

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 1296 West Broadway**

After the public hearing on January 16 and 18, 2018, 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 General Manager of Community Services, prior to enactment of the CD-1 By-law. The Housing Agreement was accepted and executed 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 the Housing Agreement with the land owner.

Director of Legal Services
July 10, 2018

1296 West Broadway

BY-LAW NO.



**A By-law to enact a Housing Agreement
for 1296 West Broadway**

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:

PID: 030-417-261

Lot 1 Block 353 District Lot 526 Group 1 New
Westminster District Plan EPP81033

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 , 2018

Mayor

City Clerk

SCHEDULE A

FORM C_V24 (Change)

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

PAGE 1 OF 15 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 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)
[TO BE FILLED IN BY OWNER'S LAWYER]

Matter no.: LS-18-00335-003.(Housing)

Deduct LTSA Fees? Yes ☒

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

030-417-261 LOT 1 BLOCK 353 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER
DISTRICT PLAN EPP81033

STC? YES ☐

3. NATURE OF INTEREST
SEE SCHEDULE

CHARGE NO. ADDITIONAL INFORMATION

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):

1061511 B.C. LTD., INC. NO. 1061511
COMPUTERSHARE TRUST COMPANY OF CANADA, INC. NO. A52313 (AS TO PRIORITY)

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

CITY OF VANCOUVER

453 WEST 12TH AVENUE

VANCOUVER

BRITISH COLUMBIA

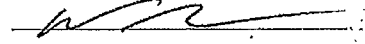
V5Y 1V4

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)



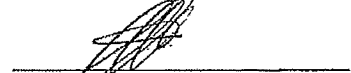
WILFRED CHAN
Barrister & Solicitor
DENTONS CANADA LLP
20th Floor, 250 Howe Street
Vancouver, B.C. V6C 3R8
Telephone (604) 687-4460

Execution Date

Y	M	D
18	07	03

Transferor(s) Signature(s)

1061511 B.C. LTD. by its authorized signatory(ies):



Print Name:

Anthony Pappejohn

Print 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

PAGE 2 of 15 PAGES

EXECUTIONS CONTINUED

Officer Signature(s)

Fiona Helene Koch
Notary Public in and for
The Province of Ontario
100 University Ave., 11th Flr.,
Toronto, ONTARIO M5J 2Y1
416-263-9888

Fiona Koch

Execution Date

Y	M	D
18	07	04

18

Transferor / Borrower / Party Signature(s)

CITY OF VANCOUVER by its
authorized signatory:

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

Aaron Cao

Print Name:

Aaron Cao
Professional, MBS

Warren A. Chang

Print Name:

Warren A. Chang
Administrator, MBS

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

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Entire Instrument

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting above Covenant priority over Mortgage CA4977621 (modified by CA5921618 and CA6792468) and Assignment of Rents (modified by CA5921619 and CA6792469)

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
(MARKET RENTAL)

1296 WEST BROADWAY

WHEREAS:

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

- (i) the Transferor, 1061511 B.C. Ltd., is herein 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 owner of the Lands;

C. The Owner made an application to rezone the Lands from C-3A (Commercial) District to CD-1 (Comprehensive Development) District to increase the floor space ratio from 3.00 to 7.07 to permit the development of an 16-storey mixed-use building containing commercial and retail uses at grade and 153 secured market rental housing units above and, after a public hearing to consider the rezoning application, the rezoning application was approved by City Council, in principle, subject to, *inter alia*, fulfillment of the condition that the Owner make arrangements to the satisfaction of the General Manager of Community Services and the Director of Legal Services to enter into an agreement securing all residential units as market rental housing for the longer of 60 years and the life of the building, and subject to the following additional conditions:

"6. Make arrangements to the satisfaction of the General Manager of Community Services and the Director of Legal Services to enter into a Housing Agreement and Section 219 Covenant securing all residential units as market rental housing units for the longer of 60 years and life of the building, subject to the following additional conditions:

- (i) A no separate-sales covenant.
- (ii) A no stratification covenant.
- (iii) That none of such units will be rented for less than one month at a time.
- (iv) Such other terms and conditions as the General Manager of Community Services and the Director of Legal Services may in their sole discretion require."

the ("Market Rental Housing Condition"); and

D. The Owner and the City are now entering into this Agreement to satisfy the Market Rental Housing Condition.

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 INTERPRETATION

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

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) "Building" means each new building or structure to be built on the Lands as contemplated by the Rezoning 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 or the Development Permit;
- (c) "Chief Housing Officer" means the chief housing officer from time to time of the City and her/his successors in function and their respective nominees;
- (d) "City" and "City of Vancouver" have the meaning ascribed to those terms in Recital A(ii);
- (e) "City Manager" means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (f) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (g) "Commencement Date" means the date as of which this Agreement has been executed by all parties to it;
- (h) "Development Permit" means a permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing development on the Lands (or any portion of the Lands) as contemplated by the Rezoning;
- (i) "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;

- (j) "General Manager of Community Services" means the chief administrator, from time to time, of the City's Community Services Department and his or her successors in function and their respective nominees;
- (k) "General Manager of Planning and Development" means the chief administrator from time to time of the Planning and Development Services Department of the City and her/his successors in function and their respective nominees;
- (l) "High-Density Housing for Families With Children Guidelines" means the City's High-Density Housing for Families With Children Guidelines adopted by the City's elected council on March 24, 1992, as the same may be amended, supplemented and/or replaced from time to time;
- (m) "Land Title Act" means the Land Title Act, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (n) "Lands" means the parcel of land situate in the City of Vancouver, British Columbia, and legally described in Item 2 of the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and includes any parcels into which such land is consolidated or further subdivided (including, without limitation, a subdivision pursuant to the *Land Title Act* and a subdivision pursuant to the *Strata Property Act*);
- (o) "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;
- (p) "Market Rental Housing" means a dwelling 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 arm's 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;
- (q) "Market Rental Housing Condition" has the meaning ascribed to that term in Recital C;
- (r) "Market Rental Housing Units" has the meaning ascribed to that term in Section 2.1(b);
- (s) "Occupancy Permit" means a permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing the use and occupation of any Building, development or partial development on the Lands or any portion of the Lands;
- (t) "Owner" means the Transferor, 1061511 B.C. Ltd., and all assigns, successors and successors in title, to the Lands or any part thereof;

- (u) "Related Person" means, where the registered or beneficial owner of the Market Rental Housing Units is:
 - (i) a corporation (as that term is defined in the *Business Corporations Act* (British Columbia)), 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;
- (v) "*Residential Tenancy Act*" means the Residential Tenancy Act, S.B.C. 2002, c. 78;
- (w) "Rezoning" means the rezoning of the Lands described in Recital C of this Agreement;
- (x) "Term" means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
 - (i) the date as of which the Building is demolished or substantially destroyed; or
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the Market Rental Housing Units Parcel;
- (y) "Vancouver" has the meaning ascribed to that term in Recital A(ii); and
- (z) "*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.
- (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 includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes 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 Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) when and if it carries out the development on the Lands after the date of this Agreement as contemplated in the Development Permit, it will construct, and throughout the Term will maintain all residential units on the Lands in accordance with the Market Rental Housing Condition, the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement (the "Market Rental Housing Units");
- (c) throughout the Term, not less than thirty-five percent (35%) of the Market Rental Housing Units will have at least two (2) bedrooms and will be designed to suitable for families with children in accordance with the High-Density Housing for Families With Children Guidelines;
- (d) throughout the Term, the Market Rental Housing Units will only be used for the purpose of providing Rental Housing;

- (e) throughout the Term, the Market Rental Housing Units will only be rented on a month-to-month or longer basis, and in no case for less than at least 30 consecutive days;
- (f) 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 Market Rental Housing Unit to be sold or otherwise transferred unless title to every Market Rental Housing Unit 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 satisfactory to the City whereby it agrees to be and thereafter remain bound by each and every term and condition of this Agreement applicable to the Owner of the Market Rental Housing Units;
- (g) throughout the Term, it will not suffer, cause or permit the Building to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld;
- (h) throughout the Term, any sale of a Market Rental Housing Unit in contravention of the covenant in Section 2.1(f), and any subdivision in contravention of Section 2.1(g), 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;
- (i) it will insure, or cause to be insured, the Building, the Market Rental Housing Units 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; and
- (j) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If the Market Rental Housing Units or any part of any thereof are/is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred.

ARTICLE 3 RECORD KEEPING

3.1 The Owner will keep accurate records pertaining to the use and occupancy of the Market Rental Housing Units, such records to be 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. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

ARTICLE 4 ENFORCEMENT

4.1 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 5
RELEASE AND INDEMNITY**

5.1 Release and Indemnity. Subject to Section 5.2, 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 Owner's Works;
 - (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 5 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

5.2 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 5.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.

