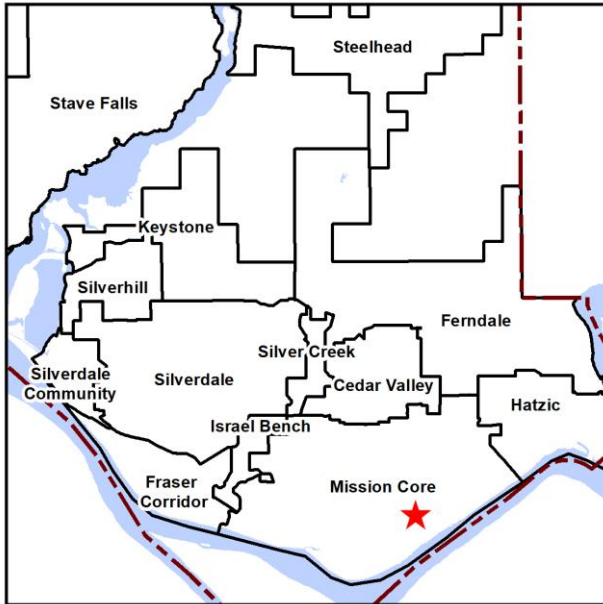


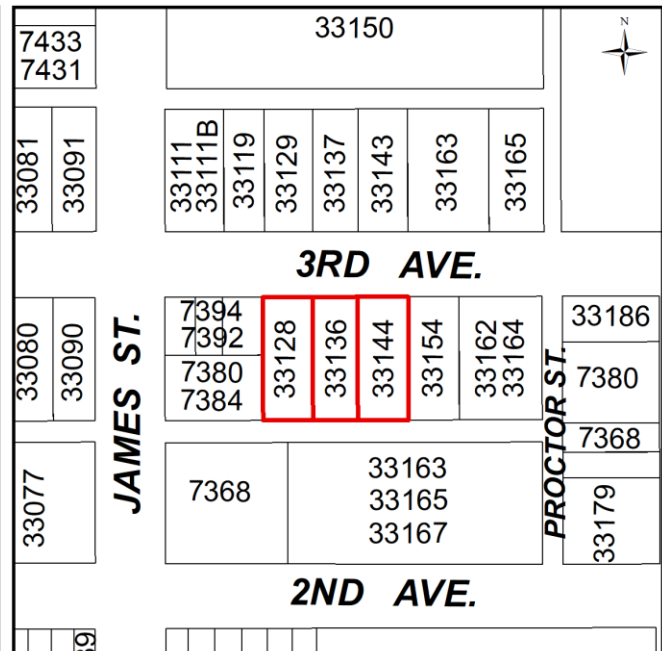
Project: P2019-142
Application Numbers: R19-046, DP19-174
File: 08-3310-21-42



DATE: December 7, 2020
BYLAW / PERMIT #: 5994-2020
PROPERTY ADDRESSES: 33128, 33136, 33144 3rd Avenue
LOCATION: Mission Core
CURRENT ZONING: Multi-unit Apartment Two Zone (MA2)
PROPOSED ZONING: CD48
CURRENT OCP: Mission City Downtown
PROPOSED OCP: No change

PROPOSAL:

A Housing Agreement bylaw, related to a recently considered 6 storey rental apartment building with 77 rental units



OVERVIEW AND STAFF COMMENTS:

This report introduces a Housing Agreement between the District and WCPG LOTS 15 LTD., INC. NO. BC1241303 for a 77 unit rental apartment building at 33128, 33136, and 33144 3rd Avenue.

Staff support the Housing Agreement and, as such have listed the District of Mission Housing Agreement - 33128, 33136, 33144 3rd Avenue Bylaw 5994-2020 under the Bylaws for consideration section of the Council Agenda.

PURPOSE:

The purpose of this report is to present a Housing Agreement (the Agreement) with WCPG LOTS 15 LTD., INC. NO. BC1241303 and to recommend the Agreement be adopted under a bylaw. A copy of the Agreement is attached as **Attachment A**.

