

EXPLANATION

**A By-law to amend the
Zoning and Development By-law
re 1201-1215 Bidwell Street and 1702-1726 Davie Street**

After the public hearing on December 1 and 10, 2009, Council resolved to amend the Zoning and Development By-law to create a CD-1 zone for 1201-1215 Bidwell Street and 1702-1726 Davie Street. The Director of Planning has advised that all prior-to conditions have been met, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
July 20, 2010

1201 - 1215 Bidwell Street
1702 - 1726 Davie Street



BY-LAW NO. _____

**A By-law to amend
Zoning and Development By-law No. 3575
to rezone an area to CD-1**

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

Zoning District Plan amendment

1. This By-law amends the Zoning District Plan attached as Schedule D to By-law No. 3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-617 (b) attached as Schedule A to this By-law, and incorporates Schedule A into Schedule D to By-law No. 3575.

Uses

2.1 The description of the area shown within the heavy black outline on Schedule A is CD-1 (489).

2.2 Subject to Council approval of the form of development, to all conditions, guidelines and policies adopted by Council, and to the conditions set out in this By-law or in a development permit, the only uses permitted within CD-1 (489) and the only uses for which the Director of Planning or Development Permit Board will issue development permits are:

- (a) Cultural and Recreational Uses, limited to Personal Training Centre;
- (b) Dwelling Uses, in conjunction with any use listed in this section 2.2;
- (c) Office Uses;
- (d) Retail Uses, limited to Adult Retail Store, Grocery or Drug Store, Liquor Store, Pawnshop, Retail Store, Secondhand Store, and Small-scale Pharmacy;
- (e) Service Uses, limited to Animal Clinic, Barber Shop or Beauty Salon, Beauty and Wellness Centre, Cabaret, Catering Establishment, Laundromat or Dry Cleaning Establishment, Neighbourhood Public House, Photofinishing or Photography Laboratory, Photofinishing or Photography Studio, Print Shop, Repair Shop - Class B, Restaurant, School - Arts or Self-Improvement, School - Business, School - Vocational or Trade; and
- (f) Accessory Uses customarily ancillary to the uses listed in this section 2.2.

Density

3.1 The floor space ratio for all uses, combined, must not exceed 6.27.

3.2 Computation of floor space ratio must include all floors, both above and below ground level, measured to the extreme outer limits of the building.

3.3 Computation of floor space ratio must exclude:

- (a) open residential balconies or sundecks, and any other appurtenances which, in the opinion of the Director of Planning, are similar to the foregoing, except that the total area of all exclusions must not exceed 8% of the residential floor area being provided;
- (b) patios and roof gardens, if the Director of Planning first approves the design of sunroofs and walls;
- (c) the floors or portions of floors used for off-street parking and loading, the taking on or discharging of passengers, bicycle storage, heating and mechanical equipment, or uses which, in the opinion of the Director of Planning, are similar to the foregoing, which are at or below the base surface except that the exclusion for a parking space must not exceed 7.3 m in length for the purpose of exclusion from floor space ratio computation;
- (d) all residential storage space above or below base surface, except that if the residential storage space above base surface exceeds 3.7 m² for a dwelling unit, there is to be no exclusion for any of the residential storage space above base surface for that unit;
- (e) where a Building Envelope Professional as defined in the Building By-law has recommended exterior walls greater than 152 mm in thickness, the area of the walls exceeding 152 mm, but to a maximum exclusion of 152 mm thickness except that this clause does not apply to walls in existence prior to March 14, 2000; and
- (f) with respect to exterior:
 - (i) wood frame construction walls greater than 152 mm thick that accommodate RSI 3.85 (R-22) insulation, or
 - (ii) walls other than wood frame construction greater than 152 mm thick that meet the standard RSI 2.67 (R-15),

the area of such walls that exceeds 152 mm to a maximum exclusion of 51 mm of thickness for wood frame construction walls and 127 mm of thickness for other walls, except that this clause is not to apply to walls in existence before January 20, 2009. A registered professional must verify that any wall referred to in this section meets the standards set out therein.

3.4 Computation of floor space ratio may exclude, at the discretion of the Director of Planning:

- (a) enclosed residential balconies if the Director of Planning first considers all applicable policies and guidelines adopted by Council and approves the design of any balcony enclosure except that:
 - (i) the total area of all open and enclosed balcony or sundeck exclusions must not exceed 8% of the provided residential floor area, and
 - (ii) enclosure of the excluded balcony floor area must not exceed 50%;
- (b) interior public space, including atria and other similar spaces if the Director of Planning first considers all applicable policies and guidelines adopted by Council except that:
 - (i) excluded space must not exceed the lesser of 10% of the permitted floor area and 600 m²,
 - (ii) a covenant and statutory right of way in favour of the city and setting out public access and use must secure the excluded area, and
 - (iii) the Director of Planning must first consider all applicable policies and guidelines adopted by Council; and
- (c) amenity floor areas except that the excluded space must not exceed the lesser of 10% of the permitted floor area and 1 000 m².

Building height

4.1 The building height, measured above base surface, must not exceed 64.0 m.

4.2 Despite section 4.1 of this By-law and section 10.11 of the Zoning and Development By-law, a planted sustainable green wall may extend 2 m more or less above the maximum height of the building.

Parking, loading, and bicycle spaces

5. Any development or use of the site requires the provision and maintenance, in accordance with the requirements of, and relaxations, exemptions and mixed use reductions in, the Parking By-law, of off-street parking spaces, loading spaces, and bicycle spaces, all as defined under the Parking By-law, except that there must be:

- (a) for non-dwelling uses:
 - (i) at least one parking space for each 145 m² of gross floor area,
 - (ii) no more than one parking space for each 115 m² of gross floor area,

- (iii) at least 1% of parking spaces designated as shared vehicle parking spaces for use by visitors who are using a shared vehicle, and
 - (iv) one disability parking space for the first 500 m² of gross floor area, and 0.4 disability parking space for each additional 1 000 m² of gross floor area; and
- (b) for dwelling uses:
- (i) at least the lesser of one parking space for each 140 m² of gross floor area and one parking space for each dwelling unit,
 - (ii) no more than 0.5 parking space for each studio dwelling unit, one parking space for each one bedroom dwelling unit, 1.5 parking spaces for each two bedroom dwelling unit, and two parking spaces for each three or more bedroom dwelling unit,
 - (iii) at least 0.1 parking spaces and no more than 0.2 parking spaces for each dwelling unit for visitor parking supplied from the minimum required and maximum allowable parking spaces,
 - (iv) 0.2 shared vehicle parking spaces for each dwelling unit, and, for parking calculation purposes, any number larger than or equal to 0.5 is to equal one,
 - (v) at least 0.008 loading spaces, Class A for one to 299 dwelling units,
 - (vi) at least 0.006 loading spaces, Class A for more than 299 dwelling units, and
 - (vii) one disability parking space for the first seven dwelling units, and 0.034 disability parking spaces for each dwelling unit thereafter.

