

## EXPLANATION

**Authorization to enter into a Housing Agreement  
Re: 1906-1918 West 4<sup>th</sup> Avenue**

The land owner applied to the City pursuant to a rezoning application for approval to rezone the Lands from C-2B (Commercial) District to CD-1 (Comprehensive Development) District to permit the development of a five-storey mixed-use building with commercial at grade and 32 secured for-profit affordable rental housing units on the Lands, which applications were approved, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, on terms satisfactory to the General Manager of Community Services and the Director of Legal Services. The Housing Agreement was accepted and executed by the applicant land owner, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services  
June 25, 2019

HC

1906-1918 West 4<sup>th</sup> Avenue

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

**A By-law to enact a Housing Agreement  
for 1906-1918 West 4<sup>th</sup> 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:

NO PID                      LOT 1 BLOCK 246 DISTRICT LOT 526 PLAN EPP91372

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.

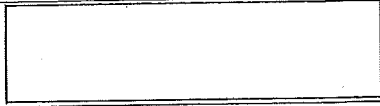
ENACTED by Council this                      day of                      , 2019

\_\_\_\_\_  
Mayor

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

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

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)  
**PLLR LAWYERS**  
 Barristers and Solicitors  
 Suite 500 - North Tower, 5811 Cooney Road  
 Richmond BC V6X 3M1  
 Applicant: KJM/s  
 File No. 104799  
 Telephone: (604) 276-2765  
 Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
 [PID] [LEGAL DESCRIPTION]  
**NO PID NMBR LOT 1 BLOCK 246 DISTRICT LOT 526 PLAN EPP91372**  
 STC? YES  
 Related Plan Number: **EPP91372**

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION  
**SEE SCHEDULE**

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):  
**HARKERSON B.C. WHOLESALE LUMBER (1966) LTD., INCORPORATION NO. BC0071875**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))  
**CITY OF VANCOUVER**  
 453 WEST 12TH AVENUE  
 VANCOUVER BRITISH COLUMBIA  
 V5Y 1V4 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)  
  
**KATER MACKAY**  
 BARRISTER AND SOLICITOR  
 SUITE 500 - North Tower  
 5811 COONEY ROAD  
 RICHMOND, BC V6X 3M1  
 TELEPHONE: 604-276-2765

Execution Date		
Y	M	D
19	06	18

Transferor(s) Signature(s)  
**HARKERSON B.C. WHOLESALE LUMBER (1966) LTD., by its authorized signatory(ies):**  
  
 Harry Singh Sengata

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

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

Officer Signature(s)

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Execution Date

Y	M	D
19		

Transferor / Borrower / Party Signature(s)

CITY OF VANCOUVER, by its  
authorized signatory(ies):

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**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

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

Entire Instrument

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

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**TERMS OF INSTRUMENT - PART 2**  
**HOUSING AGREEMENT AND BUILDING USE COVENANT**  
**FOR-PROFIT AFFORDABLE RENTAL HOUSING**  
**1906-1918 West 4<sup>th</sup> Avenue**

**WHEREAS:**

- A. It is understood and agreed that this Instrument and Agreement will be read as follows:
- (i) the Transferor, HARKERSON B.C. WHOLESAL LUMBER (1966) LTD., as more particularly defined in Section 1.1 is called the "Owner"; and
  - (ii) the Transferee, CITY OF VANCOUVER, is called the "City" or the "City of Vancouver" when referring to corporate entity continued under the *Vancouver Charter*, and "Vancouver" when referring to geographic location;
- B. The Owner is the registered and beneficial owner of the Lands;
- C. The Owner made an application to rezone the Lands from C-2B (Commercial) District to CD-1 (Comprehensive Development) District (the "Rezoning Application") to permit the development of a five-storey mixed-use building with commercial at grade and 32 secured for-profit affordable rental housing units, and after public hearing the City approved the Rezoning Application in principle, subject to a number of conditions including that the Owner make arrangements to the satisfaction of the General Manager of Arts, Culture and Community Services and the Director of Legal Services to enter into a Housing Agreement by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter* securing all residential units in the New Building as for-profit affordable rental housing units pursuant to Section 3.1A of the Vancouver DCL By-law for the longer of 60 years and life of the New Building, and subject to other conditions set forth in the minutes of the said public hearing; and
- D. The Owner and the City are entering into this agreement to satisfy the foregoing 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, in satisfaction of the requirements of Section 3.1A of the Vancouver DCL By-law and pursuant to Section 565.2 of the *Vancouver Charter* and Section 219 of the *Land Title Act*, agree as follows, in respect of the use of the Lands and the New Building:

