# **RECITALS:**

A. Constance669 Developments Ltd. (the "**Transferor**" or the "**Owner**") is the registered owner in fee-simple of those lands with a current civic address of 669 Constance Avenue, more particularly described in Item #2 of Form C to which these Part 2 - Terms of Instrument are appended, in the Township of Esquimalt in the Province of British Columbia, namely:

PID: 030-431-026 Lot 1 Suburban Lots 43 and 44 Esquimalt District Plan EPP76107 (the "Lands").

- B. The Transferee is the Corporation of the Township of Esquimalt ("**Transferee**" or "**Township**").
- C. Acknowledging that it is in the public interest that the development and use of the Lands be limited, and as a condition of rezoning the Lands to facilitate the subdivision and the development of the Lands for the construction of a multi-storey multiple-family residential building on the Lands (the "**Development**"), the previous owner of the Lands granted a Covenant with Indemnity to the Township in July of 2018, in accordance with section 219 of the *Land Title Act*, registered July 10, 2018, under charge number CA6919940 (the "**Development Covenant**").
- D. The previous owner did not construct the Development and the current Owner has instead submitted an alternate development proposal.
- E. As a result of changes to the plans for, and intended use of, the Development, the Transferor has requested amendments to the Development Covenant, and the parties have agreed to amend the Development Covenant as set out in this Agreement (the "Modification").
- F. Section 219 of the *Land Title Act* gives authority for a covenant and indemnity, whether of a negative or positive nature, to be registered against the Land and granted in favour of the Transferee with provisions:
  - in respect of the use of land or the use of a building on or to be erected on land;
  - that land is to be built on in accordance with the covenant;
  - that land is not to be built on or subdivided except in accordance with the covenant;
  - that land is not to be used, built on or subdivided; and
  - that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant.

G. For convenience purposes, an updated and consolidated version of the Development Covenant, as amended by this Modification, is attached as Schedule 1 to this Modification.

**NOW THEREFORE** in consideration of the payment of the sum of \$10.00 by the Transferee to the Transferor (receipt and sufficiency acknowledged), the mutual covenants and agreements contained in this Modification agreement, and for other good and valuable consideration, the parties covenant and agree as to the following, including under Section 219 of the *Land Title Act*:

- 1. The Owner and the Township agree the Development Covenant is hereby modified as follows:
  - (a) Replacing the defined term "Corvette Landing" with the defined term "Constance House" in sections 1(a)(i), 1(e), 1(e)(v), 1(f), 1(g)(i), 1(g)(ii), 1(g)(ii)(A), 1(g)(ii)(B), 1(h), 1(j), 1(m), 1(n), and 1(n)(iv), and in the footer.
  - (b) Adding a new recital C.1 after Recital C, that reads as follows:
    - "C.1. In April, 2021, Constance669 Developments Ltd. the registered owner of the Lands and successor owner to Standingstone Developments Ltd., sought to amend the development proposal to no longer pursue development in accordance with the plans for Corvette Landing, and the Owner and Township agreed to amend this Agreement to require that the Lands be developed in accordance with the new development proposal which includes the construction of a 6 storey multiple-family residential building consisting of approximately 83 rental dwelling units on the Lands, including ten (10) designated units with accessibility features and six (6) affordable units, to be known as "Constance House" ("Constance House" or the "Development").";
  - (c) Deleting the words "dated stamped received by the Township "February 1, 2018"" from subsection 1(a)(i);
  - (d) Adding a new subsection 1(a.1) which reads as:

# "Affordable Units

- (a.1) The Owner covenants and agrees that the Lands will not be built upon, used, or continue to be used except for the Development that includes a minimum of six (6) Dwelling Units, including three (3) one-bedroom housing units, two (2) two-bedroom housing units, and one (1) studio housing unit, that are affordable rental units (the "Affordable Units") (meaning that these housing units are to be occupied by households with a gross household income at or below the British Columbia Housing Income Limits for the Victoria region at a rent of no more than 30% of each of such households' gross annual household income), as further defined and secured by a Housing Agreement under section 483 of the Local Government Act.";
- (e) Adding a new subsection 1(a.2) after section 1(a.1), which reads as:

### "No Further Subdivision

(a.2) The Owner covenants and agrees that the Lands, or any building constructed on

the Lands, must not be further subdivided (including under the Strata Property Act) and, for greater certainty, the building, and dwelling units, it constructs upon the Lands must not be subdivided or stratified or otherwise divided into separate ownership.";

- (f) Deleting sections 1(b), 1(c) and 1(d) and the heading that reads "Passive House Certification";
- (g) Deleting the words "or subdivided (including under the *Strata Property Act*)," from section 1(e);
- (h) Deleting the words ", subdivided (including under the *Strata Property Act*)," from section 1(f);
- (i) Deleting the words "subdivided (including under the *Strata Property Act*), or" from section 1(h);
- (j) Replacing the word "three" with the word "two" before the words "boulevard trees" in subsection 1(h)(iii)(A);
- (k) Replacing the word "three" with the word "four" before the words "boulevard trees" in subsection 1(h)(iii)(B) and deleting the word "and" at the end of the subsection;
- (l) Deleting subsection 1(h)(iii)(C);
- (m) Deleting the words ", subdivided (including under the *Strata Property Act*)," from section 1(j);
- (n) Deleting section 1(k) and the heading that reads "Parking Improvements";
- (o) Deleting section 1(1);
- (p) Deleting the words "subdivided (including under the *Strata Property Act*) or" and "subdivision approval or" from section 1(m);
- (q) Replacing the semicolon and the word "or" at the end of section 1(n)(vi)(A) with a period;
- (r) Deleting subsection 1(n)(vi)(B);
- (s) Adding a new subsection 1(o) following subsection 1(n)(vi)(A) which reads as follows:

# "Energy Step Code

- (o) The Lands must not be built upon except in accordance with all the following:
  - i. The Owner shall not commence any construction or development activities upon the Lands, and shall not apply for a building permit, until it has submitted to the Township such architectural design drawings, building specifications, and any other professional reports and information that the

- Township may reasonably require, including a report or letter from the Owner's architect or other appropriate consulting professional, that the principal building to be constructed on the Lands is designed to achieve the Performance Standard.
- ii. The Owner shall construct the Development so that it achieves the Performance Standard, and shall do so strictly in accordance with the design and specifications provided to the Township under subsection 1(o)(i) of this Agreement.
- iii. The Owner agrees that the Township's review and approval of the designs, specifications, and reports set out in subsection 1(o)(i) does not relieve the Owner of the obligation to construct the Development in accordance with the requirements of the BC Building Code and the bylaws of the Township.
- iv. In this Agreement the following terms have the following meanings:
  - A. "Performance Standard" means the requirements of Step 4 (R2000) of the BC Energy Step Code."
- (t) Adding new section 11.1 after section 11 which reads as follows:
  - "11.1 The term "Owner" in this Agreement includes the Owner and its successors in title to the Lands, including Constance669 Developments Ltd., Inc. No. BC1286123."
- (u) Replacing Schedule "A" with the architectural plans attached as Schedule "2" to this Modification; and
- (v) Replacing Schedule "C" with the landscape plan attached as Schedule "3" to this Modification.
- 2. The Transferor covenants and agrees to indemnify and save harmless the Transferee from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which anyone has or may have against the Transferee or which the Transferee incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of the Agreement or this Modification, or the use of the Land contemplated under the Agreement or this Modification.
- 3. As a personal agreement between the parties, the Transferor releases and forever discharges the Transferee of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which the Transferor can or may have against the Transferee for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of the Agreement or this Modification, the breach of any covenant in this Modification, or the use of the Land contemplated under this Modification.
- 4. The release and indemnity provisions of this Modification survive its termination.

- 5. This Modification is an amendment to the Development Covenant, which the parties agree is ratified, approved and confirmed in each and every respect. Unless specifically amended by this Modification, all of the terms and conditions of the Development Covenant remain in full force, unamended.
- 6. At the Transferor's sole cost, the Transferor must do everything necessary to secure priority of registration and interest for this Modification over all encumbrances of a financial nature.
- 7. The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Modification.
- 8. The Transferor, as a personal covenant between the parties, agrees to pay the legal fees and land title office costs of the Transferee in connection with the preparation and registration of this Modification.

# **Priorities**

9. **FIRST WEST CREDIT UNION, INC NO. FI 156,** (the "Chargeholder"), the registered holder of a charge by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. **CA8815376,** and **CA8815377,** respectively (the "Charges"), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to the Chargeholder (receipt and sufficiency acknowledged), that the Modification will be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if the Modification had been dated and registered prior to the Charges. The Owner and Township acknowledge that this Modification has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.

The Transferor and Transferee acknowledge that this Covenant Modification has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.

# SCHEDULE "1" to 2021 Covenant Modification

# Amended and Consolidated Covenant

#### **TERMS OF INSTRUMENT - PART 2**

#### **SECTION 219 COVENANT**

#### RECITALS:

A. Standingstone Developments Ltd. (the "Transferor" or the "Owner") is the registered owner in fee-simple of those lands with a current civic address of 669 Constance Avenue, more particularly described in Item #2 of Form C to which these Part 2 - Terms of Instrument are appended, in the Township of Esquimalt in the Province of British Columbia, namely:

PID: 030-431-026
Lot 1 Suburban Lots 43 and 44 Esquimalt District Plan EPP76107
(the "Lands").

- B. The Transferee is the Corporation of the Township of Esquimalt ("Transferee" or "Township").
- C. The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 107 to facilitate the subdivision and the development of the Lands for the construction of a 12 storey multiple-family residential building consisting of approximately 83 stratified dwelling units (the "Strata Lots") on the Lands to be known as "Corvette Landing", further to Zoning Bylaw, 1992, No. 2050, Amendment Bylaw No. 2915 (the "Rezoning Bylaw"), and acknowledging that it is in the public interest that the use and development of the Lands be limited, the Owner has volunteered and wishes to grant this covenant to the Township, and the Township has accepted this covenant and required its registration as a condition of rezoning (the "Agreement").
- C.1 In April, 2021, Constance669 Developments Ltd. the registered owner of the Lands and successor owner to Standingstone Developments Ltd., sought to amend the development proposal to no longer pursue development in accordance with the plans for Corvette Landing, and the Owner and Township agreed to amend this Agreement to require that the Lands be developed in accordance with the new development proposal which includes the construction of a 6 storey multiple-family residential building consisting of approximately 83 rental dwelling units on the Lands, including ten (10) designated units with accessibility features and six (6) affordable units, to be known as "Constance House" ("Constance House" or the "Development").
- D. Section 219 of the Land Title Act gives authority for a covenant and indemnity, whether of a negative or positive nature, to be registered against the Lands and granted in favour of the Township with provisions:
  - in respect of the use of land or the use of a building on or to be erected on land;

Rezoning Covenant Constance House (669 Constance) 1095475-2

- that land is to be built on in accordance with the covenant;
- that land is not to be built on or subdivided except in accordance with the covenant;
- · that land is not to be used, built on or subdivided; and
- that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant.