Acoustics

6. All development permit applications require evidence in the form of a report and recommendations prepared by a person trained in acoustics and current techniques of noise measurement, demonstrating that the noise levels in those portions of dwelling units listed below do not exceed the noise level set opposite such portions. For the purposes of this section, the noise level is the A-weighted 24-hour equivalent (Leq) sound level and is defined simply as noise level in decibels.

| Portions of dwelling units | Noise levels (Decibels) |
|----------------------------------|-------------------------|
| Bedrooms | 35 |
| Living, dining, recreation rooms | 40 |
| kitchen, bathrooms, hallways | 45 |

Severability

7. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

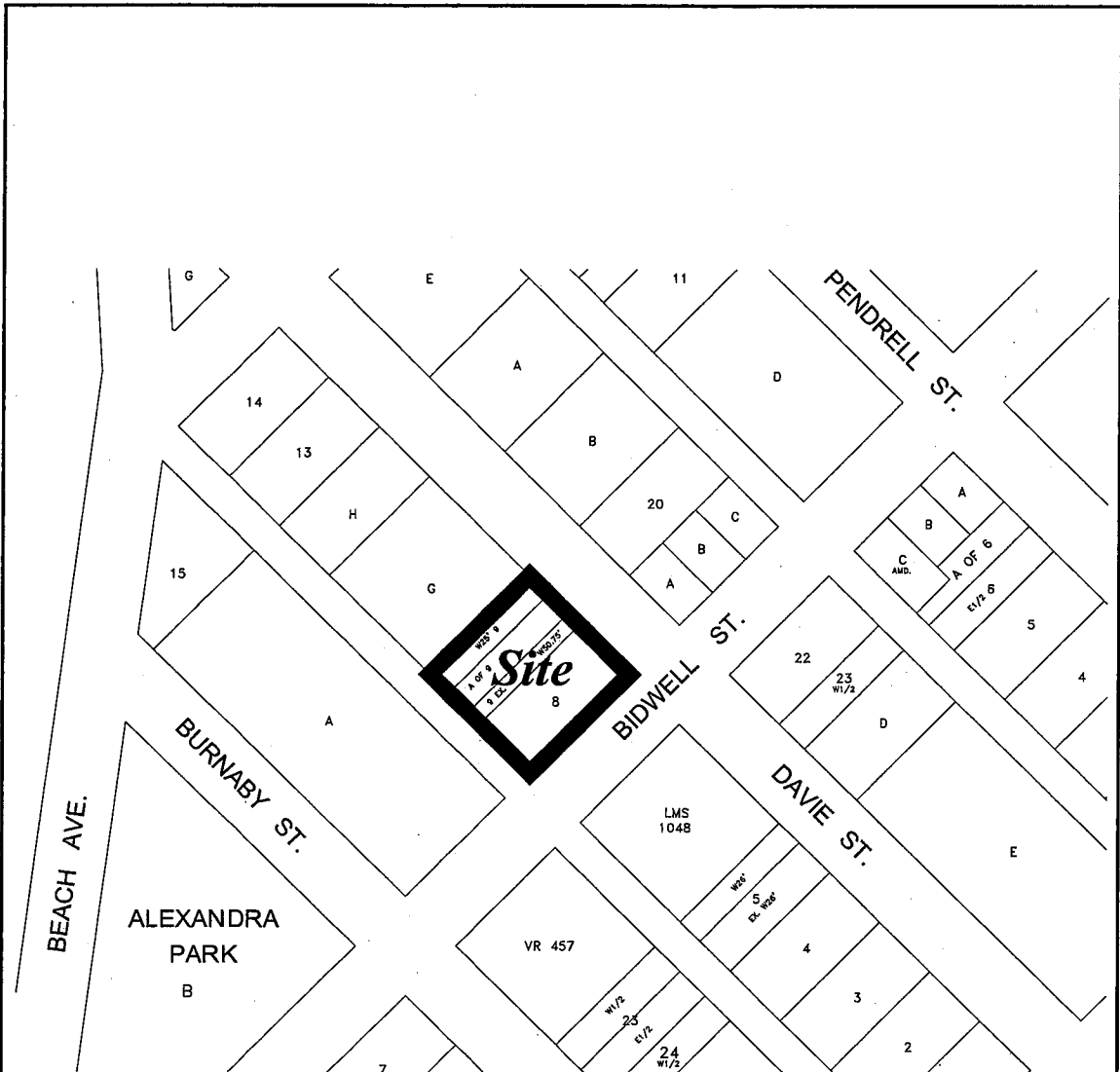
Force and effect

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

ENACTED by Council this day of , 2010

Mayor

City Clerk



The property outlined in black () is rezoned:

From **C-5** to **CD-1**

Z-617 (b)

RZ - 1201-1215 Bidwell Street & 1702-1726 Davie Street

map: 1 of 1

scale: NTS



City of Vancouver

date: 2009-11-13

EXPLANATION**Authorization to enter into a
Heritage Revitalization Agreement
with the owner of 1215 Bidwell Street**

Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 1215 Bidwell Street pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
July 20, 2010

1215 Bidwell Street



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 1215 Bidwell Street, and the following legal description:

PID: 015-752-551

Lot 8

Block 62

District Lot 185

Plan 92

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 , 2010

Mayor

City Clerk

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

Page 1 of 18 pages

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

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

| (PID) | (LEGAL DESCRIPTION) |
|-------------|--|
| 015-752-674 | Lot A (See 17609K) of Lot 9 Block 62 District Lot 185 Plan 92 |
| 015-752-551 | Lot 8 Block 62 District Lot 185 Plan 92 |
| 015-752-640 | Lot 9, Except the West 50.75 Feet, Block 62 District Lot 185 Plan 92 |
| 014-499-029 | The West 25 Feet of Lot 9 Block 62 District Lot 185 Plan 92 |

3. NATURE OF INTEREST:*

| DESCRIPTION | DOCUMENT REFERENCE (page and paragraph) | PERSON ENTITLED TO INTEREST |
|--------------|--|-----------------------------|
| 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
- (c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

