, 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 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, Vancouver Charter Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
- (iii) 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
- (iv) 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 5 will be both personal covenants of the Owner and integral parts of the Section 219 Covenant 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).

- (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 **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 to the City, addressed to:

**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, addressed to:

**South Cambie Residential (Nominee) Ltd.**  
Suite 600 - 550 Burrard Street  
Vancouver, BC V6C 3B5

Attention: President

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 will be covenants the burden of which will run with and will bind the Lands and will attach thereto.

**7.2 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 the Crown 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 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.

**7.3 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.

**7.4 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.

**7.5 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.

**7.6 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.

**7.7 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.

**7.8 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 in the Lands by way of 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 7.8 will apply equally to all subsequent purchasers/transferees (other than the transfer of an interest in the Lands by way of mortgage).

**7.9 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.

**7.10 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.

**7.11 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.

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 instrument:

- (a) **“Existing Charges”** means the Mortgage registered under CB252552;
- (b) **“Existing Chargeholder”** means ASHLEY MAR HOUSING CO-OPERATIVE;
- (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 meaning 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: 8491 Cambie Street**

After a public hearing on November 17 and 25, 2021, Council approved in principle the land owner's application to rezone the development property located at 8460 Ash Street and 8495 Cambie Street (of which the above noted property is a part) from RT-2 (Residential) District to CD-1 (Comprehensive Development) District), subject to, among other things, Housing Agreements for all three lots comprising the development property 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 for the above noted lot was approved by Council under By-law No. 13363 and registered on title to the above noted lot under land title registration numbers CB10625 to CB10626 (the "**Original Housing Agreement**").

The Original Housing Agreement included provisions to secure all residential dwelling units on the above noted lot for use as "for-profit affordable rental housing" on the basis that the land owner intended to seek a waiver of the development cost levies ("**DCLs**") for the above noted lot, in accordance with the *Vancouver Development Cost Levy By-law* No. 9755. The land owner is now electing not to seek a waiver of the DCLs for the above noted lot, and accordingly, the residential dwelling units on the above noted lot will be secured as market rental housing instead of "for-profit affordable rental housing" for the longer of 60 years and the life of the building by way of a new housing agreement (the "**New Housing Agreement**"). For additional details, please read the forthcoming memo from the General Manager of Planning, Urban Design and Sustainability.

The new 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. Upon registration of this new Housing Agreement on title to the above noted lot the City will seek a repeal of By-law No. 13363 to effect a discharge of the Original Housing Agreement.

Director of Legal Services  
November 15, 2022

**BY-LAW NO.**

**A By-law to enact a Housing Agreement  
for 8491 Cambie 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:

031-696-198

Lot C 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

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



1. Application

**Andrea Shaw, TERRA LAW CORPORATION  
2800 - 650 West Georgia Street  
Vancouver BC V6B 4N7  
604-628-8975**

File no. 502836

2. Description of Land

PID/Plan Number	Legal Description
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031-696-198	LOT C BLOCK 7 DISTRICT LOT 311 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP115039
-------------	--

3. Nature of Interest

Type	Number	Additional Information
<b>COVENANT</b>		<b>Section 219 Covenant Entire Instrument</b>
<b>PRIORITY AGREEMENT</b>		<b>granting the section 219 covenant granted herein priority over mortgage CB252552 in favour of Ashley Mar Housing Co-Operative</b>

4. Terms

Part 2 of this instrument consists of:

**(b) Express Charge Terms Annexed as Part 2**

5. Transferor(s)

**SOUTH CAMBIE RESIDENTIAL (NOMINEE) LTD., NO.BC1144480**

**ASHLEY MAR HOUSING CO-OPERATIVE**

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

Execution Date

Transferor / Transferee / Party Signature(s)



YYY-MM-DD

2022-11-07

**SOUTH CAMBIE RESIDENTIAL  
(NOMINEE) LTD.**

By their Authorized Signatory

Name:  IAN MCGREGOR

**Shengyin Gui**  
A Commissioner for Taking Affidavits  
for British Columbia  
600-650 Burnard Street  
Vancouver BC V6C 2B6  
Commission Expires April 06, 2025

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)

\_\_\_\_\_

YYY-MM-DD

Empty box for Execution Date

**CITY OF VANCOUVER**

By their Authorized Signatory

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

Shengyin Gui

Shengyin Gui  
A Commissioner for Taking Affidavits  
for British Columbia  
600-660 Burrard Street  
Vancouver BC V6C 2B6  
Commission Expires April 30, 2025

Execution Date

YYYY-MM-DD

2022-11-04

Transferor / Transferee / Party Signature(s)

**ASHLEY MAR HOUSING CO-  
OPERATIVE**

By their Authorized Signatory

[Signature]

Name: Abdala Zia 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.

