

**EXPLANATION****A By-law to amend License By-law No. 4450  
Regarding Waiver of Fees for Amendments for Expanded Service Area**

Following the Special Council Meeting on May 27, 2020, Council resolved to amend the License By-law regarding waiver of fees for amendments for expanded service area. Enactment of the attached By-law will implement Council's resolution.

Director of Legal Services  
June 9, 2020

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

**A By-law to amend License By-law No. 4450  
Regarding Waiver of Fees for Amendments for Expanded Service Area**

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

1. This By-law amends the indicated provisions of the License By-law.
2. In Part 2 of Schedule B, Miscellaneous Service Fees, Council adds “, excluding applications to temporarily expand an applicant’s service area until October 31, 2020” after “Fee for assessing and providing comments on an application for a temporary amendment to a liquor license requesting any other change to a liquor license”.
3. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
4. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Mayor

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

**EXPLANATION**

**A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area from RS-1 to RM-8A  
re: 6908-6968 Ash Street and 575 West 54th Avenue**

Following the Public Hearing on July 9 and 11, 2019, Council resolved to rezone 6908-6968 Ash Street and 575 West 54<sup>th</sup> Avenue from RS-1 (Single Family) District to RM-8A (Multiple Dwelling) District. The Director of Legal Services and the General Manager of Planning, Urban Design and Sustainability have advised that all prior to conditions have been met, and enactment of the attached By-law will implement Council's resolution.

Director of Legal Services  
June 9, 2020

6908-6968 Ash Street and  
575 West 54th Avenue

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

**A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area from RS-1 to RM-8A**

1. This By-law amends the indicated provisions of the Zoning and Development By-law No. 3575.
2. This by-law amends the Zoning District plan attached as Schedule D to By-law No.3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-755 (g) attached as Schedule A to this by-law, and incorporates Schedule A into Schedule D of By-law No. 3575.
3. The area shown within the heavy black outline on Schedule A is rezoned and moved from the RS-1 District Schedule to the RM-8A District Schedule.
4. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
5. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2020

\_\_\_\_\_  
Mayor

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

**Schedule A**



The properties outlined in black ( **█** ) are rezoned:  
 From **RS-1** to **RM-8A**

**Z-755 (g)**

RZ - 6908-6968 Ash Street & 575 West 54th Avenue

map: 1 of 1  
 scale: NTS



**City of Vancouver**

date: 2019-05-08

**EXPLANATION****A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area from RS-1 to RM-8A  
re: 6808-6888 Ash Street**

Following the Public Hearing on July 9 and 11, 2019, Council resolved to rezone 6808 - 6888 Ash Street from RS-1 (Single Family) District to RM-8A (Multiple Dwelling) District. The Director of Legal Services and the General Manager of Planning, Urban Design and Sustainability have advised that all prior to conditions have been met, and enactment of the attached By-law will implement Council's resolution.

Director of Legal Services  
June 9, 2020

6808-6888 Ash Street

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

**A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area from RS-1 to RM-8A**

1. This By-law amends the indicated provisions of the Zoning and Development By-law No. 3575.
2. This by-law amends the Zoning District plan attached as Schedule D to By-law No.3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-755 (f) attached as Schedule A to this by-law, and incorporates Schedule A into Schedule D of By-law No. 3575.
3. The area shown within the heavy black outline on Schedule A is rezoned and moved from the RS-1 District Schedule to the RM-8A District Schedule.
4. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
5. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this                  day of                  , 2020

\_\_\_\_\_  
Mayor

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

**Schedule A**



The properties outlined in black (            ) are rezoned:  
 From **RS-1** to **RM-8A**

**Z-755 (f)**

RZ - 6808-6888 Ash Street

map: 1 of 1  
 scale: NTS



**City of Vancouver**

date: 2019-05-08

Langara Golf Course

CAMBIE ST

ASH ST

W 52ND AV

W 53RD AV

W 54TH AV

CAMBIE  
 PARK



**EXPLANATION****A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area from RS-1 to RM-8A  
re: 768-780 West 27th Avenue**

Following the Public Hearing on September 12, 2019, Council resolved to rezone 768-780 West 27th Avenue from RS-1 (One-Family Dwelling) District to RM-8A (Multiple Dwelling) District. The Director of Legal Services has advised that all prior to conditions have been met, and enactment of the attached By-law will implement Council's resolution.

Director of Legal Services  
June 9, 2020

**BY-LAW NO.**

**A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area from RS-1 to RM-8A**

1. This By-law amends the indicated provisions of the Zoning and Development By-law No. 3575.

2. This By-law amends the Zoning District plan attached as Schedule D to By-law No.3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-757 (a) attached as Schedule A to this By-law, and incorporates Schedule A into Schedule D of By-law No. 3575.

3. The area shown within the heavy black outline on Schedule A is rezoned and moved from the RS-1 District Schedule to the RM-8A District Schedule.

4. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

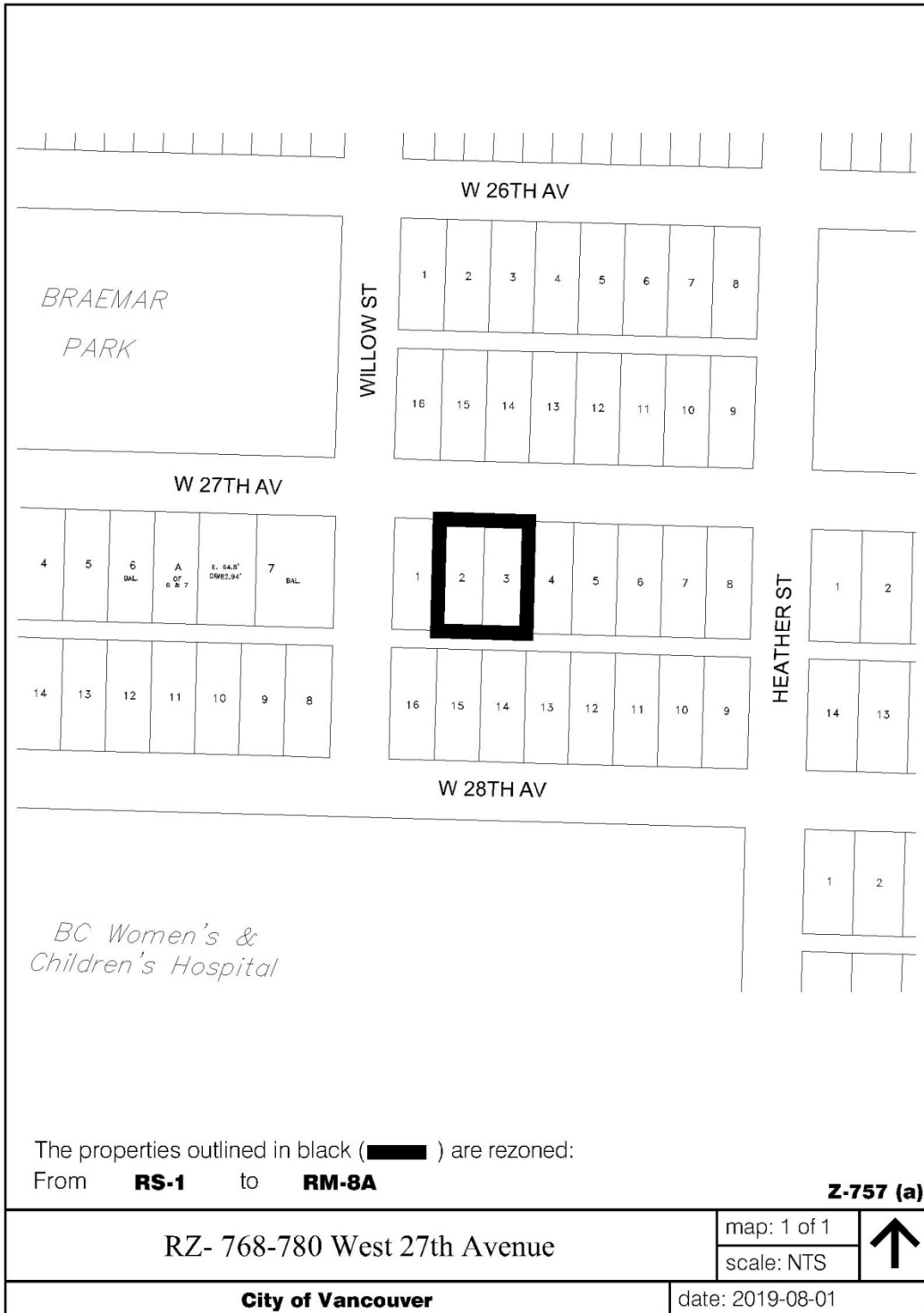
5. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this                      day of                      , 2020

\_\_\_\_\_  
Mayor

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

**Schedule A**



**EXPLANATION****A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area from RS-1 to RM-8A  
re: 628-682 West 28th Avenue and 4435 Ash Street**

Following the Public Hearing on April 4, 2019, Council resolved to rezone 628-682 West 28th Avenue and 4435 Ash Street from RS-1 (One-Family Dwelling) District to RM-8A (Multiple Dwelling) District. The Director of Legal Services has advised that all prior to conditions have been met, and enactment of the attached By-law will implement Council's resolution.

Director of Legal Services  
June 9, 2020

628-682 West 28th Avenue and  
4435 Ash Street

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

**A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area from RS-1 to RM-8A**

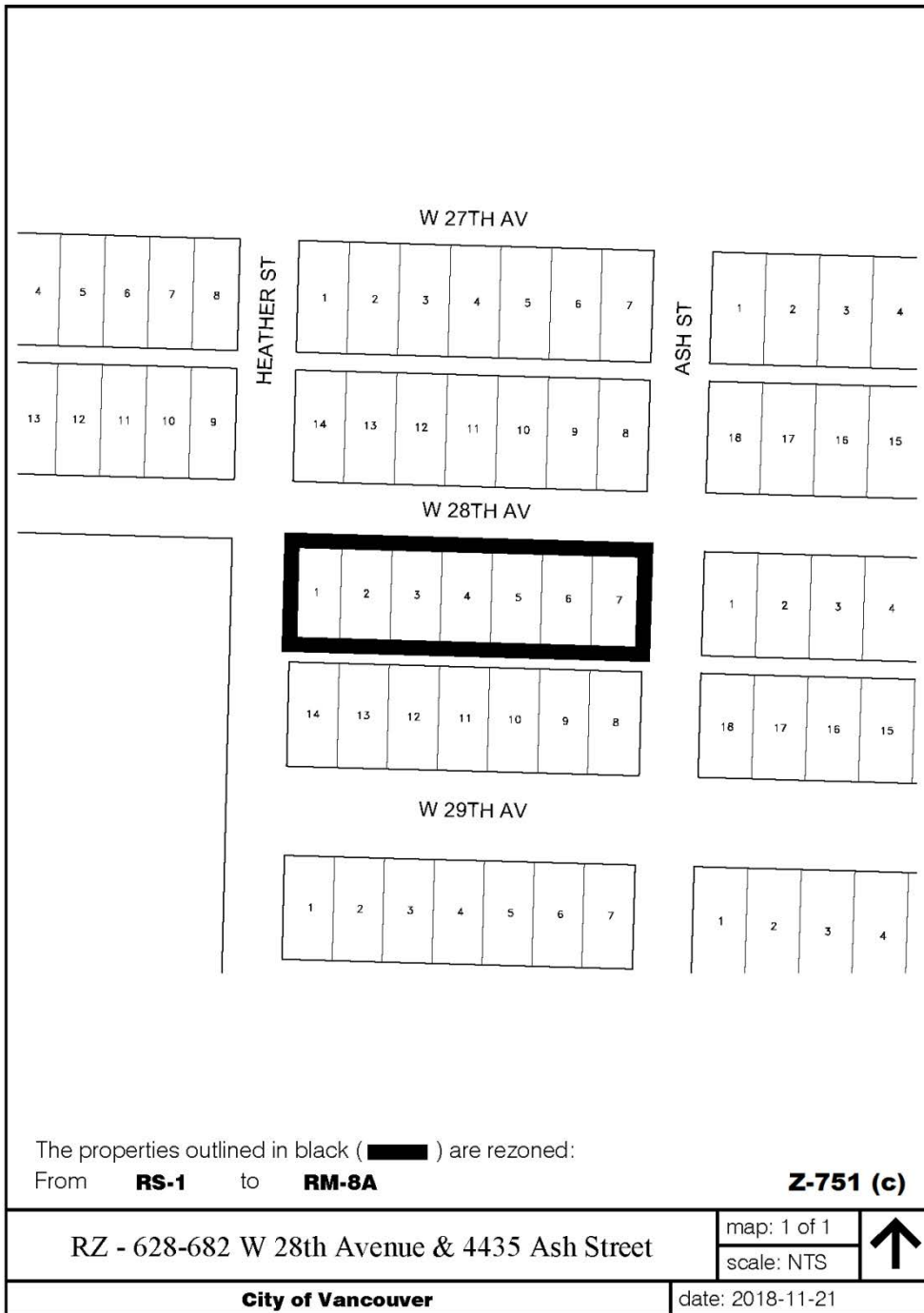
1. This By-law amends the indicated provisions of the Zoning and Development By-law No. 3575.
2. This by-law amends the Zoning District plan attached as Schedule D to By-law No.3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-751 (c) attached as Schedule A to this by-law, and incorporates Schedule A into Schedule D of By-law No. 3575.
3. The area shown within the heavy black outline on Schedule A is rezoned and moved from the RS-1 District Schedule to the RM-8A District Schedule.
4. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
5. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this                      day of                      , 2020