- Term of Housing Agreement is for 10 years.
- All 77 units in the building will remain rental for the 10 year term.
- The rental rates will target Middle Income earners. This means:
 - for dwelling units with fewer than two bedrooms, income that does not exceed the 75th income percentile for families, without children, as determined by the British Columbia Housing Management Commission, or its successors in function from time to time based on data provided by Statistics Canada. For 2019, this annual Income is \$112,410.00; and
 - for dwelling units with two or more bedrooms, income that does not exceed the 75th income percentile for families, with children, as determined by the British Columbia Housing Management Commission, or its successors in function from time to time based on data provided by Statistics Canada. For 2019, this annual Income is \$155,510.00.

COMMUNICATION:

Staff will communicate Council's decision to the applicant.

REQUIREMENTS PRIOR TO FINAL READING:

There are no requirements prior to the Final Reading of the Bylaw.

ATTACHMENTS:

A – Housing Agreement

SIGN-OFFS:



Rob Publow, Manager of Planning

MB / sj

Comment from Chief Administrative Officer:
Reviewed.

TERMS OF INSTRUMENT – PART 2

HOUSING AGREEMENT AND SECTION 219 COVENANT

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

THIS AGREEMENT made this _____ day of _____, 2020.

BETWEEN:

DISTRICT OF MISSION

P.O. Box 20
8645 Stave Lake Street
Mission, BC V0N 3A0

(the “**District**”)

OF THE FIRST PART

AND:

WCPG LOTS 15 LTD., INC.NO. BC1241303

202 - 930 West 1st Street
North Vancouver, BC V7P 3N4

(the “**Owner**”)

OF THE SECOND PART

WHEREAS:

- A. The District may, under section 483 of the *Local Government Act*, enter into a housing agreement with an owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions referred to in section 483(2) of the *Local Government Act*;
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the District in respect of the use of land or a building on land;
- C. The Owner is the registered owner in fee-simple of those lands and premises located within the District of Mission, in the Province of British Columbia, more particularly described as:

PID: 011-826-606

Legal Description: LOT 3 BLOCK 79 DISTRICT LOT 411 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 664;

PID: 011-900-971

Legal Description: LOT 4 BLOCK 79 DISTRICT LOT 411 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 664;

PID: 011-900-997

Legal Description: LOT 5 BLOCK 79 DISTRICT LOT 411 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 664;

(the "**Lands**");

- D. The Owner has applied for an amendment to the District of Mission Zoning Bylaw 5949-2020, to rezone the Lands to a new Comprehensive Development Zone 48 in order to permit the construction of a 6 storey rental apartment building with seventy-seven rental dwelling units (the "**Development**");
- E. The Owner and the District wish to enter into this Agreement to require the use of the Land, during the Term, as an affordable rental housing development on the terms and conditions set out in this Agreement, and agree that this Agreement is a housing agreement under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*; and
- F. The District has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized and executed this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of \$10.00 paid by the District to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the District and the Owner covenant and agree as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless otherwise defined, words have the same meanings as in the Zoning Bylaw, and the following words have the following meanings:

- (a) "**Agreement**" means this agreement and includes all recitals, instruments, schedules, and amendments thereto;
- (b) "**District**" means the District of Mission;
- (c) "**Dwelling Unit**" has the same meaning as under the Zoning Bylaw;
- (d) "**Eligible Occupants**" means individuals who meet the eligibility criteria set out in Schedule "A";
- (e) "**Improvements**" means those improvements, structures, buildings, fixtures, equipment and systems which now exist, or which are constructed on the Land from time to time including heating, ventilating, air-conditioning, plumbing, electrical and mechanical systems and equipment;
- (f) "**Income**" has the meaning assigned to that term in Schedule "A";
- (g) "**Land**" means the land described in Item 2 of the *Land Title Act* Form C to which this agreement is attached, and any part into which the land is subdivided;
- (h) "**Land Title Office (LTO)**" means the New Westminster Land Title Office or its successor;