MILLENNIUM ENGLISH BAY PROPERTIES LTD., (Incorporation No. 0776445)
637083 BRITISH COLUMBIA LTD., (Incorporation No. 0637083) *(as to priority)*
REALTECH CAPITAL GROUP INC. (Incorporation No. 268833) *(as to priority)*

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

CITY OF VANCOUVER, 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4

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) | Execution Date | | | Party(ies) Signature(s) |
|--|----------------|---|---|--|
| | Y | M | D | |
| <hr/> (Solicitor) (as to both signatures) | 10 | | | MILLENNIUM ENGLISH BAY PROPERTIES LTD. By its authorized signatories: <hr/> Signature and Print Name: <hr/> Signature and Print Name: |
| <hr/> Stephen F. Hayward Solicitor 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-873-7714 | 10 | | | CITY OF VANCOUVER by its authorized signatory: <hr/> Frances J. Connell/Yvonne Liljefors |

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.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

| Officer Signature(s) | Execution Date | | | Party(ies) Signature(s) |
|---|----------------|---|---|---|
| | Y | M | D | |
| _____ (Solicitor)(as to both signatures) | 10 | | | 637083 BRITISH COLUMBIA LTD., by its authorized signatory(ies) _____ Signature and Printed Name _____ Signature and Printed Name |
| _____ (Solicitor)(as to both signatures) | 10 | | | REALTECH CAPITAL GROUP INC., by its authorized signatory(ies) _____ Signature and Printed Name _____ Signature and Printed 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.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
 ** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM E
SCHEDULE**

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. NATURE OF INTEREST:*

| DESCRIPTION | DOCUMENT REFERENCE (page and paragraph) | PERSON ENTITLED TO INTEREST |
|--|--|--------------------------------|
| Section 219 Covenant | Pages 8 - 10, Article 2 | Transferee |
| Statutory Right of Way | Page 11, Article 3 | Transferee |
| Equitable Charge | Page 11, Article 4 | Transferee |
| Priority Agreement granting the above Section 219 Covenant, Statutory Right of Way and Equitable Charge priority over Mortgage CA1415393 and Assignment of Rents CA1415394 in respect of PID: 014-499-029, PID: 015-752-551, PID: 015-752-640 and PID: 015-752-674 | Page 16 | Transferee |
| Priority Agreement granting the above Section 219 Covenant, Statutory Right of Way and Equitable Charge priority over Mortgage BB357023 in respect of PID: 015-752-551, PID: 015-752-640 and PID: 015-752-674 | Page 17 | Transferee |
| Priority Agreement granting the above Section 219 Covenant, Statutory Right of Way and Equitable Charge priority over Mortgage BB1211604 and Assignment of Rents BB1211605 in respect of PID: 014-499-029 | Page 18 | Transferee |

TERMS OF INSTRUMENT - PART 2**Heritage Revitalization Agreement - 1215 Bidwell Street****WHEREAS:**

A. The Owner (as defined in Section 1.1) is the registered owner of the lands and premises located in the City of Vancouver legally known and described as set forth in item 2 in the General Instrument - Part 1 Form C attached (as more particularly defined in Section 1.1, the "Lands");

B. Situate on the Lands is a building known as "Maxine's College of Beauty" (as more particularly defined in Section 1.1), which is listed in category "C" in the Vancouver Heritage Register;

C. The Owner wishes to develop the Lands, and to enable such has applied to rezone the Lands to enable, inter alia:

- (i) an increase in the overall maximum density from FSR 2.20 to FSR 6.27;
- (ii) construction of a multi-storey residential tower;
- (iii) the provision of 49 units of secured market rental housing for the life of the residential tower; and
- (iv) retention and designation of the Façade (as more particularly defined in Section 1.1);

D. The City has agreed to the foregoing subject to a number of conditions, including without limitation, that:

- (i) the Façade be designated by City by-law as a legally protected heritage building; and
- (ii) the Owner restore and thereafter maintain the Façade, and enter into a heritage revitalization agreement with the City pursuant to Section 592 of the *Vancouver Charter* to set forth the basis on which it will be required, and agrees, to do so; and
- (iii) to enter into an agreement with the City which:
 - a. restricts the occupancy of the multi-storey residential tower to be built on the Lands until all conservation work on the Façade is completed to the satisfaction of the Director of Planning;
 - b. requires all such conservation work to be done in a timely manner;
 - c. requires the Façade to be secured from vandalism during the construction process; and

- d. includes such other terms and conditions as the City may require and the Owner may agree to.

E. Pursuant to Section 592 of the *Vancouver Charter*, a heritage revitalization agreement may, among other things, include provisions regarding the phasing and timing of commencement and completion of actions required by the agreement, and may include such other terms and conditions as the City's council and the Owner may agree, provisions, terms and conditions this Agreement sets forth.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the sum of Ten Dollars (\$10.00) now paid by each party to the other and for other good and valuable consideration passing from each party to the other (the receipt and sufficiency of which each acknowledges), pursuant to the *Land Title Act* and pursuant to Section 592 of the *Vancouver Charter*, the parties hereby agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions. The terms defined in this Section 1.1 shall, unless otherwise specifically provided for in this Agreement (as defined below), have the following meanings:

- (a) **"Agreement"** means this instrument and agreement, all land title instruments and forms attached and all schedules, if any, to this instrument and agreement;
- (b) **"City"** means the municipal corporation continued pursuant to the *Vancouver Charter*, and **"City of Vancouver"** means the geographic location;
- (c) **"City Party"** means each and every one of the City's officials, councillors, employees, contractors, agents, volunteers and licensees;
- (d) **"Conservation Plan"** means the written plan and guidelines prepared by or under the supervision of the Consultant for the conservation and preservation of the Façade after its rehabilitation as required hereby is complete, as the same may be amended or supplemented from time to time with the prior written consent of the Director of Planning;
- (e) **"Consultant"** means the Owner's heritage consultant who shall be a registered architect or professional engineer in good standing, or such other qualified person as the Director of Planning may approve, who shall have substantial experience in heritage rehabilitation work;
- (f) **"Designation"** means the designation by City by-law of the principal Façade as a protected heritage property pursuant to section 593 of the *Vancouver Charter*;
- (g) **"Development Permit"** means any development permit issued in respect of the Façade rehabilitation contemplated by this Agreement, and includes the

application therefor, together with any drawings and specifications submitted in support thereof, and any supplements or amendments thereto;

