## EXPLANATION

**Authorization to enter into a Housing Agreement**
**Re: 2009-2037 Stainsbury Avenue**

After a public hearing on July 28, 2022, Council approved in principle the land owner's application to rezone the above noted property from RS-1 (Residential) District to CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. The Housing Agreement was accepted and executed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services
February 14, 2023

**BY-LAW NO.**

**A By-law to enact a Housing Agreement for 2009-2037 Stainsbury Avenue**

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

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

| | |
|---|---|
| 031-863-922 | Lot 1 Blocks 6 to 8 District Lot 195 Group 1 New Westminster District Plan EPP125504 |

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 , 2023

_____
Mayor

_____
Acting City Clerk

Land Title Act

**Charge**

General Instrument – Part 1

1. Application

**De Jager Volkenant**
**#211 - 17660 65A Avenue**
**Surrey BC V3S 5N4**
**604-953-1500**

MAT4877 - MTR
LTO Client No. 11692
Housing Agreement

2. Description of Land

| PID/Plan Number | Legal Description |
|---|---|
| **031-863-922** | **LOT 1 BLOCKS 6 TO 8 DISTRICT LOT 195 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP125504** |

3. Nature of Interest

| Type | Number | Additional Information |
|---|---|---|
| **COVENANT** | | **Entire Agreement.**<br>**Section 219 Covenant.** |

4. Terms

Part 2 of this instrument consists of:

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

5. Transferor(s)

**CITY OF VANCOUVER**

6. Transferee(s)

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

7. Additional or Modified Terms


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8. Execution(s)

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

| Witnessing Officer Signature | Execution Date | Transferor / Transferee / Party Signature(s) |
|---|---|---|
| WESLEY Y. L. CHAN<br>453 WEST 12TH AVENUE<br>VANCOUVER, B.C. V5Y 1V4<br>BARRISTER & SOLICITOR | YYYY-MM-DD<br>2023-01-30 | **CITY OF VANCOUVER**<br>By their Authorized Signatory<br>**Name:** Grant Murray |

**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**<br>By their Authorized Signatory<br>**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.


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**TERMS OF INSTRUMENT - PART 2**

**HOUSING AGREEMENT AND BUILDING USE COVENANT**
**(Social Housing)**

**2009-2037 STAINSBURY AVENUE**

WHEREAS:

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

(i) the Transferor, CITY OF VANCOUVER, is called the "**Owner**" as more particularly defined in Section 1.1; and

(ii) the Transferee, CITY OF VANCOUVER, is called the "**City**" or the "**City of Vancouver**" when referring to corporate entity and "**Vancouver**" when referring to geographic location;

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

C. The Owner made an application to rezone the Lands from RS-1 (Residential) District to CD-1 (Comprehensive Development) District to allow construction of a seven-storey residential building containing 123 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, *inter alia*, fulfilment of the following condition:

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

*(a) A no separate-sales covenant;*

*(b) A no stratification covenant;*

*(c) That none of such units will be rented for less than one month at a time;*

*(d) That the social housing units will be legally and beneficially owned by a non-profit corporation, or by or on behalf of the city, the Province of British Columbia, or Canada as a single legal entity and used only to provide rental housing for terms of not less than one month at a time and prohibiting the separate sale or transfer of legal or beneficial ownership of any such units;*

*(e) Requiring such units to be used for "social housing", as that term is defined in the Vancouver Development Cost Levy By-law No. 9755;*

*(f) Not less than 30 per cent of the social housing units will be occupied only by households with incomes below the then current applicable Housing Income Limits, as set out in the current "Housing Income Limits" table published by the British Columbia Housing Management Commission, or equivalent publication, and each rented at a rate no higher than 30 per cent of the aggregate household income of the members of the household occupying such social housing unit; and*

*(g) On such other terms and conditions at the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services may in their sole discretion require."*