\_\_\_\_\_  
Mayor

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

**Schedule A**



**EXPLANATION****A By-law to amend the Parking By-law  
Re: 5130-5170 Cambie Street**

After the public hearing on March 13, 2018, Council resolved to add 5130-5170 Cambie Street to Schedule C of the Parking By-law. The Director of Planning has advised that all prior to conditions have been satisfied, and enactment of the attached By-law will implement Council's resolution.

Director of Legal Services  
June 9, 2020





**EXPLANATION****Authorization to enter into a Housing Agreement  
Re: 3435 East Hastings Street**

After the public hearing on January 17, 2019, Council approved in principle the land owner's application to rezone the above noted property from C-2C1 (Commercial) District to CD-1 (Comprehensive Development) District, 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, 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 9, 2020

3435 East Hastings

**BY-LAW NO.**

**A By-law to enact a Housing Agreement  
for 3435 East Hastings 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:

No PID	Lot 1 of the South ½ of Lot 48 Town of Hastings Suburban Lands Plan EPP98751
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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.

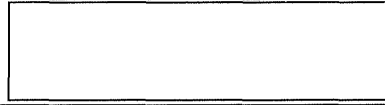
ENACTED by Council this                  day of                  , 2020

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Acting 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 designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)  
**Kornfeld LLP**  
**Barristers & Solicitors** Tel. No. (604) 331-8300 / LTO #010448  
**1100-505 Burrard Street** Housing Agreement  
**Vancouver BC V7X 1M5** File No. 515002DEV191

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
 [PID] [LEGAL DESCRIPTION]  
**NO PID NMBR LOT 1 OF THE SOUTH 1/2 OF LOT 48 TOWN OF HASTINGS SUBURBAN  
 LANDS PLAN EPP98751**  
 STC? YES  
 Related Plan Number: **EPP98751**

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION  
**Covenant** Section 219, Entire Instrument


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):  
**51561 B.C. LTD. (INC. NO. BC0051561)**

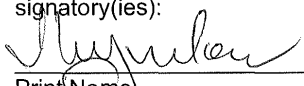
6. TRANSFEREE(S): (including postal address(es) and postal code(s))  
**CITY OF VANCOUVER**  
**453 WEST 12TH AVENUE**  
**VANCOUVER BRITISH COLUMBIA**  
**V5VY 1V4 CANADA**

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.

Transferor Signature(s)  
  
 Jada M. Teller  
 Barrister & Solicitor  
 Kornfeld LLP  
 Barristers & Solicitors  
 1100-505 Burrard Street  
 Vancouver, BC V7X 1M5  
 Phone: (604) 331-8300

Execution Date		
Y	M	D
20	05	28

Transferor(s) Signature(s)  
 51561 B.C. LTD., by its authorized signatory(ies):  
  
 Print Name  
 Irina Reznika  
 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)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Execution Date

Y	M	D

Transferor / Borrower / Party Signature(s)

CITY OF VANCOUVER, by its  
authorized signatory:

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.

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT  
FOR-PROFIT AFFORDABLE RENTAL HOUSING  
3435 EAST HASTINGS STREET

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, 51561 B.C. 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-2C1 (Commercial) District to CD-1 (Comprehensive Development) District (the "**Rezoning Application**") to permit the development of a six-storey mixed-use building with commercial at grade and 45 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 has requested and the City has agreed to replace the Original Housing Agreement with the housing agreement herein to be enacted by a by-law pursuant to Section 565.2 of the *Vancouver Charter* securing all residential units in the New Building as For-Profit Affordable Rental Housing pursuant to Section 3.1A of the Vancouver DCL By-law for the longer of 60 years and life of the New Building.

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:

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KLLP v1

Housing Agreement and Building Use Covenant  
3435 East Hastings Street

- (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 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 51561 B.C. 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(c) 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) the average initial monthly starting rents for each unit type after Occupancy Permit issuance will be at or below the following amounts, as evidenced by the rent roll attached hereto as Schedule A:
  - (i) for a studio - \$1,496;
  - (ii) for a one-bedroom - \$1,730;
  - (iii) for a two-bedroom - \$2,505; and
  - (iv) for a three-bedroom - \$3,365,

subject to such annual increases as may be authorized by the Vancouver DCL By-law (see Section 3.1B(c)) as of the date of this Agreement;

- (e) 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;

- (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 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;
- (g) throughout the Term, it will not suffer, cause or permit, such portion of the New Building (or any replacement building(s) on the Lands, as applicable) containing the For-Profit Affordable Rental Housing Units 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, but nothing herein will restrict the Owner from subdividing that portion of the New Building containing the For-Profit Affordable Rental Housing Units from the balance of the New Building, so long as all of the Housing Units are not subdivided by strata plan;
- (h) throughout the Term, that any sale of any For-Profit Affordable Rental Housing Unit 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 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 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;
- (j) 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;
- (k) 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;
- (l) 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
- (m) 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 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 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 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(k), is in force and effect, in form and substance satisfactory to the 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 of/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(k).

