

CITY OF BURNABY

BYLAW NO. 14745

A BYLAW to authorize the execution of a Housing Agreement
for the non-market rental housing development at
6263 and 6337 Cassie Avenue

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY HOUSING AGREEMENT (6263 AND 6337 CASSIE AVENUE) BYLAW 2025**.

2. The City is hereby authorized to enter into a housing agreement with Willingdon Avenue Investments Ltd., substantially in the form set out in Schedule “A” (the “**Housing Agreement**”), for the non-market rental housing development on lands legally described as:

PID: 032-229-496, Lot 2 District Lots 151 and 153 Group 1 New Westminster
District Plan EPP126819

3. The Corporate Officer is hereby authorized and empowered to execute the Housing Agreement on behalf of the City.

FIRST READING	day of	, 2025
SECOND READING	day of	, 2025
THIRD READING	day of	, 2025
RECONSIDERED AND ADOPTED	day of	, 2025

MAYOR

CORPORATE OFFICER

Schedule "A"

HOUSING AGREEMENT
(Section 483 *Local Government Act*)

THIS AGREEMENT is dated for reference _____, 2025,

BETWEEN:

WILLINGDON AVENUE INVESTMENTS LTD.

Incorporation No. BC1423335
Suite 2000 - 595 Burrard Street
Vancouver, B.C. V6C 0E4

(the "**Owner**")

AND:

CITY OF BURNABY

4949 Canada Way
Burnaby, B.C. V5G 1M2

(the "**City**")

WHEREAS:

- A. Section 483 of the *Local Government Act* permits the City to enter into and, by legal notation on title, note on title to lands, housing agreements which may include, without limitation, conditions with respect to the form of tenure of housing units;
- B. The Owner is the registered owner of the Lands and is currently constructing the Development on the Lands, the Strata Air Space Parcel and certain adjacent lands;
- C. Prior to the date of this Agreement, the Owner subdivided the Parent Parcel by Air Space Plan to create an air space parcel which contains, or will contain, all the Strata Units (the "**Strata Air Space Parcel**") and a remainder which contains, or will contain, all the Non-Market Units (being the Lands); and
- D. The Owner and the City wish to enter into this Agreement (as hereinafter defined) to provide the Non-Market Units (as hereinafter defined) as affordable housing on the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of ten dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree as

follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following words have the following meanings:

- (a) **“Accessibility Needs”** refer to physical accessibility needs identified by a Returning Tenant, in their Tenant Assistance Form or subsequently, and accommodated, as practicable, in an Adaptable Housing Unit;
- (b) **“Adaptable Housing Unit”** means a Non-Market Unit that: (a) is designed and built with features that permit easy modification to accommodate changing accessibility requirements over time; and (b) conforms to the requirements and standards specified in the *Zoning Bylaw* and elsewhere in the British Columbia Building Code for adaptable dwelling units;
- (c) **“Agreement”** means this agreement together with all schedules, attachments and priority agreements attached hereto;
- (d) **“Air Space Plan”** means the air space subdivision plan of the Parent Parcel pursuant to the *Land Title Act* which created the Lands and the Strata Air Space Parcel;
- (e) **“BC Housing”** means the British Columbia Housing Management Commission;
- (f) **“Business Day”** means a day which is not a Saturday, Sunday or statutory holiday (as defined in the *Employment Standards Act* (British Columbia)) in British Columbia;
- (g) **“CD Plan”** means the comprehensive development plan for the Parent Parcel and certain adjacent lands entitled “Willingdon Residential Development” prepared by Chris Dikeakos Architects Inc. and David Stoyko Landscape Architecture Inc. and filed with the City’s General Manager Planning and Development;
- (h) **“City”** and **“City of Burnaby”**, being the Transferee described in Item 6 of the *Land Title Act* Form C constituting Part 1 of this Agreement, means the City of Burnaby and is called the “City” when referring to the corporate entity and “City of Burnaby” when referring to the geographic location;
- (i) **“CMHC”** means the Canada Mortgage and Housing Corporation;
- (j) **“CMHC Market Median Rent”** means the median residential apartment rent applicable to areas within the City of Burnaby (being Central Park/Metrotown CMHC Market Rental survey zone in the case of the Non-Market Units under this Agreement), based on rental market data collected by CMHC, and if such rental

market data is no longer published by CMHC, then such other methodology established by the City at its discretion;

- (k) **“Daily Amount”** means \$100.00 per day as of January 1, 2018, and adjusted annually on January 1st of each subsequent year by a percentage equal to the percentage of the increase in the Vancouver Headline CPI for the period from January 1 to December 31 of the preceding calendar year;
- (l) **“Development”** means the development on the Lands, the Strata Air Space Parcel and certain adjacent lands of a 35-storey market strata building and a 38-storey market strata and non-market rental building with an internal court yard with vehicular access via Cassie Avenue constructed or to be constructed on the Lands, the Strata Air Space Parcel and certain adjacent lands in accordance with the CD Plan;
- (m) **“Effective Date”** has the meaning ascribed to it in section 11.2;
- (n) **“Eligible Tenant”** means:
 - (i) in the case of a Replacement Rental Unit, a Household with at least one member who is a Returning Tenant; and
 - (ii) in the case of a Required Inclusionary Unit, a Household with a gross household income that does not exceed the Housing Income Limits (HILs) for the applicable unit type (or such other income threshold approved by the City at its discretion), but excluding: (A) the Owner, any directors, officers, and employees of the Owner, as applicable, and their respective direct family members; and (B) if the Owner contracts a third party to manage and administer the Non-Market Units pursuant to sections 5.1(d) or 5.1(e), such third party, any directors, officers and employees of such third party, as applicable, and their respective direct family members;
- (o) **“Eligibility Date”** means the date a tenancy is considered eligible for benefits under the Tenant Assistance Policy;
- (p) **“Funding Agreement”** means an agreement entered into or to be entered into between a Funding Provider and the Owner with respect to the management of the Non-Market Units, as the same may be amended, amended and restated, supplemented or modified from time to time;
- (q) **“Funding Provider”** means BC Housing, CMHC or another organization providing funding with respect to the development or operation, or both, of the Non-Market Units;

- (r) “**Household**” has the meaning ascribed to the term “family” in the Zoning Bylaw, and in the event such term is no longer defined in the Zoning Bylaw, the last effective definition of the term “family” will apply;
- (s) “**Housing Covenant**” means the agreements, covenants and charges granted by the Owner to the City (which includes covenants pursuant to section 219 of the *Land Title Act*) charging the Lands and Strata Air Space Parcel, registered under number CB_____, as it may be amended or replaced from time to time;
- (t) “**Housing Income Limit (HILs)**” means the gross annual income limit for the HILs Lower Mainland planning area associated with the City of Burnaby, as derived from CMHC’s annual Rental Market Survey and published by BC Housing from time to time, and if such gross annual income limit is no longer published by BC Housing, then “**Housing Income Limit (HILs)**” means the last such gross annual income limit published by BC Housing adjusted annually, on January 1st of each subsequent year, by a percentage equal to the percentage of the increase in the Vancouver Headline CPI for the period January 1 to December 31 of the preceding calendar year;
- (u) “**Interpretation Act**” means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238 together with all amendments thereto and replacements thereof;
- (v) “**Land Title Act**” means the *Land Title Act*, R.S.B.C. 1996, Chapter 250 together with all amendments thereto and replacements thereof;
- (w) “**Lands**” means the following lands and premises situate in the City of Burnaby and any part thereof:

Parcel Identifier: 032-229-496
 Lot 2 District Lots 151 and 153 Group 1 New Westminster District Plan
 EPP126819 Except part in Air Space Plan EPP145377;
- (x) “**Local Government Act**” means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;
- (y) “**LTO**” means the New Westminster Land Title Office or its successor;
- (z) “**Non-Market Units**” means the 116 residential units within the Lands that are designated for use as a Replacement Rental Unit and which may subsequently become a Required Inclusionary Unit pursuant to section 3.2(h) or section 3.2(i) of this Agreement, and “**Non-Market Unit**” means any such residential unit;
- (aa) “**Owner**” means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or any part thereof;
- (bb) “**Parent Parcel**” means the lands and premises situate in the City of Burnaby and formerly legally described as:

Parcel Identifier: 032-229-496
 Lot 2 District Lots 151 and 153 Group 1 New Westminster District Plan
 EPP126819;

- (cc) **“Permitted Rent”** means:
 - (i) with respect to a Replacement Rental Unit, the Replacement Rental Rate; and
 - (ii) with respect to a Required Inclusionary Unit, the Required Inclusionary Rental Rate for the unit type;
- (dd) **“Personal Information”** has the meaning set out in the *Personal Information Protection Act*;
- (ee) **“Personal Information Protection Act”** means the *Personal Information Protection Act*, S.B.C. 2003, Chapter 63, together with all amendments thereto and replacements thereof;
- (ff) **“Prior Site”** means the lands and premises with the former civic address of 6280 and 6350 Willingdon Avenue, as of the Eligibility Date, and formerly legally described as:

Parcel Identifier: 003-062-465
 Lot "E" District Lots 151 and 153 Group 1 New Westminster District Plan
 2069; and

Parcel Identifier: 003-062-619
 Lot "F" District Lots 151 and 153 Group 1 New Westminster District Plan
 2069;

- (gg) **“Prior Unit”** means the former residential unit occupied by a Returning Tenant at the Prior Site;
- (hh) **“Public Utility”** means any utility or service provider that is regulated by the British Columbia Utilities Commission, or its successor in function;
- (ii) **“Purchaser”** has the meaning ascribed to it in section 11.2;
- (jj) **“Rental Use Zoning Policy”** means the City’s Finalized Rental Use Zoning Policy approved by City Council on March 9, 2020;
- (kk) **“Replacement Rental Rate”** means, with respect to each Replacement Rental Unit, an amount not exceeding the Returning Tenant’s rent as of the date the Returning Tenant moved out of that Returning Tenant’s Prior Unit, plus any annual increases allowed under the *Residential Tenancy Act* between the date the Returning Tenant moved out of the Prior Unit and the effective date of the tenancy

under the Tenancy Agreement for the Replacement Rental Unit together with any subsequent annual increases permitted in accordance with the *Residential Tenancy Act*;

- (ll) **“Replacement Rental Unit”** means a Non-Market Unit that replaces a rental unit at the Prior Site and is offered to and rented by a Returning Tenant;
- (mm) **“Required Inclusionary Rental Rate”** means an amount not exceeding 20% below the CMHC Market Median Rent, for the unit size and type (meaning, for greater certainty, number of bedrooms) of the Required Inclusionary Unit as of the date the Owner and Eligible Tenant enter into a Tenancy Agreement, together with any annual increases permitted in accordance with the *Residential Tenancy Act*;
- (nn) **“Required Inclusionary Unit”** means a Non-Market Unit that has become a Required Inclusionary Unit pursuant to section 3.2(h) or section 3.2(i) of this Agreement and is rented or offered for rent at the Required Inclusionary Rental Rate;
- (oo) **“Residential Tenancy Act”** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78 together with all amendments thereto and replacements thereof;
- (pp) **“Returning Tenant”** means a former tenant of a Prior Unit who is eligible for a right of first refusal for a Replacement Rental Unit under the Tenant Assistance Policy and Rental Use Zoning Policy;
- (qq) **“Strata Air Space Parcel”** means the air space parcel created by the subdivision of the Parent Parcel by Air Space Plan, which air space parcel contains all the Strata Units;
- (rr) **“Strata Units”** means the 357 residential units in the Strata Air Space Parcel that are owned by a strata corporation pursuant to the *Strata Property Act* (British Columbia);
- (ss) **“TAP Exception Letter”** means the Letter from the City to Wesgroup Properties Ltd dated March 13, 2024, a copy of which is attached hereto as Schedule “B”;
- (tt) **“Tenancy Agreement”** means a tenancy agreement, lease, license or other agreement granting rights to occupy a Required Inclusionary Unit or Replacement Rental Unit on a month-to-month basis or for a fixed term not exceeding twelve (12) months;
- (uu) **“Tenant Assistance Form”** means the Household Needs Assessment form as referenced in the Tenant Assistance Policy;
- (vv) **“Tenant Assistance Policy”** means the City’s Tenant Assistance Policy approved by City Council on December 2, 2019, a copy of which is attached hereto as Schedule “A”, as amended by the TAP Exception Letter with respect to the

definition of tenants eligible for a Replacement Rental Unit. In the event of a conflict between the Tenant Assistance Policy and the TAP Exception Letter, the TAP Exception Letter will govern to the extent of the conflict;

- (ww) “**Vancouver Headline CPI**” means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function; and
- (xx) “**Zoning Bylaw**” means the *Burnaby Zoning Bylaw, 1965*, and amendments thereto and re-enactments thereof.

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) 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* 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;
- (j) 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
- (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 AND OCCUPANCY OF NON-MARKET UNITS

- 2.1 The Owner will construct and maintain on the Lands the Non-Market Units in the following mix of unit sizes and types:
- (a) 92 one-bedroom units; and
 - (b) 24 two-bedroom units,
- all of which will first be made available as Replacement Rental Units and subsequently as Required Inclusionary Units, in accordance with this Agreement.
- 2.2 The Owner will not change the mix of size and type of the Non-Market Units set out in section 2.1(a) to (b) without the prior written consent of the City.
- 2.3 The Owner will rent the Non-Market Units at the following rates:
- (a) for all Replacement Rental Units (in accordance with the required unit mix set out in sections 2.1(a) to (b) of this Agreement), at Replacement Rental Rates to Returning Tenants who exercise their right of first refusal for a Replacement Rental Unit; and
 - (b) for all Required Inclusionary Units (i.e. any Replacement Rental Unit refused or not rented at any time by a Returning Tenant), at Required Inclusionary Rental Rates to an Eligible Tenant for a Required Inclusionary Unit.
- 2.4 The Owner agrees and will include in each Tenancy Agreement a covenant requiring that the applicable Non-Market Unit will only be used and occupied as the permanent residence of the applicable Eligible Tenant in accordance with this Agreement and any permits issued by the City with respect to the Development and the CD Plan. For the purposes of this Article 2, “permanent residence” means that the Non-Market Unit is used as the usual, main, regular, habitual, principal residence, abode or home of the Eligible Tenant.
- 2.5 Subject to the further requirements in Article 3 in the case of a Replacement Rental Unit and Article 4 in the case of a Required Inclusionary Unit, the Owner will not rent, lease, license or otherwise permit occupancy of any Non-Market Unit except in accordance with the following conditions:
- (a) the Non-Market Units will only be used or occupied as a permanent residence by an Eligible Tenant pursuant to a Tenancy Agreement and not be made available for short term rental;
 - (b) the monthly rent payable for a Non-Market Unit will not exceed the Permitted Rent for a Replacement Rental Unit or Required Inclusionary Unit, as applicable;
 - (c) the Owner:

