

EXPLANATION**A By-law to amend
Zoning and Development By-law No. 3575
regarding a miscellaneous amendment**

Following the Public Hearing on December 12, 2023, Council resolved to amend the Zoning and Development By-law regarding the industrial modernization and intensification framework. One amendment, which was specifically addressed by staff at the Public Hearing and approved by Council, was mistakenly left out of the by-law sent for enactment on January 23, 2024. Enactment of the attached by-law will correct that error and implement Council's resolutions.

Director of Legal Services
February 6, 2024

BY-LAW NO. _____

**A By-law to amend
Zoning and Development By-law No. 3575
regarding a miscellaneous amendment**

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

1. This by-law amends the indicated provisions of the Zoning and Development By-law No. 3575.
2. In section 3.1.2.4(a) of the I-2 District Schedule, Council strikes out “6.0” and substitutes “6.1”.
3. This by-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2024

Mayor

City Clerk

EXPLANATION

**Authorization to enter into a Housing Agreement
Re: 2126 West 34th Avenue and 5025 Arbutus Street and
2109-2129 West 35th Avenue**

After public hearing on April 27, 2023, Council approved in principle the land owner's application to rezone the above noted property from RS-5 (Residential) 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
February 6, 2024

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 2126 West 34th Avenue and 5025 Arbutus Street and
2109-2129 West 35th 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 currently legally described as Lot 5, Lot 6 and Lot 8 of Lot 3 Block 19 District Lot 526 Plan 4855 and Lot A Block 19 District Lot 526 Group 1 New Westminster District Plan EPP100891 [PIDs: 011-298-723, 011-298-740, 011-298-782 and 031-082-564 respectively] and which will be legally described as follows after subdivision:

EPP130645	Lot 1 Block 19 District Lot 526 Group 1 New Westminster District Plan EPP130645
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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 , 2024

Mayor

City Clerk



1. Application

Alison Thornhill
Terra Law Corporation
Suite 2800 - 650 West Georgia Street
Vancouver BC V6B 4N7
6046288966

File #505195
Housing Agreement - Secured Market Rental

2. Description of Land

PID/Plan Number Legal Description

EPP130645 LOT 1 BLOCK 19 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP130645

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 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)

RAVINE PARK DEVELOPMENT NOMINEE INC., NO.BC1334147
BANK OF MONTREAL, AS TO PRIORITY AGREEMENT

6. Transferee(s)

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

7. Additional or Modified Terms



Land Title Act

Charge

General Instrument – Part 1

8. Execution(s)

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYY-MM-DD

2024-01-19

**RAVINE PARK DEVELOPMENT
NOMINEE INC.**

By their Authorized Signatory

Name:

Name:

MELANIE GRISSE
A Commissioner for Taking Affidavits
for British Columbia
600 - 550 Burrard St., Vancouver, BC V6
Commission Expiry: 2026-10-31

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYY-MM-DD

BANK OF MONTREAL

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

**RAVINE PARK DEVELOPMENT
NOMINEE INC.**

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)

YYYY-MM-DD

2023-01-22

BANK OF MONTREAL

By their Authorized Signatory

MANDEEP R. DHALIWAL
Barrister & Solicitor
1600 - 925 WEST GEORGIA ST.
VANCOUVER, B.C. V6C 3L2
(604) 685-3456

Name:

Sharon Hao
Account Manager

Name:

Officer Certification

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



Land Title Act
Charge
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

CITY OF VANCOUVER
By their Authorized Signatory

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)**

**2126 WEST 34TH AVENUE AND 5025 ARBUTUS STREET
AND 2109 - 2129 WEST 35TH AVENUE**

WHEREAS:

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

- (i) the Transferor, **RAVINE PARK DEVELOPMENT NOMINEE INC.**, 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 owner of the Lands;

C. The Owner made an application to rezone the Lands from RS-5 (Residential) District to RR-2B (Residential Rental) District to permit the development of a five-storey market rental building, and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, among other things, fulfilment of the following condition prior to enactment of the rezoning by-law (upon enactment, the "**Rezoning By-law**"):

"2.10 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 or the life of the building, subject to a no-separate-sales covenant and a no-stratification covenant, and that no such units will be rented for less than one month at a time, and such other terms and conditions as the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services may require."

(collectively, the "**Housing Condition**"); and

D. The Owner is entering into this Agreement to satisfy the Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, 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 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) **"Building Permit"** means any building permit issued by the City authorizing the building of a 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/his 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) **"Commencement Date"** means the date as of which this Agreement has been executed by all parties to it;
- (h) **"Development Permit"** means any development permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing development on the Lands (or any portion of the Lands);
- (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 Condition"** has the meaning ascribed to that term in Recital C;
- (l) **"Housing Unit"** means a self-contained residential unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (m) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;

- (n) **"Lands"** means the parcel of land situate in 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);
- (o) **"Losses"** means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, 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;
- (p) **"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;
- (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, RAVINE PARK DEVELOPMENT NOMINEE INC., and 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) “*Rezoning By-law*” has the meaning ascribed to that term in Recital C;
- (y) “*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;
- (z) “*Vancouver*” has the meaning ascribed to that term in Recital A(ii); and
- (aa) “*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 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 such number of Housing Units and any related amenity and parking spaces as required by and in accordance with the Market Rental Housing Condition, the Development Permit, any Building Permit and the requirements of this Agreement (collectively, 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 at least two (2) 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:

- (i) the Owner will not suffer, cause or permit registered title to any Market Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) to be sold or otherwise transferred unless registered title to every Market Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) is sold or otherwise transferred together and as a block to the same registered owner; and
- (ii) the Owner will not suffer, cause or permit beneficial title to any Market Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) to be sold or otherwise transferred unless beneficial title to every Market Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) is sold or otherwise transferred together and as a block to the same beneficial owner,

and in each case such transferee must concurrently enter 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, to the standard of a reasonable and prudent owner of similar buildings in the area. If the Market Rental Housing Units (or Replacement Rental Housing Units, as applicable) or any part of any thereof are/is damaged, reasonable wear and tear excepted, 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, for the remaining duration of the Term, 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 at all times keep complete and 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 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, except in each case to the extent that such Losses are attributable to the wrongful intentional acts or gross negligence of the City or the City Personnel; and

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

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

5.2 Conduct of Proceedings.

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

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

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

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

ARTICLE 6 NOTICES

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

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

Ravine Park Development Nominee Inc.
600 - 550 Burrard Street
Vancouver, British Columbia
V6C 2B5

Attention: President

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

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

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

ARTICLE 7 MISCELLANEOUS

7.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner 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 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.

