

EXPLANATION

**A By-law to amend Vancouver Development Cost Levy By-law No. 9755
regarding 2023 rates**

Enactment of this By-law will implement Council's resolutions on June 22, 2022 to increase rates in 2023.

Director of Legal Services
September 12, 2023

SCHEDULE “C”

Category/Use	Total Development Cost Levy (Effective September 30, 2023)	Unit/ area cost
RESIDENTIAL		
Residential at or below 1.2 FSR and Laneway House	\$54.47	Per m ²
Medium Density Residential Above 1.2 to 1.5 FSR	\$117.21	Per m ²
Higher Density Residential Above 1.5 FSR	\$234.65	Per m ²
NON-RESIDENTIAL		
Industrial	\$93.86	Per m ²
Mixed-Employment (Light Industrial)	\$175.88	Per m ²
Commercial & Other	\$234.65	Per m ²

Category/Use	Total Development Cost Levy Waiver
For-Profit Affordable Rental Housing – Class A	100%
For-Profit Affordable Rental Housing – Class B	86.24%

Category/Use	Rate	Unit/ Area cost
School use	\$5.49	Per m ²
Childcare Use	\$10.00	Per building permit
Temporary Building	\$10.00	
Community Energy Centre	\$10.00	
Cultural Facility	\$10.00	
Community Centre/ Neighbourhood House	\$10.00	
Library	\$10.00	
Public Authority Use	\$10.00	
Social Service Centre	\$10.00	
Works Yard	\$10.00	

EXPLANATION

**A By-law to amend
Vancouver Utilities Development Cost Levy By-law No. 12183
regarding 2023 rates**

Enactment of this By-law will implement Council's resolutions on June 22, 2022 to increase rates in 2023.

Director of Legal Services
September 12, 2023

BY-LAW NO. _____

**A By-law to amend
Vancouver Utilities Development Cost Levy By-law No. 12183
regarding 2023 rates**

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

1. This By-law amends the indicated provisions of Vancouver Utilities Development Cost Levy By-law.
2. Council strikes "Schedule C" and replaces it with the "Schedule C" attached to this By-law.
3. This By-law is to come into force and take effect on the 30th day of September, 2023.

ENACTED by Council this _____ day of _____, 2023

Mayor

Acting City Clerk

SCHEDULE "C"

Category/Use	Total Development Cost Levy (Effective September 30, 2023)	Unit/ area cost
RESIDENTIAL		
Residential at or below 1.2 FSR and Laneway House	\$34.12	Per m ²
Medium Density Residential Above 1.2 to 1.5 FSR	\$73.52	Per m ²
Higher Density Residential Above 1.5 FSR	\$147.04	Per m ²
NON-RESIDENTIAL		
Industrial	\$29.39	Per m ²
Mixed Employment (Light Industrial)	\$55.11	Per m ²
Commercial & Other	\$73.52	Per m ²

Category/Use	Rate	Unit/ Area cost
School use	\$5.49	Per m ²
Childcare Use	\$10.00	Per building permit
Temporary Building	\$10.00	
Community Energy Centre	\$10.00	
Cultural Facility	\$10.00	
Community Centre/ Neighbourhood House	\$10.00	
Library	\$10.00	
Public Authority Use	\$10.00	
Social Service Centre	\$10.00	
Works Yard	\$10.00	

EXPLANATION

2024 Real Property Tax Interest on Arrears

The attached By-law will implement Council's resolution of September 12, 2023 to set the interest rate for delinquent real property taxes for 2024 at 11.20%.

Director of Legal Services
September 12, 2023

BY-LAW NO.

**A By-law to provide for the imposition of interest
on delinquent property taxes for 2024**

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

1. The name of this By-law, for citation, is the “2024 Real Property Tax Interest By-law”.
2. All real property taxes that are or become delinquent after December 31, 2023, are to bear interest at the rate of 11.20% per annum compounded annually.
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

EXPLANATION

A By-law to amend the License By-law No. 4450 to encourage EV charging

The attached by-law will accomplish Council's resolutions adopted on September 12, 2023 to amend the License By-law to encourage EV charging.

Director of Legal Services
September 12, 2023

BY-LAW NO.

**A By-law to amend the License By-law No. 4450
to encourage EV charging**

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

1. This By-law amends the indicated provisions of the License By-law.
2. Council inserts a new section 16.2 (1) and (2) as follows:
 - “(1) Any person who holds or should hold a Gas Station license for a premises where it is impossible or not reasonably practical to accommodate the capacity to provide electricity sales for motor vehicles at a rate not less than 50 kW in order to qualify for a Gasoline Station with Charging licence, may demonstrate such capacity by entering into a written agreement with the owner of another premises that is:
 - (a) accessible to the public; and
 - (b) permitted to provide electricity sales to motor vehicles.
 - (2) Any agreement under (1) must:
 - (a) require the owner of the other premises to provide 50 kW of charging capacity on behalf of the Gas Station;
 - (b) be submitted to the Chief License Inspector; and
 - (c) be executed after (DATE OF ENACTMENT) and remain in force and be complied with at all material times.”
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

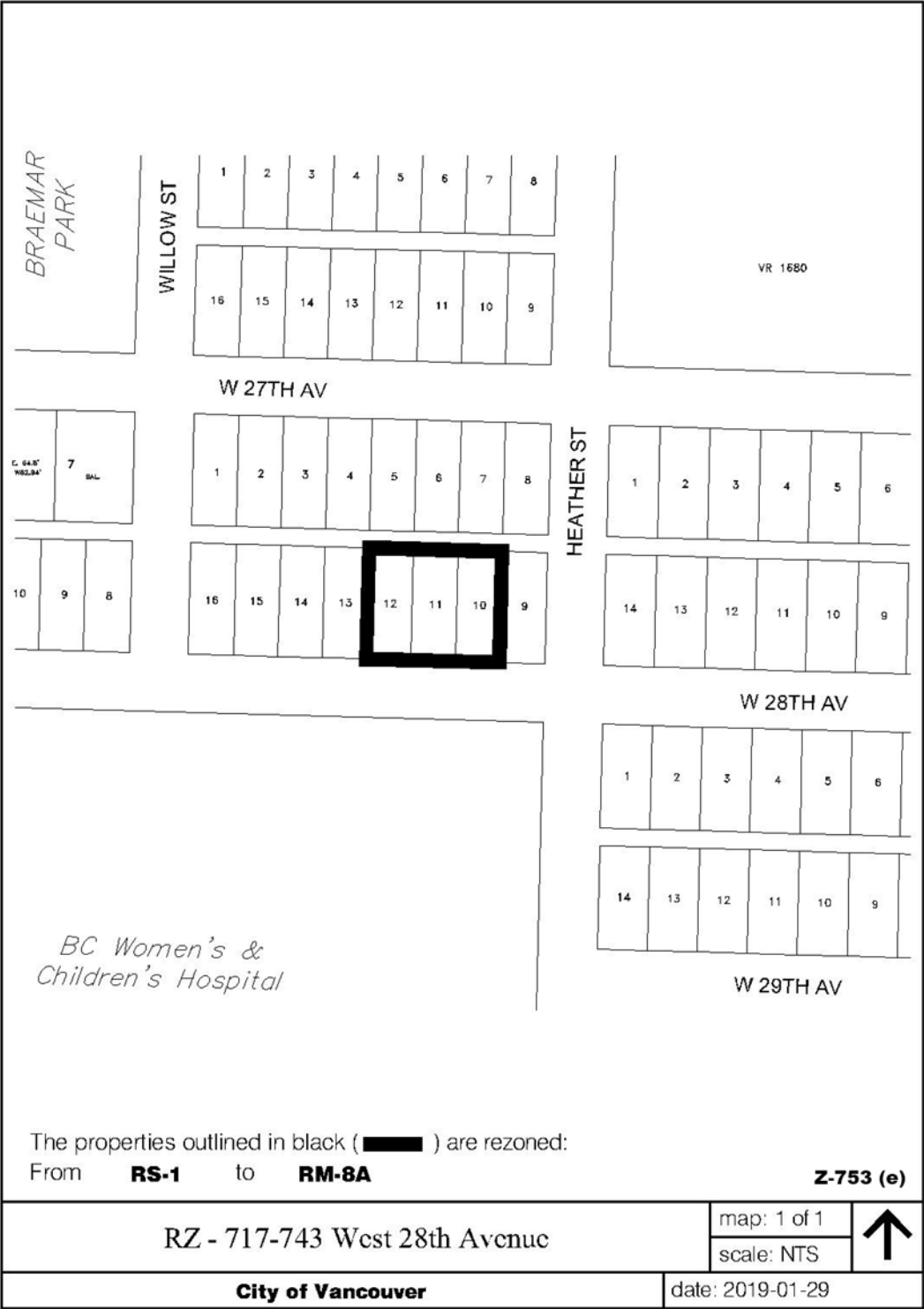
Mayor

Acting City Clerk

EXPLANATION**A By-law to amend
Zoning and Development By-law No. 3575
to rezone an area from RS-1 to RM-8A**

Following the Public Hearing on May 16, 2019, Council gave conditional approval to the rezoning of the site at 717-743 West 28th Avenue. The Director of Legal Services has advised that all prior to conditions have been met, and enactment of the attached by-law will implement Council's resolutions.

Director of Legal Services
September 12, 2023



The properties outlined in black () are rezoned:
 From **RS-1** to **RM-8A**

Z-753 (e)

RZ - 717-743 West 28th Avenue

map: 1 of 1
 scale: NTS



City of Vancouver

date: 2019-01-29

EXPLANATION**A By-law to amend
Zoning and Development By-law No. 3575
to rezone an area from RS-1 to RM-8A**

Following the Public Hearing on May 16, 2019, Council gave conditional approval to the rezoning of the site at 514-530 West 59th Avenue. The Director of Legal Services has advised that all prior to conditions have been met, and enactment of the attached by-law will implement Council's resolutions.