- (i) will not require the Eligible Tenant or any permitted occupant to pay any extra charges or fees for sanitary sewer, storm sewer, water, or other municipal utilities or for property or similar taxes;
 - (ii) may, to the extent each Non-Market Unit is individually metered for electricity and/or gas usage, require the Eligible Tenant or any permitted occupant to pay directly to the Public Utility, the cost of such utilities or services;
 - (iii) will not form a private utility to service the Non-Market Units unless the Owner has received the prior written consent of the City, which consent may be qualified or arbitrarily withheld in the City's sole discretion;
 - (iv) will not charge the Eligible Tenant or any permitted occupants of a Non-Market Unit any fees for the use of the underground loading zone, the 12 visitor parking spaces, the outdoor amenity spaces, the required bicycle storage, the lobby or elevator; but may charge for residential parking;
 - (v) the Owner may charge the Eligible Tenant or any permitted occupants of a Non-Market Unit for reasonable cost recovery related to the repair of damage caused by such Eligible Tenant or occupant, or if the item is damaged beyond repair, then for reasonable cost recovery related to the replacement of such item, provided, for certainty, that the Owner will have first deducted all recoveries which reduce any charge payable by the Eligible Tenant or permitted occupants of a Non-Market Unit, including recoveries under any warranties and recoveries under any insurance policies maintained by the Owner; and
 - (vi) will not require any Eligible Tenant or permitted occupant of a Non-Market Unit to pay any unreasonable move-in or move-out charges;
- (d) the Owner will include in each Tenancy Agreement, to the extent permitted by the *Residential Tenancy Act*, a clause entitling the Owner to terminate the Tenancy Agreement if:
- (i) the Non-Market Unit is occupied by a person or persons other than an Eligible Tenant in the Eligible Tenant's absence;
 - (ii) the Non-Market Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent;
 - (iii) subject to section 4.3, the Eligible Tenant subleases the Non-Market Unit or assigns the Tenancy Agreement in whole or in part; and/or
 - (iv) in respect of a Required Inclusionary Unit, the gross annual income of the Household exceeds the Housing Income Limits (HILs) for the unit size of

the Required Inclusionary Unit for more than one consecutive annual income review,

and in the case of each such event, the Owner hereby agrees with the City to forthwith provide to the Eligible Tenant under the applicable Tenancy Agreement a notice of termination, unless termination of the Tenancy Agreement by the Owner would not be permitted in the circumstances pursuant to the *Residential Tenancy Act* or the *Human Rights Code* or any other applicable law. Such notice of termination will provide that the termination of the tenancy will be effective two (2) months following the date of such notice or as required by the *Residential Tenancy Act* in the circumstances described in subparagraphs (i), (ii), and (iii) of this subsection 2.5(d), and six (6) months following the date of such notice or as required by the *Residential Tenancy Act* in the circumstance described in subparagraph (iv) of this subsection 2.5(d), or such longer period as the Owner considers to be fair and reasonable given the circumstances of the termination;

- (e) the Tenancy Agreement will identify all permanent occupants of the Non-Market Unit and will stipulate that any individual over the age of eighteen (18) not identified in the Tenancy Agreement will be prohibited from residing at the Non-Market Unit for more than thirty (30) consecutive days or more than forty-five (45) days total in any calendar year;
 - (f) the Owner will include in each Tenancy Agreement for a Non-Market Unit a clause, whereby each applicable tenant consents to the disclosure of the tenant's Personal Information to the City as is necessary for the Owner to comply with the Owner's reporting obligations pursuant to this Agreement, including, without limitation, providing a copy of the Tenancy Agreement to the City and disclosing the tenant's name, address, income details and rent payable; and
 - (g) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement for a Non-Market Unit to the City as soon as practicable upon demand by the City, subject to any requirements the Owner must comply with under the *Personal Information Protection Act* in respect of the collection, use, retention, and disclosure of the information of any person contained therein.
- 2.6 Where the Owner has terminated the Tenancy Agreement, the Owner will use reasonable commercial efforts to cause the Eligible Tenant and all other persons that may be in occupation of the Non-Market Unit to vacate the Non-Market Unit on or before the effective date of termination.
- 2.7 The Owner will comply with all laws, regulations, bylaws and orders with respect to the construction, maintenance, repair, operation and use of the Non-Market Units.
- 2.8 The City agrees that, notwithstanding the obligations and covenants of the Owner under this Agreement, if the performance or observance of any of the Owner's obligations or covenants under this Agreement would be contrary to any provisions of the *Residential*

Tenancy Act, the *Human Rights Code* (British Columbia) or any other applicable law, as determined to be contrary by a ruling or decision of any judicial body having jurisdiction, then the Owner will not be in breach of this Agreement for failure to perform or observe such obligation or covenant to the extent the Owner's performance or observance of such obligation would be contrary to any provision of such applicable laws.

ARTICLE 3

RETURNING TENANTS AND REPLACEMENT RENTAL UNITS

- 3.1 The Owner acknowledges that the Replacement Rental Units are intended to be rented to Returning Tenants who enter into a Tenancy Agreement in respect of a Replacement Rental Unit at the time of first occupancy of the Replacement Rental Units.
- 3.2 The Owner covenants and agrees with the City that:
- (a) the Owner will offer each Returning Tenant a right of first refusal to enter into a Tenancy Agreement for a Replacement Rental Unit in accordance with the Tenant Assistance Policy and Rental Use Zoning Policy, and in particular, will offer a Replacement Rental Unit with at least the same number of bedrooms as the Returning Tenant's Prior Unit and that meet any Accessibility Needs identified by the Returning Tenant on their Tenant Assistance Form provided to the Owner prior to vacating their Prior Unit under the Tenant Assistance Policy, or where possible, accommodate any subsequent Accessibility Needs identified by the Returning Tenant;
 - (b) the Owner will notify each Returning Tenant of the anticipated occupancy date for a Replacement Rental Unit at six (6) months and three (3) months prior to the anticipated occupancy date of such Replacement Rental Unit, and provide to each Returning Tenant at forty-five (45) days prior to the anticipated occupancy date, a Tenancy Agreement for a Replacement Rental Unit that meets the requirements of the Tenant Assistance Policy for that Returning Tenant and allow the Returning Tenant up until the anticipated occupancy date to sign and return the Tenancy Agreement;
 - (c) the Owner will allocate Replacement Rental Units to Returning Tenants in accordance with the terms of this Agreement and the Tenant Assistance Policy, to the satisfaction of the City;
 - (d) where one or more Returning Tenants occupied a Prior Unit, all such Returning Tenants will be jointly offered one Replacement Rental Unit and all such Returning Tenants must be listed as co-tenants together unless the benefit has been transferred to certain Returning Tenant(s) only, provided that a written notice of such transfer signed by all Returning Tenants who occupied the Prior Unit is delivered to the Owner;

- (e) in the event one or more Returning Tenants cannot be located using commercially reasonable efforts, such Returning Tenant is deemed to have refused the right of first refusal to a Replacement Rental Unit or as applicable, transferred the right of first refusal to the remaining Returning Tenant(s) of their Prior Unit;
- (f) where pets were permitted in respect of any Prior Units, the Owner will permit the same number and type of pets that were permitted for each such Prior Unit in the Tenancy Agreement for the corresponding Replacement Rental Unit, to the extent permitted by the *Burnaby Animal Control Bylaw 1991*;
- (g) unless otherwise required pursuant to the *Residential Tenancy Act*, the Owner will not permit a Tenancy Agreement for a Replacement Rental Unit to be subleased or assigned and will exercise its termination rights under the Tenancy Agreement accordingly;
- (h) if a Returning Tenant elects not to exercise their right of first refusal in respect of a Replacement Rental Unit by not entering into a Tenancy Agreement in respect of such Replacement Rental Unit prior to occupancy of such Replacement Rental Unit, then the Replacement Rental Unit will become a Required Inclusionary Unit and the Owner will offer such unit to an Eligible Tenant at the Required Inclusionary Rental Rate for the unit size and type at the time of entering into a Tenancy Agreement with the Eligible Tenant; and
- (i) if the only or last Returning Tenant in a Household moves out of a Replacement Rental Unit, then the Replacement Rental Unit will become a Required Inclusionary Unit, and:
 - (i) if the remaining members of such Household qualify as an Eligible Tenant for a Required Inclusionary Unit, the Owner will offer such unit to such remaining Household members at the Required Inclusionary Rental Rate for the unit size and type at the time of entering into a new Tenancy Agreement with such remaining Household members;
 - (ii) if the remaining members of such Household do not qualify as an Eligible Tenant for a Required Inclusionary Unit, the Owner will exercise its termination rights under the Tenancy Agreement accordingly, subject to the *Residential Tenancy Act*, and offer such unit to an Eligible Tenant at the Required Inclusionary Rental Rate for the unit size and type at the time of entering into a Tenancy Agreement with the Eligible Tenant; or
 - (iii) if there are no remaining members of such Household, the Owner will offer such unit to an Eligible Tenant at the Required Inclusionary Rental Rate for the unit size and type at the time of entering into a Tenancy Agreement with the Eligible Tenant.

