

EXPLANATION

**Authorization to enter into a Housing Agreement
Re: 609 Heatley Avenue**

On November 7, 2014, the Development Permit Board approved Development Application Number DE417714 to develop two multiple dwelling buildings on the referenced lands, by restoring an original heritage exterior, joining two buildings, adding a cellar to the south building and converting the existing dwelling units to 100% market rental dwelling units, resulting in a total of 30 market rental housing units, subject to a number of conditions, including a condition that the owner of the lands first make arrangements to the satisfaction of the Managing Director of Social Development and the Director of Legal Services to enter into a Housing Agreement for 60 years or the life of the building, whichever is greater, securing the 30 dwelling units as rental housing. The Housing Agreement includes covenants requiring that all 30 units be owned by a single legal entity and be used only to provide rental housing for terms of not less than one month at a time. As well a covenant in the Housing Agreement prevents the separate sale or transfer of ownership of any of the units by requiring that all the units be contained within a single air space parcel or strata lot in perpetuity or for the life of the building.

A Housing Agreement has been accepted and signed by the owner applicant. Enactment of the attached By-law, as required by section 565.2 of the *Vancouver Charter*, will complete the process to implement the Development Permit Board's condition regarding a Housing Agreement.

Director of Legal Services
March 3, 2015

609 Heatley Street



BY-LAW NO. _____

**A By-law to enact a Housing Agreement
for 609 Heatley Avenue**

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: 029-480-621

LOT 1 BLOCK 84 DISTRICT LOT 196 GROUP 1NWD PLAN
EPP46031

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 _____, 2015

Mayor

City Clerk

SCHEDULE A

FORM_C_V19 (Charge)

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

PAGE 1 OF 15 PAGES

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

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)
LUNNY ATMORE LLP
BARRISTERS & SOLICITORS
900-900 WEST HASTINGS STREET
VANCOUVER BC V6C 1E5

TELEPHONE: 604-684-2550
FILE

Deduct LTSA Fees? Yes ☒

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

029-480-621 LOT 1 BLOCK 84 DISTRICT LOT 196 GROUP 1NWD PLAN EPP46031

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

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

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

(b) ☒ Express Charge Terms Annexed as Part 2

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

5. TRANSFEROR(S):

HEATLEY APARTMENTS INC. (INC. NO. BC0996721)

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

CITY OF VANCOUVER

453 WEST 12TH AVENUE

VANCOUVER

BRITISH COLUMBIA

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

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

Officer Signature(s)

Execution Date

Y	M	D
15		

Transferor(s) Signature(s)

CITY OF VANCOUVER
by its authorized signatory(ies)

OFFICER CERTIFICATION:

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

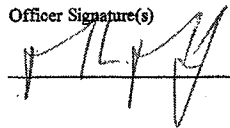
FORM D1_V19

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

PAGE 3 of 15 pages

Officer Signature(s)



MARK VON MARKSFELD
BARRISTER & SOLICITOR
1800 - 401 WEST GEORGIA STREET
VANCOUVER, BC V6B 5A1
TEL. 604-687-1323

Execution Date

Y	M	D
15	2	3

Transferor / Borrower / Party Signature(s)

REALTECH CAPITAL GROUP INC.
by its authorized signatory(ies)

David R. Bouskill
Vice President

Print Name:

Print Name:

James C. McPherson
President

OFFICER CERTIFICATION:

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

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
(MARKET RENTAL)

609 HEATLEY STREET

WHEREAS:

A. It is understood and agreed that this instrument and Agreement, dated for reference 2015, 2015, shall be read as follows:

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

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

C. By development permit application no. DE417712 (the "Development Permit Application"), the Owner applied to rehabilitate and add to the two existing multiple dwelling buildings on the Lands by restoring the original heritage exterior, joining the two buildings, adding a cellar to the south building and converting the existing dwelling units to 100% market rental dwelling units for a total of 30 market rental housing units (as more particularly described in Section 1.1, the "Rental Housing Units"), which application was considered by the City's Director of Planning and approved in principle, subject to, among other things, approval by the City's elected council and fulfillment of the condition that the Owner make arrangements to the satisfaction of the Managing Director of Social Development and the Director of Legal Services to secure the Rental Housing Units as more particularly set forth in paragraph 2.9 of the City's "prior-to" Development Permit issuance letter dated November 7, 2014 (the "Rental Housing Condition"); and

D. 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:

ARTICLE 1
DEFINITIONS AND INTERPRETATIONS

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

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;

{00315824;2}

#175324v3

609 Heatley Street

Housing /

- (b) **"Building"** means each new, renovated or rehabilitated building or structure built or 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 Manager"** means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (d) **"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;
- (e) **"Commencement Date"** means the date as of which this Agreement has been executed by all parties to it;
- (f) **"Development"** means the development on the Lands described in Recital C and approved by the Development Permit;
- (g) **"Development Permit"** means a development permit issued by the City authorizing development on the Lands or any portion of the Lands at any time following the date this Agreement is fully executed by the parties;
- (h) **"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;
- (i) **"General Manager of Planning and Development"** means the chief administrator from time to time of the Planning and Development Services Department of the City and her/his successors in function and their respective nominees;
- (j) **"Heritage Building"** means the building located on the Lands as of the Commencement Date;
- (k) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250;
- (l) **"Lands"** means the lands described in Item 2 in the Form C attached hereto;
- (m) **"Losses"** means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (n) **"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;

- (o) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of any Building, development or partial development on the Lands;
- (p) "Owner" means the Transferor, Heatley Apartments Inc., and any assigns and successors in title to the Lands or any part thereof;
- (q) "Related Person" means, where the registered or beneficial owner of the Rental Housing Units is:
 - (i) a corporation (as that term is defined in the *Business Corporations Act* (British Columbia)), then a Related Person is:
 - A. an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - B. the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and
 - (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (r) "Rental Housing" means a dwelling unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arms length, for use as rental accommodation in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (s) "Rental Housing Condition" has the meaning ascribed to that term in Recital C;
- (t) "Rental Housing Units" means the 30 residential units to be contained within the Building upon its completion, as part of the Development, which units will comply with the terms hereof applicable to the same, and "Rental Housing Unit" means any one of them, and those terms include each and all housing units constructed in a replacement building on the Lands, in the event of the destruction of the Building during the Term;
- (u) "Residential Tenancy Act" means the *Residential Tenancy Act* S.B.C. 2002, c. 78;
- (v) "Returning Tenants" means the tenants identified in the Tenant Relocation Plan who wish to return to reside in the Building upon its completion, and "Returning Tenant" means any one of them;
- (w) "Tenant Relocation Plan" means the Owner's final Tenant Relocation Plan dated December 8, 2014, which identifies, among other things, as of the date thereof, the tenants who are residing in the apartments in the Heritage

Building and who are eligible to become Returning Tenants, and otherwise complies with the requirements set out in the City's "prior-to" Development Permit issuance letter dated November 7, 2014, a copy of which the Owner has given to the City as a prior-to Development Permit condition;

- (x) "Term" means the term of this Agreement, which will commence on the date on which the final Occupancy Permit is issued for the Building and will end on the later of:
 - (i) the date as of which the Building is demolished or substantially destroyed; or
 - (ii) the date that is 60 years from the date on which the final Occupancy Permit is issued for the Building; and
- (y) "Vancouver Charter" means the *Vancouver Charter* S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) Party. Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) Singular; Gender. Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References. References to the or this "Agreement" and the words "hereof" "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and

regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.

- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

ARTICLE 2 RESTRICTIONS ON USE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) it will construct, and throughout the Term will maintain, the Housing Units in accordance with the Development Permit, any building permit issued pursuant thereto and the requirements of this Agreement;
- (c) throughout the Term, the Rental Housing Units will only be used for the purpose of providing Rental Housing;
- (d) throughout the Term, the Rental Housing Units will only be rented on a month-to-month or longer basis, and in no case for less than at least 30 consecutive days;
- (e) it will offer for rent to each Returning Tenant a Rental Housing Unit for occupancy upon completion of such Rental Housing Unit and the initial monthly rent payable during the first twelve (12) months of the tenancy will be twenty percent (20%) below the Fair Market Value, as of the date of occupancy by the Returning Tenant, of the Rental Housing Unit the Returning Tenant agrees to rent, and thereafter will be subject to the provisions of the *Residential Tenancy Act* regarding rent increases;
- (f) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Rental Housing Unit to be sold or otherwise transferred unless title to every Rental Housing Unit is sold or otherwise transferred together and as a block to the same purchaser or transferee, and unless such transferee concurrently enters into an assumption agreement satisfactory to the City whereby it agrees to be and thereafter remain bound by each and every term and condition of this Agreement applicable to the Owner of the Rental Housing Units;
- (g) throughout the Term, it will not suffer, cause or permit the Building to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld;

- (h) throughout the Term, any sale of a Rental Housing Unit in contravention of the covenant in Section 2.1(f), and any subdivision in contravention of Section 2.1(g), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (i) it will insure, or cause to be insured, the Building, the Rental Housing Units and all parts thereof to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands; and
- (j) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If the Rental Housing Units or any part of any thereof are/is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred.

ARTICLE 3 OCCUPANCY RESTRICTION ON THE LANDS

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

- (a) the Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for the Building until such time as the Owner is able to apply for an Occupancy Permit for the entire Building and all its component parts and facilities; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit permitting the use and occupation of the Building, notwithstanding completion of construction of the Building until such time as an Occupancy Permit can be issued for the entire Building and all its component parts and facilities; and
- (b) without limiting the general scope of Article 6, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this Article 3.

ARTICLE 4 RECORD KEEPING

4.1 The Owner will keep accurate records pertaining to the use and occupancy of the Rental Housing Units, such records to be to the satisfaction of the City. At the request

of the City, from time to time, the Owner will make such records available for inspection and copying by the City. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

ARTICLE 5 ENFORCEMENT

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

ARTICLE 6 RELEASE AND INDEMNITY

- 6.1 Release and Indemnity. Subject to Section 6.2, the Owner hereby:

- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:

- (i) by reason of the City or City Personnel:

- A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the Owner's Works;
- B. withholding any permit pursuant to this Agreement; or
- C. exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or

- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

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

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of:

- (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or

- (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement.

The indemnities in this Article 6 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

6.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 6.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 6.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 6.2(b); and

- (c) Regardless of whether the claim is being defended under Section 6.2(a) or Section 6.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

- #### 6.3 Survival of Release and Indemnities. The release and indemnities in this Article 6 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 7 NOTICES

- 7.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, 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 Managing Director of Social Development
and the Director of Legal Services

- (b) If to the Owner:

Heatley Apartments Inc.
423 - 1489 Marine Drive
West Vancouver, British Columbia
V7T 2X6

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

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

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

ARTICLE 8 MISCELLANEOUS

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

- 8.2 **Enurement.** This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.
- 8.3 **Severability.** All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants will remain and be binding.
- 8.4 **Vancouver Charter.** Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 8.5 **Waiver.** The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 8.6 **Perfection of Intention.** The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a 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.
- 8.7 **Priority of Registration.** The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
 - (c) which the Director of Legal Services has determined, in her/his sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

- 8.8 Further Assurances. Each party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.
- 8.9 Transfer of Lands. The Owner covenants and agrees with the City that upon any sale, transfer or conveyance of the Lands charged by this Agreement, or any portion thereof, to any person, trust, corporation, partnership or other entity, the Owner will obtain from such person, trust, corporation, partnership or entity and deliver to the City a duly executed acknowledgement, in form and substance satisfactory to the Director of Legal Services, of the terms of this Agreement and an assumption of the continuing obligations of the Owner pursuant to this Agreement relative to that portion of the Lands sold, transferred or conveyed to such person, trust, corporation, partnership or entity and the City acknowledges and confirms that on completion of the sale, transfer or conveyance of the Lands, the transferor will be released from the obligations set out herein.
- 8.10 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City that:
- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
 - (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
 - (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
 - (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA3656041 and the Assignment of Rents registered under number CA3656042;
- (b) "Existing Chargeholder" means Realtech Capital Group Inc.;
- (c) "New Charge" means the Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