- (b) Section 5.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 5.2(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 5.2(b); and
- (c) Regardless of whether the claim is being defended under Section 5.2(a) or Section 5.2(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.

5.3 Survival of Release and Indemnities. The release and indemnities in this ARTICLE 5 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 6 NOTICES

6.1 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:

1061511 B.C. Ltd.
Suite 670, 1665 West Broadway
Vancouver, British Columbia
V6J 5A4

Attention: President

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 7 MISCELLANEOUS

7.1 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.

7.2 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.

7.3 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.

7.4 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.

7.5 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 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.

7.6 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.

7.7 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.

7.8 Transfer of Lands. The Owner covenants and agrees with the City that upon any sale, transfer or conveyance of the Lands charged by this Agreement, or any portion thereof, 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 relative to that portion of the Lands sold, transferred or conveyed to such person, trust, corporation, partnership or entity. Provided any such purchaser/transferee enters in to an assumption agreement as provided in this Section 7.8, the selling/transferring Owner shall not be bound by the continuing obligations of the Owner pursuant to this Agreement following such sale, transfer or conveyance relative to that portion of the Lands sold, transferred or conveyed.

7.9 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.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA4977621 (modified by CA5921618 and CA6792468) and the Assignment of Rents registered under number CA4977622 (modified by CA5921619 and CA6792469);
- (b) "Existing Chargeholder" means the COMPUTERSHARE TRUST COMPANY OF CANADA;
- (c) "New Charges" means the registrable charges and encumbrances created by and 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:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge 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 Charges, and they 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

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 1715 Cook Street**

After the public hearing, on December 12, 2017, 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. The Housing Agreement was accepted and executed 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 the Housing Agreement with the land owner.

Director of Legal Services
July 10, 2018

1715 Cook Street



BY-LAW NO.

**A By-law to enact a Housing Agreement
for 1715 Cook 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 A, Block 4, District Lot 302, Group 1, N.W. D.,
Plan EPP76959

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 , 2018

Mayor

City Clerk

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

PAGE 1 OF 18 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 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)

Sarah W. Jones, Barrister & Solicitor

Clark Wilson LLP

900 - 885 West Georgia Street

Vancouver

BC V6C 3H1

Telephone: 604.687.5700

File No. 13260-0359

Document No. 12383951

Housing Agreement

Deduct LTSA Fees? Yes ☒

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

NO PID NMBR LOT A BLOCK 4 DISTRICT LOT 302 GP 1 NWD PLAN EPP76959

STC? YES

Related Plan Number: **EPP76959**

3. NATURE OF INTEREST
-
- Covenant**

CHARGE NO.

ADDITIONAL INFORMATION
Entire Instrument

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):

CRESSEY WILKINSON HOLDINGS LTD. (INC. NO. BC1055310)

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

CITY OF VANCOUVER

453 WEST 12TH AVENUE

VANCOUVER

V5Y 1V4

BRITISH COLUMBIA

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)

Sarah W. Jones

Barrister & Solicitor

Clark Wilson LLP

900-885 W. Georgia Street

Vancouver, BC V6C 3H1

604-687-5700

Execution Date

Y	M	D
18	07	04

Transferor(s) Signature(s)

CRESSEY WILKINSON HOLDINGS LTD., by its authorized signatory:

Print Name: Scott Cressey

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

PAGE 2 of 18 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D
18		

CITY OF VANCOUVER, by its
authorized signatory(ies):_____
Print Name:_____
Print 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.

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
FOR-PROFIT AFFORDABLE RENTAL HOUSING

1715 COOK STREET

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, Cressey Wilkinson Holdings Ltd., 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 continued under the *Vancouver Charter*, and "Vancouver" when referring to geographic location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands (the "Rezoning Application") from M-2 (Industrial) District to CD-1 (Comprehensive Development) District and after a public hearing to consider the Rezoning Application, the Rezoning Application was approved by City Council in principle, subject to a number of conditions including that the Owner make arrangements to the satisfaction of the General Manager of Community Services and the Director of Legal Services to enter into a Housing Agreement by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter* securing all residential units in the New Building as for-profit affordable rental housing units pursuant to Section 3.1A of the Vancouver DCL By-law for the longer of 60 years and life of the New Building, and subject to other conditions set forth in the minutes of the said public hearing including that a rent roll will be provided indicating the agreed initial monthly rents for each rental unit when the Housing Agreement is entered into and again prior to development permit issuance. The average initial monthly starting rents for each unit type will be at or below the following proposed starting rents subject to adjustment as contemplated by the Vancouver Development Cost Levy-By-law: Studio- \$1,496; 1-bed-\$1,922; 2-bed-\$2,539; and 3-bed @3333; and
- D. The Owner and the City are entering into this Agreement to satisfy the foregoing condition.

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, in satisfaction of the requirements of Section 3.1A of the Vancouver DCL By-law and pursuant to Section 565.2 of the *Vancouver Charter* and Section 219 of the *Land Title Act*, agree as follows, in respect of the use of the Lands and the New Building:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1 Definitions. Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals and all Schedules hereto;
- (b) "Building Permit" means any building permit issued by the City authorizing the building of a New Building as contemplated by the Rezoning By-law and the Development Permit;
- (c) "City" and "City of Vancouver" have the meaning ascribed to those terms in Recital A(ii);
- (d) "City Manager" means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (e) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) "Development Permit" means any development permit issued by the City authorizing the development of the Lands contemplated by the Rezoning By-law;
- (g) "Director of Legal Services" means the chief administrator from time to time of the City's Legal Services Department and her/his successors in function and their respective nominees;
- (h) "Effective Date" means the date as of which this Agreement has been executed by all parties to it;
- (i) "For-Profit Affordable Rental Housing" means a building containing multiple Housing Units which meets the requirements of Section 3.1A of the Vancouver DCL By-law to be for-profit affordable rental housing, but does not include alterations of or extensions to those Housing Units; PROVIDED, HOWEVER, that if the definition of For-Profit Affordable Rental Housing applicable at the time when a Building Permit is issued differs from the foregoing, the definition applicable at the time of Building Permit issuance will apply unless otherwise provided in the Vancouver DCL By-law;
- (j) "For-Profit Affordable Rental Housing Units" has the meaning ascribed to that term in section 2.1(c) and "For-Profit Affordable Rental Housing Unit" means any one of such units;
- (k) "General Manager of Community Services" means the chief administrator from time to time of the City's Community Services Department and his/her successors in function and their respective nominees;

- (l) "Housing Unit" means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (m) "Land Title Act" means the *Land Title Act*, R.S.B.C. 1996, c. 250;
- (n) "Lands" means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 of the Form C - General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided;
- (o) "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, judgements, builders liens, 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;
- (p) "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;
- (q) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of any New Building, development or partial development on the Lands issued after the Effective Date;
- (r) "Owner" means the registered owner of the Lands as of the Effective Date, namely, Cressey Wilkinson Holdings Ltd., and all of its successors and permitted assigns, successors and successors in title to the Lands or any part thereof;
- (s) "Related Person" means, where the registered or beneficial owner of the Rental Housing Units 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;
- (t) "Rental Housing" means a Housing Unit which is not occupied by the registered beneficial owner of the same or by a Related Person, but which is made by such owner to the general public, at arm's length, for use as rental accommodation on a month-to-month basis or longer 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;

- (u) "Replacement For-Profit Affordable Rental Housing Unit" has the meaning ascribed to that term in section 2.1(c) and "Replacement For-Profit Affordable Rental Housing Units" means all of such units;
- (v) "*Residential Tenancy Act*" means the Residential Tenancy Act, S.B.C. 2002, c. 78;
- (w) "Rezoning Application" has the meaning ascribed to that term in Recital C;
- (x) "Rezoning By-law" means the CD-1 by-law enacted upon satisfaction of the prior-to conditions imposed by the City following, and as a result of, the Rezoning Application;
- (y) "Term" means the term of this Agreement, which will commence on the Effective Date and will end on the later of:
 - (i) the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building; or
 - (ii) the date as of which the New Building is demolished or substantially destroyed;
- (z) "Vancouver" has the meaning ascribed to that term in Recital A(ii);
- (aa) "*Vancouver Charter*" means the *Vancouver Charter* S.B.C. 1953, c. 55; and
- (bb) "Vancouver DCL By-law" means the City's Vancouver Development Cost Levy By-law No. 9755.

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.
- (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 Effective Date 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 statutes, by-laws and regulations.
- (g) Time. Time will 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 will be local Vancouver, British Columbia time.

