

EXPLANATION

Authorization to enter into a Housing Agreement
Re: 1754 - 1772 Pendrell Street

After the public hearing on July 13, 2015, Council approved in principle a Housing Agreement to be entered into by the City and the land owner, on terms satisfactory to the Director of Legal Services and the Managing Director of Social Development, prior to enactment of the CD-1 By-law. Such a Housing Agreement has been accepted and signed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter to authorize such Housing Agreement and to authorize the City to enter into that Housing Agreement with the land owner.

Director of Legal Services
May 3, 2016

1754 - 1772 Pendrell Street

ABF

BY-LAW NO. _____

**A By-law to enact a Housing Agreement
for 1754 - 1772 Pendrell Street**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a Housing Agreement with the owner of certain lands described as:

No PID

Lot 1
Block 61
District Lot 185
New Westminster District Plan EPP6611

in substantially the form and substance of the Housing Agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City, and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

2. This By-law is to come into force and take effect on the date of its enactment.

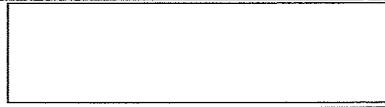
ENACTED by Council this _____ day of _____, 2016

Mayor

City Clerk

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, R.S.B.C. 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Kornfeld LLP
Barristers & Solicitors
1100 - 505 Burrard Street
Vancouver

BC · V7X 1M5

Telephone No. (604) 331-8300
LTO Client No. 010448
File No. 170001DEV151/ENK
Rental Housing Covenant

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
[PID] [LEGAL DESCRIPTION]

NO PID NMBR LOT 1 BLOCK 61 DISTRICT LOT 185 PLAN EPP56611

STC? YES

Related Plan Number: EPP56611

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms D.F. No.

(b) Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

SEE SCHEDULE

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

CITY OF VANCOUVER

453 WEST 12TH AVENUE

VANCOUVER

BRITISH COLUMBIA

V5Y 1V4

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Douglas B. Hyndman
Barrister & Solicitor
1100 - 505 Burrard Street
Vancouver, B.C. V7X 1M5
Telephone: (604) 331-8300

Execution Date

Y	M	D
16	04	20

Transferor(s) Signature(s)

1700 PENDRELL PROPERTY INC.,
by its authorized signatory(ies)

Name:

JUDY LEUNG

Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

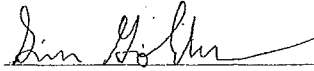
Transferor / Borrower / Party Signature(s)

Y	M	D
16	04	27

HSBC BANK CANADA, by its
authorized signatory(ies):

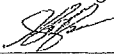
Name: _____

Name: _____



Sam Golder
Notary Public in and for
The Province of Ontario,
100 University Ave., 11th Flr.
Toronto, ONTARIO M5J 2Y1
416-263-9341

COMPUTERSHARE TRUST
COMPANY OF CANADA, by its
authorized signatory(ies):


Name: **Samuel S. Liaw**
Administrator, MBS


Name: **Aaron Gao**
Professional, MBS

CITY OF VANCOUVER, by its
authorized signatory:

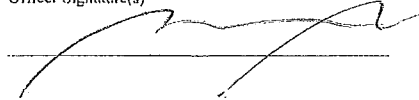
Name: _____

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Officer Signature(s)



ANNIE LI
A Commissioner for Taking Affidavits
for British Columbia
885 West Georgia Street
Vancouver, BC V6C 3G1
Commission Expires: June 30, 2018

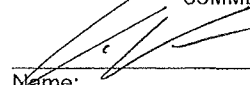
As to both

Execution Date

Y	M	D
16	04	28

Transferor / Borrower / Party Signature(s)

HSBC BANK CANADA, by its
authorized signatory(ies):


GARTH STOLL
Name: VICE PRESIDENT
COMMERCIAL REAL ESTATE
Name: **Chris Vecsey**
Assistant Vice President
Commercial Real Estate

COMPUTERSHARE TRUST
COMPANY OF CANADA, by its
authorized signatory(ies):

Name: _____

Name: _____

CITY OF VANCOUVER, by its
authorized signatory:

Name: _____

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

LAND TITLE ACT
FORM E

SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Entire Instrument

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Priority Agreement granting above Section 219 Covenant priority over Mortgage CA3352289 and Assignment of Rents CA3352290

