

**EXPLANATION****By-law to amend Southeast False Creek ODP By-law No. 9073  
regarding 1715 Cook Street**

Following the public hearing on December 12, 2017, Council resolved to amend the Southeast False Creek ODP By-law No. 9073 regarding 1715 Cook Street. The enactment of the attached By-law will implement Council's resolution.

Director of Legal Services  
December 18, 2018

HG.

1715 Cook Street  
(Southeast False Creek Area 1B)

**BY-LAW NO.**

**A By-law to amend Southeast False Creek  
Official Development Plan  
By-law No. 9073**

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

1. This By-law amends the indicated provisions of the Southeast False Creek Official Development Plan By-law No. 9073.
2. In section 4.2, Council strikes out Table 1 and substitutes:

"Table 1  
Maximum Permitted Floor Area

Area	Maximum permitted floor area for residential uses	Maximum permitted floor area for non-residential uses other than cultural, recreational and institutional	Maximum permitted floor area for all uses
Area 1A	84,595 m <sup>2</sup>	350 m <sup>2</sup>	84,945 m <sup>2</sup>
Area 2A	114,655 m <sup>2</sup>	10,212 m <sup>2</sup>	124,867 m <sup>2</sup>
Area 3A and 3B	58,020 m <sup>2</sup>	0 m <sup>2</sup>	58,020 m <sup>2</sup>
Area 1B	90,797 m <sup>2</sup>	0 m <sup>2</sup>	90,797 m <sup>2</sup>
Area 2B	143,912 m <sup>2</sup>	6,922 m <sup>2</sup>	150,834 m <sup>2</sup>
Area 3C	145,618 m <sup>2</sup>	17,822 m <sup>2</sup>	163,440 m <sup>2</sup>
Total maximum permitted floor area for all areas	637,597 m <sup>2</sup>	35,306 m <sup>2</sup>	672,903 m <sup>2</sup>

3. 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.

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

ENACTED by Council this                      day of                      , 2018

\_\_\_\_\_  
Mayor

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

**EXPLANATION****A By-law to amend the Noise Control By-law  
Re: 1715 Cook Street**

After the public hearing on December 12, 2017, Council resolved to amend the Noise Control By-law regarding this site. Enactment of the attached By-law will implement Council's resolution.

Director of Legal Services  
December 18, 2018

46

1715 Cook Street

**BY-LAW NO.**

**A By-law to amend  
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 Noise Control By-law No. 6555.
2. Council amends Schedule B (Intermediate Zone) by adding the following:

CD #	By-law #	Approximate Location
720	12326	1715 Cook Street

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

ENACTED by Council this       day of       , 2018

\_\_\_\_\_  
Mayor

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

**EXPLANATION****Parking By-law amending By-law  
Re: Relaxation and Payment-in-Lieu  
424 West Pender Street**

On October 30, 2018, Council approved a recommendation to accept \$148,200 in return for the waiver of the requirement to provide one commercial and five residential off-street parking spaces at 424 West Pender Street, and requiring the Director of Legal Services to bring forward a By-law for enactment.

The Director of Finance has verified that the money has been received, and Council may now enact the attached By-law to implement Council's resolution and effect the waiver.

Director of Legal Services  
December 18, 2018

Hc.

424 West Pender Street

**BY-LAW NO.**

**A By-law to amend Parking By-law No. 6059**

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

1. To Schedule A of the Parking By-law, Council adds:

"PID:

Lot 2, Block 35,  
District Lot 541, Group 1,  
New Westminster District,  
Plan EPP75326

One (1) commercial  
parking space and five (5)  
residential off-street  
parking spaces

\$148,200"

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

ENACTED by Council this                      day of                      , 2018

\_\_\_\_\_  
Mayor

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

**EXPLANATION****Parking By-law amending By-law  
Re: Relaxation and Payment-in-Lieu  
454 West Pender Street**

On October 30, 2018, Council approved a recommendation to accept \$296,400 in return for the waiver of the requirement to provide two commercial and ten residential off-street parking spaces at 454 West Pender Street, and requiring the Director of Legal Services to bring forward a By-law for enactment.

The Director of Finance has verified that the money has been received, and Council may now enact the attached By-law to implement Council's resolution and effect the waiver.

Director of Legal Services  
December 18, 2018



HC.

