

BY-LAW NO. _____

**A By-law to authorize Council entering into a
Heritage Revitalization Agreement with the Owner of Heritage Property**

PREAMBLE

Council has authority under the *Vancouver Charter* to enter into a Heritage Revitalization Agreement with the owner of heritage property, including terms and conditions to which Council and the owner may agree.

Certain property bearing the civic address of 3123 – 3129 West Broadway Street and the following legal description:

PID: 006-767-966
LOT H
BLOCK 54
DISTRICT LOT 540
PLAN 20212

PID: 015-450-384
LOT 9
EXCEPT PART IN PLAN
4166
BLOCK 54
DISTRICT LOT 540
PLAN 229

PID: 015-450-414
THE EAST ½ OF LOT 10
EXCEPT THE NORTH 5
FEET, NOW LANE, AND
PART IN PLAN 4166
BLOCK 54
DISTRICT LOT 540
PLAN 229

contains a heritage building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the property have agreed to facilitate such conservation, by agreeing to the terms and conditions set out in the attached Heritage Revitalization Agreement.

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

1. Council authorizes the City to enter into a Heritage Revitalization Agreement with the owner, in substantially the form and substance of the Heritage Revitalization 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

DRAFT

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

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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)

Joanna Track, Solicitor
 City of Vancouver
 453 West 12th Avenue
 Vancouver

BC V5Y 1V4

LTO Client number: 10647
 Phone number: 604-873-7513
 Matter number: LS-18-01528-001

Deduct LTSA Fees? Yes ☒

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

SEE SCHEDULE

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):

4184 INVESTMENTS LTD. (INCORPORATION NO. BC0559518)
CANADIAN WESTERN BANK, AS TO PRIORITY

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

CITY OF VANCOUVER

453 WEST 12TH AVENUE
 VANCOUVER

V5Y AV4

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)

BARBARA VANDERBURGH
 Barrister & Solicitor
 Fasken Martineau DuMoulin LLP
 2900 - 550 Burrard Street
 Vancouver, BC V6C 0A3
 604 631 4937

Execution Date

Y	M	D
18	06	18

Transferor(s) Signature(s)

4184 INVESTMENTS LTD. by its
 authorized signatory(ies):

C. Dino Bonni's
 Print Name: C. Dino Bonni's

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.

EXECUTIONS CONTINUED

Officer Signature(s)

KEVIN MALCOLM DE LA MARE
A Commissioner for taking
Affidavits for British Columbia
22nd Floor 666 Burrard Street
Vancouver, B.C. V6C 2X8
Expires August 31, 2020

Execution Date

Y	M	D
18	06	18

Transferor / Borrower / Party Signature(s)

CANADIAN WESTERN BANK by its
authorized signatory(ies):

Print Name:

LIAM LAMONT

Print Name: _____

ANDREW BUTLER

18

CITY OF VANCOUVER by its
authorized signatory:

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

006-767-966 LOT H BLOCK 54 DISTRICT LOT 540 PLAN 20212

STC? YES ☐

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

015-450-384 LOT 9, EXCEPT PART IN PLAN 4166, BLOCK 54 DISTRICT LOT 540 PLAN 229

STC? YES ☐

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

**015-450-414 THE EAST ½ OF LOT 10, EXCEPT THE NORTH 5 FEET, NOW LANE, AND
PART IN PLAN 4166, BLOCK 54 DISTRICT LOT 540 PLAN 229**

STC? YES ☐

**LAND TITLE ACT
FORM E****SCHEDULE**

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NATURE OF INTEREST
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Article 2, pages 10-12**NATURE OF INTEREST**
Priority Agreement**CHARGE NO.****ADDITIONAL INFORMATION**granting the above Section 219 Covenant priority
over Mortgage CA3574502 and Assignment of
Rents CA3574503

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NATURE OF INTEREST
Covenant**CHARGE NO.****ADDITIONAL INFORMATION**Section 219 Covenant
Article 4, page 14**NATURE OF INTEREST**
Priority Agreement**CHARGE NO.****ADDITIONAL INFORMATION**granting the above Section 219 Covenant priority
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NATURE OF INTEREST
Statutory Right of Way**CHARGE NO.****ADDITIONAL INFORMATION**

Article 5, page 14

NATURE OF INTEREST
Priority Agreement**CHARGE NO.****ADDITIONAL INFORMATION**granting the above Statutory Right of Way priority
over Mortgage CA3574502 and Assignment of
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**LAND TITLE ACT
FORM E**

SCHEDULE

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NATURE OF INTEREST
Equitable Charge

CHARGE NO.