- 3.3 The Owner acknowledges and agrees that the Returning Tenant in each Replacement Rental Unit will pay the Replacement Rental Rate for that Returning Tenant until the termination of the Returning Tenant's Tenancy Agreement with respect to the Replacement Rental Unit.

ARTICLE 4 REQUIRED INCLUSIONARY UNITS

- 4.1 It is acknowledged by the Owner that each Required Inclusionary Unit (being a Replacement Rental Unit that subsequently becomes a Required Inclusionary Unit in accordance with section 3.2(h) or section 3.2(i) of this Agreement) is intended to be made available to a Household in need of affordable rental housing that qualifies as an Eligible Tenant for a Required Inclusionary Unit.
- 4.2 Where any Replacement Rental Units become Required Inclusionary Units pursuant to section 3.2(h) of this Agreement, at the time of first occupancy of such Required Inclusionary Units, the Owner is encouraged to first offer such Required Inclusionary Units to those tenants in good standing who were displaced from the Prior Site by the rezoning application associated with the Prior Site and did not qualify as Returning Tenants for a Replacement Rental Unit but do qualify as Eligible Tenants for Required Inclusionary Units and have independently indicated to the Owner their interest in returning to the building.
- 4.3 The Owner agrees to restrict subletting or assignment of a Required Inclusionary Unit, to the extent permitted by the *Residential Tenancy Act*, except that the Owner may permit an Eligible Tenant to sublet or assign their Required Inclusionary Unit provided the sublessee or assignee qualifies as an Eligible Tenant for a Required Inclusionary Unit.
- 4.4 For greater certainty, if a Required Inclusionary Unit is rented to a Household that qualifies as an Eligible Tenant at the commencement of such tenancy but such Household subsequently ceases to qualify as an Eligible Tenant due to an increase in the gross household income of such Household, then the Owner will not be in breach of any requirement hereunder so long as the Owner complies with section 2.5(d).
- 4.5 Where any Replacement Rental Unit subsequently becomes a Required Inclusionary Unit in accordance with section 3.2(h) or section 3.2(i) of this Agreement, the Owner acknowledges and agrees that Required Inclusionary Rental Rates apply to such a Required Inclusionary Unit in perpetuity from the date such Replacement Rental Unit becomes a Required Inclusionary Unit. When an Eligible Tenant moves out of a Required Inclusionary Unit, the Owner may adjust the Required Inclusionary Rental Rate for such unit to the applicable rate for the unit size and type as of the date the Owner and new Eligible Tenant enter into a Tenancy Agreement for the Required Inclusionary Unit.

ARTICLE 5
MANAGEMENT OF NON-MARKET UNITS

5.1 The Owner covenants and agrees, at its cost and expense, to:

- (a) furnish good and efficient management of the Non-Market Units to the satisfaction of the City;
- (b) permit representatives of the City to inspect the Non-Market Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*;
- (c) maintain the Non-Market Units in a good state of repair and fit for habitation and to comply with all laws, including health and safety standards applicable to the Lands to the satisfaction of the City;
- (d) ensure active management and administration of the Non-Market Units and contract a third party that is, to the satisfaction of the City: (1) experienced in rental property management; and (2) licensed under the *Real Estate Services Act* to provide rental property management services, unless such third party is exempt from the requirement to be licensed under the *Real Estate Services Act* and regulations thereto, and cause such third party to:
 - (i) manage the Non-Market Units in accordance with this Agreement;
 - (ii) maintain the Non-Market Units in a good state of repair and fit for habitation and to comply with all laws, including health and safety standards applicable to the Lands;
 - (iii) select tenants for Required Inclusionary Units in accordance with the eligibility criteria for Eligible Tenants for Required Inclusionary Units; and
 - (iv) conduct on an annual basis a review of the gross income for a Household occupying a Required Inclusionary Unit to ensure that such Household continues to qualify as an Eligible Tenant for a Required Inclusionary Unit,provided that if the Owner meets the criteria set out in (1) and (2) above, the Owner may itself undertake the management and administration of the Non-Market Units pursuant to this section 5.1(d);
- (e) to hire a person or company with the skill and expertise to manage the Non-Market Units in accordance with section 5.1(d) to the satisfaction of the City, if so required by the City pursuant to section 5.2;
- (f) communicate to all tenants and prospective tenants the rights and restrictions of the Owner and Eligible Tenants under this Agreement and, to the extent permitted by the *Residential Tenancy Act*, enforce all restrictions and exercise all rights of

termination under this Agreement, including under section 2.5(d) of this Agreement, to the satisfaction of the City; and

- (g) advise any prospective tenant of a Non-Market Unit that the Non-Market Unit is subject to this Agreement and provide a copy of this Agreement to a tenant or prospective tenant upon request.

- 5.2 Notwithstanding the Owner's right to itself undertake the management and administration of the Non-Market Units pursuant to section 5.1(d), if the Owner is in default of its obligations to manage the Non-Market Units in accordance with section 5.1(d) and does not cure such breach within thirty (30) days after receiving notice thereof from the City (or, if it is not reasonably possible for the Owner to cure such breach within such period, then the Owner fails within such period to commence to diligently cure such breach and thereafter to continually and expeditiously cure such breach as soon as reasonably possible in the circumstances), then the City may, in its absolute discretion, require the Owner to hire a person or company with the skill and expertise to manage the Non-Market Units to the satisfaction of the City.

ARTICLE 6 REPORTING

- 6.1 Within thirty (30) days after receiving notice from the City, the Owner will, in respect of each Non-Market Unit, provide to the City a statutory declaration, substantially in the form (with, in the City Solicitor's discretion, such further amendments or additions as deemed necessary) attached as Appendix A, sworn by the Owner, containing all of the information required to complete the statutory declaration, a copy of the Owner's or, if the Owner has contracted a third party pursuant to sections 5.1(d) or 5.1(e), a copy of such third party's Rental Property Management Licence (if applicable), and documentation of experience managing rental properties together with any other information required by the City.
- 6.2 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.

ARTICLE 7 INSURANCE

- 7.1 The Owner will insure, or cause to be insured, the Non-Market Units and all buildings and structures within the Lands to the full replacement cost thereof against perils normally insured against by reasonable and prudent owners of similar buildings and lands in Burnaby and those additional policies set out in Appendix B attached hereto.
- 7.2 Upon request, the Owner will provide to the City proof of insurance coverage required by section 7.1 of this Agreement.

ARTICLE 8 DAMAGE OR DESTRUCTION

- 8.1 The Owner covenants and agrees with the City that in the event of partial damage to or partial destruction of all or any of the Non-Market Units, the Owner will as soon as reasonably possible repair or replace such damage or destruction to a standard comparable to the standard of the Non-Market Units being repaired or replaced immediately prior to the event of damage or destruction.
- 8.2 In the event of the complete or substantially complete destruction of Non-Market Units to the extent of at least 75% of the full replacement cost thereof, as determined by the City's Chief Building Inspector, the Owner will reconstruct or replace the Non-Market Units, as applicable, with new Non-Market Units in a manner comparable to the Non-Market Units being replaced immediately prior to the event of damage or destruction within three years of such complete or substantially complete destruction of the Non-Market Units. This Agreement and the Housing Covenant will apply to the replacement Non-Market Units, to the same extent and in the same manner as such agreements apply to the original Non-Market Units, unless and until a new housing agreement and section 219 covenant are entered into between the Owner and the City with respect to the replacement Non-Market Units, at the discretion of the City.