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

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

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

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

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

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under CA9684271, extended by CA9696578, CA9825217 and CB_____ and the Assignment of Rents registered under number CA9684272, extended by CA9696579, CA9825218 and CB_____;
- (b) "Existing Chargeholder" means BANK OF MONTREAL;
- (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: 3205 Arbutus Street**

After the public hearing on April 25, 2023, Council approved in principle the land owner's application to rezone the above noted property from C-1 (Commercial) District to CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. The Housing Agreement was accepted and executed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services
February 6, 2024

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 3205 Arbutus 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:

024-760-595

Parcel A Block 484 District Lot 526 Group 1 New
Westminster District Plan LMP45736

which lands will be subject to a subdivision to dedicate an easterly portion of the site for road purposes yielding a parcel with a legal description of Lot 1 Block 484 District Lot 526 Group 1 New Westminster District Plan EPP134195 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 , 2024

Mayor

City Clerk



1. Application

SAMPSON DAVIE FANE VOLPIANA LLP
Barristers and Solicitors
408 - 355 Burrard Street
Vancouver BC V6C 2G8
604.343.1930

File No.: 1035-21-0200
Liza Volpiana / Kelly Boreham
(Housing Agreement and Building Use Covenant)

2. Description of Land

PID/Plan Number Legal Description

EPP134195 LOT 1 BLOCK 484 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP134195

3. Nature of Interest

Type Number Additional Information

COVENANT

PRIORITY AGREEMENT

granting the Covenant with one registration number less than this Priority Agreement priority over Mortgage CA9474763, Assignment of Rents CA9474764, Mortgage CA9474765 and Assignment of Rents CA9474766

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

1088573 B.C. LTD., NO.BC1088573

COAST CAPITAL SAVINGS FEDERAL CREDIT UNION, AS TO PRIORITY

M.D.K.M. MANAGEMENT LTD., NO.BC0318317, AS TO PRIORITY

6. Transferee(s)

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

7. Additional or Modified Terms



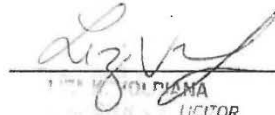
8. Execution(s)

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

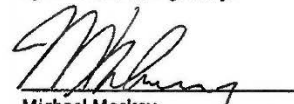
Execution Date

Transferor / Transferee / Party Signature(s)


MICHAEL MACKAY
SOLICITOR
LAWSON DUFFY LANE VOIPIANA LLP
SUITE 105-105, CHESTNUT STREET
VANCOUVER, B.C. V6C 2G8
(604) 343-1553

YYYY-MM-DD
2024-01-15

1088573 B.C. LTD.
By its Authorized Signatory:


Michael Mackay

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
2024-01-18

COAST CAPITAL SAVINGS FEDERAL
CREDIT UNION
By its Authorized Signatory(ies):


Name: Ben Dodman
Senior Manager
Commercial Real Estate


Name: Devon McAndrews
Manager
Commercial Real Estate

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.

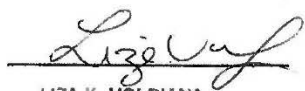


Land Title Act
Charge
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)



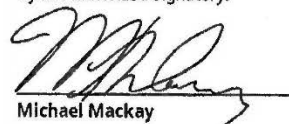
LIZA K. VOLPIANA
SOLICITOR
SIMPSON DAVIE FANE VOLPIANA LLP
SUITE 103 - 355 BURRARD STREET
VANCOUVER, B.C. V6C 2G8

YYYY-MM-DD

2024-01-15

M.D.K.M. MANAGEMENT LTD.

By Its Authorized Signatory:


Michael Mackay

Officer Certification 3-1933

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 Its Authorized Signatory:

Name:

Officer Certification

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

Electronic Signature

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

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT SECURED MARKET RENTAL HOUSING

Introduction

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (I) the Transferor, 1088573 B.C. LTD., as more particularly defined in Section 1.1(r); and
 - (II) the Transferee, CITY OF VANCOUVER, is herein called the "City", as more particularly defined in Section 1.1(c);
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands from C-1 (Commercial) District to CD-1 (Comprehensive Development) District to increase the permitted floor space ratio from 1.20 to 2.56 (including a minimum of 0.35 for non-dwelling uses) and the building height from 10.7 metres to 19.2 metres (and 22.4 metres to the top of the rooftop amenity space and roof access) to permit the development of a four-storey mixed-use building with 54 secured market rental units and commercial space (the "Development"), and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council, in principle, subject to, *inter alia*, fulfilment of the condition that, prior to enactment of the rezoning bylaw (the "Rezoning Bylaw"), 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 Section 219 Covenant to secure all 54 residential units as secured rental housing units for the longer of 60 years and the life of the building, subject to the following additional conditions:

- (a) A no separate sales covenant;*
- (b) A no stratification covenant;*
- (c) A provision that none of such units will be rented for less than one month at a time;*
- (d) That, if a waiver of the Development Cost Levies is sought pursuant to the Development Cost Levy By law, prior to rezoning enactment, all proposed residential units will meet the definition of "for-profit affordable rental housing" in the Development Cost Levy By-law and accordingly, the average size of all residential units will not be greater than specified for for-profit affordable rental housing in the Development Cost Levy By-law, and the average initial rents for all proposed residential units will not exceed rents specified for for-profit affordable*

rental housing in the Development Cost Levy By-law. A rent roll would be provided indicating the agreed initial monthly rents for each rental unit, when the Housing Agreement is entered into, prior to development permit issuance and prior to DCL calculation during building permit.

- (e) Such other terms and conditions as the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services may in their sole discretion require.

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

Note to Applicant: If the applicant chooses to seek a waiver of the Development Cost Levies at any stage, the application will be subject to further review to determine if land lift is generated and a further Public Hearing may be required.

Note to Applicant: If the applicant chooses to seek a waiver of the Development Cost Levies at the development permit stage, a new Housing Agreement will be required prior to development permit issuance to secure the obligations described in subsection (d) above.”; and

- D. The Owner is entering into this Agreement to satisfy the foregoing conditions.

Consideration

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:

Terms of Agreement

ARTICLE 1 DEFINITIONS AND INTERPRETATION

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

- (a) “Agreement” means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;
- (b) “Building Permit” means any building permit issued by the City authorizing the building of a New Building as contemplated by the Rezoning Bylaw and the Development Permit;
- (c) “City” means the City of Vancouver as a corporate entity;

- (d) "City Manager" means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (e) "City of Vancouver" means, save only for its use in Section 1.1(c), the City of Vancouver as a geographical location;
- (f) "City Personnel" means any and all of the City's elected and appointed officials, officers, employees, agents, contractors, subcontractors, nominees, delegates, permittees and volunteers;
- (g) "Development" means the development on the Lands described in Recital C as contemplated by the Rezoning Bylaw and approved by a Development Permit;
- (h) "Development Permit" means any development permit issued by the City authorizing the development of any portion of the Lands contemplated by the Rezoning Bylaw;
- (i) "Director of Legal Services" means the chief administrator, from time to time, of the City's Legal Services Department and his or her successors in function and their respective nominees;
- (j) "Dwelling Unit" has the meaning ascribed to such term in the City's *Zoning and Development By-law* No. 3575, as may be amended or replaced from time to time;
- (k) "Effective Date" means the date as of which this Agreement has been executed by all parties to it;
- (l) "General Manager of Planning, Urban Design and Sustainability" means the chief administrator, from time to time, of the City's Planning, Urban Design and Sustainability Department and her or his successors in function and their respective nominees;
- (m) "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;
- (n) "Lands" means the parcel of land situate in the City of Vancouver 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;
- (o) "Losses" means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, judgements, builders liens, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (p) "New Building" means any new building or structure to be built on the Lands and any building or structure on the Lands being renovated, upgraded or refurbished as contemplated by the Rezoning Bylaw and any Development Permit, and includes any portion of any such building or structure, but does not

include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Rezoning Bylaw and any Development Permit;

- (q) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of any New Building, development or partial development on the Lands issued after the Effective Date;
- (r) "Owner" means the Transferor, 1088573 B.C. LTD., and any successors in title to the Lands or any portion thereof;
- (s) "Owner's Personnel" means all of the Owner's employees, agents, contractors, subcontractors, nominees, delegates, licensees, permittees and volunteers;
- (t) "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 Section 1.1(t)(i)(A); and
 - (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (u) "Rental Housing" means a Dwelling Unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arm's length, for use as rental accommodation on a month-to-month basis or longer in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (v) "Rental Housing Units" means the new units of Rental Housing to be contained within the New Building upon its completion, as part of the Development, which units will comply with the Rezoning Bylaw, the terms of this Agreement and the Development Permit applicable to the same, and "Rental Housing Unit" means any one of them;
- (w) "Rental Housing Units Parcel" has the meaning ascribed to such term in Section 3.1(a);

- (x) "Replacement Rental Housing Unit" has the meaning ascribed to such term in Section 2.1(c) and "Replacement Rental Housing Units" means all of such units;
- (y) "Residential Tenancy Act" means the *Residential Tenancy Act*, S.B.C. 2002, c. 78, as may be amended or replaced from time to time;
- (z) "Rezoning Bylaw" has the meaning ascribed to such term in Recital C;
- (aa) "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; and
- (bb) "Vancouver Charter" means the *Vancouver Charter*, S.B.C. 1953, c. 55, as may be amended or replaced from time to time.