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NATURE OF INTEREST
Priority Agreement

CHARGE NO.

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granting the above Equitable Charge priority over
Mortgage CA3574502 and Assignment of Rents
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NATURE OF INTEREST

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NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

TERMS OF INSTRUMENT - PART 2
HERITAGE REVITALIZATION AGREEMENT

WHEREAS:

- A. The Owner (as herein defined) is the registered owner of those parcels of land in the City of Vancouver with civic addresses and legal descriptions as follows:
- (i) 3123/3129 West Broadway, legally described as:
PID: 006-767-966
Lot H Block 54 District Lot 540 Plan 20212 ("Lot H");
 - (ii) 3133/3135 West Broadway, legally described as:
PID: 015-450-384
Lot 9, Except Part in Plan 4166, Block 54 District Lot 540 Plan 229 ("Lot 9");
and
 - (iii) 3141/3143 West Broadway, legally described as:
PID: 015-450-414
The East ½ of Lot 10, Except the North 5 Feet, Now Lane, and Part in Plan 4166, Block 54 District Lot 540 Plan 229 ("East ½ Lot 10"),
- (collectively, the "Lands").
- B. There is a building situated on Lot H, known as the "Hollywood Theatre", which is listed on the Vancouver Heritage Register in the 'B' evaluation category and is considered to be of heritage value (the "Heritage Building").
- C. The Owner wishes to develop the Lands by:
- (i) rehabilitating the Heritage Building;
 - (ii) constructing on the Lands, to the west of the Heritage Building, a new six-storey mixed-use building containing approximately forty (40) Dwelling Units and commercial units on the ground floor (the "New Building");
 - (iii) limiting the use of the Heritage Building to theatre use only and entering into a Community Use Agreement with the City to secure access to the Heritage Building for local non-profit arts and cultural purposes; and
 - (iv) either:
 - (a) consolidating the Lands pursuant to the provisions of the *Land Title Act* to create a single parcel upon which both the New Building and the Heritage Building will be located;

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Heritage Revitalization Agreement - Hollywood Theatre
3123-3129 West Broadway

- (b) consolidating Lot 9 and the East ½ of Lot 10 pursuant to the provisions of the *Land Title Act* to create a single parcel upon which the New Building will be located, with the Heritage Building continuing to be located on existing Lot H;
- (c) consolidating and subdividing the Lands pursuant to the provisions of the *Land Title Act* to create two new parcels, one parcel upon which the New Building will be located and a separate parcel upon which the Heritage Building is located,

PROVIDED only one of the above options be undertaken;

and under development permit application No. DP-2018-00039 (the "DP Application") has applied to the City for a development permit for that purpose.

- D. The Owner proposes that, in exchange for a number of variances to the City of Vancouver Zoning & Development By-law and the Subdivision By-law needed for the proposed project as contemplated under the DP Application, the Owner will enter into this heritage revitalization agreement with respect to the Lands and will accept the designation of the Heritage Features (more particularly described in Section 1.1(n)) as protected heritage property under the provisions of the *Vancouver Charter*.

THEREFORE, pursuant to Section 592 of the *Vancouver Charter*, and in consideration of the payment ten dollars (\$10.00) by the City to the Owner, the mutual obligations and benefits given herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 **Definitions.** In this agreement, unless explicitly used differently elsewhere herein, the terms defined in this section have the meanings given to them here:

- (a) "Approving Officer" means the person acting as Approving Officer for the City pursuant to the *Land Title Act*, and any employee of the City acting as the nominee or agent of that person in connection with this agreement;
- (b) "Chief Building Official" means the person appointed as the Chief Building Inspector by Vancouver City Council pursuant to the provisions of the *Vancouver Charter*, as amended, and any employee of the City acting as the nominee or agent of that person in connection with this agreement;
- (c) "City" means the municipality of the City of Vancouver continued under the *Vancouver Charter* and "City of Vancouver" means its geographic location and area;
- (d) "Conservation Plan" means a written plan and guidelines prepared by and/or under the supervision of a Heritage Consultant and explicitly accepted by the City

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Heritage Revitalization Agreement - Hollywood Theatre
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for the rehabilitation and conservation of the Heritage Building as provided for hereunder;