(the **"Social Housing Condition"**); and

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

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 565.2 of the *Vancouver Charter* and to Section 219 of the *Land Title Act*, agree as follows in respect of the use of the Lands and the New Building:

## ARTICLE 1
## DEFINITIONS AND INTERPRETATIONS

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

(a) **"Agreement"** means this housing agreement and building use covenant, including the foregoing Recitals;

(b) **"BC Housing"** means British Columbia Housing Management Commission or its successors in function;

(c) **"City"** and **"City of Vancouver"** are defined in Recital A(ii);

(d) **"City Manager"** means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;

(e) **"City Personnel"** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;

(f) **"CMHC"** means Canada Mortgage and Housing Corporation or its successors in function;

(g) **"Commencement Date"** means the date as of which this Agreement has been submitted to the Land Title Office;

(h) **"Development"** means the development on the Lands described in Recital C as contemplated by the Rezoning;

(i) **"Development Permit"** means a development permit issued by the City authorizing development on the Lands or any portion of the Lands as contemplated by the Rezoning at any time following the date this Agreement is fully executed by the parties;

(j) **"Director of Legal Services"** means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;

(k) **"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;

(l) **"General Manager of Planning, Urban Design and Sustainability"** means the chief administrator from time to time of the Planning, Urban Design and Sustainability Department of the City and his/her successors in function and their respective nominees;

(m) **"Housing Income Limit"** or **"HIL"** means the income required to pay the average market rent for an appropriately sized unit in the private market in Vancouver, determined annually by BC Housing, which is derived from CMHC's Annual Rental Market Survey or an equivalent publication (as approved by the General Manager of Planning, Urban Design and Sustainability);

(n) ***"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;

(o) **"Lands"** means the lands described in Item 2 in the Form C attached hereto; provided, however, that if the Lands are at any time subdivided by air space parcel subdivision, and this Agreement is thereafter discharged from one or more of the resulting legal parcels, then **"Lands"** will thereafter mean only the part of the Lands within the legal parcel(s) against which it remains registered;

(p) **"Losses"** means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;

(q) **"New Building"** means each new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;

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

(s) **"Owner"** means the Transferor, CITY OF VANCOUVER, and any successors in title to the Lands or a portion of the Lands;

(t) **"Rental Housing"** means a Dwelling Unit which is not occupied by the registered or beneficial owner of the same, but which is made available by such owner to the general public (subject to Article 2), at arm's length, for use as rental accommodation on a month-to-month or longer basis in accordance with this Agreement, and pursuant to reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto;

(u) **"Replacement Social Housing Unit"** has the meaning ascribed to that term in section 2.1(b) and **"Replacement Social Housing Units"** means all of such units;

(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) **"Social Housing"** has the meaning ascribed to that term in the Vancouver Development Cost Levy By-law No. 9755, namely Rental Housing:

(i) in which at least 30% of the dwelling units are occupied by households with incomes below housing income limits, as set out in the current "Housing Income Limits" table published by BC Housing, or equivalent publication;

(ii) which is owned by a non-profit corporation, by a non-profit co-operative association, or by or on behalf of the City, the Province of British Columbia or Canada; and

(iii) in respect of which the registered owner or ground lessee of the freehold or leasehold title to the land on which the housing is situate has granted to the City a Section 219 covenant, housing agreement, or other security for the housing commitments required by the City, registered against the freehold or leasehold title, with such priority of registration as the City may require;

(y) **"Social Housing Condition"** has the meaning ascribed to that term in Recital C;

(z) **"Social Housing Units"** has the meaning ascribed to that term in Section 2.1(b), and **"Social Housing Unit"** means any one of such Social Housing Units;

(aa) **"Term"** means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:

(i) the date as of which the New Building is demolished or substantially destroyed; and

(ii) 60 years from the date when the final Occupancy Permit is issued for the New Building; and

(bb) "***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 date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.

(f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.