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Priority Agreement granting above Section 219 Covenant priority over Mortgage CA4394943 and Assignment of Rents CA4394944

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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LAND TITLE ACT
FORM E

SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

5. TRANSFEROR(S):

1700 PENDRELL PROPERTY INC. (INCORPORATION NO. BC0714395)

HSBC BANK CANADA, as to Priority

COMPUTERSHARE TRUST COMPANY OF CANADA (INCORPORATION NO. A0052313), as to
Priority

TERMS OF INSTRUMENT - PART 2

RENTAL HOUSING COVENANT
1754 - 1772 Pendrell Street

WHEREAS:

A. It is understood and agreed that this instrument and Agreement shall be read as follows:

- (i) the Transferor, 1700 Pendrell Property Inc., is called the "Owner" as more particularly defined in Section 1.1; and
- (ii) the Transferee, City of Vancouver, is called the "City" or the "City of Vancouver" when referring to corporate entity, and "Vancouver" when referring to geographic location;

B. The Owner is the registered and beneficial owner of the Lands;

C. The Owner made an application to rezone the Lands (the "Rezoning Application") to CD-1 (Comprehensive Development) District to permit the development of a 21-storey multiple dwelling building and after a public hearing to consider the Rezoning Application, the rezoning (the "Rezoning") was approved by City Council in principle, subject to, among other things, fulfilment of the condition that, prior to enactment of the rezoning by-law (the "Rezoning By-law"), the Owner make arrangements to the satisfaction of the Chief Housing Officer and the Director of Legal Services to enter into a Housing Agreement securing 178 units as market rental housing for the longer of 60 years and the life of the Building and, for a period of 30 years, securing 26 of said units, on floors 2, 3 and 4 of the New Building with rents at twenty percent (20%) below the West End Area Market Rents and upon such other additional housing conditions set out in the Regular Council Minutes dated September 15, 2015; and

D. The Owner, with the agreement of the City, has reconfigured the design of certain of the proposed housing units such that the intended number of rental housing units is 173;

E. The Owner is entering into this Agreement to satisfy the foregoing conditions.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 219 of the *Land Title Act*, agree as follows in respect of the use of the Lands and the Building:

ARTICLE 1
DEFINITIONS AND INTERPRETATIONS

1.1 Definitions. In this Agreement the following terms have the definitions now given:

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Rental Housing Covenant
1754 - 1772 Pendrell Street

- (a) "Agreement" means this rental housing covenant, including the foregoing Recitals;
- (b) "Average Market Rents West End" means the rents as defined by the then current Canada Mortgage and Housing Corporation "Rental Market Report" for Private Apartment Average Rents in the West End (Stanley Park), as amended or replaced from time to time by the Canada Mortgage and Housing Corporation, provided that if the most current edition of such report reports the average rents at a time more than 6 months before the relevant date for determination of the rent of a Below-Market Rental Housing Unit, the Average Market Rents West End shall be adjusted for the purposes of this Agreement by increasing such rents by the Consumer Price Index (British Columbia Monthly for All Items as published by Statistics Canada) difference between that existing as at the date of the average rent used in the said report and the date of determination of the rent for a Below-Market Residential Housing Unit;
- (c) "Below-Market Rental Housing Units" means a total of 26 Housing Units located on floors 2, 3 and 4 of the New Building, which are secured for the Reduced Term with rents at 20% below the Average West End Market Rents and "Below-Market Rental Housing Unit" means any one of such units;
- (d) "Building Permit" means any building permit issued by the City authorizing the building of a New Building as contemplated by the Rezoning By-Law;
- (e) "Chief Housing Officer" means the chief administrator from time to time of the City's Social Development Department and his/her successors in function and their respective nominees;
- (f) "City Manager" means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (g) "City Personnel" means the City's elected officials, officers, employees, contractors, subcontractors, agents, licensees, invitees and permittees;
- (h) "Chief Housing Officer" means the chief housing officer from time to time of the City and his/her successors in function and their respective nominees;
- (i) "Development Permit" means any development permit issued by the City authorizing the development of the Lands contemplated by the Rezoning By-Law;
- (j) "Director of Legal Services" means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (k) "Effective Date" means the date as of which this Agreement is registered in the LTO;
- (l) "Eligible Tenants" means the tenants who are resident, as of January 1, 2015, in any of the existing twenty-six (26) units that will be demolished if this development proceeds and are identified in the Tenant Relocation Plan as