**NOW THEREFORE** in consideration of the payment of the sum of \$10.00 by the Township to the Owner (receipt and sufficiency acknowledged), the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the parties covenant and agree as to the following, including under Section 219 of the *Land Title Act*:

#### **Restrictions and Requirements**

 Notwithstanding broader or greater uses, density or other regulations in the Township's Zoning Bylaw, as amended from time to time, the Owner covenants and agrees with the Township that the Land will not be built on, subdivided, or used except in accordance with all of the following:

#### Development in compliance with Plans, including 10 Units with Accessibility Features

- (a) The Owner covenants and agrees that the Lands will not be built upon or used except in general compliance with:
  - (i) the plans entitled "Constance House", the originals of which are with the Township's Development Services Department, with a copy attached as Schedule "A" for convenience only; and
  - (ii) the "Basic Adaptable Housing" plans and specifications attached as Schedule "B" to this Agreement, for a minimum of ten (10) residential dwelling units;

all, however, subject to such reasonable modifications specifically referenced and approved in accordance with a Development Permit approved and issued by the Township.

(a.1) The Owner covenants and agrees that the Lands will not be built upon, used, or continue to be used except for the Development that includes a minimum of six (6) Dwelling Units, including three (3) one-bedroom housing units, two (2) two-bedroom housing units, and one (1) studio housing unit, that are affordable rental units (the "Affordable Units") (meaning that these housing units are to be occupied by households with a gross household income at or below the British Columbia Housing Income Limits for the Victoria region at a rent of no more than 30% of each of such households' gross annual household income), as further defined and secured by a Housing Agreement under section 483 of the Local Government Act.

### No Further Subdivision

(a.2) The Owner covenants and agrees that the Lands, or any building constructed on the Lands, must not be further subdivided (including under the Strata Property Act) and, for

greater certainty, the building, and dwelling units, it constructs upon the Lands must not be subdivided or stratified or otherwise divided into separate ownership.

#### Dwelling Units - Breakdown by Number of Bedrooms

- (e) The Lands must not be built upon or used for residential purposes, unless Constance House has been designed and constructed to include:
  - (i) six 3-bedroom dwelling units;
  - (ii) 43 2-bedroom dwelling units;
  - (iii) 27 1-bedroom dwelling units;
  - (iv) seven studio dwelling units; and
  - a glass façade at street level that allows views of the exterior courtyard of Constance House from Admirals Road.

#### **Hydro Works**

- (f) The Lands must not be built upon or used for residential purposes, and the Owner will not be entitled to a building permit in respect of Constance House unless and until:
  - (i) the Owner has buried the existing BC Hydro power lines that run from the corner of Astle Street and Constance Avenue to the north end of Constance Avenue (the "Constance Avenue Hydro Work") in accordance with the plans and specifications prescribed by BC Hydro, and to the satisfaction of the Township's Director of Engineering and Public Works; and
  - (ii) the existing BC Hydro power lines that run from the corner of Astle Street and Admirals Road to the corner of Naden Way and Admirals Road (the "Admirals Road Hydro Work") have been buried in accordance with the plans and specifications prescribed by BC Hydro, and to the satisfaction of the Township's Director of Engineering and Public Works;

the parties acknowledging that the Township is under no obligation to agree to, pay for, commence or complete such works, or otherwise facilitate the timing of such undergrounding works, which decisions remain at the sole discretion of Council.

(g) The parties agree that the Owner may offer temporary, interim or permanent alternatives to the Admirals Road Hydro Works, and if acceptable to BC Hydro and accompanied by, to the satisfaction of the Fire Chief, a Fire Safety Report prepared by an independent professional certifying that the Lands can be developed safely, then the Township and the Owner may, but are not obligated to, agree to such alternatives, in order to allow:

- the Owner constructing non-combustible elements of Constance House prior to the work set out in subsections 1(f)(i) and (ii) being complete (but subject to the other requirements set out in this Agreement);
- (ii) the Owner constructing combustible elements of Constance House prior to the work set out in subsections 1(f)(ii) being complete subject to the Township's approval, which approval may be withheld in the Township's sole and unfettered discretion and which approval may be subject to further conditions as determined in the Township's sole and unfettered discretion, which conditions may include, but not be limited to:
  - A. the Owner providing a cash contribution to the Township (the "Hydro Contribution") to be credited towards the cost of the Admirals Road Hydro Work, where the Owner's Hydro Contribution will be the cost to complete the Admirals Road Hydro Work, as determined by the Township's Director of Engineering and Public Works and BC Hydro acting reasonably, proportionate to the amount of Constance House's street frontage along the Admirals Road Hydro Work; and
  - C. the Township's Fire Chief being satisfied in his sole and unfettered discretion that all fire safety requirements of the Township in respect of the construction of Constance House have been fully addressed by the Owner;

and, the agreements and conditions contemplated by subsection 1(g) may be agreed to by the Township and the Owner without modifying this Agreement as registered against the Lands.

#### **Additional Sidewalk and Boulevard Improvements**

- (h) The Lands must not be used for residential purposes, and the Owner will not be entitled to apply for, and will not apply for, occupancy permits in respect of Constance House unless and until:
  - (i) the Owner has constructed a sidewalk along the eastern side of Constance Avenue from the Lands to Astle Street (the "Constance Avenue Sidewalk");
  - (ii) the Owner has constructed a sidewalk along the north side of Astle Street from Admirals Road to Constance Avenue (the "North Sidewalk"); and
  - (iii) the Owner completes the work set out below, as illustrated in the landscape plan attached as **Schedule "C"** (the "Landscaping Work") in particular:
    - A. planting two boulevard trees on the eastern side of Constance Avenue; and
    - B. planting four boulevard trees on the western side of Constance Avenue;

(i) At the Township's sole discretion, the parties may agree to a servicing agreement and security generally in accordance with the Subdivision and Development Control Bylaw for the Constance Avenue Sidewalk, North Sidewalk and/or the Landscaping Work.

#### Two Additional Fire Hydrants

- (j) The Lands must not be built upon or used for residential purposes, and the Owner will not be entitled to apply for, and will not apply for, building permits in respect of Constance House unless and until the Owner has installed:
  - (i) one fire hydrant and related piping and appurtenances immediately adjacent to the Lands along Constance Avenue, and
  - (ii) one fire hydrant and related piping and appurtenances immediately adjacent to the Lands along Admirals Road

(collectively the "Fire Hydrant Work") all as reasonably satisfactory to the Township's Fire Chief.

#### **Public Art**

(m) The Lands must not be used, and Owner will not be entitled to subdivision approval or an occupancy permit, in respect of Constance House unless and until the Owner has provided a cash contribution to the Township's Public Art Reserve Fund in the amount of \$75,000.00 (the "Public Art Contribution").

#### **Transit Passes for Residents**

- (n) The Owner further covenants and agrees to provide a one-year BC Transit bus pass for the Victoria Regional Transit System (each a "Transit Pass") to each occupant of a dwelling unit in Constance House (each a "Occupant") in accordance with the following:
  - only those Occupants who are residents of a dwelling unit will be entitled to a Transit Pass;
  - (ii) the Owner will only be required to provide a maximum of 166 Transit Passes, on average up to two Transit Passes per dwelling unit, however where none or only one pass is requested for a dwelling unit, then requests for a third pass for alternate units must be accommodated, up to 166 Transit Passes in total;
  - (iii) the Transit Passes may be in the form of an actual transit pass, a voucher, or a reimbursement and must be provided to each resident within 30 days of occupation of the dwelling unit (the "Transit Contribution Date");
  - (iv) prior to applying for occupancy permits in respect of Constance House, the Owner will provide security in the amount of \$129,000.00 (the "Transit Security") to secure the performance of the Owner's covenants in this section 1(n), such amount being determined by the following calculation:

Number of Units x Two Passes per Unit x (Cost of Annual Pass OR Cost of Monthly Pass x 12 times)

- (v) the Owner will provide the Transit Security by:
  - A. in accordance with Council Policy entitled "Financial Security FIN-14" (April 18, 2006), unless Council resolves otherwise, as determined in the Township's sole discretion; or
  - depositing the Transit Security in trust with the Owner's solicitors, on terms reasonably acceptable to the Township;
- (vi) the Transit Security, or such proportionate amount, will be released:
  - A. to the Owner, upon the Owner providing evidence to the satisfaction of the Township's Director of Development Services, acting reasonably, that each Occupant has received a Transit Pass on or before the applicable Transit Contribution Date, such evidence may include an acknowledgment and receipt signed by each respective Occupant.

#### **Energy Step Code**

- (o) The Lands must not be built upon except in accordance with all the following:
  - (i) The Owner shall not commence any construction or development activities upon the Lands, and shall not apply for a building permit, until it has submitted to the Township such architectural design drawings, building specifications, and any other professional reports and information that the Township may reasonably require, including a report or letter from the Owner's architect or other appropriate consulting professional, that the principal building to be constructed on the Lands is designed to achieve the Performance Standard.
  - (ii) The Owner shall construct the Development so that it achieves the Performance Standard, and shall do so strictly in accordance with the design and specifications provided to the Township under subsection 1(o)(i) of this Agreement.
  - (iii) The Owner agrees that the Township's review and approval of the designs, specifications, and reports set out in subsection 1(o)(i) does not relieve the Owner of the obligation to construct the Development in accordance with the requirements of the BC Building Code and the bylaws of the Township.
  - (iv) In this Agreement the following terms have the following meanings:
    - A. "Performance Standard" means the requirements of Step 4 (R2000) of the BC Energy Step Code.

#### **Indemnity and Release**

- 2. The Owner covenants and agrees to indemnify and save harmless the Township from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) (collectively, "Claims") whatsoever, in law or equity, which anyone has or may have against the Township or which the Township incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use of the Lands contemplated under this Agreement.
- 3. The Owner releases and forever discharges the Township of and from any Claims whatsoever, in law or equity, which the Owner can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use of the Lands contemplated under this Agreement.
- 4. Without limiting the above release and indemnity, the Owner acknowledges that this Agreement contains conditions, restrictions, requirements, benefits or gifts that may not be specifically identified or required by bylaw. The Owner hereby expresses its intention to be solely responsible for the costs resulting from satisfying the conditions of this Agreement, and to donate any contribution to the Township as a gift without any expectation of credit, payment or reward of any kind, including in situations where the Owner has fulfilled some of the commitments of this Agreement but cannot complete the development as planned or at all. The Owner further releases, waives and forever discharges the Township from and against any claims, actions, or causes of action, whether based in contract, tort or equity, for damages or losses, for the recovery of the contributions or costs incurred, including legal expenses, or for unjust enrichment, in connection with the provision of those contributions.
- 5. The release and indemnity provisions of this Agreement survive its termination, and are granted with the Owner's full knowledge of the dangers and risks of building within and use of the Lands and that no representation is made by the Township as to the safety or other appropriateness of such use.

### Interest in Land

 The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Township and intended to be perpetual, and will continue to bind all of the Lands when subdivided.