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATION**

- 1.1 Definitions. Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:
- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;
  - (b) "Building Permit" means any building permit issued by the City authorizing the

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Housing Agreement and Building Use Covenant  
1906-1918 West 4<sup>th</sup> Avenue

building of a New Building as contemplated by the Rezoning By-law and the Development Permit;

- (c) "City" and "City of Vancouver" have the meaning ascribed to those terms in Recital A(ii);
- (d) "City Manager" means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (e) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (f) "Development Permit" means any development permit issued by the City authorizing the development of the Lands contemplated by the Rezoning By-law;
- (g) "Director of Legal Services" means the chief administrator from time to time of the City's Legal Services Department and her/his successors in function and their respective nominees;
- (h) "Effective Date" means the date as of which this Agreement has been executed by all parties to it;
- (i) "For-Profit Affordable Rental Housing" means a building containing multiple Housing Units which meets the requirements of Section 3.1A of the Vancouver DCL By-law to be for-profit affordable Rental Housing, but does not include alterations of or extensions to those Housing Units; PROVIDED, HOWEVER, that if the definition of For-Profit Affordable Rental Housing applicable at the time when a Building Permit is issued differs from the foregoing, the definition applicable at the time of Building Permit Issuance will apply unless otherwise provided in the Vancouver DCL By-law;
- (j) "For-Profit Affordable Rental Housing Units" has the meaning ascribed to that term in section 2.1(c) and "For-Profit Affordable Rental Housing Unit" means any one of such units;
- (k) "General Manager of Arts, Culture and Community Services" means the chief administrator from time to time of the City's Arts, Culture and Community Services Department and his/her successors in function and their respective nominees;
- (l) "Housing Unit" means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (m) "Land Title Act" means the Land Title Act, R.S.B.C. 1996, c. 250;
- (n) "Lands" means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 of the Form C - General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided;
- (o) "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, judgements, builders liens, 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;

- (p) **"New Building"** means any new building or structure to be built on the Lands as contemplated by the Rezoning By-law and 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 Rezoning By-law and the Development Permit;
- (q) **"Occupancy Permit"** means a permit issued by the City authorizing the use and occupation of any New Building, development or partial development on the Lands issued after the Effective Date;
- (r) **"Owner"** means the registered owner of the Lands as of the Effective Date, namely **HARKERSON B.C. WHOLESALE LUMBER (1966) LTD.**, and its successors and permitted assigns;
- (s) **"Related Person"** means, where the registered or beneficial owner of the For-Profit Affordable Rental Housing Units is:
  - (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c.57, 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;
- (t) **"Rental Housing"** means a Housing 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 arm's length, for use as rental accommodation on a month-to-month basis or longer 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;
- (u) **"Replacement For-Profit Affordable Rental Housing Unit"** has the meaning ascribed to that term in section 2.1(o) and **"Replacement For-Profit Affordable Rental Housing Units"** means all of such units;
- (v) **"Residential Tenancy Act"** means the Residential Tenancy Act, S.B.C. 2002, c. 78;
- (w) **"Rezoning Application"** has the meaning ascribed to that term in Recital C;



- (x) "Rezoning By-law" means the CD-1 by-law enacted upon satisfaction of the prior-to conditions imposed by the City following, and as a result of, the Rezoning Application;
- (y) "Term" means the term of this Agreement, which will commence on the Effective Date and will end on the later of:
  - (i) the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building; or
  - (ii) the date as of which the New Building is demolished or substantially destroyed;
- (z) "Vancouver" has the meaning ascribed to that term in Recital A(ii);
- (aa) "Vancouver Charter" means the Vancouver Charter, S.B.C. 1953, c. 55; and
- (bb) "Vancouver DCL By-law" means the City's Vancouver Development Cost Levy By-law No. 9755.