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Rental Housing Covenant
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eligible for the benefits set out therein, and "Eligible Tenant" means any one of them;

- (m) "Housing Unit" means a self-contained residential unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (n) "Income of the Occupant" has the meaning described in Section 3.1(d);
- (o) "*Land Title Act*" means the Land Title Act, R.S.B.C. 1996, c. 250;
- (p) "Lands" means the lands described in Item 2 in the Form C attached hereto, and includes any lots or parcels into which such land is consolidated or further subdivided;
- (q) "LTO" means the land title office for the jurisdiction in which the Lands are situate;
- (r) "Losses" means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (s) "New Building" means any new building or structure to be built on the lands, as contemplated by the Rezoning By-Law and the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Rezoning By-Law and the Development Permit;
- (t) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of any building, development or partial development on the Lands;
- (u) "Owner" means the Transferor, 1700 Pendrell Property Inc., and all assigns, successors and successors in title to the Lands or any part thereof;
- (v) "Reduced Term" means 30 years from the date the Occupancy Permit is issued for the Below-Market Rental Housing Units, in the New Building;
- (w) "Related Person" means, where the registered or beneficial owner of the Rental Housing Units (or Replacement Rental Housing Units, as applicable) is:
 - (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c.57, then a Related Person is:
 - A. an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - B. the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and

- (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (x) "Rental Housing" means a residential unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arms length, for use as rental accommodation in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (y) "Rental Housing Units" means a minimum of 173 new residential units intended for Rental Housing, and "Rental Housing Unit" means any one of such units;
- (z) "Replacement Rental Housing Unit" has the meaning ascribed to that term in Section 2.1(i), and "Replacement Rental Housing Units" means more than one or all of such Units, as the context requires;
- (aa) "*Residential Tenancy Act*" means the Residential Tenancy Act, S.B.C. 2002, c. 78;
- (bb) "Returning Tenants" means the Eligible Tenants who accept the Owner's offer to relocate to the New Building after its completion, and "Returning Tenant" means any one of them;
- (cc) "Rezoning By-Law" has the meaning ascribed to that term in Recital C;
- (dd) "Tenant Relocation Plan" means the Owner's Tenant Relocation Plan outlined in Schedule A, attached hereto, approved by the Chief Housing Officer;
- (ee) "Term" means the term of this Agreement, which will commence on Effective Date and will end on the later of:
 - (i) the date as of which the New Building is demolished or substantially destroyed; and
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the New Building;
- (ff) "*Vancouver Charter*" means the Vancouver Charter, S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) Party. Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.

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- (b) Singular; Gender. Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References. References to the or this "Agreement" and the words "hereof" "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.
- (f) Legislation. Any reference to a statute or by-law includes and is a reference to such statute or by-law and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute, by-law and regulations that may be passed which have the effect of supplementing or superseding such statute, by-law and regulations.
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

ARTICLE 2
RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) at its sole cost and expense, it will construct, fit and finish the New Building containing the Rental Housing Units and related amenity and parking spaces, in accordance with the conditions of the Rezoning By-Law, the Development Permit, and all applicable City by-laws and polices, all to the satisfaction of the City and thereafter throughout the Term will maintain, the Rental Housing Units including, without limitation, the Below-Market Rental Units, all in

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accordance with the Rezoning By-Law, Development Permit and this Agreement;

- (c) after completion and thereafter throughout the Term, the Rental Housing Units will be used only for the purpose of providing Rental Housing;
- (d) after completion and thereafter throughout the Term, the Rental Housing Units (or Replacement Rental Housing Units, as applicable) will only be rented on a month-to-month or longer basis, and in no case for less than at least 30 consecutive days except for the month of February;
- (e) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) to be sold or otherwise transferred unless title to every Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and unless such transferee concurrently enters into an assumption agreement as contemplated by Section 9.9;
- (f) throughout the Term, it will not suffer, cause or permit the Lands or the New Building to be subdivided by strata plan or air space plan or otherwise without the prior written consent of the City, which consent may be arbitrarily withheld;
- (g) throughout the Term, any sale of a Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) in contravention of the covenant in Section 2.1(e), and any subdivision in contravention of Section 2.1(f), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (h) throughout the Term, it will insure the New Building and all parts thereof to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands;
- (i) after completion and thereafter throughout the Term, it will keep and maintain the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) is damaged or destroyed before the end of the Term, the Owner will promptly restore and repair the same (each such replacement Rental Housing Unit hereinafter referred to as a "Replacement Rental Housing Unit") whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred;