**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;
  - 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, but except to the extent that any such Losses are the result of, or relate in any way to any gross negligence or wrongful intentional 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;

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, but except to the extent that any such Losses are the result of, or relate in any way to any gross negligence or wrongful intentional acts or omissions on the part of the City or the City Personnel.

- (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 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 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 6 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

## ARTICLE 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:

51561 B.C. Ltd.  
Suite 604 - 700 West Pender Street  
Vancouver, B.C. V6C 1G8

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 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.
- 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, and in such case the Owner will be released of its obligations hereunder. The provisions in this Section 8.8 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.

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

Schedule A  
Rent Roll

The Narrows - 3435 East Hastings, Vancouver  
Projected Rent Roll 2018 RENTAL 100 CAP

Unit Count	Unit #	Bedroom Type	Size of Unit (Net area)	MARKET Rent	Monthly P/F
1	207	1 Bed	517 sf	\$ 1,400.00	\$ 0.00
2	203	Studio	422 sf	\$ 1,450.00	\$ 0.44
3	204	Studio	416 sf	\$ 1,450.00	\$ 0.49
4	205	Studio	416 sf	\$ 1,450.00	\$ 0.49
5	206	Studio	429 sf	\$ 1,450.00	\$ 0.43
6	207	Studio	414 sf	\$ 1,450.00	\$ 0.49
7	209	Studio	507 sf	\$ 1,499.00	\$ 2.06
8	269	1 bed	678 sf	\$ 1,899.00	\$ 2.30
9	240	3 bed	978 sf	\$ 2,400.00	\$ 3.27
10	211	2 bed	686 sf	\$ 2,299.00	\$ 1.84
11	246	2 bed	774 sf	\$ 2,642.00	\$ 3.51
12	202	1 Bed	517 sf	\$ 1,639.00	\$ 1.19
13	201	Studio	422 sf	\$ 1,485.00	\$ 0.82
14	208	2 house	426 sf	\$ 1,485.00	\$ 0.97
15	205	Studio	416 sf	\$ 1,485.00	\$ 0.97
16	206	Studio	420 sf	\$ 1,485.00	\$ 0.91
17	207	Studio	415 sf	\$ 1,485.00	\$ 1.39
18	208	Studio	527 sf	\$ 1,525.00	\$ 1.91
19	209	1 bed	690 sf	\$ 1,650.00	\$ 2.05
20	249	3 bed	977 sf	\$ 3,560.00	\$ 3.38
21	214	2 bed	820 sf	\$ 2,500.00	\$ 3.02
22	248	2 bed	774 sf	\$ 2,425.00	\$ 3.12
23	402	1 Bed	517 sf	\$ 1,675.00	\$ 0.24
24	403	Studio	422 sf	\$ 1,900.00	\$ 3.55
25	404	Studio	426 sf	\$ 1,900.00	\$ 3.43
26	405	Studio	426 sf	\$ 1,900.00	\$ 3.64
27	406	Studio	420 sf	\$ 1,500.00	\$ 0.57
28	407	Studio	415 sf	\$ 1,500.00	\$ 0.67
29	408	Studio	507 sf	\$ 1,550.00	\$ 2.09
30	409	1 bed	690 sf	\$ 1,860.00	\$ 2.49
31	410	3 bed	977 sf	\$ 4,000.00	\$ 4.41
32	411	2 bed	820 sf	\$ 2,500.00	\$ 3.09
33	503	2 bed	774 sf	\$ 2,425.00	\$ 3.23
34	505	1 Bed	517 sf	\$ 1,675.00	\$ 0.21
35	503	Studio	422 sf	\$ 1,525.00	\$ 0.69
36	504	Studio	416 sf	\$ 1,525.00	\$ 0.67
37	505	Studio	416 sf	\$ 1,525.00	\$ 0.82
38	506	Studio	420 sf	\$ 1,525.00	\$ 0.68
39	507	Studio	415 sf	\$ 1,525.00	\$ 0.67
40	509	Studio	507 sf	\$ 1,525.00	\$ 0.63
41	509	3 bed	1008 sf	\$ 3,500.00	\$ 3.33
42	510	2 bed	820 sf	\$ 2,550.00	\$ 3.15
43	606	2 bed	756 sf	\$ 2,500.00	\$ 3.31
44	602	2 bed	795 sf	\$ 2,500.00	\$ 3.14
45	605	2 bed	800 sf	\$ 2,525.00	\$ 3.33
46	604	2 bed	824 sf	\$ 2,600.00	\$ 3.59
47	605	3 bed	1,040 sf	\$ 3,500.00	\$ 3.87
48	606	2 bed	801 sf	\$ 3,525.00	\$ 3.43
			22,412	\$ 55,759.00	
				\$ 11,531.66	

Suite	Number of Units	Sum Unit Monthly Rent	Narrows Average Rents	2018 Initial Rent Cap	Over/(Under)
Studio	24	\$53,308	\$1,496	\$1,485	\$ 1,113
1 bed	7	\$12,119	\$1,730	\$1,789	\$ (579)
2 bed	11	\$17,554	\$2,605	\$1,505	\$ 1,100
3 bed	6	\$10,190	\$3,365	\$1,965	\$ 1,400

Suite	2018 Initial Rent Cap	2018 RTO Increase	2019 Max Monthly Rent	2020 RTO Increase	2020 Max Monthly Rent
Studio	\$1,496	2.7%	\$1,533.40	2.6%	\$1,573.27
1 bed	\$1,789	2.9%	\$1,773.25	2.6%	\$1,818.55
2 bed	\$1,505	2.9%	\$1,547.43	2.6%	\$1,595.36
3 bed	\$1,965	2.9%	\$1,949.11	2.6%	\$1,998.87

END OF DOCUMENT

## EXPLANATION

**Authorization to enter into a Housing Agreement**  
**Re: 686-688 East 22nd Avenue, 3811-3891 Fraser Street, and 679 East 23rd Avenue**

After a Public Hearing on July 9 and 11, 2019, to consider a rezoning application, the application was approved by Council in principle, subject to fulfilment of the condition that the owner of the subject lands 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 pursuant to Section 565.2 of the *Vancouver Charter*.