END OF DOCUMENT

EXPLANATION

**A By-law to amend
Building By-law No. 10908,
regarding housekeeping amendments
to definition of “owner” and to letters of undertaking**

The enactment of this By-law will correct the wording on the owner’s undertaking letters to remove an unnecessary reference to partnerships and to change the title of Schedule E-3 from “Lessee’s Undertaking for Tenant Improvements” to “Tenant’s Undertaking for Tenant Improvements” and to remove the reference to lessee and sublessee from the definition of “owner”.

Director of Legal Services
March 3, 2015



BY-LAW NO.

**A By-law to amend
Building By-law No. 10908,
regarding housekeeping amendments
to definition of "owner" and letters of undertaking**

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

1. This By-law amends the indicated provisions of Building By-law No. 10908.
2. In Books I and II, Division A, Part 1, Sentence 1.4.1.2. (1), in the definition of "owner" Council strikes out "a lessee, a sublessee,".
3. In Books I and II, Division C, Part 1, after Article 1.10.1.6., Council strikes out Schedules E-1, E-2 and E-3 and substitutes the Schedules attached to this By-law as Schedules E-1, E-2 and E-3.
4. 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.
5. This By-law is to come into force and take effect on the date of enactment.

ENACTED by Council this day of , 2015

Mayor

City Clerk



SCHEDULE E-1

Note: To be submitted with the application for a Building Permit

BUILDING BY-LAW "OWNER'S UNDERTAKING"

The Chief Building Official
City of Vancouver
453 West 12th Avenue
Vancouver, B.C.
V5Y 1V4

Date (Month Day Year)

Dear Sir:

RE: Property Address _____
Building Permit Application No. _____

In consideration of the City accepting and processing the above application for a building permit, and as required by the Building By-law, the following representations, warranties and indemnities are given to the City.

1. (a) If an individual is the owner:
() That I am the owner of the above property, or

(b) If a corporation is the owner of the property,
() That _____ is the owner of the above property.
(Name of Corporation)
2. The owner will comply with, and cause those employed for this project to comply with all applicable by-laws of the City of Vancouver and other statutes and regulations in force in the City of Vancouver relating to the development, work, undertaking or permission in respect of which this application is made.
3. The owner fully understands the requirements herein, and acknowledges full responsibility for carrying out the work, or gives assurance that the work will be carried out, in accordance with all by-laws governing the construction of the building. The owner understands and acknowledges that the issuance of any permit, including an Occupancy Permit, or the inspection or approval or passage of work by the City is not a representation or warranty that any by-law has been complied with and the owner remains responsible at all times to assure compliance. The Owner has read and understands Article 1.3.2.1. and Article 1.4.1.5. of Division C Book I and Book II of the Building By-law which are set out on the reverse side hereof.
4. The owner hereby agrees to indemnify and save harmless the City of Vancouver and its employees from all claims, liability, judgments, costs and expenses of every kind including negligence which may result from the failure to comply fully with all by-laws, statutes and regulations relating to any work or undertaking in respect of which this application is made.
5. Where used herein the words "work" or "undertaking" in respect of which this application is made, the owner understands this to include all electrical, plumbing, mechanical, gas and other works necessary to complete the contemplated construction.