ARTICLE 2 RESTRICTIONS ON USE OF LANDS AND SUBDIVISION

2.1 Use of the Lands. The Owner covenants and agrees with the City, in respect of the use of the Lands and the construction and use of the New Building, that, during the Term:

- (a) 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 Housing Units and related amenity and parking spaces, in accordance with this Agreement, the conditions of enactment of the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
- (c) when the New Building is completed and an Occupancy Permit has been issued and thereafter throughout the Term, all Housing Units in the New Building will be used only for the purpose of providing For-Profit Affordable Rental Housing (the "For-Profit Affordable Rental Housing Units") in accordance with the terms of this Agreement, and if the New Building is destroyed or demolished before the end of the Term, then any replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than the same number and type of replacement Housing Units as the New Building formerly contained, which replacement Housing Units will also be used only for the purpose of providing For-Profit Affordable Rental Housing (each such replacement Housing Unit hereinafter referred to as a "Replacement For-Profit Affordable Rental Housing Unit"), in accordance with the terms of this Agreement and the applicable by-laws of the City;

- (d) at least 25% of the For-Profit Affordable Rental Housing Units (or Replacement For-Profit Affordable Rental Housing Units, as applicable) will have two or more bedrooms and be designed to meet the City's "High Density Housing for Families with Children Guidelines";
- (e) it will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any For-Profit Affordable Rental Housing Unit (or Replacement For-Profit Affordable Rental Housing Unit, as applicable) for a term of less than one month at a time;
- (f) 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 registered title to any For-Profit Affordable Rental Housing Unit (or For-Profit Affordable Rental Housing Unit, as applicable) to be sold or transferred unless title to every one of the For-Profit Affordable Rental Housing Units (or Replacement For-Profit Affordable Rental Housing Units, as applicable) is sold or otherwise transferred together and as a block to the same legal and beneficial owner, as applicable, and subject further to Section 8.9;
- (g) it will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld;
- (h) that any sale of any For-Profit Affordable Rental Housing Unit (or Replacement For-Profit Affordable Rental Housing Unit, as applicable) in contravention of the covenant in Section 2.1(f), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(g), 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;
- (i) it will keep and maintain the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings;
- (j) if the New Building or any part thereof, is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred;
- (k) it will insure, or cause to be insured, the New Building to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands;
- (l) as of the Effective Date, the rents proposed to be charged by the Owner to the first occupants of the For-Profit Affordable Rental Housing Units in the New Building, following issuance of the Occupancy Permit, are as set forth in the rent roll attached hereto as Schedule A, subject to such annual increases as may be authorized by Section 3.1B(c) of the Vancouver DCL By-law;

- (m) the rent charged for each For-Profit Affordable Rental Housing Unit as of initial occupancy will not be increased before the one year anniversary of that date even if there is a change in occupancy during that year; and
- (n) in the event of the substantial or complete destruction of the New Building prior to the 60 year anniversary of the issuance of the final Occupancy Permit, it will promptly take all steps reasonably necessary to enable it to build a replacement building or buildings on the Lands, which building(s) (together with any remaining undestroyed or undemolished portion of the New Building building) will also contain not less than the same number and type of replacement Housing Units as the New Building formerly contained, unless the City then otherwise agrees in its absolute and unfettered discretion, which replacement Housing Units will also be used only for the purpose of providing For-Profit Affordable Rental Housing (each such replacement Housing Unit, referred to as a "Replacement For-Profit Affordable Rental Housing Unit"), for the duration of the Term in accordance with the terms of this Agreement and the applicable by-laws of the City.

ARTICLE 3

DEVELOPMENT PERMIT RESTRICTION ON THE LANDS

3.1 **No Development.** The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:

- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Development Permit, and will take no action, directly or indirectly, to compel the issuance of any Development Permit, until such time as the Owner has delivered a rent roll to, and to the satisfaction of, the General Manager of Community Services confirming the rents proposed to be charged to the first occupants of the For-Profit Affordable Rental Housing Units (or Replacement For-Profit Affordable Rental Housing Units, as applicable) following issuance of the Occupancy Permit, and the unit type mix and size, which rents, unit type mix and size will comply with this Agreement and the DCL By-law when the Development Permit is issued; and
 - (ii) the City will be under no obligation to issue any Development Permit until such time as the Owner has complied with Section 3.1(a)(i); and
- (b) without limiting the general scope of Article 6, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of a Development Permit until there is compliance with the provisions of this Article 3.

ARTICLE 4

OCCUPANCY RESTRICTION ON THE LANDS

4.1 **No Occupancy.** The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:

- (a) the Lands and the New 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 New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the General Manager of Community Services:
 - (A) a final rent roll confirming the rents to be charged to the first occupants of the For-Profit Affordable Rental Housing Units following issuance of the Occupancy Permit on either a per unit or a per square foot basis, and the unit type mix and size, which rents, unit type mix and size will comply with this Agreement and the DCL By-law as of the date when the Occupancy Permit is issued;
 - (B) proof of the insurance, consistent with the requirements of Section 2.1(k), is in force and effect, in form and substance satisfactory to the City;
 - (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 4.1(a)(i); and
- (b) without limiting the general scope of Article 6, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City 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 **Records.** The Owner will keep accurate records pertaining to the use, occupancy and rental rates charged of//for the For-Profit Affordable Rental Housing Units (or Replacement For-Profit Affordable Rental Housing Units, as applicable) such records to be to the satisfaction of the General Manager of Community Services. At the request of the General Manager of Community Services, from time to time, the Owner will:

- (a) make such records available for inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and
- (b) provide evidence of the insurance required to be taken out pursuant to Section 2.1(k).

ARTICLE 6 RELEASE AND INDEMNITY

6.1 **Release and Indemnity.** Subject to Section 6.2, 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 New Building or any part thereof;
 - (B) withholding any permit pursuant to this Agreement; or
 - (C) exercising any of its rights under any Section 219 covenant, *Vancouver Charter* Section 562.2 housing agreement 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.
 - (c) The indemnities in this Article 6 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

6.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms this Agreement, requires the Owner to indemnify the City or City Personnel, the City will give notice of such claim to the Owner and, subject to Section 6.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 6.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.2(a) in the following

- (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 6.2(b); and

- (c) Regardless of whether the claim is being defended under Section 6.2(a) or Section 6.2(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.

6.3 Survival of Release and Indemnities. The release and indemnities in this Article 6 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 7 NOTICES

7.1 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, will be in writing and will be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:

- (a) 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
- (b) if personally delivered, on the date when delivered.

If to the City, addressed to:

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

Attention: General Manager of Community Services with a concurrent copy to
the Director of Legal Services

If to the Owner, addressed to:

Cressey Wilkinson Holdings Ltd.
200 - 555 West 8th Avenue
Vancouver, British Columbia
V5Z 1C6

Attention: President

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 8 MISCELLANEOUS

8.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner will be covenants the burden of which will run with and will bind the Lands and will attach thereto and run with each and every part into which the same may be subdivided or consolidated.

8.2 Agreement to be a First Charge. The Owner agrees to cause, at its sole cost and expense, 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 any rezoning or any Development Permit; and
- (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

8.3 Enforcement. 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 will be entitled to court costs on a solicitor and own client basis.

8.4 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.

8.5 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.

8.6 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 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.

8.7 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 housing agreement pursuant to Section 565.2 of the *Vancouver Charter* and also registered as a charge against title to the Lands.

8.8 Further Assurances. The Owner will 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 including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.

8.9 Sale or Transfer of Lands or New Building. Prior to the sale or transfer of any legal beneficial interest in the Lands and/or the New Building or any part thereof (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over mortgage), subject always to Sections 2.1(f) and 2.1(g), the Owner will cause the purchaser/transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of the Owner under Agreement. The provisions in this Section 8.9 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 contained herein priority, in form and substance satisfactory to the City, over its mortgage).

8.10 Owner's Representations. 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.

8.11 Enurement. This Agreement will enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement will enure to the benefit of and be binding upon the Owner and its successors and assigns.

IN WITNESS WHEREOF the parties have executed this Agreement on the Forms C or D which are a part hereof.