- (h) **“Director of Legal Services”** means the chief administrator from time to time of the Legal Services Department of the City and her successors in function and their respective nominees;
- (i) **“Director of Planning”** means the chief administrator from time to time of the Planning Department of the City and his successors in function and their respective nominees;
- (j) **“Effective Date”** means the date that this Agreement is executed by the Director of Legal Services;
- (k) **“Façade”** means principal façade of Maxine’s College of Beauty at 1215 Bidwell, and includes:
 - (i) all elements thereof and all permitted improvements thereto and replacements thereof; and
 - (ii) any other feature or fixture of that principal facade or the Lands identified in the Development Permit or in the applicable heritage designation by-law or heritage revitalization by-law as part thereof;
- (l) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250, 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;
- (m) **“Lands”** is defined in Recital A, and includes any portion thereof;
- (n) **“Owner”** means the registered owner(s) of the Lands as of the Effective Date, and all of its respective assigns, heirs, successors and successors in title to the Lands or any part thereof and, if the Lands are subdivided by way of a strata plan, then **“Owner”** includes, without limitation, a strata corporation thereby created;
- (o) **“Rehabilitation”** or **“Rehabilitate”** means the rehabilitation and restoration of the Façade to the satisfaction of the City in accordance with this Agreement, the Development Permit, the Conservation Plan and the directions and guidelines of the City applicable; and
- (p) **“Vancouver Charter”** means the *Vancouver Charter* S.B.C. 1953, c.55, as amended or replaced from time to time.

1.2 **Headings.** The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings is for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article or other portion

hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Recitals, Articles, Sections or Paragraphs are to Recitals, Articles, Sections or Paragraphs of this Agreement.

1.3 Number. Words 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.

1.4 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.

1.5 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.

1.6 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.

ARTICLE 2 REHABILITATION AND PRESERVATION OF THE HERITAGE BUILDING

2.1 Pursuant to 592 of the *Vancouver Charter* and Section 219 of the *Land Title Act*, the Owner covenants and agrees with the City, as covenants and agreements running with, charging and binding the Lands, in respect of the use of the Lands and the buildings located thereon, that:

- (a) the Owner will, at its expense and to the satisfaction of the Director of Planning, within a period of 24 months from the Effective Date, Rehabilitate the Façade;
- (b) the Owner will, at its expense and to the satisfaction of the Director of Planning; ensure that the Consultant supervises all aspects of the Rehabilitation of the Façade;
- (c) the Owner will, at its expense and to the satisfaction of the Director of Planning, secure the Façade from vandalism and occupation by squatters at all times during the Rehabilitation;
- (d) the Owner will, at its expense and to the satisfaction of the Director of Legal Services, keep the Façade insured to its full replacement value against all perils,

including, without limitation, damage or destruction by earthquake, both during the Rehabilitation and thereafter;

- (e) on completion of the Rehabilitation, the Owner will, at its expense, cause the Consultant to submit to the Director of Planning a signed statement (in form and contents satisfactory to the Director of Planning) confirming that the Rehabilitation has been fully completed to the City's satisfaction;
- (f) the City shall be under no obligation to issue, and neither the Owner nor any other person shall apply for, nor take any action to compel the issuance of:
 - (i) an occupancy permit for any building or improvement constructed on the Lands (or any part thereof); or
 - (ii) approval of an application to subdivide the Lands,

notwithstanding that all other conditions and City by-law requirements in respect thereof may have been fulfilled, until the Rehabilitation is completed and unless the Owner is then in full compliance with the requirements of paragraphs (a) to (e) above;

- (g) until the Rehabilitation is completed and an occupancy permit has been issued for the Façade as so Rehabilitated:
 - (i) neither the Owner nor any other person whatsoever shall suffer, cause or permit the use or occupation of any part of any building or improvement constructed on the Lands;
 - (ii) the person that is the registered Owner on the Effective Date shall not transfer all or any of its legal or beneficial ownership in the Lands (or any part thereof) without the prior written consent of the Director of Legal Services; and
 - (iii) neither the Owner nor any other person whatsoever shall suffer, cause or permit an application to subdivide the Lands to be submitted to the City;
- (h) at all times after completion of the Rehabilitation, the Owner will, at its expense, conserve the Façade, as rehabilitated, in accordance with the Conservation Plan and to the satisfaction of the Director of Planning, and, in any event, in good condition in all respects as would a reasonable and prudent owner;
- (i) at all times after completion of the Rehabilitation, the Owner will not, except as may be permitted by this Agreement, the Development Permit or a heritage alteration permit issued by the City, alter the exterior, make structural changes, or renovate or reconfigure the Façade (or any part thereof);
- (j) if the Façade is damaged, the Owner will, at its expense, repair the Façade if to do so is lawful and economic. In determining if it is economic to repair the Façade,

the Owner and the City will consider only land economic factors including the cost of repair, the cost of the replacement building contemplated below and the fact that heritage incentives (including any granted as part of the by-law variations effected by this Agreement) have been granted herein. If the Owner and the City cannot agree on whether it is economic to repair the Façade, such question will be determined by arbitration pursuant to paragraph (k) below. If the Owner and the City agree or if an arbitrator(s) determines that it is uneconomic to repair the Façade or if the Façade is destroyed, the Owner will not be obligated to repair or rebuild the Façade, but will be restricted to building on the Lands a building of similar form, massing, quality of materials, detailing and height as the original Façade, and the City will, at the Owner's expense, execute and deliver an amendment, and to the extent applicable, in the City's sole opinion, a partial discharge of this Agreement to reflect such change in circumstances;

- (k) all disputes arising from paragraph (j) above will be determined by arbitration in the manner set out in this paragraph (k), and the seat of such arbitration will be Vancouver, British Columbia. Within 30 days following written notice of the dispute by either party to the other, such dispute will be referred to a single arbitrator to be chosen by the Owner and the City; provided that if the Owner and the City do not agree as to the choice of a single arbitrator, then by three arbitrators, one of whom will be chosen by the Owner, one of whom will be chosen by the City and the third by the two so chosen, and the third arbitrator so chosen will be the chairman. Decisions will be made by the majority of the arbitrators. If within 15 days or such extended time as the parties may agree upon, a party who has been notified of a dispute fails to appoint an arbitrator or the two arbitrators appointed by the parties do not agree upon a third arbitrator, then the party or parties not in default may apply to the British Columbia International Commercial Arbitration Centre or, if it or a successor thereto does not exist at such time, to a Judge of the Supreme Court of British Columbia for the appointment of an arbitrator to represent the party or parties in default or a third arbitrator or both of such arbitrators. The costs of the reference and award will be in the discretion of the arbitrators who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between solicitor and client, subject always to Article 6. Except as to matters otherwise provided herein, the provisions of the *Commercial Arbitration Act* (British Columbia), as amended or re-enacted from time to time, will apply; and
- (l) the City may, at its cost, affix a commemorative plaque to the Façade and the Owner will refrain from obscuring, defacing or removing it.

