

Attachment 2

*Housing Agreement Bylaw
(145-209 East Columbia
Street) No. 8434, 2024*

THE CORPORATION OF THE CITY OF NEW WESTMINSTER

HOUSING AGREEMENT BYLAW (145-209 East Columbia Street) No. 8434, 2024

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

GIVEN THAT:

- A. The owner of the land (the “**Owner**”) within the City of New Westminster, British Columbia legally described as:

PID: 032-086-717

LOT A SUBURBAN BLOCK 3 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP130622

(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 Bylaw (145-209 East Columbia Street) No. 8434, 2024”.
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 ____ day of _____, 2024.

READ A SECOND TIME this ____ day of _____, 2024.

READ A THIRD TIME this ____ day of _____, 2024.

ADOPTED this ____ day of _____, 2024.

Mayor Patrick Johnstone

Corporate Officer Peter DeJong

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.: 239-1299
Cov-Housing Agmt

2. Description of Land

PID/Plan Number	Legal Description
032-086-717	LOT A SUBURBAN BLOCK 3 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP130622

3. Nature of Interest

Type	Number	Additional Information
COVENANT		S.219

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

EAST COLUMBIA INVESTMENTS LTD., NO.BC0848508

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

EAST COLUMBIA INVESTMENTS 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 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.

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 8 November 2023, is

BETWEEN:

EAST COLUMBIA INVESTMENTS LTD., INC. NO. BC0848508

200 - 177 WEST 7TH AVENUE

Vancouver, British Columbia V5Y 1L8

(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 wishes to construct a building on the Lands which will include 99 dwelling units, at grade retail, and office space (the “Development”) and requires a zoning amendment to facilitate the Development;
- E. 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 the mixed-use building proposed to be constructed on the Lands by the Owner as part of the Development, including the Secured Rental Units;
- (c) “Dwelling Unit” means a residential dwelling unit located or to be located on the Lands;
- (d) “LTO” means the New Westminster Land Title Office or its successor;
- (e) “Secured Rental Units” means the 99 Dwelling Units required to be constructed on the Lands pursuant to this Agreement and used as residential rental housing;
- (f) “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);
- (g) “Tenancy Agreement” means a tenancy agreement, lease, license or other agreement granting rights to occupy a Secured Rental Unit; and
- (h) “Tenant” means an occupant of a Secured Rental 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 a Tenant, 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 Use In Accordance with Agreement – The Lands must not be used or built upon except in accordance with this Agreement.

2.2 Construction on the Lands – The Lands must not be built upon, constructed upon, or developed in any way unless such development includes the complete construction of, in accordance with a building permit issued by the City, any development permit issued by the City, and any rezoning consideration applicable to the Development, no less than ninety-nine (99) Dwelling Units (the “Secured Rental Units”), which must have the following composition:

- (a) No less than 28% of the Secured Rental Units (28 of 99 units) must have two or more bedrooms;
- (b) No less than 6% (6 of 99 units) of the Secured Rental Units must have three or more bedrooms.

2.3 Use of the Lands – The Secured Rental Units must only be used as permanent residences for Tenants, and the tenure of all Dwelling Units must be residential rental.

2.4 Restriction on Subdivision – The Lands must not be subdivided in any manner or by any means that would result in the separation of the Secured Rental Units into two or more legal parcels. Without limiting the foregoing, the Owner acknowledges that the City will not support applications for subdivision of the Lands in any manner that would allow the Secured Rental Units to be sold independently of each other.

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

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

2.7 Requirement for Statutory Declaration – Within thirty (30) days after receiving notice from the City, the Owner will, in respect of each Secured Rental 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) 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 Secured Rental 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 OPERATION OF SECURED RENTAL 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 Secured Rental 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 and Article 3 of this Agreement to every Tenancy Agreement created on or after the execution date of this Agreement.

3.2 Management – The Owner covenants and agrees with the City that:

- (a) the management of all Secured Rental Units will be undertaken by a single legal entity;
- (b) if the Secured Rental Housing is managed by someone other than the Owner, that management will be undertaken by a property management service with expertise in managing residential rental properties;
- (c) the Owner will permit representatives of the City to inspect the Secured Rental Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*;
- (d) the Owner will maintain the Secured Rental Units in a good state of repair and fit for habitation in accordance with the requirements of the *Residential Tenancy Act*, reasonable wear and tear excepted; and
- (e) the Owner will comply with all applicable laws, including, without limitation, the *Residential Tenancy Act*, the City of New Westminster Business Regulation and Licensing (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.

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

- (a) the Secured Rental Units will be used or occupied only pursuant to a Tenancy Agreement;
- (b) the Owner will forthwith deliver a true copy of any Tenancy Agreement to the City upon demand.

3.4 Dwelling Unit Cooling – The Owner must provide an active cooling system to each Secured Rental Unit, or connect each Secured Rental Unit to an active cooling system, which can be used to maintain reasonable indoor temperatures during periods of warm or hot weather.

3.5 Bicycle Parking – The Owner must provide to each Secured Rental Unit no less than one (1) bicycle storage space in the building, with additional bicycle storage in the building available at a commercially reasonable rental rate.

ARTICLE 4 DEMOLITION

4.1 Demolition – The Owner will not demolish a Secured Rental Unit 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 Secured Rental Unit or the 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 the City, in its sole discretion;

and, in each case, a demolition permit for the Secure Rental Unit or the building has been issued by the City and the Secured Rental Unit or building has been 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 Discharge of Agreement – Subsequent to any subdivision of the Lands which creates a separate legal parcel from any portion of the Lands containing the Secured Rental Units, the owner of that separate legal parcel may provide the City with a discharge of this Agreement, which the City will execute and return to that owner for filing with the LTO.

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 or causes of actions, loss, damage, costs (including legal 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) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Dwelling Unit or the enforcement of any Tenancy Agreement;
- (c) the City's efforts to enforce the terms of this Agreement as a result of any breach of any provision of this Agreement by the Owner; or
- (d) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

except in each case to the extent arising from the negligence or wilful misconduct of the City or those for whom it is at law responsible.

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, loss, damage, costs (including legal costs), and liabilities by reason of or arising out of or which would or could not occur but for the:

- (a) construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Dwelling Units under this Agreement; or
- (b) the exercise by the City of any of its rights under this Agreement,

except in each case to the extent arising from the negligence or wilful misconduct of the City or those for whom it is at law responsible.

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;
- (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 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.

5.11 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 to the attention of General Counsel, 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.

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

5.13 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 permitted assigns.

5.14 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.

5.15 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.

5.16 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 Secured Rental 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 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.

5.18 Agreement Runs with Lands – This Agreement burdens and runs with the Lands and every parcel into which it is subdivided in perpetuity. 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.

5.19 Priority – The Owner must cause this Agreement to be registered in the LTO 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

5.20 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 the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City 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.

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

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**IN THE MATTER OF A HOUSING
AGREEMENT WITH THE
CORPORATION OF THE CITY OF NEW
WESTMINSTER**

("Housing Agreement")

PROVINCE OF BRITISH COLUMBIA

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 the Owner has complied with the Owner’s obligations under the Housing Agreement.
5. 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____.

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A Commissioner for Taking Affidavits in the Province of British Columbia

DECLARANT

END OF DOCUMENT