Such a Housing Agreement has been accepted by the owner applicant and its lenders. Enactment of the attached By-law will complete the process to implement Council's resolution regarding a Housing Agreement.

Director of Legal Services  
June 9, 2020

686-688 East 22nd Avenue,  
3811-3891 Fraser Street, and  
679 East 23rd Avenue

**BY-LAW NO.**

**A By-law to enact a Housing Agreement  
for 686-688 East 22nd Avenue, 3811-3891 Fraser Street, and 679 East 23rd 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 that are anticipated to be described as:

PID: No PID  
Number

Lot A Block 20 District Lot 301 Group 1 New Westminster  
District Plan EPP98052

in substantially the form and substance of the Housing Agreement attached to this By-law as Schedule A, 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       , 2020

\_\_\_\_\_  
Mayor

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

# Schedule A

FORM C\_V25 (Charge)

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

PAGE 1 OF 21 PAGES

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.4(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)  
**Norton Rose Fulbright Canada LLP**  
**Barristers & Solicitors** Phone: 604.687.6575  
**#1800 - 510 West Georgia Street** File No.: 1000381357  
**Vancouver BC V6B 0M3** Housing Agreement

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
 [PID] [LEGAL DESCRIPTION]  
**NO PID NMBR LOT A BLOCK 20 DISTRICT LOT 301 GROUP 1 NEW WESTMINSTER**  
**DISTRICT PLAN EPP98052**

STC? YES  
 Related Plan Number: **EPP98052**

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):  
**SEE SCHEDULE**

6. TRANSFEREE(S): (including postal address(es) and postal code(s))  
**CITY OF VANCOUVER**

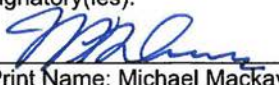
**453 WEST 12TH AVENUE**  
**VANCOUVER BRITISH COLUMBIA**  
**V5Y 1V4 CANADA**

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)  
  
**Liza Volpiana**  
**Barrister & Solicitor**  
**Norton Rose Fulbright Canada LLP**  
**1800 - 510 West Georgia Street**  
**Vancouver, B.C. V6B 0M3**  
**(604) 641-4834**

Execution Date		
Y	M	D
20	05	28

Transferor(s) Signature(s)  
**FRASER STREET PROJECT**  
**NOMINEE INC., by its authorized**  
**signatory(ies):**  
  
**Print Name: Michael Mackay**

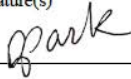
Print Name:

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)



\_\_\_\_\_  
Daniel Jae Dong Park  
A Commissioner for Taking Affidavits  
for Province of British Columbia  
34th Floor, 650 West Georgia Street  
Vancouver, BC V6B 4N7  
Commission Expiration Date: July 31, 2021

**Execution Date**

Y	M	D
20	05	29
20	05	28
20	05	28

Transferor / Borrower / Party Signature(s)

THE BANK OF NOVA SCOTIA, by its  
authorized signatory(ies):



Print Name: **Winston Wah Szeto**  
Director, Real Estate Banking

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

\_\_\_\_\_  
Liza Volpiana

Barrister & Solicitor

Norton Rose Fulbright Canada LLP  
1800 - 510 West Georgia Street  
Vancouver, B.C. V6B 0M3  
(604) 641-4834

D.C.M. HOLDINGS INC., by its  
authorized signatory(ies):

\_\_\_\_\_  
Print Name: Michael Mackay

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

\_\_\_\_\_  
Liza Volpiana

Barrister & Solicitor

Norton Rose Fulbright Canada LLP  
1800 - 510 West Georgia Street  
Vancouver, B.C. V6B 0M3  
(604) 641-4834

M.D.K.M. MANAGEMENT LTD., by its  
authorized signatory(ies):

\_\_\_\_\_  
Print Name: Michael Mackay

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)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_

Y	M	D
20	05	28
20	05	28

THE BANK OF NOVA SCOTIA, by its  
authorized signatory(ies):

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


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



Liza Volpiana  
Barrister & Solicitor  
Norton Rose Fulbright Canada LLP  
1800 - 510 West Georgia Street  
Vancouver, B.C. V6B 0M3  
(604) 641-4834

20 05 28

D.C.M. HOLDINGS INC., by its  
authorized signatory(ies):



\_\_\_\_\_  
Print Name: Michael Mackay

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



Liza Volpiana  
Barrister & Solicitor  
Norton Rose Fulbright Canada LLP  
1800 - 510 West Georgia Street  
Vancouver, B.C. V6B 0M3  
(604) 641-4834

20 05 28

M.D.K.M. MANAGEMENT LTD., by its  
authorized signatory(ies):



\_\_\_\_\_  
Print Name: Michael Mackay

\_\_\_\_\_  
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)

Neil R. Davie\*

Barrister & Solicitor  
Norton Rose Fulbright Canada LLP  
1800 - 510 West Georgia Street  
Vancouver, B.C. V6B 0M3  
(604) 641-4930  
\*Law Corporation

Execution Date

Y	M	D
20	05	28

Transferor / Borrower / Party Signature(s)

INTERCITY PROJECTS VANCOUVER LTD., by its authorized signatory(ies):

Linda S. Mari  
Print Name: Linda Mari

Print Name:

CITY OF VANCOUVER, by its authorized signatory:

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 E

SCHEDULE

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**Covenant**

**Section 219 Covenant**

**Entire Instrument**

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**Priority Agreement**

**Granting the above Covenant priority over  
Mortgage CA6652675 and Assignment of Rents  
CA6652676**

**Page 20**

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**Priority Agreement**

**Granting the above Covenant priority over  
Mortgage CA6669557 and Assignment of Rents  
CA6669558**

**Page 21**

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

LAND TITLE ACT  
FORM E

SCHEDULE

ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

**5. TRANSFEROR(S):**

FRASER STREET PROJECT NOMINEE INC. (INC. NO. BC1148285)