#### **Priority**

 At the Owner's sole cost, the Owner must do everything necessary to secure priority of registration and interest for this Agreement over all encumbrances of a financial nature.

#### **Further Assurances**

 The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement. However, the Township acknowledges

and agrees that if the Rezoning Bylaw is not adopted, and the related Development applications are abandoned, then this Agreement will be discharged from the Lands forthwith upon the request of the Owner and at the Owner's sole cost.

# Township's Costs

The Owner, as a personal covenant between the parties, agrees to pay the legal fees and land title office costs of the Township in connection with the preparation and registration of this Agreement.

#### Owner's Costs

 The Owner will comply with all requirements of this Agreement at its own sole cost and expense and without expectation of compensation from the Township.

#### Successors and Assigns

- 11. The Owner covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement.
- 11.1 The term "Owner" in this Agreement includes the Owner and its successors in title to the Lands, including Constance669 Developments Ltd., Inc. No. BC1286123.

#### **Entire Agreement**

12. It is mutually understood, acknowledged and agreed by the parties that the Township has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.

#### Township's Rights Preserved

- 13. Nothing contained or implied in this Agreement:
  - (a) prejudices or affects the rights, powers or discretion of the Township 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 Lands as if the Agreement had not been executed and delivered by the Owner;
  - imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement or the breach of any provision in this Agreement; or
  - (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Township with respect to its exercise of any right or remedy expressly provided in this Agreement or at law or in equity.

#### **Approvals**

14. The Owner covenants and agrees that the Township may withhold development permits, building permits and other approvals related to the use, building or subdivision of land as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a permit or approval does not act as a representation or warranty by the Township that the covenants of this Agreement have been satisfied.

#### **Breach by Owner**

- 15. The Owner covenants and agrees that:
  - if the Township advises of a breach of this Agreement, as determined in its reasonable discretion, the Owner must promptly remedy that breach at it sole cost;
  - (b) if the Owner has not remedied the breach to the reasonable satisfaction of the Township within fifteen (15) days of notice or such other longer time period specified by the Township, the Township may, but is under no obligation to, remove or rectify the breach at the expense of the Owner without further notice; and
  - (c) any costs to the Township of such removal or rectification is a debt due from the Owner to the Township together with interest at a rate of 3% per annum in excess of the Prime Lending Rate of the Royal Bank of Canada in effect from time to time, and:
    - the Owner will pay such costs and interest to the Township forthwith upon demand; and
    - (ii) failing payment, the Township may add such costs to property taxes for the Lands.

#### **Cumulative Rights**

16. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity. The Owner agrees that the Township is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach of this Agreement by the Owner.

#### Waiver

17. The waiver by a party of any breach of this Agreement or failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar, and no waiver is effective unless it is written and signed by both parties.

#### Severance

18. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this

Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

#### Legal Advice

 The Owner acknowledges having received legal advice prior to executing this Agreement, and the Owner agrees that it fully and completely understands this Agreement and its impact on the Lands.

#### Notice

20. Any notice required or permitted to be give in connection with this Agreement will be in writing and delivered personally or sent by prepaid express mail to the applicable addresses set out above. If notice is delivered personally, it will be considered given when delivered. If notice is mailed, it will be considered given five days after mailing by deposit at a Canada Post mailing point or office. A party may only change their address for delivery under this section by notice to the other party in accordance with this section.

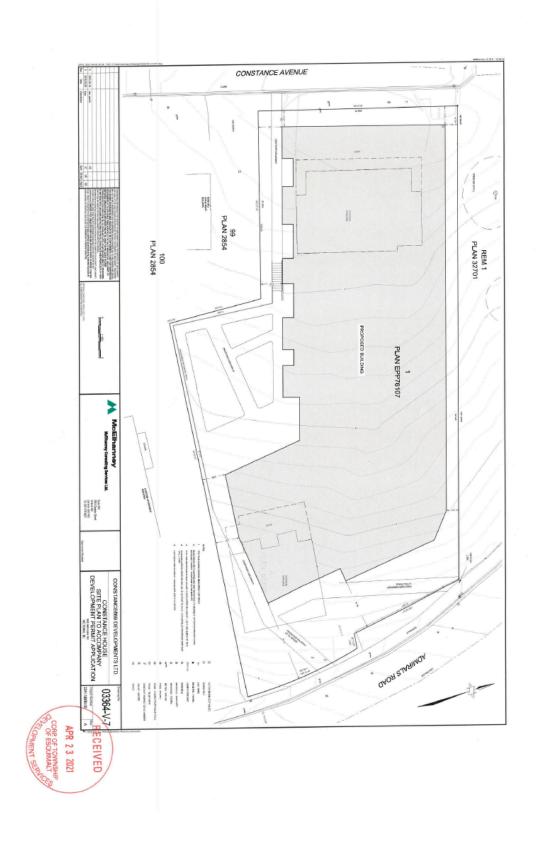
#### **Governing Law**

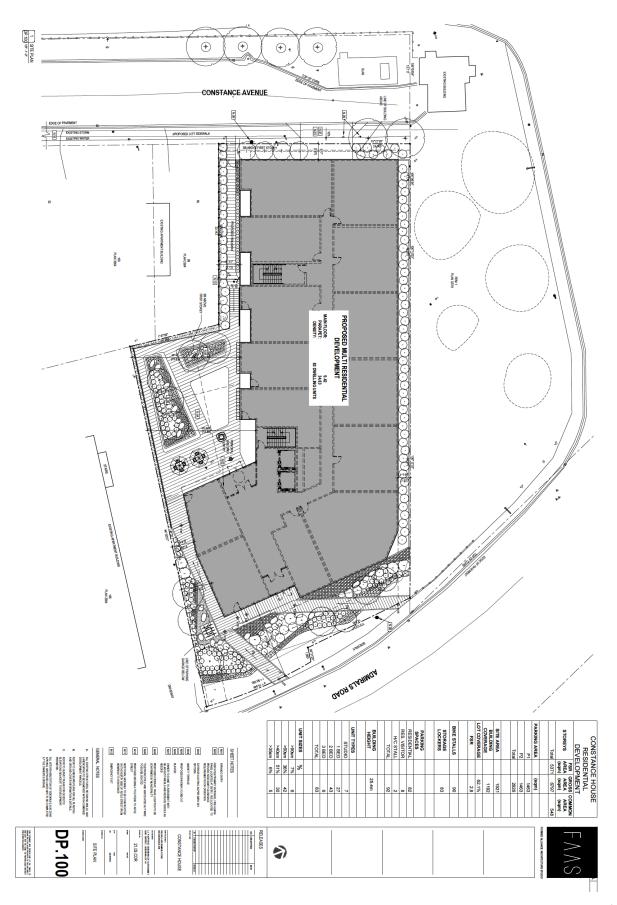
21. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

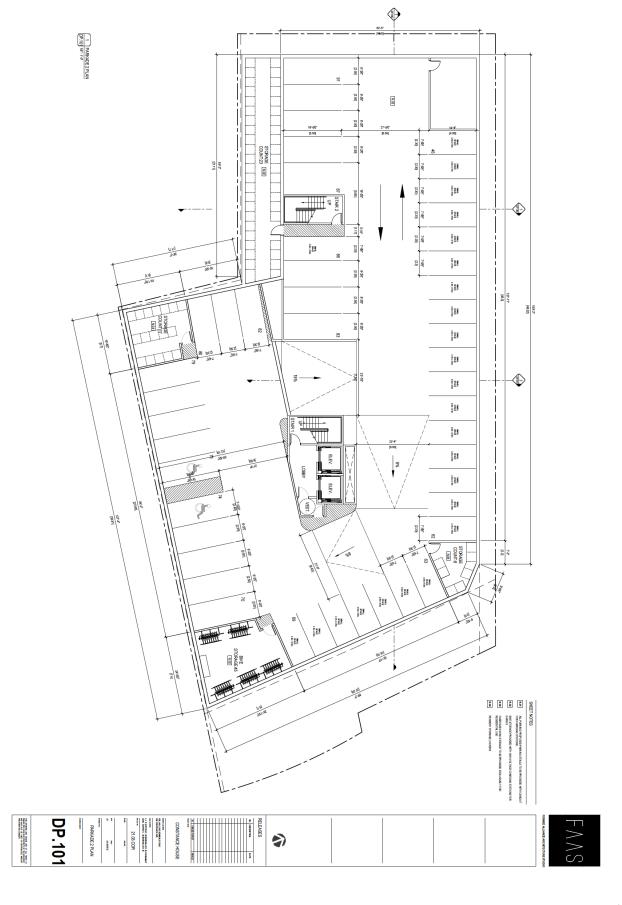
#### Priority - Chargeholder

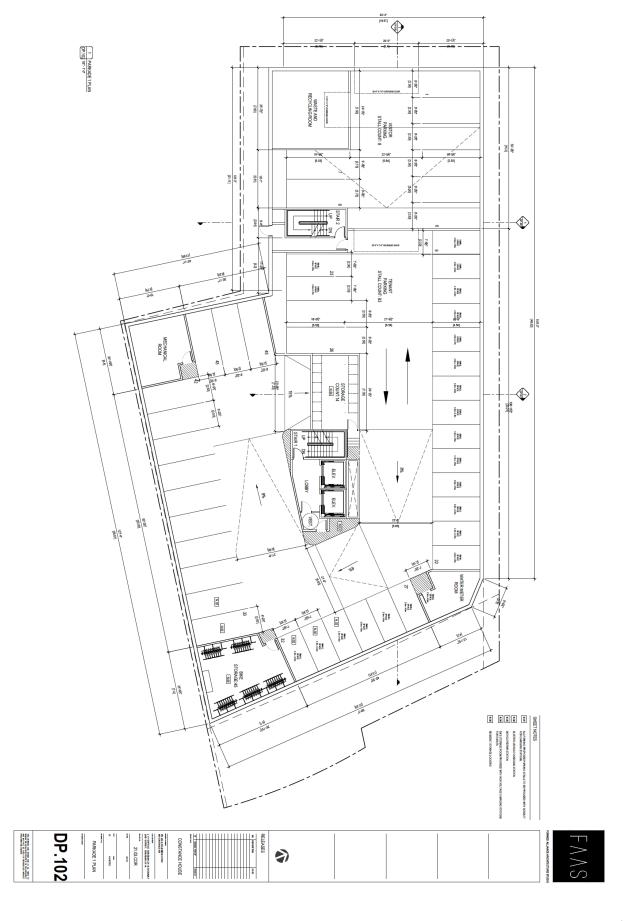
22. VANCOUVER CITY SAVINGS CREDIT UNION (the "Chargeholder") the registered holder of a charge by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA5999996 and CA5999997 (the "Charge"), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to the Chargeholder (receipt and sufficiency acknowledged), that the Agreement will be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the Charge. The Owner and Township acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D (pages 1 and 2) attached.

