

BY-LAW NO. 13063

**A By-law to enact a Housing Agreement
for 2735 East Hastings**

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

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

NO PID LOT A OF LOT 51 TOWN OF HASTINGS SUBURBAN LANDS
PLAN EPP 111274

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 6th day of July, 2021

Signed _____ "Kennedy Stewart"
Mayor

Signed _____ "Katrina Leckovic"
City Clerk



1. Application

Samantha Haddow, TERRA LAW CORPORATION 2800 - 650 West Georgia Street Vancouver BC V6B 4N7 604-628-8969	504804 - Housing Agreement and Building Use Covenant
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2. Description of Land

PID/Plan Number	Legal Description
EPP111274	LOT A OF LOT 51 TOWN OF HASTINGS SUBURBAN LANDS PLAN EPP111274

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Entire Instrument
PRIORITY AGREEMENT		page 20
PRIORITY AGREEMENT		page 21

4. Terms

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

5. Transferor(s)

SLOCAN AND HASTINGS HOLDINGS LTD., NO.BC1110294
CANADIAN IMPERIAL BANK OF COMMERCE, AS TO PRIORITY
CANADA MORTGAGE AND HOUSING CORPORATION, AS TO PRIORITY

6. Transferee(s)


CITY OF VANCOUVER 453 WEST 12TH AVENUE VANCOUVER BC V5Y 1V4
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7. Additional or Modified Terms

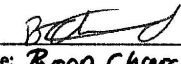


8. Execution(s)

This instrument creates, assigns, modifies, enlarges, discharges 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

SVET SAVOVA
Barrister & Solicitor
BORDEN LADNER GERVAIS LLP
 1200 Waterfront Centre, 200 Burrard Street
 P.O. Box 48800, Vancouver, Canada V7X 1T2
 604-632-8647

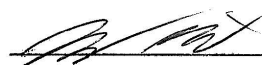
Execution Date
 YYYY-MM-DD
 2021-06-09

Transferor Signature(s)
SLOCAN AND HASTINGS HOLDINGS LTD.
 By their Authorized Signatory

 Name: Byron Chard

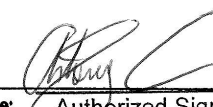
Name:


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

JAMES STEWART
 GOWLING WLG (CANADA) LLP
 BARRISTER & SOLICITOR
 550 BURRARD STREET - SUITE 2300
 BENTALL 5 - VANCOUVER, B.C. V6C 2B5
 TELEPHONE: (604) 683-6498

Execution Date
 YYYY-MM-DD
 2021-06-10

Transferor Signature(s)
CANADIAN IMPERIAL BANK OF COMMERCE
 By their Authorized Signatory

 Name: Authorized Signatory
Antoine Crosby


 Name: Chaya Bains
Authorized signatory

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 Signature(s)



[Handwritten Signature]

Chelsea Mitchell
 A Notary in and for the
 Province of Ontario
 700 Montreal Road
 Ottawa, Ont. K1A 0P7

YYY-MM-DD
 2021-06-23

CANADA MORTGAGE AND HOUSING CORPORATION
 By their Authorized Signatory

[Handwritten Signature]
 Name: **Simon Ribbans**

[Handwritten Signature]
 Name: **Dimitrios Langis**
Counsel

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor Signature(s)

YYYY-MM-DD

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*, R.S.B.C. 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

TERMS OF INSTRUMENT - PART 2
HOUSING AGREEMENT AND BUILDING USE COVENANT
FOR-PROFIT AFFORDABLE RENTAL HOUSING
2735 EAST HASTINGS STREET

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, SLOCAN AND HASTINGS HOLDINGS LTD., as more particularly defined in Section 1.1 is called the "Owner"; and
 - (ii) the Transferee, CITY OF VANCOUVER, is called the "City" or the "City of Vancouver" when referring to corporate entity continued under the *Vancouver Charter*, and "Vancouver" when referring to geographic location;
- B. The Owner is the registered owner of the Lands; and
- C. The Owner made an application (the "Rezoning Application") to rezone the Lands from C-2C1 (Commercial) District to CD-1 (Comprehensive Development) District to permit the development of a six-storey, mixed use building with secured rental residential units and commercial uses at grade, and after public hearing to consider the Rezoning Application City Council approved the Rezoning Application, in principle, subject to, *inter alia*, fulfilment of the condition that the Owner make arrangements to the satisfaction of the General Manager of Arts, Culture and Community Services 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 residential units in the New Building as for-profit affordable rental housing units pursuant to Section 3.1A of the Vancouver DCL By-law for the longer of 60 years and life of the New Building, and subject to other conditions set forth in the minutes of the said public hearing; and
- D. To satisfy the foregoing condition, the Owner has agreed to enter into this Agreement with the City.