ARTICLE 9 DEFAULT AND REMEDIES

- 9.1 The Owner agrees that, in addition to any other remedies available to the City under this Agreement or the Housing Covenant or at law or in equity, if a Non-Market Unit is used or occupied in breach of this Agreement or the Housing Covenant, or if the Owner is otherwise in breach of any of its obligations under this Agreement or the Housing Covenant, the Owner will pay, without duplication, the Daily Amount to the City for every day that the breach continues after forty-five (45) days' written notice from the City to the Owner stating the particulars of the breach. For greater certainty, the City is not entitled to give written notice with respect to any breach of the Agreement until any applicable cure period, if any, has expired. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the City for the same.
- 9.2 The Owner acknowledges and agrees that a default by the Owner of any of its promises, covenants, representations or warranties set-out in the Housing Covenant also constitutes a default under this Agreement.

ARTICLE 10 DISPUTE RESOLUTION

- 10.1 If a dispute arises between the parties out of or in connection with this Agreement the parties agree that the following dispute resolution process will be used:
- (a) a meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute;
 - (b) if, within fourteen (14) days after such meeting or such further period agreed to by the parties in writing, the parties have not succeeded in negotiating a resolution of the dispute, the parties agree to try to resolve the dispute by participating in a structured negotiation conference with a mediator agreed upon by the parties or, failing agreement, under the Mediation Rules of Procedure of the British Columbia International Commercial Arbitration Centre, in which case the appointing authority is the British Columbia International Commercial Arbitration Centre; and
 - (c) after dispute resolution attempts have been made under sections 10.1(a) and 10.1(b), any remaining issues in dispute will be determined by arbitration under the *Arbitration Act* (British Columbia) if the parties mutually agree to arbitration, and failing such agreement, either party may commence an action in the British Columbia courts to resolve any remaining issues in dispute.

ARTICLE 11 MISCELLANEOUS

11.1 Funding Agreement

The Owner covenants and agrees that should the Owner wish to enter into a Funding Agreement for the Non-Market Units, the Owner will ensure that such Funding Agreement does not conflict with the terms of this Agreement. For greater clarity, any requirements contained in a Funding Agreement that exceed the requirements contained in this Agreement will not be considered a conflict.

11.2 Sale, Transfer or Disposition

The Owner agrees that it will not sell, transfer or otherwise dispose of the whole or any part of the Lands to any person, trust, corporation, partnership or other entity (in this section 11.2, a “**Purchaser**”) unless the Owner requires the Purchaser, as a condition precedent to the transfer, to enter into an assumption agreement with the Owner and the City, in form and content satisfactory to the City, pursuant to which agreement the Purchaser, beginning at the effective date of such transfer (in this section 11.2, the “**Effective Date**”), will unconditionally assume all of the Owner’s covenants and obligations hereunder and upon delivery of a fully executed copy of such assumption agreement to the City, the Owner

shall be released from any of its covenants and obligations hereunder which arise on or after the Effective Date (but, for greater certainty, the Owner will remain liable for breaches or non-observance or non-performance of the Owner's covenants and obligations contained herein occurring or arising prior to the Effective Date).

11.3 **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*;
- (b) the City may file notice of this Agreement in the LTO against the title to the Lands; and
- (c) this Agreement and, if applicable, any amendments thereto are binding on all persons who acquire an interest in the Lands.

11.4 **No Compensation**

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 City, for any decrease in the market value of the Lands or for any obligations on the part of the Owner and its successors in title which at any time may result directly or indirectly from the operation of this Agreement.

11.5 **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.

11.6 **Indemnity**

The Owner will indemnify and save harmless the City and each of its elected officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates from and against all claims, demands, actions, loss, damage, costs (including legal fees on a solicitor-client basis) 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, employees, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) any requirements or obligations hereunder with respect to the construction, maintenance, repair, ownership, lease, license, operation, or management of the

Lands or any Non-Market Unit, or the enforcement of any Tenancy Agreement; and/or

- (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

11.7 **Release**

The Owner hereby releases and forever discharges the City and each of its elected officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates 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:

- (a) any requirements or obligations hereunder with respect to the construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Non-Market Unit under this Agreement; and/or
- (b) the exercise by the City of any of its rights under this Agreement or an enactment.

11.8 **Survival**

The obligations of the Owner set out in this Agreement will survive the termination or discharge of this Agreement.

11.9 **Priority**

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

11.10 **City's Powers Unaffected**

This Agreement does not:

- (a) affect 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.

11.11 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 Eligible Tenant, or any future owner, lessee, occupier or user of the Lands, or any portion thereof, including any Non-Market 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.

11.12 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.

11.13 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 Burnaby
4949 Canada Way
Burnaby, BC V5G 1M2

Attention: Director, Legislative Services, with copies to City Solicitor and General Manager Planning and Development

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.

11.14 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.

11.15 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.

11.16 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 by the City in exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

11.17 Sole Agreement

This Agreement, and any documents signed by the Owners contemplated by this Agreement (including, without limitation, the Housing Covenant), represent the whole agreement between the City and the Owner respecting the use and occupation of the Non-Market Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement. In the event of any conflict between this Agreement and the Housing Covenant, this Agreement will, to the extent necessary to resolve such conflict, prevail.

11.18 Further Assurance

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

11.19 Covenant Runs with the Lands

This Agreement burdens and runs with the Lands and 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.

11.20 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.

11.21 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.

11.22 Applicable Law and Jurisdiction

Unless the context otherwise requires, 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. The parties agree to attorn to the exclusive jurisdiction of the courts of British Columbia.

11.23 Deed and Contract

By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

11.24 Counterparts

This Agreement may be executed in counterparts and delivered by facsimile or pdf email transmission, and each such counterpart, facsimile or pdf email transmission copy shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

11.25 Joint and Several

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

signature page attached.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

WILLINGDON AVENUE INVESTMENTS LTD.,

by its authorized signatory(ies):

Per: _____

Name:

Title:

Per: _____

Name:

Title:

CITY OF BURNABY,

by its authorized signatory:

Per: _____

Name:

Title:

APPENDIX A
STATUTORY DECLARATION

CANADA PROVINCE OF BRITISH COLUMBIA))))	IN THE MATTER OF A HOUSING AGREEMENT WITH CITY OF BURNABY ("Housing Agreement")
--	------------------	--

TO WIT:

I, _____ of _____ (the "**Owner**"), British Columbia, do solemnly declare that in my capacity as a director or officer of the Owner:

1. I am an authorized signatory of the Owner of the Non-Market Units (as defined in the Housing Agreement) at _____, 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 Non-Market Units.

3. For the period from _____ to _____, the Non-Market Units were occupied only by Eligible Tenants (as defined in the Housing Agreement) whose addresses and gross cumulative income appear below:

[Addresses and incomes of Eligible Tenants occupying Required Inclusionary Units]

4. The unit size, occupancy status and rents charged each month for the Non-Market Units are as follows:

[Type of Non-Market Unit, Unit Size, Occupancy Status, Tenancy Start Date and Rents for each Non-Market Unit]

5. The number of Replacement Rental Units that are rented to Returning Tenants were: _____

6. The number of Required Inclusionary Units that were rented to existing Burnaby residents were: _____

7. The number of Required Inclusionary Units offered to tenants who were displaced by the rezoning application associated with the Prior Site and the Housing Agreement but who are not eligible as Returning Tenants were: _____

8. The number of Required Inclusionary Units occupied by tenants who were displaced by the rezoning application associated with the Prior Site and the Housing Agreement but who are not eligible as Returning Tenants were: _____
9. Unless the Owner, or the third party contracted to manage the Non-Market Units, is exempt from the requirement to be licensed under the *Real Estate Services Act*, attached as Exhibit “A” is a true copy of the current and valid Rental Property Management licence issued by the BC Financial Services Authority for the Owner, or the party contracted to manage the Non-Market Units, together with a summary of their experience managing rental properties.
10. The Owner is in compliance with the Owner's obligations under the Housing Agreement, and other charges in favour of the City noted or registered in the Land Title Office against title to the land on which the Non-Market Units are situated.
11. 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

Exhibit “A” to Appendix A

A. Licence

[Unless the Owner or third party contracted to manage the Non-Market Units is exempt from the requirement to be licensed under the *Real Estate Services Act*, attach Rental Property Management licence]