- (e) **“Development”** means the proposed development project as described above in Recital C, all pursuant to the DP Application;
- (f) **“Development Permit”** means any development permit(s) issued by the City pursuant to the DP Application in respect of the Development, as such permit(s) may be modified or amended from time to time, including, without limitation, all final reports, plans, drawings and specifications relating thereto and any amendments thereof;
- (g) **“Director of Legal Services”** means the City’s Director of Legal Services or his or her designate;
- (h) **“DP Application”** has the meaning given above in Recital C;
- (i) **“Dwelling Unit”** has the meaning given under the *Zoning & Development By-law*;
- (j) **“General Manager of Planning, Urban Design, and Sustainability”** means the City’s General Manager of Planning, Urban Design, and Sustainability appointed under the provisions of the *Vancouver Charter*;
- (k) **“Heritage Building”** has the meaning given above in Recital B;
- (l) **“Heritage Consultant”** means an independent, heritage building rehabilitation and conservation expert, knowledgeable and experienced in and duly qualified for planning and supervising rehabilitation and conservation work for heritage buildings;
- (m) **“Heritage Designation”** means the City’s designation of the Heritage Features as protected heritage property pursuant to section 593 of the *Vancouver Charter*;
- (n) **“Heritage Features”** means, with respect to the Heritage Building:
 - (i) all exterior finishes and structure, including, but not limited to:
 - (A) all signage and marquee hardware and structures facing West Broadway,
 - (B) ticket kiosk and glazing, and
 - (C) doors, door hardware and windows/storefronts including glazing; and
 - (ii) the following interior features:
 - (A) balcony, projection room and ceiling structures,

- (B) original wall wainscoting in main theatre area and coved ceiling in lobby,
- (C) original deco 'blue and red' wall sconces,
- (D) original 'Men' and 'Ladies' washroom signs, and
- (E) original 'Exit' and 'Loges' signs,

certain of which are shown identified in Appendix A attached hereto;

- (o) "Lands" has the meaning given above in Recital A and includes any other parcels of land into which the Lands may at any time in any way be consolidated or subdivided;
- (p) "*Land Title Act*" means the *Land Title Act*, R.S.B.C. 1996, c.250;
- (q) "*New Building*" has the meaning given above in Recital C;
- (r) "Owner" means the registered owner or owners of the Lands and the successors and assigns thereof and, without limitation, if the Lands are subdivided by way of a strata plan under the *Strata Property Act* of British Columbia, then "Owner" includes the strata corporation thereby created;
- (s) "rehabilitate" and "rehabilitation" mean the planning and carrying out of restoration, rehabilitation, construction and conservation work to restore, upgrade, improve and conserve the structure, support and heritage characteristics and features of a heritage building or real property heritage feature so as to revitalize it and extend its life and use as such;
- (t) "Rehabilitation Work" has the meaning given below herein;
- (u) "*Strata Property Act*" means the *Strata Property Act*, S.B.C. 1998, c.43;
- (v) "Subdivision By-law" means the City's Subdivision By-law No. 5208 and any amendments thereto and replacements thereof;
- (w) "*Vancouver Charter*" means the *Vancouver Charter*, S.B.C. 1953, c.55, as amended from time to time, and any and all replacements thereof or any statute enacted in substitution thereof and all regulations applicable thereto and any amendments, replacements and substitutions thereof;
- (x) "*Vancouver Building By-law*" means the City's Building By-law No. 10908 and any amendments thereto and replacements thereof;
- (y) "*Zoning & Development By-law*" means the City's Zoning & Development By-law No. 3575 and any amendments thereto and replacements thereof.

ARTICLE 2
SECTION 219 COVENANT
REHABILITATION AND CONSERVATION OF HERITAGE BUILDING

2.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that:

- (a) the Owner, at the Owner's expense, and to the satisfaction of the General Manager of Planning, Urban Design, and Sustainability:
 - (i) within thirty-six (36) months after the later of the date upon which the City's Council enacts the by-law to effect the Heritage Designation and the date of registration of this agreement, or such other effective date as may be agreed upon to the satisfaction of the General Manager of Planning, Urban Design, and Sustainability and the Director of Legal Services, but in any event by no later than forty-eight (48) months after the date upon which this covenant is registered on title to the Lands, shall rehabilitate or cause the rehabilitation of the Heritage Building and shall do so in accordance with this agreement, the Development Permit and the Conservation Plan (the "Rehabilitation Work");
 - (ii) shall ensure that a Heritage Consultant supervises the Rehabilitation Work;
 - (iii) shall ensure that, at all times during the carrying out of the Rehabilitation Work, the Heritage Building is secure from vandalism and occupation by squatters; and
 - (iv) on completion of the Rehabilitation Work as required by this agreement, shall cause a Heritage Consultant to submit to the General Manager of Planning, Urban Design, and Sustainability, a signed statement stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan;
- (b) nobody will in any way use or occupy either the Heritage Building or the New Building or any part thereof and nobody will apply for or take any other action to compel the City, and, notwithstanding that either the Heritage Building or the New Building may be ready for occupancy, the City will be under no obligation to issue any occupancy permit for either the Heritage Building or the New Building, or any part thereof, at any time after this agreement is registered on title to the Lands, until:
 - (i) the Rehabilitation Work has been completed in accordance herewith;
 - (ii) the Owner, as required above herein, has submitted or caused to be submitted to the General Manager of Planning, Urban Design, and Sustainability a signed written statement prepared by a Heritage Consultant stating explicitly that the Rehabilitation Work has been completed in accordance with the Conservation Plan; and