- (i) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250;
- (j) **"Local Government Act"** means the *Local Government Act*, S.B.C. 2015, Chapter 1;
- (k) **"Market Rent"** means the rent that a willing tenant would pay to a willing landlord to rent the Dwelling Unit in question pursuant to a Tenancy Agreement, on the open market in Mission, British Columbia, having regard to any utility or other services or amenities available to the tenant or provided by the Owner as landlord, as determined in accordance with Section 4 of this Agreement;
- (l) **"Middle Income"** has the meaning assigned to that term in Schedule "A";
- (m) **"Records"** means all documentation relating to the use and occupation of the Land and Improvements including tenancy agreements, information confirming Eligible Occupant status, books of account and receipts;
- (n) **"Specific Purpose"** means the operation of the Property to provide affordable rental housing as a principle residence for persons who, at the date of the commencement of their residency, are Eligible Occupants;
- (o) **"Subdivide"** means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land 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 units" or "shared interests in land" as defined in the *Real Estate Development Marketing Act*;
- (p) **"Tenancy Agreement"** means a tenancy agreement pursuant to the *Residential Tenancy Act* that is regulated by that Act;
- (q) **"Term"** means that period of time commencing on the date when this Agreement is registered at the Land Title Office and ending on the later of the date that is ten (10) years from when:
 - a. this Agreement is registered at the Land Title Office; or
 - b. the final Certificate of Occupancy for the Improvements is issued by the applicable Statutory Authority; and
- (r) **"Zoning Bylaw"** means the District of Mission Zoning Bylaw No. 5949-2020, as amended or replaced from time to time.

1.2 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) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the corresponding numbered or lettered article, section or Schedule of this Agreement;
- (d) 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;
- (e) the word “enactment” has the meaning given in the Interpretation Act on the reference date of this Agreement;
- (f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (g) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (h) the provisions of Section 25 of the Interpretation Act with respect to the calculation of time apply;
- (i) all provisions are to be interpreted as always speaking;
- (j) 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;
- (k) reference to a “day”, “month”, “quarter” or “year” is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- (l) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement must be performed, made or exercised acting reasonably.

2.0 SECTION 219 COVENANT - LAND USE RESTRICTIONS

2.1 The Owner hereby covenants and agrees with the District that during the Term:

- (a) the Land must be used only in accordance with this Agreement;
- (b) the District will not be required to support applications to stratify or subdivide buildings on the Land, nor allow any Dwelling Unit to be sold independently of any other Dwelling Unit; and
- (c) the Owner will not cause or permit the Land, or any part thereof, or any building on the Land, to be Subdivided.

2.2 As an exception to the restrictions on subdivision under section 2.1(b) and (c), the Owner may deposit a strata plan over the Land for the purpose of subdividing the Development into separate strata lots pursuant to the *Strata Property Act*, provided that concurrently with the deposit of the strata plan, the Owner enters into and registers a covenant pursuant to section 219(2)(d) of the *Land Title Act* in favour of the District, in the form attached as Schedule “B” to this

Agreement, under which none of the strata lots in the Development may be sold or otherwise transferred separately until after the end of the Term.

3.0 HOUSING AGREEMENT - TRANSFER AND RENTAL RESTRICTIONS

3.1 The Owner hereby covenants and agrees with the District that during the Term:

- (a) the Land and all Improvements on the Land, including the Development, must be used for the Specific Purpose, and for no other purpose;
- (b) without limiting the foregoing, each Dwelling Unit may only be used to provide rental accommodation, under a Tenancy Agreement, to Eligible Occupants;
- (c) the total monthly rent charged for a Dwelling Unit shall not exceed the lesser of:
 - a. Market Rent;
 - b. thirty percent of the annual Middle Income level applicable from time to time to that Dwelling Unit, as determined in accordance with Schedule "A", and divided by twelve (12);
- (d) every year, or as otherwise requested by the District from time to time, the Transferor will submit to the District:
 - a. move-in date of the current tenants of all Dwelling units;
 - b. household Income of the current tenants at move-in; and
 - c. the current monthly rent for all Dwelling Units;
- (e) the Owner shall not sell or transfer, or agree to sell or transfer, any permanent interest in the Land or any building thereupon, other than as a full interest in the fee simple title to a purchaser that agrees to assume the obligations of the Owner under this Agreement. This section does not restrict the Owner from granting easements, rights of way and similar interests in land provided this Housing Agreement and section 219 Covenant retains priority over such interests.

4.0 DETERMINATION OF MARKET RENT

4.1 If the Owner and the District do not agree on the Market Rent, the value shall be determined by an appraiser appointed jointly by the Owner and the District.

4.2 If the Owner and the District fail to jointly agree on one appraiser to determine Market Rent, each party shall appoint their own appraiser to determine the Market Rent. The two (2) appraisers shall independently prepare a written appraisal of the Market Rent and the Market Rent shall be the average of the two (2) appraisal values.