2.2 If the Owner fails to carry out the Rehabilitation, or at any time fails to carry out its obligations to preserve and protect the Façade as required hereby, subject to the provisions of this Agreement, the City may, but will be under no obligation to, do so on the Owner's behalf and at the Owner's expense.

**ARTICLE 3
STATUTORY RIGHT OF WAY**

3.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City a statutory right of way to enter and be upon the Lands and to install upon the exterior of the Façade a commemorative plaque regarding the Façade's historical significance, and thereafter to maintain, repair and/or replace it, and, in the event that the Owner is in default of any of its obligations under this Agreement, to undertake and/or diligently prosecute to conclusion the Rehabilitation, and to preserve, protect, maintain, repair and/or replace the Façade, if the City should at any time choose to do so.

3.2 Notwithstanding Section 3.1, nothing herein obligates the City to conduct the Rehabilitation, or any part thereof, or to preserve, protect, maintain, repair and/or replace the Façade.

3.3 In the event that the City enters upon the Lands to conduct all, or any part, of the Rehabilitation, or any other work contemplated by Section 3.1:

- (a) there will be no express or implied warranties as to the quality of the Rehabilitation, or any other work contemplated by Section 4.1, or the suitability of the materials for the purposes for which they are put; and
- (b) the Owner will pay to the City the costs incurred by the City in undertaking the Rehabilitation or any part thereof, and any other work contemplated by Section 4.1, plus 20% of such costs as fair compensation for the City's administrative costs.

The statutory right of way set out in this Article 3 is necessary for the operation and maintenance of the City's undertaking.

**ARTICLE 4
EQUITABLE CHARGE**

4.1 The Owner 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 and the provisions of this Article 4 will survive any termination of this Agreement and continue to apply. This equitable charge may be enforced by the appointment of a receiver for the sale of the Lands.

**ARTICLE 5
RELEASE AND INDEMNITY**

5.1 The Owner hereby releases, indemnifies and saves harmless the City and each City Party, from and against all liabilities, actions, statutory or other proceedings, judgements, investigations, claims, losses, loss of profit, damages, consequential damages, fines, penalties, costs and legal expenses and disbursements on a full indemnity basis (i) which the City or a City Party may suffer or incur, in the case of the indemnity contained herein, and (ii) which the Owner or its directors, officers, employees, contractors, agents or licencees, if/as applicable, may suffer

or incur, in the case of the release contained herein, in each case, arising out of or in any way connected with:

- (a) the City conducting all or any portion of the Rehabilitation or any other work contemplated by this Agreement;
- (b) the City withholding any permits (including, without limitation, an occupancy permit) under this Agreement, until the Owner has fully complied with all requirements of the City in this Agreement and otherwise applicable to the Lands;
- (c) the City withholding approval of the subdivision of the Lands, until the Owner has fully complied with all requirements of the City in this Agreement and otherwise applicable to the Lands, or failing to approve such at all;
- (d) this Agreement, except to the extent the same arises directly and solely from a default of the City or a City Party hereunder;
- (e) any release of this Agreement or the loss of any of the rights granted hereunder;
- (f) the non-compliance, if any, of the Lands, the Façade or any part of either thereof with any City by-law; and
- (g) issuance of any development permit in respect of the Lands.

5.2 Without limiting the generality of Section 5.1, the Owner hereby acknowledges and agrees that, notwithstanding that:

- (a) this Agreement and the heritage revitalization by-law authorizing it; and
- (b) the enactment of a heritage designation by-law which identifies the Façade as a "Protected Heritage Property";

each impose consequent restrictions on the future redevelopment of the Lands, the zoning and subdivision by-law variations effected as a consequence of the rezoning of the Lands and the Development Permit are full and fair compensation for the obligations and restrictions placed upon the Owner by this Agreement and such heritage revitalization by-law and heritage designation by-law, including without limitation, any resulting reduction in the market value of the Façade, the Lands or any part thereof and/or its improvements, and the Owner waives and renounces all claims for further or other compensation by reason of this Agreement, such heritage revitalization by-law and/or such heritage designation by-law, and acknowledges that the requirements of Section 595(1) of the *Vancouver Charter* have been met to its full satisfaction by the terms of this Agreement.

5.3 The releases and indemnities set out in this Article 5 shall survive the expiration or earlier termination of this Agreement and shall survive any modification, release or partial release of any of the covenants created by this Agreement. The releases and indemnities in this Article 5 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted hereby.

ARTICLE 6 NOTICES

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:
Millennium English Bay Properties Ltd.
Main Floor, 198 West Hastings Street
Vancouver, British Columbia
V6B 1H2
Attention: Mr. Shahram Malek

- (b) if to the City:
City of Vancouver
Law Department
453 West 12th Avenue
Vancouver, British Columbia
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 any parcel of land should change, then to the address as set out in the State of Title Certificate for that particular parcel of land, or, if strata-titled, the address of the strata corporation in the records of the Land Title Office, 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 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 7 GENERAL

7.1 Joint and Several Liability. If the registered owner of the Lands shall be 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.

7.2 Priority of Registration. The Owner shall, after execution of this Agreement, do or cause to be done, at its own cost and expense, all things and acts necessary to ensure that this Agreement is registered against title to the Lands with priority over all other financial encumbrances except financial encumbrances in favour of the City.

7.3 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.

7.4 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.

7.5 Time of Essence. Time will be of the essence of this Agreement.

7.6 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 each separate parcel, lot or part into which it may be subdivided subject only to Section 8.8, and shall enure to the benefit of and be binding upon the Owner's successors in title and their respective trustees and successors and all parties claiming through such owners.