ARTICLE 3
RETURNING TENANTS AND BELOW-MARKET RENTAL HOUSING UNITS

- 3.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the Building, that:
- (a) it will provide all Eligible Tenants with a right of first refusal to occupy a Below-Market Rental Housing Unit in the New Building following issuance of the Occupancy Permit, based on length of occupancy of a unit in the New Building, at 20% below the Average Market Rents West End as determined at the commencement of the rental period for each such Below Market Rental Housing Unit rented to an Eligible Tenant and thereafter subject to the provisions of the *Residential Tenancy Act* as to rent increases provided such discounted rent would only be applicable to households where such rent level would be equivalent to 30% of their gross monthly income;
 - (b) notwithstanding Section 3.1 (a) above, throughout the Reduced Term, the Below-Market Rental Housing Units will be rented at 20% below the Average Market Rents West End as determined at the commencement date of each rental and re-rental of each Below Rental Housing Unit and thereafter subject to the provisions of the *Residential Tenancy Act* in relation to rent increase provided that the new increased rent amount does not exceed the amount that is 20% below the Average Market Rents West End;
 - (c) if an Eligible Tenant does not qualify for rent at 20% below the Average Market Rents West End, the Owner will provide the said Eligible Tenant with a right of refusal to occupy a Rental Housing Unit, other than a Below-Market Rental Housing Unit, at market rent otherwise payable by any other tenant for the particular Rental Housing Unit chosen by the Eligible Tenant;
 - (d) it will, throughout the Reduced Term, engage a non-profit housing provider, selected by the City, to assist with tenancing of the Below Market Rental Housing Units to ensure the Below-Market Rental Housing Units are rented only to Occupants where the reduced rent level would be equivalent to 30% of the Occupants' Income, (as defined herein) and to provide on-going monitoring and re-tenancing, and the tenancing plan must be agreed to by the Chief Housing Officer. "Income" of an Occupant (where "Occupant" includes all persons for whom the Rental Housing Unit serves as the principal residence) means the total annual income before income tax from all sources of income of the Occupant, calculated as of the date when the Occupant becomes a resident of the Below-Market Rental Housing Unit, and includes without limitation:
 - (i) all income from earnings, including commissions and tips;
 - (ii) all income from all public and private pension plans, Old Age Security and Guaranteed Income Supplement;
 - (iii) all income received under the *Employment and Assistance Act* (British Columbia), the *Employment and Assistance for Persons with Disabilities Act* (British Columbia), or successor legislation;
 - (iv) Disabled Veteran's Allowance;
 - (v) alimony;

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- (vi) child support;
- (vii) workers' compensation benefits;
- (viii) employment insurance; and
- (ix) actual income from Assets;

but does not include:

- (x) Child Tax Benefit;
 - (xi) capital gains, such as insurance settlements, inheritances, disability awards and sale of effects in the year they are received;
 - (xii) the earnings of a person aged 18 and under;
 - (xiii) student loans, student loan equalization payments and student grants (Note: non-repayable training allowances, research fellowships or similar grants are not excluded);
 - (xiv) living out or traveling allowances;
 - (xv) Shelter Aid for Elderly Renters ("SAFER") or Rental Assistance Program ("RAP") payments received prior to moving into the Building;
 - (xvi) Goods and Services Tax (GST) and Harmonized Sales Tax (HST) rebates;
 - (xvii) government provided daycare allowance; or
 - (xviii) payments for foster children, or Child in Home of Relative (CIHR) income under the *Employment and Assistance Act* (British Columbia), except for the housing allowance portion.
- (e) it will ensure that the non-profit housing provider establishes policies and procedures for establishing rent and asset calculations and submits these to the City for approval. As part of this the Owner will ensure that the non-profit housing provider obtains a declaration ("Declaration of Income and Assets") and supporting documentation as evidence of the Income and Assets of each Occupant as of the time of the initial occupancy and annually thereafter. The said Declaration will be in a form approved by the City as may be amended by the City from time to time. The Owner will ensure that the Operator maintains a copy of each Occupant's documentation in a file available to the City on request. The income of any person occupying a Below-Market Rental Housing Unit as his or her principal residence will be included for the purpose of determining the Occupant's Income.
- (f) it will ensure that the Operator submits an annual operator report to the City no later than three (3) months after the Operator's Fiscal Year end in form and contents to be pre-approved by the City and such Operator's report to include, in respect of the Fiscal Year (or partial Fiscal Year, if applicable, at the beginning and end of the term or otherwise) just ended, a rent roll for the 26 units of Below-Market Rental Housing Units, showing the occupant name, rental rate, and proof of income testing.
- (g) as of the Effective Date, it will provide the City with a table of the rents that would be charged by the Owner for the Below-Market Rental Housing Units as at the Effective Date if they were available for rent at that date;