SCHEDULE A - RENT ROLL

Rent Roll

Unit #	Bedroom Type	RENT ROLL	
		Starting Monthly Rental Rate (2017 DCL waiver)	Size of Unit (Net area)
101	2bd	\$2,800	798
102	1bd	\$1,620	552
103	1bd	\$1,575	501
104	2bd	\$2,800	786
105	Studio	\$1,375	385
106	Studio	\$1,375	385
107	Studio	\$1,375	385
108	1bd	\$1,375	472
201	2bd	\$2,800	798
202	1bd	\$1,620	552
203	1bd	\$1,575	502
204	2bd	\$2,800	811
205	Studio	\$1,375	385
206	Studio	\$1,375	385
207	Studio	\$1,375	385
208	Studio	\$1,375	385
209	1bd	\$1,365	472
210	1bd	\$1,745	606
301	2bd	\$2,600	700
302	Studio	\$1,465	422
303	Studio	\$1,400	410
304	3bd	\$3,098	846
305	1bd	\$1,450	483
306	Studio	\$1,450	426
307	Studio	\$1,400	441
308	Studio	\$1,430	424
309	2bd	\$1,925	548
310	2bd	\$2,075	671
311	Studio	\$1,390	438
312	Studio	\$1,475	437
401	2bd	\$2,640	700
402	Studio	\$1,505	422
403	Studio	\$1,440	410
404	3bd	\$3,200	846

(00937670v3)

Housing Agreement and Building Use Covenant
1715 Cook Street

405	1bd	\$1,470	483
406	Studio	\$1,480	426
407	Studio	\$1,430	441
408	Studio	\$1,460	424
409	2bd	\$1,965	548
410	2bd	\$2,115	671
411	Studio	\$1,420	438
412	Studio	\$1,505	437
501	2bd	\$2,680	700
502	Studio	\$1,545	422
503	Studio	\$1,480	410
504	3bd	\$3,275	846
505	1bd	\$1,490	483
506	Studio	\$1,460	441
507	Studio	\$1,490	426
508	Studio	\$1,460	441
509	2bd	\$2,005	548
510	2bd	\$2,155	671
511	Studio	\$1,460	438
512	Studio	\$1,545	437
601	2bd	\$2,720	700
602	Studio	\$1,595	422
603	Studio	\$1,530	410
604	3bd	\$3,375	846
605	1bd	\$1,510	483
606	Studio	\$1,490	441
607	Studio	\$1,520	426
608	Studio	\$1,490	441
609	2bd	\$2,045	548
610	2bd	\$2,195	671
611	Studio	\$1,500	438
612	Studio	\$1,585	437
701	2bd	\$2,770	700
702	Studio	\$1,645	422
703	Studio	\$1,580	410
704	3bd	\$3,475	846
705	1bd	\$1,530	483
706	Studio	\$1,550	426
707	Studio	\$1,520	441
708	Studio	\$1,550	424
709	2bd	\$2,095	548
710	2bd	\$2,245	671

711	Studio	\$1,540	438
712	Studio	\$1,625	437
801	2bd	\$2,820	700
802	Studio	\$1,695	422
803	Studio	\$1,630	410
804	3bd	\$3,575	846
805	1bd	\$1,550	483
806	Studio	\$1,580	426
807	Studio	\$1,550	441
808	Studio	\$1,580	424
809	2bd	\$2,145	548
810	2bd	\$2,295	671
811	Studio	\$1,580	438
812	Studio	\$1,665	437
901	2bd	\$3,300	802
902	2bd	\$3,400	853
903	1bd	\$2,375	552
904	1bd	\$2,375	552
905	1bd	\$2,400	561
906	1bd	\$2,520	665
907	1bd	\$2,495	581
1001	2bd	\$3,250	802
1002	2bd	\$3,350	853
1003	1bd	\$2,375	552
1004	1bd	\$2,375	552
1005	1bd	\$2,400	561
1006	1bd	\$2,520	665
1007	1bd	\$2,495	581

END OF DOCUMENT

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 155 East 37th Avenue (Little Mountain)**

After the public hearing on July 26, 2016, Council approved in principle a Housing Agreement to be entered into by the City and the land owner, on terms satisfactory to the General Manager of Community Services, the General Manager of Planning and Development Services, the General Manager of Engineering Services, the General Manager of Real Estate and Facilities Management, the Director of Real Estate Services and the Director of Legal Services, prior to enactment of the CD-1 By-law. The Housing Agreement was accepted and executed 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 the Housing Agreement with the land owner.

Director of Legal Services
July 10, 2018

155 East 37th Avenue (Little Mountain)



BY-LAW NO. _____

**A By-law to enact a Housing Agreement
for 155 East 37th Avenue (Little Mountain)**

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 PIDs

Lot 1 DL 638 GP 1 NWD Plan EPP82101
Lot 2 DL 637 and 638 GP 1 NWD Plan EPP82101
Lot 4 DL 638 GP 1 NWD Plan EPP82101
Lot 5 DL 638 GP 1 NWD Plan EPP82101
Lot 6 DL 637 and 638 GP 1 NWD Plan EPP82101
Lot 7 DL 637 GP 1 NWD Plan EPP82101
Lot 8 DL 637 GP 1 NWD Plan EPP82101
Lot 9 DL 638 GP 1 NWD Plan EPP82101
Lot 10 DL 637 and 638 GP 1 NWD Plan EPP82101
Lot 11 DL 637 GP 1 NWD Plan EPP82101
Lot 12 DL 637 GP 1 NWD Plan EPP82101

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 _____, 2018

Mayor

City Clerk

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

PAGE 1 OF 32 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 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)

Michelle Stewart, Paralegal of Fasken Martineau DuMoulin LLP

Barristers & Solicitors

2900 - 550 Burrard Street

Vancouver

BC V6C 0A3

LTO Client No. 11565

Matter No. 258670.00031/13625

Telephone: 604 631 3131

Deduct LTSA Fees? Yes ☒

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

SEE SCHEDULE

STC? YES ☐

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

V5Y 1V4

BRITISH COLUMBIA

CANADA

Incorporation No

n/a

7. ADDITIONAL OR MODIFIED TERMS:

None

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)

HANG ZENG
Barrister & Solicitor
 200-1111 WEST GEORGIA STREET
 VANCOUVER, B.C. V6E 4S4
 604 688 8387

Execution Date

Y	M	D
18	07	03

Transferor(s) Signature(s)

HOLBORN PROPERTIES LTD. by
 its authorized signatory(ies):

[Signature]

Print Name : Joo Kim Tiah

OFFICER CERTIFICATION:

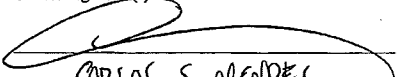
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution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

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

PAGE 2 of 31 PAGES

Officer Signature(s)

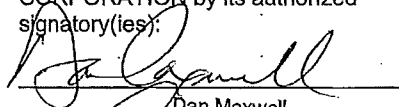

CARLOS S. MENDES
BARRISTER & SOLICITOR
700-401 WEST GEORGIA ST.
VANCOUVER, BC V6B 5A1
604-682-3664

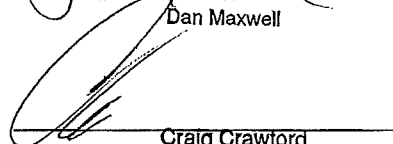
Execution Date

Y	M	D
18	07	03
18	07	03
18		

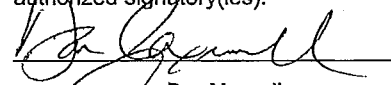
Transferor / Borrower / Party Signature(s)

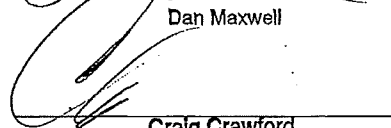
PROVINCIAL RENTAL HOUSING
CORPORATION by its authorized
signatory(ies):


Dan Maxwell


Craig Crawford

BRITISH COLUMBIA HOUSING
MANAGEMENT COMMISSION by its
authorized signatory(ies):


Dan Maxwell


Craig Crawford

CITY OF VANCOUVER by its
authorized signatory(ies):

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

PAGE 3 OF 32 PAGES

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND

Related Plan Number: **EPP82101**

STC for each PID listed below? YES ☐

[PID] [LEGAL DESCRIPTION – must fit in a single text line]

NO PID NMBR LOT 1 DL 638 GP 1 NWD PLAN EPP82101

NO PID NMBR LOT 2 DL 637 AND 638 GP 1 NWD PLAN EPP82101

NO PID NMBR LOT 4 DL 638 GP 1 NWD PLAN EPP82101

NO PID NMBR LOT 5 DL 638 GP 1 NWD PLAN EPP82101

NO PID NMBR LOT 6 DL 637 AND 638 GP 1 NWD PLAN EPP82101

NO PID NMBR LOT 7 DL 637 GP 1 NWD PLAN EPP82101

NO PID NMBR LOT 8 DL 637 GP 1 NWD PLAN EPP82101

NO PID NMBR LOT 9 DL 638 GP 1 NWD PLAN EPP82101

NO PID NMBR LOT 10 DL 637 AND 638 GP 1 NWD PLAN EPP82101

NO PID NMBR LOT 11 DL 637 GP 1 NWD PLAN EPP82101

NO PID NMBR LOT 12 DL 637 GP 1 NWD PLAN EPP82101

LAND TITLE ACT
FORM E

SCHEDULE

PAGE 4 OF 32 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

Page 17, Article 2
as to Lots 2, 4, 5 and 8, onlyNATURE OF INTEREST
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION

Granting the Covenant with one registration
number less than this priority agreement priority
over Mortgage CA3212928 and Assignment of
Rents CA3212929NATURE OF INTEREST
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION

Granting the Covenant with two registration
numbers less than this priority agreement priority
over Mortgage CA3212930 and Assignment of
Rents CA3212931NATURE OF INTEREST
Covenant

CHARGE NO.