1.2 Interpretation. In this Agreement:

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

- (f) *Legislation.* Any reference to a statute or bylaw includes and is a reference to such statute or bylaw and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute, bylaw and regulations that may be passed which have the effect of supplementing or superseding such statutes, bylaws 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 not less than 54 Rental Housing Units, in accordance with the conditions of enactment of the Rezoning Bylaw, this Agreement, the Development Permit, the Building Permit and all applicable City bylaws and policies, all to the satisfaction of the City;
- (c) when the New Building is completed and an Occupancy Permit has been issued and thereafter throughout the Term, all of the Rental Housing Units in the New Building will be used only for the purpose of providing Rental Housing in accordance with the terms of this Agreement, and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building, then then it will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired or replacement building(s) on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than 54 Rental Housing Units, which replacement Rental Housing Units will also be used only for the purpose of providing Rental Housing (each such replacement Rental Housing Unit hereinafter referred to as a "Replacement Rental Housing Unit"), in accordance with the terms of this Agreement and the applicable bylaws of the City and which Replacement Rental Housing Units will be subject, for the remaining duration of the Term, to the same use restriction as the Rental Housing Units are pursuant to this Agreement;
- (d) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) for a term of less than one month at a time;

- (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 Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) to be sold or otherwise transferred unless title to every one of the Rental Housing Units (or Replacement Rental Housing Units, as applicable) is sold or otherwise transferred together and as a block to the same legal or beneficial owner, as applicable, and subject to Section 8.7(a);
- (f) throughout the Term, it will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld, subject to ARTICLE 3;
- (g) throughout the Term, that any sale of any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) 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 New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings in the City of Vancouver, excluding reasonable wear and tear;
- (i) if the New Building, or any part thereof, is damaged during the Term, it will promptly restore and repair the same whenever and as often as damage occurs, to a state and condition that is equal to or greater than the state and condition thereof as existed before such damage occurred; and
- (j) throughout the Term, it will insure, or cause to be insured, the New Building to the full replacement cost against perils normally insured against in the City of Vancouver by reasonable and prudent owners of similar buildings and lands.

ARTICLE 3 SUBDIVISION OF THE LANDS AND THE NEW BUILDING

3.1 Subdivision. Notwithstanding Section 2.1(f):

- (a) subject to compliance by the Owner with all applicable requirements of the City's Approving Officer and the City's elected Council, this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands by the deposit of an air space subdivision plan, to enable all of the Rental Housing Units to be contained within one air space parcel, or to enable all of the Rental Housing Units to be contained within the remainder parcel (such legal parcel containing all of the Rental Housing Units herein being referred to as the "Rental Housing Units Parcel"); and

- (b) following such a subdivision and the issuance of a final Occupancy Permit for the Rental Housing Units Parcel, the Owner may apply to the City for a partial discharge of this Agreement with respect to any legal parcel other than the Rental Housing Units Parcel, and the City will on request of the Owner execute and deliver a registrable discharge of this Agreement in respect of such other parcel(s) provided, that:
 - (i) 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 Rental Housing Units, the Rental Housing Units 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.

3.2 Air Space Parcel. If the Lands are subdivided by way of an air space plan whereby the Rental Housing Units are contained within the Rental Housing Units Parcel and the balance of the Lands is contained within the remainder, a separate air space parcel or is subdivided by way of strata plan, the Owner shall, as condition of the subdivision of the Lands by way of air space plan (and prior to any subdivision of any parcel other than the Rental Housing Units Parcel by way of strata plan), be required to register a reciprocal air space parcel easement agreement in form satisfactory to the City setting out the respective obligations of the owner of the Rental Housing Units Parcel and the owner(s) of the balance of the Lands whereby, without limitation:

- (a) the owner of the Rental Housing Units Parcel shall be responsible for performing the covenants and obligations of the Owner herein as they pertain to the Rental Housing Units Parcel;
- (b) the owner(s) of the balance of the Lands will be responsible for performing the covenants and obligations of the Owner as they pertain to the balance of the Lands; and
- (c) primary responsibility for the maintenance and repair of and insurance for common areas and facilities (including, without limitation, the building envelope and roof) will be assigned to one of the owners;
- (d) the owner of the Rental Housing Units Parcel and the owner(s) of the balance of the Lands will pay equitable shares of the costs of maintenance and repair of and insurance for common areas and facilities; and
- (e) the obligation to replace the Rental Housing Units under Section 2.1(c) will apply where the owner of the Rental Housing Units Parcel and the owner of the balance of the Lands have reached a decision to rebuild the Building or if a new

development is to be constructed on the Lands, subject always to the City's development permit process and requirements.

**ARTICLE 4
OCCUPANCY RESTRICTION ON THE LANDS**

4.1 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, in form and substance satisfactory to the General Manager of Planning, Urban Design and Sustainability, proof of the insurance, consistent with the requirements of Section 2.1(j), is in force and effect; 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 4.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 6, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this ARTICLE 4.

**ARTICLE 5
ENFORCEMENT**

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

**ARTICLE 6
RELEASE AND INDEMNITY**

6.1 Release and Indemnity. Subject to Section 6.3, the Owner covenants and agrees as follows:

(a) it will not make any claims against the City or City Personnel and releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner in connection with this Agreement, including without limitation:

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

(A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building or any part thereof;

(B) performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement;

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

(D) exercising any of its rights hereunder; or

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

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

(b) to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of or which could not have been sustained "but for" any of the following:

(i) this Agreement;

(ii) the release by the City or any or all of the City's rights under this Agreement or the loss of any rights purported to be granted hereby;

(iii) the City or City Personnel:

(A) reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building or any part thereof;

(B) withholding any permit pursuant to this Agreement;

- (C) performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement; or
- (D) exercising any of its rights hereunder under; or
- (iv) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
- (v) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement,

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

6.2 Nature of Indemnities. The indemnities in this ARTICLE 6 will be both personal covenants of the Owner and integral parts of the Section 219 covenant granted in this Agreement.

6.3 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 6.3(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 6.3(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.3(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 6.3(b).

- (c) Regardless of whether the claim is being defended under Section 6.3(a) or Section 6.3(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.

- 6.4 **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, 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, BC 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:

1088573 B.C. Ltd.
2400 - 320 Granville Street
Vancouver, BC V6C 1S9
Attention: Oliver Bibby

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 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 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 enactment of the Rezoning Bylaw or any Development Permit; and
 - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 8.3 **Enforcement.** This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it will be entitled to court costs on a solicitor and own client basis.
- 8.4 **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.