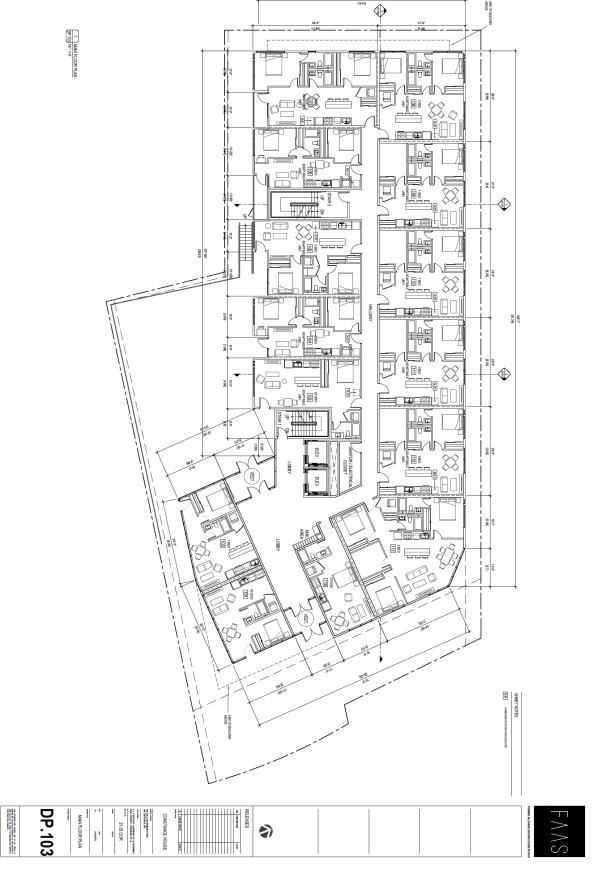
# **SCHEDULE A**

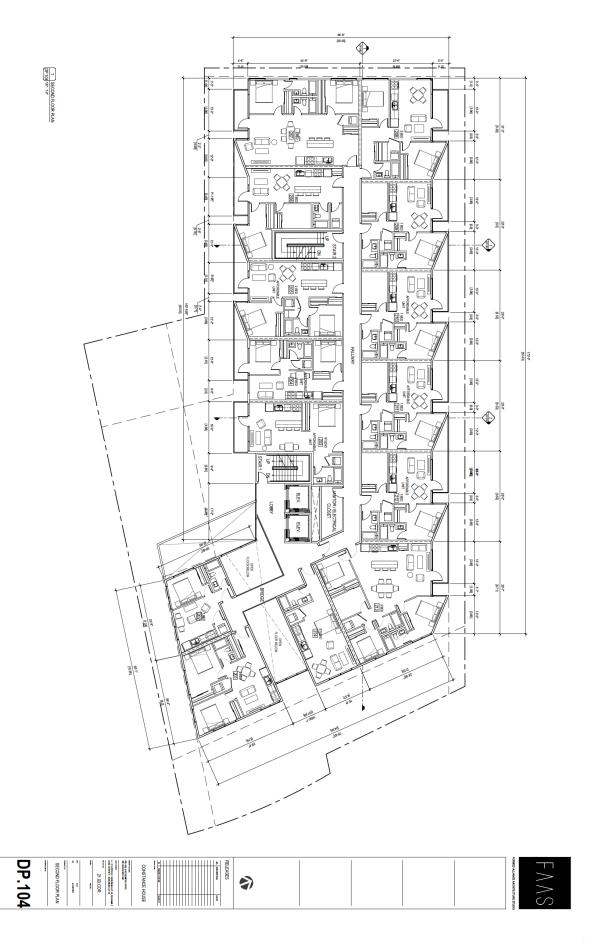


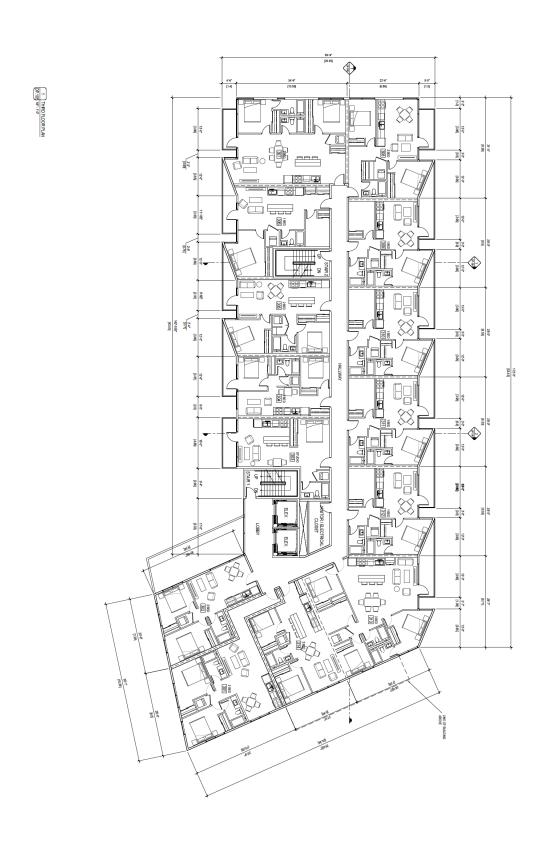






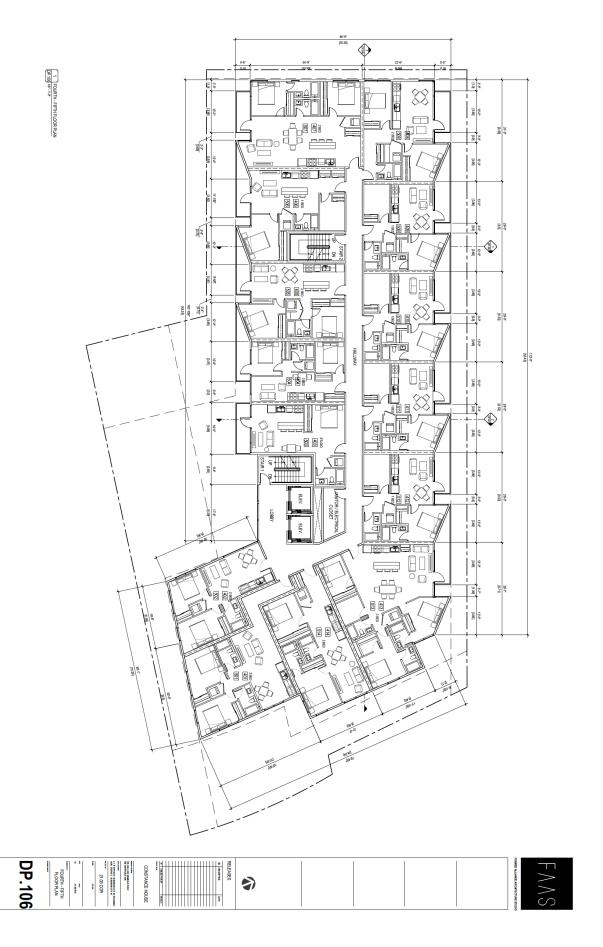


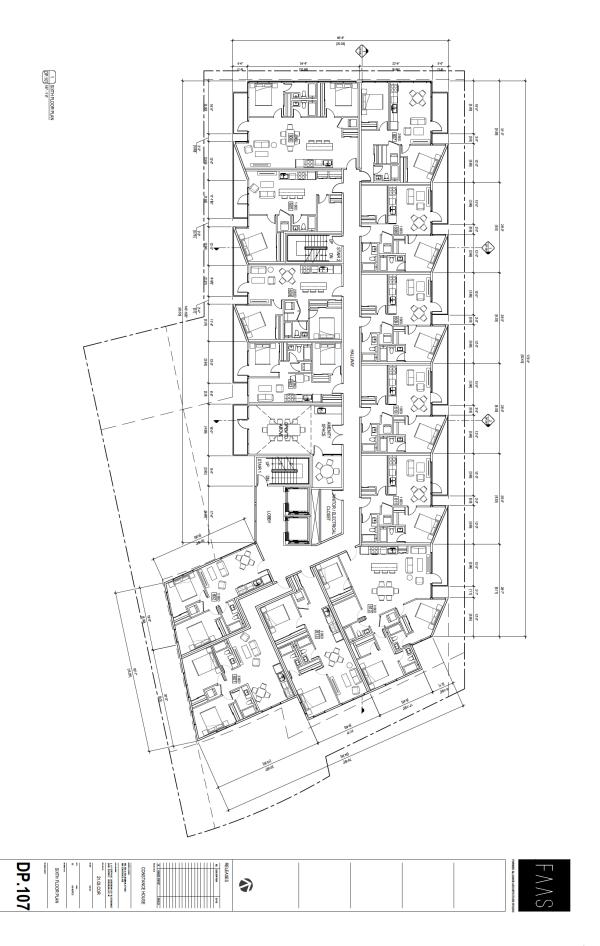


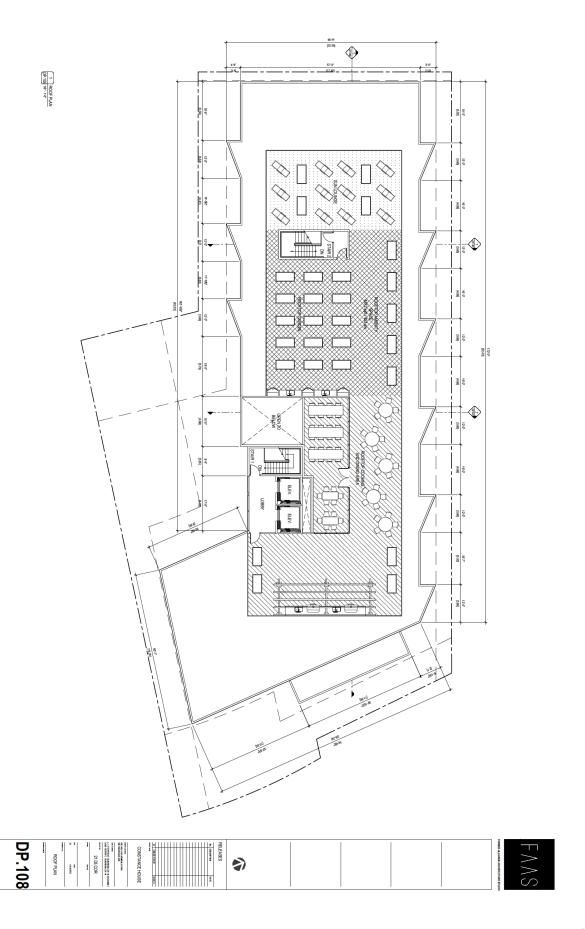


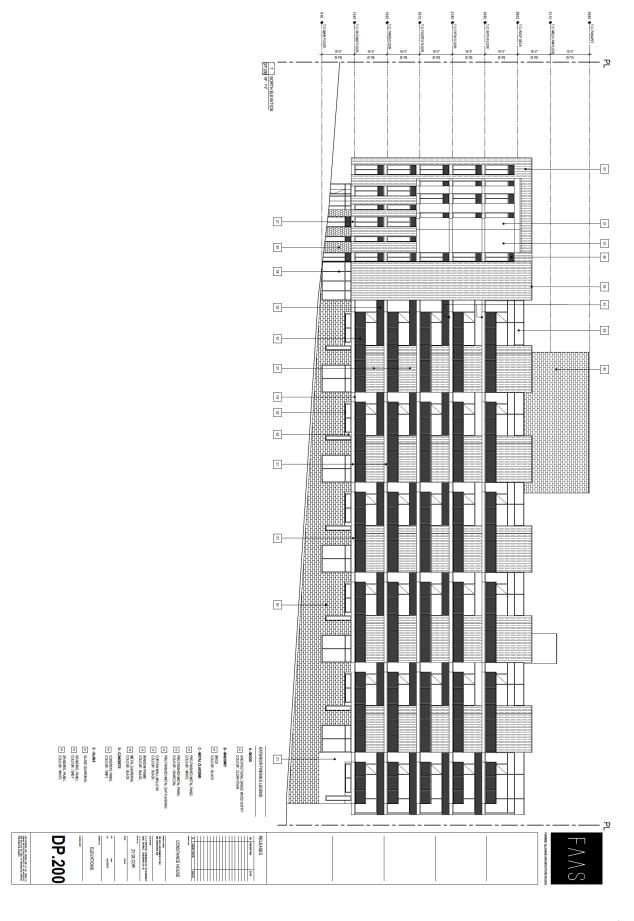


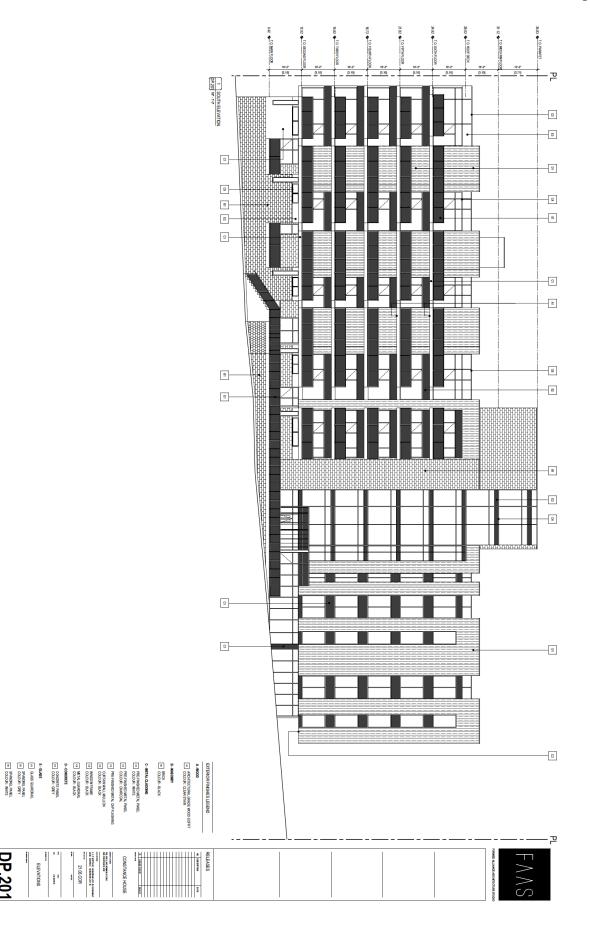




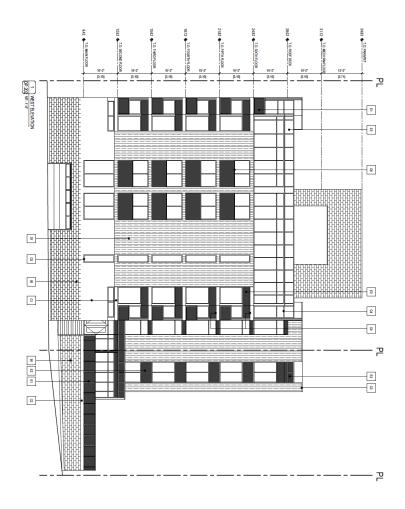


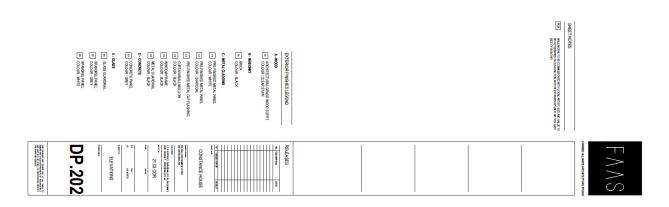


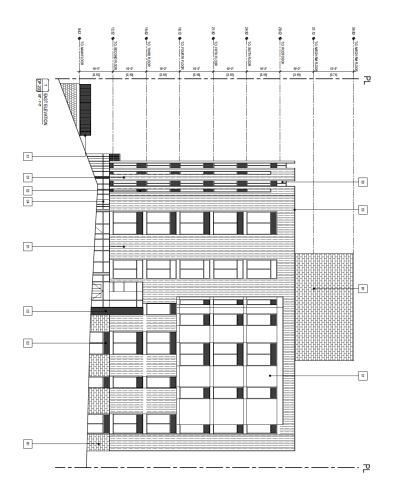




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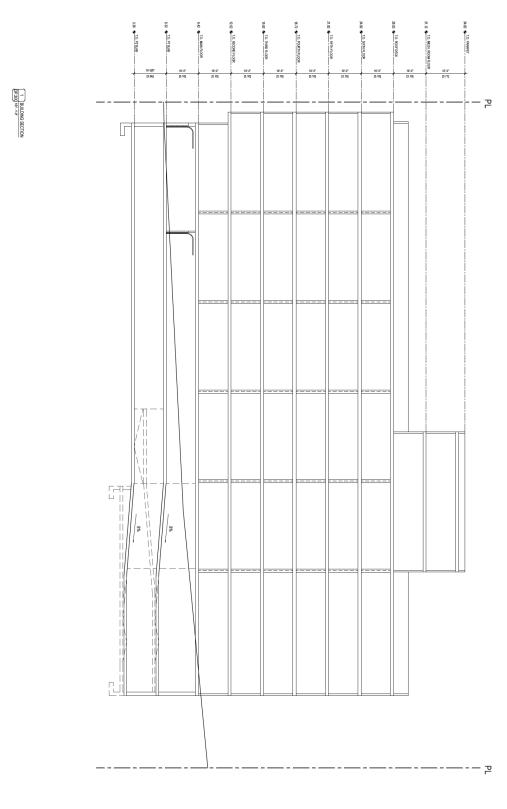






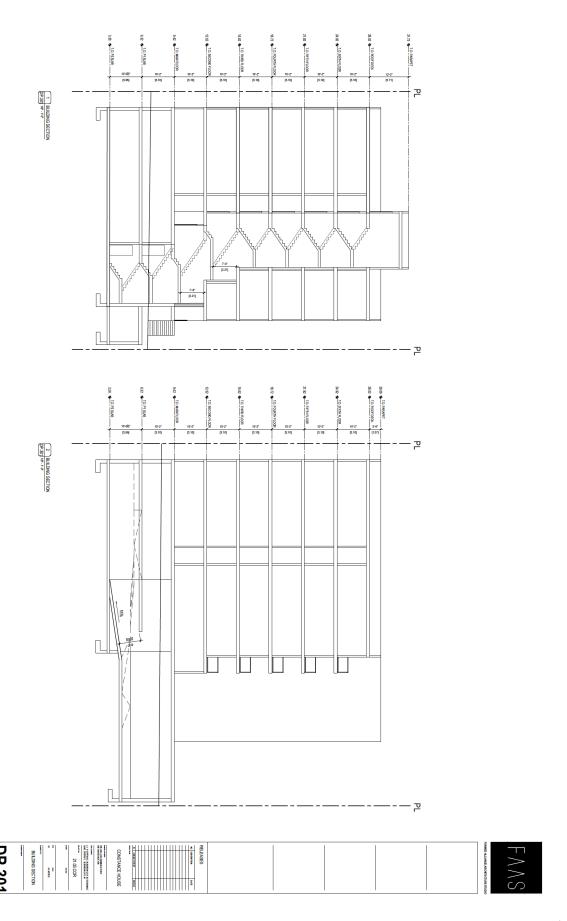
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### SCHEDULE B

# Page 1 of 7

#### BASIC ADAPTABLE HOUSING

### BASIC ADAPTABLE HOUSING

The following Basic Adaptable Housing features are required in all newly-constructed buildings serviced by an elevator containing apartment or congregate housing uses.

The requirements of Schedule "F" Section (g) do not apply to non-congregate housing apartment units smaller than 42 m (450 ft) provided that a bathroom consistent with Section (g)(iii) of this Schedule "F" is available to all occupants within the building.

### (A) Building Access

- Barrier-free access from the street shall be provided to each dwelling unit and to each type of common amenity space.
- Barrier-free access from a private parking area shall be provided to each dwelling unit and to each type of common amenity space.
- Access to the elevator shall be provided from both the street entry and a private parking area entry.
- A covering over a level building entry area, of 1500mm by 1500mm shall be provided.
- No intercom user functions shall be higher than 1220mm above the finished paved area.
- Wiring for an automatic door opener shall be provided at each of the required barrier- free entries.