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- (iii) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms its acceptance that the Rehabilitation Work has been completed in accordance herewith;
- (c) the City may revoke at any time any occupancy permit(s) issued for either the Heritage Building or the New Building prior to completion of the Rehabilitation Work, unless such occupancy permit(s) was obtained in accordance with this agreement, and in such circumstances the Owner, on reasonable notice from the City, will ensure that anyone occupying any part of any such building vacates it immediately on such revocation of occupancy permit(s), and if anyone continues to occupy any portion of any part of either the Heritage Building or the New Building in contravention of such revocation, this agreement and any applicable City bylaws, the City, at the Owner's expense, may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that either the Heritage Building or the New Building, as the case may be, is vacated and unoccupied in accordance with this agreement;
- (d) after completion of the Rehabilitation Work in accordance herewith, the Owner, at the Owner's expense, will do all things reasonably necessary to conserve the Heritage Building as rehabilitated and, in any event, keep it in good condition in all respects at all times;
- (e) at all times after and while this agreement is registered on title to the Lands, the Owner, at the Owner's expense, shall keep the Heritage Building insured to full replacement value against all perils, including, without limitation, damage or destruction by earthquake;
- (f) except for maintenance and repair work, the Owner will not and will not suffer or permit anyone else to do anything at any time to renovate, alter, modify or reconfigure or that will result in any alteration, modification or reconfiguration of the Heritage Building in any way except as may be permitted or required by this agreement, the Conservation Plan and/or any development and/or heritage alteration permits issued by the City;
- (g) the Owner shall not at any time and shall not suffer or permit anyone else to at any time do anything that will obscure, deface or remove in any way any heritage related commemorative plaque the City, at its expense, may attach to the Heritage Building or the Lands pursuant to the statutory right of way granted to pursuant to Article 4 hereof;
- (h) if at any time for any reason the Heritage Building is damaged in any way or destroyed, the Owner, at the Owner's expense, and to the City's satisfaction, shall repair it or replace it with a replica building, except that if the Owner *bona fide* believes that to do so would be uneconomical, in which case, and if for that reason the Owner wishes to demolish it as damaged or wishes not to replicate it, as the case may be, the Owner, at the Owner's expense, and in consultation with and to the satisfaction of the City, will prepare an economic analysis therefor, but taking into consideration only land related economic factors, such as, for example, but

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without limitation, the estimated cost to repair or replicate the Heritage Building, as the case may be, the anticipated market value of the repaired or replicated building, the incentives given by the City for this agreement and the Heritage Designation, the estimated value of the Lands under the zoning otherwise applicable thereto, after which the City and the Owner, together, on the basis of that analysis, will determine whether in the circumstances it would be uneconomical to repair or replicate the Heritage Building, failing which the matter in all respects will be determined by arbitration by a single arbitrator in Vancouver, British Columbia, in accordance with the provisions of the *Arbitration Act*, RSBC 1996 c. 55, and if the Owner and the City agree or if in arbitration it is determined that it would be uneconomical for the Owner to be required to repair or replicate the Heritage Building, then, by explicit written notification, the City will consent to the Owner's wish to not repair or replicate the Heritage Building and will discharge this agreement from title to the Lands and the Owner may request of the City's Mayor and Council that the Heritage Designation be cancelled;

- (i) if at any time, in default under this agreement, the Owner, in the City's opinion, fails to perform its obligations as required hereby to rehabilitate and conserve the Heritage Building and fails to rectify any such default within thirty (30) days, or within such other longer time as the City may explicitly permit, after notice from the City to so rectify such default, the City, on the Owner's behalf and at the Owner's expense, may, but will be under not be obligated to, rectify the Owner's default; and
- (j) the Owner acknowledges and agrees that, notwithstanding that this agreement and the Heritage Designation will result in restrictions with respect to the future use and development and therefore may affect the value of the Lands, the Owner has received full and fair compensation therefor and the Owner hereby waives and renounces any and all claims for any further or other compensation by reason of this agreement and/or the Heritage Designation and acknowledges and agrees that the requirements of Section 595(1) of the *Vancouver Charter* have been fully satisfied, and the Owner hereby releases the City and its officials, officers, employees and agents from any liability for any loss, injury, damage or expense of any kind the Owner may suffer, incur or experience and the Owner will indemnify the City for any loss, injury, damage or expense the City may incur, suffer or experience and for any complaint, demand, claim, action, suit or judgment for any loss, injury, damage or expense anyone else may suffer, incur or experience arising out of or in any way connected this agreement and/or the Heritage Designation. The release and promise of indemnification contained in this paragraph will survive discharge and termination of this agreement.

