

THE CORPORATION OF THE CITY OF NEW WESTMINSTER

HOUSING AGREEMENT (810 AGNES STREET) BYLAW NO. 8389, 2023

A BYLAW TO ENTER INTO A HOUSING AGREEMENT UNDER SECTION 483 OF THE *LOCAL GOVERNMENT ACT*

GIVEN THAT:

- A. The owner of the lands (the "Owner") within the City of New Westminster, British Columbia legally described as:

PID: 031-993-184

LOT A BLOCK 23 NEW WESTMINSTER DISTRICT PLAN EP130088

(the "Land")

wishes to construct dwelling units on the Land.

- B. In connection with such construction, the Owner has agreed to use the Land for rental housing in accordance with the terms of the Section 219 Covenant and Housing Agreement attached hereto as Schedule "A" (the "Housing Agreement").

The Council of the City of New Westminster, in open meeting assembled,

ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as "Housing Agreement (810 Agnes Street) Bylaw No. 8389, 2023".
2. Council hereby authorizes the City of New Westminster to enter into the Housing Agreement with the Owner, substantially in the form attached hereto as Schedule "A".
3. The Mayor and the Corporate Officer of the City of New Westminster are authorized to execute the Housing Agreement, substantially in the form attached hereto as Schedule "A", and the Corporate Officer is authorized to sign and file in the Land Title Office a notice of the Housing Agreement, as required by section 483 of the *Local Government Act*.

READ A FIRST TIME this 6th day of November, 2023.

READ A SECOND TIME this 6th day of November, 2023.

READ A THIRD TIME this 6th day of November, 2023.

ADOPTED this _____ day of _____, 2023.

Mayor Patrick Johnstone

Peter DeJong, Corporate Officer

Schedule "A"
Section 219 Covenant and Housing Agreement

1. Application

**Timothy H. Luk
YOUNG ANDERSON
1616 - 808 Nelson Street
Vancouver BC V6Z 2H2
6046897400**

File No.: 239-1273

Covenant-Housing Agreement

2. Description of Land

PID/Plan Number

Legal Description

031-993-184**LOT A BLOCK 23 NEW WESTMINSTER DISTRICT PLAN EPP130088**

3. Nature of Interest

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

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

1111262 B.C. LTD., NO.BC1111262**THE BANK OF NOVA SCOTIA (AS TO PRIORITY)**

6. Transferee(s)

**THE CORPORATION OF THE CITY OF NEW WESTMINSTER
511 ROYAL AVENUE
NEW WESTMINSTER BC V3L 1H9**

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

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)

**THE CORPORATION OF THE CITY OF
NEW WESTMINSTER**

By their Authorized Signatory

YYYY-MM-DD

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.

PART 2 – TERMS OF INSTRUMENT

HOUSING AGREEMENT AND COVENANT

(Section 483 *Local Government Act* and Section 219 *Land Title Act*)

THIS AGREEMENT dated for reference the 31st 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")

WHEREAS:

- A. The Owner is the registered owner in fee simple of the lands and premises in the City of New Westminster, British Columbia which are legally described in Item 2 of the Form C attached hereto (the "Lands");
- B. Section 483 of the *Local Government Act* permits the City to enter into and note on title to lands housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units, and rent that may be charged for housing units;
- C. 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;
- D. The Owner intends to construct a building of approximately 33-storeys, containing at least 352 market rental Dwelling Units on the Lands (the "Development");
- E. The Owner has agreed to use the Dwelling Units in the Development only for rental housing in accordance with the terms of this Agreement; and
- F. The City and the Owner wish to enter into this Agreement to provide long-term rental housing on the terms and conditions set out in this Agreement.

In consideration of one (\$1.00) dollar paid to the Owner by the City and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this Agreement, the following words have the following meanings:

- (a) “Agreement” means this agreement together with all LTO forms, schedules, appendices, attachments and priority agreements attached hereto;
- (b) “building” means any building constructed or proposed to be constructed on the Lands by the Owner after the reference date of this Agreement;
- (c) “Dwelling Unit” means a residential dwelling unit or units located or to be located on the Lands;
- (d) “LTO” means the New Westminster Land Title Office or its successor;
- (e) “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);
- (f) “Tenancy Agreement” means a tenancy agreement, lease, license or other agreement granting rights to occupy a Dwelling Unit; and
- (g) “Tenant” means an occupant of a Dwelling Unit by way of a Tenancy Agreement.