Director of Legal Services
September 12, 2023

514-530 West 59th Avenue

BY-LAW NO. _____

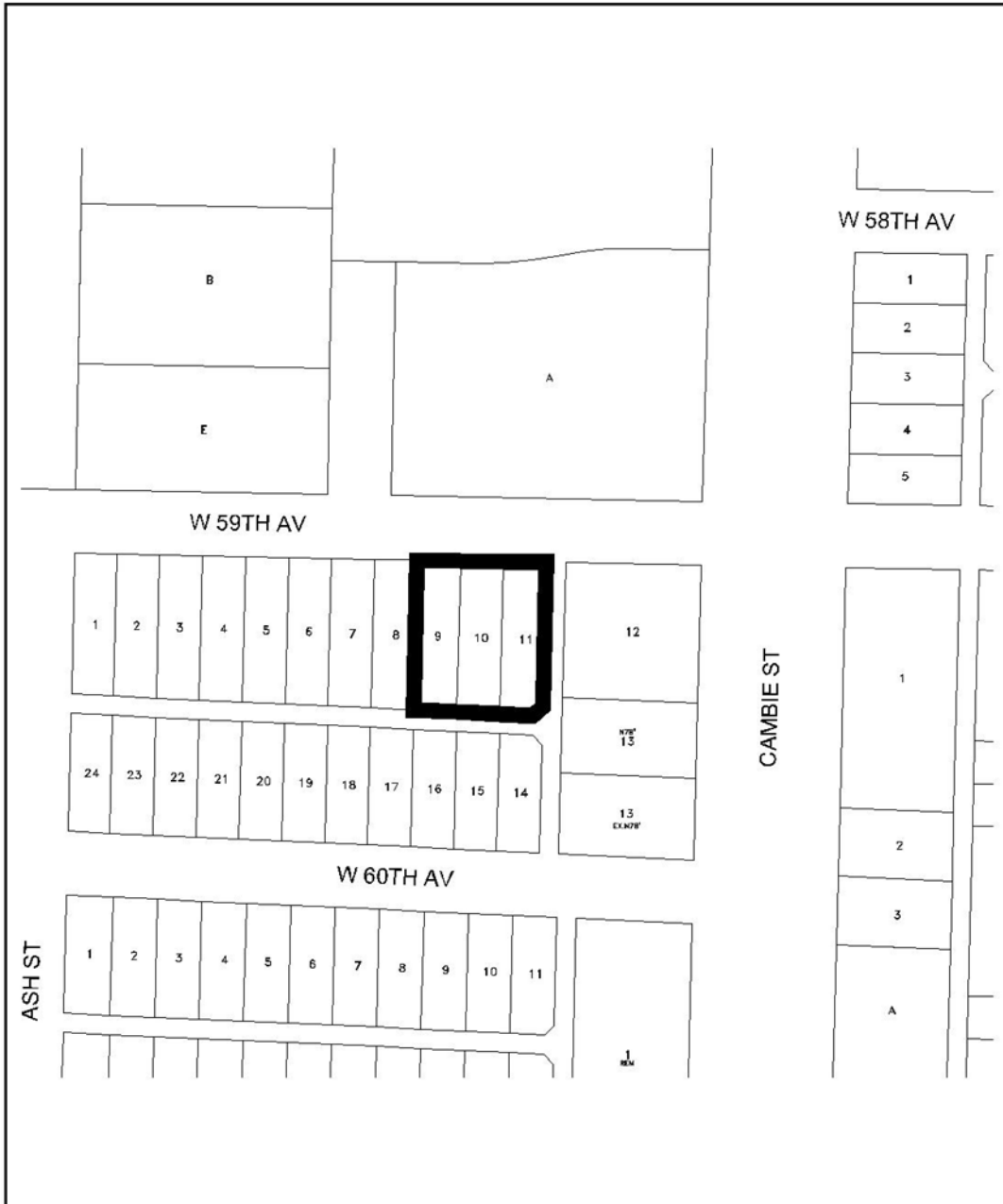
**A By-law to amend
Zoning and Development By-law No. 3575
to rezone an area from RS-1 to RM-8A**

- 1. This by-law amends the indicated provisions and schedules of the Zoning and Development By-law No. 3575.
- 2. This by-law amends the Zoning District plan attached as Schedule D to By-law No. 3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-753 (c) attached as Schedule A to this by-law, and incorporates Schedule A into Schedule D of By-law No. 3575.
- 3. The area shown within the heavy black outline on Schedule A is rezoned and moved from the RS-1 District Schedule to the RM-8A District Schedule.
- 4. 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



The properties outlined in black () are rezoned:
 From **RS-1** to **RM-8A**

Z-753 (c)

RZ - 514-530 West 59th Avenue

map: 1 of 1
 scale: NTS



City of Vancouver

date: 2019-01-29

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 1960 Macdonald Street**

Pursuant to a development permit application for DP-2022-00766, the owner of 1960 Macdonald Street applied to redevelop the lands with a six-storey mixed-use building containing 99 secured market rental units. The Director of Planning has conditionally approved such application subject to the condition that the Owner, among other things, 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 securing all residential units as secured market rental housing units pursuant to Section 3.1A of the Vancouver Development Cost Levy By-law.

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

Director of Legal Services
September 12, 2023

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 1960 Macdonald 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:

EPP130061 LOT 1 BLOCK 9 DISTRICT LOT 192 GROUP 1 NWD PLAN EPP130061

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 September , 2023

Mayor

Acting City Clerk



Land Title Act

Charge

General Instrument – Part 1

1. Application

**Julie Deng, Paralegal
Fasken Martineau DuMoulin LLP
Suite 2900 - 550 Burrard Street
Vancouver BC V6C 0A3
16046313131**

321806.00142/23103
W 4th Ave & Macdonald
Housing Agreement

2. Description of Land

PID/Plan Number Legal Description

EPP130061 LOT 1 BLOCK 9 DISTRICT LOT 192 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP130061

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Entire Instrument
PRIORITY AGREEMENT		See Page 16, granting the above Covenant priority over Mortgage CA6332743 and Assignment of Rents CA6332744

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

WEST 4TH AVENUE & MACDONALD STREET INVESTMENTS LTD., NO.BC1431243

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

 SARAH BATUT
 Barrister & Solicitor
 Fasken Martineau DuMoulin LLP
 2900 - 550 Burrard Street
 Vancouver, BC V6C 0A3
 604 631 4954

Execution Date
 YYYY-MM-DD
 2023-08-23

Transferor / Transferee / Party Signature(s)
WEST 4TH AVENUE & MACDONALD STREET INVESTMENTS LTD.
 By their Authorized Signatory

 Name: DAVID WESIK

Name: _____

Officer Certification

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

Witnessing Officer Signature

Execution Date
 YYYY-MM-DD

Transferor / Transferee / Party Signature(s)
City of Vancouver
 By their Authorized Signatory

Name: _____

Name: _____

Officer Certification

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



Witnessing Officer Signature

MATTHEW E. MITCHELL
GOWLING WLG (CANADA) LLP
BARRISTER & SOLICITOR
550 BURRARD STREET - SUITE 2300
BENTALL 5 - VANCOUVER, B.C. V6C 2B5
TELEPHONE: (604) 891-2257

Execution Date

YYY-MM-DD
2023-08-23

Transferor / Transferee / Party Signature(s)

**Canadian Imperial Bank of
Commerce**
By their Authorized Signatory

Name: Bryden Smeaton

Name: Kyla Nareso

Officer Certification

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

Electronic Signature

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

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

1960 MACDONALD STREET

WHEREAS:

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

- (i) the Transferor, **WEST 4TH AVENUE & MACDONALD STREET INVESTMENTS LTD.**, is 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 owner of the Lands;

C. The Owner made a development permit application for the Lands under number DP-2022-00766 (the “**Development Permit Application**”) to develop on the Lands a six (6) storey mixed-use building, with retail use on the ground floor and residential use (ground - 6th floor), containing ninety-nine (99) dwelling units (Secured Market Rental), all over two (2) levels of underground parking;

D. The Development Permit Application was approved by the General Manager of Planning, Urban Design and Sustainability 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 a Section 219 Covenant securing all residential units in the Building, as secured market rental housing units, excluding Seniors Supportive or Assisted Housing, pursuant to the City’s Secured Rental Policy Program, for a term equal to the longer of 60 years and 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:

{02010500v3}
May, 2023
321806.00144/300932446.3
321806.00142/300932446.4

Housing Agreement and Building Use Covenant (Market Rental)
1960 Macdonald Street

**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”** has the meaning set out in Recital A and includes all assigns, successors and successors in title to the Lands or any part thereof;
- (t) **“Owner’s Personnel”** means any and all of the contractors, subcontractors, employees, agents, licensees, invitees and permittees of the Owner;
- (u) **“Related Person”** means, where the registered or beneficial owner of the Market Rental Housing Units is:
 - (i) a corporation (as that term is defined in the *Business Corporations Act* (British Columbia)), then a Related Person is:
 - (A) an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - (B) the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and

- (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (v) **“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;
- (w) **“Residential Tenancy Act”** means the *Residential Tenancy Act*, S.B.C. 2002, c. 78, and all amendments thereto and re-enactments thereof;
- (x) **“Term”** means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
 - (i) the date as of which the Building is demolished or substantially destroyed; or
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the Market Rental Housing Units;
- (y) **“Vancouver”** has the meaning ascribed to that term in Recital A(ii); and
- (z) **“Vancouver Charter”** means the *Vancouver Charter*, S.B.C. 1953, c. 55, 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 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, finish and, throughout the Term, maintain, at its sole cost and expense, the Building to contain such number of Housing Units and related amenity and parking spaces as required by and 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 35% of the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) will have two (2) bedrooms or three (3) bedrooms to the satisfaction of the City, and 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, all of 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 legal owner and/or the beneficial interest is sold or otherwise transferred together and as a block to the same beneficial owner, and unless such transferee concurrently enters into an assumption agreement satisfactory to the City whereby it agrees to be and thereafter remains 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 8.8;

- (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 as would a reasonable and prudent owner of similar buildings and lands in the City of Vancouver, 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 substantially 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, unless the City then otherwise agrees in its absolute and unfettered discretion.

