

Attachment 3  
*“No Strata Title”*  
*Covenant*



1. Application

<p><b>Timothy H. Luk</b>  <b>YOUNG ANDERSON</b>  <b>1616 - 808 Nelson Street</b>  <b>Vancouver BC V6Z 2H2</b>  <b>6046897400</b></p>
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File No.: 239-1273  
Cov-No Subdivision

2. Description of Land

PID/Plan Number	Legal Description
<b>031-993-184</b>	<b>LOT A BLOCK 23 NEW WESTMINSTER DISTRICT PLAN EPP130088</b>

3. Nature of Interest

Type	Number	Additional Information
<b>COVENANT</b>		<b>S.219</b>
<b>PRIORITY AGREEMENT</b>		<b>Granting the Covenant granted herein priority over Mortgage CB616854 and Assignment of Rents CB616855</b>

4. Terms

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

5. Transferor(s)

<b>1111262 B.C. LTD., NO.BC1111262</b>
<b>THE BANK OF NOVA SCOTIA (AS TO PRIORITY)</b>

6. Transferee(s)

<p><b>THE CORPORATION OF THE CITY OF NEW WESTMINSTER</b>  <b>511 ROYAL AVENUE</b>  <b>NEW WESTMINSTER BC V3L 1H9</b></p>
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7. Additional or Modified Terms



8. Execution(s)

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

\_\_\_\_\_

YYYY-MM-DD

**1111262 B.C. LTD.**  
By their Authorized Signatory

\_\_\_\_\_  
**Name:**

(as to both signatures)

\_\_\_\_\_  
**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

**THE BANK OF NOVA SCOTIA (as to Priority)**  
By their Authorized Signatory

\_\_\_\_\_  
**Name:**

(as to both signatures)

\_\_\_\_\_  
**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 CORPORATION OF THE CITY OF  
NEW WESTMINSTER**

By their Authorized Signatory

\_\_\_\_\_  
**Name:**

(as to both signatures)

\_\_\_\_\_  
**Name:**

**Officer Certification**

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

**Electronic Signature**

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

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**TERMS OF INSTRUMENT – PART 2**

**SECTION 219 COVENANT – RESTRICTION ON SUBDIVISION COVENANT**

THIS AGREEMENT dated for reference this 31<sup>st</sup> day of May 2023, is

BETWEEN:

**1111262 B.C. LTD., INC.NO. BC1111262**  
C/O Brookfield Asset Management, Brookfield Place  
181 Bay Street, Suite 300  
Toronto, Ontario M5J 2T3

(the “Owner”)

AND:

**THE CORPORATION OF THE CITY OF NEW WESTMINSTER,**  
511 Royal Avenue  
New Westminster, British Columbia V3L 1H9

(the “City”)

GIVEN THAT:

- A. The Owner is the registered owner of the lands legally described in the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement (the “**Lands**”);
- B. The Owner seeks to develop the Lands and build dwelling units on the Lands and requires zoning amendments to support such development, in particular Zoning Amendment (810 Agnes Street) Bylaw No. 8390, 2023;
- C. The City seeks to ensure that development within the City is done and maintained in the public interest;
- D. Section 219 of the *Land Title Act* permits the registration of a covenant of a positive or a negative nature in favour of the City in respect of the use of, construction on, and subdivision of land; and
- E. The Owner wishes to grant to the City a covenant under section 219 of the *Land Title Act* (British Columbia), on the terms set out in this Agreement.

THIS AGREEMENT is evidence that in consideration of the payment of one dollar (\$1.00) from the City to the Owner and other good and valuable consideration (the receipt and sufficiency of which the Owner acknowledges), the Owner covenants and agrees with the City under section 219 of the *Land Title Act* as follows:

1. **Definitions** – In this Agreement the following words have the following meanings:
  - (a) “subdivide” means to divide, apportion, consolidate or subdivide the Lands or any building on the Lands, or the ownership or right to possession or occupation of the Lands or any building on the Lands, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or a “shared interest in land” as defined in the *Real Estate Development Marketing Act* (British Columbia);
  - (b) “Term” means the period ending 60 years from the reference date of this Agreement.
2. **Restriction on Subdivision** – The Owner covenants and agrees with the City that, during the Term, none of the Lands nor any building on the Lands shall be subdivided by any means whatsoever, excluding the consolidation of the Lands into a single lot and/or dedication of portions of the Lands to the City, or as permitted in section 3. Without limiting the foregoing, the Owner acknowledges that the City will not support applications during the Term for subdivision in any manner that would allow dwelling units on the Lands to be sold independently of each other.
3. **Subdivision Exception** – The Lands may be subdivided to create one or more airspace parcels as permitted and set out in the development covenant between the parties, registered on title to the Lands under a registration number two less than this Agreement.
4. **Municipal Permits** – The Owner agrees that the City may withhold building permits and occupancy permits with respect to any building or other structure from time to time constructed or proposed to be constructed on the Lands, as the City may, in its sole discretion, consider necessary to ensure compliance with this Agreement.
5. **Indemnity** – As an integral part of this Agreement, pursuant to section 219(6)(a) of the *Land Title Act*, the Owner hereby indemnifies the City and each of its elected or appointed officials, officers, employees or agents, from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses, demands and losses at any time suffered or incurred by, or brought against, the City, or any of its elected or appointed officials, officers, employees or agents, arising from or in connection with the granting or existence of this Agreement, the performance of any of the Owner’s

obligations under this Agreement, any breach of any provision under this Agreement or the enforcement by the City of this Agreement.