(g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

## ARTICLE 2
## RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

(a) throughout the Term, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;

(b) it will design, construct, equip and finish within the New Building such number of Dwelling Units as approved in the Development Permit, all of which will be for use only as Social Housing (the **"Social Housing Units"**), in accordance with the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement, and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit, then it will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired New Building or replacement building(s) will contain not less than the same number and type of replacement Social Housing Units as the New Building formerly contained (each such replacement Social Housing Unit hereinafter referred to as a **"Replacement Social Housing Unit"**) and will be subject, for the duration of the Term, to the same use restrictions as the Social Housing Units and the New Building are pursuant to this Agreement. Notwithstanding the foregoing, the City and the Owner acknowledge and agree that if at the time of such damage, destruction or demolition, BC Housing, CMHC or an Approved Lender (as that term is defined under the *National Housing Act* (Canada)) as successor holds a mortgage charging the Lands and/or the New Building, then any insurance proceeds received may, at the option of such mortgagee, be applied to repair the New Building or rebuild a replacement building or buildings on the Lands, be paid to the mortgagor or be applied or paid partly in one way and partly in another way, or be applied, in the sole discretion of the mortgagee, in whole or in part towards all indebtedness under such mortgage, whether due or not then due;

(c) throughout the Term the New Building will be used only in a manner that ensures its continued compliance with the definition of Social Housing;

(d) throughout the Term, not less than 30% of the Social Housing Units will be:

(i) occupied only by households with incomes below the then current applicable HIL; and

(ii) each rented at a rate no higher than 30% of the aggregate household income of the members of the household occupying such Social Housing Unit;

(e) throughout the Term, the Social Housing Units will only be used for the purpose of providing Rental Housing;

(f) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial

or registered title to or interest in any Social Housing Unit to be sold or otherwise transferred unless:

(i) every Social Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner; or

(ii) the sale or transfer is to Provincial Rental Housing Corporation pursuant to the exercise of a registered option to purchase, to a non profit entity to whom Provincial Rental Housing Corporation subsequently transfers title to or to the City or it otherwise obtains the express written consent of the City;

(g) throughout the Term, it will not suffer, cause or permit the Lands, or any part thereof, to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld;

(h) throughout the Term, any sale or other transfer of title to a Social Housing Unit in contravention of the covenant in Section 2.1(f), and any subdivision of the Lands in contravention of Section 2.1(g), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;

(i) throughout the Term, the Social Housing Units will only be rented on a month-to-month or longer basis and in no case for less than one month at a time;

(j) throughout the Term, all of the Social Housing Units will be owned by a non-profit corporation, by a non-profit co-operative association, or by or on behalf of the City, the Province of British Columbia or Canada, which shall include, without limitation, those entities referred to in Section 2.1(f);

(k) throughout the Term, it will insure, or cause to be insured, the Lands and the New Building and all parts thereof to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands; and

(l) throughout the Term, it will keep and maintain the Lands and the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition. If the Lands or the New Building or any part thereof is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred, subject to Section 2.1(b).

## ARTICLE 3
## OCCUPANCY RESTRICTION ON THE LANDS

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

(a) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for the New Building, until such time as the Owner has delivered, to the General Manager of Planning, Urban Design and Sustainability, in form and substance satisfactory to the General Manager of Planning, Urban Design and Sustainability:

(i) proof of the insurance, or confirmation of self-insurance, consistent with the requirements of Section 2.1(k), is in force and effect;

(ii) a final rent roll confirming the rents to be charged to the first occupants, listed by unit bedroom type, of the Social Housing Units following issuance of the Occupancy Permit satisfy the requirements of Section 2.1(d); and

(iii) evidence the unit type mix and size of the constructed, equipped and finished Social Housing Units satisfy the requirements set out in the Development Permit; and

(b) the City will be under no obligation to issue any Occupancy Permit for the New Building or any part thereof, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 3.1(a).

3.2 Without limiting the general scope of ARTICLE 6, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit for the New Building until there is compliance with the provisions of this ARTICLE 3.