Owner's Undertaking (continued) Property Address _____

Building Permit Application No. _____

6. I am authorized to give these representations, warranties, assurances and indemnities to the City of Vancouver. This Owner's Undertaking is executed by the Owner this _____ day of _____, _____.
(Day) (Month) (Year)

1. Where owner is an individual:

Signed and delivered in the presence of:

Owner's Signature _____

Witness's Signature _____

Owner's Name _____

Witness's Name _____

(PRINT)

(PRINT)

Witness's Address _____

2. Where owner is a corporation:

Signed, sealed and delivered in the presence of:

Name of Corporation _____

Witness's Signature _____

Per: Authorized Signatory _____

Witness's Name _____

Name _____

(PRINT)

(PRINT)

Witness's Address _____

Building By-law, Division C, Article 1.3.2.1. Intent

- 1) This By-Law sets standards in the general public interest. It is enacted and retained on the understanding and specifically expressed condition that it creates no duty whatsoever on the city, the Chief Building Official or any employee of the city to enforce its provisions, and on the further condition that a failure to administer or enforce its provisions, or the incomplete or inadequate administration or enforcement of its provisions, shall not give rise to a cause of action in favour of any person whatsoever. The issuance of any permit, including an occupancy permit, is not a representation, warranty or statement that this By-Law or any other enactment has been complied with, and the issuance thereof in error shall not give rise to a cause of action. Accordingly, words in this By-law defining the responsibilities and authority of the Chief Building Official shall be construed as internal administrative directions which do not create a duty.

Building By-law, Division C, Article 1.4.1.5. Compliance with By-law and Other Enactments

- 1) The owner shall comply with this By-law and all other applicable enactments.
- 2) The owner shall ensure that all work, construction, or occupancy is carried out in accordance with this By-law and all other applicable enactments.
- 3) The owner shall ensure that the occupancy of a building or part of a building complies with the occupancy permit.
- 4) The issuance of a permit, the acceptance of plans and supporting documents submitted for a permit, or the making of inspections by the Chief Building Official shall not relieve the owner of a building from the full responsibility for carrying out the work or having the work carried out in accordance with this By-law and all other applicable enactments.

SCHEDULE E-2

Note: To be submitted with the application for a Building Permit



BUILDING BY-LAW “OWNER’S UNDERTAKING FOR TENANT IMPROVEMENTS”

The Chief Building Official
City of Vancouver
453 West 12th Avenue
Vancouver, B.C.
V5Y 1V4

Date (Month Day Year)

Dear Sir:

RE: Property Address _____
Building Permit Application No. _____

In consideration of the City accepting and processing the above application for a building permit from _____ (the “Tenant”), a tenant of the above-mentioned property, and as required by the Building By-law, the following representations, warranties and indemnities are given to the City.

1. (a) If an individual is the owner:
() That I am the owner of the above property, or

(b) If a corporation is the owner of the property,
() That _____ is the owner of the above property.
(Name of Corporation)
2. The owner will use its reasonable efforts to require the tenant to comply with, and cause those employed for this project to comply with all applicable by-laws of the City of Vancouver and other statutes and regulations in force in the City of Vancouver relating to the development, work, undertaking or permission in respect of which this application is made.
3. The owner understands and acknowledges that the issuance of any permit, including an Occupancy Permit, or the inspection or approval or passage of work by the City is not a representation or warranty that any by-law has been complied with the owner remains responsible at all times to use its reasonable efforts to require compliance by the tenant. The owner has read and understands Article 1.3.2.1. and Article 1.4.1.5. of Division C Book I and Book II of the Building By-law which are set out on the reverse side hereof.
4. The owner hereby agrees to use its reasonable efforts to require that the tenant does indemnify and save harmless the City of Vancouver and its employees from all claims, liability, judgments, costs and expenses of every kind including negligence which may result from the failure to comply fully with all by-laws, statutes and regulations relating to any work or undertaking in respect of which this application is made.
5. Where used herein the words “work” or “undertaking” in respect of which this application is made, the owner understands this to include all electrical, plumbing, mechanical, gas and other works necessary to complete the contemplated construction

Owner's Undertaking (continued)

Property Address _____

(Tenant Improvements)