454 West Pender Street

**BY-LAW NO.**

**A By-law to amend Parking By-law No. 6059**

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

1. To Schedule A of the Parking By-law, Council adds:

"PID:

Lot 1, Block 35,  
District Lot 541, Group 1,  
New Westminster District,  
Plan EPP75325

Two (2) commercial  
parking spaces and ten  
(10) residential off-street  
parking spaces

\$296,400"

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

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2018

\_\_\_\_\_  
Mayor

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

**EXPLANATION**

**A By-law to amend  
Parking By-law No. 6059  
regarding Miscellaneous Housekeeping Amendments**

The attached By-law will implement Council's resolution of December 18, 2018 to amend the Parking By-law in accordance with proposed amendments. Enactment of the attached By-law will implement Council's resolution.

Director of Legal Services  
December 18, 2018

HC.

**BY-LAW NO.**

**A By-law to amend Parking By-law No. 6059  
Regarding Miscellaneous Housekeeping Amendments**

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

1. This By-law amends the indicated provisions of the Parking By-law No. 6059.
2. In the title of Column 1 in section 4.2, Council strikes out "Building Classification" wherever it appears and substitutes "Building Classification".
3. In 4.2.1.4, under COLUMN 1 – BUILDING CLASSIFICATION, Council strikes out "Principal Dwelling Unit with a Lock-off Unit in RM-7, RM-7N, RM-7AN, RM-8, RM-8N, RM-8A, RM-8AN, RM-9, RM-9A, RM-9N, RM-9AN and RM-9BN, RM-9BN, RM-8N, RM-9, RM-9A, RM-9N, RM-9AN, RM-10, RM-10N, RM-11, RM-11N, and RM-12N" and substitutes "Principal Dwelling Unit with a Lock-off Unit in RM-7, RM-7N, RM-7AN, RM-8, RM-8N, RM-8A, RM-8AN, RM-9, RM-9A, RM-9N, RM-9AN, RM-9BN, RM-10, RM-10N, RM-11, RM-11N, and RM-12N".
4. In Section 4.14, Council strikes out:

**"4.14 Transportation Demand Management Plan**

All development sites involving a land parcel or parcels having a total site size of 8,000 m<sup>2</sup> or more, or containing 45,000 m<sup>2</sup> or more of new development floor area, must provide a Traffic Demand Management Plan satisfactory to the Director of Planning."

and substitutes:

**"4.15 Transportation Demand Management Plan**

4.15.1 All development sites involving a land parcel or parcels having a total site size of 8,000 m<sup>2</sup> or more, or containing 45,000 m<sup>2</sup> or more of new development floor area, must provide a Traffic Demand Management Plan satisfactory to the Director of Planning."
5. 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.

ENACTED by Council this    day of \_\_\_\_\_ , 2018.

Mayor

City Clerk

**EXPLANATION****A By-law to amend the Zoning and Development By-law  
Re: 8378-8432 Oak Street**

Following the Public Hearing on January 16, 2018, Council gave conditional approval to the rezoning of the site at 8378-8432 Oak 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  
December 18, 2018

HC.

8378-8432 Oak 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-731 (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 (721).

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 (721), and the only uses for which the Director of Planning or Development Permit Board will issue development permits are:

- (a) Multiple Dwelling; and
- (b) Accessory uses customarily ancillary to the uses permitted in this Section.

**Conditions of use**

3. The design and layout of at least 35% of the dwelling units must:

- (a) be suitable for family housing;
- (b) include two or more bedrooms, of which:
  - (i) at least 25% of the total dwelling units must be two-bedroom units, and
  - (ii) at least 10% of the total dwelling units must be three-bedroom units; and
- (c) comply with Council's "High-Density Housing for Families with Children Guidelines".

## **Floor area and density**

4.1 Computation of floor space ratio must assume that the site area is 1,758.1 m<sup>2</sup>, being the site area at the time of the application for the rezoning evidenced by this By-law, and before any dedications.

4.2 The floor space ratio for all uses must not exceed 2.50.

4.3 Computation of floor area must include all floors, including earthen floor, above and below ground level, having a minimum ceiling height of 1.2 m, measured to the extreme outer limits of the building.

4.4 Computation of floor area must exclude:

- (a) open residential balconies or sun decks and any other appurtenances which, in the opinion of the Director of Planning, are similar to the foregoing, except that:
  - (i) the total area of all such exclusions must not exceed 12% of permitted floor area, and
  - (ii) the balconies must not be enclosed for the life of the building;
- (b) patios and roof gardens, provided that the Director of Planning first approves the design of sunroofs and walls;
- (c) where floors are 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, those floors or portions thereof so used, which are at or below base surface, except that the minimum exclusion for a parking space must not exceed 7.3 m in length; and
- (d) all residential storage area above or below base surface, except that if the residential storage area above base surface exceeds 3.7 m<sup>2</sup> per dwelling unit, there will be no exclusion for any of the residential storage area above base surface for that unit.