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 Effective Date and to subsequent amendments to or replacements of the statute or regulations.
- (f) Legislation. Any reference to a statute or by-law includes and is a reference to such statute or by-law and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute, by-law and

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

- (g) Time. Time will 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 will be local Vancouver, British Columbia time.

## ARTICLE 2 RESTRICTIONS ON USE OF LANDS AND SUBDIVISION

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

- (a) throughout the Term, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) the Owner will construct, fit and finish, at its sole cost and expense, and throughout the Term, will maintain such number of Housing Units as approved in the Development Permit in the New Building, in accordance with this Agreement, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
- (c) when the New Building is completed and an Occupancy Permit has been issued and thereafter throughout the Term, all Housing Units in the New Building will be used only for the purpose of providing For-Profit Affordable Rental Housing (the "For Profit Affordable Rental Housing Units") in accordance with the terms of this Agreement;
- (d) not less than 35% of the For-Profit Affordable Rental housing Units (or Replacement For-Profit Affordable Rental Housing units, as applicable) will have two or more bedrooms and be designed to meet the City's "high Density housing for Families with Children Guidelines";
- (e) the average initial monthly starting rents for each unit type after Occupancy Permit issuance will be at or below the following proposed starting rents:
  - (i) for a studio - \$1,646;
  - (ii) for a one-bedroom - \$1,903
  - (iii) for a two-bedroom - \$2,756; and
  - (iv) for a three-bedroom - \$3,702,

and the rents proposed to be charged for each For-Profit Affordable Rental Housing Unit are as set forth in the rent roll attached hereto as Schedule A, all of which are subject to such annual increases as may be authorized by the Vancouver DCL By-law (see Section 3.1B(c));

- (f) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any For-Profit Affordable Rental Housing Unit for a term of less than one month at a time;

- (g) 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 For-Profit Affordable Rental Housing Unit to be sold or otherwise transferred unless title to every one of the For-Profit Affordable Rental Housing Units is sold or otherwise transferred together and as a block to the same legal and beneficial owner, as applicable, and subject to Section 9.8;
- (h) throughout the Term, it will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld;
- (i) throughout the Term, that any sale of any For-Profit Affordable Rental Housing Unit in contravention of the covenant in Section 2.1(g), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(h), 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;
- (j) throughout the Term, it will keep and maintain the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings;
- (k) if the New Building or any part thereof, is damaged during the Term, it 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;
- (l) throughout the Term, it will insure, or cause to be insured, the New Building to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands;
- (m) as of the Effective Date, the rents proposed to be charged by the Owner to the first occupants of the For-Profit Affordable Rental Housing Units in the New Building following issuance of the Occupancy Permit are as set forth in rent roll attached hereto as Schedule A;
- (n) the rent charged for each For-Profit Affordable Rental Housing Unit as of Initial occupancy will not be increased before the one year anniversary of that date even if there is a change in occupancy during that year; and
- (o) in the event of the substantial or complete destruction of the New Building prior to the 60 year anniversary of the issuance of the final Occupancy Permit, it will promptly take all steps reasonably necessary to enable it to build a replacement building or buildings on the Lands, which building(s) (together with any remaining undestroyed or undemolished portion of the New Building building) will also contain not less than the same number and type of replacement Housing Units as the New Building formerly contained, unless the City then otherwise agrees in its absolute and unfettered discretion, which replacement Housing Units will also be used only for the purpose of providing For-Profit Affordable Rental Housing (each such

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replacement Housing Unit, referred to as a "Replacement For-Profit Affordable Rental Housing Unit"), for the duration of the Term in accordance with the terms of this Agreement and the applicable by-laws of the City.