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- (h) it will provide all Eligible Tenants with the notice, rent allowance, moving expenses and assistance and other benefits and assistance set out in the Tenant Relocation Plan; and
- (i) it will in all other respects comply with and fulfill the terms and conditions set out in the Tenant Relocation Plan.

**ARTICLE 4
OCCUPANCY RESTRICTION ON THE LANDS**

4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the Building, that:

- (a) the Lands and the Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the Lands or the Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for the Lands or the Building; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit permitting the use and occupation of the Lands or the Building, notwithstanding completion of construction of the Building,

until such time as the Owner provides the City with:

 - (iii) proof that insurance consistent with the requirements of Section 2.1(h) is in force and effect as of Occupancy Permit issuance, in form and substance satisfactory to the City; and
 - (iv) confirmation that the Rental Housing Units will be used as Rental Housing as of Occupancy Permit issuance, in form and substance satisfactory to the City;
 - (v) confirmation that the Tenant Relocation Plan has been complied with, in form and substance satisfactory to the City;
 - (vi) particulars regarding Returning Tenants including the unit number and type to be occupied by each and the starting rent that will be payable for the same, together with evidence substantiating the agreed rent discount;
 - (vii) confirmation of the rents for the Below-Market Rental Housing Units based on the length of tenancy in accordance with the criteria in this Agreement;
- (b) without limiting the general scope of Article 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City

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Rental Housing Covenant
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Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this Article 4.

ARTICLE 5
RECORD KEEPING

- 5.1 The Owner will, throughout the Term, keep accurate records pertaining to the use, rental rates charged and occupancy of/for the Rental Housing Units (or Replacement Rental Housing Units, as applicable), such records to be in form and substance to the satisfaction of the City. At the request of the City, from time to time, the Owner will make such records available for inspection and copying by the City on a confidential basis. The City acknowledges that the Owner's records pertaining to occupancy and rental rates for the Rental Housing Units is proprietary information of the Owner, the release of which is likely to be harmful to the Owner's competitive position among other things and the City will comply with the Owner's statutory obligations with respect to privacy of such information and the provisions of the *Freedom of Information and Protection of Privacy Act* as amended and replaced from time to time. The Owner will also, throughout the Term, forthwith upon request by the City, provide the City with proof of the insurance required to be taken out pursuant to Section 2.1(h), in form and substance satisfactory to the City.

ARTICLE 6
ENFORCEMENT

- 6.1 This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it shall be entitled to court costs on a solicitor and own client basis.

ARTICLE 7
RELEASE AND INDEMNITY

7.1 Release and Indemnity. Subject to Section 7.2, the Owner hereby:

- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:
- (i) by reason of the City or City Personnel:
- A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the Building or any part thereof to the extent that such reviewing, accepting or

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approving is connected to matters covered under this Agreement;

- B. withholding any permit pursuant to this Agreement; or
 - C. exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or
- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel; and

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of:
- (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
 - (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.