# (B) Doors and Doorways

- The minimum clear opening for all suite entry doors and doors in common areas shall be no less than 850 mm. (See Figure 1)
- The minimum clear opening for all interior doors within a dwelling unit shall be no less than 800mm. (See Figure 1)
- Doors in all suites and common areas shall be operable by devices that do not require tight grasping or twisting of the wrist.



FIGURE 1 – CLEAR OPENING MEASUREMENT FROM DOORS

# Page 2 of 7

# BASIC ADAPTABLE HOUSING

# (C) Manoeuvring Space at Doorways

- Suite entry doors and door assemblies in common areas (except those which are not self-closing) shall have a clear and level area which is not less than the following:
  - Where the door swings toward the area (pull door), 1220mm long by the width of the door plus at least 300mm clear space on the latch side. (See Figure 2)

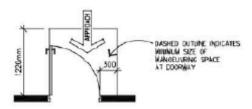


FIGURE 2 – FRONT APPROACH, PULL SIDE

Where the door swings away from the area (push door), 1220mm long by the width of the door plus at least 300mm clear space on the latch side. (See Figure 3)

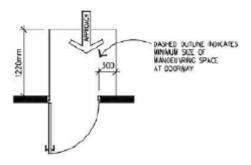


FIGURE 3 - FRONT APPROACH, PUSH SIDE

# Page 3 of 7

# BASIC ADAPTABLE HOUSING

Where there are doors in a series in common areas, there must be separation of at least 1220mm plus the width of the door. (See Figure 4)

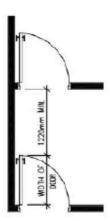


FIGURE 4 - SEPARATION OF DOORS IN SERIES

# (D) Corridor widths

Common corridors shall be no less than 1220mm wide.

# (E) Thresholds

Thresholds shall be kept to a minimum, and in all suites and common areas shall not exceed 13 mm.

# (F) Outlets and Switches

- Light switches shall be located between 1015mm and 1120mm from the floor.
- Electrical outlets, cable outlets, and telephone jacks shall be located not less than 450mm from the floor.