**ARTICLE 3
RECORD KEEPING**

3.1 Record Keeping. 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 (provided that the Owner is only required to keep records for particular tenant for a period of seven (7) years from the date such tenant has vacated a Market Rental Housing Unit). 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.

**ARTICLE 4
SUBDIVISION**

4.1 Air Space Subdivision. Notwithstanding Section 2.1(g):

- (a) subject to compliance by the Owner with all applicable requirements of the City's Approving Officer and the City's elected Council, this Agreement and all applicable laws and by-laws, the Owner may subdivide the Lands by the deposit of an air space subdivision plan, to enable:
 - (i) all of the Market Rental Housing Units to be contained within one air space parcel (the "**Market Rental Housing Units Air Space Parcel**"); and
 - (ii) other components of the Development to be contained within one or more other air space parcel(s) or a remainder parcel;
- (b) following such a subdivision and the issuance of a final Occupancy Permit for the Market Rental Housing Units Air Space Parcel, the Owner may apply to the City for a partial discharge of this Agreement with respect to any legal parcel other than the Market Rental Housing Units Air Space Parcel, and the City will on request of the Owner execute and deliver a registrable discharge of this Agreement in respect of such other parcel(s) (whereupon the term "**Lands**" as used in this Agreement will be read as not including such other parcel(s)) provided, that:
 - (i) the Director of Legal Services is satisfied that such discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the Market Rental Housing Units or in respect of the Market Rental Housing Units Air Space Parcel pursuant to this Agreement;
 - (ii) any such discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
 - (iii) the City will have a reasonable amount of time to execute and return any such discharge; and

- (iv) the preparation and registration of any such discharge will be without cost to the City.

4.2 Partial Discharge. Following such subdivision and partial discharge, this Agreement will be read and applied so that the obligations herein will apply only to any parcel in Market Rental Housing Units are contained.

ARTICLE 5 ENFORCEMENT

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

ARTICLE 6 RELEASE AND INDEMNITY

6.1 Release and Indemnity. Subject to Section 6.2, the Owner hereby:

- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:
 - (i) by reason of the City or City Personnel:
 - (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the 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 any Losses are the result of, or relate in any way, to any negligence acts or omissions on the part of the City Personnel, except to the extent that any such Losses are the result of the gross negligence or wrongful intentional acts by the City or City Personnel; and
- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person,

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

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

whether or not any Losses are the result of, or relate in any way, to any negligence acts or omissions on the part of the City Personnel, except to the extent that any such Losses are the result of the gross negligence or wrongful intentional acts by the City or 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.

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 Section 6.1(b).

- (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 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:

(a) If to the City:

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

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

(b) If to the Owner:

West 4th Avenue & Macdonald Street Investments Ltd.
200 - 177 West 7th Avenue
Vancouver, BC V5Y 1L8

Attention: General Counsel
with a copy to: Vice President, Development

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.

8.2 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.

8.3 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.

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

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

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

8.7 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 Crown grant 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.

8.8 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.

8.9 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 8.8, 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.

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

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal 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 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.

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

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 CA6332743 and the Assignment of Rents registered under number CA6332744;
- (b) **"Existing Chargeholder"** means CANADIAN IMPERIAL BANK OF COMMERCE;
- (c) **"New Charges"** means the registrable charges and encumbrances created by and contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

END OF DOCUMENT

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 2904 West 4th Avenue**

On January 26, 2023, 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
September 12, 2023

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 2904 West 4th 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:

031-941-451

Lot 1 Block 30 District Lot 192 Group 1 New Westminster
District Plan EPP103564

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



1. Application

**Thomas J. Beechinor
Beechinor Baker Hall
300 - 1681 Chestnut Street
Vancouver BC V6J 4M6
(604) 714-5150**

File No: 24163
Housing Agreement and Building Use Covenant (Secured Market Rental)
Orr Development Corp. - 2904 W 4th Avenue, Vancouver, BC

2. Description of Land

PID/Plan Number	Legal Description
031-941-451	LOT 1 BLOCK 30 DISTRICT LOT 192 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP103564

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 Covenant Entire Agreement

4. Terms

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

5. Transferor(s)

ORR DEVELOPMENT CORP., NO.BC1392691

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
2023-08-16

ORR DEVELOPMENT CORP.
 By their Authorized Signatory

Name: **CHINA ORR**

THOMAS J. BEECHINOR
Barrister & Solicitor
 Suite 300 - 1681 Chestnut Street
 Vancouver, B.C. V6J 4M6
 Direct Line: (604) 714-5152

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

CITY OF VANCOUVER
 By their Authorized Signatory

Name:

Name:

Officer Certification

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

<p>Electronic Signature</p> <p>Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the <i>Land Title Act</i>, 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.</p>	<div style="border: 1px solid black; height: 28px; width: 250px;"></div>
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**TERMS OF INSTRUMENT - PART 2
HOUSING AGREEMENT AND BUILDING USE COVENANT
(SECURED MARKET RENTAL)**

2904 WEST 4TH AVENUE

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement shall be read as follows:
- (i) the Transferor, **ORR DEVELOPMENT CORP.**, 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-2022-00745 (the “**Development Permit Application**”) to develop on the Lands a 6-storey mixed-use residential rental building consisting of retail use at the ground level and dwelling units (54 secured market rental units) from ground to the sixth level, all over 2 levels of underground parking and having vehicular access from lane;
- 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 a Section 219 Covenant securing 54 residential 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, Orr Development Corp., 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 fifty-four (54) 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

ARTICLE 4 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

ARTICLE 5 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

- (a) 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 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:

Orr Development Corp.
 310 - 1847 West Broadway
 Vancouver, British Columbia
 V6J 1Y6

Attention: Eddie Papazian

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.

END OF DOCUMENT

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 807-847 East 33rd Avenue**

After the public hearing on February 16, 2023, Council approved in principle the land owner's application to rezone the above noted property from RS-1 (Residential) District to RR-2B (Residential Rental) 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
September 12, 2023

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 807-847 East 33rd 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:

015-645-151	Lot 1 of Lot 5 Block 3 District Lots 391 and 392 Plan 344
015-645-177	Lot 2 of Lot 5 Block 3 District Lots 391 and 392 Plan 344
002-999-595	Lot 3, Except the South 7 Feet, Now Road Block 5 Block 3 District Lots 391 and 392 Plan 344
015-645-185	Lot 4, Except the South 7 Feet Now Road, of Lot 5 Block 3 District Lots 391 and 392 Plan 344

which lands will be subject to a consolidation and subdivision to dedicate the south 7 feet of Lot 1 and Lot 2 for road purposes yielding a parcel with a legal description of Lot A of Lot 5 Block 3 District Lots 391 and 392 Plan EPP128452 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



1. Application

Samantha Haddow, TERRA LAW CORPORATION
2800 - 650 West Georgia Street
Vancouver BC V6B 4N7
604-628-8969

505609 - Housing Agreement

2. Description of Land

PID/Plan Number Legal Description

EPP128452 LOT A OF LOT 5 BLOCK 3 DISTRICT LOTS 391 AND 392 PLAN EPP128452

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Entire Instrument
PRIORITY AGREEMENT		page 15

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

1327287 B.C. LTD., NO.BC1327287

MCAP FINANCIAL CORPORATION, NO.A62340

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
 2023-08-04

1327287 B.C. LTD.
 By their Authorized Signatory

Name: Herman Kwee

RAVINDER BAINS
 Notary Public
 4310 Fraser Street
 Vancouver, British Columbia
 V5V 4G3

(15) (as to the signature of Herman Kwee) (14)

 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

MCAP FINANCIAL CORPORATION
 By their Authorized Signatory

 Name:

 Name:

Officer Certification

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






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 <div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto;"></div>	1327287 B.C. LTD. By their Authorized Signatory _____ Name:
		 _____ Name:

Officer Certification

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

Witnessing Officer Signature	Execution Date	Transferor / Transferee / Party Signature(s)
 LINH HUE QUACH A Commissioner for Taking Affidavits for the Province of British Columbia My Commission expires April 30, 2028 MCAP Financial Corporation Suite 2100 - 475 Howe Street Vancouver, BC V6C 2B8 Ph: (604) 690-3871 <i>(one to both signatories)</i>	YYYY-MM-DD <div style="border: 1px solid black; width: 100px; height: 100px; margin: 0 auto; text-align: center;">2023-08-08</div>	MCAP FINANCIAL CORPORATION By their Authorized Signatory  Name: RAY JOHNSON  Name: BLAKE JOHNSTON

Officer Certification

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



Land Title Act
Charge
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

CITY OF VANCOUVER
By their Authorized Signatory

Name:

Name:

Officer Certification

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

Electronic Signature

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

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
(SECURED MARKET RENTAL)807 - 847 EAST 33RD AVENUE

WHEREAS:

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

- (i) the Transferor, 1327287 B.C. LTD., is herein called the "Owner" as more particularly defined in Section 1.1; 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 owner of the Lands;

C. The Owner made an application to rezone the Lands from RS-1 (Residential) to RR-2B (Residential Rental) District to permit development of a five-storey rental building, and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, *inter alia*, fulfilment of the condition that the Owner:

"2.5. 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 a Section 219 Covenant to secure all residential units as secured market rental housing units, excluding Seniors Supportive or Assisted Housing, pursuant to the City's Secured Rental Policy, for a term equal to the longer of 60 years and the life of the building, subject to a no-separate-sales covenant and a no-stratification covenant, and such other terms and conditions as the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services may require.