ARTICLE 3 LETTER OF CREDIT

3.1 Notwithstanding the occupancy restrictions set out above in respect of the Heritage Building and the New Building, the City may, in its discretion, issue occupancy permits therefor

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and, on that basis, one or both of them may be occupied prior to the time that the Rehabilitation Work is completed in accordance herewith, provided:

- (a) the Owner duly applies to the City for any and all occupancy permits required therefor and pays all fees required therefor;
- (b) this agreement has been fully registered in the Land Title Office to the City's satisfaction;
- (c) the City has issued a building permit and/or heritage alteration permit in respect of the Rehabilitation Work;
- (d) all legal requirements for occupancy of the Heritage Building or the New Building have been fulfilled;
- (e) the Owner has delivered to the City, in all respects to the City's satisfaction, a letter of credit in the amount equal to one hundred and twenty percent (120%) of the then estimated cost to complete the Rehabilitation Work, with such estimate to be made in writing by the Consultant and explicitly accepted in writing by the City;
- (f) the Owner, at the time of application for any such occupancy permits, is not, in the City's opinion, in breach of any of its obligations under this agreement or any other agreement between the City and the Owner with respect to the Heritage Building, the New Building and/or the Lands; and
- (g) the City, in its opinion, is satisfied that the Rehabilitation Work is being carried out diligently.

3.2 All letters of credit required under this Article will be issued by a Schedule I Canadian chartered bank or other financial institution acceptable to the City's Director of Legal Services and will be unconditional, irrevocable and self-renewing and otherwise in a form and content which is acceptable to the City and will be provided for a period of one (1) year with a provision for an automatic renewal or extension without amendment from year to year.

3.3 The City may call upon the letter or letters of credit provided to it pursuant to the preceding paragraphs herein and apply the proceeds therefrom for any purpose and in any manner it may choose in connection with the Rehabilitation Work, if:

- (a) the bank issuing the letter of credit refuses to extend or renew the expiry date of the letter of credit;
- (b) the Owner becomes insolvent or commits any act of bankruptcy or becomes bankrupt or takes the benefit of any act or legislation that may be enforced for bankrupt or insolvent debtors;
- (c) the Owner, in the City's opinion, has not been diligently carrying out the Rehabilitation Work; or

- (d) the City in any way undertakes all or any part of the Rehabilitation Work pursuant to this agreement.

3.4 Within a reasonable time of the Owner's request after completion of the Rehabilitation Work in accordance with this agreement, the City will, as the case may be, return to its issuer any letter of credit provided to the City hereunder or, if the City has called upon the letter of credit, deliver to the Owner any remaining balance therefrom.

ARTICLE 4 SECTION 219 COVENANT - NO SEPARATE SALE

4.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that no portion of the Lands will at any time be sold separately from any other portion of the Lands and that all of the Lands will be owned at all times by the same person or persons.

4.2 Within a reasonable time of the Owner's request after the Rehabilitation Work has been completed in accordance with this agreement, the City, at the Owner's expense, will discharge from title to the Lands the Section 219 covenant contained in this Article 4.

ARTICLE 5 STATUTORY RIGHT OF WAY

5.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City, effective at all times from and after the date upon which the City issues the Development Permit, a statutory right of way to enter, be and move about on the Lands:

- (a) to install, maintain, repair and replace on the exterior of the Heritage Building or at the perimeter of the Lands, at the City's expense, and in consultation with the Owner as to location, a commemorative plaque; and
- (b) in the event the Owner, in the City's opinion, is in default of any of its obligations under this agreement to rehabilitate and conserve the Heritage Building, to carry out any such obligations of the Owner hereunder as the City may choose.

5.2 The statutory right of way granted in the preceding paragraph is necessary for the operation and maintenance of the City's undertaking.

5.3 Notwithstanding any other provision of this agreement, nothing herein obligates the City to exercise any of the rights granted to it by way of the statutory right of way contained herein.