Page 4 of 7

# BASIC ADAPTABLE HOUSING

# (G) Bathrooms

- There shall be at least one bathroom with toilet and sink on the main entry level of each suite which provides enough floor space to be the following space requirements:
  - Clear floor area of 760mm by 1220mm beyond the swing of the door. (See Figure 5)

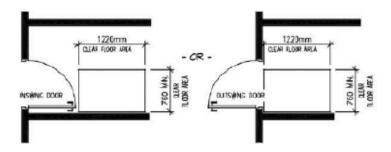


FIGURE 5 - CLEAR FLOOR AREA BEYOND SWING OF DOOR

Clear floor area at the tub of 760mm by 1220mm, or 1220mm by 760mm, measured from the foot end of the tub. (See Figure 6)

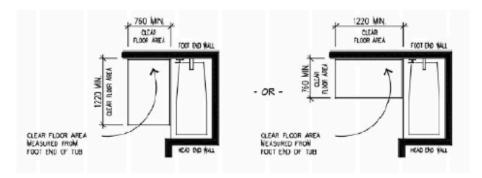


FIGURE 6 - CLEAR FLOOR AREA AT TUB

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# BASIC ADAPTABLE HOUSING

3. Clear floor area at the sink of 760mm by 1220mm positioned for a parallel approach and centred on the sink. (See Figure 7)

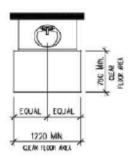


FIGURE 7 – CLEAR AREA AT SINK

- 4. Toilets shall meet the following space provisions: (See Figure 8)
  - a. Lateral distance from the centre line of the toilet to a bathtub or sink shall be 455mm minimum on one side and 380mm minimum on the other. Where the toilet is adjacent to a wall, the lateral distance from the centre line of the toilet to the wall shall be 455mm with 380mm minimum on the other side.
  - b. Clear floor area at the toilet of 1420mm minimum (measured from the wall behind the toilet) by 1220mm minimum (measured from a point 455mm from the centre line of the toilet on the side designated for future grab bars.)
  - c. The vanity or sink on the wall behind the toilet may overlap the clear floor required for the toilet.

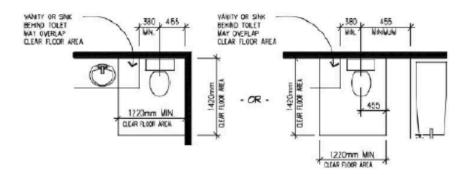


FIGURE 8 - CLEAR FLOOR AREA AT TOILET

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### BASIC ADAPTABLE HOUSING

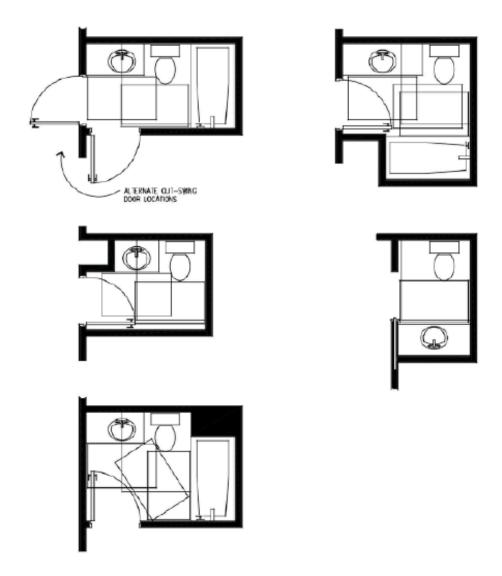


FIGURE 9 – EXAMPLES OF BATHROOMS WITH FLOOR AREA TO SUITE "MINIMALLY ACCESSABLE" REQUIREMENTS

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#### BASIC ADAPTABLE HOUSING

- Solid blocking in walls around toilets, tub/shower, and behind towel bars shall be provided in all bathrooms as illustrated in Figure 10.
- Where bathrooms are provided to serve common amenity spaces, at least one shall be wheelchair accessible as described in the B.C. Building Code (1998) Sentence 3.7.4.8.(1)

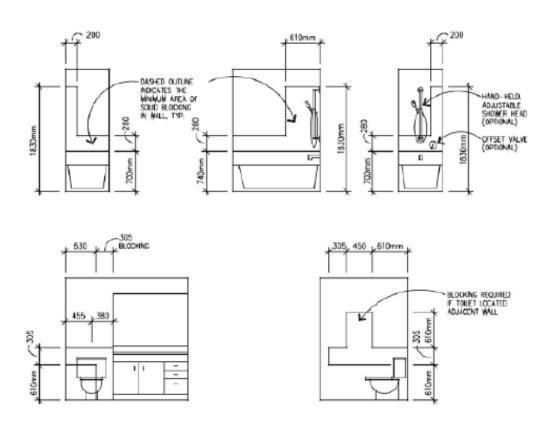
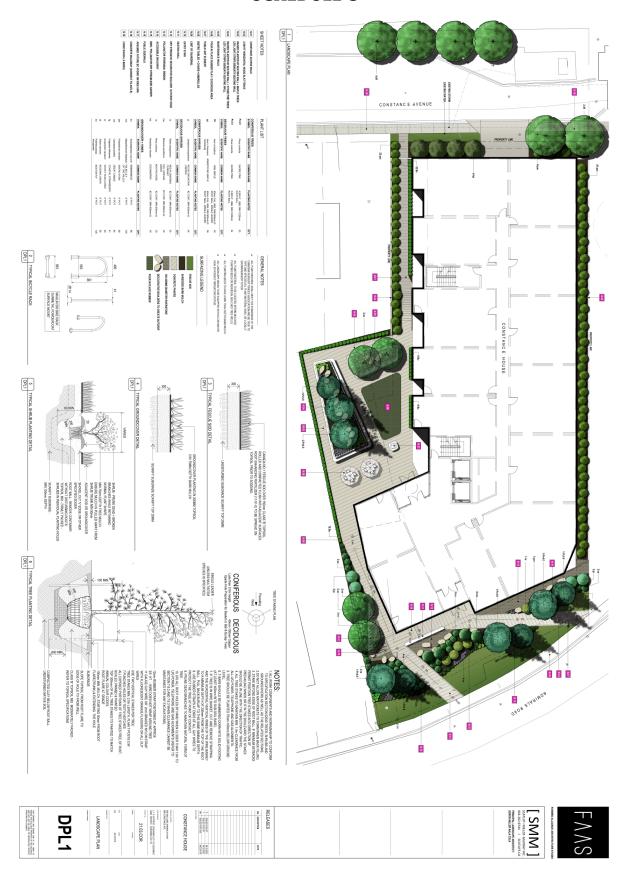
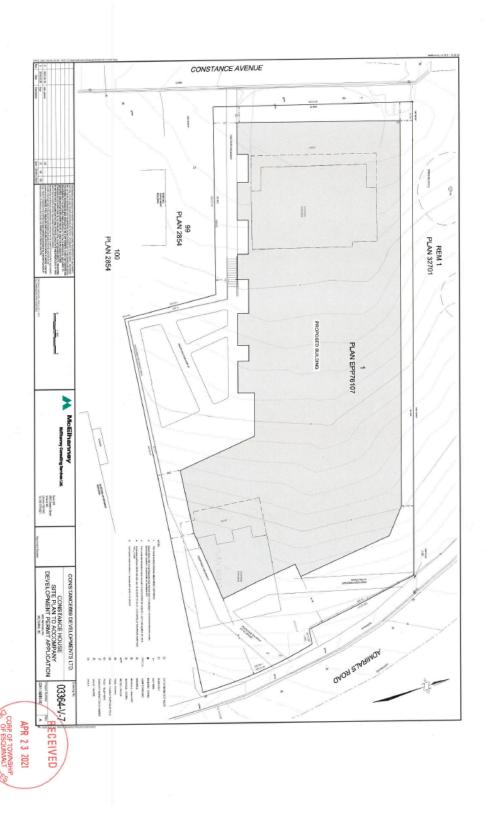