7.7 Subdivision of the Lands by Strata Plan. Notwithstanding the generality of Section 8.6, if the Lands, or any portion thereof, are subdivided by way of a strata plan and the Façade or any part thereof is located within the strata plan:

- (a) this Agreement shall charge each strata lot and shall be noted on the common property sheet of the strata corporation;
- (b) the strata corporation or strata corporations so created shall
 - (i) be responsible for the performance and observance of the Owner's covenants and obligations herein at the expense of the strata lot owners;
 - (ii) take into consideration the content of this Agreement when creating, amending or rescinding the by-laws, rules and regulations of the strata corporation applicable to strata lot owners, and shall cause the strata lot owners to comply with the obligations, restrictions and limitations as provided herein and therein;
 - (iii) be jointly and severally responsible for any breach arising from any action or omission of any and all of the strata lot owners of the obligations, restrictions and limitations as provided herein and in any such by-laws, rules and regulations; and
 - (iv) be entitled to give all permissions and consents permitted to be given by the Owner; and
- (c) the financial liability of each strata lot owner for the performance and observance of the Owner's covenants and obligations in this Agreement shall be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan

and shall be treated as a common expense and all strata lot owners shall contribute to such costs in proportion to their unit entitlement, subject to the *Strata Property Act* (British Columbia) and the by-laws of the strata corporation.

7.8 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, 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.

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 CA1415393 and ASSIGNMENT OF RENTS registered under number CA1415394;
- (b) "Existing Chargeholder" means Realtech Capital Group Inc.;
- (c) "New Charges" means the rights of way, covenants, equitable charges and other rights and encumbrances contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this Instrument, unless defined herein, have the respective meanings ascribed to them by 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:

- (a) consents to the Owner granting the New Charges to the City;
- (b) agrees with the City that the New Charges will be binding and enforceable against the Lands in accordance with their terms, and will be charges upon 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:

- (a) "Existing Charge" means the MORTGAGE registered under number BB357023;
- (b) "Existing Chargeholder" means 637083 British Columbia Ltd.;
- (c) "New Charges" means the rights of way, covenants, equitable charges and other rights and encumbrances contained in the attached Terms of Instrument - Part 2;
- (d) "Lands" means, collectively, the lands and premises legally described as:
 - Lot A (See 17609K) of Lot 9 Block 62 District Lot 185 Plan 92;
 - Lot 8 Block 62 District Lot 185 Plan 92; and
 - Lot 9, Except the West 50.75 Feet, Block 62 District Lot 185 Plan 92; and
- (e) words capitalized in this Instrument, unless defined herein, have the respective meanings ascribed to them by 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:

- (a) consents to the Owner granting the New Charges to the City;
- (b) agrees with the City that the New Charges will be binding and enforceable against the Lands in accordance with their terms, and will be charges upon the Lands in priority to the Existing Charge 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 Lands prior to the grant or registration of the Existing Charge or the advance of any money under the Existing Charge.

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:

- (a) "Existing Charge" means the MORTGAGE registered under number BB1211604 and ASSIGNMENT OF RENTS registered under number BB1211605;
- (b) "Existing Chargeholder" means Realtech Capital Group Inc.;
- (c) "New Charges" means the rights of way, covenants, equitable charges and other rights and encumbrances contained in the attached Terms of Instrument - Part 2;
- (d) "Lands" means The West 25 Feet of Lot 9 Block 62 District Lot 185 Plan 92; and
- (e) words capitalized in this Instrument, unless defined herein, have the respective meanings ascribed to them by 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:

- (a) consents to the Owner granting the New Charges to the City;
- (b) agrees with the City that the New Charges will be binding and enforceable against the Lands in accordance with their terms, and will be charges upon the Lands in priority to the Existing Charge 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 Lands prior to the grant or registration of the Existing Charge or the advance of any money under the Existing Charge.

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

**Heritage Designation By-law
re 1215 Bidwell Street**

At a public hearing on December 1, 2009 and reconvened on December 10, 2009, Council approved a recommendation to designate the structure and exterior envelope of the improvements and exterior building materials of a building at 1215 Bidwell Street as protected heritage property. Enactment of the attached by-law will achieve the designation.

Director of Legal Services
July 20, 2010

1215 Bidwell Street
Maxine's College of Beauty



BY-LAW NO. _____

**A By-law to designate certain real property
as protected heritage property**

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

1. Council considers that the real property described as:

Structure and exterior
envelope of the principal
façade of the building
facing on Bidwell Street

1215 Bidwell Street,
Vancouver, BC

PID: 015-752-551
Lot 8
Block 62
District Lot 185
Plan 92

has heritage value or heritage character, and that its designation as protected heritage property is necessary or desirable for its conservation.

2. Council designates the real property described in section 1 of this By-law as protected heritage property under Section 593 of the *Vancouver Charter*.

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

ENACTED by Council this _____ day of _____, 2010

Mayor

City Clerk

EXPLANATION

**Authorization to enter into a housing agreement
re 1201-1215 Bidwell Street and 1702-1726 Davie Street**

On December 15, Council approved recommendations in connection with the rezoning of 1201-1215 Bidwell Street and 1702-1726 Davie Street. The recommendations did not refer specifically to approval of a housing agreement, but the Report to Council dated October 20, 2009, in Appendix B and in the body of the Report, included as a prior-to enactment condition securing the designated units as rental for the life of the building pursuant to the Short Term Incentives for Rental Housing program. Enactment of the attached by-law will accomplish that objective by authorizing Council to enter into a housing agreement with the land owner.

Director of Legal Services
July 20, 2010

1201-1215 Bidwell Street and 1702-1726 Davie Street



BY-LAW NO. _____

**A By-law to enact a Housing Agreement
for 1201-1215 Bidwell Street and 1702-1726 Davie 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:

Parcel Identifier: 015-752-674
Lot A (See 17609K) of Lot 9
Block 62
District Lot 185
Plan 92

Parcel Identifier: 015-752-551
Lot 8
Block 62
District Lot 185
Plan 92

Parcel Identifier: 015-752-640
Lot 9, Except the West 50.75 Feet
Block 62
District Lot 185
Plan 92

Parcel Identifier: 014-499-029
The West 25 Feet of Lot 9
Block 62
District Lot 185
Plan 92

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 _____, 2010

Mayor

City Clerk

LAND TITLE ACT
FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

Page 1 of 13 pages

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

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

| (PID) | (LEGAL DESCRIPTION) |
|-------------|--|
| 015-752-551 | Lot 8 Block 62 District Lot 185 Plan 92 |
| 015-752-640 | Lot 9, Except the West 50.75 Feet, Block 62 District Lot 185 Plan 92 |
| 015-752-674 | Lot A (See 17609K) of Lot 9 Block 62 District Lot 185 Plan 92 |
| 014-499-029 | The West 25 Feet of Lot 9 Block 62 District Lot 185 Plan 92 |

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE (page and paragraph)

PERSON ENTITLED TO INTEREST

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
(c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S)/CHARGEHOLDER(S):*