**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 RENTAL HOUSING  
8491 CAMBIE STREET

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- I. the Transferor, **SOUTH CAMBIE RESIDENTIAL (NOMINEE) LTD. (INC. NO. BC1144480)**, is called the “Owner”, as more particularly defined in Section 1.1(q); and
  - II. the Transferee, **CITY OF VANCOUVER**, is called the “City” or the “City of Vancouver” when referring to corporate entity continued under the *Vancouver Charter*, and “Vancouver” when referring to geographic location;
- B. The Owner is the registered Owner of the Lands;
- C. The Owner made an application to rezone, *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 a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, among other things, fulfilment of the following condition prior to enactment of the rezoning by-law (the “**Rezoning By-law**”): that the Owner will 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 (the “**For-Profit Affordable Rental Housing Agreement**”) 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;
- D. The For-Profit Affordable Rental Housing Agreement was subsequently entered into and registered on title to the Lands in the Land Title Office on June 16, 2022 under registration number CB10625 (together with a Housing Agreement Notice registered under registration number CB10627); and
- E. Subsequently the Owner has elected, pursuant to the Vancouver DCL By-law, not to receive a waiver of the Development Cost Levies payable in respect of the portion of the Development situated on the Lands, and accordingly, the Owner and City have agreed for the Housing Agreement herein to secure all of the rental residential units as being used only for the purpose of providing Rental Housing for the longer of 60 years and the life of the New Building.

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

City, 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 INTERPRETATION**

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

- (a) **“Agreement”** means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;
- (b) **“Building Permit”** means any building permit issued by the City authorizing the building of a New Building as contemplated by the Development Permit;
- (c) **“City”** and **“City of Vancouver”** have the meaning ascribed to those terms in Recital A(ii);
- (d) **“City Manager”** means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (e) **“City Personnel”** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) **“Development”** means the development on the Lands described in Recital C and approved by a Development Permit;
- (g) **“Development Permit”** means any development permit issued by the City authorizing the development of any portion of the Lands contemplated by the Rezoning By-law;
- (h) **“Director of Legal Services”** means the chief administrator from time to time of the City’s Legal Services Department and her/his successors in function and their respective nominees;
- (i) **“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;
- (j) **“Effective Date”** means the date as of which this Agreement has been executed by all parties to it;
- (k) **“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;
- (l) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c. 250, as may be amended or replaced from time to time;

- (m) **“Lands”** means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 of the General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided;
- (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, 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;
- (o) **“New Building”** means any new building or structure to be built on the Lands and any building or structure on the Lands being renovated, upgraded or refurbished as contemplated by any 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 any Development Permit;
- (p) **“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;
- (q) **“Owner”** means the registered owner of the Lands as of the Effective Date, namely, SOUTH CAMBIE RESIDENTIAL (NOMINEE) LTD., and its successors and permitted assigns;
- (r) **“Related Person”** means, where the registered or beneficial owner of the Rental Housing Units is:
  - (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c. 57), then a Related Person is:
    - (A) an officer, director or shareholder of such 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 referred to in paragraph (A); and
  - (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (s) **“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;
- (t) **“Rental Housing Units”** means the new residential units of Rental Housing to be contained within the New Building upon its completion, as part of the Development, which units will comply with the terms in this Agreement and the Development Permit applicable to the same, and **“Rental Housing Unit”** means any one of them;

- (u) **"Replacement Rental Housing Unit"** has the meaning ascribed to that term in Section 2.1(c) 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, as may be amended or replaced from time to time;
- (w) **"Rezoning"** means the rezoning of the Lands as described in Recital C;
- (x) **"Rezoning By-law"** has the meaning ascribed to it in Recital C;
- (y) **"Social Housing Units"** has the meaning ascribed to that term in Recital C;
- (z) **"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;
- (aa) **"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;
- (bb) **"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;
- (cc) **"Vancouver"** has the meaning ascribed to that term in Recital A(ii); and
- (dd) **"Vancouver Charter"** means the *Vancouver Charter*, S.B.C. 1953, c. 55, as may be amended or replaced from time to time.