- (a) 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(a) will apply equally to all subsequent purchasers/transferees (other than the transfer of an interest in the Lands by way of mortgage).
- (b) Subject to Section 8.7(a), neither the Owner nor any successor in title to the Lands shall be liable for breaches of 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 of the Lands, but the Owner or its successors in title, as the case may be, shall remain liable after ceasing to be the registered owner of any portion of the Lands for all breaches of and non-observance and non-performance of covenants herein as the same relate to such portion of the Lands that occurred prior to the Owner or any successor in title, as the case may be, ceasing to be the registered owner of such portion of the Lands

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, bylaws, 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 General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means Mortgage CA9474763 and Assignment of Rents CA9474764;
- (b) "Existing Chargeholder" means Coast Capital Savings Federal Credit Union;
- (c) "New Charges" means the registrable charges and encumbrances created by and contained in the Terms of Instrument - Part 2 to which this Consent and Priority Instrument is attached; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the Terms of Instrument - Part 2 to which this Consent and Priority Instrument is attached.

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 to which this Consent and Priority Instrument is attached.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means Mortgage CA9474765 and Assignment of Rents CA9474766;
- (b) "Existing Chargeholder" means M.D.K.M. Management Ltd.;
- (c) "New Charges" means the registrable charges and encumbrances created by and contained in the Terms of Instrument - Part 2 to which this Consent and Priority Instrument is attached; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the Terms of Instrument - Part 2 to which this Consent and Priority Instrument is attached.

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 General Instrument - Part 1 to which this Consent and Priority Instrument is attached.

END OF DOCUMENT

EXPLANATION**Repeal of By-law No. 12502
Re: 1555 Robson Street**

The owner made an application for a development permit pursuant to Development Application DP-2018-00589 (the “**Development Application**”) for a development on the above-noted property (the “**Development**”). On February 6, 2019, the Director of Planning approved in principle the Development subject to the owner of the lands entering into a Housing Agreement with the City. Subsequently, the landowner and the City entered into a Housing Agreement (the “**Housing Agreement**”), as approved under By-law No. 12502. A number of agreements were registered at the Land Title Office, including the Housing Agreement. In December 2023, the owner advised the City that it is no longer proceeding with the Development. All permits associated with the Development have been cancelled by the City. The owner has requested that all agreements registered at the Land Title Office as a condition of the Development Application be discharged from title to the above-noted property. As a result of the owner no longer proceeding with the Development, all permits associated with the Development being cancelled, and the Housing Agreement no longer being required, By-law No. 12502, authorizing the Housing Agreement should be repealed.

Director of Legal Services
February 6, 2024

BY-LAW NO.

**A By-law to repeal By-law No. 12502 authorizing
a Housing Agreement for 1555 Robson Street**

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

1. Council hereby repeals By-law No. 12502.
2. This by-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2024

Mayor

City Clerk

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 427-449 West 39th Avenue**

After a public hearing on June 15, 2023, Council approved in principle the land owner's application to rezone the above noted property from RS-1 (Residential) District to CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. The Housing Agreement was accepted and executed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services
February 6, 2024

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 427-449 West 39th 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:

032-051-531

Lot A Block 854 District Lot 526 Group 1 New
Westminster District Plan EPP116785

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 , 2024

Mayor

City Clerk



1. Application

**Nicholas R. Shon, Barrister and Solicitor (Kelly
Cumberland)
Lawson Lundell LLP
1600 - 925 West Georgia Street
Vancouver BC V6C 3L2
(604) 685-3456**

File No.: 39552-168488
W39 Development - Housing Agreement

2. Description of Land

PID/Plan Number Legal Description

032-051-531 LOT A BLOCK 854 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP116785

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 Covenant
		Entire Agreement
PRIORITY AGREEMENT		Granting the Covenant with one registration number less than this priority agreement priority over Mortgage CA9788506 and Assignment of Rents CA9788507

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

W39 INVESTMENT HOLDINGS LTD., NO.BC1328627

THE BANK OF NOVA SCOTIA, 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

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

Execution Date

YYYY-MM-DD

2024-01-18

Transferor / Transferee / Party Signature(s)

W39 INVESTMENT HOLDINGS LTD.
By their Authorized Signatory

Name: Bruce Black

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)

THE BANK OF NOVA SCOTIA
By their Authorized Signatory

Name: _____

Name: _____

Officer Certification

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



Land Title Act
Charge
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

CITY OF VANCOUVER, as Transferee
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 RENTAL AND BELOW-MARKET RENTAL HOUSING427-449 WEST 39TH AVENUE

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, W39 INVESTMENT HOLDINGS LTD., is called the "Owner", as more particularly defined in Section 1.1; and
 - (ii) the Transferee, City of Vancouver, is called the "City" or the "City of Vancouver" when referring to corporate entity continued under the *Vancouver Charter*, and "Vancouver" when referring to geographic location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands (the "Rezoning Application") from RS-1 (Residential) District to CD-1 (Comprehensive Development) District and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, among other things, fulfilment of the condition that, prior to enactment of the rezoning by-law (upon enactment, the "Rezoning By-law"), the Owner make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services to enter into a Housing Agreement by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter* securing all of the residential units as secured rental housing units with at least 20 percent of the residential floor areas counted in the calculation of the floor space ratio secured as Below-Market Rental Housing Units pursuant to Section 3.1A of the Vancouver DCL Bylaw, for the longer of 60 years and life of the New Building, and subject to other conditions set forth in the minutes of the public hearing (collectively, the "Housing Condition"); and
- D. The Owner is entering into this Agreement to satisfy the Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, in satisfaction of the requirements of Section 3.1A of the Vancouver DCL By-law and pursuant to Section 565.2 of the *Vancouver Charter* and Section 219 of the *Land Title Act*, agree as follows, in respect of the use of the Lands and the New Building:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions.** Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:
- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;

- (b) **"Below-Market Rental Housing"** means a portion of the For-Profit Affordable Rental Housing in a building that is comprised of at least 20% of the residential floor area that is counted in the calculation of the Floor Space Ratio consisting of Dwelling Units with rents that meet the requirements of Section 2.1(o) of this Agreement, are made available for rent only to Eligible Persons in accordance with this Agreement and comply with the Moderate Income Rental Housing Pilot Program Rezoning Policy;
- (c) **"Below-Market Rental Housing Rent Roll"** means a rent roll report providing information regarding each of the Below-Market Rental Housing Units, including the unit number, unit type, unit size and rent;
- (d) **"Below-Market Rental Housing Report"** means a notarized annual report prepared by the Owner and delivered to the City providing information regarding each of the Below-Market Rental Housing Units to the satisfaction of the General Manager of Planning, Urban Design and Sustainability, substantially in the form attached hereto as Schedule A, with such amendments or additions thereto as may be required by the General Manager of Planning, Urban Design and Sustainability from time to time;
- (e) **"Below-Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Below-Market Rental Housing Unit"** means any one of such units;
- (f) **"Building Permit"** means any building permit issued by the City authorizing the building of a New Building as contemplated by the Rezoning By-law and the Development Permit;
- (g) **"City"** and **"City of Vancouver"** have the meaning ascribed to those terms in Recital A(ii);
- (h) **"City Manager"** means the chief administrator from time to time of the City and his or her successors in function and their respective nominees;
- (i) **"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;
- (j) **"CMHC Rental Market Survey"** means the annual Rental Market Survey Data Tables conducted and published by the Canada Mortgage Housing Corporation for the City of Vancouver or if such publication is no longer published by the Canada Mortgage Housing Corporation, such other equivalent publication that is acceptable to the General Manager of Planning, Urban Design and Sustainability;
- (k) **"Development Permit"** means any development permit issued by the City authorizing the development of the Lands contemplated by the Rezoning By-law;
- (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"** has the meaning set out in the City's Zoning and Development By-law No. 3575, as amended or replaced from time to time;
- (n) **"Effective Date"** means the date as of which this Agreement has been executed by all parties to it;
- (o) **"Eligible Person"** means a person who:
 - (i) at the beginning of such person's tenancy of a Below-Market Rental Housing Unit, together with all other Occupants of such Below-Market Rental Housing Unit, have an aggregate annual household Income that is less than or equal to four (4) times the annual rent of such Below-Market Rental Housing Unit;
 - (ii) thereafter throughout such person's tenancy of a Below-Market Rental Housing Unit, together with all other Occupants of such Below-Market Rental Housing Unit, have an aggregate annual household Income that is less than or equal to five (5) times the annual rent of such Below-Market Rental Housing Unit; and
 - (iii) throughout such person's tenancy of a Below-Market Rental Housing Unit, will:
 - (A) not permit such Below-Market Rental Housing Unit to be occupied by a person or persons other than those persons identified in the Tenancy Agreement for more than 60 consecutive days or more than 90 days in total in any calendar year, without the prior written consent of the Owner;
 - (B) not permit such Below-Market Rental Housing Unit to be occupied by a total number of Occupants less than the total number of bedrooms therein;
 - (C) occupy such Below-Market Rental Housing Unit as his or her Principal Residence and not permit any Occupant to occupy such Below-Market Rental Housing Unit unless such Below-Market Rental Housing Unit is the Occupant's Principal Residence;
 - (D) not permit such Below-Market Rental Housing Unit to be vacant for a period of six months or longer, cumulatively within a calendar year, without the prior written consent of the Owner; and
 - (E) be:
 - I. a Canadian citizen;
 - II. an individual lawfully admitted into Canada for permanent residency;
 - III. a refugee sponsored by the Government of Canada; or
 - IV. an individual who has applied for refugee status,