ADDITIONAL INFORMATION

Page 22, Article 4

NATURE OF INTEREST
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION

Granting the Covenant with one registration
number less than this priority agreement priority
over Mortgage CA3212928 and Assignment of
Rents CA3212929NATURE OF INTEREST
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION

Granting the Covenant with two registration
numbers less than this priority agreement priority
over Mortgage CA3212930 and Assignment of
Rents CA3212931

LAND TITLE ACT
FORM E

SCHEDULE

PAGE 5 OF 32 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Page 23 Article 5
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting the Covenant with one registration number less than this priority agreement priority over Mortgage CA3212928 and Assignment of Rents CA3212929
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		Granting the Covenant with two registration numbers less than this priority agreement priority over Mortgage CA3212930 and Assignment of Rents CA3212931
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION

**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 6 OF 32 PAGES

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. TRANSFERORS:

HOLBORN PROPERTIES LTD. (Inc. No. 668711)
PROVINCIAL RENTAL HOUSING CORPORATION (Inc. No. 52129) (as to priority)
BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION (as to priority)

TERMS OF INSTRUMENT - PART 2
HOUSING AGREEMENT AND BUILDING USE COVENANT
SOCIAL HOUSING

155 East 37th Avenue

WHEREAS:

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

- (i) the Transferor, HOLBORN PROPERTIES LTD., 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 the corporate entity and "Vancouver" when referring to geographic location;

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

C. The Owner made an application to rezone the Development Lands from RM-3A (Multi-Family Dwelling) District to CD-1 (Comprehensive Development) District (the "Rezoning") to permit a mixed-use development including: approximately 1,573 dwelling units totalling 149,675 m² (1,610,982 sq. ft.), including 282 social housing units; 3,046 m² (32,786 sq. ft.) of commercial space; a 69-space childcare; a neighbourhood house; and a public plaza and park, and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, *inter alia*, fulfilment of the following condition prior to enactment of the rezoning by-law (the "Rezoning By-Law"):

"18. *Make arrangements to the satisfaction of the General Manager of Community Services, the General Manager of Planning and Development Services, the General Manager of Engineering Services, the General Manager of Real Estate and Facilities Management, the Director of Real Estate Services and the Director of Legal Services for the owner to:*

- (i) *Design, construct, equip and convey to the Province of British Columbia a minimum of 234 dwelling units, to be secured as social housing, together with the subdivided parcels of land on which those dwelling units are located, in the first two phases of the Little Mountain redevelopment.*
- (ii) *Complete a minimum of 58 social housing units (beyond the existing 53 replacement units completed and occupied in 2015) prior to occupancy of any market unit in phase 1, except that number may be increased by the General Manager of Community Services in consultation with General Manager of Planning and Development Services, based on the summary of tenant's expressions of interest to return and a summary of their housing needs.*

- (iii) *Complete the balance of such social housing units prior to the earlier of occupancy of any market unit in phase 2 and issuance of any development permit for any building in phase 3 or 4.*
- (iv) *Enter into one or more housing agreements pursuant to Section 565.2 of the Vancouver Charter in respect of all such social housing units, in each case:*
 - a. *For the longer of 60 years or the life of the building, in which such units are located.*
 - b. *Requiring all such units to be used only for social housing.*
 - c. *Requiring that no less than 184 of the units will be suitable for families as per the City's Guidelines for High Density Housing for Families with Children.*
 - d. *Requiring that no less than five percent of the total number of the Social Housing units be suitable as disabled housing as defined by the City's Social Housing Design and Technical Guidelines.*
 - e. *Containing no-separate-sales and no-stratification covenants.*
 - f. *Requiring all such units to be made available for rental for a term of not less than one month at a time.*
 - g. *Providing a first-right-of-refusal for former tenants to relocate into a replacement rental unit on the site at rents comparable to what they formerly paid (adjusted for CPI and subject to normal income testing).*
 - h. *Requiring that replacement social housing units beyond those allocated to returning residents must be rented at rates no greater than rents affordable to households with incomes below the Housing Income Limits as published by CMHC for metro Vancouver.*
 - i. *Including such other terms and condition as the Director of Legal Services and the Chief Housing Officer or successor in function may require."*

(the "Social Housing Condition"); and

D. The Owner and the City are now entering into this Agreement to satisfy the Social Housing Condition.

E. In addition, as a condition of the Rezoning By-law, the City and the Owner will enter into the City Building Agreement (as defined herein) and the parties wish to set out their agreements respecting the same.

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 565.2 of the *Vancouver Charter*, agree as follows in respect of the use of the Lands and the New Building:

ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

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

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) "Applicable HIL Rent Rate" means the monthly rent rate for a Social Housing Unit based on the applicable HIL calculated as follows:

Thirty (30%) Percent x the applicable HIL / 12;
- (c) "Building Permit" means a building permit issued by the City authorizing construction of a New Building or any portion thereof, at any time following the date this Agreement is fully executed by the parties;
- (d) "*Builders Lien Act*" means the British Columbia *Builders Lien Act*, S.B.C., c. 45;
- (e) "City Building" means the building and improvements that will include, *inter alia*, the City Social Housing Units, that the Owner is required to construct for the City, pursuant to the conditions of the Rezoning and the City Building Agreement;
- (f) "City Building Agreement" means the agreement that has or will be entered into between the City and the Owner providing for the design and construction by the Owner, as development manager for the City, of a building, containing, *inter alia*, not less than 48 of the Social Housing Units, and a public plaza on the lands legally described as:

Lot 4 District Lot 638 Group 1 New Westminster District Plan EPP82101

following the transfer of registered and beneficial title of such lands by the Owner to the City and which agreement is a condition for the enactment of the Rezoning By-law;

- (g) "City Manager" means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (h) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;

- (i) "City Social Housing Units" means the 48 Social Housing Units the Owner is required to construct for the City within the City Building, pursuant to the conditions of the Rezoning and the City Building Agreement;
- (j) "Commencement Date" means the date as of which this Agreement has been executed by all parties to it;
- (k) "Complete" means:
 - (i) design, construct, equip and finish in accordance with the Social Housing Condition, the Rezoning By-law, the Development Permit, any Building Permit issued pursuant thereto, the requirements of this Agreement and the City Building Agreement (with respect to the City Social Housing Units only); and
 - (ii) obtain an Occupancy Permit for;
 and "Completed" and "Completion" shall have the respective corresponding meanings;
- (l) "CPI" means the Consumer Price Index for the City of Vancouver;
- (m) "CPI Increase" means the percentage increase in the CPI from the CPI for the last year that a Returning Tenant rented a unit in the Original Buildings to the CPI for year in which the Returning Tenant first occupies a Social Housing Unit;
- (n) "Development" means the development on the Development Lands described in Recital C and approved by the Development Permit;
- (o) "Development Lands" means, collectively, the Lands and Lot 3;
- (p) "Development Permit" means any development permit issued by the City authorizing the development of any portion of the Lands contemplated by the Rezoning By-law;
- (q) "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;
- (r) "Disabled Housing" has the meaning ascribed to such term in the *Building By-law (2014)* No. 10908, as may be amended from time to time;
- (s) "Dwelling Unit" means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (t) "Eligible Tenants" means the tenants who were residents in the Original Buildings, displaced by the redevelopment of the Development Lands and meet the income testing protocol to be established by the Owner, as described in Section 2.1(i), and "Eligible Tenant" means any one of them;

- (u) "Eligible Tenant Summary Report" means a summary of the Eligible Tenants' expressions of interest to rent the Social Housing Units and a summary of their housing needs;
- (v) "Existing Social Housing Building" means the building and improvements constructed on Lot 3 by the Owner and completed in April 2015, comprised of the Existing Social Housing Units;
- (w) "Existing Social Housing Units" means the 53 Dwelling Units constructed by the Owner on Lot 3 for use as Social Housing contained within the Existing Social Housing Building;
- (x) "General Manager of Arts, Culture and Community Services" means the chief administrator from time to time of the City's Arts, Culture and Community Services Department and his/her successors in function and their respective nominees;
- (y) "General Manager of Planning and Development Services" means the chief administrator from time to time of the City's Planning and Development Services Department and his/her successors in function and their respective nominees;
- (z) "Holborn" means Holborn Properties Ltd. and its successors and assigns;
- (aa) "Housing Income Limit" or "HIL" means the income limit for subsidized housing (for each category of dwelling unit) in Vancouver, determined annually by British Columbia Housing Management Commission which is derived from Canada Mortgage and Housing Corporation's Annual Rent Market Survey or, if British Columbia Housing Management Commission ceases to exist or to establish and/or publish such limits annually or at some other regular period acceptable to the City, then such gross annual income limits as the City may set from time to time based on the British Columbia Housing Management Commission's methods last used for establishing such limits;
- (bb) "*Land Title Act*" means the Land Title Act, R.S.B.C. 1996, c. 250;
- (cc) "Lands" means the lands described in Item 2 in the Form C attached hereto; provided, however, that if the Lands are at any time subdivided by air space parcel subdivision, and this Agreement is thereafter discharged from one or more of the resulting legal parcels, then "Lands" will thereafter mean only the part of the Lands within the legal parcel(s) against which it remains registered;
- (dd) "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;
- (ee) "Lot 2" means the lands legally described as:

Lot 2 District Lots 637 and 638 Group 1 New Westminster District Plan EPP82101;

(ff) "Lot 3" means the lands legally described as:

Lot 3 District Lot 638 Group 1 New Westminster District Plan EPP82101;

(gg) "Lot 4" means the lands legally described as:

Lot 4 District Lot 638 Group 1 New Westminster District Plan EPP82101;

(hh) "Lot 5" means the lands legally described as:

Lot 5 District Lot 638 Group 1 New Westminster District Plan EPP82101;

(ii) "Lot 5 Social Housing Units" has the meaning set out in Section 2.1(b)(i)B;

(jj) "Lot 5 Social Housing Building" means the New Building in which such Lot 5 Social Housing Units are a part and all its component parts and facilities;

(kk) "Lot 8" means the lands legally described as:

Lot 8 District Lot 637 Group 1 New Westminster District Plan EPP82101;

(ll) "Lot 8 Social Housing Units" has the meaning set out in Section 2.1(b)(i)B;

(mm) "Market Units" means the residential Dwelling Units being developed and constructed by the Owner on the Lands, or any part thereof, for sale at market prices and "Market Unit" means any one of them, as the context requires;

(nn) "New Buildings" means the new buildings or structures to be built on the Lands that includes one or more Social Housing Unit as contemplated by the Development Permit, and includes any portion of any such buildings or structures, 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 Development Permit and does not include any building or structure constructed or installed on the Lands by or on behalf of the City pursuant to the TMH Licence Agreement and "New Building" means any one of them, as the context requires; provided, however, that if the Lands and the New Buildings are at any time subdivided by air space parcel subdivision, and this Agreement is thereafter discharged from one or more of the resulting legal parcels, then "New Building" will thereafter mean only the part of the New Building within the legal parcel(s) against which it remains registered;

(oo) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of the New Building, building, development or partial development on the Lands;

(pp) "Original Buildings" means the buildings built on or around 1954 on the Development Lands by the Government of Canada and containing 224 social

housing units in a mix of three-storey walk-up apartments and row houses and which buildings were demolished between 2009 - 2014;

- (qq) “Owner” means the registered and beneficial owner of the Development Lands as of the Commencement Date, namely Holborn Properties Ltd., and includes all of its successors, assigns and successors in title to the Development Lands, and if the Development Lands are subdivided by one or more subdivision plans, then “Owner” will thereafter refer to the respective owner of each such legal parcel against which this Agreement remains registered after subdivision, as applicable;
- (rr) “Owner’s Personnel” means the Owner and any of the Owner’s directors, officers, employees or agents;
- (ss) “Permit” means any Development Permit or Building Permit or Occupancy Permit applied for in respect of any Building to be constructed on the Development Lands, or any portion thereof, following the execution of this Agreement;
- (tt) “Phase 1” means the first of five planned phases in the Development being constructed on the Phase 1 Lots;
- (uu) “Phase 1 Lots” means the lands legally defined as:
 - (i) Lot 1 District Lot 638 Group 1 New Westminster District Plan EPP82101;
 - (ii) Lot 2; and
 - (iii) Lot 4;
- (vv) “Phase 2” means the second of five planned phases in the Development being constructed on the Phase 2 Lots;
- (ww) “Phase 2 Lots” means the lands legally defined as:
 - (i) Lot 5; and
 - (ii) Lot 6 District Lots 637 and 638 Group 1 New Westminster District Plan EPP82101;
- (xx) “Phase 3” means the second of five planned phases in the Development being constructed on the Phase 3 Lots;
- (yy) “Phase 3 Lots” means the lands legally defined as:
 - (i) Lot 9 District Lot 638 Group 1 New Westminster District Plan EPP82101;
 - (ii) Lot 10 District Lots 637 and 638 Group 1 New Westminster District Plan EPP82101; and

- (iii) Lot 11 District Lot 637 Group 1 New Westminster District Plan EPP82101;
- (zz) "Phase 4" means the fourth of five planned phases in the Development being constructed on the Phase 4 Lots and the Owner intends to construct Phase 4 concurrently with Phase 2;
- (aaa) "Phase 4 Lots" means the lands legally defined as:
 - (i) Lot 7 District Lot 637 Group 1 New Westminster District Plan EPP82101; and
 - (ii) Lot 8;
- (bbb) "Phase 5" means the fifth of five planned phases in the Development being constructed on the Phase 5 Lots;
- (ccc) "Phase 5 Lots" means the lands legally defined as:
 - Lot 12 District Lot 637 Group 1 New Westminster District Plan EPP82101;
- (ddd) "PRHC" means the Provincial Rental Housing Corporation, and includes its successor(s) in function if any;
- (eee) "PRHC Social Housing Units" has the meaning ascribed to that term in Section 2.1(b)(i);
- (fff) "PRHC Notice" means notice from PRHC to the City:
 - (i) confirming that the Lot 5 Social Housing Units and the Lot 5 Social Housing Building have been completed; and
 - (ii) confirming that PRHC has received security in a form and amount acceptable to PRHC to secure:
 - A. the Completion of the Lot 5 Social Housing Units and the Lot 5 Social Housing Building; and
 - B. the transfer of beneficial and registered title of Lot 5 to PRHC; and
 - (iii) enclosing a copy of the "certificate of completion" (as defined in the *Builders Lien Act*) in respect of the Lot 5 Social Housing Units and the Lot 5 Social Housing Building,

provided that notwithstanding anything to the contrary in this Instrument, in this definition, "completed" has the definition provided in the *Builders Lien Act*;
- (ggg) "Rental Housing" means a Dwelling Unit which is not occupied by the registered or beneficial owner of the same, but which is made available by

such owner to the general public (subject to Article 2), at arm's length, for use as rental accommodation on a month-to-month or longer basis in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto;

- (hhh) **Replacement Social Housing Unit** has the meaning ascribed to that term in Section 2.1(b) and **Replacement Social Housing Units** means all of such units;
- (iii) **"Residential Tenancy Act"** means the Residential Tenancy Act S.B.C. 2002, c. 78;
- (jjj) **"Returning Tenants"** means the Eligible Tenants who accept the Owner's offer to relocate to the New Building after completion of its construction as contemplated by Section 2.1(h), and **"Returning Tenant"** means any one of them;
- (kkk) **"Rezoning"** has the meaning ascribed to that term in Recital C;
- (lll) **"Rezoning By-law"** has the meaning ascribed to that term in Recital C;
- (mmm) **"Social Housing"** has the meaning ascribed to that term in the Vancouver Development Cost Levy By-law No. 9755, namely Rental Housing:
 - (i) in which at least 30% of the dwelling units are occupied by households with incomes below Housing Income Limits, as set out in the current "Housing Income Limits" table published by the British Columbia Housing Management Commission, or equivalent publication;
 - (ii) which is owned by a non-profit corporation, by a non-profit co-operative association, or by or on behalf of the City, the Province of British Columbia or Canada; and
 - (iii) in respect of which the registered owner or ground lessee of the freehold or leasehold title to the land on which the housing is situate has granted to the City a Section 219 covenant, housing agreement, or other security for the housing commitments required by the City, registered against the freehold or leasehold title, with such priority of registration as the City may require;
- (nnn) **"Social Housing Condition"** has the meaning ascribed to that term in Recital C;
- (ooo) **"Social Housing Units"** has the meaning ascribed to that term in Section 2.1(b), and **"Social Housing Unit"** means any one of such Units;
- (ppp) **"Social Housing Parcels"** means the following parcels on which one or more of the Social Housing Units will be constructed:
 - (i) Lot 2;
 - (ii) Lot 4;

(iii) Lot 5; and

(iv) Lot 8;

and "Social Housing Parcel" means any one of such parcels;

(qqq) "Term" means the term of this Agreement, which, for each New Building, will commence on the Commencement Date and will end on the later of:

(i) the date as of which, for each New Building, such New Building is demolished or substantially destroyed; and

(ii) 60 years from the date when the final Occupancy Permit is issued for such New Building;

and for greater certainty will be different for each of the New Buildings;

(rrr) "TMH Licence Agreement" means the licence agreement dated effective as of February 16, 2018 between the City, as licensee, and Holborn Properties Ltd., as licensor, in respect of temporary modular housing (as amended from time to time); and