**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.
- (h) **Replacement of For-Profit Affordable Rental Housing Agreement.** For greater certainty, upon the discharge from title of the For-Profit Affordable Rental Housing Agreement, this Agreement will supersede and replace the For-Profit Affordable Rental Housing Agreement and the For-Profit Affordable Rental Housing Agreement will be of no further force or effect.

## ARTICLE 2 RESTRICTIONS ON USE OF LANDS AND SUBDIVISION

2.1 **Use of Lands.** 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) it will construct, fit and finish, at its sole cost and expense, the New Building containing not less than the number of Rental Housing Units approved in the Development Permit, 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 of the Rental Housing Units in the New Building will be used only for the purpose of providing Rental Housing in accordance with the terms 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 for the New Building, then 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 or replacement building(s) on the Lands (together with any remaining undestroyed or undemolished building) will also

contain not less than the same number and type of replacement Rental Housing Units as the New Building formerly contained, which replacement Rental Housing Units will also be used only for the purpose of providing Rental Housing (each such replacement Rental Housing Unit hereinafter referred to as a “**Replacement Rental Housing Unit**”), in accordance with the terms of this Agreement and the applicable by-laws of the City and which Replacement Rental Housing Units will be subject, for the remaining duration of the Term, to the same use restriction as the Rental Housing Units are pursuant to this Agreement;

- (d) not less than 35% of the 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) 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 Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) for a term of less than one month at a time;
- (f) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies:
  - (i) the Owner will not suffer, cause or permit registered title to any Rental Housing Unit within the New Building to be sold or otherwise transferred unless registered title to every one of the 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 Rental Housing Unit within the New Building to be sold or otherwise transferred unless beneficial title to every one of the 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 7.8. For greater certainty, and without limitation, this Section 2.1(f) 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 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;

- (g) throughout the Term, it will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld;
- (h) throughout the Term, that any sale of any Rental Housing Unit in contravention of the covenant in Section 2.1(f), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(g), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;

- (i) throughout the Term, it will keep and maintain the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings in the area;
- (j) 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 a state and condition that is equal to or greater than the state and condition thereof as existed before such damage occurred; and
- (k) throughout the Term, it will insure, or cause to be insured, the New Building to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands.

### **ARTICLE 3 OCCUPANCY RESTRICTION ON THE LANDS**

**3.1 No Occupancy.** The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:

- (a) the 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 General Manager of Planning, Urban Design and Sustainability, in form and substance satisfactory to the General Manager of Planning, Urban Design and Sustainability, proof of the insurance, consistent with the requirements of Section 2.1(k), is in force and effect; and
    - (B) the Social Housing Building Occupancy Permit has been issued;
  - (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 3.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 5, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this ARTICLE 3.

### **ARTICLE 4 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.



**ARTICLE 5  
RELEASE AND INDEMNITY**

5.1 **Release and Indemnity.** Subject to Section 5.2, 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 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, Vancouver Charter Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
- (iii) 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
- (iv) 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 5 will be both personal covenants of the Owner and integral parts of the Section 219 Covenant 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).

- (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 **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 to the City, addressed to:

**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, addressed to:

**South Cambie Residential (Nominee) Ltd.**  
Suite 600 - 550 Burrard Street  
Vancouver, BC V6C 3B5

Attention: President

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 will be covenants the burden of which will run with and will bind the Lands and will attach thereto.

**7.2 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 the Crown 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 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.

**7.3 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.

**7.4 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.

**7.5 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.

**7.6 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.

**7.7 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.

**7.8 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 in the Lands by way of 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 7.8 will apply equally to all subsequent purchasers/transferees (other than the transfer of an interest in the Lands by way of mortgage).

**7.9 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.

**7.10 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.

**7.11 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.

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 instrument:

- (a) **"Existing Charges"** means the Mortgage registered under CB252552;
- (b) **"Existing Chargeholder"** means ASHLEY MAR HOUSING CO-OPERATIVE;
- (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 meaning 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