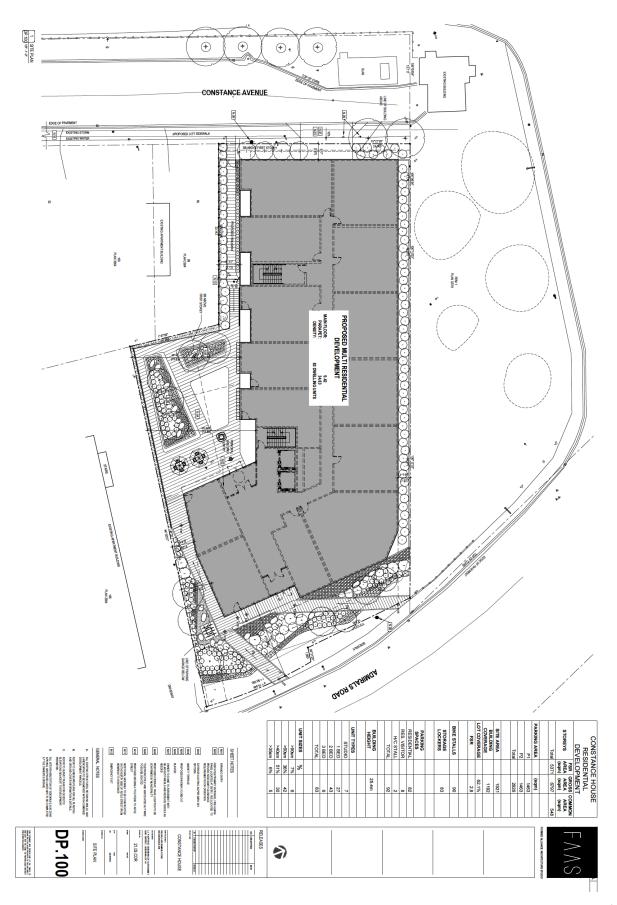
FIGURE 10 - BLOCKING REQUIREMENTS

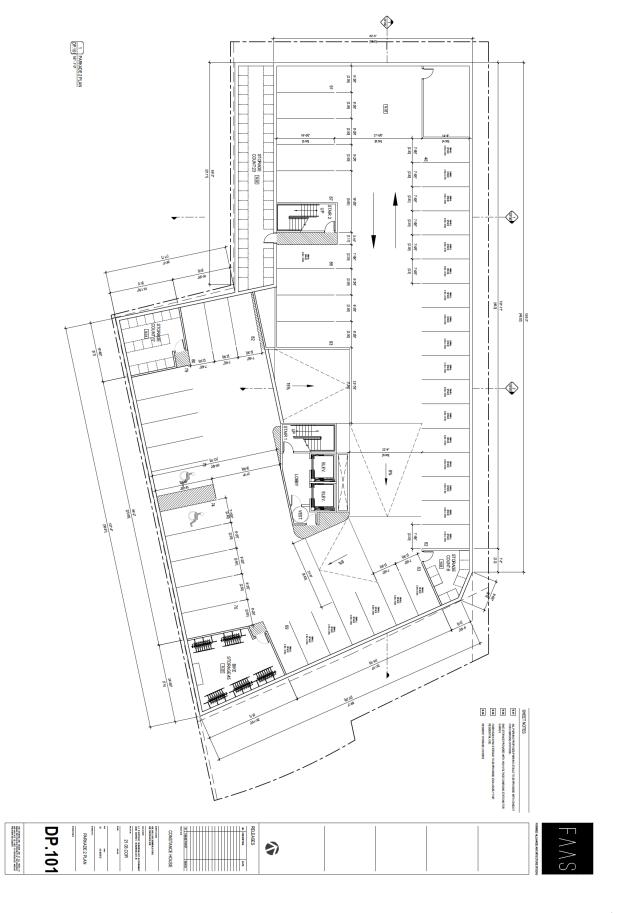
### SCHEDULE C

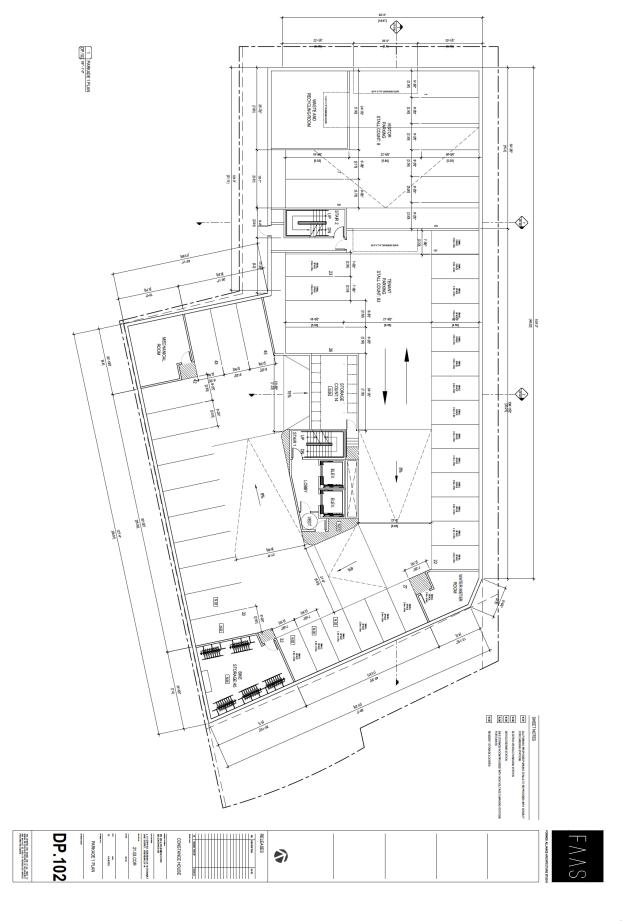


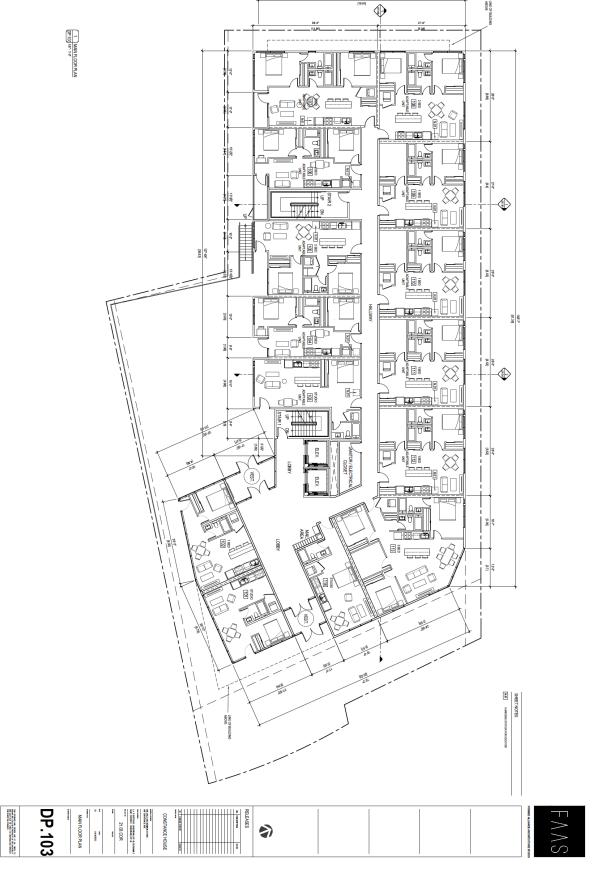
# SCHEDULE "2" to 2021 Covenant Modification SCHEDULE A