and who, at the start of the tenancy, has resided in British Columbia for the past twelve (12) consecutive months,

or a person who is otherwise deemed to be an Eligible Person by the General Manager of Planning, Urban Design and Sustainability, in their sole discretion;

- (p) **"Floor Space Ratio"** means the figure obtained when the area of the floors of the New Building is divided by the area of the Lands;
- (q) **"For-Profit Affordable Rental Housing"** means multiple Dwelling Units within a building for use as Rental Housing which meets the requirements of Section 3.1A of the Vancouver DCL By-law to be "for-profit affordable rental housing" (as defined therein) and does not include use as Seniors Supportive or Assisted Housing, which is specifically excluded;
- (r) **"For-Profit Affordable Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"For-Profit Affordable Rental Housing Unit"** means any one of such units;
- (s) **"General Manager of Planning, Urban Design and Sustainability"** means the person appointed from time to time as the City's General Manager of Planning, Urban Design and Sustainability and his/her successors in function and delegates and their respective nominees;
- (t) **"Income"** of an Occupant means the total annual world-wide income before income tax from all sources of the Occupant and includes without limitation, the following income sources:
 - (i) income assistance;
 - (ii) employment, including regular overtime, vacation pay and gratuities;
 - (iii) self-employment, including commission sales;
 - (iv) seasonal employment;
 - (v) Employment Insurance and WorkSafe BC insurance;
 - (vi) training allowances;
 - (vii) income from the Resettlement Assistance Program;
 - (viii) child support, maintenance payments or support from family/friends/community;
 - (ix) rental income from real estate or dividends from stocks or bonds, if the real monthly income is greater than the imputed income from the Asset; and
 - (x) pension incomes including:

- (A) old Age Security, Guaranteed Income Supplement, Allowance, and Allowance for the Survivor (formerly Spousal Allowance);
- (B) senior's supplement;
- (C) private pension plans including Registered Retirement Income Funds;
- (D) Canada Pension Plan, including retirement, disability, orphans, widows, disability for child, etc.
- (E) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada; and
- (F) foreign pensions,

but does not include:

- (xi) earnings of dependent children aged 18 and under (regardless of student status);
- (xii) student loans, equalization payments, student grants and scholarships;
- (xiii) taxable benefits, including living out or travel allowances, medical coverage, uniform allowance, etc.;
- (xiv) Shelter Aid for Elderly Renters and Rental Assistance Program payments;
- (xv) Canada Child Tax Benefits, including the National Child Benefit Supplement, Child Disability Benefit, BC Family Bonus, and BC Earned Income Benefit;
- (xvi) Universal Child Care Benefits;
- (xvii) BC Childcare Subsidy;
- (xviii) income from foster parenting;
- (xix) Child in Home of Relative and Extended Family Program;
- (xx) income from approved live-in care givers; and
- (xxi) GST and Income Tax rebates;
- (u) "**Land Title Act**" means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (v) "**Lands**" means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 of the Form C - General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided;

- (w) "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;
- (x) "Moderate Income Rental Housing Pilot Program Rezoning Policy" means the pilot program policy adopted by City Council on November 28, 2017, as amended from time to time thereafter and as may be further amended from time to time hereafter, which policy provides for, *inter alia*, the process, project requirements and available incentives for the development of new buildings where 100% of the residential floor area is secured rental housing and at least 20% of the residential floor area that is counted in the calculation of the Floor Space Ratio is made available to moderate income households;
- (y) "New Building" means any new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;
- (z) "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;
- (aa) "Occupants" means persons for whom a Rental Housing Unit serves as their Principal Residence and an "Occupant" means any one of them, as the context requires;
- (bb) "Owner" means the registered owner of the Lands as of the Effective Date, namely, W39 Investment Holdings Ltd. and its successors and assigns;
- (cc) "Personal Information Protection Act" means the *Personal Information Protection Act*, S.B.C. 2003, c.63, and all amendments thereto and re-enactments thereof;
- (dd) "Principal Residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this agreement, a person may only have one principal residence;
- (ee) "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 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;
- (ff) **"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;
- (gg) **"Replacement For-Profit Affordable Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Replacement For-Profit Affordable Rental Housing Unit"** means one such unit;
- (hh) **"Replacement Below-Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Replacement Below-Market Rental Housing Unit"** means one such unit;
- (ii) **"Residential Tenancy Act"** means the *Residential Tenancy Act* S.B.C. 2002, c. 78 and all amendments thereto and re-enactments thereof;
- (jj) **"Residential Tenancy Regulation"** means the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 and all amendments thereto and re-enactments thereof;
- (kk) **"Rezoning Application"** has the meaning ascribed to that term in Recital C;
- (ll) **"Rezoning By-law"** has the meaning ascribed to that term in Recital C;
- (mm) **"Seniors Supportive or Assisted Housing"** has the meaning set out in the City's Zoning and Development By-law No. 3575, as amended or replaced from time to time;
- (nn) **"Statement of Below-Market Rental Housing Unit Eligibility"** means a notarized statement, prepared by the Owner and delivered to the City, that states the following in respect of a Below-Market Rental Housing Unit:
 - (i) confirmation that, to the best of the Owner's knowledge based on the most current information available to the Owner pursuant to Section 2.1(g), the Tenant of such Below-Market Rental Housing Unit is an Eligible Person;
 - (ii) description of all of the actions and procedures that the Owner has undertaken to verify that the Tenant of such Below-Market Rental Housing Unit is an Eligible Person; and

- (iii) such other information regarding such Below-Market Rental Housing Unit and its Occupants as the General Manager of Planning, Urban Design and Sustainability may otherwise require;

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

- (oo) **"Tenancy Agreement"** means a residential tenancy agreement, lease, licence or other agreement prepared in accordance with the *Residential Tenancy Act*, granting rights to occupy a Below-Market Rental Housing Unit;
- (pp) **"Tenant"** means an Eligible Person who is a tenant of a Below-Market Rental Housing Unit by way of a Tenancy Agreement;
- (qq) **"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;
- (rr) **"Vancouver"** has the meaning ascribed to that term in Recital A(ii);
- (ss) **"Vancouver Charter"** means the *Vancouver Charter* S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof; and
- (tt) **"Vancouver DCL By-law"** means the City's Vancouver Development Cost Levy By-law No. 9755, and all amendments thereto and re-enactments thereof.