6. **Release** – The Owner, on its behalf, hereby releases and forever discharges the City and each of its elected or appointed officials, officers, employees or agents, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the terms and operation of this Agreement, or, except to the extent arising from the negligence or wilful misconduct of the City or those for whom it is at law responsible, the exercise by the City of any of its rights under this Agreement.
7. **Survival** – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.
8. **Specific Relief** – The Owner agrees that the public interest in ensuring that all of the provisions of this Agreement are complied with strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the City, in the event of an actual or threatened breach of this Agreement.
9. **No Effect on Powers** – Nothing in this Agreement shall:
  - (a) affect or limit the discretion, rights or powers of the City or the City’s Approving Officer under any enactment or at common law, including in relation to the use, development or subdivision of the Lands;
  - (b) affect or limit any enactment relating to the use, development or subdivision of the Lands; or
  - (c) relieve the Owner from complying with any enactment, including in relation to the use, development or subdivision of the Lands.

And the Owner covenants and agrees to comply with all such enactments with respect to the Lands.

10. **City Discretion** – Where the City or a representative of the City is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent:
  - (a) the relevant provision shall not be considered fulfilled unless the approval, opinion, determination, consent or expression of satisfaction is in writing signed by the City or the representative, as the case may be;
  - (b) the approval, opinion, determination, consent or satisfaction is in the sole discretion of the City or the representative, as the case may be; and

- (c) the City or the representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the City or the representative may do any of those things in the same manner as if it were a private person and not a public body or employee or officer thereof.
11. **No Obligation to Enforce** – The rights given to the City under this Agreement are permissive only and nothing in this Agreement shall give rise to any legal duty of any kind on the City to anyone or obligate the City to enforce this Agreement or to perform any act or incur any expense.
  12. **Agreement Runs with Land** – This Agreement shall burden and run with, and bind the successors in title to, the Lands and each and every part into which the Lands may be subdivided by any means (including by deposit of a strata plan of any kind under the *Strata Property Act* (British Columbia)), unless and to the extent this Agreement is discharged from title to the Lands any subdivided parcels thereof with the consent of the City.
  13. **Waiver** – No waiver by the City of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.
  14. **Limitation on Owner's Obligations** – The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands.
  15. **Remedies** - No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the City may from time to time exercise any one or more of such remedies independently or in combination.
  16. **Priority** – The Owner shall cause this Agreement to be registered in the applicable land title office against title to the Lands with priority over all financial liens, charges and encumbrances, and any leases and options to purchase, registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge, encumbrance, lease or option to purchase to execute an instrument in a form required by the City under which such holder postpones all of the holder's rights to those of the City under this Agreement in the same manner and to the same extent as if such lien, charge, encumbrance, lease or option to purchase had been registered immediately after the registration of this Agreement.
  17. **Modification** – This Agreement may not be modified except by an agreement or instrument in writing signed by the Owner or its successor in title and the City or a successor or assignee.



18. **Further Assurances** – The Owner shall do and cause to be done all things, including by executing further documents, as may be necessary to give effect to the intent of this Agreement.
19. **Owner's Expense** – The Owner shall perform its obligations under this Agreement at its own expense and without compensation from the City.
20. **Severance** – If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity or enforceability of the remainder of this Agreement.
21. **Interpretation** - In this Agreement:
  - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
  - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
  - (c) the term “enactment” has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
  - (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
  - (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
  - (f) reference to a particular numbered section, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered section or lettered schedule of this Agreement;
  - (g) all Schedules to this Agreement form an integral part of this Agreement;
  - (h) time is of the essence; and
  - (i) where the word "including" is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word "including".
22. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia, which shall be deemed to be the proper law hereof.

23. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns, as the case may be, but subject to Section 14.
24. **Execution in Counterparts & Electronic Delivery** - This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

As evidence of their agreement to be bound by this Agreement, the parties have executed the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement.

## CONSENT AND PRIORITY AGREEMENT

### PRIORITY AGREEMENT

#### WHEREAS:

- A. **THE BANK OF NOVA SCOTIA** (the “**Chargeholder**”) is the holder of a mortgage and assignment of rents (the “**Financial Charges**”) encumbering the lands described in Item 2 of Part 1 of the Form C General Instrument to which this Priority Agreement is attached and which are registered in the New Westminster Land Title Office as Mortgage CB616854 and Assignment of Rents CB616855; and
- B. A covenant is being granted pursuant to Part 2 of the Form C General Instrument to which this Priority Agreement is attached (the “**City’s Charge**”) which is or will be registered against title to the lands.

**NOW THEREFORE** for one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder hereby grants to the City priority for the City’s Charges over all the Chargeholder’s right, title and interest in and to the lands as if the City’s Charges had been executed, delivered and registered prior to the execution and registration of the Financial Charges and prior to the advance of any monies pursuant to the Financial Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

**IN WITNESS WHEREOF**, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form C above which is attached hereto and forms part of this Agreement.