## ARTICLE 4
## RECORD KEEPING

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

## ARTICLE 5
## ENFORCEMENT

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

## ARTICLE 6
## RELEASE AND INDEMNITY

6.1 Release and Indemnity. Subject to Section 3.2, the Owner hereby:

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

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

A. withholding any permit pursuant to this Agreement; or

B. exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or

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

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

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

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

(ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.

The indemnities in this ARTICLE 6 will be both personal covenants of the Owner (subject to Section 8.1) and integral parts of the Section 219 covenants granted in this Agreement.

6.2 Conduct of Proceedings.

(a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 6.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.

(b) Section 6.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.2(a) in the following circumstances:

(i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;

(ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or

(iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 6.2(b); and

(c) Regardless of whether the claim is being defended under Section 6.2(a) or Section 6.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

6.3 Survival of Release and Indemnities. The release and indemnities in this Article 6 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

## ARTICLE 7
## NOTICES

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

(a) If to the City:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y IV4

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

(b) If to the Owner:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y IV4

Attention: Director of Real Estate

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 8
## MISCELLANEOUS

8.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated. Upon the sale or transfer of the legal or beneficial interest in the Lands, the parties agree that the covenants and agreements herein contained shall only be binding upon the transferring party in respect of a breach or acts or omissions occurring during its ownership of the Lands, and the transferring party shall otherwise be released from all covenants and agreements herein contained following such sale or transfer of the legal or beneficial interest in the Lands.

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

(a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;

(b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and

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

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

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

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

8.6 Further Assurances. The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.

8.7 Perfection of Intention. The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter* and also registered as a charge against title to the Lands with priority over all other encumbrances except those in favour of the City.

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

(a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;

(b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;

(c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and

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

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

IN WITNESS WHEREOF the parties have executed this Agreement on the General Instrument - Part 1 which is a part hereof.

**END OF DOCUMENT**

## EXPLANATION

**Authorization to enter into a Housing Agreement**
**Re: 815 SW Marine Drive**

On June 30, 2022, the Director of Planning approved in principle a development on the above noted property, 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, prior to the issuance of a Development Permit.

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

Director of Legal Services
February 14, 2023

**BY-LAW NO.**

**A By-law to enact a Housing Agreement for 815 SW Marine Drive**

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:

| | |
|---|---|
| 014-245-388 | Lot A (Explanatory Plan 7356) of Lot Y Blocks 7 to 10 of Block C District Lots 319, 323 and 324 Plan 1870 Except Part in Plan LMP28173 |

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 , 2023

_____
Mayor

_____
Acting City Clerk

Land Title Act

# Charge

General Instrument – Part 1

1. Application

**Claudia Leca Notary Public**
**Suite 264-2025 West 42nd Avenue**
**Vancouver BC V6M 2B5**
**604-263-3277**

File Number: 200144 1179241 B.C. LTD

2. Description of Land

| PID/Plan Number | Legal Description |
|---|---|
| **014-245-388** | **LOT A (EXPLANATORY PLAN 7356) OF LOT Y BLOCKS 7 TO 10 OF BLOCK C DISTRICT LOTS 319, 323 AND 324 PLAN 1870 EXCEPT PART IN PLAN LMP28173** |

3. Nature of Interest

| Type | Number | Additional Information |
|---|---|---|
| **COVENANT** | | **Section 219 Covenant Entire Document** |
| **PRIORITY AGREEMENT** | | **Granting the above Covenant priority over Mortgage registered under number CA8398619 and the Assignment of Rents registered under number CA8398620** |

4. Terms

Part 2 of this instrument consists of:

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

5. Transferor(s)

**1179241 B.C. LTD., NO.BC1179241**

6. Transferee(s)

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

7. Additional or Modified Terms


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8. Execution(s)

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

| Witnessing Officer Signature | Execution Date | Transferor / Transferee / Party Signature(s) |
|---|---|---|
| **Claudia Leca**<br>**Notary Public**<br>#303-9940 Lougheed Hwy<br>Burnaby BC V3J 1N3<br><br>Permanent Commission | YYYY-MM-DD<br>2023-01-23 | **1179241 B.C. Ltd.**<br>By their Authorized Signatory<br><br>**Name** Dinesh Chand<br><br>**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**<br>By their Authorized Signatory<br><br>**Name**<br><br>**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.