Building Permit Application No. _____

6. I am authorized to give these representations, warranties, assurances and indemnities to the City of Vancouver. This Owners' Undertaking is executed by the owner this _____ day of _____, _____.
(Day) (Month) (Year)

1. Where owner is an individual:

Signed and delivered in the presence of:

Owner's Signature _____

Witness's Signature _____

Owner's Name _____
(PRINT)

Witness's Name _____
(PRINT)

Witness's Address _____

2. Where owner is a corporation:

Signed, sealed and delivered in the presence of:

Name of Corporation _____

Witness's Signature _____

Per: Authorized Signatory _____
Name _____
(PRINT)

Witness's Name _____
(PRINT)

Witness's Address _____

Building By-law, Division C, Article 1.3.2.1. Intent

- 1) This By-Law sets standards in the general public interest. It is enacted and retained on the understanding and specifically expressed condition that it creates no duty whatsoever on the city, the Chief Building Official or any employee of the city to enforce its provisions, and on the further condition that a failure to administer or enforce its provisions, or the incomplete or inadequate administration or enforcement of its provisions, shall not give rise to a cause of action in favour of any person whatsoever. The issuance of any permit, including an occupancy permit, is not a representation, warranty or statement that this By-Law or any other enactment has been complied with, and the issuance thereof in error shall not give rise to a cause of action. Accordingly, words in this By-law defining the responsibilities and authority of the Chief Building Official shall be construed as internal administrative directions which do not create a duty.

Building By-law, Division C, Article 1.4.1.5. Compliance with By-law and Other Enactments

- 1) The owner shall comply with this By-law and all other applicable enactments.
- 2) The owner shall ensure that all work, construction, or occupancy is carried out in accordance with this By-law and all other applicable enactments.
- 3) The owner shall ensure that the occupancy of a building or part of a building complies with the occupancy permit.
- 4) The issuance of a permit, the acceptance of plans and supporting documents submitted for a permit, or the making of inspections by the Chief Building Official shall not relieve the owner of a building from the full responsibility for carrying out the work or having the work carried out in accordance with this By-law and all other applicable enactments.

SCHEDULE E-3

Note: To be submitted with the application for a Building Permit



BUILDING BY-LAW "TENANTS UNDERTAKING FOR TENANT IMPROVEMENTS"

The Chief Building Official
City of Vancouver
453 West 12th Avenue
Vancouver, B.C.
V5Y 1V4

Date (Month Day Year)

Dear Sir:

RE: Property Address _____
Building Permit Application No. _____

In consideration of the City accepting and processing the above application for a building permit, and as required by the Building By-law, the following representations, warranties and indemnities are given to the City.

1. (a) If an individual is the tenant:
() That I am the tenant of the above property, or

(b) If a corporation is the tenant of the property,
() That _____ is the tenant of the above property.
(Name of Corporation)
2. The tenant will comply with, and cause those employed for this project to comply with all applicable by-laws of the City of Vancouver and other statutes and regulations in force in the City of Vancouver relating to the development, work, undertaking or permission in respect of which this application is made.
3. The tenant fully understands the requirements herein, and acknowledges full responsibility for carrying out the work, or gives assurance that the work be carried out, in accordance with all by-laws governing the construction of the building. The tenant understands and acknowledges that the issuance of any permit, including an Occupancy Permit, or the inspection or approval or passage of work by the City is not a representation or warranty that any by-law has been complied with and the tenant remains responsible at all times to assure compliance. The tenant has read and understands Article 1.3.2.1. and Article 1.4.1.5. of Division C Book I and Book II of the Building By-law which are set out on the reverse side hereof.
4. The tenant hereby agrees to indemnify and save harmless the City of Vancouver and its employees from all claims, liability, judgments, costs and expenses of every kind including negligence which may result from the failure to comply fully with all by-laws, statutes and regulations relating to any work or undertaking in respect of which this application is made.
5. Where used herein the words "work" or "undertaking" in respect of which this application is made, the tenant understands this to include all electrical, plumbing, mechanical, gas and other works necessary to complete the contemplated construction.