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

ARTICLE 1
DEFINITIONS AND INTERPRETATION

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

- (b) **"Building Permit"** means any building permit issued by the City authorizing the building of a New Building as contemplated by the Rezoning By-law and the Development Permit;
- (c) **"City"** and **"City of Vancouver"** have the meaning ascribed to those terms in Recital A(ii);
- (d) **"City Manager"** means the chief administrator from time to time of the City and her/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) **"Development Permit"** means any development permit issued by the City authorizing the development of the Lands contemplated by the Rezoning By-law;
- (g) **"Director of Legal Services"** means the chief administrator from time to time of the City's Legal Services Department and her/his successors in function and their respective nominees;
- (h) **"Discharge"** has the meaning ascribed to that term in Section 8.1(b);
- (i) **"Effective Date"** means the date as of which this Agreement has been executed by all parties to it;
- (j) **"For-Profit Affordable Rental Housing"** means a building containing multiple Housing Units which meets the requirements of Section 3.1A of the Vancouver DCL By-law to be for-profit affordable Rental Housing, but does not include alterations of or extensions to those Housing Units; PROVIDED, HOWEVER, that if the definition of For-Profit Affordable Rental Housing applicable at the time when a Development Permit is issued differs from the foregoing, the definition applicable at the time of Development Permit issuance will apply unless otherwise provided in the Vancouver DCL By-law;
- (k) **"For-Profit Affordable Rental Housing Units"** has the meaning ascribed to that term in section 2.1(c) and **"For-Profit Affordable Rental Housing Unit"** means any one of such units;
- (l) **"General Manager of Arts, Culture and Community Services"** means the chief administrator from time to time of the City's Arts, Culture and Community Services Department and his/her successors in function and their respective nominees;
- (m) **"Housing Unit"** means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (n) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250;

- (o) "**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;
- (p) "**Losses**" means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, 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;
- (q) "**New Building**" means any new building or structure to be built on the Lands as contemplated by the Rezoning By-law and the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Rezoning By-law and the Development Permit;
- (r) "**Occupancy Permit**" means a permit issued by the City authorizing the use and occupation of any New Building, development or partial development on the Lands issued after the Effective Date;
- (s) "**Owner**" means the registered owner of the Lands as of the Effective Date, namely **Slocan and Hastings Holdings Ltd.**, and its successors and permitted assigns;
- (t) "**Related Person**" means, where the registered or beneficial owner of the For-Profit Affordable Rental Housing Units is:
 - (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c.57, then a Related Person is:
 - (A) an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - (B) the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and
 - (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (u) "**Rental Housing**" means a 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 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 Parcel**" has the meaning ascribed to that term in Section 8.1(a);

- (w) **"Replacement For-Profit Affordable Rental Housing Unit"** has the meaning ascribed to that term in section 2.1(c) and "Replacement For-Profit Affordable Rental Housing Units" means all of such units;
- (x) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, c. 78;
- (y) **"Rezoning Application"** has the meaning ascribed to that term in Recital C;
- (z) **"Rezoning By-law"** means the CD-1 by-law enacted upon satisfaction of the prior-to conditions imposed by the City following, and as a result of, the Rezoning Application;
- (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; or
 - (ii) the date as of which the New Building is demolished or substantially destroyed;
- (bb) **"Vancouver"** has the meaning ascribed to that term in Recital A(ii);
- (cc) **"Vancouver Charter"** means the *Vancouver Charter*, S.B.C. 1953, c. 55; and
- (dd) **"Vancouver DCL By-law"** means the City's Vancouver Development Cost Levy By-law No. 9755.

1.2 Interpretation. In this Agreement:

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

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

**ARTICLE 2
RESTRICTIONS ON USE OF LANDS AND SUBDIVISION**

- 2.1 The Owner covenants and agrees with the City, in respect of the use of the Lands and the construction and use of the New Building, that:
- (a) throughout the Term, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
 - (b) the Owner will construct, fit and finish, at its sole cost and expense, and throughout the Term, will maintain such number of Housing Units as approved in the Development Permit in the New Building, in accordance with this Agreement, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City, acting reasonably;
 - (c) when the New Building is completed and an Occupancy Permit has been issued and thereafter throughout the Term, all Housing Units in the New Building will be used only for the purpose of providing For-Profit Affordable Rental Housing (the "For Profit Affordable Rental Housing Units") in accordance with the terms of this Agreement;
 - (d) subject to increases permitted in accordance with Section 3.1B(c) of the Vancouver DCL By-law, the average initial monthly starting rents for each unit type after Occupancy Permit issuance will be at or below the following amounts:

Unit Type	2735 East Hastings Street Proposed Average Starting Rents
Studio	\$1,641
1 - bedroom	\$1,942
2 - bedroom	\$2,611
3 - bedroom	\$2,977

and the rents proposed to be charged for each For-Profit Affordable Rental Housing Unit are as set forth in the rent roll attached hereto as Schedule A, all of which are subject to such annual increases as may be authorized by Section 3.1B(c) of the Vancouver DCL By-law. For greater certainty, the foregoing starting rent limits and the proposed rents set forth in the rent roll attached hereto as Schedule A only apply in respect of the initial tenant of each For-Profit Affordable Rental Housing Unit and do not apply in respect of subsequent tenants, which subsequent tenants will pay then-current market rent as determined by the Owner;

- (e) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any For-Profit Affordable Rental Housing Unit for a term of less than one month at a time;
- (f) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any For-Profit Affordable Rental Housing Unit to be sold or otherwise transferred unless title to every one of the For-Profit Affordable Rental Housing Units is sold or otherwise transferred together and as a block to the same legal or beneficial owner, as applicable, and subject to Section 10.8;
- (g) subject to ARTICLE 8, throughout the Term, it will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld;
- (h) throughout the Term, that any sale of any For-Profit Affordable Rental Housing Unit in contravention of the covenant in Section 2.1(f), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(g), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (i) throughout the Term, it will keep and maintain the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings in Vancouver;
- (j) excluding reasonable wear and tear, if the New Building or any part thereof, is damaged during the Term, it will promptly restore and repair the same whenever

and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred;

- (k) throughout the Term, it will insure, or cause to be insured, the New Building to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands; and
- (l) in the event of the substantial or complete destruction of the New Building prior to the 60 year anniversary of the issuance of the final Occupancy Permit, it will promptly take all steps reasonably necessary to enable it to build a replacement building or buildings on the Lands, which building(s) (together with any remaining undestroyed or undemolished portion of the New Building building) will also contain not less than the same number and type of replacement Housing Units as the New Building formerly contained, unless the City then otherwise agrees in its absolute and unfettered discretion, which replacement Housing Units will also be used only for the purpose of providing For-Profit Affordable Rental Housing (each such replacement Housing Unit, referred to as a "**Replacement For-Profit Affordable Rental Housing Unit**"), for the duration of the Term in accordance with the terms of this Agreement and the applicable by-laws of the City.

**ARTICLE 3
DEVELOPMENT PERMIT RESTRICTION ON THE LANDS**

- 3.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Development Permit, and will take no action, directly or indirectly, to compel the issuance of any Development Permit, until such time as the Owner has delivered a rent roll to, and to the satisfaction of, the General Manager of Arts, Culture and Community Services confirming the rents proposed to be charged to the first occupants of the For-Profit Affordable Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and sizes, which rents, unit type, mix and sizes shall comply with this Agreement when the Development Permit is issued; and
 - (ii) the City will be under no obligation to issue any Development Permit until such time as the Owner has complied with Section 3.1(a)(i); and
 - (b) without limiting the general scope of ARTICLE 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of a Development Permit until there is compliance with the provisions of this ARTICLE 3.

**ARTICLE 4
OCCUPANCY RESTRICTION ON THE LANDS**

- 4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the General Manager of Arts, Culture and Community Services:
 - (A) a final rent roll confirming the rents to be charged to the first occupants of the For-Profit Affordable Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and sizes, which rents, unit type mix and sizes shall comply with this Agreement as of the date when the Occupancy Permit is issued; and
 - (B) proof of the insurance, consistent with the requirements of Section 2.1(k), is in force and effect, in form and substance satisfactory to the City, acting reasonably; 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 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this ARTICLE 4.

**ARTICLE 5
RECORD KEEPING**

- 5.1 The Owner will keep accurate records pertaining to the use, occupancy and rental rates charged of/for the For-Profit Affordable Rental Housing Units such records to be to the satisfaction of the General Manager of Arts, Culture and Community Services, acting reasonably. At the request of the General Manager of Arts, Culture and Community Services, from time to time, the Owner will:
- (a) make such records available for inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and
 - (b) provide evidence of the insurance required to be taken out pursuant to Section 2.1(k).