MILLENNIUM ENGLISH BAY PROPERTIES LTD., (Incorporation No. 0776445)
637083 BRITISH COLUMBIA LTD., (Incorporation No. 0637083) (as to priority)
REALTECH CAPITAL GROUP INC. (Incorporation No. 268833) (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

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) | Execution Date | | | Party(ies) Signature(s) |
|---|----------------|---|---|---|
| | Y | M | D | |
| _____ Solicitor/Notary (as to both signatures) | 10 | | | REALTECH CAPITAL GROUP INC., by its authorized signatory(ies): _____ Print Name: _____ Print Name: |
| _____ Solicitor/Notary (as to both signatures) | 10 | | | 637083 BRITISH COLUMBIA LTD., by its authorized signatory(ies): _____ Print Name: _____ Print Name: |
| _____ Stephen F. Hayward Solicitor 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-873-7714 | 10 | | | CITY OF VANCOUVER by its authorized signatory: _____ Francis Connell/Yvonne Liljefors |

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

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Officer Signature(s)

Solicitor/Notary (as to both signatures)

Execution Date

| Y | M | D |
|----|---|---|
| 10 | | |

Party(ies) Signature(s)

MILLENNIUM ENGLISH BAY PROPERTIES LTD., by its authorized signatories:

Name: _____

Name: _____

OFFICER CERTIFICATION:

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

**LAND TITLE ACT
FORM E
SCHEDULE**

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

| 3. NATURE OF INTEREST: DESCRIPTION | DOCUMENT REFERENCE (page and paragraph) | PERSON ENTITLED TO INTEREST |
|---|--|--------------------------------|
| Section 219 Covenant | Entire Instrument | Transferee |
| Priority Agreement granting above Section 219 Covenant priority over Mortgage BB357023 in respect of PID: 015-752-551, PID: 015-752-640 and PID: 015-752-674 | Page 11 | Transferee |
| Priority Agreement granting above Section 219 Covenant priority over Mortgage CA1415393 and Assignment of Rents CA1415394 in respect of PID: 015-752-551, PID: 015-752-640, PID: 014-499-029 and PID: 015-752-674 | Page 12 | Transferee |
| Priority Agreement granting above Section 219 Covenant priority over Mortgage BB1211604 and Assignment of Rents BB1211605 in respect of PID: 014-499-029 | Page 13 | Transferee |

TERMS OF AGREEMENT - PART 2
STIR Housing Agreement
1215 Bidwell Street

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement, dated for reference June 20, 2010, shall be read as follows:
- (i) the Transferor, Millennium English Bay Properties Ltd., as more particularly defined in section 1.1, is called the "Owner"; and
 - (ii) the Transferee, City of Vancouver, is called the "City" when referring to corporate entity, and "City of Vancouver" when referring to geographic location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner has applied to rezone the Lands by CD-1 by-law (when and as enacted, the "Rezoning"), to increase the site density to permit construction of a mixed-use development containing rental and condominium housing and at-grade commercial uses and related amenity space and service rooms and facilities, and wishes to qualify, pursuant to the City's "Short Term Incentives for Rental" program, for a waiver of the development cost levies and a reduction in parking requirements that would otherwise be payable or deliverable, respectively, by the Owner in respect of the Building (or a portion thereof);
- D. Following public hearings on December 1 and 10, 2009 and a City Council meeting on December 15, 2009, the Owner's said rezoning application was conditionally approved, subject, *inter alia*, to the Owner making arrangements to the satisfaction of the Managing Director of Social Development and the Director of Legal Services, to secure 49 designated units as rental housing units pursuant to the City's Short Term Incentives for Rental Housing ("STIR") Program, subject to a no-separate-sales covenant and a no-stratification covenant;
- E. In order to qualify for the STIR Program, the Owner must:
- (i) satisfy the City Manager that the Building (or a portion thereof) qualifies as For-Profit Affordable Rental Housing;
 - (ii) register against title to the Lands, a legal instrument satisfactory to the Director of Legal Services as to form, substance and priority of registration, restricting the tenure of the Building to rental only for the life of the Building or 60 years, whichever is longer, or such other term as the City and the Owner may agree;
 - (iii) enter into a car share agreement with the City on terms and condition satisfactory to the General Manager of Engineering Services and the Director of Legal Services; and

- (iv) comply with all other City-imposed conditions applicable; and

F. The City Manager has concluded that the Building (or a portion thereof) qualifies, or will qualify when completed, as For-Profit Affordable Rental Housing and the Owner is entering into this Agreement and a car share agreement to satisfy the other conditions to eligibility for a waiver of the subject development cost levies and a reduction in parking requirements otherwise applicable.

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

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) **"Vancouver DCL By-law"** means the City's Vancouver Development Cost Levy By-law No. 9755 and all amendments thereto and re-enactments thereof;
- (c) **"Building"** means any building or structure used, occupied or constructed on the Lands at any time following the date this Agreement is executed by the Owner and the City, 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, construction on the Lands;
- (d) **"City Manager"** means the chief administrator from time to time of the City and her/his 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) **"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;
- (g) **"For-Profit Affordable Rental Housing"** means three or more new rental dwelling units in the same building or project, determined by the City Manager, to be affordable, but does not include alterations of or extensions to such units, where "determined by the City Manager" means which the City Manager, after considering the finishing, size, location and other design consideration and proposed rents, considers to be affordable;

- (h) **"General Manager of Engineering Services"** means the chief administrator from time to time of the Engineering Services Department of the City and his/her successors in function and their respective nominees and designates;
- (i) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c.250, and amendments thereto and re-enactments thereof;
- (j) **"Lands"** means the parcel described in Item 2 in the Form C attached hereto;
- (k) **"Managing Director of Social Development"** means the chief administrator from time to time of the City's Social Development Department and his/her successors in function and their respective nominees;
- (l) **"Owner"** means the registered and beneficial owner of the Lands, being Millennium English Bay Properties Ltd. As of the reference date hereof, and includes any and all of the its respective assigns and successors as registered or beneficial owner of the Lands or any part thereof;
- (m) **"STIR Units"** means 49 residential units to be constructed on the 2nd, 3rd and 4th floors of the 4-storey podium of the Building, ranging in size from 36m² to 66m² (390 ft² to 706 ft²), and having an average size of 435 ft², together with all related common service and amenity areas and systems, subject to final approval by the City as to form and contents;
- (n) **"Term"** means the term of this Agreement, which will commence on the date when this Agreement has been executed by all parties to it, and will end on:
 - (i) the 60 year anniversary of that commencement date; or
 - (ii) the date as of which the Building is demolished or substantially destroyed,

whichever occurs later; and
- (o) **"Vancouver Charter"** means the *Vancouver Charter* S.B.C. 1953, c.55, as amended or replaced from time to time.