4.5 Computation of floor area may exclude amenity areas, except that the total exclusion for amenity areas must not exceed 10% of permitted floor area.

4.6 The use of floor area excluded under sections 4.4 and 4.5 must not include any use other than that which justified the exclusion.

## **Building height**

5. Building height, measured from base surface, must not exceed 22.1 m.

## **Horizontal angle of daylight**

6.1 Each habitable room must have at least one window on an exterior wall of a building.

6.2 The location of each such exterior window must allow a plane or planes extending from the window and formed by an angle of 50 degrees, or two angles with a sum of 70 degrees, to encounter no obstruction over a distance of 24.0 m.

6.3 Measurement of the plane or planes referred to in Section 6.2 must be horizontally from the centre of the bottom of each window.

6.4 The Director of Planning or Development Permit Board may relax the horizontal angle of daylight requirement, if:

- (a) the Director of Planning or Development Permit Board first considers all of the applicable policies and guidelines adopted by Council; and
- (b) the minimum distance of unobstructed view is not less than 3.7 m.

6.5 An obstruction referred to in Section 6.2 means:

- (a) any part of the same building including permitted projections; or
- (b) the largest building permitted under the zoning on any site adjoining CD-1 (721).

6.6 A habitable room referred to in section 6.1 does not include:

- (a) a bathroom; or
- (b) a kitchen whose floor area is the lesser of:
  - (i) 10% or less of the total floor area of the dwelling unit, or
  - (ii) 9.3 m<sup>2</sup>.

### Acoustics

7. A development permit application for dwelling uses must include an acoustical report prepared by a licensed professional acoustical engineer demonstrating that the noise levels in those portions of dwelling units listed below will not exceed the noise levels expressed in decibels set opposite such portions of the dwelling units. For the purposes of this section, the noise level is the A-weighted 24-hour equivalent (Leq24) sound level and will be 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**

8. 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**

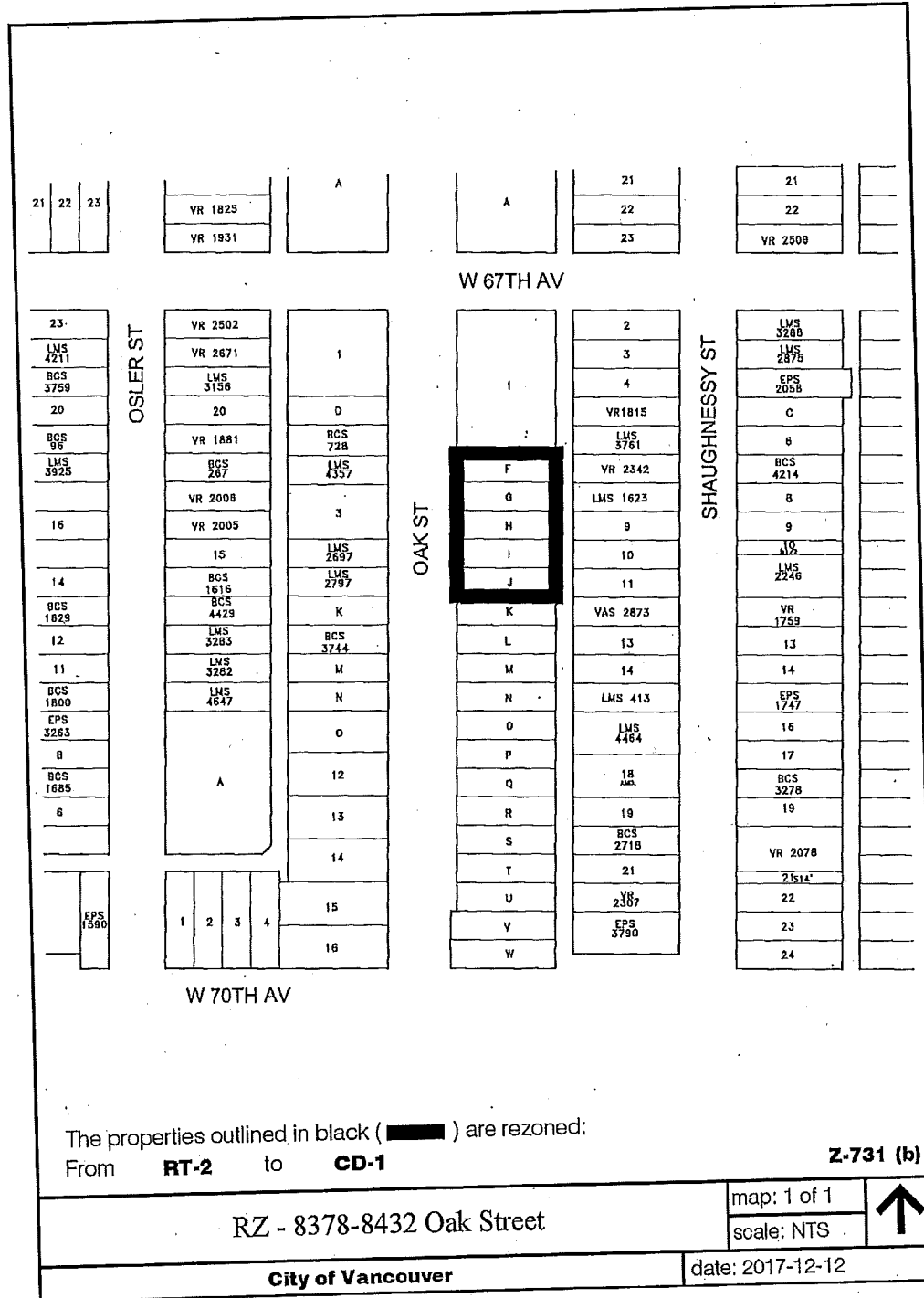
9. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this      day of      , 2018