4.3 Unless otherwise agreed, the cost of the appraiser shall be borne equally by the Owner and the District.

4.4 Any appraiser appointed pursuant to this section is to be an independent professional appraiser who is a member of the Accredited Appraiser Canadian Institute.

5.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

5.1 The Owner acknowledges and agrees that:

- (a) this Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 483 of the *Local Government Act*;
- (b) this Agreement shall be registered in the LTO by the District at the cost of the Owner in accordance with section 483 of the *Local Government Act* and section 219 of the *Land Title Act*; and
- (c) this Agreement shall be binding on all persons who acquire an interest in the Land after registration of this notice, and unless discharged in accordance with this Agreement, run with and bind the Land in accordance with section 19 herein.

6.0 COMPLIANCE WITH AGREEMENT

6.1 The Owner hereby irrevocably authorizes the District to make such inquiries as it considers reasonably necessary in order to confirm that the Owner is complying with this Agreement.

6.2 The Owner agrees that upon a written request being made by the District, it will provide to the District a report in writing, to the reasonable satisfaction of the District, demonstrating the Owner's compliance with this Agreement.

6.3 The Owner will retain all Records that pertain to its obligations under this Agreement for not less than seven (7) years following the date of receipt or production of the Records.

6.4 The District shall have the right to inspect the Records including the right to enter any premises used by the Transferor to keep or store the Records at any time after the delivery of notice to the Transferor, and shall have the immediate right to make extracts from and take copies of the Records.

7.0 ENFORCEMENT AND WAIVER

7.1 The rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the District to any one, or obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this agreement. Nothing contained or implied herein shall prejudice or affect the rights and powers of the District in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Land as if this Agreement had not been executed and delivered by the Owner.

7.2 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

7.3 The parties agree that the District is not obligated to inspect the Land or to otherwise ensure compliance with this Agreement, nor is the District obligated to remedy any default of this

Agreement. A failure by the District to enforce this Agreement shall not constitute a waiver of any of the District's rights herein.

7.4 Notwithstanding any provision to the contrary in this Agreement, if the Owner is in default of its obligations in this Agreement then the District may, by written notice to the Owner, require such default to be corrected within thirty (30) days after receipt of such notice. If within the thirty (30) days after receipt of such notice the default has not been corrected or reasonable steps to correct the default have not been taken, the District, without limiting any other right it might have, may pursue a remedy consistent with the provisions described in section 7.5 and 7.6 below.

7.5 No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available at law or in equity.

7.6 The Owner covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the District is entitled to all equitable remedies, including specific performance, injunction and declarative relief to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

7.7 An alleged waiver of any breach of this agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this agreement does not operate as a waiver of any other breach of this agreement.

8.0 TERM

8.1 This Agreement shall run with and bind the Land in accordance with section 19 herein for the Term of this Agreement.

8.2 If this Agreement is discharged in accordance with section 10.1, both parties shall execute the discharge for filing in the LTO.

9.0 MANAGEMENT

9.1 The Owner further covenants and agrees that it or its operator will maintain the Dwelling Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands.

10.0 DISCHARGE OR AMENDMENT

10.1 Prior to the expiry of the Term, and subject to section 10.2, this Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the District.

10.2 Pursuant to section 483(4) of the *Local Government Act*, this Agreement may be amended only by a bylaw adopted by the District, with the consent of the Owner.

11.0 INDEMNITY AND RELEASE

11.1 The Owner hereby releases and indemnifies and saves harmless the District and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators,

personal representatives, successors and assigns, from and against all liabilities, loss, damage, costs (including without limitation, reasonable outside legal costs), expenses, actions, suits, debts, accounts, claims and demands, including without limitation, any and all claims of third parties (and including personal injury, death or damage occurring in or on the Land) (collectively the "Claims"), which all or any of them may suffer, incur or be put to arising directly or indirectly out of or in connection with this Agreement, including:

- (a) any breach by the Owner of any covenant or agreement contained in or related to this Agreement;
- (b) 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;
- (c) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Land or any Dwelling Unit or the enforcement of any Residency Agreement;
- (d) the exercise by the District of any of its rights under this Agreement or an enactment; and
- (e) the District refusing to issue a development permit, building permit or refusing to permit occupancy of any building, or any portion thereof, constructed on the Land under the terms of this Agreement, provided the foregoing indemnity and release shall not apply to any Claims arising out of the negligence or willful misconduct of the District. Indemnity and release shall survive the termination of this Agreement.