1.2 Interpretation. In this Agreement:

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

designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.

1. 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.
- (e) Legislation. Any reference to a statute or by-law includes and is a reference to such statute or by-law and to the regulations made pursuant thereto in force on the Effective Date, with all amendments made thereto and as in force from time to time, and to any statute, by-law and regulations that may be passed which have the effect of supplementing or superseding such statutes, by-laws and regulations.
- (f) Time. Time will be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time will be local Vancouver, British Columbia time.

ARTICLE 2 RESTRICTIONS ON USE OF LANDS AND SUBDIVISION

- 2.1. The Owner covenants and agrees with the City, in respect of the use of the Lands and the construction and use of the New Building, that throughout the Term:
 - (a) the Lands, the New Building and the For-Profit Affordable Rental Housing Units (including the Below-Market Rental Housing Units) will not be used in any way that is inconsistent with the terms of this Agreement;
 - (b) at its sole cost and expense, it will construct, fit and finish the New Building, including the For-Profit Affordable Rental Housing Units (including the Below-Market Rental Housing Units) any amenities and parking spaces, in accordance with this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
 - (c) all of the Dwelling Units in the New Building will be used only for the purpose of providing For-Profit Affordable Rental Housing (the "For-Profit Affordable Rental Housing Units"), provided that the For-Profit Affordable Rental Housing Units comprising not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below-Market Rental Housing (the "Below-Market Rental Housing Units"), all in accordance with the terms of this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building, then the Owner will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired or replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than the same number and type of replacement Dwelling Units as

the New Building formerly contained, which replacement Dwelling Units during the remainder of the Term, will also be used only for the purpose of providing For-Profit Affordable Rental Housing (such replacement Dwelling Units hereinafter referred to as a "Replacement For-Profit Affordable Rental Housing Units") and Below-Market Rental Housing (such replacement Dwelling Units hereinafter referred to as a "Replacement Below-Market Rental Housing Units") respectively, in the same percentages as set out in this Section and in accordance with the terms of this Agreement and the applicable by-laws of the City and such Replacement For-Profit Affordable Rental Housing Units and Replacement Below-Market Rental Housing Units will be subject, for the remaining duration of the Term, to the same use restrictions, respectively, as the For-Profit Affordable Rental Housing Units and the Below-Market Rental Housing Units are pursuant to this Agreement;

- (d) not less than:
 - (i) 35% of the For-Profit Affordable Rental Housing Units; and
 - (ii) 35% of the Below-Market Rental Housing Units;
 will have two or more bedrooms;
- (e) each of the Below-Market Rental Housing Units shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Eligible Person and except in accordance with the following conditions:
 - (i) each Below-Market Rental Housing Unit shall be rented only pursuant to a Tenancy Agreement, which Tenancy Agreement shall include a copy of this Agreement;
 - (ii) each Below-Market Rental Housing Unit shall be rented for a monthly rent not exceeding the rent permitted to that type of Below-Market Rental Housing Unit, as described in Section 2.1(o) and the Owner will withhold its consent to any assignment or subletting of a Below-Market Rental Housing Unit in accordance with Section 2.1(e)(v)(D)VI.b;
 - (iii) each Below-Market Rental Housing Unit shall be occupied only by an Eligible Person who is occupying such Below-Market Rental Housing Unit as his or her Principal Residence and the Principal Residence of such other Occupants of the Eligible Person's household as specified in the Tenancy Agreement between the Owner and the Eligible Person for the rental thereof;
 - (iv) each Below-Market Rental Housing Unit shall have at least one Occupant per bedroom thereof;
 - (v) each Tenancy Agreement shall include:
 - (A) a clause requiring the Tenant and each permitted Occupant of the respective Below-Market Rental Housing Unit to comply with this Agreement;

- (B) the names of all Occupants of the respective Below-Market Rental Housing Unit;
- (C) a term that is not less than one month;
- (D) clauses providing that:
 - I. the Tenant is and remains an Eligible Person at all times during the term of the Tenancy Agreement;
 - II. any person not identified in the Tenancy Agreement shall not reside at the Below-Market Rental Housing Unit for more than 60 consecutive days or more than 90 days total in any calendar year, unless the Tenant receives prior written consent from the Owner;
 - III. the Below-Market Rental Housing Unit will have at least one Occupant per bedroom thereof;
 - IV. the Below-Market Rental Housing Unit will not be vacant for six months or longer, cumulatively, within a calendar year, without the prior written consent of the Owner;
 - V. the Below-Market Rental Housing Unit will at all times during the term of the Tenancy Agreement be the Principal Residence of the Tenant and the other Occupants in the Tenant's household as specified in the Tenancy Agreement; and
 - VI. the Tenant will not assign or sublet the Below-Market Rental Housing Unit or assign the Tenancy Agreement in whole or in part, except to an Eligible Person and with the consent of the Owner, provided that:
 - a. the Tenant does not receive a fee for such assignment or subletting and the rent paid by the assignee or sublessee does not exceed the rent payable in the Tenancy Agreement; and
 - b. the Owner will withhold its consent and the Tenant acknowledges that it will not be unreasonable for the Owner to do so, if the assignee or sublessee is not an Eligible Person or if the Tenant receives a fee for such assignment or subletting or the rent paid by the assignee or sublessee exceeds the rent payable in the Tenancy Agreement; and
 - VII. the Tenant acknowledges and agrees that each of the foregoing clauses described in subsections I. to VI. is a material term of the Tenancy Agreement;

(E) a clause:

- I. wherein the Tenant consents to the collection, use and retention by the Owner and disclosure to the City of information, documentation and evidence described in Section 2.1(g); and
- II. requiring the Tenant to deliver to the Owner the information, documentation and evidence described in Section 2.1(g)(ii) every five (5) years following the date on which the Tenant first occupies the Below-Market Rental Housing Unit,

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

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

Housing Unit from the Occupants listed in the Tenancy Agreement, verify, by obtaining all information, documentation or evidence necessary or such other information, documentation or evidence that the General Manager of Planning, Urban Design and Sustainability may deem necessary, that such prospective tenant is an Eligible Person and that there will be at least one Occupant per bedroom for such Below-Market Rental Housing Unit upon occupancy; and

- (ii) not less than once every five (5) years after the date on which a Below-Market Rental Housing Unit was rented to a Tenant, verify, by all information, documentation or evidence necessary or such other information, documentation or evidence that the General Manager of Planning, Urban Design and Sustainability may deem necessary, that such prospective tenant is an Eligible Person and that such Below-Market Rental Housing Unit continues to have at least one Occupant per bedroom;
- (h) the Owner will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any For-Profit Affordable Rental Housing Unit for a term of less than one month at a time;
- (i) except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any For-Profit Affordable Rental Housing Unit to be sold or otherwise transferred unless title to every one of the For-Profit Affordable Rental Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner, as applicable, and subject to Section 10.9;
- (j) the Owner will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld;
- (k) any sale of any For-Profit Affordable Rental Housing Unit in contravention of the covenant in Section 2.1(i), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(j), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (l) the Owner will keep and maintain the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings;
- (m) if the New Building or any part thereof, is damaged, it will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred reasonable wear and tear excepted;