1.2 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) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (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, unless otherwise expressly provided;
- (f) the provisions of section 25 of the *Interpretation Act* (British Columbia) with respect to the calculation of time apply;
- (g) time is of the essence;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a “party” is a reference to a party to this Agreement and to that party’s respective successors, assigns, trustees, administrators, and receivers. Wherever the context so requires, reference to a “party” also includes an agent, officer, and invitee of the party;
- (j) reference to a “day”, “month”, or “year” is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided; and
- (k) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

ARTICLE 2 USE OF AND CONSTRUCTION UPON LANDS

2.1 Development of the Lands – The Owner covenants and agrees that the Lands must not be developed or built upon and no building or structure will be constructed on the Lands unless as part of the development or construction of any such building or structure, the Owner designs and constructs to completion, in accordance with a building permit issued by the City, any development permit issued by the City and, if applicable, any rezoning consideration applicable to the development on the Lands, at least three hundred fifty-two (352) Dwelling Units with the following minimum composition:

- (a) no less than 25% of all Dwelling Units will be two- or three-bedroom Dwelling Units; and
- (b) no less than 5% of all Dwelling Units will be three-bedroom Dwelling Units.

2.2 Use of the Lands – The Lands must only be used in accordance with this Agreement and:

- (a) the tenure of all Dwelling Units must be residential rental.

2.3 Restriction on Subdivision – The Lands and any building on the Lands must not be subdivided by any means whatsoever, excluding the consolidation of the Lands with other lands, the dedication of portions of the Lands to the City, and/or subdivision 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 one less than this Agreement. Without limiting the foregoing,

the Owner acknowledges that the City will not support applications for subdivision in any manner that would allow the Dwelling Units to be sold independently of each other.

2.4 Short-term Rentals Prohibited – No Dwelling Unit may be rented to or tenanted by any person for a term of less than thirty (30) days.

2.5 City Authorized to Make Inquiries – The Owner hereby irrevocably authorizes the City to make such lawful inquiries as the City considers necessary in order to confirm that the Owner is complying with this Agreement.

2.6 Requirement for Statutory Declaration – Within thirty (30) days after receiving notice from the City, the Owner will, in respect of each Dwelling Unit, provide to the City a statutory declaration, substantially in the form (with, in the City's discretion, such further amendments or additions as deemed necessary or desirable and that can be lawfully disclosed by the Owner to the City without violation of privacy or other applicable laws) attached as Appendix A, sworn by an authorized signatory of the Owner, containing all of the information required to complete the statutory declaration. The City may request such statutory declaration in respect to each Dwelling Unit no more than once in any calendar year; provided, however, notwithstanding that the Owner may have already provided such statutory declaration in the particular calendar year, the City may request and the Owner will provide to the City such further statutory declarations as requested by the City in respect to a Dwelling Unit if, in the City's absolute determination, the City believes that the Owner is in breach of any of its obligations under this Agreement.

ARTICLE 3 USE AND OCCUPANCY OF DWELLING UNITS

3.1 Tenancy Agreements – Any Tenancy Agreement entered into with a Tenant will conform with this Agreement and will specifically provide that:

- (a) the Dwelling Unit will only be used for residential tenancies validly entered into under the *Residential Tenancy Act* by a Tenant;
- (b) if the Tenancy Agreement is entered into on or after the execution of this Agreement, the Tenancy Agreement will be for a term of at least thirty (30) days; and
- (c) the Owner will attach Article 2 (Use of And Construction Upon Lands) and Article 3 (Use and Occupancy of Dwelling Units) of this Agreement to every Tenancy Agreement.

3.2 Ownership and Management – The management of all Dwelling Units will be undertaken by a single legal entity.

3.3 Occupancy and Tenure of Dwelling Units – The Owner will not rent, lease, license or otherwise permit occupancy of any Dwelling Unit except in accordance with the following additional conditions:

- (a) the Dwelling Units will be used or occupied only pursuant to a Tenancy Agreement;

- (b) the Owner will not require the Tenant or any permitted occupant to pay any extra charges or fees for property or similar tax.

ARTICLE 4 TERM AND DEMOLITION

4.1 Expiry of Housing Agreement – This Agreement will cease to apply from and after the date which is the later of:

- (a) sixtieth (60th) anniversary of the date this Agreement is registered in the LTO; or
- (b) the date that the building constructed on the Lands as contemplated herein has been demolished pursuant to clause 4.2, and

upon expiry, the Owner may provide to the City a discharge of this Agreement, which the City will execute and return to the Owner for filing in the LTO.