**ARTICLE 3  
DEVELOPMENT PERMIT RESTRICTION ON THE LANDS**

- 3.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the Lands and the New Building will not be used or occupied except as follows:
    - (i) the Owner will not apply for any Development Permit, and will take no action, directly or indirectly, to compel the issuance of any Development Permit, until such time as the Owner has delivered a rent roll to, and to the satisfaction of, the General Manager of Arts, Culture and Community Services confirming the rents proposed to be charged to the first occupants of the For-Profit Affordable Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and sizes, which rents, unit type, mix and sizes shall comply with this Agreement when the Development Permit is issued; and
    - (ii) the City will be under no obligation to issue any Development Permit until such time as the Owner has complied with Section 3.1(a)(i); and
  - (b) without limiting the general scope of ARTICLE 7, 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 a Development Permit until there is compliance with the provisions of this ARTICLE 3.

**ARTICLE 4  
OCCUPANCY RESTRICTION ON THE LANDS**

- 4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the Lands and the New 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 New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the General Manager of Arts, Culture and Community Services:
      - (A) a final rent roll confirming the rents to be charged to the first occupants of the For-Profit Affordable Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and sizes, which rents, unit type mix and sizes shall comply with this Agreement as of the date when the Occupancy Permit is issued; and
      - (B) proof of the insurance, consistent with the requirements of Section 2.1(l), is in force and effect, in form and substance satisfactory to the

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City; and

- (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 4.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 7, 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 4.

#### **ARTICLE 5 RECORD KEEPING**

- 5.1 The Owner will keep accurate records pertaining to the use, occupancy and rental rates charged off for the For-Profit Affordable Rental Housing Units such records to be to the satisfaction of the General Manager of Arts, Culture and Community Services. At the request of the General Manager of Arts, Culture and Community Services, from time to time, the Owner will:
- (a) make such records available for inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and
  - (b) provide evidence of the insurance required to be taken out pursuant to Section 2.1(l).

#### **ARTICLE 6 ENFORCEMENT**

- 6.1 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 7 RELEASE AND INDEMNITY**

- 7.1 Release and Indemnity. Subject to Section 7.2, 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 New Building or any part thereof;

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- B. withholding any permit pursuant to this Agreement; or
  - C. exercising any of its rights under any Section 219 covenant, *Vancouver Charter* Section 562.2 housing agreement 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; and

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; and
- (c) The indemnities in this ARTICLE 7 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

7.2 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 7.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 7.1(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 7.1(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 7.2(b); and

- (c) Regardless of whether the claim is being defended under Section 7.1(a) or Section 7.1(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.

- 7.3 Survival of Release and Indemnities. The release and indemnities in this ARTICLE 7 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 8 NOTICES

- 8.1 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, will be in writing and will be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:
- (a) if made by registered mail, on the earlier of the day receipt is acknowledged by the addressee or the third day after it was mailed, except when there is a postal service disruption during such period, in which case delivery will be deemed to be completed upon actual delivery of the notice, demand or request; and
  - (b) if personally delivered, on the date when delivered.

If to the City, addressed to:

CITY OF VANCOUVER  
453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia  
V5Y 1V4

Attention: City Clerk, with concurrent copies to the General Manager of Arts, Culture and Community Services and the Director of Legal Services

If to the Owner, addressed to:

HARKERSON B.C. WHOLESALE LUMBER (1966) LTD.  
12311 Mitchell Road  
Richmond, BC V6V 1M7

Attention: Harry Singh Sengara

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 9 MISCELLANEOUS

- 9.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner will be covenants the burden of which will run with and will bind the Lands and will attach thereto.
- 9.2 Agreement to be a First Charge. The Owner agrees to cause, at its sole cost and expense, 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 any rezoning or any Development Permit; and
  - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 9.3 Enforcement. This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it will be entitled to court costs on a solicitor and own client basis.
- 9.4 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.
- 9.5 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.