B. List of rental property management experience

[List relevant rental property management experience for the Owner or third party contracted to manage the Non-Market Units, as applicable]

APPENDIX B**INSURANCE**

1. The Owner, at its own cost, maintain throughout the term of the Housing Agreement, all of the following insurance:
 - (a) “all risks” (including flood and earthquake) property insurance on all insurable property and broad form boiler and machinery insurance in respect of the Lands (the “**Property**”), and all objects owned, leased, or for which the Owner is legally responsible, or operated by the Owner or by others on behalf of the Owner in the Property or relating to or serving the Property, with reasonable deductibles, and which insurance will cover all property owned or leased by the Owner or for which the Owner is legally liable located on or about the Property, including but not limited to, all buildings, structures, contents, and the Owner’s improvements, in an amount not less than the full appraised replacement cost thereof and including a by-law endorsement; and
 - (b) commercial general liability insurance written on an occurrence form with inclusive limits of not less than Five Million Dollars (\$5,000,000) per occurrence, which insurance will provide indemnity against claims arising out of bodily injury and/or death to persons and against loss or damage to or destruction of the property of others, including the property of the City of Burnaby (the “**City**”), and for the loss of use thereof, and will also:
 - (i) include all operations of the Owner, owners’ protective, products, completed operations, intentional acts to protect persons or property, personal injury, employers and blanket contractual liability coverage, provisions for cross liability, severability of interests and occurrence property damage, and
 - (ii) name the City as an additional insured.
2. The Owner will deliver to the City certificates evidencing the required insurance signed by the Owner’s insurers or, if required by the City, certified copies of the insurance policies.
3. The Owner will cause each policy of insurance to:
 - (c) be primary, non-contributing with, and not in excess of any other insurance available to the City;
 - (d) contain an endorsement prohibiting cancellation or adverse material change in coverage without thirty (30) days’ prior written notice to the City by registered mail;

- (e) contain a waiver, where the City is insured, in respect of the respective interests of the City of any provision in any such insurance policies with respect to any breach or violation of any warranties, representations, declarations or conditions in such policies;
- (f) contain a waiver or waivers of subrogation by the insurer in favour of the City; and
- (g) be in a form and with such insurers reasonably satisfactory to the City.

PRIORITY AGREEMENT

With respect to a Housing Agreement (the “**Housing Agreement**”) made pursuant to Section 483 of the *Local Government Act* between the City of Burnaby and Willingdon Avenue Investments Ltd. (the “**Owner**”) with respect to the lands and premises legally known and described as:

Parcel Identifier: 032-229-496

Lot 2 District Lots 151 and 153 Group 1 New Westminster District Plan EPP126819

Except part in Air Space Plan EPP145377

(the “**Lands**”)

Royal Bank of Canada (the “**Chargeholder**”) is the holder of a Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the New Westminster Land Title Office under numbers CA6410780 and CA6410781, respectively, (collectively, the “**Bank Charges**”).

The Chargeholder, being the holder of the Bank Charges, by signing below, in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder), hereby consents to the granting of the covenants in the Housing Agreement by the Owner and hereby covenants that the Housing Agreement will bind the Bank Charges in the Lands and will rank in priority upon the Lands over the Bank Charges as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

ROYAL BANK OF CANADA

by its authorized signatory(ies):

Per: _____

Name:

Per: _____

Name:

PRIORITY AGREEMENT

With respect to a Housing Agreement (the “**Housing Agreement**”) made pursuant to Section 483 of the *Local Government Act* between the City of Burnaby and Willingdon Avenue Investments Ltd. (the “**Owner**”) with respect to the lands and premises legally known and described as:

Parcel Identifier: 032-229-496

Lot 2 District Lots 151 and 153 Group 1 New Westminster District Plan EPP126819

Except part in Air Space Plan EPP145377

(the “**Lands**”)

Travelers Insurance Company of Canada (the “**Chargeholder**”) is the holder of a Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the New Westminster Land Title Office under numbers CB1784288 and CB1784289, respectively, (collectively, the “**Bank Charges**”).

The Chargeholder, being the holder of the Bank Charges, by signing below, in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder), hereby consents to the granting of the covenants in the Housing Agreement by the Owner and hereby covenants that the Housing Agreement will bind the Bank Charges in the Lands and will rank in priority upon the Lands over the Bank Charges as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

TRAVELERS INSURANCE COMPANY OF CANADA

by its authorized signatory(ies):

Per: _____

Name:

Per: _____

Name:

SCHEDULE “A”
Tenant Assistance Policy



Tenant Assistance Policy

1.0 POLICY INTENT

The Tenant Assistance Policy establishes enhanced standards for accommodating and assisting tenants of multiple family market rental buildings who are displaced from their homes as a result of major renovation or redevelopment that requires rezoning.

Additional guidance to applicants and tenants regarding this policy is detailed in the *Tenant Assistance Policy Implementation Guide (the guide)*, which should be referenced in conjunction with this document.¹

2.0 ROLE OF BRITISH COLUMBIA RESIDENTIAL TENANCY ACT

British Columbia's *Residential Tenancy Act (RTA)* regulates all tenancies in residential units across the province. It is essential for both landlords and tenants to understand their rights and responsibilities under the *RTA*.

The Tenant Assistance Policy does not replace requirements set out in the *RTA*. Instead, this policy is intended to supplement the *RTA*, establishing additional measures to mitigate challenges and concerns experienced by Burnaby renters.

3.0 APPLICABILITY

3.1 Housing Type

This policy applies to purpose-built market rental buildings with five or more dwelling units. Purpose-built market rental includes:

- private rental housing with rents determined by the market; and/or,
- private stratified housing required to operate as market rental housing in perpetuity by restrictive covenant or housing agreement.

¹ The Tenant Assistance Policy Implementation Guide will be provided to Council at time of final approval of the Tenant Assistance Policy.

This policy does not apply to non-market rental and co-operative housing.

3.2 Application Type

This policy applies to rezoning applications that impact the applicable housing type and requires tenants to be displaced due to demolition or major renovation. Building Permits that are not associated with a rezoning application are not subject to the policy.

Rezoning applications that have not received Second Reading by Council as of the effective date of this policy are subject to this policy, provided the application pertains to the applicable housing type.

3.3. Eligible Tenants

Benefits prescribed under this policy are provided on a household basis and apply to tenants named on a tenancy agreement with the landlord at the time the rezoning application is submitted to the City. In the absence of a tenancy agreement, benefits will be provided on a household basis to all tenants who reside in the affected unit.

3.4 Ineligible Tenants

The following tenants are not eligible for benefits under this policy, but may be included at the applicant's discretion:

- **tenants who begin their tenancy after the rezoning application is submitted;**
- **tenants who live in buildings where the rezoning application has received Second Reading by Council as of the effective date of this policy;**
- **tenants who have or will be receiving benefits under this policy for another active rezoning application in which the replacement units have not received a certificate of occupancy from the City;**
- **tenants who sub-lease their unit and do not have a tenancy relationship with the original landlord, unless the original tenant chooses to transfer benefits, in part or in whole, to the sub-tenant in writing; or,**
- **roommates or occupants who do not have a tenancy relationship with the original landlord, unless the head-tenant chooses to transfer benefits, in part or in whole, to the roommate or occupant in writing**

Landlord obligations to tenants under the *RTA* continue to apply, even if tenants are ineligible under this policy.

3.5 Units Vacant at Time of Rezoning Application

Tenants that formerly resided in a unit that is vacant at the time of rezoning application may be eligible under this policy, if the unit is vacant for the following reasons:

- landlord's use of property prior to rezoning application;
- compliance with a government order;
- tenant buy-out;
- frustrated tenancy; or,
- unit was formerly occupied by a caretaker, manager or superintendent

For more information on vacant units, please refer to the *guide*.

4.0 TENANT ASSISTANCE

Applicants must provide tenants with the following benefits:

4.1 Relocation Assistance

A Tenant Relocation Coordinator must be hired or appointed by the applicant to assist tenants in finding alternate housing options where required, and to deliver upon the items outlined under this policy and the accompanying *guide*.