4.2 Demolition – The Owner will not demolish a Dwelling Unit or the building unless:

- (a) the Owner has obtained the written opinion of a professional engineer or architect, who is at arm's length to the Owner, indicating that it is no longer reasonable or practical to repair or replace any structural component of the Dwelling Unit or building, and the Owner has delivered to the City a copy of the engineer's or architect's report; or
- (b) 25% or more of the value of the building above its foundations is damaged or destroyed, as determined by a professional appraiser retained by the Owner and approved by the City;

and, in each case, a demolition permit for the Dwelling Unit or building has been issued by the City and the Dwelling Unit or building is demolished under that permit.

ARTICLE 5 MISCELLANEOUS

5.1 Housing Agreement – The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*;
- (b) the City may file notice of, and register, this Agreement in the LTO pursuant to section 483(5) of the *Local Government Act* against the title to the Lands.

5.2 Modification – This Agreement may be modified or amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

5.3 Compliance with Applicable Law – The Owner covenants and agrees with the City that the Owner will comply with all applicable laws, including, without limitation, the *Residential Tenancy*

Act, the City of New Westminster Business Regulation and Licencing (Rental Units) Bylaw No. 6926, 2004, as amended from time to time, and all other City bylaws, and any health and safety standards applicable to the Lands.

5.4 Indemnity – The Owner, on its behalf, will indemnify, defend, and save harmless the City and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- (a) any negligent act or omission of the Owner, or its officers, directors, agents, contractors, or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner; or
- (c) the granting or existence of this Agreement.

5.5 Release – The Owner, on its behalf, hereby releases and forever discharges the City and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, 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 construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Dwelling Units under 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.

5.6 Survival – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.

5.7 City's Powers Unaffected – This Agreement does not:

- (a) affect, fetter or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
- (c) affect or limit any enactment relating to the use or subdivision of the Lands; or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

5.8 Agreement for Benefit of City Only – The Owner and the City agree that:

- (a) this Agreement is entered into only for the benefit of the City, and no third party beneficiary is contemplated in, or entitled to any rights under this Agreement;

- (b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future Owner, lessee, occupier or user of the Lands or the building or any portion thereof, including any Dwelling Units; and
- (c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

5.9 No Public Law Duty – Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination, or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

5.10 Notice – Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered:

- (a) to the postal address of the Owner set out in the records at the LTO, and
- (b) to the postal address of the City set out on the first page of the terms of this Agreement and to the attention of the Director of Planning:

or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

5.11 Owners Expense – The Owner must perform its obligations under this Agreement at its own expense and without compensation from the City.

5.12 Enuring Effect – This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and assigns.

5.13 Severability – If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

5.14 Waiver – All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach. Any waiver of any clause or obligation by either party will be in writing and delivered pursuant to the notice provisions in this Agreement.

5.15 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.

5.16 Entire Agreement – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the entire agreement between the City and the Owner respecting the

use and occupation of the Dwelling Units, and there are no warranties, representations, conditions, or collateral agreements made by the City except as set forth in or contemplated by this Agreement.

5.17 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.

5.18 Further Assurance – Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.

5.19 Agreement Runs with Lands – This Agreement burdens and runs with the Lands and every parcel into which it is subdivided in perpetuity, unless and to the extent this Agreement is discharged from title to any such parcels with the consent of the City. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement acquire an interest in the Lands, subject to the terms of Section 5.15.

5.20 Equitable Remedies – The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

5.21 No Joint Venture – Nothing in this Agreement will constitute one party as the agent, joint venturer, or partner of the other party or give a party any authority to bind the other party in any way.

5.22 Applicable Law – The laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

5.23 Execution in Counter Part - 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

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the *Land Title Act* Form C which is attached to and forms part of this Agreement.

Appendix A to Housing Agreement

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF A HOUSING
	)	AGREEMENT WITH THE
	)	CORPORATION OF THE CITY OF NEW
PROVINCE OF BRITISH COLUMBIA	)	WESTMINSTER
	)	
	)	("Housing Agreement")

TO WIT:

I, _____ of _____, British Columbia, do solemnly declare that:

1. I am an authorized signatory of the owner of the lands located at _____, New Westminster, B.C. (the "**Lands**"), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the Lands.
3. I confirm that all dwelling units on the Lands are residential rental units only, and that no short-term vacation rentals are permitted to operate on the Lands.4. I confirm that the Owner has complied with the Owner's obligations under the Housing Agreement.
4. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at the City of _____
 _____, in the Province of British
 Columbia, this _____ day of
 _____, 20____.

 A Commissioner for Taking Affidavits in the
 Province of British Columbia

 DECLARANT

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.