THE BANK OF NOVA SCOTIA (AS TO PRIORITY)

D.C.M. HOLDINGS INC. (INC. NO. BC0865210) (AS TO PRIORITY)

M.D.K.M. MANAGEMENT LTD. (INC. NO. BC0318317) (AS TO PRIORITY)

INTERCITY PROJECTS VANCOUVER LTD. (INC. NO. BC1150551) (AS TO PRIORITY)

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT  
(MARKET RENTAL)

686-688 East 22nd Avenue, 3811-3891 Fraser Street, and 679 East 23rd Avenue

Introduction

- A. It is understood and agreed that this Agreement will be read as follows:
- I. the Transferor, FRASER STREET PROJECT NOMINEE INC., is called the "Owner", as more particularly defined in Section 1.1; and
  - II. the Transferee, the 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 geographic location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands from RT-2 (Two-Family Dwelling) District to CD-1 (Comprehensive Development) District to permit the development of a six-storey mixed-use building with commercial uses at grade and 125 secured market rental housing units (the "Development"), and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council, in principle, subject to *inter alia* fulfillment of the condition that the Owner, at no cost to the City, 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 and Section 219 Covenant securing all residential units in the development as secured market rental housing units for the longer of 60 years and the life of the building, and subject to the following additional conditions:
- I. a no separate sales covenant;
  - ii. a no stratification covenant;
  - iii. that none of such units will be rented for less than one month at a time; and
  - IV. such other terms and conditions as the General Manager of Arts, Culture, and Community Services and the Director of Legal Services may in their sole discretion require,
- (the "Market Rental Housing Condition"); and
- D. The Owner and the City are now entering into this Agreement to satisfy the Market Rental Housing Condition.

Consideration

NOW THEREFORE THIS AGREEMENT WITNESSES that for Ten (\$10) Dollars and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged and

agreed to by the parties), 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 Building:

**Terms of Agreement**

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** In this Agreement the following terms have the following definitions, unless specifically otherwise provided in this Agreement:

- (a) **"Agreement"** means this agreement, including the foregoing Recitals, and any Schedules attached hereto;
- (b) **"Building"** means any building or structure on the Lands, including additions and alterations to an existing building or structure, at any time following the date this Agreement is fully executed, all as contemplated by the Rezoning and the Development Permit, and includes any portion of 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 or the Development Permit;
- (c) **"Business Corporations Act"** means the *Business Corporations Act*, S.B.C. 2002, c. 57, and all amendments thereto and re-enactments thereof;
- (d) **"City"** or **"City of Vancouver"** means the City of Vancouver in its capacity as a corporate entity;
- (e) **"City Manager"** means the chief administrator, from time to time, of the City and his or 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"** has the meaning ascribed to that term in Recital C above;
- (i) **"Development Permit"** means a development permit issued by the City at any time following the date this Agreement is fully executed by the parties hereto;
- (j) **"Director of Legal Services"** means the chief administrator, from time to time, of the City's Legal Services Department and his or her successors in function and their respective nominees;
- (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 or her successors in function and their respective nominees;

- (l) **“High-Density Housing for Families With Children Guidelines”** means the City’s High-Density Housing for Families With Children Guidelines adopted by the City’s elected council on March 24, 1992, as the same may be amended, supplemented and/or replaced from time to time;
- (m) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (n) **“Lands”** means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 of the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and includes any parcels into which such land is consolidated or further subdivided (including, without limitation, a subdivision pursuant to the *Land Title Act* and a subdivision pursuant to the *Strata Property Act*);
- (o) **“Losses”** means all actions, causes of action, claims, compensation, costs, demands, damages, expenses, fines, judgements, legal obligations, liabilities, losses, orders, penalties, suits and builders liens of every nature or kind whatsoever (whether direct, indirect or consequential, including, without limitation, in respect of, incidental to or resulting from any consequential injuries to or death of persons or damage to property or loss of profits and loss of use and damages arising out of delays) and all legal costs on a solicitor-and-own-client basis;
- (p) **“Market Rental Housing”** means a dwelling unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at 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;
- (q) **“Market Rental Housing Condition”** has the meaning ascribed to that term in Recital C;
- (r) **“Market Rental Housing Units”** has the meaning ascribed to that term in Section 2.1(b);
- (s) **“Market Rental Housing Units Air Space Parcel”** has the meaning ascribed to that term in Section 3.1;
- (t) **“Occupancy Permit”** means a permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing the use and occupation of any Building, development or partial development on the Lands or any portion of the Lands;
- (u) **“Owner”** means the Transferor, including its successors and permitted assigns and any successors in title to the Lands or a portion of the Lands;

- (v) **“Related Person”** means, where the registered or beneficial owner of the Market Rental Housing Units is:
  - (i) a corporation (as that term is defined in the *Business Corporations Act*), 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;
- (w) **“Residential Tenancy Act”** means the *Residential Tenancy Act*, S.B.C. 2002, c. 78, and all amendments thereto and re-enactments thereof;
- (x) **“Rezoning”** means the rezoning of the Lands described in Recital C of this Agreement;
- (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 Building is demolished or substantially destroyed; or
  - (ii) 60 years from the date when the final Occupancy Permit is issued for the Market Rental Housing Units; and
- (z) **“Vancouver Charter”** means the *Vancouver Charter*, S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof.

## 1.2 Interpretation.

- (a) Any interest in land created hereby, including the interests noted in the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and found in certain Articles, Sections, paragraphs or parts of this Agreement, will be construed, interpreted and given force in the context of those portions of this Agreement:
  - (i) that define the terms used in this Agreement;
  - (ii) that deal with the interpretation of this Agreement; and
  - (iii) that are otherwise of general application.
- (b) The word “including” when following any general statement, term, or matter is not to be construed to limit such general statement, term, or matter to the specific items set forth immediately following such word or to similar items whether or not non-limiting language such as “without limitation” or “but not

limited to” or words of similar import are used with reference thereto, but rather such general statement, term, or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

- (c) Any Schedules attached to this Agreement constitute an integral part of this Agreement.
- (d) The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.
- (e) Words importing the singular number only will include the plural and *vice versa*, words importing the masculine gender will include the feminine and neuter genders and *vice versa*, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and *vice versa*.
- (f) 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.
- (g) 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 General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached is fully executed and to subsequent amendments to or re-enactments or replacements of such statute or regulations.