ARTICLE 6 DEBTS OWED TO CITY

6.1 If the City, pursuant to this agreement, enters upon the Lands or any of them to perform any of the Owner's obligations hereunder to carry out the Rehabilitation Work or to conserve, repair or replace or replicate the Heritage Building:

- (a) there will be no express or implied warranties as to the quality of any work the City may so carry out or the suitability of the materials for the purposes for which they are put; and
- (b) the Owner will pay to the City, forthwith on demand, to the extent the City has not taken payment for such costs from any letters of credit provided to the City hereunder, as reimbursement for expenses incurred, the full amount of all costs the City incurs to carry out work to rehabilitate, conserve, repair or replace the Heritage Building, plus twenty percent (20%) of such costs as fair compensation for the City's overhead, and any such amounts the Owner does not pay or fails to pay to the City forthwith on demand will bear interest, until paid in full, at the prime lending rate at the Bank of Montreal's main branch in the City of Vancouver, plus three percent (3%), calculated monthly and not in advance.

ARTICLE 7 EQUITABLE CHARGE

7.1 The Owner hereby grants to the City an Equitable Charge over the Lands, which charge will run with, charge and bind the Lands, for the payment of all sums (including all interest thereon) which may at any time be payable by the Owner to the City under the terms of this agreement or otherwise at law.

7.2 The Equitable Charge the Owner has granted to the City herein may be enforced by the appointment of a receiver for the sale of the Lands.

ARTICLE 8 BY-LAW VARIATIONS

8.1 Subdivision By-law - If the Lands are consolidated so as to create a single parcel upon which both the New Building and the Heritage Building will be located, or the Lands are consolidated and then subdivided so as to create two new parcels, one parcel upon which the New Building will be located and a separate parcel upon which the Heritage Building is located, then, upon the deposit of a plan of such consolidation or a plan of such consolidation and subdivision, Sections 9.1, 9.3, 9.4, 9.5, 9.8, 9.9 and 9.10 of the Subdivision By-law shall not apply to the Lands, EXCEPT THAT any advice from the Chief Building Official with respect to the Vancouver Building By-law shall be considered by the Approving Officer, who may refuse to approve the subdivision if, in the Approving Officer's opinion, the existing buildings, after subdivision, do not comply with the provisions of the Vancouver Building By-law.

8.2 Zoning & Development By-law - The C-2C District Schedule to the Zoning & Development By-law is hereby varied as follows for the Lands, for purposes of the Development

- (a) Section 3.2.C is varied so that the Heritage Building may be used only for Theatre use, including both live acts and film, and any customarily ancillary retail and office space use;
- (b) Section 3.3.3 shall not apply to any ancillary office use of the Heritage Building;

- (c) Section 4.2 shall not apply to the Heritage Building;
- (d) Section 4.3 is varied to permit a maximum building height of 23.1 metres (75.8 feet) for the New Building, to the top of the rooftop stair access, and a maximum building height of 9.4 metres (30.9 feet) for the Heritage Building, and further section 4.3.1 shall not apply;
- (e) Section 4.4 shall not apply to the Heritage Building;
- (f) Section 4.6 shall not apply;
- (g) Section 4.7 is varied to permit a maximum floor area of 680 m² (7,320 f²) for the Heritage Building and a maximum floor area of 4,285 m² (46,106 f²) for the New Building, with the total combined floor area for all buildings on the Lands not to exceed of 4,972 m² (53,500 f²), which is approximately a floor space ratio of 3.19 based on the total area of the Lands, which is approximately 1,557 m² (16,750 f²);
- (h) Section 4.7.3(a) is varied such that the Director of Planning may consider balcony exclusions up to an amount equal to 12% of the provided floor area, provided the Director of Planning is satisfied with the impact on massing and shadowing created by such additional balcony area; and
- (i) Section 4.7.4(a)(i) is varied such that the total amount of floor area excluded for all open and enclosed balconies or sundecks is equal to the amount approved under Section 4.7.3(a).

ARTICLE 9 SUBDIVISION

9.1 Subdivision. If the Lands are subdivided at any time hereafter either under the provisions of the *Land Title Act* or under the *Strata Property Act* or under other similar legislation enacted from time to time then upon the deposit of a plan of subdivision, strata plan, or similar plan as the case may be:

- (a) subject to Section 9.2 herein, the rights and benefits of this agreement herein granted will be annexed to and run with each of the new parcels, lots, or other subdivided parcels and areas so created; and
- (b) subject to Section 9.3 herein, the burdens, obligations, covenant, statutory right of way and Equitable Charge contained in this agreement will continue to charge each of the new parcels, lots, or other subdivided parcels and areas so created.