(104789-02274883.)

Housing Agreement and Building Use Covenant  
1906-1918 West 4<sup>th</sup> Avenue



- 9.6 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.
- 9.7 Further Assurances. The Owner will 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 including all 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*.
- 9.8 Sale of Lands or New Building. Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), subject always to Sections 2.1(f) and 2.1(g), the Owner will cause the purchaser/ transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of the Owner under this Agreement. The provisions in this Section 9.8 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage).
- 9.9 Owner's Representations. 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.
- 9.10 Enurement. This Agreement will enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement will enure to the benefit of and be binding upon the Owner and its successors and assigns.

(104789-02274863.)

Housing Agreement and Building Use Covenant  
1906-1918 West 4<sup>th</sup> Avenue

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

(104799-02274883.)

Housing Agreement and Building Use Covenant  
1806-1918 West 4<sup>th</sup> Avenue

**Schedule A  
Rent Roll**

**[see attached]**

**END OF DOCUMENT**

**{104709-02274863.}**

**Housing Agreement and Building Use Covenant  
1806-1918 West 4<sup>th</sup> Avenue**

Unit #	Bedroom Type	Starting Monthly Rental Rate	Size of Unit (Net area)	Size of Unit (Net area)
201	Residential - 2-bedroom	\$2,724	792 SF	792
202	Residential - 2-bedroom	\$2,772	806 SF	806
203	Residential - Studio	\$1,646	434 SF	434
204	Residential - 1-bedroom	\$1,977	600 SF	600
205	Residential - 1-bedroom	\$1,962	595 SF	595
206	Residential - 2-bedroom	\$2,982	827 SF	827
207	Residential - 3-bedroom	\$3,735	970 SF	970
208	Residential - 3-bedroom	\$3,668	995 SF	995
301	Residential - 2-bedroom	\$2,724	792 SF	792
302	Residential - 2-bedroom	\$2,772	806 SF	806
203	Residential - 1-bedroom	\$1,798	582 SF	582
304	Residential - 1-bedroom	\$1,977	600 SF	600
305	Residential - 1-bedroom	\$1,962	595 SF	595
306	Residential - 2-bedroom	\$2,982	827 SF	827
307	Residential - 3-bedroom	\$3,735	970 SF	970
308	Residential - 3-bedroom	\$3,668	995 SF	995
401	Residential - 2-bedroom	\$2,724	792 SF	792
402	Residential - 2-bedroom	\$2,772	806 SF	806
403	Residential - 1-bedroom	\$1,798	582 SF	582
404	Residential - 1-bedroom	\$1,977	600 SF	600
405	Residential - 1-bedroom	\$1,962	595 SF	595
406	Residential - 2-bedroom	\$2,982	827 SF	827

{104799-02289967.}

407	Residential - 3-bedroom	\$3,735	970 SF	970
408	Residential - 3-bedroom	\$3,668	995 SF	995
501	Residential - 2-bedroom	\$2,490	724 SF	724
502	Residential - 2-bedroom	\$2,583	751 SF	751
503	Residential - 1-bedroom	\$1,699	550 SF	550
504	Residential - 1-bedroom	\$1,903	600 SF	600
505	Residential - 1-bedroom	\$1,909	578 SF	578
506	Residential - 2-bedroom	\$2,841	826 SF	826
507	Residential - 2-bedroom	\$2,617	761 SF	761
508	Residential - 2-bedroom	\$2,580	750 SF	750

{104799-02289967.}

**EXPLANATION****Authorization to enter into a Housing Agreement  
Re: 325 and 333 Carrall Street**

The land owner applied to the City under Development Application No. DP-2018-00379 for approval to permit the retention of the two-storey façade of the exiting municipally designated heritage building on the Lands and the development of a 7-storey mixed use building, containing commercial uses at ground level and a total of 38 market rental units above, which applications were approved, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, on terms satisfactory to the General Manager of Arts, Culture and Community Services and the Director of Legal Services. The Housing Agreement was accepted and executed by the applicant land owner, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services  
June 25, 2019