12.0 BINDING AND BINDING EFFECT

12.1 This Agreement shall ensure the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, administrators and permitted assignees. Once a notice of this Agreement is filed in the LTO, the Agreement and, if applicable, any amendment to it, is binding on all persons who acquire an interest in the land affected by the Agreement, including all amendments thereto.

13.0 AGREEMENT FOR BENEFIT OF DISTRICT ONLY

13.1 The Owner and the District agree that:

- (a) this Agreement is not intended to protect the interests of the Owner, any resident, or any future owner, lessee, occupier or user of the Land or the building or any portion thereof.

14.0 NO COMPENSATION

14.1 The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the District, for any decrease in the market value of the Land or for any obligations on the part of the Owner and its successors in interest or title which at any time results directly or indirectly from the operation of this Agreement.

15.0 NO PUBLIC LAW DUTY

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

16.0 NOTICE

16.1 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, 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 date of delivery.

17.0 SEVERABILITY

17.1 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.

18.0 SOLE AGREEMENT

18.1 This Agreement, and any documents signed by the Owner contemplated by this Agreement, represents the whole agreement between the District and the Owner, and there are no warranties, representations, conditions or collateral agreements made by the District or the Owner except as set forth in this Agreement.

19.0 COVENANT RUNS WITH THE LAND

19.1 This Agreement burdens and runs with the Land and every parcel into which it is Subdivided. 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 Land.

20.0 PRIORITY

20.1 The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be noted and registered against title to the Land in priority to all financial charges and financial encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in advance in writing by the District or in favour of the District, and that a notice under section 483(5) of the *Local Government Act* will be filed on the title on the Land.

21.0 LIMITATION ON OWNER'S OBLIGATIONS

21.1 The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land provided however that notwithstanding that the Owner is no longer the registered owner of the Land, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Land.

22.0 NO JOINT VENTURE

22.1 Nothing in this Agreement constitutes the Owner as the agent, joint venturer, or partner of the District or gives the Owner any authority to bind the District in any way.

23.0 JOINT AND SEVERAL

23.1 If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

24.0 APPLICABLE LAW

24.1 Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

25.0 FURTHER ACTS

25.1 The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

26.0 ENUREMENT

26.1 This agreement binds the parties to it and their respective successors, heirs, executors and administrators.

27.0 DEED AND CONTRACT

27.1 By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

28.0 PRIORITY AGREEMENT

28.1 FIRST WEST CREDIT UNION, the registered holder of charges by way of a Mortgage against the Lands and registered under No. CA8094768 and an Assignment of Rents against the Lands and registered under No. CA8094769 (the "**Charges**") in the Land Title Office at Victoria, British Columbia, for and in consideration of the sum of One (\$1.00) Dollar paid by the District to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the District, its successors and assigns, that the within section 219 Covenant shall be an encumbrance upon the Lands in priority 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 parties have executed the Form C and Form D to which this Agreement is attached as the Term of Instrument.

Schedule “A”

Eligible Occupants

“Eligible Occupants” are limited to those persons residing together in a dwelling unit who collectively have an Income, as defined below, that does not exceed Middle Income, as defined below.

“Income” means the total Income from all sources, before tax, of all persons residing together in a dwelling unit.

“Middle Income” means:

- (a) for dwelling units with fewer than two bedrooms, income that does not exceed the 75th income percentile for families, without children, as determined by the British Columbia Housing Management Commission, or its successors in function from time to time based on data provided by Statistics Canada. For 2019, this annual Income is \$112,410.00; and
- (b) for dwelling units with two or more bedrooms, income that does not exceed the 75th income percentile for families, with children, as determined by the British Columbia Housing Management Commission, or its successors in function from time to time based on data provided by Statistics Canada. For 2019, this annual Income is \$155,510.00.

Schedule "B"

No Separate Sale Covenant

TERMS OF INSTRUMENT – PART 2

THIS AGREEMENT made this _____ day of _____, 2020.