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Land Title Act

**Charge**

General Instrument – Part 1

| Witnessing Officer Signature | Execution Date | Transferor / Transferee / Party Signature(s) |
|---|---|---|
| Mark A. Janetka<br>Commissioner for Taking Affidavits<br>For the Province of British Columbia<br>Expiry: February 28, 2025<br><br>BLUESHORE FINANCIAL CREDIT UNION<br>1250 LONSDALE AVE<br>NORTH VANCOUVER BC<br>V7M 2H6 | YYYY-MM-DD<br>2023-01-30 | **Blueshore Financial Credit Union**<br>(As to Priority Agreement)<br>By their Authorized Signatory<br><br>**Name** MICHAEL YUEN<br><br>**Name** Sarah Harbinson |

**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.


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**TERMS OF INSTRUMENT - PART 2**
**HOUSING AGREEMENT AND BUILDING USE COVENANT**
**(SECURED MARKET RENTAL)**

**815 SW MARINE DRIVE**

WHEREAS:

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

(i) the Transferor, **1179241 B.C. LTD.**, is herein called the **"Owner"** as more particularly defined in Section 1.1(s); and

(ii) the Transferee, **CITY OF VANCOUVER**, is herein called the **"City" or the "City of Vancouver"** when referring to corporate entity, and **"Vancouver"** when referring to geographic location;

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

C. The Owner made a development permit application for the Lands under number DP-2022-00127 (the **"Development Permit Application"**) to permit exterior and interior alterations to the Building on the Lands, including patio additions on the main floor, balcony additions on the second and third floors, the conversion of the storage/locker area into a dwelling unit on the main floor, the replacement of all windows and the addition of another level to the Building;

D. The Development Permit Application was approved by the Development Permit Board in principle subject to, *inter alia*, fulfilment of the condition that the Owner make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services to enter into a Housing Agreement and Section 219 Covenant securing twenty-six (26) dwelling units in the Building, as secured market rental housing units, excluding Seniors Supportive or Assisted Housing, for a term equal to the longer of 60 years or the life of the building, subject to the following additional conditions:

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

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

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

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

## ARTICLE 1
## DEFINITIONS AND INTERPRETATION

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

(a) **"Agreement"** means this housing agreement and building use covenant, including the foregoing Recitals;

(b) **"Building"** means each existing building located on the Lands and each new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;

(c) **"City" and "City of Vancouver"** have the meaning ascribed to those terms in Recital A(ii);

(d) **"City Manager"** means the chief administrator from time to time of the City and her/his successors in function and their respective nominees;

(e) **"City Personnel"** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;

(f) **"Commencement Date"** means the date as of which this Agreement has been executed by all parties to it;

(g) **"Development Permit"** means any permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing development on the Lands (or any portion of the Lands) as contemplated by the Development Permit Application;

(h) **"Development Permit Application"** has the meaning ascribed to that term in Recital C;

(i) **"Director of Legal Services"** means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;

(j) **"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;

(k) **"Housing Unit"** means a self-contained residential unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;

(l) **"*Land Title Act*"** means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;

(m) **"Lands"** means the parcel of land situate in the City of Vancouver, British Columbia, and legally described in Item 2 of the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and includes any parcels into which such land is consolidated or further subdivided (including, without limitation, a subdivision pursuant to the *Land Title Act* and a subdivision pursuant to the *Strata Property Act*);

(n) **"Losses"** means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, judgments, 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) **"Market Rental Housing"** means a Housing Unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arm's length, for use as rental accommodation in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;