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

(the "Market Rental Housing Condition"); and

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

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

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions.** In this Agreement the following terms have the definitions now given:
- (a) **"Agreement"** means this housing agreement and building use covenant, including the foregoing Recitals;
 - (b) **"Building"** means each new building or structure to be built on the Lands as contemplated by the Rezoning or the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Rezoning or the Development Permit;
 - (c) **"City"** and **"City of Vancouver"** have the meaning ascribed to those terms in Recital A(ii);
 - (d) **"City Manager"** means the chief administrator from time to time of the City and her/his successors in function and their respective nominees;
 - (e) **"City Personnel"** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
 - (f) **"Commencement Date"** means the date as of which this Agreement has been executed by all parties to it;
 - (g) **"Development Permit"** means any permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing development on the Lands (or any portion of the Lands) as contemplated by the Rezoning;
 - (h) **"Director of Legal Services"** means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
 - (i) **"General Manager of Planning, Urban Design and Sustainability"** means the chief administrator, from time to time, of the City's Planning, Urban Design and Sustainability Department and her/his successors in function and their respective nominees;
 - (j) **"Housing Unit"** means a self-contained residential unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
 - (k) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
 - (l) **"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*);

- (m) "Losses" means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (n) "Market Rental Housing" means a dwelling unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arm's length, for use as rental accommodation in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (o) "Market Rental Housing Condition" has the meaning ascribed to that term in Recital C;
- (p) "Market Rental Housing Units" has the meaning ascribed to that term in Section 2.1(b);
- (q) "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;
- (r) "Owner" means the Transferor, 1327287 B.C. LTD., and all assigns, successors and successors in title to the Lands or any part thereof;
- (s) "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;
- (t) "Replacement Rental Housing Unit" has the meaning ascribed to that term in Section 2.1(j) and "Replacement Rental Housing Units" means all of such units;

- (u) "*Residential Tenancy Act*" means the *Residential Tenancy Act*, S.B.C. 2002, c. 78;
- (v) "*Rezoning*" means the rezoning of the Lands described in Recital C of this Agreement;
- (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 Building;
- (x) "*Vancouver*" has the meaning ascribed to that term in Recital A(ii); and
- (y) "*Vancouver Charter*" means the *Vancouver Charter*, S.B.C. 1953, c. 55.

1.2 **Interpretation.** In this Agreement:

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

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

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

ARTICLE 2 RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) when and if it carries out the development on the Lands after the Commencement Date as contemplated in the Development Permit, it will construct, and throughout the Term will maintain all residential units on the Lands in accordance with the Market Rental Housing Condition, the Rezoning, the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement (the "Market Rental Housing Units");
- (c) 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;
- (d) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licensed to use or sublet, any Market Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) except for a month-to-month or longer basis, and in no case for term of less than 30 consecutive days;
- (e) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Market Rental Housing Unit (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);
- (f) throughout the Term, it will not suffer, cause or permit the Building to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld;

- (g) throughout the Term, any sale of a Market Rental Housing Unit (or Replacement Rental Housing Units, as applicable) in contravention of the covenant in Section 2.1(e), and any subdivision in contravention of Section 2.1(f), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (h) 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;
- (i) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If the Market Rental Housing Units (or 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
- (j) 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.

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) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:
 - (i) by reason of the City or City Personnel:
 - (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Building or any part thereof to the extent that such reviewing, accepting or approving is connected to matters covered under this Agreement;
 - (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, except to the extent such losses result from the gross negligence or wrongful intentional acts by the City or City Personnel; and

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of:
 - (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
 - (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.

The indemnities in this 5.1 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

5.2 Conduct of Proceedings.

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

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

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

5.3 **Survival of Release and Indemnities.** The release and indemnities in this 5.1 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:

(a) 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:

1327287 B.C. Ltd.
Suite 401 - 34 West 7th Avenue
Vancouver, British Columbia V5Y 1L6

Attention: Hassan Sayed

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

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

7.8 **Transfer of Lands.** The Owner covenants and agrees with the City that upon any sale, transfer or conveyance of the Lands charged by this Agreement, or any portion thereof, to any person, trust, corporation, partnership or other entity, the Owner will obtain from such person, trust, corporation, partnership or entity and deliver to the City a duly executed acknowledgement, in form and substance satisfactory to the Director of Legal Services, of the terms of this Agreement and an assumption of the continuing obligations of the Owner

pursuant to this Agreement relative to that portion of the Lands sold, transferred or conveyed to such person, trust, corporation, partnership or entity. Provided any such purchaser/transferee enters in to an assumption agreement as provided in this Section 7.8, the selling/transferring Owner shall not be bound by the continuing obligations of the Owner pursuant to this Agreement following such sale, transfer or conveyance relative to that portion of the Lands sold, transferred or conveyed. **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 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 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 **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.

7.11 **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.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Chargeholder" means MCAP FINANCIAL CORPORATION;
- (b) "Existing Charges" means the Mortgage registered under number CA9493705 and the Assignment of Rents registered under number CA9493706;
- (c) "New Charges" means the registrable charges and encumbrances created by and contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

END OF DOCUMENT

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 3625 Kingsway**

The land owner applied to the City to develop the Lands pursuant to Development Application DP-2021-00197 to permit the development of a new mixed use building, containing 38 dwelling units, over 2 levels of underground parking and commercial area on the main floor. The Development Application was approved, subject to, among other things, a Housing Agreement being entered into by the City and the land owner securing three residential units as market rental housing units, and accordingly, the Housing Agreement attached to this By-law was accepted and executed by the land owner.

The City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner

Director of Legal Services
September 12, 2023

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 3625 Kingsway**

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:

012-888-770	Lot B (see 352827L) Block 5 District Lots 36 and 49 Plan 3442
012-888-761	Amended Lot 4 (Explanatory Plan 4070) Block 5 District Lots 36 and 49 Plan 3442

which lands will be subject to a consolidation yielding a parcel with a legal description of Lot A Block 5 District Lot 49 Group 1 New Westminster District Plan EPP99459 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



1. Application

**WINFRED VAN DER SANDE
2065 - 2780 GRANVILLE STREET
VANCOUVER BC V6H 3J3
604.739.7989**

2. Description of Land

PID/Plan Number	Legal Description
EPP99459	LOT A BLOCK 5 DISTRICT LOT 49 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP99459

3. Nature of Interest

Type	Number	Additional Information
COVENANT		
PRIORITY AGREEMENT		

4. Terms

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

5. Transferor(s)

1327434 B.C. LTD., NO.BC1327434
PROSPERA CREDIT UNION, NO.FI-157

6. Transferee(s)


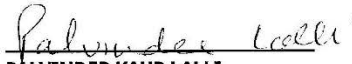
**CITY OF VANCOUVER
453 WEST 12TH AVENUE
VANCOUVER BC V5Y 1V4**

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.

<p>Witnessing Officer Signature</p>  <p>_____ WINFRED VAN DER SANDE Barrister & Solicitor 206 - 2780 GRANVILLE STREET VANCOUVER BC V6H 3J3</p>	<p>Execution Date</p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> YYYY-MM-DD 2023-08-04 </div>	<p>Transferor / Transferee / Party Signature(s)</p> <p>1327434 B.C. LTD. By their Authorized Signatory</p>  <p>_____ PALVINDER KAUR LALLI</p>
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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.

<p>Witnessing Officer Signature</p>  <p>_____ Karen Frederickson A Commissioner for taking Affidavits for British Columbia 1900 - 13450 102 Avenue Surrey, B.C. V3T 5Y1 604-519-4200</p>	<p>Execution Date</p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> YYYY-MM-DD 2023/8/17 </div>	<p>Transferor / Transferee / Party Signature(s)</p> <p>PROSPERA CREDIT UNION By their Authorized Signatory</p>  <p>_____ Jag Khatra Senior Business Relationship Manager Real Estate</p>  <p>_____ Mehul Bhagat Senior Business Relationship Manager Real Estate</p>
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Officer Certification *MP 1/30/2023 HB*

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.

<p>Witnessing Officer Signature</p> <p>_____</p>	<p>Execution Date</p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> YYYY-MM-DD </div>	<p>Transferor / Transferee / Party Signature(s)</p> <p>CITY OF VANCOUVER By their Authorized Signatory</p> <p>_____</p>
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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 - RENTAL HOUSING

3625 KINGSWAY

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- I. the Transferor, 1327434 B.C. LTD. Is called the “Owner”, as more particularly defined in Section 1.1(s); and
 - II. the Transferee, CITY OF VANCOUVER, is called the “City” or the “City of Vancouver” when referring to corporate entity continued under the *Vancouver Charter*, and “Vancouver” when referring to geographic location;
- B. The Owner is the registered and beneficial owner of the Lands;
- C. The Owner made an application to develop the Lands pursuant to Development Application DP-2021-00197 (the “Development Application”) to construct a new mixed use building, containing 38 dwelling units, over 2 levels of underground parking and commercial area on the main floor (the “Development”), which Development Application was approved by the Director of Planning in principle, subject to, among other things, fulfilment of the condition that, prior to issuance of a Development Permit, 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 and/or Section 219 Covenant for 60 years or the life of the building, whichever is greater, to subdivide the development lands by either (a) an air space subdivision to create an air space parcel; or (b) a strata plan to create one single strata lot, containing at least one (1) residential unit of secured market rental housing, subject to the following conditions and requirements:
- (i) a no separate sales covenant;
 - (ii) a no stratification covenant (on air space parcel or from single strata lot);
 - (iii) that none of such units will be rented for less than one month at a time;
 - (iv) a covenant that, if the residential units of secured market rental housing are contained within a single strata lot, a rental disclosure statement pursuant to the *Strata Property Act*, will be duly filed and delivered in accordance with the *Real Estate Development Marketing Act*, designating such strata lot as rental for a period of not less than 200 years and that no by-law that restricts the rental of such strata lot will be adopted prior to the first conveyance of a strata lot in the development; and
 - (v) 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;
- D. The Owner is entering into this Agreement to satisfy the foregoing conditions.