The Tenant Relocation Coordinator must be responsive to tenants, including being available to answer tenants questions on phone and email at regular and consistent hours. A dedicated email address for the Tenant Relocation Coordinator must be established and contact information for the Tenant Relocation Coordinator should be posted within the building in accessible locations frequented by tenants.

4.2 Financial Compensation

Tenants may select one of two financial compensation options, paid for by the applicant:

(1) Rent Top-Up in Applicant Secured Temporary Housing

Under this option, the applicant or Tenant Relocation Coordinator is responsible for finding three temporary housing options for tenants. Options for temporary housing should be located in Burnaby, ideally within the same quadrant of Burnaby as the tenant currently lives in, unless otherwise specified by the tenant. Options are restricted to Metro Vancouver municipalities. Transportation assistance to view temporary housing options must be provided by the applicant, if requested by the tenant.

The tenant will continue to pay their existing rent amount with any overage ("top-up") paid for by the applicant. The applicant is further responsible for payment of additional security and pet damage deposits for the temporary tenancy, above that which has been collected for the existing tenancy, if applicable.

Permitted *RTA* allowable rent increases will be calculated based on the proportion of rent paid for by the tenant and applicant. The "top-up" provided by the applicant will end the last day of the month proceeding the determined move-in date for a replacement unit, irrespective of the tenant relocating into the replacement unit.

or

(2) Rent Top-Up in Tenant Secured Temporary Housing

Under this option, the tenant chooses to find their own temporary housing at their chosen rent amount. Tenants are entitled to receive a "top-up" from the applicant, up to a maximum of the greater of the following formulas:

(Most recent CMHC Rental Market Survey (RMS) median rent for the applicable RMS zone and bedroom type + 30 percent) – current rent of tenant

OR

Current rent of tenant x 15 percent

Tenants who elect to secure their own housing are entitled to receive the rent "top-up" at the time that all remaining tenants in the application site receive a Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit, or upon City issuance of a demolition permit, whichever occurs first.

Permitted *RTA* allowable rent increases will be calculated based on the proportion of rent paid for by the tenant and applicant. The "top-up" provided by the applicant will end the last day of the month proceeding the determined move-in date for a replacement unit, irrespective of the tenant relocating into the replacement unit.

Exception:

On an exception-only basis, tenants may receive a one-time lump sum payment as compensation from the applicant, equal to the greater of the following formulas:

(Most recent CMHC Rental Market Survey (RMS) median rent for the applicable RMS zone and bedroom type + 30 percent) – current rent of tenant

OR

(Current rent of tenant x 15 percent) x 36 months

Exceptions to which tenants may receive a one-time lump sum payment will be reviewed and approved by the Director of Planning and Building and may include, but are not limited to, the following reasons:

- purchasing a property;
- entering assisted living or other long-term care facility;
- entering military service;
- relocation to outside of British Columbia; or,
- relocation to a living arrangement that does not require ongoing rental payments.

Documentation must be provided to the City to verify exception requests prior to approval.

4.3 Heating Supplement

If a tenant was displaced from a unit where heating costs were included in the rent and selects a temporary housing unit that is not inclusive of heating costs, the applicant must provide a monthly heating supplement to the tenant in accordance with BC Housing's Monthly Heat Allowance Rates.

4.4 Moving Assistance

Tenants may select one of two moving assistance options, provided on a household basis, paid for by the applicant:

1. An insured moving company arranged by the applicant
 - To include boxes and/or packing assistance, if requested
 - Only available to tenants relocating within Metro Vancouver

or

2. A flat rate payout, based on existing bedroom type, of \$900 for studio or one-bedroom units, \$1200 for two-bedroom units, and \$1,400 for three bedroom or larger units

4.5 Replacement Unit

Under the Rental Replacement Policy, tenants are eligible for the right of first refusal for a replacement rental unit in the redeveloped building. At a minimum, tenants will be offered a replacement unit that has the same number of bedrooms as the unit they formerly had at the application site. Where tenants have identified accessibility requirements in their Household Needs Assessment, the applicant must construct units in accordance with the tenant's accessibility needs.

In perpetuity, rents paid by tenants in replacement units are to be the lesser of the following formulas:

Final rent amount at application site + RTA allowable rent increases in intervening years since vacating application site

OR

Most recent CMHC Rental Market Survey (RMS) median rent for the applicable RMS zone and bedroom type – 20 percent

Tenants are to be provided the same moving assistance options outlined in Section 4.4 to move into the replacement unit.

5.0 IMPLEMENTATION

5.1 Tenant Compensation Selection

As of the effective date of this policy, the applicant must not enter into any compensation agreement with tenants until a City-attended group tenant meeting has occurred. Tenants are to communicate their selected benefit options directly to the City.

5.2 Bonding

To ensure compensation obligations are fulfilled, bonding from the applicant is required.

The applicant must provide a cost estimate of all tenant assistance benefits to the City prior to Final Adoption of the rezoning bylaw. After review, the City will require bonding in the determined amount, plus a 1% Administration Fee (plus GST), to be submitted to the Planning Department by certified cheque or irrevocable Letter of Credit.

The bonding will be released upon review and approval of the final report prepared after all replacement units have been occupied by the Director of Planning and Building

6.0 COMMUNICATION AND REPORTING

Applicants and/or Tenant Relocation Coordinators are expected to be in regular communication with tenants and support tenants throughout the relocation process. Applicants and/or Tenant Relocation Coordinators are further expected to be in regular communication with the City of Burnaby's Planning Department, which will provide oversight on all tenant assistance activities.

Please refer to the *Tenant Assistance Policy Implementation Guide* for detailed information on document submission and meetings required as part of this policy.

6.1 Group Tenant Meeting

Within 60 days of Council authorizing Planning Department staff to work with the applicant, the applicant must convene a meeting with all tenants in the building to introduce the Tenant Relocation Coordinator, answer tenant questions, provide and explain the Household Needs Assessment form, and obtain consent for City staff to contact tenants and use their information to monitor implementation of the Tenant Assistance Policy. City staff must be present at this meeting.

6.2 Tenant Assistance Plan

The following documents, which together comprise the Tenant Assistance Plan, must be submitted to the City at the following intervals:

At submission of rezoning application:

- Documentation of all units in the building, including vacant units, including the size and bedroom type, rental rates, tenancy information, and other pertinent information in the approved forms
- Signed Freedom of Information and Protection of Privacy Act compliance form

Within two months of Group Tenant Meeting:

- Household Needs Assessment

With demolition permit application:

- Confirmation of benefits selected by tenants

Within one month of the building being vacant or prior to Final Adoption of rezoning bylaw:

- Tenant Relocation Report

Two months prior to occupancy of replacement units:

- Status Report of Impending Moves into Replacement Units

One month after occupancy of replacement units:

- Final report of New Tenancies in Replacement Units

6.3 Freedom of Information and Protection of Privacy Act

To protect tenants' private information, all information received by the applicant and the City must be administered in compliance with the Freedom of Information and Protection of Privacy Act.

Approved in principle by Burnaby City Council on _____
Approved by Burnaby City Council on _____



CHECKLIST

SCHEDULE "B"

Purpose: This checklist is intended to help ensure that rezoning applicants meet the requirements of the Tenant Assistance Policy (TAP). It does not replace the policy, but is intended to help navigate the requirements within. It does not cover other requirements or conditions related to the rezoning process. It is subject to updates.

Instructions:

- *City staff send this checklist to Rezoning Applicants with pre-application discussions, when other information such as allowed FAR and Rental Use Zoning Policy requirements are shared.*
- *Rezoning Applicants complete and submit the checklist as follows:*
 - *Part A is to be submitted to the City prior to Final Adoption of a Rezoning Bylaw.*
 - *Part B is to be submitted prior to occupancy of the development or at any time upon request by the City.*
 - *Part C is to be submitted to the City one month after occupancy of replacement units, as part of the Final Tenant Assistance Report.*

CHECKLIST



Part A: Prior to Final Adoption of a Rezoning Bylaw

These tasks must be completed as per the timing indicated below. All Part A tasks must be completed as a condition of Final Adoption.

