

## EXPLANATION

# 1

### Authorization to enter into a Housing Agreement Re: 1241 Harwood Street

The Development Permit Board at its meeting on December 12, 2011, approved DE415100 subject to the applicant entering into a Housing Agreement for 1241 Harwood Street and subject to Council approval of such an agreement, prior to issuance of the Development Permit. This Housing Agreement is consistent with the provisions of the Rental Housing Stock Official Development Plan By-law for replacement rental housing. Such Housing Agreement, securing 8 replacement rental units for 60 years or the life of the building, has been accepted and signed by the applicant and the City now seeks enactment of the same as a by-law as contemplated by section 565.2 of the *Vancouver Charter*. Enactment of the attached By-law will complete the process to implement the Board's resolution regarding a Housing Agreement.

Director of Legal Services  
April 18, 2012



1241 Harwood Street

BY-LAW NO. \_\_\_\_\_

**A By-law to enact a Housing Agreement  
for 1241 Harwood 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:

PID: 028-781-546

LOT A  
BLOCK 39  
DISTRICT LOT 185  
GROUP 1  
NEW WESTMINSTER DISTRICT  
PLAN BCP50208

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 \_\_\_\_\_, 2012

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

Schedule A

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 9 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)

028-781-546

Lot A Block 39 District Lot 185 Group 1 New Westminster District Plan BCP50208

3. NATURE OF INTEREST:\*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Entire Instrument, Pages 1 - 11	Transferee

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):\*

5253 INVESTMENTS LTD. (Inc. No. BC0684251)

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

CITY OF VANCOUVER, a municipal corporation, 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.

Execution Date

Officer Signature(s)

Party(ies) Signature(s)

Y	M	D
12		
12		

**5253 INVESTMENTS LTD.**, by its authorized signatory(ies):

Name: \_\_\_\_\_

Name: \_\_\_\_\_

**CITY OF VANCOUVER** by its authorized signatory:

\_\_\_\_\_  
Frances J. Connell/Yvonne Liljefors

\_\_\_\_\_  
(Solicitor) (as to both signatures)

\_\_\_\_\_  
Stephen F. Hayward  
Solicitor  
453 West 12<sup>th</sup> Avenue  
Vancouver, BC, V5Y 1V4  
Tel: 604-873-7714

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.

## TERMS OF INSTRUMENT - PART 2

1241/1245 Harwood Street

## WHEREAS:

A. It is understood and agreed that this instrument and Agreement, dated for reference March 30, 2012, shall be read as follows:

- (i) the Transferor, 5253 Investments Ltd., is called the "Owner" as more particularly defined in Section 1.1; and
- (ii) the Transferee, City of Vancouver, is called the "City" or the "City of Vancouver" when referring to corporate entity and "Vancouver" when referring to geographic location;

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

C. The Owner has applied, pursuant to the Development Permit Application, to develop the Lands to enable construction of a 17 storey residential building containing 38 dwelling units over one level of underground parking plus two detached parking garages and related amenities and services (the "Development");

D. After consideration of the Development Permit Application by the Development Permit Board at its meeting on December 12, 2011, the Development was approved subject to a number of conditions, including that, in order to comply with the Rental Housing Stock Official Development Plan and the Rate of Change Guidelines of the City, the Owner execute a housing agreement to secure eight dwelling units in the Development for use as residential rental accommodation on terms and conditions satisfactory to the Director of Planning, the Director of Legal Services and the Managing Director of Social Development, including that those dwelling units be secured for a term of 60 years or the life of the Building, whichever is longer (as more particularly defined in Section 1.1, the "Rental Housing Condition"); and

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

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 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) "**Building**" means each new residential building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;
- (c) "**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;
- (d) "**Development**" has the meaning ascribed to that term in Recital C;
- (e) "**Development Permit**" means any development permit given by the City pursuant to the Development Permit Application, as the same may be amended from time to time;
- (f) "**Development Permit Application**" means development permit application number DE415100 made by the Owner to enable it to develop the Lands;
- (g) "**Director of Legal Services**" means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (h) "**Director of Planning**" means the chief administrator from time to time of the Planning Department of the City and her/his successors in function and their respective nominees;
- (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) "**Losses**" means all damages, losses, costs, expenses, actions, causes of action, claims, demands, builders liens, liabilities, expenses and indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays);
- (l) "**Managing Director of Social Development**" means the chief administrator from time to time of the Social Development Department of the City and his/her successors in function and their respective nominees;
- (m) "**Occupancy Permit**" means a permit issued by the City authorizing the use and occupation of any Building, development or partial development on the Lands;