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) **“Air Space Plan”** means has the meaning ascribed to it in Section 6.1(a);
- (c) **“Building Permit”** means any building permit issued by the City authorizing the building of a New Building as contemplated by the Development Permit;
- (d) **“City”** and **“City of Vancouver”** have the meaning ascribed to those terms in Recital A(ii);
- (e) **“City Manager”** means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (f) **“City Personnel”** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (g) **“Combined Air Space Parcel”** has the meaning set out in Section 6.1(a)(i);
- (h) **“Combined Strata Lot”** has the meaning set out in Section 6.1(a)(i);
- (i) **“Development”** has the meaning ascribed to it in Recital C;
- (j) **“Development Application”** has the meaning ascribed to it in Recital C;
- (k) **“Development Permit”** means any development permit issued by the City authorizing the development of the Lands contemplated by the Development Application;
- (l) **“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;
- (m) **“Dwelling Unit”** means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (n) **“Effective Date”** means the date as of which this Agreement has been executed by all parties to it;
- (o) **“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;

- (p) **“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;
- (q) **“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;
- (r) **“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;
- (s) **“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 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;
- (t) **“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;
- (u) **“Owner”** means the registered owner of the Lands as of the Effective Date, namely 1327434 B.C. LTD. and its successors and permitted assigns;
- (v) **“Partial Discharge”** has the meaning ascribed to it in Section 6.1(b);
- (w) **“Real Estate Development Marketing Act”** means the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41, and all amendments thereto and re-enactments thereof;
- (x) **“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;
- (y) **“Rental Disclosure Statement”** means a Rental Disclosure Statement in the prescribed form set out in the *Strata Property Act*;
- (z) **“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;
- (aa) **“Rental Housing Unit”** means one (1) Dwelling Unit of Rental Housing within the New Building upon its completion, as part of the Development, which unit will comply with the terms in this Agreement and the Development Permit applicable to the same;
- (bb) **“Replacement Rental Housing Unit”** has the meaning ascribed to that term in Section 2.1(c);
- (cc) **“Residential Tenancy Act”** means the *Residential Tenancy Act*, S.B.C. 2002, c. 78, as may be amended or replaced from time to time;
- (dd) **“Strata Corporation”** means the strata corporation formed upon deposit of the Strata Plan at the Land Title Office;
- (ee) **“Strata Plan”** has the meaning ascribed to it in Section 6.1(a);
- (ff) **“Strata Property Act”** means the *Strata Property Act*, S.B.C. 1998, c.43, as may be amended or replaced from time to time;
- (gg) **“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;
- (hh) **“Vancouver”** has the meaning ascribed to that term in Recital A(ii); and
- (ii) **“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.

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 the Rental Housing Unit, 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, the Rental Housing Unit 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 Rental Housing Unit 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 Rental Housing Unit 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 one (1) replacement Rental Housing Unit, which replacement Rental Housing Unit during the remainder of the Term, will also be used only for the purpose of providing Rental Housing (the 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 Unit will be subject, for the remaining duration of the Term, to the same use restriction as the Rental Housing Unit is pursuant to this Agreement;

- (d) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, the Rental Housing Unit for a term of less than one month at a time;
- (e) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to the Rental Housing Unit to be sold or otherwise transferred unless title to it is sold or otherwise transferred together with the other Dwelling Unit that, together with the Rental Housing Unit, comprise the Combined Strata Lot or the Combined Air Space Parcel, as the case may be, and subject to Section 8.7;
- (f) subject to Section 6.1, throughout the Term, it will not suffer, cause or permit the Lands, or the New Building (or any replacement building(s) on the Lands, as applicable), or any part thereof, to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld;
- (g) throughout the Term, that any sale of the Rental Housing Unit in contravention of the covenant in Section 2.1(e), 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(f), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner’s expense;
- (h) throughout the Term, it will keep and maintain the Rental Housing Unit 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 units;
- (i) if the Rental Housing Unit, 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

- (j) throughout the Term, it will insure, or cause to be insured, the Rental Housing Unit 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 the Owner has delivered, to the General Manager of Planning, Urban Design and Sustainability:
 - (A) proof of the insurance, consistent with the requirements of Section 2.1(j), in form and substance satisfactory to the General Manager of Planning, Urban Design and Sustainability, is in force and effect; and
 - (B) proof that the Lands have been subdivided by a Strata Plan or an Air Space Plan so as to create, *inter alia*, either the Combined Strata Lot or the Combined Air Space Parcel, as described in Section 6.1; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 3.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 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, except in each case to the extent attributable to the wrongful intentional acts of the City or the City Personnel, the Owner hereby:

- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:
 - (i) by reason of the City or City Personnel:
 - (A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building or any part thereof;
 - (B) withholding any permit pursuant to this Agreement; or
 - (C) exercising any of its rights under any Section 219 covenant 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; andwhether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel; and
- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of:
 - (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
 - (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement; and

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

5.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 5.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 5.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 5.2(a) in the following circumstances:

- (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
- (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
- (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City,

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

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

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

ARTICLE 6 SUBDIVISION OF THE LANDS

6.1 By Strata Plan or Air Space Subdivision Plan. Notwithstanding Section 2.1(f):

- (a) subject to compliance by the Owner with this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands and the New Building by the deposit of a strata plan under the provisions of the *Strata Property Act* (the “**Strata Plan**”) or an air space subdivision plan under the provisions of the *Land Title Act* (the “**Air Space Plan**”), provided that:
 - (i) the Rental Housing Unit will thereafter be contained within a single strata lot together with one other Dwelling Unit (the “**Combined Strata Lot**”) or within a single air space parcel together with one other Dwelling Unit (the “**Combined Air Space Parcel**”); and
 - (ii) if the Rental Housing Unit is part of a Combined Strata Lot, the Owner has duly filed a Rental Disclosure Statement (the “**Rental Disclosure**”)

Statement") pursuant to the *Strata Property Act*, designating the Combined Strata Lot as rental for a period of not less than 200 years;

- (b) following such a subdivision and the issuance of a final Occupancy Permit for the Combined Strata Lot or Combined Air Space Parcel, as the case may be, the Owner may apply to the City for a partial discharge of this Agreement (the "**Partial Discharge**") with respect to any strata lot other than the Combined Strata Lot and the Common Property, or with respect to any air space parcel other than the Combined Air Space Parcel and the remainder parcel, and the City will on request of the Owner execute and deliver a registrable Partial Discharge in respect of such other parcel(s) provided, that:
 - (i) the Director of Legal Services is satisfied that the Discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the Rental Housing Unit pursuant to this Agreement;
 - (ii) the Partial Discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
 - (iii) the City will have a reasonable amount of time to execute and return the Partial Discharge; and
 - (iv) the preparation and registration of the Partial Discharge will be without cost to the City.

6.2 Rental Disclosure Statement. Following any strata subdivision of the Lands, as described in Section 6.1, the Owner will not:

- (a) amend the Rental Disclosure Statement without the prior written consent of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services; or
- (b) cause the Strata Corporation to pass a bylaw or vote in favour of any bylaw of the Strata Corporation that will restrict or limit the rental of the Rental Housing Unit.

6.3 Partial Discharge. Notwithstanding anything else contained herein, following the subdivision and Partial Discharge contemplated in Section 6.1, this Agreement will be read and applied so that the obligations and restrictions contained herein will apply only to the Rental Housing Unit and this Agreement and the obligations and restrictions contained herein will not apply to any other portion of the Lands.

ARTICLE 7 NOTICES

7.1 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:

1327434 B.C. LTD.
5674 Melbourne Street
Vancouver, British Columbia
V5R 4L9

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

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

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

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

8.4 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.

8.5 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.

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

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

8.7 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(e) and 2.1(f), the Owner will cause the purchaser/transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of the Owner under this Agreement. The provisions in this Section 8.7 will apply equally to all subsequent purchasers/transferees (other than the transfer of an interest in the Lands by way of mortgage).

8.8 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.

8.9 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.

8.10 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, together, the Mortgage registered under number CA9737691 and the Assignment of Rents registered under number CA9737692;
- (b) **"Existing Chargeholder"** means **PROSPERA CREDIT UNION**;
- (c) **"New Charges"** means the Housing Agreement and Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

END OF DOCUMENT

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 2086-2098 West 7th Avenue and 2091 West 8th Avenue**

After public hearings on June 28, 29, 30 and July 14, 25 and 26, 2022 Council approved in principle the land owner's application to rezone the above noted property from RM-4 (Residential) 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 enter into the Housing Agreement.

Director of Legal Services
September 12, 2023

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 2086-2098 West 7th Avenue and 2091 West 8th Avenue**

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

1. Council approves the City entering into the Housing Agreement attached to this By-law with the owner of certain lands described therein as:

EPP128071 Lot A Block 305 District Lot 526 Group 1 New Westminster
District Plan EPP128071

now legally described as:

PID: 031-969-291 Lot A Block 305 District Lot 526 Group 1 New Westminster
District Plan EPP128071

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



1. Application

**Alisha Parmar
 City of Vancouver
 453 West 12th Avenue
 Vancouver BC V5Y 1V4
 604.829.2001**

Social Housing Agreement (2086-2098 W. 7th Ave and 2091 W. 8th Ave)
 22-01467

2. Description of Land

PID/Plan Number Legal Description

EPP128071 LOT A BLOCK 305 DISTRICT LOT 526 GROUP 1. NEW WESTMINSTER DISTRICT PLAN EPP128071

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 Covenant Entire Instrument

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




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

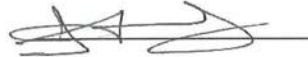
Execution Date

Transferor / ~~Transferee~~ / Party Signatory(s)


ALISHA P. PARMAR
453 WEST 12TH AVENUE
VANCOUVER, B.C. V5Y 1V4
BARRISTER & SOLICITOR

YYY-MM-DD
2023-04-12

CITY OF VANCOUVER *as transferor*
By their Authorized Signatory


JEFFREY M. GREENBERG

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 Signatory(s)


ALISHA P. PARMAR
453 WEST 12TH AVENUE
VANCOUVER, B.C. V5Y 1V4
BARRISTER & SOLICITOR

YYY-MM-DD
2023-06-01

CITY OF VANCOUVER *as transferee*
By their Authorized Signatory


JEFFREY M. GREENBERG

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 168.4(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