2. Use of Lands and Building. The Owner covenants and agrees with the City that, during the Term:

- (a) the Lands and the Building shall not be used in any way that is inconsistent with the terms of this Agreement;
- (b) the Building and the Lands shall be used only for the purpose of providing For-Profit Affordable Rental Housing, and if the Building is destroyed or demolished

before the end of the Term, then any replacement building built on the Lands shall also be used only for the purpose of providing For-Profit Affordable Rental Housing in accordance with the terms of this Agreement, as the same may be amended from time to time, and in no case shall any of such For-Profit Affordable Rental Housing be rented for a term of less than one month;

- (c) it will not suffer, cause or permit, beneficial or registered title to any residential unit in the Building (or any replacement building on the Lands) to be sold or otherwise transferred unless title to every residential unit in the Building is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and subject to section 16;
- (d) it will not suffer, cause or permit, the Building (or any replacement building on the Lands) or any part thereof, to be subdivided by strata plan; and
- (e) that any sale of a residential unit in the Building (or any replacement building on the Lands), in contravention of the covenant in section 2(c), and any subdivision of the Building (or any replacement building on the Lands) or any part thereof, in contravention of the covenant in Section 2(d), 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.

3. Record Keeping. The Owner shall keep accurate records pertaining to the use of the Building (or any replacement building on the Lands) as For-Profit Affordable Rental Housing, such records to be to the satisfaction of the City Manager. At the request of the City Manager, from time to time, the Owner shall make these records available for inspection and copying by City staff.

4. Repair, Maintain and Insure. The Owner shall keep and maintain the Building (or any replacement building on the Lands) and all parts thereof in good repair and in a safe, clean, neat and tidy condition, and shall insure it to the full replacement cost against perils normally insured against in the City of Vancouver by reasonable and prudent owners of similar buildings and lands. If the Building or any part thereof is damaged, the Owner shall promptly restore and repair it whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred.

Prior to the issuance of an occupancy permit for the Building or any part thereof, the Owner shall provide the City with such proof of the insurance required to be taken out pursuant to this section 4, in form and substance satisfactory to the City. Thereafter and throughout the Term, forthwith upon request by the City, the Owner shall provide the City with similar proof of insurance.

5. Substantial or Complete Destruction. In the event of the substantial or complete destruction or demolition of the Building prior to the 60 year anniversary of the date when this Agreement has been executed by all parties to it, the Owner shall promptly take all steps

reasonably necessary to enable it to build a replacement building on the Lands, which building shall be subject to the same use restrictions as the Building pursuant to this Agreement.

6. **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 shall be entitled to court costs on a solicitor and own client basis.

7. **Release and Indemnity.** The Owner hereby releases, and agrees to indemnify and save harmless, the City and all City Personnel for and from any cost, claim, demand, complaint, judgment or order for any injury, loss, damage or expense suffered, incurred or experienced by any person or entity, including, without limitation, the Owner, the City and any/all City Personnel, in connection with, that arises out of, or that would not have been incurred "but for", this Agreement. This indemnity will survive release or discharge of the Section 219 Covenant given hereby.

8. **Notices.** 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 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 (3rd) 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: Managing Director of Social Development

If to the Owner, addressed to:

Millennium English Bay Properties Ltd.
Main Floor, 198 West Hastings Street
Vancouver, British Columbia
V6B 1H2
Attention: Mr. Shahram Malek

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.

- 9. 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 always to sections 2(c) and 2(d).
- 10. 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.
- 11. 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.
- 12. 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* as amended from time to time 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 Roads and the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 13. 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.
- 14. 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.
- 15. 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.
- 16. Sale of Lands or Building.** Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the Building or any part thereof, subject always to sections 2(c), (d) and 2(e), the Owner shall 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 shall agree to be bound by all of the obligations, agreements and indemnities of the Owner under this Agreement. The provisions in this section 16 shall apply equally to all subsequent purchasers/transferees.

17. Partial Discharge. Notwithstanding section 2(d), upon construction by the Owner of the Building, and approval by the City's Approving Officer of an application by the Owner to subdivide the Lands by air space parcelling, as contemplated at the time of the Rezoning, such that the STIR Units will be wholly and solely contained within a separate legal parcel, and so long as the Owner is not then in default of any of its covenants, agreements or obligations herein, the City will consent, on terms and conditions satisfactory to the Director of Legal Services in her sole discretion, to discharge and release the charges and encumbrances contained in this Agreement against title to those subdivided parts of the Lands and Building that do not contain any part of the STIR Units; provided, however, that:

- (a) the City will have no obligation to execute any such discharge and release until a written request therefor from the Owner has been received by the City, which request will include the form of discharge and release in registrable form;
- (b) the cost of preparation of each such discharge and release and the cost of registration of the same in the LTO will be paid by the Owner; and
- (c) the City will have a reasonable time within which to execute any such discharge and release and return same to the Owner for registration.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" mean the **Mortgage** registered under number **BB357023**;
- (b) "Existing Chargeholder" means the **637083 BRITISH COLUMBIA LTD.**;
- (c) "Lands" means, collectively:
 - Lot 8 Block 62 District Lot 185 Plan 92,
 - Lot 9, Except the West 50.75 Feet, Block 62 District Lot 185 Plan 92, and
 - Lot A (See 17609K) of Lot 9 Block 62 District Lot 185 Plan 92;
- (d) "New Charges" means the Section 219 Covenant and Statutory Right of Way 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 by 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;
- (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 above-mentioned 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:

- (a) "Existing Charges" mean the **Mortgage** registered under number **CA1415393** and the **Assignment of Rents** registered under number **CA1415394**;
- (b) "Existing Chargeholder" means the **REALTECH CAPITAL GROUP INC.**;
- (c) "New Charges" means the Section 219 Covenant and Statutory Right of Way 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 by 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;
- (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 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:

- (a) "Existing Charges" mean the **Mortgage** registered under number **BB1211604** and the **Assignment of Rents** registered under number **BB1211605**;
- (b) "Existing Chargeholder" means the **REALTECH CAPITAL GROUP INC.**;
- (c) "Lands" means The West 25 Feet of Lot 9 Block 62 District Lot 185 Plan 92;
- (d) "New Charges" means the Section 219 Covenant and Statutory Right of Way contained in the attached Terms of Instrument - Part 2; and
- (e) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them by 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;
- (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 above-mentioned 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