(sss) "*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.
- (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.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto in force on the Commencement Date, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes 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 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the City in respect of the use of the Social Housing Parcels that:
- (a) throughout the Term, the Social Housing Parcels and the New Buildings will not be used in any way that is inconsistent with the terms of this Agreement;
 - (b) it will Complete:
 - (i) within one or more of the New Buildings not less than 234 Dwelling Units (the "PRHC Social Housing Units") for use only as Social Housing (of which 53 units have been constructed in the Existing Social Housing Building), as follows:
 - A. not less than 58 PRHC Social Housing Units (or such greater number of Social Housing Units as the General Manager of Arts, Culture and Community Services, in consultation with the General Manager of Planning and Development Services, may determine, based on the Eligible Tenant Summary Report) shall be Completed on Lot 2 and beneficial and legal title thereto transferred to PRHC prior to the occupation of and the issuance of an Occupancy Permit for any Market Unit on the Lands; for clarity, the 58 PRHC Social Housing Units shall be in addition to the Existing Social Housing Units; and
 - B. the balance of such PRHC Social Housing Units (being 123 PRHC Social Housing Units, 54 of which will be Completed on Lot 5 (the "Lot 5 Social Housing Units") and 69 of which will be Completed on Lot 8 (the "Lot 8 Social Housing Units"), subject to any adjustment of Social Housing Units being required to be constructed in Phase 1, as described in subsection 2.1(b)(i)A, above) shall, with respect to the Lot 8

Social Housing Units, be Completed and beneficial and legal title thereto transferred to PRHC; and, with respect to the Lot 5 Social Housing Units, the City shall have received the PRHC Notice; prior to the earlier of:

- I. the occupancy and the issuance of any Occupancy Permit for any Market Unit in Phase 2, Phase 3, Phase 4 or Phase 5; and
- II. the issuance of any Development Permit for any building or development in Phase 3 or Phase 5; and

and with respect to the Lot 5 Social Housing Units, the Owner shall Complete the Lot 5 Social Housing Units and cause the beneficial and legal title thereto to be transferred to PRHC within a reasonable time, but in any case not later than six (6) months, following the delivery of the PRHC Notice to the City, and

for clarity, the PRHC Social Housing Units shall not include any building, structure or units constructed or installed on the Lands by or on behalf of the City pursuant to the TMH Licence Agreement; and

- (ii) within the City Building, the City Social Housing Units for use only as Social Housing, prior to the issuance of any Occupancy Permit for any Market Unit on the Lands;

(collectively, the "Social Housing Units"),

and if a New Building is destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for such New Building, then it will promptly take all steps reasonably necessary to enable it to build a replacement building or buildings on the Lands, which replacement building(s) will contain not less than the same number and type of replacement Social Housing Units as the respective New Building formerly contained (each such replacement Social Housing Unit hereinafter referred to as a "Replacement Social Housing Unit") and will be subject, for the duration of the Term, to the same use restrictions as the Social Housing Units and the New Building are pursuant to this Agreement;

- (c) throughout the Term, the Social Housing Units will only be used for the purpose of providing Social Housing;
- (d) throughout the Term, not less than 184 of the Social Housing Units (or Replacement Social Housing Units, as applicable) will contain two or more bedrooms and will be designed to meet the City's "High Density Housing for Families with Children Guidelines";
- (e) without limiting Section 2.1(d), the unit mix for the City Social Housing Units is proposed to be the following, subject to final building design:

<u>UNIT TYPE</u>	<u>UNIT COUNT</u>
STUDIO	12 units
ONE BEDROOM	8 units
TWO BEDROOMS	16 units
<u>THREE BEDROOMS</u>	<u>12 units</u>
TOTAL:	48 units

which unit mix may be amended by General Manager of Arts, Culture and Community Services and/or the General Manager of Planning and Development Services in their sole discretion, in consultation with the Owner, subject always to Section 2.1(d); and the unit mix for the PRHC Social Housing Units is proposed to be the following, subject to final building design:

<u>UNIT TYPE</u>	<u>UNIT COUNT</u>
ONE BEDROOM	48 units
TWO BEDROOMS	96 units
THREE BEDROOMS	69 units
FOUR BEDROOMS	18 units
<u>FIVE BEDROOMS</u>	<u>3 units</u>
TOTAL:	234 units

which unit mix may be amended by agreement among the General Manager of Arts, Culture and Community Services, the General Manager of Planning and Development Services, the Owner and PRHC, subject always to Section 2.1(d);

- (f) throughout the Term, not less than five percent (5%) of the total number of Social Housing Units will be suitable for Disabled Housing;
- (g) subject to Section 2.1(h), throughout the Term:
 - (i) each PRHC Social Housing Unit;; and
 - (ii) not less than 30% of the City Social Housing Units,

shall be rented at monthly rates no higher than the Applicable HIL Rent Rate;

- (h) it will provide each Eligible Tenant with a right of first refusal to occupy a Social Housing Unit after the New Buildings, in which the respective Social Housing Units are situated, are ready for occupancy and at an initial monthly rent rate equal to the last monthly rent rate paid by the Eligible Tenant for his or her rental of a unit in the Original Building, as adjusted by the CPI Increase;
- (i) it will establish an income testing protocol for prospective returning tenants to ensure that they are qualified to be Eligible Tenants and that the Social Housing Units that are available to rent by Eligible Tenants are available to low and moderate income households;
- (j) 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:
 - (i) to any PRHC Social Housing Unit to be sold or otherwise transferred unless every PRHC Social Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner, provided that the Owner may transfer the PRHC Social Housing Units to PRHC in two separate transactions, as contemplated in Sections 2.1(b)(i)A and 2.1(b)(i)B, respectively; and
 - (ii) to any City Social Housing Unit to be sold or otherwise transferred unless every City Social Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner, provided that the Owner may transfer the Lot 4 to the City concurrently with the registration of this Agreement at the Land Title Office; and

the transferee complies with Section 10.8;

- (k) throughout the Term, it will not suffer, cause or permit the Social Housing Parcels, or any part thereof, to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld, subject to ARTICLE 3;
- (l) throughout the Term, any sale or other transfer of title to a Social Housing Unit in contravention of the covenant in Section 2.1(j), and any subdivision of the Social Housing Parcels in contravention of Section 2.1(k), 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;
- (m) throughout the Term, the Social Housing Units (or Replacement Social 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;
- (n) throughout the Term, it will insure, or cause to be insured, the Social Housing Parcels and the New Buildings 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; and

- (o) throughout the Term, it will keep and maintain the Social Housing Parcels and the New Buildings and all parts thereof in good repair and in a safe, clean, neat and tidy condition. If the Social Housing Parcels or the New Buildings or any part thereof is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred;

provided, however, that notwithstanding the foregoing, following the issuance of a final occupancy permit for the New Buildings in which the Social Housing Units are situate, in accordance with ARTICLE 3, the Owner of each Social Housing Parcel will become responsible only for insuring, managing and maintaining the units in its respective Social Housing Parcel, and the definition of New Building will thereupon be amended to apply only to that portion of the New Building within each such Social Housing Parcel.

ARTICLE 3 SUBDIVISION OF THE LANDS AND THE NEW BUILDING

3.1 Notwithstanding Section 2.1(k):

- (a) subject to compliance by the Owner with all applicable requirements of the City's Approving Officer and the City's elected Council, this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands by the deposit of a subdivision plan, to enable the subdivision of the Social Housing Parcels in accordance with the Rezoning and/or the Development Permit;
- (b) following such a subdivision and the issuance of a final occupancy permit for the New Buildings in which the Social Housing Units are situate, the Owner may apply to the City for a partial discharge of the Section 219 in Section 2.1 with respect to any legal parcel other than the parcels in which the Social Housing Units are situate (the "Subdivided Parcels"), and the City will on request of the Owner execute and deliver a registrable discharge of this Agreement in respect of such other parcel(s) provided, that:
 - (i) the Director of Legal Services is satisfied that such discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreement and obligations in respect of the Social Housing Units or in respect of the Subdivided Parcels pursuant to this Agreement;
 - (ii) any such discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
 - (iii) the City will have a reasonable amount of time to execute and return any such discharge; and

- (iv) the preparation and registration of any such discharge will be without cost to the City.
- 3.2 Following such subdivision and partial discharge, this Section 219 in Section 2.1 will be read and applied so that the obligations herein will apply only to the Subdivided Parcels.

ARTICLE 4
OCCUPANCY RESTRICTION ON THE LANDS - PHASE 1 SOCIAL HOUSING UNITS

- 4.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the City in respect of the use of the Lands that notwithstanding that the Owner may be otherwise entitled:
 - (a) the Lands 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, any Market Unit on the Lands and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for any Market Unit on the Lands until such time as:
 - A. the Social Housing Units described in Sections 2.1(b)(i)A and 2.1(b)(ii) including the New Buildings in which such Social Housing Units are a part and all its component parts and facilities have been Completed; and
 - B. beneficial and legal title to Lot 3 and those Social Housing Units described in Section 2.1(b)(i)A have been transferred to PRHC;
 - (ii) the City will be under no obligation to issue any Occupancy Permit permitting the use and occupation of any Market Unit on the Lands, notwithstanding completion of construction of any Market Unit on the Lands, until such time as:
 - A. the Social Housing Units described in Sections 2.1(b)(i)A and 2.1(b)(ii), including the New Buildings in which such Social Housing Units are a part and all its component parts and facilities have been Completed; and
 - B. beneficial and legal title to Lot 3 and those Social Housing Units described in Section 2.1(b)(i)A have been transferred to PRHC; and
 - (b) without limiting the general scope of ARTICLE 8, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City 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.