[Empty box for electronic signature]

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
(Social Housing)2086 - 2098 West 7th Avenue and 2091 West 8th 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 (the "Rezoning") from RM-4 (Residential) District to a CD-1 (Comprehensive Development) District, to increase the maximum floor space ratio (FSR) from 3.0 to 4.4 and increase the maximum building height from 19.9 m (65 ft.) to 47.1 m (155 ft.) to permit the development of a 13-storey residential building containing a total of 129 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:

"2.7 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 to secure all residential units as social housing units for the longer of 60 years or the life of the building, subject to the following conditions and requirements:

- (a) A no separate-sales covenant;
- (b) A no stratification covenant;
- (c) A provision that none of such units will be rented for less than one month at a time;
- (d) A requirement that all units comply with the definition of "social housing" in the applicable City Development Cost Levy By-law;
- (e) A requirement that a minimum 50% of dwelling units be rented for no more than the shelter component of Income Assistance;
- (f) A requirement that for the balance of dwelling units,
 - (i) be rented to tenants with aggregate household incomes (at the commencement date of the tenancy) at or below 50% of the maximum housing income limits as set out in the current "Housing Income Limits" (HILs) table published by the British

Columbia Housing Management Commission or equivalent publication, and each rented at rates no more than 30% of the respective tenant's initial [sic] household income;

- (ii) *A tenant's aggregate household income shall not exceed the current applicable Housing Income Limit; and*
- (iii) *Annual income testing for the tenants will be required to ensure that the aggregate household incomes of each tenant does not exceed the current BC Housing Income Limit.*
- (g) *If Council, at its sole discretion, approves any financial grants for the purpose of enabling deeper levels of affordability in the project, terms and conditions necessary to secure such affordability as set out in the grant approval; and*
- (h) *Such other terms and conditions as the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services may in their sole discretion require.*

Note to Applicant: A Housing Agreement is to be entered into the City by by-law enacted pursuant to section 565.2 of the Vancouver Charter."

(the "Social Housing Condition"); and

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

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

ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

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

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) "City" and "City of Vancouver" are defined in Recital A(ii);
- (c) "City Manager" means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (d) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (e) "Commencement Date" means the date as of which this Agreement has been submitted to the Land Title Office;

- (f) "Development" means the development on the Lands described in Recital C, as contemplated by the Rezoning;
- (g) "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;
- (h) "Director of Legal Services" means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (i) "Dwelling Unit" means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (j) "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 their respective nominees;
- (k) "Guaranteed Income Supplement" means an additional benefit that may be added to the Old Age Security pension received by a person aged 65 and older if he/she has a low income and meets other specified criteria, which is administered and paid by the Government of Canada;
- (l) "Housing Income Limit" or "HIL" means the income required to pay the average market rent for an appropriately sized unit in the private market in Vancouver, determined annually by the British Columbia Housing Management Commission or its successors in function, which is derived from the Canada Mortgage and Housing Corporation's Annual Rental Market Survey or an equivalent publication (as approved by the General Manager of Planning, Urban Design and Sustainability);
- (m) "Income Assistance" means financial assistance for a person in financial need who has no other resources and meets other specified criteria, which is administered and paid by the Government of British Columbia;
- (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) "Old Age Security" means a monthly pension payment available to certain persons aged 65 and older who meet specified legal status, residence and other requirements, which is administered and paid by the Government of Canada;
- (t) "Owner" means the Transferor, CITY OF VANCOUVER, and any successors in title to the Lands or a portion of the Lands;
- (u) "Owner's Personnel" means any and all of the contractors, subcontractors, employees, agents, licensees, invitees and permittees of the Owner;
- (v) "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 arms 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;
- (w) "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;
- (x) "*Residential Tenancy Act*" means the Residential Tenancy Act S.B.C. 2002, c. 78, as may be amended or replaced from time to time;
- (y) "Rezoning" means the rezoning of the Lands as described in Recital C;
- (z) "Social Housing" has the meaning ascribed to that term in the Vancouver Development Cost Levy By-law No. 9755, namely Rental Housing:
 - (i) in which at least 30% of the dwelling units are occupied by households with incomes below Housing Income Limits, as set out in the current "Housing Income Limits" table published by the British Columbia Housing Management Commission, or equivalent publication;
 - (ii) which is owned by a non-profit corporation, by a non-profit co-operative association, or by or on behalf of the City, the Province of British Columbia or Canada; and

- (iii) in respect of which the registered owner or ground lessee of the freehold or leasehold title to the land on which the housing is situate has granted to the City a Section 219 covenant, housing agreement, or other security for the housing commitments required by the City, registered against the freehold or leasehold title, with such priority of registration as the City may require;
- (aa) "Social Housing Condition" has the meaning ascribed to that term in Recital C;
- (bb) "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;
- (cc) "Term" means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
 - (i) the date as of which the New Building is demolished or substantially destroyed; or
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the New Building; 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 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 remaining duration of the Term, to the same use restrictions as the Social Housing Units and the New Building are pursuant to this Agreement;
- (c) throughout the Term the New Building will be used only in a manner that ensures its continued compliance with the definition of Social Housing;
- (d) throughout the Term:
 - (i) not less than 50% of the Social Housing Units, will be occupied only by persons eligible for either Income Assistance or a combination of Old Age Security pension and the Guaranteed Income Supplement and

rented at rental rates no higher than the shelter component of Income Assistance;

- (ii) the balance of the Social Housing Units will be:
 - A. occupied only by households with incomes at or below 50% of the HIL applicable as of the date the tenancy commences, provided that the household income may increase over the course of the tenancy so long as it does not exceed the then current HIL; and
 - B. 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; and
- (iii) not less than 50% of the Social Housing Units will be provided with support services, being access to on-site services including a meal program, staffing, and health and wellness services;
- (e) annually throughout the Term, the Owner will verify the income of the persons occupying the Social Housing Units described in Section 2.1(d)(ii) to ensure that household income does not exceed the then current HIL;
- (f) throughout the Term, the Social Housing Units will only be used for the purpose of providing Rental Housing;
- (g) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Social Housing Unit to be sold or otherwise transferred unless:
 - (i) every Social Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner; and
 - (ii) the sale or transfer is to the City or it otherwise obtains the express written consent of the City;
- (h) 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;
- (i) throughout the Term, any sale or other transfer of title to a Social Housing Unit in contravention of the covenant in Section 2.1(g), and any subdivision of the Lands in contravention of Section 2.1(h), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (j) throughout the Term, the Social Housing Units will only be rented on a month-to-month or longer basis and in no case for less than at least 30 consecutive days;

- (k) throughout the Term, the Social Housing Units will only 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;
- (l) 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
- (m) throughout the Term, it will keep and maintain the Lands and the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If the 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.

**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, consistent with the requirements of Section 2.1(l), is in force and effect; and
 - (ii) a final rent roll confirming the rents to be charged to the first occupants of the Social Housing Units following issuance of the Occupancy Permit on a per unit basis, which rents will comply with those applicable to the Social Housing Units; and
 - (b) the City will be under no obligation to issue any Occupancy Permit for the New Building or any part thereof, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 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, but excluding any grossly negligent acts on the part of the City or the City Personnel; and

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

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

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel, but excluding any grossly negligent acts on the part of the City or the City Personnel.

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 1V4

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

- (b) If to the Owner:

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

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 Crown grant 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 their 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 Form C or D which is a part hereof.

END OF DOCUMENT

EXPLANATION**A By-law to amend
Zoning and Development By-law No. 3575
to rezone an area to CD-1**

Following the public hearings on June 28, 29, 30, July 14, 25 and 26, 2022, Council gave conditional approval to the rezoning of the site at 2086-2098 West 7th Avenue and 2091 West 8th Avenue. The Director of Legal Services has advised that all prior to conditions have been met, and enactment of the attached By-law will implement Council's resolutions.

Director of Legal Services
September 12, 2023

2086-2098 West 7th Avenue and
2091 West 8th Avenue

BY-LAW NO. _____

**A By-law to amend
Zoning and Development By-law No. 3575
to rezone an area to CD-1**

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

Zoning District Plan Amendment

1. This by-law amends the Zoning District Plan attached as Schedule D to By-law No. 3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan attached as Schedule A to this by-law, and incorporates Schedule A into Schedule D of By-law No. 3575.

Designation of CD-1 District

2. The area shown within the heavy black outline on Schedule A is hereby designated CD-1 (848).

Uses

3. Subject to Council approval of the form of development, to all conditions, guidelines and policies adopted by Council, and to the conditions set out in this by-law or in a development permit, the only uses permitted within CD-1 (848) and the only uses for which the Director of Planning or Development Permit Board will issue development permits are:

- (a) Dwelling Uses, limited to Multiple Dwelling;
- (b) Utility and Communication Uses; and
- (c) Accessory Uses customarily ancillary to the uses permitted in this section.

Conditions of Use

4. All residential floor area must be used for social housing.

Floor Area and Density

5.1 Computation of floor area must assume that the site area is 1,797.6 m², being the site area at the time of the application for the rezoning evidenced by this by-law, prior to any dedications.

5.2 The floor space ratio for all uses combined must not exceed 4.4.

5.3 Computation of floor area must include all floors having a minimum ceiling height of 1.2 m, both above and below base surface, measured to the extreme outer limits of the building.

5.4 Computation of floor area must exclude:

- (a) balconies and decks, and any other appurtenances which in the opinion of the Director of Planning are similar to the foregoing, except that:
 - (i) the total area of all such exclusions must not exceed 12% of the floor area being provided for dwelling uses, and
 - (ii) the balconies must not be enclosed for the life of the building;
- (b) patios and roof decks, if the Director of Planning first approves the design of sunroofs and walls;
- (c) where floors are used for off-street parking and loading, the taking on or discharging of passengers, bicycle storage, heating and mechanical equipment, or uses which in the opinion of the Director of Planning are similar to the foregoing, those floors or portions thereof so used that are at or below base surface, except that the exclusion for a parking space must not exceed 7.3 m in length; and
- (d) all residential storage area above or below base surface, except that if residential storage area above base surface exceeds 3.7 m² for a dwelling unit, there will be no exclusion for any of the residential storage area above base surface for that unit.