BETWEEN:

DISTRICT OF MISSION

P.O. Box 20
8645 Stave Lake Street
Mission, BC V0N 3A0

(the "**District**")

OF THE FIRST PART

AND:

WCPG LOTS 15 LTD., INC.NO. BC1241303

202 - 930 West 1st Street
North Vancouver, BC V7P 3N4

(the "**Owner**")

OF THE SECOND PART

WHEREAS:

- A. Section 219(2)(d) of the *Land Title Act* permits the registration of a covenant under which parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately;
- B. The Owner is the registered owner in fee-simple of those lands and premises located within the District of Mission, in the Province of British Columbia, more particularly described as:

PID: 011-826-606

Legal Description: LOT 3 BLOCK 79 DISTRICT LOT 411 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 664;

PID: 011-900-971

Legal Description: LOT 4 BLOCK 79 DISTRICT LOT 411 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 664;

PID: 011-900-997

Legal Description: LOT 5 BLOCK 79 DISTRICT LOT 411 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 664;

(the "**Lands**");

- C. The Owner has constructed a 6 storey rental apartment building with seventy-seven rental dwelling units (the "**Development**") on the Lands;
- D. Under the terms of a Section 219 Covenant and Housing Agreement registered against title to the Lands under Land Title Office registration number [insert land title registration number] (the "**Rental Housing Agreement**") the Owner and the District agreed that the Development would be used for affordable rental housing during the term of the Housing Agreement;
- E. As contemplated under section 2.2 of the Rental Housing Agreement, the Owner wishes to deposit a strata plan over the Lands and to subdivide the Development into separate fee simple strata lots, and has agreed to register this agreement against title to the strata lots as a covenant pursuant to section 219(2)(d) of the *Land Title Act*.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of \$10.00 paid by the District to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the District and the Owner covenant and agree as follows:

1.0 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise defined, words have the same meanings as in the Zoning Bylaw, and the following words have the following meanings:
 - (a) "**Agreement**" means this agreement and includes all recitals, instruments, schedules, and amendments thereto;
 - (b) "**District**" means the District of Mission;
 - (c) "**Land Title Act**" means the *Land Title Act*, R.S.B.C. 1996, Chapter 250;
 - (d) "**Strata Lots**" means the fee simple strata lots within the Development, as identified in section 2 of the General Instrument – Part 1 to which these Terms of Instrument are attached, over which this Agreement is registered as a covenant pursuant to section 219(2)(d) of the *Land Title Act*.
 - (e) "**Term**" means the period of time commencing on the date when this Agreement is registered at the Land Title Office and ending on the later of the date that is ten (10) years from when:
 - i. the Rental Housing Agreement was registered at the Land Title Office; or
 - ii. the final Certificate of Occupancy for the Development was issued by the applicable Statutory Authority.

2.0 SECTION 219 COVENANT – NO SEPARATE SALE

- 2.1 The Owner hereby covenants and agrees with the District that during the Term, the Owner shall not sell or otherwise transfer any of the Strata Lots separately, such that the fee simple title to the Strata Lots will remain registered in the name of a single Owner during the Term.

3.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

3.1 The Owner acknowledges and agrees that:

- (a) this Agreement shall be registered in the LTO by the District at the cost of the Owner in accordance with section 219 of the *Land Title Act*; and
- (b) this Agreement shall be binding on all persons who acquire an interest in the Land after registration of this notice, and unless discharged in accordance with this Agreement, run with and bind the Land in accordance with section 13 herein.

4.0 ENFORCEMENT AND WAIVER

- 4.1 The rights given to the District by this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the District to any one, or obliges the District to enforce this Agreement, to perform any act or to incur any expense in respect of this agreement. Nothing contained or implied herein shall prejudice or affect the rights and powers of the District in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Land as if this Agreement had not been executed and delivered by the Owner.
- 4.2 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 4.3 The parties agree that the District is not obligated to inspect the Land or to otherwise ensure compliance with this Agreement, nor is the District obligated to remedy any default of this Agreement. A failure by the District to enforce this Agreement shall not constitute a waiver of any of the District's rights herein.
- 4.4 Notwithstanding any provision to the contrary in this Agreement, if the Owner is in default of its obligations in this Agreement then the District may, by written notice to the Owner, require such default to be corrected within thirty (30) days after receipt of such notice. If within the thirty (30) days after receipt of such notice the default has not been corrected or reasonable steps to correct the default have not been taken, the District, without limiting any other right it might have, may pursue a remedy consistent with the provisions described in 4.5 and 4.6 below.
- 4.5 No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available at law or in equity.
- 4.6 The Owner covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the District is entitled to all equitable remedies, including specific performance, injunction and declarative relief to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

- 4.7 An alleged waiver of any breach of this agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this agreement does not operate as a waiver of any other breach of this Agreement.