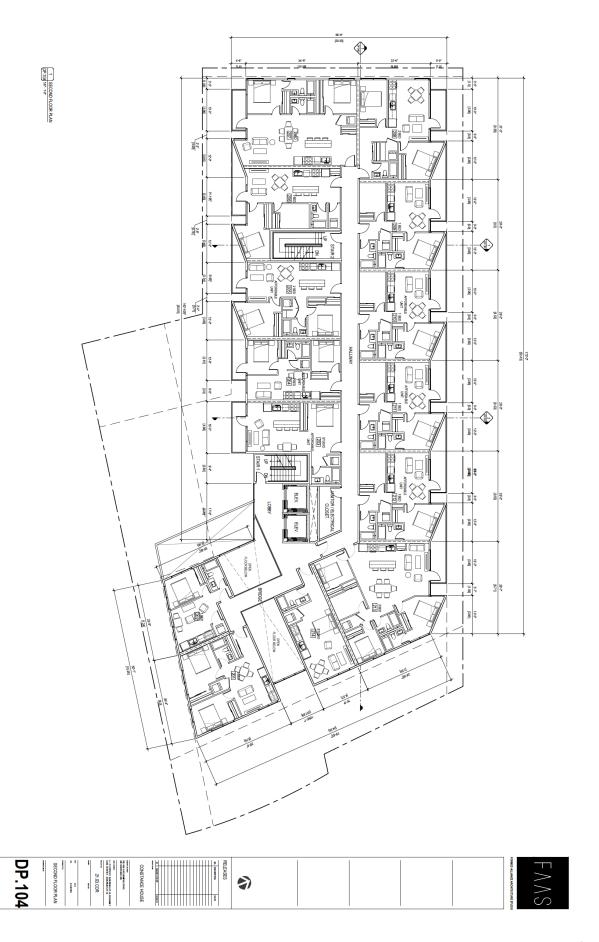


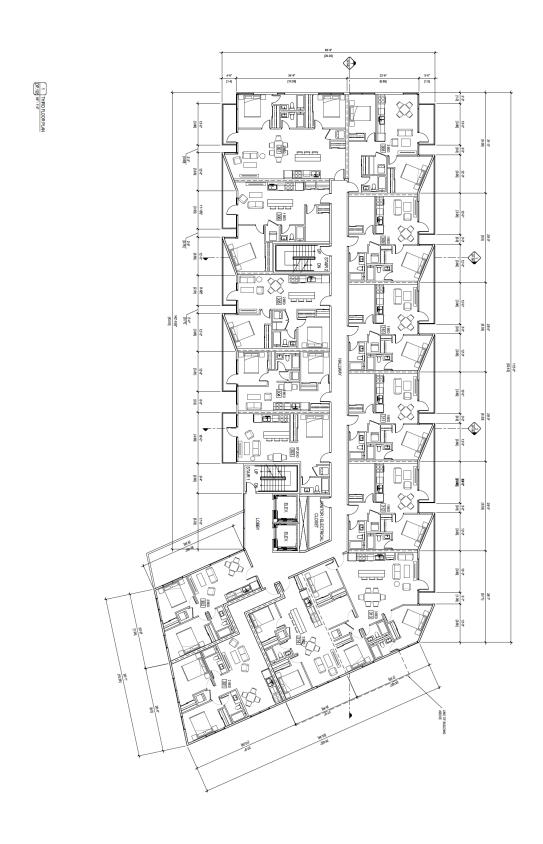






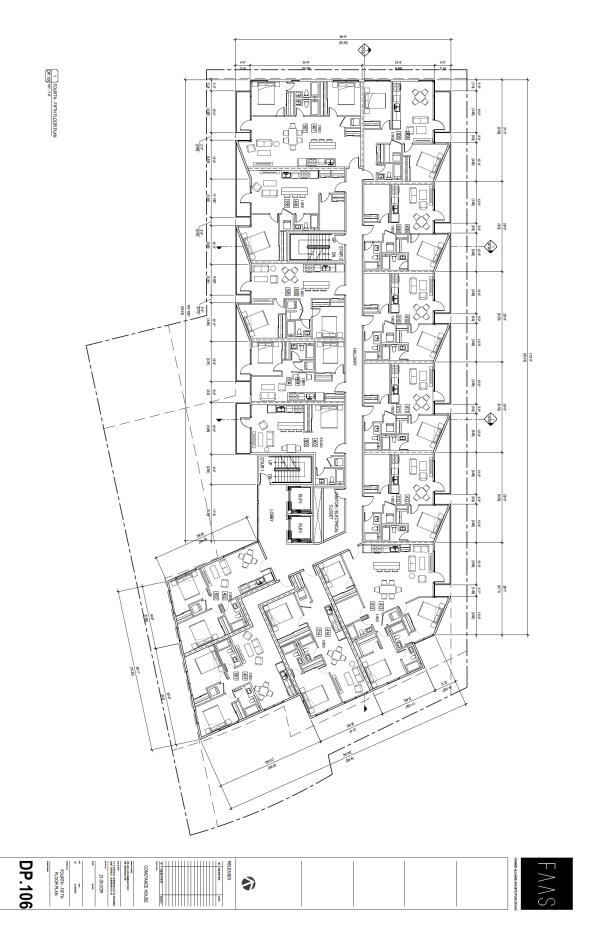


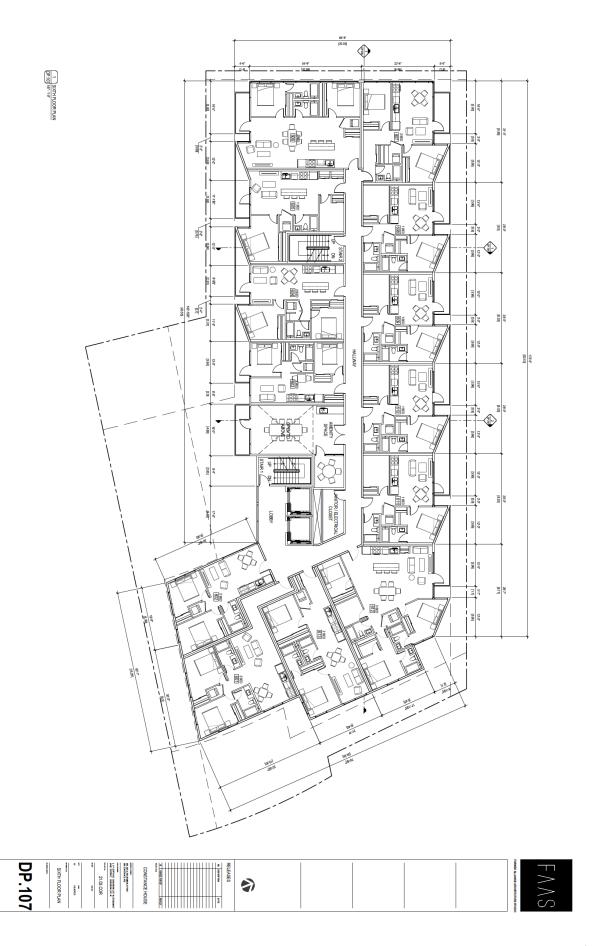


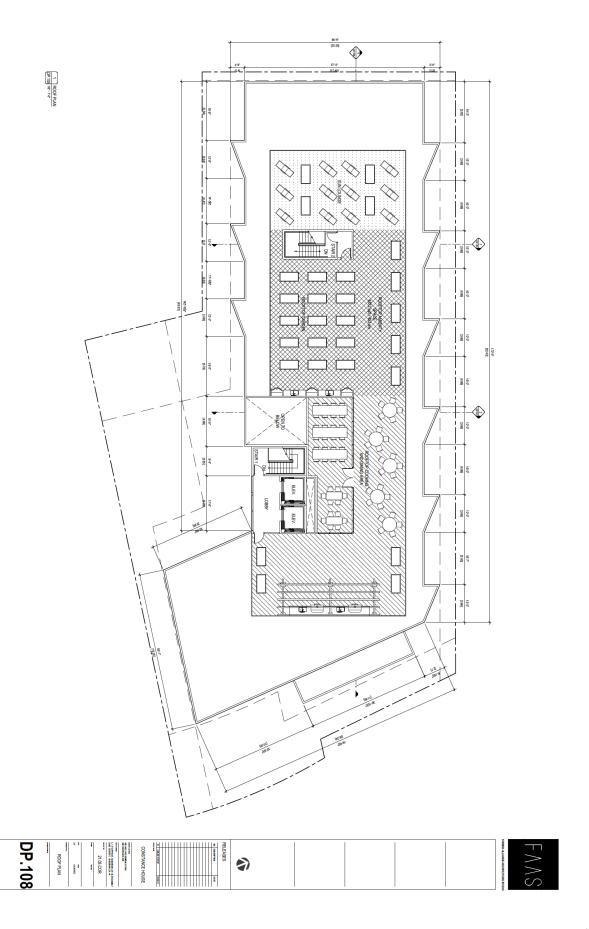


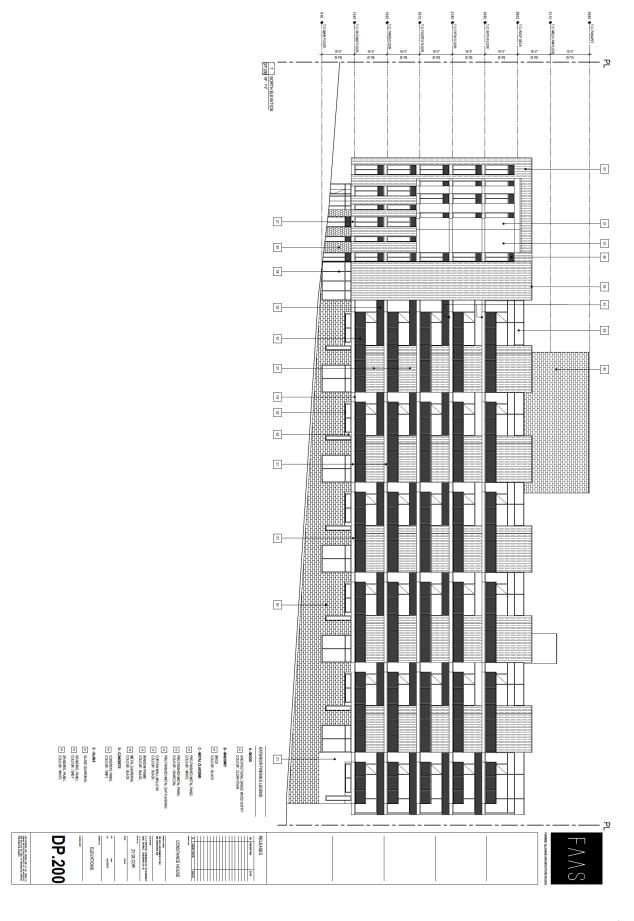


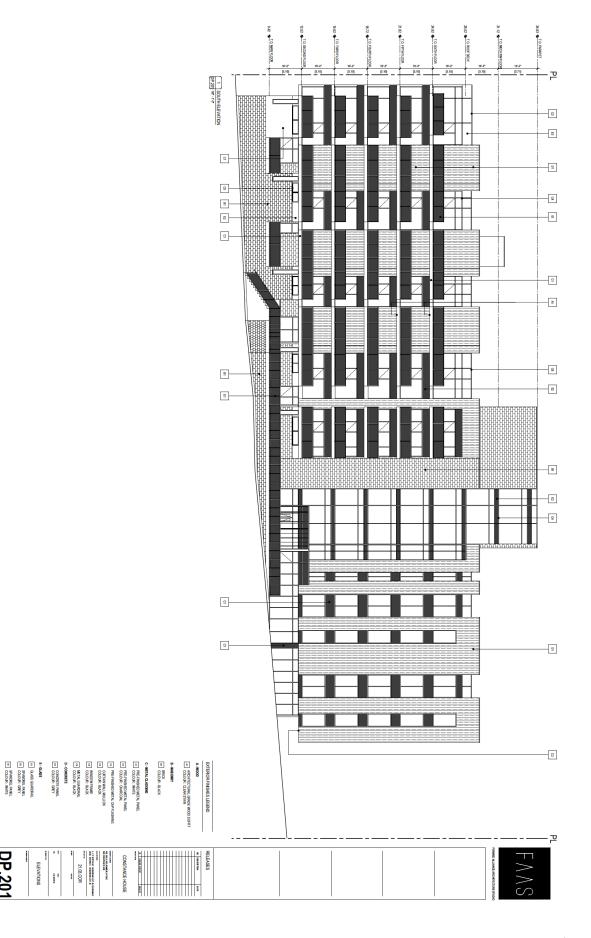




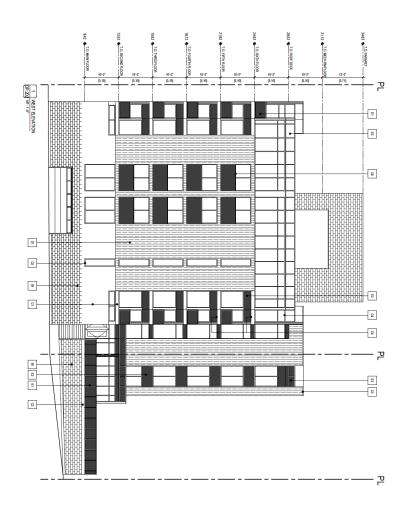


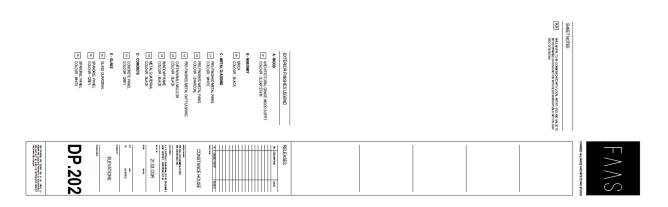


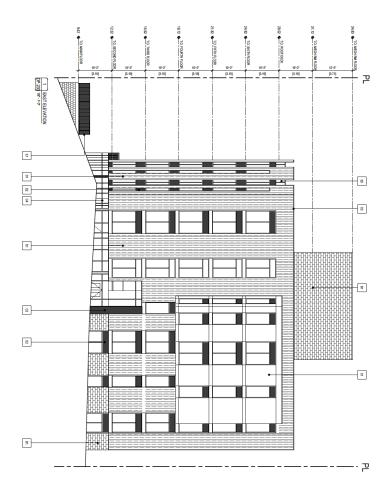




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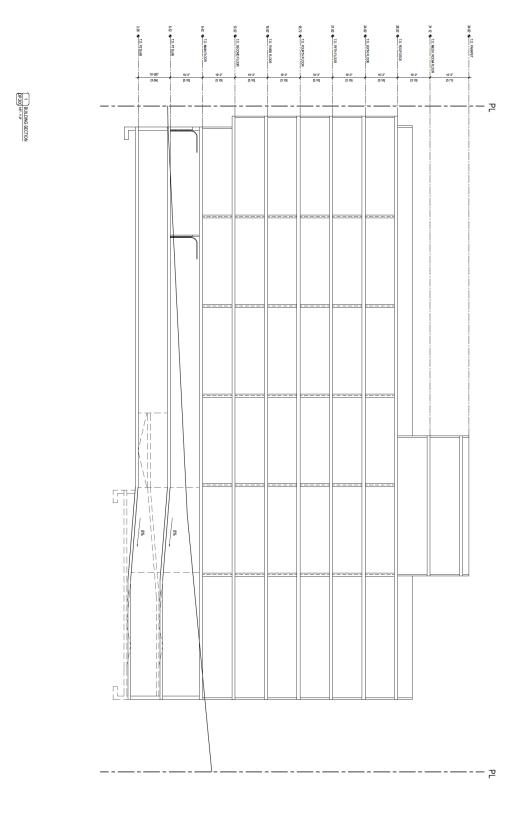






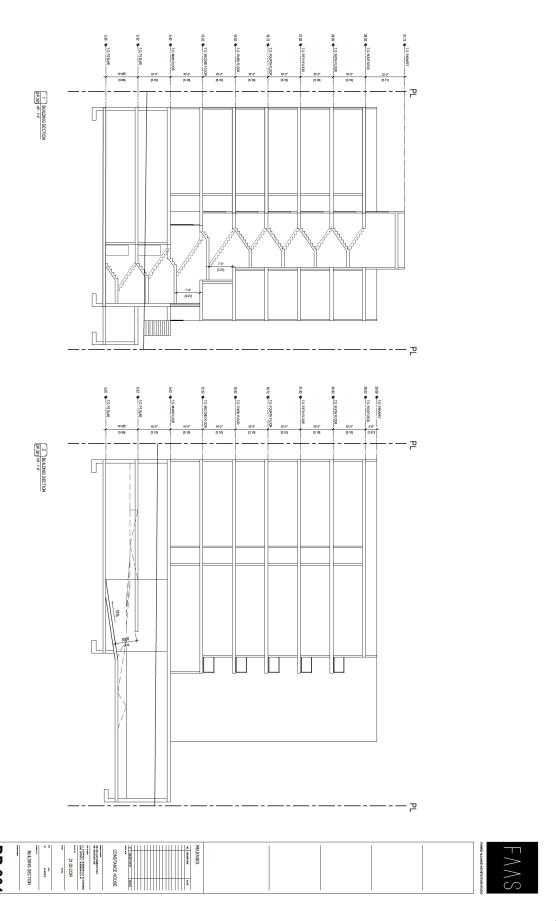
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## SCHEDULE "3" to 2021 Covenant Modification SCHEDULE C