5.5 Computation of floor area may exclude, at the discretion of the Director of Planning or Development Permit Board, amenity areas accessory to a residential use, to a maximum of 10% of the total floor area being provided for dwelling uses.

Building Height

6.1 Building height, measured from base surface to top of parapet, must not exceed 47.1 m.

6.2 Despite section 6.1 of this by-law and section 10.18 of the Zoning and Development By-law, the Director of Planning may permit a greater height not to exceed 50.9 m for rooftop appurtenances such as stairs and elevators for rooftop access, elevator machine rooms, mechanical rooms, mechanical screens, a vestibule accessing a green roof, or similar features, if the Director of Planning first considers:

- (a) siting and sizing in relation to views, overlook, shadowing, and noise impacts; and
- (b) all applicable policies and guidelines adopted by Council.

Horizontal Angle of Daylight

7.1 Each habitable room must have at least one window on an exterior wall of a building.

7.2 The location of each such exterior window must allow a plane or planes extending from the window and formed by an angle of 50 degrees, or two angles with a sum of 70 degrees, to encounter no obstruction over a distance of 24.0 m.

7.3 Measurement of the plane or planes referred to in section 7.2 must be horizontally from the centre of the bottom of each window.

7.4 The Director of Planning or Development Permit Board may relax the horizontal angle of daylight requirement if:

- (a) the Director of Planning or Development Permit Board first considers all the applicable policies and guidelines adopted by Council; and
- (b) the minimum distance of unobstructed view is not less than 3.7 m.

7.5 An obstruction referred to in section 7.2 means:

- (a) any part of the same building excluding permitted projections; or
- (b) the largest building permitted under the zoning on any adjoining site.

7.6 A habitable room referred to in section 7.1 does not include:

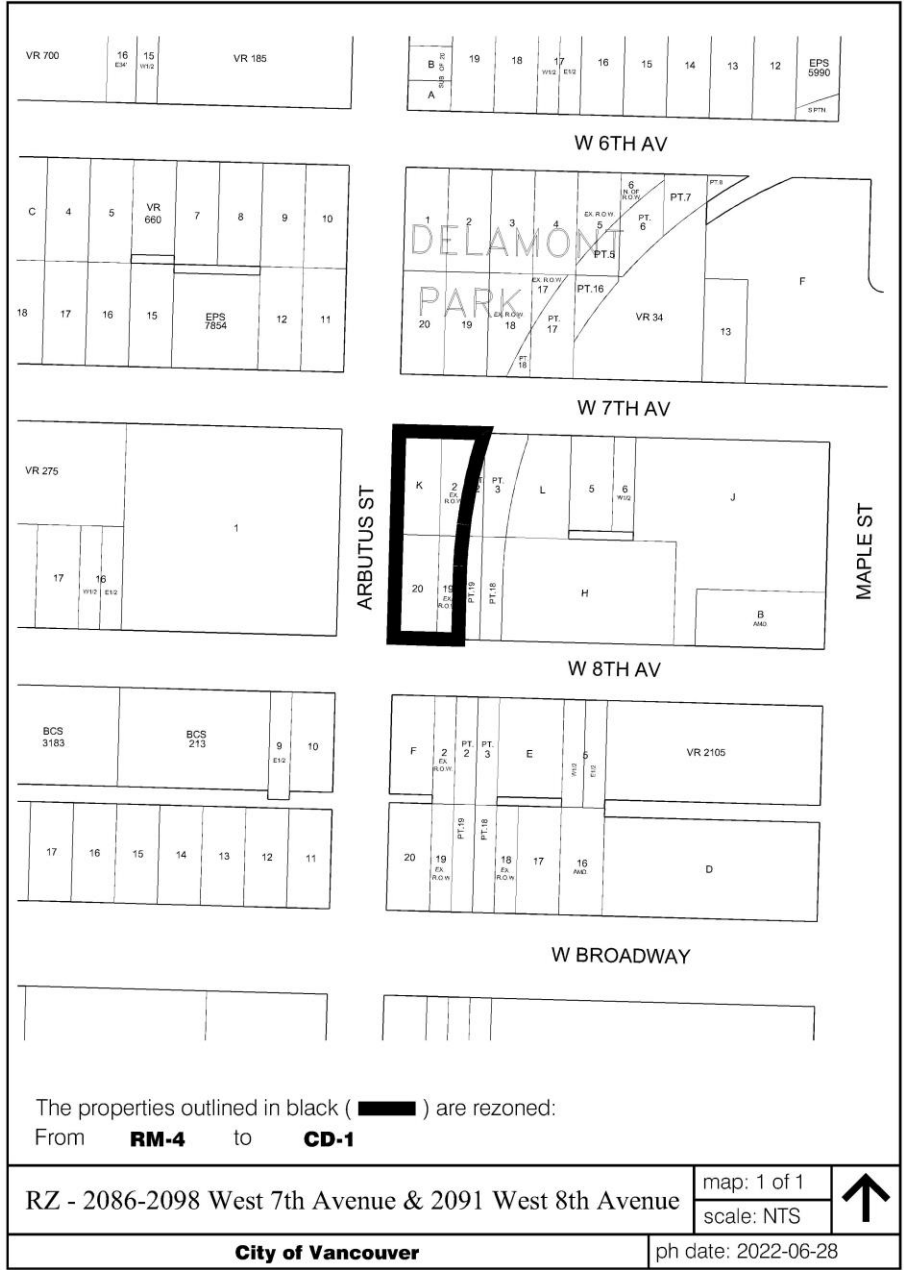
- (a) a bathroom; or
- (b) a kitchen whose floor area is the lesser of:
 - (i) 10% or less of the total floor area of the dwelling unit, or
 - (ii) 9.3 m².

Acoustics

8. A development permit application for dwelling uses must include an acoustical report prepared by a registered professional acoustical engineer demonstrating that the noise levels in those portions of the dwelling units listed below will not exceed the noise levels expressed in decibels set opposite such portions of the dwelling units. For the purposes of this section, the noise level is the A-weighted 24-hour equivalent (Leq24) sound level and will be defined simply as noise level in decibels.

Portions of dwelling units	Noise levels (Decibels)
Bedrooms	35
Living, dining, recreation rooms	40
Kitchen, bathrooms, hallways	45

Schedule A



The properties outlined in black () are rezoned:
 From **RM-4** to **CD-1**

RZ - 2086-2098 West 7th Avenue & 2091 West 8th Avenue

map: 1 of 1
 scale: NTS



City of Vancouver

ph date: 2022-06-28

EXPLANATION**A By-law to amend
Zoning and Development By-law No. 3575
to rezone an area to CD-1**

Following the public hearings on November 18 and 25, 2021, Council gave conditional approval to the rezoning of the site at 4992-5138 Ash Street. The Director of Legal Services has advised that all prior to conditions have been met, and enactment of the attached by-law will implement Council's resolutions.

Director of Legal Services
September 12, 2023

4992-5138 Ash Street

BY-LAW NO.

**A By-law to amend
Zoning and Development By-law No. 3575
to rezone an area to CD-1**

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

Zoning District Plan Amendment

1. This by-law amends the Zoning District Plan attached as Schedule D to By-law No. 3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan attached as Schedule A to this by-law, and incorporates Schedule A into Schedule D of By-law No. 3575.

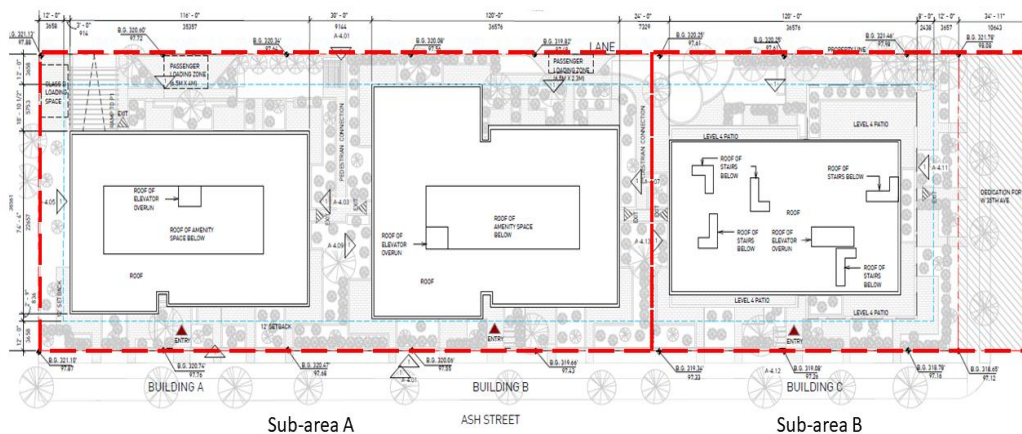
Designation of CD-1 District

2. The area shown within the heavy black outline on Schedule A is hereby designated CD-1 (860).

Sub-areas

3. The site is to consist of two sub-areas generally as illustrated in Figure 1, solely for the purpose of establishing the maximum permitted building height for each sub-area.

Figure 1 – Sub-areas



Uses

4. Subject to Council approval of the form of development, to all conditions, guidelines and policies adopted by Council, and to the conditions set out in this by-law or in a development permit, the only uses permitted within CD-1 (860) and the only uses for which the Director of Planning or Development Permit Board will issue development permits are:

- (a) Dwelling Uses, limited to Multiple Dwelling; and
- (b) Accessory uses customarily ancillary to the uses permitted in this section.

Conditions of Use

- 5. The design and layout of at least 35% of the dwelling units must:
 - (a) be suitable for family housing;
 - (b) include two or more bedrooms, of which:
 - (i) at least 25% of the total dwelling units must be two-bedroom units, and
 - (ii) at least 10% of the total dwelling units must be three-bedroom units.