\_\_\_\_\_  
Mayor

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

**Schedule A**



**EXPLANATION****Authorization to enter into a  
Heritage Revitalization Agreement  
Regarding 3123 – 3129 West Broadway Street**

After a public hearing held on July 17, 2018, Council resolved to enter into a By-law to authorize the City to enter into a Heritage Revitalization Agreement regarding 3123 – 3129 West Broadway Street, pursuant to Section 592 of the *Vancouver Charter*. Enactment of the attached By-law will achieve this.

Director of Legal Services  
December 18, 2018

46.

3123 – 3129 West Broadway Street  
(Hollywood Theatre)

**BY-LAW NO.**

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

**PREAMBLE**

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

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

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

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

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

contains a heritage building.

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

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

1. Council authorizes the City to enter into a Heritage Revitalization Agreement with the owner, in substantially the form and substance of the Heritage Revitalization Agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City, and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

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

ENACTED by Council this                      day of                      , 2018

\_\_\_\_\_  
Mayor

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

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

1529346970 PAGE 1 OF 21 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)

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

BC V5Y 1V4

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

Deduct LTSA Fees? Yes ☒

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

SEE SCHEDULE

STC? YES ☐

3. NATURE OF INTEREST  
 SEE SCHEDULE

CHARGE NO. ADDITIONAL INFORMATION

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

(a) ☐ Filled Standard Charge Terms D.F. No.(b) ☒ Express Charge Terms Annexed as Part 2

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

5. TRANSFEROR(S):

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

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

CITY OF VANCOUVER

453 WEST 12TH AVENUE  
 VANCOUVER

BRITISH COLUMBIA  
 CANADA

V5Y AV4

7. ADDITIONAL OR MODIFIED TERMS:  
 N/A

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

Officer Signature(s)

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

Execution Date

Y	M	D
18	06	18

Transferor(s) Signature(s)

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

Print Name: C. Dino Bonnis

Print Name:

## OFFICER CERTIFICATION:

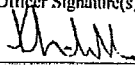
Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of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

LAND TITLE ACT  
FORM D

EXECUTIONS CONTINUED

PAGE 2 of 21 PAGES

Officer Signature(s)



**KEVIN MALCOLM DE LA MARE**  
A Commissioner for taking  
Affidavits for British Columbia  
22nd Floor 686 Burrard Street  
Vancouver, B.C. V6C 2X8  
Expires August 31, 2020

Execution Date

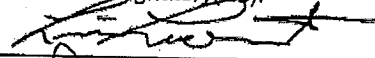
Y M D

18 06 18

18

Transferor / Borrower / Party Signature(s)

CANADIAN WESTERN BANK by its  
authorized signatory(ies):



Print Name:

**LIAM LAMONT**

Print Name:

**ANDREW BUTLER**

CITY OF VANCOUVER by its  
authorized signatory:

OFFICER CERTIFICATION:

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

LAND TITLE ACT  
FORM E

SCHEDULE

PAGE 3 OF 21 PAGES

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

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

STC? YES ☐

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

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

STC? YES ☐

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

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

STC? YES ☐



LAND TITLE ACT  
FORM E

## SCHEDULE

PAGE 4 OF 21 PAGES

NATURE OF INTEREST  
Covenant

CHARGE NO.