Tenant's Undertaking (continued) Property Address _____

Building Permit Application No. _____

6. I am authorized to give these representations, warranties, assurances and indemnities to the City of Vancouver. This Tenant's Undertaking is executed by the tenant this _____ day of _____, _____.
(Day) (Month) (Year)

1. Where tenant is an individual:

Signed and delivered in the presence of:

Tenant's Signature _____

Witness's Signature _____

Tenant's Name _____
(PRINT)

Witness's Name _____
(PRINT)

Witness's Address _____

2. Where tenant is a corporation:

Signed, sealed and delivered in the presence of:

Name of Corporation _____

Witness's Signature _____

Per: Authorized Signatory _____

Witness's Name _____

Name _____
(PRINT)

(PRINT)
Witness's Address _____

Building By-law, Division C, Article 1.3.2.1. Intent

- 1) This By-Law sets standards in the general public interest. It is enacted and retained on the understanding and specifically expressed condition that it creates no duty whatsoever on the city, the Chief Building Official or any employee of the city to enforce its provisions, and on the further condition that a failure to administer or enforce its provisions, or the incomplete or inadequate administration or enforcement of its provisions, shall not give rise to a cause of action in favour of any person whatsoever. The issuance of any permit, including an occupancy permit, is not a representation, warranty or statement that this By-Law or any other enactment has been complied with, and the issuance thereof in error shall not give rise to a cause of action. Accordingly, words in this By-law defining the responsibilities and authority of the Chief Building Official shall be construed as internal administrative directions which do not create a duty.

Building By-law, Division C, Article 1.4.1.5. Compliance with By-law and Other Enactments

- 1) The owner shall comply with this By-law and all other applicable enactments.
- 2) The owner shall ensure that all work, construction, or occupancy is carried out in accordance with this By-law and all other applicable enactments.
- 3) The owner shall ensure that the occupancy of a building or part of a building complies with the occupancy permit.
- 4) The issuance of a permit, the acceptance of plans and supporting documents submitted for a permit, or the making of inspections by the Chief Building Official shall not relieve the owner of a building from the full responsibility for carrying out the work or having the work carried out in accordance with this By-law and all other applicable enactments.

EXPLANATION

**A Housekeeping By-law to amend By-law No. 11160
regarding 960-968 Kingsway and 955 East 19th Avenue**

By-law No. 11160 was approved by Council on February 17, 2015, and amended the Noise Control By-law to add the above noted properties to it. By-law No. 11160 incorrectly referred to "955 East 19th Avenue" as "55 East 19th Avenue". The attached By-law will correct that error.

Director of Legal Services
March 3, 2015

960-968 Kingsway and 955 East 19th Avenue



BY-LAW NO. _____

**A By-law to amend
By-law No. 11160 in relation to Noise Control By-law No. 6555**

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

1. This By-law amends the indicated provisions of By-law 11160.
2. Council strikes out Section 1 of By-law 11160 and substitutes:
"To Schedule B (Intermediate Zone) of By-law No. 6555, at the end, Council adds:

CD-1 (596)

By-law No. 11159

960-968 Kingsway and
955 East 19th Avenue"

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

ENACTED by Council this day of , 2015

Mayor

City Clerk

EXPLANATION**Heritage Designation By-law
Re: 1010 East 21st Avenue**

At a public hearing on February 17, 2015, Council approved a recommendation to designate the structure and exterior envelope, of the improvements and exterior building materials of a building at 1010 East 21st Avenue as protected heritage property. Enactment of the attached By-law will achieve the designation.

Director of Legal Services
March 3, 2015

1010 East 21st Avenue
Wickson House



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 improvements
and exterior
building materials of
heritage building

1010 East 21st Avenue
Vancouver, B.C.

PID: 010-937-706
LOT 1
BLOCK 33
DISTRICT LOT 301
PLAN 187

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 _____, 2015

Mayor

City Clerk