(p) **"Market Rental Housing Condition"** has the meaning ascribed to that term in Recital D;

(q) **"Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(b);

(r) **"Occupancy Permit"** means a permit issued by the City at any time following the Commencement Date authorizing the use and occupation of any Building, development or partial development on the Lands or any portion of the Lands;

(s) **"Owner"** means the Transferor, 1179241 B.C. Ltd., and all assigns, successors and successors in title to the Lands or any part thereof;

(t) **"Related Person"** means, where the registered or beneficial owner of the Market Rental Housing Units is:

(i) a corporation (as that term is defined in the *Business Corporations Act* (British Columbia), then a Related Person is:

(A) an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or

(B) the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and

(ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;

(u) **"Replacement Rental Housing Unit"** has the meaning ascribed to that term in Section 2.1(k) and **"Replacement Rental Housing Units"** means all of such units;

(v) ***"Residential Tenancy Act"*** means the *Residential Tenancy Act*, S.B.C. 2002, c. 78, and all amendments thereto and re-enactments thereof;

(w) **"Term"** means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:

(i) the date as of which the Building is demolished or substantially destroyed; or

(ii) 60 years from the date when the final Occupancy Permit is issued for the Market Rental Housing Units;

(x) **"Vancouver"** has the meaning ascribed to that term in Recital A(ii); and

(y) ***"Vancouver Charter"*** means the *Vancouver Charter*, S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof.

1.2 **Interpretation.** In this Agreement:

(a) Party. Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.

(b) Singular; Gender. Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.

(c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.

(d) References. References to the or this **"Agreement"** and the words **"hereof" "herein"** and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.

(e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.

(f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made

thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.

(g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

## ARTICLE 2
## RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

(a) throughout the Term, the Lands and the Building will not be used in any way that is inconsistent with the terms of this Agreement;

(b) when and if it carries out any development on the Lands after the Commencement Date, it will construct, fit, and finish and throughout the Term will maintain, at its sole cost and expense, the Building to contain twenty-six (26) Housing Units and related amenity and parking spaces in accordance with the Market Rental Housing Condition, the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement (the **"Market Rental Housing Units"**), all to the satisfaction of the City;

(c) throughout the Term, not less than one (1) of the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) will have two (2) bedrooms, provided that, subject to the approval and confirmation in writing by the General Manager of Planning, Urban Design and Sustainability or the Development Permit Board in their sole discretion, and compliance with this Agreement and any issued Development Permit and/or Building Permit and all applicable City by-laws and policies, such unit mix may be adjusted prior to issuance of the Development Permit and/or prior to issuance of the Occupancy Permit, without amendment to this Agreement;

(d) throughout the Term, not less than all the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) will only be used for the purpose of providing Market Rental Housing;

(e) throughout the Term, it will not rent, licence to use or sublet any Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) for a term of less than 30 consecutive days, nor will it allow to be rented, licensed to use or sublet any Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) for a term of less than 30 consecutive days;

(f) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Market Rental Housing Unit (or Replacement Rental Housing Units, as applicable) to be sold or otherwise transferred unless title to every Market Rental Housing Unit (or Replacement Rental Housing Units, as

applicable) is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and unless such transferee concurrently enters into an assumption agreement satisfactory to the City whereby it agrees to be and thereafter remain bound by each and every term and condition of this Agreement applicable to the Owner of the Market Rental Housing Units subject further to Section 7.8;

(g) throughout the Term, it will not suffer, cause or permit the Lands or the Building (or any replacement building(s) on the Lands, as applicable), or any part thereof, to be subdivided, whether by subdivision plan, strata plan, air space plan, or otherwise, without the prior written consent of the City, which consent may be arbitrarily withheld;

(h) throughout the Term, any sale of a Market Rental Housing Unit (or Replacement Rental Housing Units, as applicable) in contravention of the covenant in Section 2.1(f), and any subdivision in contravention of Section 2.1(g), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;