## ARTICLE 2 RESTRICTIONS ON USE AND SUBDIVISION

- 2.1 **Restrictions.** The Owner covenants and agrees with the City, in respect of the use of the Lands and the Building, that:
- (a) throughout the Term, the Lands and the Building will not be used in any way that is inconsistent with the terms of this Agreement;
  - (b) if it carries out the development on the Lands after the date of this Agreement as contemplated in the Development Permit, it will construct at its sole cost and expense, and throughout the Term will maintain not less than 125 residential units on the Lands (the “**Market Rental Housing Units**”), all in accordance with the Market Rental Housing Condition, the Development

Permit, any building permit issued pursuant thereto, all applicable City by-laws and policies, and the requirements of this Agreement;

- (c) throughout the Term, not less than thirty-five percent (35%) of the Market Rental Housing Units will have at least two (2) bedrooms and will be designed to be suitable for families with children in accordance with the High-Density Housing for Families With Children Guidelines;
- (d) throughout the Term, the Market Rental Housing Units will only be used for the purpose of providing Rental Housing;
- (e) throughout the Term, none of the Market Rental Housing Units will be rented for less than one month at a time;
- (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 Market Rental Housing Unit to be sold or otherwise transferred unless title to every Market Rental Housing Unit is sold or otherwise transferred together and as a block to the same legal or beneficial owner, as applicable, subject to Section 8.1;
- (g) throughout the Term, it will not suffer, cause or permit the Building to be subdivided by subdivision plan, strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld, except as may be permitted by Article 3 below;
- (h) throughout the Term, any sale of a Market Rental Housing Unit in contravention of the covenant in Section 2.1(f), and any subdivision in contravention of Section 2.1(g), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (i) it will insure, or cause to be insured, the Building, the Market Rental Housing Units and all parts thereof to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands;
- (j) throughout the Term, it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition to the standard of a reasonable and prudent owner of similar buildings. If the Market Rental Housing Units or any part of any thereof are/is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred; and
- (k) if the Building is destroyed or demolished before the end of the 60<sup>th</sup> anniversary of the date the final Occupancy Permit for the Market Rental Housing Units is issued, then any replacement building(s) built on the Lands will also contain not less than the same number and type of replacement Market Rental Housing Units as the Building formerly contained, which replacement



Market Rental Housing Units will also be used only for the purpose of providing Rental Housing in accordance with the terms of this Agreement.

**ARTICLE 3  
SUBDIVISION OF THE LANDS AND THE BUILDING**

**3.1 Airspace Subdivision.** Notwithstanding Section 2.1(g):

- (a) subject to compliance by the Owner with all applicable requirements of the City's Approving Officer and the City's elected Council, this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands by the deposit of an air space subdivision plan, to enable:
  - (i) all of the Market Rental Housing Units to be contained within one air space parcel (the "**Market Rental Housing Units Air Space Parcel**"); and
  - (ii) other components of the Development to be contained within one or more other air space parcel(s) or a remainder parcel;
- (b) following such a subdivision and the issuance of a final Occupancy Permit for the Market Rental Housing Units Air Space Parcel, the Owner may apply to the City for a partial discharge of this Agreement with respect to any legal parcel other than the Market Rental Housing Units Air Space Parcel, and the City will on request of the Owner execute and deliver a registrable discharge of this Agreement in respect of such other parcel(s) provided, that:
  - (i) the Director of Legal Services is satisfied that such discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the Market Rental Housing Units or in respect of the Market Rental Housing Units Air Space Parcel pursuant to this Agreement;
  - (ii) any such discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
  - (iii) the City will have a reasonable amount of time to execute and return any such discharge; and
  - (iv) the preparation and registration of any such discharge will be without cost to the City.

**3.2 Partial Discharge.** Following such subdivision and partial discharge, this Agreement will be read and applied so that the obligations herein will apply only to any parcel in which Market Rental Housing Units are contained.

**ARTICLE 4  
OCCUPANCY RESTRICTION**

- 4.1 No Occupancy.** The Owner covenants and agrees with the City, in respect of the use of the Lands and the Building that the Lands and Building will not be used or occupied except as follows:
- (a) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the General Manager of Arts, Culture, and 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; and
  - (b) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the Building until such time as the Owner has complied with Section 3.1(a); and

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 Record Keeping.** The Owner will keep accurate records pertaining to the use and occupancy of the Market 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, subject to any applicable laws with respect to the privacy of such information. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

**ARTICLE 6  
ENFORCEMENT**

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

**ARTICLE 7  
RELEASE AND INDEMNITY**

- 7.1 Release and Indemnity.** Except in each case to the extent attributable to the wrongful intentional acts of the City or the City Personnel, and subject to Section 7.3, 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:
- (ii) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Building or any part thereof;
- (iii) withholding any permit pursuant to this Agreement; or
- (iv) exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or
- (v) 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.

**7.2 Nature of Indemnities.** 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.

**7.3 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 7.3(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 7.3(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 7.3(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 7.3(b).

- (c) Regardless of whether the claim is being defended under Section 7.3(a) or Section 7.3(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.

- 7.4 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 TRANSFER OF LANDS

- 8.1 Transfer of Lands.** The Owner covenants and agrees with the City that upon any sale, transfer or conveyance of the Lands charged by this Agreement, or any portion thereof, to any person, trust, corporation, partnership or other entity, the Owner will obtain from such person, trust, corporation, partnership or entity and deliver to the City a duly executed acknowledgement, satisfactory to the Director of Legal Services, of the terms of this Agreement and an assumption of the continuing obligations of the Owner pursuant to this Agreement relative to that portion of the Lands sold, transferred or conveyed to such person, trust, corporation, partnership or entity. Provided any such purchaser/transferee enters in to an assumption agreement as provided in this Section 8.1, the selling/transferring Owner shall not be bound by the continuing obligations of the Owner pursuant to this Agreement following such sale, transfer or conveyance relative to that portion of the Lands sold, transferred or conveyed.