5.0 INDEMNITY AND RELEASE

- 5.1 The Owner hereby releases and indemnifies and saves harmless the District and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all liabilities, loss, damage, costs (including without limitation, reasonable outside legal costs), expenses, actions, suits, debts, accounts, claims and demands, including without limitation, any and all claims of third parties (and including personal injury, death or damage occurring in or on the Land) (collectively the “**Claims**”), which all or any of them may suffer, incur or be put to arising directly or indirectly out of or in connection with this Agreement, including:

- (a) any breach by the Owner of any covenant or agreement contained in or related to this Agreement;
- (b) 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;
- (c) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Land or any Dwelling Unit or the enforcement of any Residency Agreement;
- (d) the exercise by the District of any of its rights under this Agreement or an enactment; and
- (e) the District refusing to issue a development permit, building permit or refusing to permit occupancy of any building, or any portion thereof, constructed on the Land under the terms of this Agreement, provided the foregoing indemnity and release shall not apply to any Claims arising out of the negligence or willful misconduct of the District. Indemnity and release shall survive the termination of this Agreement.

6.0 BINDING AND BINDING EFFECT

- 6.1 This Agreement shall ensure the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, administrators and permitted assignees. Once a notice of this Agreement is filed in the Land Title Office, the Agreement and, if applicable, any amendment to it, is binding on all persons who acquire an interest in the land affected by the Agreement, including all amendments thereto.

7.0 AGREEMENT FOR BENEFIT OF DISTRICT ONLY

- 7.1 The Owner and the District agree that this Agreement is not intended to protect the interests of the Owner, any resident, or any future owner, lessee, occupier or user of the Land or the building or any portion thereof.

8.0 NO COMPENSATION

- 8.1 The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the District, for any decrease in the market value of the Land or for any obligations on the part of the Owner and its successors in interest or title which at any time results directly or indirectly from the operation of this Agreement.

9.0 NO PUBLIC LAW DUTY

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

10.0 NOTICE

- 10.1 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, 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 date of delivery.

11.0 SEVERABILITY

- 11.1 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.

12.0 SOLE AGREEMENT

- 12.1 This Agreement, and any documents signed by the Owner contemplated by this Agreement, represents the whole agreement between the District and the Owner, and there are no warranties, representations, conditions or collateral agreements made by the District or the Owner except as set forth in this Agreement.

13.0 COVENANT RUNS WITH THE LAND

- 13.1 This Agreement burdens and runs with the Land and every parcel into which it is Subdivided. 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 Land.

14.0 PRIORITY

- 14.1 The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be noted and registered against title to the Land in priority to all financial charges and financial encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in advance in writing by the District or in favour of the District.

15.0 LIMITATION ON OWNER'S OBLIGATIONS

- 15.1 The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land provided however that notwithstanding that the Owner is no longer the registered owner of the Land, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Land.

16.0 NO JOINT VENTURE

- 16.1 Nothing in this Agreement constitutes the Owner as the agent, joint venturer, or partner of the District or gives the Owner any authority to bind the District in any way.

17.0 JOINT AND SEVERAL

- 17.1 If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

18.0 APPLICABLE LAW

- 18.1 Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

19.0 FURTHER ACTS

- 19.1 The Owner shall do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

20.0 ENUREMENT

- 20.1 This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

21.0 DEED AND CONTRACT

- 21.1 By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

22.0 PRIORITY AGREEMENT

- 22.1 *, the registered holder of charges by way of a Mortgage against the Lands and registered under No. * and an Assignment of Rents against the Lands and registered under No. * (the "**Charges**") in the Land Title Office at Victoria, British Columbia, for and in consideration of the sum of One (\$1.00) Dollar paid by the District to the said Chargeholder (the receipt whereof is hereby acknowledged), agrees with the District, its successors and assigns, that the within section 219 Covenant shall be an encumbrance upon the Lands in priority 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 parties have executed the Form C and Form D to which this Agreement is attached as the Term of Instrument.