- (n) “Owner” means 5253 Investments Ltd., and includes any and all of its respective assigns and successors as registered or beneficial owner of the Lands or any part thereof;
- (o) “Rental Housing” means a dwelling unit which shall not be occupied by the Owner of the same, but which is made available by such Owner to the general public, at arms length, for use as rental accommodation on a month-to-month or longer basis in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (p) “Rental Housing Condition” means the terms and conditions outlined in this Agreement applicable to the Rental Units;
- (q) “Rental Units” means eight new residential units to be contained on levels four and five of the Building upon its completion, as part of the Development, and “Rental Unit” means any one of them, and those terms include each and all dwelling units constructed in a replacement building on the Lands, in the event of the destruction of the Building during the Term;
- (r) “Rental Unit Parcel” has the meaning ascribed to that term in Section 3(a);
- (s) “Term” means the term of this Agreement being the life of the Building or 60 years, whichever is longer; and
- (t) “Vancouver Charter” means the *Vancouver Charter* S.B.C. 1953, c. 55, as amended or replaced from time to time.

2. Restrictions on Use and Subdivision. The Owner covenants and agrees with the City in respect of the use of the Lands and the Building that

- (a) throughout the Term, the Lands and each Building on the Lands will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) it will construct, and throughout the Term will maintain, the Rental Units in accordance with the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement;
- (c) throughout the Term, all Rental Units will only be used for the purpose of providing Rental Housing;
- (d) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* (British Columbia) applies, it will not suffer, cause or permit, beneficial or registered title to any Rental Unit to be sold or otherwise transferred unless title to every Rental Unit is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and unless such

transferee concurrently enters into an assumption agreement satisfactory to the City whereby it agrees to be and thereafter remain bound by each and every term and condition of this Agreement applicable to the Owner;

- (e) throughout the Term, subject to Section 3, it will not suffer, cause or permit the Building to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent the City may arbitrarily withhold;
- (f) throughout the Term, any sale of a Rental Unit in contravention of the covenant in Section 2(d), and any subdivision of the Building or any part thereof, in contravention of the covenant in Section 2(e), 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;
- (g) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, and will 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 will 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; and
- (h) throughout the Term, any changes to the foregoing restrictions and requirements will be made only with the prior written agreement of the Managing Director of Social Development, who may first seek input from the City's elected Council

3. Subdivision of the Building. Despite Subsection 2(e),

- (a) subject to compliance by the Owner with all applicable requirements of the City's Approving Officer and the City's elected Council, this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands by air space plan, that creates a single legal titled parcel which contains all of the Rental Units and any related common areas (the "Rental Unit Parcel"), or any further or other subdivision of that part of the Building which contains the other units by deposit of a strata plan; and
- (b) following such a subdivision and the issuance of a final occupancy permit for the Rental Unit Parcel, the Owner may apply to the City for a partial discharge of this Agreement with respect to any parcel or parcels other than the Rental Unit Parcel, and the City will on request of the Owner execute and deliver a registrable discharge of this Agreement in respect of all parcels other than the Rental Unit Parcel; provided, that:
  - (i) the Director of Legal Services is satisfied that such discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the Rental Units pursuant to this Agreement;



- (ii) any such discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
- (iii) the City will have a reasonable amount of time to execute and return any such discharge; and
- (iv) the preparation and registration of any such discharge will be without cost to the City.

4. Occupancy Restriction on the Lands. The Owner covenants and agrees with the City in respect of the use of the Lands and each Building, that:

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

until such time as an Occupancy Permit has been issued for each of the Rental Units; and

- (b) without limiting the general scope of this Section 4, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this Section 4.

5. Record Keeping. The Owner will keep accurate records pertaining to the use and occupancy of the Building and the Rental Units, such records to be to the satisfaction of the City. At the request of the City, from time to time, the Owner will make such records available for inspection and copying by the City. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

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 Losses 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 follows:

(a) If to the City:

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

Attention: City Clerk, with concurrent copies to the attention of the Managing Director of Social Development and the Director of Legal Services;

(b) If to the Owner:

5253 Investments Ltd.  
2100 - 1075 West Georgia Street  
Vancouver, British Columbia  
V6E 3G2

Attention: President

and 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 (3<sup>rd</sup>) 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,

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(d), 2(e) and 3.

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.

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

END OF DOCUMENT