(i) it will insure, or cause to be insured, the Building, the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) and all parts thereof to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands;

(j) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) or any part of any thereof are/is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred; and

(k) if the Building is destroyed or demolished before the end of the 60th anniversary of the date when the final Occupancy Permit is issued for the Building, then any replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building(s)) will also contain not less than the same number and type of replacement Market Rental Housing Units as the Building formerly contained, which replacement Market Rental Housing Units will also be used only for the purpose of providing Market Rental Housing (each such replacement Market Rental Housing Unit is herein referred to as a **"Replacement Rental Housing Unit"**), in accordance with the terms of this Agreement and the applicable by-laws of the City.

## ARTICLE 3
## RECORD KEEPING

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

agreements and any amendments thereto or renewals thereof available for inspection and copying by the City. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

**ENFORCEMENT**

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

**RELEASE AND INDEMNITY**

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

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

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

(A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Market Rental Housing Units;

(B) withholding any permit pursuant to this Agreement; or

(C) exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or

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

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

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

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

(ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.

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

**5.2 Conduct of Proceedings.**

(a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 5.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.

(b) Section 5.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 5.2(a) in the following circumstances:

(i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;

(ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or

(iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

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

(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, shall be in writing and shall be given by registered mail or personal delivery, addressed as follows:If to the City:

**City of Vancouver**
453 West 12th Avenue
Vancouver, British Columbia
V5Y IV4

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

(b) If to the Owner:

**1179241 B.C. Ltd.**
302 - 2818 Main Street
Vancouver, British Columbia
V5T 0C1

Attention: Dinesh Chand

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

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

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

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

## ARTICLE 7
## MISCELLANEOUS

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

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

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

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

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

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

(a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;

(b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and

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

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

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

following such sale, transfer or conveyance relative to that portion of the Lands sold, transferred or conveyed.

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

(a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;

(b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;

(c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and

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

7.10 **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.

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

## CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

(a) "**Existing Charges**" means the Mortgage registered under number CA8398619 and the Assignment of Rents registered under number CA8398620;

(b) "**Existing Chargeholder**" means Blueshore Financial Credit Union (Incorporation no. FI 18);

(c) "**New Charges**" means the registrable charges and encumbrances created by and contained in the attached Terms of Instrument - Part 2; and

(d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

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

**END OF DOCUMENT**

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## EXPLANATION

**A By-law to amend the Sign By-law**
**Re: 728-796 Main Street**

At the Public Hearing on February 9, 2021, Council resolved to amend the Sign By-law for this site. Enactment of the attached By-law will implement Council's resolution.

Director of Legal Services
February 14, 2023

728-796 Main Street

**BY-LAW NO.**

**A By-law to amend Sign By-law No.11879**

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

1. This by-law amends the indicated provisions of Sign By-law No. 11879.

2. Council amends Schedule B (CD-1 Zoning Districts regulated by Part 10, 12, 13 or 14) by adding the following:

"

| | | | | |
|---|---|---|---|---|
| 728-796 Main Street | CD-1(845) | 13614 | HA-1A | Part 10 |

".

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

ENACTED by Council this day of , 2023

_____
Mayor

_____
Acting City Clerk

4

## EXPLANATION

**A By-law to amend the Noise Control By-law**
**Re: 728-796 Main Street**

After the Public Hearing on February 9, 2021, Council resolved to amend the Noise Control By-law regarding this site. Enactment of the attached By-law will implement Council's resolution.

Director of Legal Services
February 14, 2023

728-796 Main Street

**BY-LAW NO. _____**

**A By-law to amend**
**Noise Control By-law No. 6555**

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

1. This by-law amends the indicated provisions of Noise Control By-law No. 6555.

2. Council amends Schedule B (Intermediate Zone) by adding the following:

"

| | | |
|---|---|---|
| 845 | 13614 | 728-796 Main Street |

".

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

ENACTED by Council this day of , 2023

_____
Mayor

_____
Acting City Clerk