9.2 Subdivision by Strata Plan. If the Lands, or any portion thereof, are subdivided by a strata plan then, subject to Section 9.3 herein, this agreement will charge title to the strata lots and the common property comprising such strata plan and:

- (a) the Section 219 Covenant and obligations therein and the Statutory Right of Way and Equitable Charge granted herein will be registered against each individual strata lot and noted on the common property sheet;
- (b) the strata corporation or the strata corporations created will perform and observe the Owner's covenants in this agreement, solely at the expense of the strata lot owners; and
- (c) the liability of each strata lot owner for the performance and observance of the Owner's covenants herein will be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan,

provided that, if the Lands are first subdivided by air space plan and then one or more of these parcels are further subdivided by strata plan, the easements and covenants registered concurrently with the air space plan may designate the air space parcel or the remainder, and therefore the strata corporation, responsible to perform and observe the Owner's covenants in this agreement.

9.3 Should the Lands be subdivided pursuant to the *Land Title Act* to create a parcel in which only the New Building is located, then at the Owner's request after the Rehabilitation Work has been completed in accordance with this agreement, the City, at the Owner's expense, will discharge from title to the newly created parcel containing only the New Building, the Section 219 Covenants, the Statutory Right of Way and the Equitable Charge contained in this agreement and will request of the Registrar of the Land Title Office that all legal notations referring to this agreement and the Heritage Designation be removed from title to the parcel containing only the New Building, provided that, if the owner of that parcel which contains only the New Building wishes to retain the variances granted under Article 8, of this agreement, then this agreement for such parcel, including the variances granted for that parcel, will be retained on title to that parcel, however, the City acknowledges and agrees that the ongoing covenants herein with respect to maintenance of the Heritage Building and the Equitable Charge in Article 7 herein will not apply to that newly created parcel which contains only the New Building. For certainty, nothing in this Agreement shall be interpreted to mean that the City is obligated to approve an application for a subdivision of the Lands under the *Land Title Act*.

9.4 The Owner hereby acknowledges and agrees that for the purposes of Section 592(4) of the *Vancouver Charter*, following such a subdivision, the Owner of the parcel that contains only the New Building may seek to amend this agreement as registered on title to that parcel without the consent or approval of the owner of the parcel which contains the Heritage Building.

ARTICLE 10 NOTICES

10.1 Any notice, request or communication required or permitted to be given hereunder will be in writing and will be deemed to have been duly given if delivered to the party or mailed in Canada by prepaid registered post addressed to the party as follows:

- (a) if to the Owner, to the Owner's address as shown in the Land Title Office records; and

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(b) if to the City:

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

Attention: City Clerk and Director of Legal Services,

or to such other address in Canada as any party may specify in writing to the other parties, provided that if and when the owner of the Lands or any part thereof should change, then to the address as set out in the State of Title Certificate for the Lands or such part thereof, and such notice will be deemed to have been received, if delivered, on the date of delivery, and if mailed as aforesaid within Canada then on the third (3rd) business day following its mailing, provided that if mailed, should there be between the time of the mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect delivery of such notice, then such notice will only be effective if and when actually delivered.

ARTICLE 11 GENERAL

11.1 Joint and Several Liability. If the Owner is more than one party, such parties shall be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this agreement.

11.2 Priority of Registration. The Owner, at his, her or its expense, after execution of this agreement, shall do or cause to be done all things and acts necessary to ensure that this agreement is registered against title to the Lands with priority over all other encumbrances on title to the Lands as the City may require.

11.3 Perfection of Intention. The parties hereto will do such things and execute such further and other documents and instruments and do such further and other acts as may be reasonably necessary to implement and carry out the provisions and intent of this agreement and to ensure timely and effective registration in the Land Title Office.

11.4 Waiver. 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.

11.5 Time of Essence. Time will be of the essence in respect of this agreement.

11.6 Enurement. This agreement shall enure to the benefit of and be binding upon the Owner and its successors and trustees, and this agreement shall charge and run with the Lands and with any parcel, lot or part into which the Lands may be subdivided or consolidated and shall enure to

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the benefit of and be binding upon the Owner's successors in title and trustees and successors and all parties claiming through such owners.

11.7 City's Other Rights and Obligations. Nothing contained or implied in this agreement will derogate from the obligations of the Owner under any other agreement with the City or 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 other laws, 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.

11.8 Headings. The division of this agreement into articles, sections and paragraphs and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this agreement.