At Submission of Rezoning Application

- ☐ Sign and submit the Information Sharing Agreement to the City
- ☐ Establish Tenant Relocation Coordinator(s) with a dedicated email for the rezoning application and provide contact information to the City
- ☐ Provide a rent roll to the City, with all units in all buildings listed and additional details including: vacant units, start date of tenancies, number of bedrooms, current rental rate, and other pertinent information
- ☐ Deliver a hard copy of the TAP to each unit in each building at the rezoning site
- ☐ Deliver a hard copy letter confirming eligibility (or ineligibility) and outlining the tenant assistance process to each unit in each building at the rezoning site
- ☐ Post contact information (at minimum, email and phone number) for the Tenant Relocation Coordinator(s), City of Burnaby Renters Office and other tenant resources (at minimum, the Residential Tenancy Branch and Tenant Resource and Advisory Centre) within accessible locations with high visibility and frequented by tenants.

Within 60 Days of Council Authorization to Work on Suitable Plan of Development

- ☐ Host a Tenant Meeting with all tenants in the building(s)
- ☐ Provide the Tenant Assistance Form to all eligible tenants in the building(s)

CHECKLIST

**Prior to Final Adoption**

- ☐ Provide a Tenant Relocation Report to the City describing the status of relocation, in form and content required by the City, and at minimum, describing the relocation status of each eligible tenant as follows:
 - Information about affected unit and household (i.e., unit number, number of bedrooms, designated tenant, rent at move-out, tenancy dates)
 - Address of interim / new housing
 - Type of financial and moving compensation provided and amounts used to calculate financial compensation (i.e., rent in interim unit, applicable CMHC median rent, rent top-up amount, lump sum amount)
 - Current contact information (phone and/or email)

(this is required prior to Final Adoption *or* within one month of the building being vacant)
- ☐ Submit to the City a cost estimate of compensation already paid for calculating the bond amount
- ☐ Submit bonding in the amount calculated by the City of Burnaby
- ☐ Enter into a register Section 219 Covenant to address TAP obligations and use and release of bonding
- ☐ Enter into Housing Agreement with the City and register Section 219 Covenant on title¹ to secure replacement rental units and other below-market rental units in the new development to be rented at the following rates:

For a returning tenant, at the tenant's rent at the time of move out, plus any annual rent increases permitted under the Residential Tenancy Act.

For all other tenants, at 20% below the applicable CMHC median rent or other non-market rate approved by the City.

¹ The registration of the Housing Agreement and Housing Covenant may be deferred at the City's discretion beyond Final Adoption. In that circumstance, a Section 219 No Occupancy Covenant will be registered on title prior to Final Adoption, guaranteeing document registration prior to the issuance of an occupancy permit for the rental building.

CHECKLIST



Ongoing Tasks

- ☐ Notify the City when any notice to end tenancy has been issued, including the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit
- ☐ In accordance with the TAP, provide financial compensation, moving assistance, and, where requested, additional support to tenants who are relocating
- ☐ Document compensation and assistance provided to eligible tenants

CHECKLIST



Part B: After Final Adoption of a Rezoning Bylaw and Before Occupancy

These tasks must be completed as per the timing indicated below.

Ongoing Tasks

- ☐ Notify the City when any notice to end tenancy has been issued, including the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit
- ☐ In accordance with the TAP, provide financial compensation, moving assistance, and, where requested, additional support to tenants who are relocating
- ☐ Document compensation and assistance provided to eligible tenants

Replacement Units

- ☐ Regularly communicate with eligible tenants regarding the status of replacement units as per City guidelines, including at 6 months and 3 months prior to anticipated occupancy
- ☐ 45 days before assigned move-in date, offer each eligible tenant household tenancy agreements for a replacement rental unit with the same number of bedrooms as their original unit at the rezoning application site, which meets any accessibility requirements identified by the tenant in their Tenant Assistance Form
- ☐ In accordance with the TAP, provide moving assistance and additional support where requested to eligible tenants returning to replacement units



CHECKLIST

Part C: After Occupancy of Replacement Units

One Month Following Occupancy of Replacement Units

- ☐ Provide to the City a Final Tenant Assistance Report, in form and content required by the City, and at minimum, describing the relocation status of each eligible tenant as follows:
 - breakdown of compensation amounts and types provided;
 - acceptance or decline of replacement unit;
 - for those who accepted replacement unit:
 - date tenant moved into replacement unit;
 - rent payable by tenant for replacement unit, including separately identifying rent at move-out and increases applied;
 - for those who declined replacement units:
 - city or town where tenant moved to
 - reason for declining replacement unit, if tenant agrees to share such information
- ☐ Completed Tenant Assistance Policy Checklist

SCHEDULE “B”
TAP Exception Letter

TENANT ASSISTANCE POLICY CONFIRMATION OF EXCEPTION



March 13, 2024

FILE: 49500 20

Wesgroup Properties Ltd.
Attn: Evan French
Suite 2000 – 595 Burrard Street
Vancouver, BC V6C 0E4
E: efrench@wesgroup.ca

SUBJECT: CONFIRMATION OF TENANT ASSISTANCE POLICY EXCEPTION

ADDRESS: 6280 and 6350 Willingdon Avenue

**LEGAL: LOT "E" and "F" DISTRICT LOTS 151 AND 153 GROUP 1 NEW
WESTMINSTER DISTRICT PLAN 2069**

REZONING REFERENCE: 18-03

EXCEPTION:

With respect to rezoning reference #18-03, the City has determined exceptions to the eligibility criteria related to dates that establish eligibility for financial compensation and a replacement rental unit under the Tenant Assistance Policy.

The applicant will be required to financially compensate only those households that had an active written or unwritten tenancy agreements in place as of January 25, 2018 (date application for rezoning was submitted to the City) and continued their tenancy to at least December 2, 2019 (revised Tenant Assistance Policy approved-in-principle by Council).

The applicant will be required to provide the right of first refusal for a replacement rental unit to all of those households that had an active written or unwritten tenancy agreement in place as of December 2, 2019 (revised Tenant Assistance Policy approved-in-principle by Council).

RATIONALE FOR EXCEPTION:

The February 2018 Tenant Assistance Policy established the eligibility date for compensation to be the date Council authorized the Planning Department to work with the applicant on a suitable plan for development. In December 2019, the Tenant

TENANT ASSISTANCE POLICY CONFIRMATION OF EXCEPTION



Assistance Policy was revised and for in-stream applications that had not received Council authorization as of December 2, 2019, the eligibility date was considered to be the date that the application was submitted to the City.

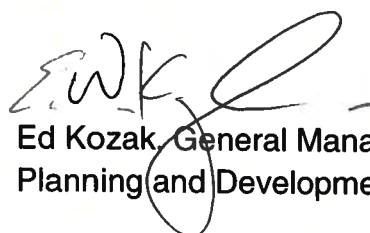
As a consequence of this change, tenants that had moved out prior to December 2, 2019 without any eligibility for compensation would now be considered eligible for retroactive compensation and those tenants that moved in after the application date and are still residing at the application site on the Council authorization date would not be considered eligible.

To transition to the revised policy, the City is issuing this exception so that the applicant is not required to compensate tenants that had moved out of their rental unit and were not entitled to compensation under the previous version of the Tenant Assistance Policy, and ensure that tenants who were residing at the application site on the date of the policy change continue to retain their eligibility for a replacement rental unit that they may have become entitled to under the previous policy.

These exceptions will not result in an over allocation of replacement rental units.

ADDITIONAL COMMENTS

Any portion of an agreement or addendum to a written tenancy agreement that declares a tenant (that is eligible under this exception) as ineligible is not considered valid for the purpose of establishing eligibility under the Tenant Assistance Policy.



Ed Kozak, General Manager
Planning and Development

JBS/PK/WT