

THE CORPORATION OF THE CITY OF NEW WESTMINSTER

HOUSING AGREEMENT (1321 CARIBOO STREET) BYLAW NO. 8346, 2022

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 bearing civic address 1321 Cariboo Street and legally described as:

PID: 013-465-457

SOUTHERLY HALF LOT 1 OF LOT 17 SUBURBAN BLOCK 7 PLAN 2620 HAVING A FRONTAGE OF 132 FEET ON CARIBOO STREET BY A UNIFORM FULL DEPTH OF 66 FEET

PID: 013-465-473

SOUTHERLY HALF LOT 2 OF LOT 17 SUBURBAN BLOCK 7 PLAN 2620 HAVING A FRONTAGE OF 132 FEET ON CARIBOO STREET BY A UNIFORM FULL DEPTH OF 66 FEET

(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 (1321 Cariboo Street) Bylaw No. 8346, 2022”.
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 _____, 2022.

READ A SECOND TIME this ____ day of _____, 2022.

READ A THIRD TIME this ____ day of _____, 2022.

ADOPTED this ____ day of _____, 2022.

Jonathan X Cote, Mayor

Jacqueline Killawee, City Clerk

Schedule "A"

Section 219 Covenant and Housing Agreement



1. Application

**Joseph Scafe
YOUNG ANDERSON
1616 808 Nelson Street
Vancouver BC V6Z 2H2
604-689-7400**

2. Description of Land

PID/Plan Number	Legal Description
013-465-457	SOUTHERLY HALF LOT 1 OF LOT 17 SUBURBAN BLOCK 7 PLAN 2620 HAVING A FRONTAGE OF 132 FEET ON CARIBOO STREET BY A UNIFORM FULL DEPTH OF 66 FEET
013-465-473	SOUTHERLY HALF LOT 2 OF LOT 17 SUBURBAN BLOCK 7 PLAN 2620 HAVING A FRONTAGE OF 132 FEET ON CARIBOO STREET BY A UNIFORM FULL DEPTH OF 66 FEET

3. Nature of Interest

Type	Number	Additional Information
COVENANT		
PRIORITY AGREEMENT		Granting this Covenant herein priority over Mortgage CA5616265 and Assignment of Rents CA5616266

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

FZK INVESTMENTS LTD., NO.BC1060683
CANADIAN WESTERN BANK

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

FZK 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

CANADIAN WESTERN BANK
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 is dated for reference the 3rd day of June, 2022:

BETWEEN:

FZK INVESTMENTS LTD. (Inc. No. BC1060683)
135 – 1991 Savage Road, Richmond, British Columbia, V6V 0A4

(the “Owner”)

AND:

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

(the “City”)

WHEREAS:

- A. Section 483 of the *Local Government Act* (British Columbia) permits the City to enter into housing agreements for the provision of affordable and special needs housing, which may include conditions in respect to the form of tenure of housing units;
- B. Section 219 of the *Land Title Act* (British Columbia) permits the registration of a covenant of a positive or a negative nature in favour of the City in respect of the use of and subdivision of land;
- C. The Owner owns the Lands (hereinafter defined) and intends to construct a 15-unit residential building on the Lands;
- D. In order that the proposed development of the Lands be consistent with the City’s land use management, community planning objectives and housing policies, the Owner has agreed with the City to enter into this Agreement to establish restrictions and requirements in respect of the use, occupancy and subdivision of the Lands; and
- E. The City adopted Housing Agreement Bylaw No. 8346, 2022, authorizing the City to enter into this Agreement.

In consideration of \$10.00 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) **“Dwelling Unit”** means a self-contained set of rooms, designed and intended to be occupied as a full-time residence, including at least a kitchen; a washroom with a sink, toilet and shower or bath tub; and a separate sleeping area;
- (c) **“Lands”** means the lands identified in the section 2 of Part 1 of this Agreement;
- (d) **“LTO”** means the New Westminster Land Title Office or its successor;
- (e) **“Secured Rental Unit”** means a Dwelling Unit that is occupied by a Tenant;
- (f) **“Subdivide”** or **“Subdivided”** 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*;
- (g) **“Tenancy Agreement”** means a tenancy agreement, lease, license or other agreement granting rights to occupy a Secured Rental Unit as a residence; and
- (h) **“Tenant”** means a person authorized to occupy a Dwelling Unit under a Tenancy Agreement, and who is not an owner of the Dwelling Unit, and is not related to any owner of the Dwelling Unit by blood, adoption, marriage or a marriage-like relationship.

ARTICLE 2 USE OF LANDS AND SUBDIVISION

2.1 Construction – The Lands shall not be used or occupied for any purpose unless the Owner has constructed on the Lands a building containing at least 15 Dwelling Units, a minimum of 25% of which shall contain two or three bedrooms, and an additional minimum of 5% of which shall contain three bedrooms.

2.2 Secured Rental Units – The Owner agrees that no Dwelling Unit on the Lands shall be used or occupied except as a Secured Rental Unit.