- 4.2 The City covenants to execute a discharge of the Section 219 Covenant granted pursuant to Section 4.1 from the Lands upon the Director of Legal Services being satisfied that the Owner has completed the requirements under Sections 4.1(a)(i)A and B, provided however that:
- (a) the City will have no obligation to execute such discharge until a written request therefor from the Owner has been received by the City, which request will include the form of discharge, in registrable form;
 - (b) the cost of preparation of such discharge and the cost of registration of same in the LTO will be paid by the Owner; and
 - (c) the City will have a reasonable time within which to execute such discharge and return the same to the Owner for registration.
- 4.3 The Owner covenants and agrees that any Occupancy Permit permitting the use of and occupation of any Market Unit on the Lands issued inadvertently or otherwise prior to release or discharge of the Section 219 Covenant in Section 4.1 may be revoked by the City at any time and further agrees that if the Owner undertakes any construction in contravention of this Agreement, the City may pursue all remedies, including, without limitation, injunctive relief.

**ARTICLE 5
DEVELOPMENT AND OCCUPANCY RESTRICTIONS ON THE LANDS - PHASE 2 SOCIAL
HOUSING UNITS**

- 5.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the City in respect of the use of the Lands that notwithstanding that the Owner may be otherwise entitled:
- (a) the Lands will not be used or occupied except as follows:
 - (i) the Owner will not:
 - A. apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, any Market Unit in Phase 2, Phase 3, Phase 4 or Phase 5; and
 - B. suffer or permit any part of, any new Building in Phase 3 or Phase 5 to be built;
- and will:
- C. take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for any Market Unit in Phase 2 Phase 3, Phase 4 or Phase 5; and
 - D. take no action, directly or indirectly, to compel the issuance of any Development Permit for any new Building in Phase 3 or

Phase 5 and no such Development Permit for any new Building in Phase 3 or Phase 5 will be issued;

until such time as:

- E. with respect to the Lot 5 Social Housing Units, the City has received the PRHC Notice from PRHC; and
- F. with respect to the Lot 8 Social Housing Units:
 - I. an Occupancy Permit has been issued for the Lot 8 Social Housing Units described in Section 2.1(b)(i)B, including the New Building in which such Lot 8 Social Housing Units are a part and all its component parts and facilities; and
 - II. beneficial and legal title to the Lot 8 Social Housing Units described in 2.1(b)(i)B has been transferred to PRHC;

(ii) the City will be under no obligation to issue:

- A. any Occupancy Permit permitting the use and occupation of any Market Unit in Phase 2, Phase 3, Phase 4 or Phase 5 notwithstanding completion of construction of any Market Unit in Phase 2, Phase 3, Phase 4 or Phase 5; or
- B. any Development Permit for any new Building in Phase 3 or Phase 5;

until such time as:

- C. with respect to the Lot 5 Social Housing Units, the City has received the PRHC Notice from PRHC; and
- D. with respect to the Lot 8 Social Housing Units:
 - I. an Occupancy Permit has been issued for the Lot 8 Social Housing Units described in Section 2.1(b)(i)B, including the New Building in which such Lot 8 Social Housing Units are a part and all its component parts and facilities; and
 - II. beneficial and legal title to the Lot 8 Social Housing Units described in 2.1(b)(i)B has been transferred to PRHC; and

- (b) without limiting the general scope of ARTICLE 8, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy

Permit or Development Permit until there is compliance with the provisions of this ARTICLE 5.

5.2 The City covenants to execute:

- (a) a partial discharge of the Section 219 Covenant granted pursuant to Section 5.1 from the Phase 1 Lots upon the Director of Legal Services being satisfied that the Owner has completed the requirements under Sections 4.1(a)(i)A and B; and
- (b) a discharge of the Section 219 Covenant granted pursuant to Section 5.1 from the Phase 2 Lots, the Phase 3 Lots, the Phase 4 Lots and the Phase 5 Lots upon the Director of Legal Services being satisfied that the Owner has completed the requirements under Sections 5.1(a)(i)E and 5.1(a)(i)F provided however that:
 - (i) the City will have no obligation to execute such discharge until a written request therefor from the Owner has been received by the City, which request will include the form of discharge, in registrable form;
 - (ii) the cost of preparation of such discharge and the cost of registration of same in the LTO will be paid by the Owner; and
 - (iii) the City will have a reasonable time within which to execute such discharge and return the same to the Owner for registration.

5.3 The Owner covenants and agrees that any Permit issued inadvertently or otherwise prior to release or discharge of the Section 219 Covenant in Section 5.1 may be revoked by the City at any time and further agrees that if the Owner undertakes any construction in contravention of this Agreement, the City may pursue all remedies, including, without limitation, injunctive relief.

ARTICLE 6 RECORD KEEPING

- 6.1 The Owner will keep accurate records pertaining to the use and occupancy of the Social Housing Units. Such records will be 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. The City will comply with the Owner's statutory obligations with respect to the privacy of such information.

ARTICLE 7 ENFORCEMENT

- 7.1 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 8
RELEASE AND INDEMNITY**

8.1 Release and Indemnity. Subject to Section 8.2, 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 New Building;
 - 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;

except where 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 8 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

8.2 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 8.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.

- (b) Section 8.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 8.2(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 8.2(b); and

- (c) Regardless of whether the claim is being defended under Section 8.2(a) or Section 8.2(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.

- 8.3 Survival of Release and Indemnities. The release and indemnities in this ARTICLE 8 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 9 NOTICES

- 9.1 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 General Manager of
 Arts, Culture and Community Services and the Director of Legal Services

(b) If to the Owner:

Holborn Properties Ltd.
 200-1111 West Georgia Street
 Vancouver, British Columbia
 V6E 4S4

Attention: Director of Development

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 10 MISCELLANEOUS

- 10.1 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, subject to ARTICLE 3. Upon the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof in accordance with the provisions of Section 10.8, the parties agree that the covenants and agreements herein contained shall only be binding upon the transferring party in respect of a breach or acts or omissions occurring during its ownership.
- 10.2 Agreement to be a First Charge. 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 sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 10.3 Enforcement. 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 will be entitled to court costs on a solicitor and own client basis.
- 10.4 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.
- 10.5 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.
- 10.6 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 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.
- 10.7 Further Assurances. The Owner will 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 including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 10.8 Sale of Lands or New Building. Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the Director of Legal Services, over its mortgage), subject always to Sections 2.1(d) and 2.1(l), the Owner will cause the purchaser/transferee to enter into an assumption

agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the applicable obligations, agreements and indemnities of the Owner under this Agreement, insofar as they relate to the part of the Lands and/or the New Building that is being transferred. The provisions in this Section 10.8 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the Director of Legal Services, over its mortgage). For certainty, upon transfer of any Social Housing Units, Social Housing Parcels or Subdivided Parcels to PRHC, provided Section 10.8 is complied with, the Owner shall thereafter no longer be bound by the covenants, agreements or indemnities in this Agreement in respect of such Social Housing Units, Social Housing Parcels or Subdivided Parcels. Notwithstanding anything herein to the contrary and the transfer of Lot 4 to the City, Holborn shall thereafter continue to be bound by the covenants, agreements and indemnities in this Agreement in respect of Lot 4 until such time as the Director of Legal Services being satisfied that Holborn has completed the requirements under Section 4.1(a)(i)A.

- 10.9 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 housing agreement pursuant to Section 565.2 of the *Vancouver Charter* and also registered as a charge against title to the Lands with priority over all other encumbrances except those in favour of the City.
- 10.10 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.
- 10.11 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.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA3212928 and the Assignment of Rents registered under number CA3212929;
- (b) "Existing Chargeholder" means Provincial Rental Housing Corporation;
- (c) "New Charges" means the registrable charges and encumbrances created by and contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (a) consents to the Owner granting the New Charges to the City; and
- (b) agrees with the City that the New Charges charge 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 Charges, and they 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.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (c) "Existing Charges" means the Mortgage registered under number CA3212930 and the Assignment of Rents registered under number CA3212931;
- (d) "Existing Chargeholder" means British Columbia Housing Management Commission;
- (e) "New Charges" means the registrable charges and encumbrances created by and contained in the attached Terms of Instrument - Part 2; and
- (f) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (g) consents to the Owner granting the New Charges to the City; and
- (h) agrees with the City that the New Charges charge 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 Charges, and they 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