**ARTICLE 6
ENFORCEMENT**

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

**ARTICLE 7
RELEASE AND INDEMNITY**

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

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

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

- A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building or any part thereof;
- B. withholding any permit pursuant to this Agreement; or
- C. exercising any of its rights under any Section 219 covenant, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or

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

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

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

- (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement, but except to the extent that any such Losses are the result of, or relate in any way to any

gross negligence or wrongful intentional acts or omissions on the part of the City or the City Personnel; or

- (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement; and
- (c) The indemnities in this ARTICLE 7 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

7.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 7.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 7.1(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 7.1(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

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

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

7.3 Survival of Release and Indemnities. The release and indemnities in this ARTICLE 7 will remain effective, and survive any modification of, or partial release or release of the

covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

**ARTICLE 8
SUBDIVISION OF THE LANDS**

8.1 By Air Space Subdivision Plan. Notwithstanding Section 2.1(g):

- (a) subject to compliance by the Owner with all applicable requirements of the City's Approving Officer and the City's elected Council, this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands and the New Building by the deposit of an air space subdivision plan, provided that all the For-Profit Affordable Rental Housing Units will thereafter be contained within a single air space parcel or remainder parcel (the "Rental Housing Parcel"); and
- (b) following such subdivision and the issuance of a final occupancy permit for the Rental Housing Parcel, the Owner may apply to the City for a partial discharge of this Agreement (the "Discharge") with respect to any legal parcel other than the Rental Housing Parcel, and the City will on request of the Owner execute and deliver a registrable Discharge in respect of such other parcel(s) provided, that:
 - (i) the Director of Legal Services is satisfied that the Discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the For-Profit Affordable Rental Housing Units or in respect of the Rental Housing Parcel, pursuant to this Agreement;
 - (ii) the Discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
 - (iii) the City will have a reasonable amount of time to execute and return the Discharge; and
 - (iv) the preparation and registration of the Discharge will be without cost to the City.

8.2 Partial Discharge. Notwithstanding anything else contained herein, following the subdivision and partial discharge contemplated in Section 8.1, this Agreement will be read and applied so that the obligations and restrictions contained herein will apply only to the Rental Housing Parcel and this Agreement and the obligations and restrictions contained herein will not apply to any other portions of the Lands.

**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: City Clerk, with concurrent copies to the General Manager of Arts, Culture and Community Services and the Director of Legal Services

If to the Owner, addressed to:

Slocan and Hastings Holdings Ltd.
500 - 509 Richards Street
Vancouver, British Columbia
V6B 2Z6

Attention: Director

or to such other address in Canada as either party may specify in writing to the other party in the manner described above, provided that if and when the owner of the Lands 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 10 MISCELLANEOUS

- 10.1 Agreement Runs With the Lands. Subject to ARTICLE 8, 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.
- 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 grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of any rezoning or any Development Permit; and

- (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 10.3 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.
- 10.4 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 10.5 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 10.6 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 10.7 Further Assurances. The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 10.8 Sale of Lands or New Building. Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), subject always to Sections 2.1(f) and 2.1(g), the Owner will cause the purchaser/ transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of the Owner under this Agreement. The provisions in this Section 10.8 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage).
- 10.9 No Liability. The parties agree that neither the Owner nor any successor in title to the Lands, or portions thereof, will be liable for breaches or non-observance or non-

performance of covenants herein occurring as the same relate to any portion of the Lands after it has ceased to be the registered owner of such portion and provides an assumption agreement in accordance with Section 10.8 of this Agreement, but the Owner, or its successors in title, as the case may be, will remain liable after ceasing to be the registered owner of any portion of the Lands for all breaches of and non-observance of covenants herein as the same relate to such portion that occur prior to the Owner, or any successor in title, as the case may be, ceasing to be the registered owner of such portion.

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 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.