Floor Area and Density

6.1 Computation of floor area must assume that the site area is 5,349 m², being the site area at the time of the application for the rezoning application evidenced by this by-law, and before any dedications.

6.2 The floor space ratio for all uses must not exceed 2.0.

6.3 Computation of floor area must include all floors of all buildings, having a minimum ceiling height of 1.2 m, including earthen floors and accessory buildings, both above and below ground level, measured to the extreme outer limits of the buildings.

6.4 Computation of floor area must exclude:

- (a) balconies and decks, and any other appurtenances which in the opinion of the Director of Planning are similar to the foregoing, except that:
 - (i) the total floor area of all such exclusions must not exceed 12% of the residential floor area, and
 - (ii) the balconies must not be enclosed for the life of the building;
- (b) patios and roof gardens, provided that the Director of Planning first approves the design of sunroofs and walls;
- (c) where floors are used for off-street parking and loading, the taking on or discharging of passengers, bicycle storage, heating and mechanical equipment, or uses, which in the opinion of the Director of Planning are similar to the foregoing, those floors or portions thereof so used, which are at or below base surface, except that the maximum exclusion for a parking space must not exceed 7.3 m in length; and
- (d) all residential storage area above or below base surface, except that if the residential storage area above base surface exceeds 3.7 m² per dwelling unit,

there will be no exclusion for any of the residential storage area above base surface for that unit.

6.5 Computation of floor area may exclude, at the discretion of the Director of Planning or Development Permit Board, amenity areas accessory to a residential use, to a maximum of 10% of the total floor area being provided for dwelling uses.

Building Height

7.1 Buildings in each sub-area must not exceed the maximum height for that sub-area, measured from base surface, as set out in Figure 2.

7.2 Despite section 7.1 of this by-law and section 10.18 of the Zoning and Development By-law, the Director of Planning may permit a greater height for roof access structures, common indoor rooftop amenity spaces, mechanical appurtenances, and any required guards, to the maximum permitted height for each sub-area, as set out in Figure 2.

Figure 2 – Maximum Permitted Building Height

Sub-area	Building Height	Building height including roof access structures, common indoor rooftop amenity spaces, mechanical appurtenances, and guards
A	15.0 m	19.7 m
B	21.0 m	24.7 m

Horizontal Angle of Daylight

8.1 Each habitable room must have at least one window on an exterior wall of a building.

8.2 The location of each such exterior window must allow a plane or planes extending from the window and formed by an angle of 50 degrees, or two angles with a sum of 70 degrees, to encounter no obstruction over a distance of 24.0 m.

8.3 Measurement of the plane or planes referred to in section 8.2 must be horizontally from the centre of the bottom of each window.

8.4 The Director of Planning or Development Permit Board may relax the horizontal angle of daylight requirement, if:

(a) the Director of Planning or Development Permit Board first considers all of the applicable policies and guidelines adopted by Council; and

(b) the minimum distance of unobstructed view is not less than 3.7 m.

8.5 An obstruction referred to in section 8.2 means:

(a) any part of the same building including permitted projections; or

(b) the largest building permitted under the zoning on any adjoining site.

Schedule A



The properties outlined in black () are rezoned:
From **RS-1** to **CD-1**

RZ - 4992-5138 Ash Street

map: 1 of 1
scale: NTS



City of Vancouver

date: 2021-11-18

EXPLANATION**A By-law to authorize the amendment of a
Housing Agreement
Authorized by By-law No. 12710
Re: 3435 East Hastings**

This amendment to the Housing Agreement for 3435 East Hastings, which was authorized by By-law 12710 on June 9, 2020 and was required as a condition of rezoning bylaw enactment with respect to the lands, modifies such Housing Agreement by, *inter alia*, amending the table of initial average rents to reflect the table current at the time when the Public Hearing for this rezoning occurred.

The change to the Housing Agreement that necessitated this by-law amendment has been agreed to by the land owner in accordance with section 565.2(4) of the Vancouver Charter.

Director of Legal Services
September 12, 2023

3435 East Hastings Street

BY-LAW NO. _____

**A By-law to authorize the amendment of a
Housing Agreement Authorized by By-law No. 12710**

PREAMBLE

WHEREAS

Council has authority under the *Vancouver Charter* to amend an existing Housing Agreement with the consent of the owner of property;

AND WHEREAS

Pursuant to By-law No. 12710 enacted June 9th, 2020, the City has entered into a Housing Agreement with the owner of certain properties bearing the civic address 3435 East Hastings (the "**Housing Agreement**") and thereafter the Housing Agreement was registered at the Land Title Office under registration number CA8552145; and

AND WHEREAS

The City and the owner now wishes to amend the Housing Agreement and all proposed amendments are acceptable to the City and the owner.

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

1. Council authorizes amendment of the Housing Agreement in substantially the form and substance of the modification agreement attached to this By-law as Schedule A and authorizes the Director of Legal Services to execute the modification 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. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
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



1. Application

KORNFELD LLP
1100-505 Burrard Street
Vancouver BC V7X 1M5
604-331-8300

515002DEV191
Modification of Covenant CA8552145

2. Description of Land

PID/Plan Number	Legal Description
031-228-364	LOT 1 OF THE SOUTH 1/2 OF LOT 48 TOWN OF HASTINGS SUBURBAN LANDS GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP98751

3. Nature of Interest

Type	Number	Additional Information
MODIFICATION	CA8552145	Modification of Covenant CA8552145
PRIORITY AGREEMENT		Granting above Modification priority over Mortgage CA9629714, as modified by CB688896, and Assignment of Rents CA9629715

4. Terms

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

5. Transferor(s)

51561 B.C. LTD., NO.BC0051561
BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION, AS TO PRIORITY

6. Transferee(s)

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

7. Additional or Modified Terms



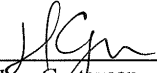
8. Execution(s)

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

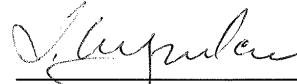
Transferor / Transferee / Party Signature(s)



 Hans Gustavson
 Barrister & Solicitor
 Kornfeld LLP
 1100 - 505 Burrard Street
 Vancouver, B.C. V7X 1M5
 Telephone: (604) 331-8312

YYYY-MM-DD
 2023-08-31

51561 B.C. LTD.
 By their Authorized Signatory



Print Name:
 LEINA REZNIKOVA

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

CITY OF VANCOUVER
 By their Authorized Signatory

Print Name:

Print Name:

Officer Certification

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



Land Title Act
Charge
 General Instrument – Part 1

Witnessing Officer Signature

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

**BRITISH COLUMBIA HOUSING
 MANAGEMENT COMMISSION**
 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
MODIFICATION OF HOUSING AGREEMENT AND BUILDING USE COVENANT
FOR-PROFIT AFFORDABLE RENTAL HOUSING
(the "Modification")**

3435 EAST HASTINGS STREET

Introduction

- A. The Transferor, 51561 B.C. LTD., is called the "Owner";
- B. The Transferee, City of Vancouver, is called the "City" when referring to corporate entity and "City of Vancouver" when referring to geographic location;
- C. The Owner is the registered and beneficial owner of the Lands;
- D. The Owner made an application to rezone the Lands from C-2C1 (Commercial) District to CD-1 (Comprehensive Development) District and to satisfy the conditions of such rezoning, among other things, the Owner entered into a Housing Agreement and Building Use Covenant for For-Profit Affordable Rental Housing with the City, which was registered at the Land Title Office on November 5, 2020 under number CA8552145 (the "Housing Agreement"); and
- E. The City and the Owner have agreed to enter into this modification agreement (the "Modification") to amend, *inter alia*, the table of initial average rents in Section 2.1(d) of the Housing Agreement to reflect the table current at the time when the Public Hearing for this Rezoning occurred.

Consideration

NOW THEREFORE THIS MODIFICATION WITNESSES that, in consideration of each party agreeing to modify the Agreement as set out hereinafter and for good and valuable consideration (the receipt and sufficiency of which the parties hereto acknowledge and agree to), pursuant to Section 565.2 of the *Vancouver Charter* and Section 219 of the *Land Title Act*, the Owner and the City hereby covenant and agree as follows:

1. Definitions

All capitalized terms used in this Modification which are defined in the Housing Agreement will have the meaning ascribed to such terms in the Housing Agreement unless defined in this Modification or the context otherwise requires.

2. Modification of the Housing Agreement

The Owner and the City agree that the Housing Agreement shall be amended by:

- (a) deleting Section 2.1(d) and replacing it with the following:

“(d) the average initial starting monthly rents for each unit type after Occupancy Permit issuance will be at or below the following amounts:

- (i) for a studio - \$1,607;
- (ii) for a one-bedroom - \$1,869;
- (iii) for a two-bedroom - \$2,457; and
- (iv) for a three-bedroom - \$3,235;

subject to such annual increases as may be authorized by the Vancouver DCL By-law (see Section 3.1B(c)) as at the date of this Agreement. Prior to the issuance of an Occupancy Permit, the Owner will deliver to the General Manager of Arts, Culture and Community Services a final rent roll confirming the rents to be charged to the first occupants of the For-Profit Affordable Rental Housing Units and the unit type mix and sizes, which rents, unit type mix and sizes will comply with this Agreement as of the date when the Occupancy Permit is issued;” and

(b) deleting Schedule A in its entirety.

3. Housing Agreement Ratified and Confirmed

Except as hereby expressly modified, the Housing Agreement is hereby ratified and confirmed by the City and the Owner to the effect and with the intent that the Housing Agreement and this Modification will be read and construed as one document.

4. Amendment

No alteration or amendment of the Housing Agreement or this Modification will have effect unless the same is in writing and duly executed by the parties to be charged.

5. Binding Effect

This Modification will enure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.

6. Time

Time shall be of the essence of this Modification.

7. Conflict

In the event of any conflict between the terms and conditions of the Housing Agreement and the terms and conditions of this Modification, the terms and conditions of this Modification will prevail.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA9629714 and the Assignment of Rents registered under number CA9629715;
- (b) "Existing Chargeholder" means BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION;
- (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