

EXPLANATION

Authorization to enter into a Housing Agreement Re: 1517 Comox Street

On May 3, 2018, the Director of Planning approved in principle a development on the above noted property, subject to, among other things, a Housing Agreement to be entered into by the City and the land owner, on terms satisfactory to the Director of Legal Services and the General Manager of Arts, Culture and Community Services, prior to the issuance of a Development Permit. Such a Housing Agreement has been accepted and signed by the applicant, 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 that Housing Agreement with the land owner.

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

Director of Legal Services
September 10, 2019

1517 Comox Street

BY-LAW NO. _____

**A By-law to enact a Housing Agreement
for 1517 Comox 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: 015-761-185

The East 1/2 of Lot 14 Block 47 District Lot 185
Plan 92

in substantially the form and substance of the Housing Agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City, and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

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

ENACTED by Council this _____ day of _____, 2019

Mayor

City Clerk

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

1566330919 PAGE 1 OF 17 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)
**BRIDGEHOUSE LAW LLP
 BARRISTERS & SOLICITORS
 900-900 WEST HASTINGS STREET
 VANCOUVER BC V6C 1E5**
 Tel. 604.684.2550
 Lawyer File No. 15669-009
 File No.: LS-19-00381-001 (Housing Agt.)

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
 [PID] [LEGAL DESCRIPTION]
015-761-185 THE EAST 1/2 OF LOT 14 BLOCK 47 DISTRICT LOT 185 PLAN 92
 STC? YES

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

4. TERMS: Part 2 of this instrument consists of (select one only)
 (a) Filed Standard Charge Terms D.F. No. (b) Express Charge Terms Annexed as Part 2
 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):
**PLAN A - 1517 COMOX STREET LTD., INCORPORATION NO. BC1051571
 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
 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)

TIMOTHY J. LACK
Barrister & Solicitor
 Suite 900 - 900 West Hastings Street
 Vancouver, British Columbia
 V6C 1E5

Execution Date		
Y	M	D
19	08	26

Transferor(s) Signature(s)
**PLAN A - 1517 COMOX STREET
 LTD. by its authorized
 signatory(ies):**

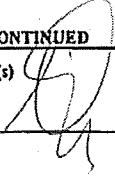
Print Name: **Anoop Majithia**

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

Officer Signature(s)



NICHOLAS KING
A Commissioner for taking
Affidavits for British Columbia
#2200, 866 Burrard Street
Vancouver, BC V6C 2X8
Expires: September 30, 2021

(As to all signatures)

Execution Date

Y	M	D
19	08	27
19		

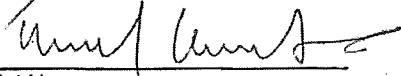
Transferor / Borrower / Party Signature(s)

CANADIAN WESTERN BANK by its
authorized signatory(ies):



JEREMY BLOY
SR MANAGER, BUSINESS DEVELOPMENT
COMMERCIAL BANKING

Print Name:



Print Name: **DANIEL PRETO**
AVP COMMERCIAL BANKING

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

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Entire Instrument

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Covenant priority over Mortgage CA7302190 and Assignment of Rents CA7302191

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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TERMS OF INSTRUMENT - PART 2
HOUSING AGREEMENT AND BUILDING USE COVENANT
FOR MARKET RENTAL HOUSING
1517 COMOX 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:
- (a) the Transferor, **PLAN A - 1517 COMOX STREET LTD.**, as more particularly defined in Section 1.1, is called the "Owner"; and
 - (b) 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 owner of the Lands;
- D. The Owner applied under Development Permit Application number DP-2017-01277 (the "Development Permit Application") to:
- (a) provide interior alterations to the existing multiple conversion dwelling unit (the "Existing Building") with ten (10) housekeeping units and convert to five (5) dwelling units; and
 - (b) develop a three-storey infill two-family dwelling at the rear of the site,
- thereby providing a total of seven (7) secured market rental units with one (1) car-share at grade parking space having vehicular access from the lane;
- E. The Development Permit Application was approved in principle by the City's Director of Planning subject to, among other things, fulfillment of the condition that the Owner enter into a housing agreement with the City to secure all seven (7) residential units as secured market rental housing units for the longer of 60 years and life of the Buildings and on the other terms and conditions set out in the City's "prior-to DE" letter of May 3, 2018 to the Owner's architect, W. Neil Robertson DBA: Stuart Howard Architects, 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 Existing Buildings:

**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 alteration and conversion of the Existing Building and the building of the New Building as contemplated by the Development Permit;
- (c) "Building(s)" means either the Existing Building or the New Building or both;
- (d) "City" and "City of Vancouver" have the meaning ascribed to those terms in Recital B(ii);
- (e) "City Manager" means the chief administrator from time to time of the City and her successors in function and their respective nominees;
- (f) "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;
- (g) "Commencement Date" means the date as of which this Agreement has been executed by all parties to it;
- (h) "Development" means the development on the Lands described in Recital C and approved by the Development Permit;
- (i) "Development Permit" means a development permit issued by the City as a result of the Development Permit Application;
- (j) "Development Permit Application" has the meaning ascribed to that term in Recital D;
- (k) "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;
- (l) "Eligible Tenants" means the tenants who are listed as residents in the applicant's Tenant Relocation Plan in any of the existing units that will be demolished if the redevelopment contemplated by the Development Permit proceeds and are identified in the Tenant Relocation Plan as eligible for the benefits set out therein, and "Eligible Tenant" means any one of them;
- (m) "Existing Building" has the meaning ascribed to that term in Recital D;

- (n) "General Manager of Arts, Culture and Community Services" means the chief administrator from time to time of the City's Community Services Department and his/her successors in function and their respective nominees;
- (o) "Housing Unit" means a self-contained residential unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (p) "Land Title Act" means the *Land Title Act*, R.S.B.C. 1996, c. 250;
- (q) "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;
- (r) "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;
- (s) "Moving Expenses" means receipted moving expenses (whether for moving out and/or moving back in) and reconnection fees to a maximum of \$750 for each unit occupied by Eligible Tenants;
- (t) "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;
- (u) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of the Building(s) or any other development or partial development on the Lands contemplated by the Development Permit;
- (v) "Owner" means the registered owner of the Lands as of the Commencement Date, namely Plan A - 1517 Comox Street Ltd., and all of its permitted assigns, successors and successors in title to the Lands or any part thereof;
- (w) "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;

- (x) "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;
- (y) "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;
- (z) "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;
- (aa) "*Residential Tenancy Act*" means the *Residential Tenancy Act*, S.B.C. 2002, c. 78;
- (bb) "Returning Tenants" means the Eligible Tenants who accept the Owner's offer to relocate to the Buildings after the alteration and conversion of the Existing Building and the construction of the New Building, and "Returning Tenant" means any one of them;
- (cc) "Tenant Relocation Plan" means the Owner's final Tenant Relocation Plan as approved by the General Manager of Arts, Culture and Community Services;
- (dd) "Tenant Relocation Report" means the report which outlines the names of Eligible Tenants; indicates the outcome of their search for alternate accommodation; summarizes the total monetary value to be given to each Eligible Tenant (moving costs, rent and any other compensation); and includes a summary of all communication provided to the Eligible Tenants prior to issuance of that report (i.e., prior to Building Permit in the case of the interim report and prior to final Occupancy Permit in the case of the final report);
- (ee) "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 alteration and conversion of the Existing Building has commenced; or
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the Existing Building;
- (ff) "Vancouver" has the meaning ascribed to that term in Recital B(ii); and
- (gg) "*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 Building(s) 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, at its sole cost and expense, alter and convert the Existing Building to contain five (5) Housing Units and construct a three-storey infill two-family dwelling at the rear of the site 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, all to the satisfaction of the City;

- (c) throughout the Term, all of the Housing Units in the Building(s) 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, 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 For Rental Housing Unit, as applicable) is sold or otherwise transferred together and as a block to the same owner, and subject further to Section 10.9;
- (f) throughout the Term, it will not suffer, cause or permit the Lands or the Building(s) (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;
- (g) 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(e), and any subdivision of the Lands or the Building(s) (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(f), 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;
- (h) throughout the Term, it will insure, or cause to be insured, the Building(s) 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;
- (i) throughout the Term, it will keep and maintain the Building(s) 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;
- (j) prior to the issuance of the Development Permit the Owner will provide to the General Manager of Arts, Culture and Community Services, in form and contents satisfactory to the General Manager of Arts, Culture and Community Services, a notarized declaration which demonstrates that each Eligible Tenant has been given written notice of the Owner's intent to redevelop the property; that indicates the number of units occupied on the date of the notice; and includes

copies of a letter addressed to each Eligible Tenant summarizing the Tenant Relocation Plan offer and signed as received by each Eligible Tenant; and