The indemnities in this Article 7 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

7.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, ~~then the City will give notice of such claim to the Owner and, subject to Section 7.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.~~
- (b) Section 7.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 7.2(a) in the following circumstances:
- (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a

precedent with respect to other existing or potential claims affecting or involving the City;

provided, however, that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 7.2(b); and

- (c) Regardless of whether the claim is being defended under Section 7.2(a) or Section 7.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

- 7.3 Survival of Release and Indemnities. The release and indemnities in this Article 7 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 8 NOTICES

- 8.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, shall be in writing and shall be given by registered mail or personal delivery, addressed as follows:

- (a) If to the City:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: City Clerk, with concurrent copies to the Chief Housing Officer and the Director of Legal Services

- (b) If to the Owner:

1700 Pendrell Property Inc.
#501 - 1067 West Cordova Street
Vancouver, British Columbia
V6C 1C7

Attention: Development Manager

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and any such notice, demand or request will be deemed given:

- (c) if made by registered mail, on the earlier of the day receipt is acknowledged by the addressee or the third day after it was mailed, except when there is a postal service disruption during such period, in which case delivery will be deemed to be completed upon actual delivery of the notice, demand or request; and
- (d) if personally delivered, on the date when delivered,

or to such other address in Canada as either party may specify in writing to the other party in the manner described above, provided that if and when the owner of the Land or any part thereof should change, in the absence of any such specification, then to the address as set out in the State of Title Certificate for that particular parcel of land.

ARTICLE 9 MISCELLANEOUS

- 9.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated; provided that notwithstanding anything to the contrary in this Agreement, the parties agree that neither the Owner or any successor in title to the Lands shall be liable for breaches of or non-observance or non-performance of covenants herein occurring as the same relate to any portion of the Lands after it has ceased to be the registered owner of such portion.
- 9.2 Enurement. This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.
- 9.3 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants will remain and be binding.
- 9.4 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 9.5 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this

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Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.

- 9.6 Perfection of Intention. The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a charge against title to the Lands.
- 9.7 Priority of Registration. The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
 - (c) which the Director of Legal Services has determined, in her/his sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 9.8 Further Assurances. Each party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.
- 9.9 Transfer of Lands. The Owner covenants and agrees with the City that concurrent with any sale, transfer or conveyance of the Lands charged by this Agreement, or any portion thereof (subject to Sections 2.1(e) and 2.1(f)), to any person, trust, corporation, partnership or other entity, the Owner will obtain from such person, trust, corporation, partnership or entity and deliver to the City a duly executed acknowledgement, in form and substance satisfactory to the Director of Legal Services, of the terms of this Agreement and an assumption of the continuing obligations of the Owner pursuant to this Agreement.
- 9.10 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City that:
- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
 - (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;

- (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C which is a part hereof.

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Schedule A

Rate of Change Guideline Requirements	Tenant Relocation Plan Offer
Two months' free rent	<ul style="list-style-type: none"> • Three Months Free Rent Provided (rebated at the end of the tenancy)
Reimbursement for receipted moving expenses	<ul style="list-style-type: none"> • \$1,000 moving and reconnection expenses provided as a flat rate.
Assistance in finding a rental unit or other form of alternative affordable housing	<ul style="list-style-type: none"> • Applicant has committed to providing tenants requesting assistance with 3 reasonable offers for alternative, affordable rental options in Vancouver. One option must be in the same general area as their current home and all options must identify the needs identified by the tenant to include school catchment, family/pet friendly and appropriate number of bedrooms.
First right of refusal to relocate into a replacement rental unit on the site	<ul style="list-style-type: none"> • Tenants would receive right of first refusal to move back to the market rental units at market rental rates. • Tenants who meet the income tests would be given priority to move into the affordable units. • Tenants who do not meet the income testing but still wish to move into a market rental unit would receive two months of free rent
Additional offering (Not part of Rate of Change)	<ul style="list-style-type: none"> • An additional cash incentive equal to \$5,000 less the 3-months free rent and moving allowance is being offered. This equates to a cash payment of \$1,240 to \$3,115 per unit.

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CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA3352289 and the Assignment of Rents registered under number CA3352290;
- (b) "Existing Chargeholder" means HSBC Bank Canada;
- (c) "New Charge" means the Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder hereby:

- (i) consents to the Owner granting the New Charge to the City; and
- (ii) agrees with the City that the New Charge charges the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charge, and it had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

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CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA4394943 and the Assignment of Rents registered under number CA4394944;
- (b) "Existing Chargeholder" means Computershare Trust Company of Canada;
- (c) "New Charge" means the Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder hereby:

- (i) consents to the Owner granting the New Charge to the City; and
- (ii) agrees with the City that the New Charge charges the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charge, and it had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT

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