- (n) the Owner will insure, or cause to be insured the New Building to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands;
- (o) with respect to the Below-Market Rental Housing Units:
 - (i) the initial rental rate for each tenancy of a Below-Market Rental Housing Unit will not exceed an amount that is 20% below the private apartment average rents for the City of Vancouver applicable to the respective unit type according to the CMHC Rental Market Survey:
 - (A) for the initial tenancy, most recently published at the time when the Occupancy Permit is issued; and
 - (B) for all subsequent tenancies, most recently published at the time when the respective tenancy of a Below-Market Rental Housing Unit commences;
 - (ii) the unit numbers, unit type, unit size and rents to be charged by the Owner to the first Tenants of each of the Below-Market Rental Housing Units in the New Building following issuance of the Occupancy Permit will be set out in a Below-Market Rental Housing Rent Roll and delivered by the Owner to the City for approval by the General Manager of Planning, Urban Design and Sustainability, in his or her sole discretion, prior to the issuance of the Occupancy Permit;
 - (iii) following the issuance of the Occupancy Permit, subject to the terms of this Agreement, including, without limitation, that not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below-Market Rental Housing and provided the Owner has received approval in writing from the General Manager of Planning, Urban Design and Sustainability, in his or her sole discretion, if a Below-Market Rental Housing Unit is occupied by a Tenant who was formerly an Eligible Person but no longer meets the eligibility requirements therefor, the Owner may substitute and re-assign the designation of such Dwelling Unit as a Below-Market Housing Rental Unit to another Dwelling Unit in the New Building, which is the same unit type and is equal to or greater in size to the Dwelling Unit being substituted, on a one-for-one basis, such that the unit type mix and number of Below-Market Housing Rental Units in the New Building remain unchanged and the initial rent for the newly assigned Below-Market Rental Housing Unit will be set in accordance with Section 2.1(o)(i)(B); and
 - (iv) following the issuance of the Occupancy Permit, during a tenancy of a Below-Market Rental Housing Unit, the Owner shall not increase the rent for the Below-Market Rental Housing Unit, except for annual increases in rent by an amount not to exceed the annual allowable increase in rent permitted under the provisions of the *Residential Tenancy Act* and the *Residential Tenancy Regulation*, which as of the date of this Agreement, are Section 43(1)(a) of the *Residential Tenancy Act* and Section 22 of the *Residential*

Tenancy Regulation, respectively (as each such section may be amended or replaced from time to time) and if there is a change in tenancy of a Below-Market Rental Housing Unit, the initial rent for the new tenancy will be established in accordance with Section 2.1(o)(i). For clarity, the Owner shall not increase the rent for a Below-Market Rental Housing Unit in any other circumstance, including but not limited to, any rent increases permitted under the *Residential Tenancy Act* or the *Residential Tenancy Regulation* for eligible capital expenses incurred with respect to the Building or a Below-Market Rental Housing Unit.

ARTICLE 3 DEVELOPMENT RESTRICTION ON THE LANDS

- 3.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Development Permit, and will take no action, directly or indirectly, to compel the issuance of any Development Permit, until such time as the Owner has confirmed in writing and to the satisfaction of the General Manager of Planning, Urban Design and Sustainability, the rent structure proposed to be charged to the first tenants of the Below-Market Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and size, unit type and mix shall comply with those applicable to the Below-Market Rental Housing Units in accordance with this Agreement; and
 - (ii) the City will be under no obligation to issue any Development Permit until such time as the Owner has complied with Section 3.1(a)(i); and
 - (b) without limiting the general scope of ARTICLE 8, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of a Development Permit until there is compliance with the provisions of this ARTICLE 3.

ARTICLE 4 BUILDING RESTRICTION ON THE LANDS

- 4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Building Permit, and will take no action, directly or indirectly, to compel the issuance of any Building Permit, until such time as the Owner has confirmed in writing and to the satisfaction of the General Manager of Planning, Urban Design and Sustainability, the rent structure proposed to be charged to the first tenants of the Below-Market Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and size, unit type and mix shall comply with those applicable

to the Below-Market Rental Housing Units in accordance with this Agreement and the Development Permit; and

- (ii) the City will be under no obligation to issue any Building Permit until such time as the Owner has complied with Section 4.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 8, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of a Development Permit until there is compliance with the provisions of this ARTICLE 4.

ARTICLE 5 OCCUPANCY RESTRICTION ON THE LANDS

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

- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not suffer or permit the occupation of, the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the General Manager of Planning, Urban Design and Sustainability, a Below-Market Rental Housing Rent Roll confirming the rents to be charged to the first tenants of the Below-Market Rental Housing Units following issuance of the Occupancy Permit and the unit type mix and size, which rents, unit type and mix shall comply with those applicable to the Below-Market Rental Housing Units in accordance with this Agreement and the Development Permit; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 5.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 8, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this ARTICLE 5.

ARTICLE 6 RECORD KEEPING

6.1 The Owner will keep accurate records pertaining to the use, occupancy and rental rates charged of/for the Below-Market Rental Housing Units, such records to be to the satisfaction of the General Manager of Planning, Urban Design and Sustainability. The Owner will:

- (a) on each anniversary of the date of issuance of the first Occupancy Permit for any portion of the New Building or at the request of the City, provide an updated Below-Market Rental Housing Report to the General Manager of Planning, Urban Design

and Sustainability;

- (b) within ninety (90) days of a written request by the General Manager of Planning, Urban Design and Sustainability, from time to time, notwithstanding that the Owner may have already provided a Below-Market Rental Housing Report in the same calendar year, complete and deliver to the City a Statement of Below-Market Rental Housing Unit Eligibility in respect of such Below-Market Rental Housing Unit;
- (c) at the request of the General Manager of Planning, Urban Design and Sustainability, from time to time:
 - (i) make such records available for audit, inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and
 - (ii) provide evidence of the insurance required to be taken out pursuant to Section 2.1(n); and
- (d) comply with the *Personal Information Protection Act* in collecting, using, retaining and disclosing the information of any person, Tenant or Occupant pursuant to its obligations under this Agreement and any Tenancy Agreement.

ARTICLE 7 ENFORCEMENT

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

ARTICLE 8 RELEASE AND INDEMNITY

- 8.1 Release and Indemnity. Subject to Section 8.2, the Owner hereby:

- (a) will not make any claims against the City or City Personnel and releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner in connection with this Agreement, including without limitation:
 - (i) by reason of the City or City Personnel:
 - A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building or any part thereof;
 - B. performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement
 - C. withholding any permit pursuant to this Agreement; or

- D. exercising any of its rights under any Section 219 covenant, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

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

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of or which could not have been sustained "but for" any of the following:
 - (i) this Agreement;
 - (ii) the City or City Personnel:
 - A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building or any part thereof;
 - B. withholding any permit pursuant to this Agreement;
 - C. performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement; or
 - D. exercising any of its rights under any Section 219 covenant, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
 - (iii) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
 - (iv) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement;

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

The indemnities in this ARTICLE 8 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

8.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 8.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 8.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 8.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 8.2(b); and

- (c) Regardless of whether the claim is being defended under Section 8.2(a) or Section 8.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

- 8.3 Survival of Release and Indemnities. The release and indemnities in this Article 8 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 9 NOTICES

- 9.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, will be in writing and will be given

by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:

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

If to the City, addressed to:

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

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

If to the Owner, addressed to:

W39 Investment Holdings Ltd.
700 - 700 West Pender Street
Vancouver, British Columbia
V6C 1G8

Attention: President

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

ARTICLE 10 MISCELLANEOUS

- 10.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner will be covenants the burden of which will run with and will bind the Lands and will attach thereto. Upon the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof in accordance with the provisions of Section 10.9, the parties agree that the covenants and agreements herein contained shall only be binding upon the transferring party in respect of a breach or acts or omissions occurring during its ownership.
- 10.2 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 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 any rezoning or any Development Permit; and
- (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

10.3 Application of Residential Tenancy Act to Termination Notice. The City agrees that, in the event the Owner delivers a termination notice to a Tenant pursuant to Section 2.1(e)(vi), and such termination notice is found to be ineffective by a ruling or decision of any judicial body having jurisdiction in connection with the *Residential Tenancy Act*, provided that the termination notice was not found to be ineffective by reason of an error by or the negligence of the Owner, including any error by the Owner in delivering the termination notice in accordance with, or complying with the applicable time limits in, the *Residential Tenancy Act* or *Residential Tenancy Regulation*, the Owner shall not be in breach of its obligation to ensure that:

- (a) not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below-Market Rental Housing, as set out in Section 2.1(c) as a result of such termination notice being ineffective and for clarity, the Below-Market Rental Housing Unit to which such ineffective termination notice relates shall continue to count towards the aforementioned twenty (20) percent of the residential floor areas, for the remainder of the period that such Below-Market Rental Housing Unit is rented to the applicable Tenant; and
- (b) the Below-Market Rental Housing Unit to which such ineffective termination notice relates shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Eligible Person, for the remainder of the period that such Below-Market Rental Housing Unit is rented to the applicable Tenant.