ADDITIONAL INFORMATION

Section 219 Covenant  
Article 2, pages 10-12NATURE OF INTEREST  
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION

granting the above Section 219 Covenant priority  
over Mortgage CA3574502 and Assignment of  
Rents CA3574503

Page 21

NATURE OF INTEREST  
Covenant

CHARGE NO.

ADDITIONAL INFORMATION

Section 219 Covenant  
Article 4, page 14NATURE OF INTEREST  
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION

granting the above Section 219 Covenant priority  
over Mortgage CA3574502 and Assignment of  
Rents CA3574503

Page 21

NATURE OF INTEREST  
Statutory Right of Way

CHARGE NO.

ADDITIONAL INFORMATION

Article 5, page 14

NATURE OF INTEREST  
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION

granting the above Statutory Right of Way priority  
over Mortgage CA3574502 and Assignment of  
Rents CA3574503

Page 21

LAND TITLE ACT  
FORM E

SCHEDULE

PAGE 5 OF 21 PAGES

NATURE OF INTEREST  
Equitable Charge

CHARGE NO.

ADDITIONAL INFORMATION  
Article 7, page 15

NATURE OF INTEREST  
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION  
granting the above Equitable Charge priority over  
Mortgage CA3574502 and Assignment of Rents  
CA3574503  
Page 21

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**TERMS OF INSTRUMENT - PART 2**  
**HERITAGE REVITALIZATION AGREEMENT**

**WHEREAS:**

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

[01002806v4]

Heritage Revitalization Agreement - Hollywood Theatre  
3123-3129 West Broadway

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

PROVIDED only one of the above options be undertaken;

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

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

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

#### ARTICLE 1 DEFINITIONS

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

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

for the rehabilitation and conservation of the Heritage Building as provided for hereunder;

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

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

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

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

**ARTICLE 2**  
**SECTION 219 COVENANT**  
**REHABILITATION AND CONSERVATION OF HERITAGE BUILDING**

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

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

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



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

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

### ARTICLE 3 LETTER OF CREDIT

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

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

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

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

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

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

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

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

#### ARTICLE 4 SECTION 219 COVENANT - NO SEPARATE SALE

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

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

#### ARTICLE 5 STATUTORY RIGHT OF WAY

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

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

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

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

#### ARTICLE 6 DEBTS OWED TO CITY

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

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

#### ARTICLE 7 EQUITABLE CHARGE

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

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

#### ARTICLE 8 BY-LAW VARIATIONS

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

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

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

- (c) Section 4.2 shall not apply to the Heritage Building;
- (d) Section 4.3 is varied to permit a maximum building height of 23.1 metres (75.8 feet) for the New Building, to the top of the rooftop stair access, and a maximum building height of 9.4 metres (30.9 feet) for the Heritage Building, and further section 4.3.1 shall not apply;
- (e) Section 4.4 shall not apply to the Heritage Building;
- (f) Section 4.6 shall not apply;
- (g) Section 4.7 is varied to permit a maximum floor area of 680 m<sup>2</sup> (7,320 f<sup>2</sup>) for the Heritage Building and a maximum floor area of 4,285 m<sup>2</sup> (46,106 f<sup>2</sup>) for the New Building, with the total combined floor area for all buildings on the Lands not to exceed of 4,972 m<sup>2</sup> (53,500 f<sup>2</sup>), which is approximately a floor space ratio of 3.19 based on the total area of the Lands, which is approximately 1,557 m<sup>2</sup> (16,750 f<sup>2</sup>);
- (h) Section 4.7.3(a) is varied such that the Director of Planning may consider balcony exclusions up to an amount equal to 12% of the provided floor area, provided the Director of Planning is satisfied with the impact on massing and shadowing created by such additional balcony area; and
- (i) Section 4.7.4(a)(i) is varied such that the total amount of floor area excluded for all open and enclosed balconies or sun decks is equal to the amount approved under Section 4.7.3(a).