325 and 333 Carrall Street

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

**A By-law to enact a Housing Agreement  
for 325 and 333 Carrall Street**

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

1. Council authorizes the City to enter into a Housing Agreement with the owner of certain lands described as:

PID: 030-721-032      Lot 1 of Lot 17 Block 3 Old Granville Townsite Plan  
Plan.EPP88209

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 \_\_\_\_\_, 2019

\_\_\_\_\_  
Mayor

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

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

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, R.S.B.C. 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)

Kornfeld LLP  
Barristers & Solicitors  
1100-505 Burrard Street  
Vancouver

Tel. No. (604) 331-8300 / LTO #010448  
File No: M1028DEV191 ENK

BC V7X 1M5

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

Deduct LTSA Fees? Yes

030-721-032 LOT 1 OF LOT 17 BLOCK 3 OLD GRANVILLE TOWNSITE PLAN  
PLAN EPP8209

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 F.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):

MILLENNIUM CARRALL PROPERTIES LTD., INC. NO. BC1152654  
HMT HOLDINGS INC., INCORPORATION NO. A9074963, 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

V6Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:  
N/A

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

Officer Signature(s)

Douglas L. Holliday  
Barrister & Solicitor  
Kornfeld LLP  
1100 - 505 Burrard Street  
Vancouver, B.C. V7X 1M5  
Telephone: (604) 331-8331

Execution Date		
Y	M	D
19	06	07

Transferor(s) Signature(s)

MILLENNIUM CARRALL  
PROPERTIES LTD. by its  
authorized signatory(ies):

Name: SHYAM MALEK MALICK

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.



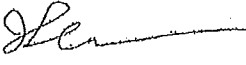
LAND TITLE ACT  
FORM D.  
EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D
19	06	18

\_\_\_\_\_  


HMT HOLDINGS INC. by its authorized signatory(ies):

\_\_\_\_\_  
 Name: Bruce Shepherd  
 \_\_\_\_\_  
 Name: Nelson Da Silva

Doshua Paul Lerner, Notary Public  
 c/o 550 - 36 Toronto St.  
 Toronto, ON M5C 2C5

CITY OF VANCOUVER by its authorized signatory(ies):

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

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

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

FORM E\_V24

LAND TITLE ACT

FORM E

SCHEDULE

PAGE 3 OF 16 PAGES

NATURE OF INTEREST  
Covenant

CHARGE NO.

ADDITIONAL INFORMATION  
Entire Instrument

NATURE OF INTEREST  
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION  
Priority Agreement granting above Section 219  
Covenant priority over Mortgage CA7345579 and  
Assignment of Rents CA7345580

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

HOUSING AGREEMENT AND BUILDING USE COVENANT  
FOR MARKET RENTAL HOUSING  
325 AND 333 CARRALL STREET

WHEREAS:

A. Capitalized terms used in this Agreement will have the respective meanings ascribed to them in Section 1.1, unless otherwise defined herein or the context otherwise requires;

B. It is understood and agreed that this instrument and Agreement shall be read as follows:

- (i) the Transferor, MILLENNIUM CARRALL PROPERTIES LTD. (Inc. No BC1152654), as more particularly defined in Section 1.1, is called the "Owner"; and
- (ii) the Transferee, CITY OF VANCOUVER, is called the "City" or the "City of Vancouver" when referring to the corporate entity continued under the Vancouver Charter, and "Vancouver" when referring to the geographic location;

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

D. The Owner applied under Development Permit Application number DP-2018-00379 (the "Development Permit Application") to retain the two-storey façade of the existing municipality designated heritage building on the Lands and to develop on the Lands a seven-storey mixed-use building containing commercial uses at ground level and 37 secured market rental dwelling units above;