2.3 Restriction on Subdivision – The Owner covenants and agrees with the City that none of the Lands nor any building on the Lands shall be Subdivided by any means whatsoever. Without limiting the foregoing, the Owner acknowledges that the City will not support applications for Subdivision in any manner that would allow the Secured Rental Units to be sold independently of each other.

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

2.5 Requirement for Statutory Declaration – Within 30 days after receiving notice from the City, the Owner must, 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.

ARTICLE 3 OPERATION OF SECURED RENTAL UNITS

3.1 Application of Article – The City and the Owner acknowledge and agree that the obligations imposed upon and covenants made by the Owner under section 3.3 and 3.4 will apply to tenancies and Tenancy Agreements created or entered into on or after the date that this Agreement is registered by the LTO.

3.2 Short Term Rentals Prohibited – The Owner agrees that no Secured Rental Unit will be rented to or occupied by any person for a term of less than 30 consecutive days.

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

- (a) the Secured Rental Unit will be used or occupied only by a Tenant;
- (b) the term of a Tenancy Agreement will not be less than 30 days;
- (c) the Owner will not require a Tenant or any permitted occupant of a Secured Rental Unit to pay any extra charges or fees for property or similar tax; and
- (d) the Owner will forthwith deliver a certified true copy of any Tenancy Agreement to the City upon demand.

3.4 Attach Copy of Tenancy Agreement – The Owner will attach a copy of this Agreement, or at a minimum Articles 2 and 3 of this Agreement, to every Tenancy Agreement.

ARTICLE 4 TERM AND DEMOLITION

4.1 Expiry of Housing Agreement – The City covenants and agrees with the Owner that this Agreement shall cease to apply from and after that date which is the later of: (i) the 60th anniversary of the date this Agreement is registered in the LTO; or (ii) the date that all buildings located on the Lands have been demolished. Upon expiry, the Owner may provide to the City a discharge of this Agreement, which the City shall execute and return to the Owner for filing in the LTO.

4.2 Demolition – The Owner will not demolish a Secured Rental Unit or a building on the Lands 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 building, and the Owner has delivered to the City a copy of the engineer's or architect's report; or
- (b) 40% 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 Secured 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*; and
- (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 of New Westminster and thereafter if it is signed by the City and the Owner.

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

- (a) the Owner will manage the Secured Rental Units, and without limiting the foregoing, the Owner may engage the services of a third-party property manager to manage the building;
- (b) the Owner shall 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* (British Columbia);
- (c) the Owner shall 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
- (d) the Owner shall comply with all laws, including, without limitation, the City of New Westminster Business Regulation and Licencing (Rental Units) Bylaw No. 6926, 2004 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 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) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Secured Rental Unit or the enforcement of any Tenancy Agreement; or
- (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

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 its 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:

- (a) construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Secured Rental Unit under this Agreement; or
- (b) 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 Registration & Priority – The Owner will cause this Agreement to be registered as a covenant under section 219 of the *Land Title Act* against title to the Lands in priority to all charges and encumbrances registered or pending registration against title to the Lands save and except those in favour of the City or specifically approved in advance in writing by the City, and will cause a notice of this Agreement under section 483(5) of the *Local Government Act* to be filed in the Land Title Office and shown as a legal notation on title to the Lands.

5.8 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.

5.9 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 Secured Rental Unit; 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.

5.10 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.

5.11 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, to the postal address of the Owner set out in the records at the LTO, and in the case of the City addressed to:

City of New Westminster
511 Royal Avenue
New Westminster, BC V3L 1H9
Attention: Clerk

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 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.

5.13 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.

5.15 Whole Agreement – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the City and the Owner respecting the use and occupation of the Secured Rental Unit, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in or contemplated by this Agreement.

5.16 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.

5.17 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.

5.18 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.

5.19 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.

5.20 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.

5.21 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) 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”.

5.22 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.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the *Land Title Act* Form C and D 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
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 1321 Cariboo Street, New Westminster (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.
4. 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____.

)

)

)

)

)

)

)

,

A Commissioner for Taking Affidavits in the Province of British Columbia

DECLARANT

CONSENT AND PRIORITY AGREEMENT

WHEREAS CANADIAN WESTERN BANK (the "Chargeholder") is the holder of a Mortgage and an Assignment of Rents (collectively called the "Charges") encumbering the lands (the "Lands") described in item 2 of the Land Title Act Form C attached hereto, which was registered in the Land Title Office under, respectively, numbers CA5616265 and CA5616266.

The Chargeholder, in consideration of the premises and the sum of One Dollar (\$1.00) now paid to the Chargeholder by the Transferee, hereby approves of, joins in and consents to the granting of the within Agreement and covenants and agrees that the same shall be binding upon its interest in or charge upon the Lands and shall be an encumbrance upon the Lands prior to the Charges in the same manner and to the same effect as if it had been dated and registered prior to the Charges.

IN WITNESS WHEREOF the Chargeholder has executed this Agreement on the Land Title Act form to which this Agreement is attached and which forms part of this Agreement.

END OF DOCUMENT