#### ARTICLE 9 SUBDIVISION

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

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

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

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

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

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

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

#### ARTICLE 10 NOTICES

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

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

(b) if to the City:

City of Vancouver  
453 West 12<sup>th</sup> Avenue  
Vancouver, BC V5Y 1V4

Attention: City Clerk and Director of Legal Services,

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

#### ARTICLE 11 GENERAL

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

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

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

11.4 **Waiver.** No failure on the part of the City to exercise and no delay in exercising any right under this agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.

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

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

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

**11.7 City's Other Rights and Obligations.** Nothing contained or implied in this agreement will derogate from the obligations of the Owner under any other agreement with the City or prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* and the rights, powers, duties and obligations of the City under all other laws, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this agreement had not been executed and delivered by the Owner and the City.

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

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

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

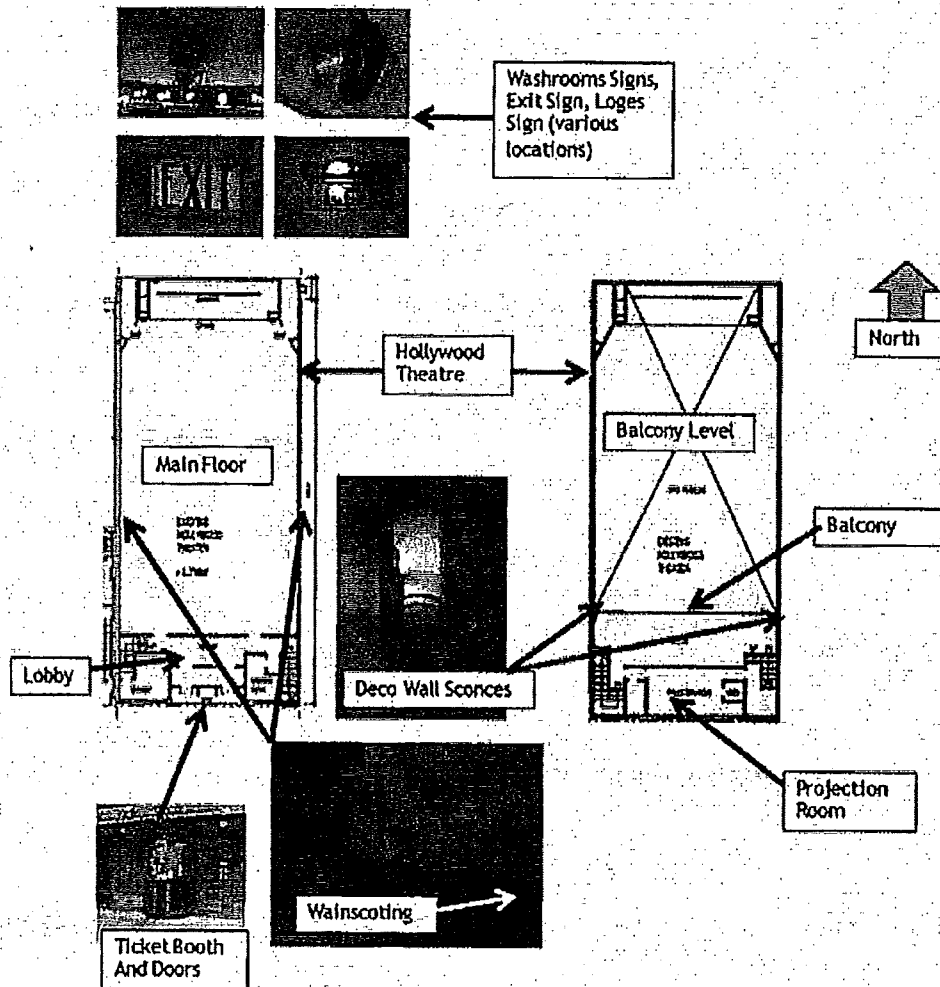
**11.11 Severability.** All provisions of this agreement are severable in that if any court or other lawful authority having jurisdiction to decide the matter finds for any reason that one or more of them is void or unenforceable, then such void or unenforceable provisions will be severed from this agreement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

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

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



## APPENDIX A



**CONSENT AND PRIORITY INSTRUMENT**

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA3574502 and the Assignment of Rents registered under number CA3574503;
- (b) "Existing Chargeholder" means the CANADIAN WESTERN BANK;
- (c) "New Charges" means the Section 219 Covenants, the Statutory Right of Way and the Equitable Charge and contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

**END OF DOCUMENT**