E. The Development Permit Application was approved in principle by the City's Development Permit Board subject to, among other things, fulfillment of the condition that the Owner enter into a housing agreement with the City to secure all of the Housing Units in the New Building as rental housing for the longer of 60 years or the life of the New Building and on the other terms and conditions set out in the City's "prior-to" letter of January 22, 2019 addressed to the Owner's architect Peter Atkinson of Human Studio Architecture and Urban Design Ltd., such housing agreement to be enacted by by-law pursuant to Section 565.2 of the Vancouver Charter; and

F. The Owner and the City are entering into this Agreement to satisfy the foregoing 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 Section 219 of the Land Title Act, agree as follows in respect of the use of the Lands and the New Building:

ARTICLE 1  
DEFINITIONS AND INTERPRETATIONS

- 1.1 Definitions. Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:
- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
  - (b) "Building Permit" means any building permit issued by the City authorizing the building of the New Building as contemplated by the Development Permit;
  - (c) "City" and "City of Vancouver" have the meaning ascribed to those terms in Recital B(ii);
  - (d) "City Manager" means the chief administrator from time to time of the City and her successors in function and their respective nominees;
  - (e) "City Personnel" means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractor's, subcontractors and volunteers of the City;
  - (f) "Commencement Date" means the date as of which this Agreement has been executed by all parties to it;
  - (g) "Development" means the development on the Lands described in Recital C and approved by the Development Permit;
  - (h) "Development Permit" means a development permit issued by the City means a as a result of the Development Permit Application;
  - (i) "Development Permit Application" has the meaning ascribed to that term in Recital D;
  - (j) "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;
  - (k) "General Manager of Community Services" means the chief administrator from time to time of the City's Arts, Culture and Community Services Department and his/her successors in function and their respective nominees;
  - (l) "Housing Unit" means a self-contained residential unit, comprised of two or more rooms (one of such rooms shall be a bathroom), including toilet, bathing or showering, and cooking facilities;
  - (m) "Land Title Act" means the *Land Title Act*, R.S.B.C. 1996, c. 250;
  - (n) "Lands" means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 in the Form C attached hereto, and includes any lots or parcels into which such land is consolidated or further subdivided;

- (o) "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;
- (p) "Micro Dwelling Unit" means a Rental Housing Unit which measures no less than 23.2 m<sup>2</sup> and no more than 29.7 m<sup>2</sup> and is intended for single occupancy;
- (q) "New Building" means any new building or structure 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;
- (r) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of the New Building or any other development or partial development on the Lands contemplated by the Development Permit;
- (s) "Owner" means the registered and beneficial owner of the Lands as of the Commencement Date, namely MILLENNIUM CARRALL PROPERTIES LTD, (Inc. No. BC1152654), and all of its successors in title to the Lands or any part thereof;
- (t) "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;
- (u) "Rental Housing" means a Housing 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 arm's 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;
- (v) "Rental Housing Units" has the meaning ascribed to that term in Section 2.1(c), and "Rental Housing Unit" means any one of such Units;

- (w) "Replacement Rental Housing Unit" has the meaning ascribed to that term in section 2.1(k) and "Replacement Rental Housing Units" means all of such units;
- (x) "*Residential Tenancy Act*" means the *Residential Tenancy Act*, S.B.C. 2002, c. 78;
- (y) "Term" means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
  - (i) the date as of which the New Building is demolished or substantially destroyed; or
  - (ii) 60 years from the date when the final Occupancy Permit is issued for the New Building;
- (z) "Vancouver" has the meaning ascribed to that term in Recital B(ii); and
- (aa) "*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, SALE AND SUBDIVISION