- (k) if any of the Building(s) is destroyed or demolished before the end of the 60th anniversary of the date when the final Occupancy Permit is issued for the Existing 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 Building(s) 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 RETURNING TENANTS

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

- (a) it will provide each Eligible Tenant with a right of first refusal to occupy a Rental Housing Unit that is of a comparable or closest available comparable type and size to their current unit in the Existing Building, in the Existing Building or the New Building following issuance of the Occupancy Permit with a starting rent as set forth in the Tenant Relocation Plan as follows:
- (i) \$1,680 per month for a studio unit, being a 20% discount on the starting rent of \$2,100 per month;
 - (ii) \$1,920 per month for a one bedroom unit, being a 20% discount on the starting rent of \$2,400 per month;
 - (iii) \$3,600 per month for a three bedroom unit, being a 20% discount on the starting rent of \$4,500 per month; and
 - (iv) \$4,000 per month for a four bedroom unit, being a 20% discount on the starting rent of \$5,000 per month;
- (b) it will provide all Eligible Tenants with the notice, rent allowance, Moving Expenses and assistance and other benefits and assistance set out in the Tenant Relocation Plan; and
- (c) it will in all other respects comply with and fulfill the terms and conditions set out in the Tenant Relocation Plan.

ARTICLE 4 BUILDING PERMIT RESTRICTION ON THE LANDS

4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the Building(s), that:

- (a) the Owner will not apply for any Building Permit, and will take no action, directly or indirectly, to compel the issuance of any Building Permit, until such time as the Owner has delivered, to the General Manager of Arts, Culture and Community Services, an Interim Tenant Relocation Report in form and contents satisfactory to the General Manager of Arts, Culture and Community Services; and
 - (b) the City will be under no obligation to issue any Building Permit, notwithstanding compliance by the Owner with all other prerequisites to the issuance of a Building Permit, until such time as the Owner has complied with Section 4.1(a).
- 4.2 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 a Building Permit for the Building(s) until there is compliance with the provisions of this Article 4.

**ARTICLE 5
OCCUPANCY RESTRICTION ON THE LANDS**

- 5.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the Building(s), that:
- (a) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the Building(s), and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for the Building(s), until such time as the Owner has delivered, to the General Manager of Arts, Culture and Community Services, in form and substance satisfactory to the General Manager of Arts, Culture and Community Services:
 - (i) proof of the insurance, consistent with the requirements of Section 2.1(h), is in force and effect;
 - (ii) confirmation that the Tenant Relocation Plan has been complied with;
 - (iii) particulars regarding Returning Tenants including the unit number and type to be occupied by each and the starting rent that will be payable, together with evidence substantiating the rent discount; and
 - (iv) a final Tenant Relocation Report; and
 - (b) the City will be under no obligation to issue any Occupancy Permit for the Building(s), or any part thereof, notwithstanding completion of alteration and conversion of the Existing Buildings until such time as the Owner has complied with Section 5.1(a).
- 5.2 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 Building(s) until there is compliance with the provisions of this Article 5.

**ARTICLE 6
RECORD KEEPING**

- 6.1 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. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

**ARTICLE 7
ENFORCEMENT**

- 7.1 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 8
RELEASE AND INDEMNITY**

- 8.1 Release and Indemnity. Subject to Section 8.2, 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 alteration and conversion of the Existing Buildings 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; and

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

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

The indemnities in this Article 8 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

8.2 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 8.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 8.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 8.2(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 8.2(b); and

- (c) Regardless of whether the claim is being defended under Section 8.2(a) or Section 8.2(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.

8.3 Survival of Release and Indemnities. The release and indemnities in this Article 8 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 9
NOTICES**

9.1 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 Arts, Culture and Community Services and the Director of Legal Services

If to the Owner:

Plan A - 1517 Comox Street Ltd.
c/o Bridgehouse Law LLP
900 - 900 West Hastings Street
Vancouver, British Columbia
V6C 1E5

Attention: Falko Wong

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 10
MISCELLANEOUS**

10.1 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.

- 10.2 **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.
- 10.3 **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.
- 10.4 **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.
- 10.5 **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.
- 10.6 **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.
- 10.7 **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.
- 10.8 **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.

- 10.9 **Sale or Transfer of Lands.** Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the Building(s) 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(e) and 2.1(f), 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 10.9 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).
- 10.10 **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.
- 10.11 **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 CA7302190 and the Assignment of Rents registered under number CA7302191;
- (b) "Existing Chargeholder" means CANADIAN WESTERN BANK;
- (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