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

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

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

- 10.7 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 10.8 Further Assurances. The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 10.9 Sale of Lands and New Building or Part Thereof. Prior to the sale or transfer of any legal or beneficial interest (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), and subject always to Sections 2.1(i) and 2.1(j), the Owner of the Lands and the New Building will cause the purchaser/ transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of such Owner under this Agreement. The provisions in this Section 10.9 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage).
- 10.10 Owner's Representations. The Owner represents and warrants to and covenants and agrees with the City that:
- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal 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.
- 10.11 Liability. Notwithstanding anything to the contrary contained herein, the Owner shall not be liable under any of the covenants and agreements contained herein where such liability

arises by reason of an act or omission occurring after the Owner ceases to have any further interest in the Lands.

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

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

[illegible]

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA9788506 and the Assignment of Rents registered under number CA9788507;
- (b) "Existing Chargeholder" means The Bank of Nova Scotia;
- (c) "New Charges" means the Housing Agreement and Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

END OF DOCUMENT

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 2325 – 2377 West 49th Avenue**

After the public hearing on June 15, 2023, Council approved in principle the land owner's application to rezone the above noted property from RS-5 (Residential) District to RR-2B (Residential) District, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. The Housing Agreement was accepted and executed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services
February 6, 2024

BY-LAW NO.

A By-law to enact a Housing Agreement for 2325 – 2377 West 49th 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:

011-222-565 The West 1/2 of Lot 5 of Lot 4 Block 1 District Lot 526
Plan 5190

011-222-611 The East 1/2 of Lot 5 of Lot 4 Block 1 District Lot 526
Plan 5190

015-083-063 Lot H of Lot 4 Block 1 District Lot 526 Plan 19740

003-025-861 Lot I of Lot 4 Block 1 District Lot 526 Plan 19740

which lands will be subject to a consolidation and subdivision to dedicate the south 7 feet (2.134 metres) and the north 20 feet (6.096 metres) of the East 1/2 and the West 1/2 of Lot 5 of Lot 4, Block 1, District Lot 526, Plan 5190 for road purposes and lane purposes respectively, yielding a parcel with a legal description of Lot 1 of Lot 4 Block 1 District Lot 526 Group 1 New Westminster District Plan EPP130648, 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 , 2024

Mayor

City Clerk



1. Application

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

Housing Agreement and Building Use Covenant (Secured Market Rental)
File no. 505199

2. Description of Land

PID/Plan Number	Legal Description
EPP130648	LOT 1 OF LOT 4 BLOCK 1 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP130648

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 Covenant Entire Instrument
PRIORITY AGREEMENT		granting the section 219 covenant registered under the number that is one less than this priority agreement priority over mortgage CA9797835 and assignment of rents CA9797836 in favour of Bank of Montreal

4. Terms

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

5. Transferor(s)

WESTWARD DEVELOPMENT NOMINEE INC., NO.BC1334148
BANK OF MONTREAL

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)



YYY-MM-DD

2024-01-23

**WESTWARD DEVELOPMENT
NOMINEE INC.**

By their Authorized Signatory

MELANIE GRISSE
A Commissioner for Taking Affidavits
for British Columbia

600 - 550 Burrard St., Vancouver, BC V6C 2B5
Commission Expiry: 2026-10-31

Name: 

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYY-MM-DD

BANK OF MONTREAL

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

**WESTWARD DEVELOPMENT
NOMINEE INC.**

By their Authorized Signatory

Name:

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

BANK OF MONTREAL

By their Authorized Signatory

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

2024-01-24

Name:

Sharon Hao
Account Manager

Name:

Officer Certification

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



Land Title Act
Charge
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

CITY OF VANCOUVER

By their Authorized Signatory

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)

2325 - 2377 WEST 49TH AVENUE

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement shall be read as follows:
- (i) the Transferor, WESTWARD DEVELOPMENT NOMINEE INC., is herein called the "Owner" as more particularly defined in Section 1.1; and
 - (ii) the Transferee, CITY OF VANCOUVER, is called the "City" or the "City of Vancouver" when referring to corporate entity, and "Vancouver" when referring to geographic location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands from RS-5 (Residential) District to RR-2B (Residential Rental) District to permit development of a five-storey market rental building in accordance with the *Secured Rental Policy*, 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 or 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 date this Agreement is fully executed by the parties authorizing the use and occupation of any Building, development or partial development on the Lands or any portion of the Lands;
- (r) **"Owner"** means the Transferor, WESTWARD DEVELOPMENT NOMINEE INC., and all assigns, successors and successors in title to the Lands or any part thereof;
- (s) **"Owner's Personnel"** means any and all of the contractors, subcontractors, employees, agents, licensees, invitees and permittees of the Owner;
- (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(j) and **"Replacement Rental Housing Units"** means all of such units;
- (v) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, c. 78;
- (w) **"Rezoning"** means the rezoning of the Lands described in Recital C of this Agreement;
- (x) **"Term"** means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
 - (i) the date as of which the Building is demolished or substantially destroyed; or
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the Building;
- (y) **"Vancouver"** has the meaning ascribed to that term in Recital A(ii); and
- (z) **"Vancouver Charter"** means the *Vancouver Charter*, S.B.C. 1953, c. 55.

1.2 **Interpretation.** In this Agreement:

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

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

ARTICLE 2 RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) when and if it carries out the development on the Lands after the date of this Agreement as contemplated in the Development Permit, it will construct, and throughout the Term will maintain all residential units on the Lands in accordance with the Market Rental Housing Condition, the Rezoning, the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement (the "**Market Rental Housing Units**");
- (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 Units (or Replacement Rental Housing Units, as applicable) for a 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 in each case to the extent that such Losses are attributable to the wrongful intentional acts or gross negligence of the City or the City Personnel; and

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

(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.**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 5.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 5.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

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

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

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

ARTICLE 6

NOTICES

6.1 **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) 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:

Westward Development Nominee Inc.
600 - 550 Burrard Street
Vancouver, British Columbia
V6C 2B5

Attention: Director

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

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

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

ARTICLE 7 MISCELLANEOUS

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

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

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

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

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

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

- (a) contained in any 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 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 into an assumption agreement as provided in this Section 7.8, the selling/transferring Owner shall not be bound by the continuing obligations of the Owner pursuant to this Agreement following such sale, transfer or conveyance relative to that portion of the Lands sold, transferred or conveyed.

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

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal 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 **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 Bank of Montreal;
- (b) **"Existing Charges"** means the Mortgage registered under number CA9797835 and the Assignment of Rents registered under number CA9797836;
- (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