2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) if it carries out any development on the Lands after the Commencement Date, it will construct, fit and finish, at its sole cost and expense, the New Building to contain 37 Housing Units, 6 of which shall be Micro Dwelling Units, 28 of which shall be studio units, and 3 of which shall be 1-bedroom units (or such other number or mix of Housing Units as may be approved in writing by the General Manager of Community Services or the City Manager), and related amenity and parking spaces, in accordance with this Agreement, the conditions of the Development Permit, the Building Permit and all applicable City by-laws and policies;
- (c) throughout the Term, not less than all of the Housing Units will be used only for the purpose of providing Rental Housing (the "Rental Housing Units");
- (d) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) for a term of less than one month at a time;
- (e) throughout the Term, the rent for each Micro Dwelling Unit will be less than the average rents for studio apartments in the East Hastings zone (as may be renamed from time to time) as stated annually in the Canada Mortgage and Housing Corporation's Annual Rental Market Survey or an equivalent publication (as may be approved by the General Manager of Arts, Culture and Community Services) and, throughout the Term, it will comply with the provisions of the City's *Micro Dwelling Policies and Guidelines*;
- (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 (or Replacement Rental Housing Unit, as applicable) to be sold or otherwise transferred unless title to every Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) is sold or otherwise transferred together and as a block to the same owner, and subject further to Section 8.9;

- (g) throughout the Term, it will not suffer, cause or permit the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, but excluding by way of airspace subdivision to separate the Rental Housing Units from those portions of the New Building used for commercial purposes, without the prior written consent of the Director of Legal Services, which consent may be arbitrarily withheld;
- (h) throughout the Term, any sale of a Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) in contravention of the covenant in Section 2.1(f), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant 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) throughout the Term, it will insure, or cause to be insured, the New Building 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;
- (j) throughout the Term, it will keep and maintain the New 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 Replacement Rental Housing Unit, as applicable) 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;
- (k) if the New Building is destroyed or demolished before the end of the 60<sup>th</sup> anniversary of the date when the final Occupancy Permit is issued for the New Building, then any replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than the same number and type of replacement Rental Housing Units as the New Building formerly contained, which replacement Rental Housing Units will also be used only for the purpose of providing Rental Housing (each such replacement Rental Housing Unit hereinafter referred to as a "Replacement Rental Housing Unit"), in accordance with the terms of this Agreement and the applicable by-laws of the City.

**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 New Building, that:

- (a) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the New Building, and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for the New Building, until such time as the Owner has delivered, to the General Manager of Community Services, in form and substance satisfactory to the General Manager of



Community Services, proof of the insurance, consistent with the requirements of Section 2.1(i), is in force and effect, in form and substance satisfactory to the City;

- (b) the City will be under no obligation to issue any Occupancy Permit for the New Building or any part thereof, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 3.1(a).
- 3.2 Without limiting the general scope of Article 8, 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 for the New Building 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, rental rates charged and occupancy of for 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 and the City acknowledges that delivery of such information insofar as it identifies the name of any tenant or occupier is intended by the Owner to be delivered in confidence to 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 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 New Building or any part thereof;
- 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, other than wrongful intentional acts 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 willful 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 fulfillment 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, will be in writing and will be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:

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

If to the City:

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

Attention: City Clerk, with concurrent copies to the General Manager of Community Services and the Director of Legal Services

If to the Owner:

Millennium Carrall Properties Ltd.  
788 Richards Street  
Vancouver, B.C. V6B 3A4

Attention: Development Manager

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.
- 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 including all 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*.
- 8.9 Sale or Transfer of Lands or New Building. Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), subject always to Sections 2.1(f) and 2.1(g), the Owner will cause the purchaser/ transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of the Owner under this Agreement, whereupon the vendor/transferor will be released from its obligations hereunder arising from and after the date of such sale or transfer. The provisions in this Section 8.9 will apply equally to all subsequent purchasers/ transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage).
- 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.

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

IN WITNESS WHEREOF the parties have executed this Agreement on the Land Title Act Forms which are a part hereof.

## CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA7345579 and the Assignment of Rents registered under number CA7345580;
- (b) "Existing Chargeholder" means HMT HOLDINGS INC.;
- (c) "New Charges" means the Housing Agreement and 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:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to 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