11.9 Number. Words contained herein importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

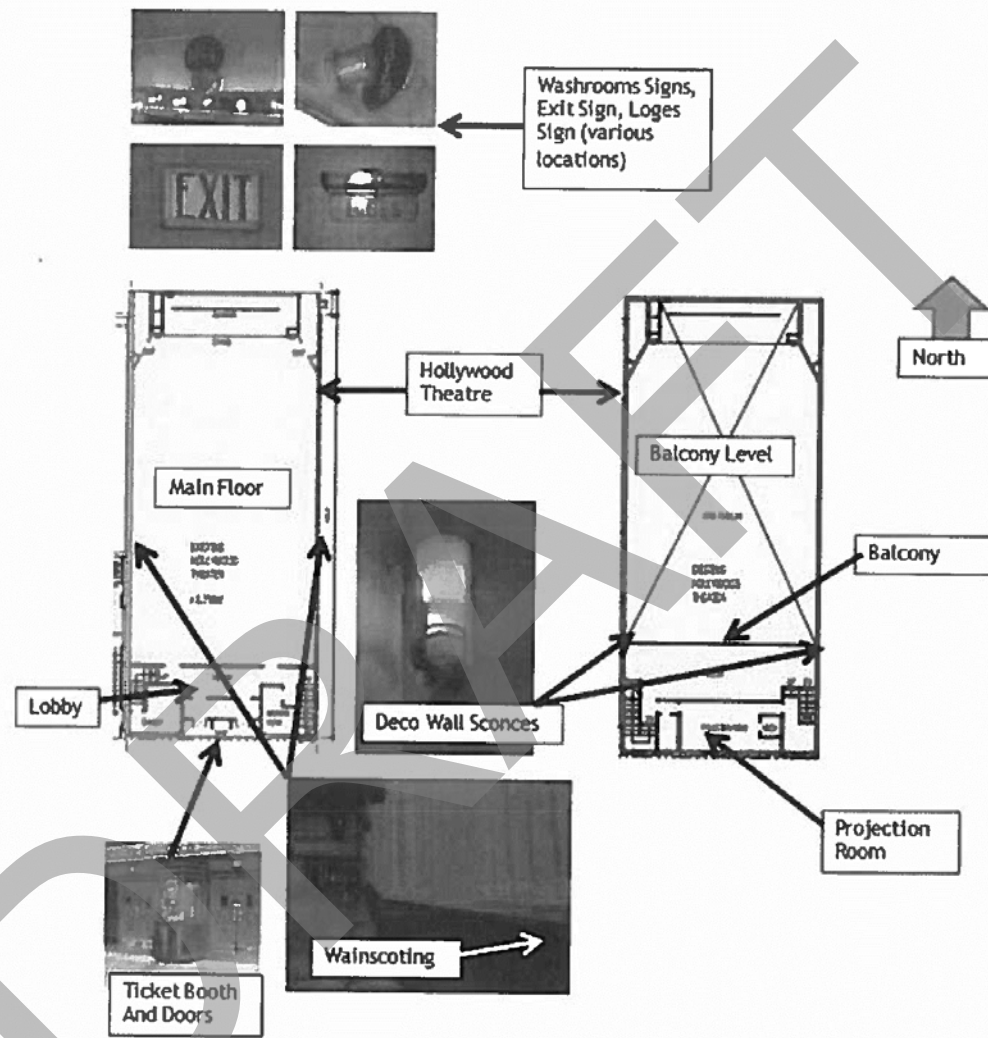
11.10 Governing Law. This agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

11.11 Severability. All provisions of this agreement are severable in that if any court or other lawful authority having jurisdiction to decide the matter finds for any reason that one or more of them is void or unenforceable, then such void or unenforceable provisions will be severed from this agreement and all other provisions herein will continue to be binding and enforceable.

11.12 City Approvals. In this agreement, where City "approval", "acceptance", "consent" or similar authorization or agreement is required, unless provided for otherwise in this agreement, such "approval", "acceptance", "consent" or similar City agreement or authority must be provided in writing, by the City departments, employees, officers or designates, as the case may be, that are authorized to provide such "approval", "acceptance", "consent" or similar authorization or agreement. Any purported "approval", "acceptance" "consent" or similar authorization or agreement provided by a City department, employee, officer or designate, as the case may be, that is not authorized to provide the same, shall be of no force or effect.

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

APPENDIX A



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CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Charges"** means the Mortgage registered under number CA3574502 and the Assignment of Rents registered under number CA3574503;
- (b) **"Existing Chargeholder"** means the CANADIAN WESTERN BANK;
- (c) **"New Charges"** means the Section 219 Covenants, the Statutory Right of Way and the Equitable Charge 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 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.

END OF DOCUMENT