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

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

**Schedule A
Rent Roll**

Unit #	Bedroom Type	Starting Monthly Rental Rate	Unit Size (ft²)
201	Residential - 1-bedroom	\$1,942.00	485
202	Residential - 3-bedroom	\$2,977.00	976
203	Residential - Studio	\$1,641.00	426
204	Residential - 2-bedroom	\$2,611.00	750
205	Residential - 2-bedroom	\$2,611.00	750
206	Residential - 2-bedroom	\$2,611.00	750
207	Residential - 2-bedroom	\$2,611.00	878
208	Residential - 1-bedroom	\$1,942.00	506
209	Residential - 1-bedroom	\$1,942.00	492
210	Residential - 1-bedroom	\$1,942.00	492
211	Residential - 1-bedroom	\$1,942.00	492
212	Residential - 1-bedroom	\$1,942.00	494
213	Residential - 1-bedroom	\$1,942.00	473
214	Residential - 1-bedroom	\$1,942.00	496
301	Residential - 1-bedroom	\$1,942.00	523
302	Residential - 3-bedroom	\$2,977.00	976
303	Residential - Studio	\$1,641.00	427
304	Residential - 2-bedroom	\$2,611.00	750
305	Residential - 2-bedroom	\$2,611.00	750
306	Residential - 2-bedroom	\$2,611.00	750
307	Residential - 2-bedroom	\$2,611.00	878
308	Residential - 2-bedroom	\$2,611.00	698
309	Residential - 1-bedroom	\$1,942.00	492
310	Residential - 1-bedroom	\$1,942.00	492
311	Residential - 1-bedroom	\$1,942.00	492
312	Residential - 1-bedroom	\$1,942.00	494
313	Residential - 1-bedroom	\$1,942.00	473
314	Residential - 1-bedroom	\$1,942.00	496
401	Residential - 1-bedroom	\$1,942.00	523
402	Residential - 3-bedroom	\$2,977.00	976
403	Residential - Studio	\$1,641.00	427
404	Residential - 2-bedroom	\$2,611.00	750
405	Residential - 2-bedroom	\$2,611.00	750
406	Residential - 2-bedroom	\$2,611.00	750
407	Residential - 2-bedroom	\$2,611.00	878
408	Residential - 2-bedroom	\$2,611.00	698

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Housing Agreement and Building Use Covenant
2735 East Hastings Street

409	Residential - 1-bedroom	\$1,942.00	492
410	Residential - 1-bedroom	\$1,942.00	492
411	Residential - 1-bedroom	\$1,942.00	492
412	Residential - 1-bedroom	\$1,942.00	494
413	Residential - 1-bedroom	\$1,942.00	473
414	Residential - 1-bedroom	\$1,942.00	496
501	Residential - 2-bedroom	\$2,611.00	766
502	Residential - 2-bedroom	\$2,611.00	681
503	Residential - 2-bedroom	\$2,611.00	675
504	Residential - 2-bedroom	\$2,611.00	675
505	Residential - 2-bedroom	\$2,611.00	675
506	Residential - 2-bedroom	\$2,611.00	811
507	Residential - 2-bedroom	\$2,611.00	648
508	Residential - 1-bedroom	\$1,942.00	436
509	Residential - 1-bedroom	\$1,942.00	436
510	Residential - 1-bedroom	\$1,942.00	436
511	Residential - 1-bedroom	\$1,942.00	437
512	Residential - 1-bedroom	\$1,942.00	473
513	Residential - 1-bedroom	\$1,942.00	497
601	Residential - 2-bedroom	\$2,611.00	763
602	Residential - 1-bedroom	\$1,942.00	551
603	Residential - Studio	\$1,641.00	364
604	Residential - Studio	\$1,641.00	364
605	Residential - Studio	\$1,641.00	364
606	Residential - Studio	\$1,641.00	364
607	Residential - Studio	\$1,641.00	364
608	Residential - Studio	\$1,641.00	371
609	Residential - 2-bedroom	\$2,611.00	648
610	Residential - 1-bedroom	\$1,942.00	436
611	Residential - 1-bedroom	\$1,942.00	436
612	Residential - 1-bedroom	\$1,942.00	436
613	Residential - 1-bedroom	\$1,942.00	436
614	Residential - 1-bedroom	\$1,942.00	473
615	Residential - 1-bedroom	\$1,942.00	497

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (i) **"Existing Charges"** means the mortgage registered under number CA8029688 and assignment of rents registered under number CA8029689;
- (ii) **"Existing Chargeholder"** means CANADIAN IMPERIAL BANK OF COMMERCE;
- (iii) **"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
- (iv) 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:

- (a) consents to the Owner granting the New Charges to the City; and
- (b) 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:

- (i) **"Existing Charge"** means the mortgage registered under number CA8215559;
- (ii) **"Existing Chargeholder"** means CANADA MORTGAGE AND HOUSING CORPORATION;
- (iii) **"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
- (iv) 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:

- (a) consents to the Owner granting the New Charges to the City; and
- (b) agrees with the City that the New Charges charge the Lands in priority to the Existing Charge 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 Charge or the advance of any money under the Existing Charge.

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.

END OF DOCUMENT