**ARTICLE 9  
NOTICES**

9.1 **Notice.** Any notice, approval or request required or permitted to be given under this Agreement will be in writing and may be given by delivering such notice, approval or request, or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia or by personal delivery:

(a) in the case of the Owner addressed to it at:

**Fraser Street Project Nominee Inc.**  
2160-650 West Georgia Street  
Vancouver, BC  
V6B 4N7

Attention: President

(b) and in the case of the City addressed to it at:

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

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

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery of such notice, approval or request, or on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.

**ARTICLE 10  
MISCELLANEOUS**

10.1 **Agreement for Benefit of City.** The Owner and the City hereby acknowledge, agree and declare that this Agreement is entered into for the sole purpose of benefiting the City and, in particular, acknowledge, agree and declare that this Agreement is not designed to protect or promote the interests of the Owner or any mortgagee of the Owner, or any future owner or occupier of the Lands and any improvements on the Lands or any other person or corporation whatsoever, and the City may, at its sole option, execute a release of this Agreement at any time without liability to anyone for so doing.

10.2 **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 whether by strata plan, subdivision plan or otherwise, except as otherwise set out in Article 3.

- 10.3 **Amendments.** Any amendment to this Agreement will have no force or effect unless in writing and the City and the Owner have signed the amendments.
- 10.4 **Assignment by City.** The City, upon prior written notice to the Owner, may assign all or any part of this Agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing such public facilities and services as are contemplated by this Agreement; and the City may designate licensees and permittees for any and all purposes of this Agreement.
- 10.5 **City Court Costs.** In an action to enforce this Agreement in respect of which the Court determines that the position of the City will prevail, the City will be entitled to court costs on a solicitor-client basis.
- 10.6 **City's Other Rights Unaffected.** 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.
- 10.7 **Damages Insufficient.** The Owner acknowledges that damages may be an inadequate remedy for the City for any breach by the Owner of its obligations under this Agreement and the Owner agrees that the City is entitled to seek and obtain an order for specific performance, injunctive relief (whether prohibitory, mandatory or otherwise) or other equitable relief in connection with any default by the Owner under this Agreement.
- 10.8 **Entire Agreement.** This is the entire agreement between the City and the Owner concerning its subject and it may be changed only in a document executed by the City and the Owner.
- 10.9 **Further Assurances.** The parties to this Agreement will do such things and execute such documents and in such form as may reasonably be necessary in order to perfect the intention of this Agreement.
- 10.10 **Joint and Several.** Any covenants, agreements, conditions, or promises made by two or more persons shall be construed as joint as well as several, including any payments or compensation to be paid pursuant to this Agreement. If the Owner consists of more than one person, each such person will be jointly and severally liable to perform the Owner's obligations under this Agreement.
- 10.11 **No Assignment.** The Owner shall not assign this Agreement or any of its rights or obligations hereunder except in strict accordance with this Agreement.
- 10.12 **No Waiver.** No consent or waiver, expressed or implied, by the City of any default by the Owner in observing or performing its obligations under this Agreement will be

effective unless given in writing, or be deemed or construed to be a consent or waiver of any other default. 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. Failure on the part of the City to complain of any act or failure to act by the Owner or to declare the Owner in default, irrespective of how long such failure continues, will not constitute a waiver by the City of its rights under this Agreement or at law or in equity. No waiver by the City of any breach of this Agreement operates as a waiver of any other breach of this Agreement.

**10.13 Owner's Costs.** Unless otherwise provided, the Owner will be responsible for all costs and expenses incurred to comply with its obligations under this Agreement.

**10.14 Owner's Duties as Occupier.** Nothing in this Agreement will abrogate or limit the Owner's duties and liability as occupier of the Lands.

**10.15 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.

**10.16 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 Rezoning or the 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.

**10.17 Remedies Cumulative.** The remedies provided for in this Agreement will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City in this Agreement 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. No reference to nor exercise of any specific right or remedy under this Agreement or at law or in equity by the City will prejudice, limit or preclude the City from exercising any other such right or remedy. No such right or remedy will be exclusive or dependent upon any other such right or remedy, but the City may, from time to time, exercise any one or more of such rights or remedies independently, successively, or in combination.

**10.18 Severability.** If a court of competent jurisdiction finds that any provision contained in this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement which will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein and such other provisions will be binding and enforceable to the fullest extent permitted at law or in equity.

**10.19 Time of Essence.** Time will be of the essence of this Agreement. If either party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party.

**10.20 Enurement.** This Agreement will enure to the benefit of and will be binding upon the parties hereto and their respective successors, administrators and permitted assigns

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached.



**CONSENT AND PRIORITY INSTRUMENT**

In this consent and priority instrument:

- (a) **“Existing Charges”** means the Mortgage registered under number CA6652675 and the Assignment of Rents registered under number CA6652676;
- (b) **“Existing Chargeholder”** means The Bank of Nova Scotia;
- (c) **“New Charges”** means the registrable charges and encumbrances created by and contained in the Terms of Instrument - Part 2 to which this Consent and Priority Instrument is attached; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the Terms of Instrument - Part 2 to which this Consent and Priority Instrument is attached.

For \$10 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 to which this Consent and Priority Instrument is attached.

**CONSENT AND PRIORITY INSTRUMENT**

In this consent and priority instrument:

- (a) **“Existing Charges”** means the Mortgage registered under number CA6669557 and the Assignment of Rents registered under number CA6669558;
- (b) **“Existing Chargeholder”** means collectively D.C.M. Holdings Inc., M.D.K.M. Management Ltd., and Intercity Projects Vancouver Ltd.;
- (c) **“New Charges”** means the registrable charges and encumbrances created by and contained in the Terms of Instrument - Part 2 to which this Consent and Priority Instrument is attached; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the Terms of Instrument - Part 2 to which this Consent and Priority Instrument is attached.

For \$10 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 to which this Consent and Priority Instrument is attached.

**END OF DOCUMENT**