

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 5055 Joyce Street**

On October 6, 2020, the Director of Planning approved in principle a development on the above noted property, subject to, among other things, a Housing Agreement to be entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services prior to the issuance of a Development Permit. Such a Housing Agreement has been accepted and signed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter to authorize such Housing Agreement and to authorize the City to enter into that Housing Agreement with the land owner. Enactment of the attached By-law, as required by section 565.2 of the *Vancouver Charter*, will complete the process to implement Council's condition regarding a Housing Agreement.

Director of Legal Services
January 19, 2021

BY-LAW NO. _____

A By-law to enact a Housing Agreement for 5055 Joyce Street

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

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

PID: 024-143-111 LOT 1 BLOCK 17 DISTRICT LOT 51 GROUP 1 NEW
WESTMINSTER DISTRICT PLAN LMP37967

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 , 2021

Mayor

Acting City Clerk

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

PAGE 1 OF 24 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 168.41(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
 1105-505 Burrard Street
 Vancouver

BC V7X 1M5

File No.: LS-20-01545-009 (Housing Agt.)

Deduct LTSA Fees? Yes ☒

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

**024-143-111 LOT 1 BLOCK 17 DISTRICT LOT 51 GROUP 1 NEW WESTMINSTER DISTRICT
 PLAN LMP37967**

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

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

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

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

5. TRANSFEROR(S):

SEE SCHEDULE

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

CITY OF VANCOUVER

453 WEST 12TH AVENUE
 VANCOUVER

V5Y 1V4

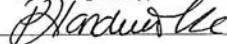
BRITISH COLUMBIA
 CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

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

Officer Signature(s)

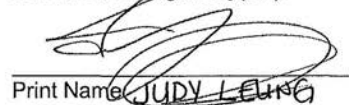


Parvinder K. Hardwick
 Barrister & Solicitor
 601-1067 W. Cordova St.
 Vancouver, BC V6C 1C7

Execution Date		
Y	M	D
21	01	11

Transferor(s) Signature(s)

5055 JOYCE PROPERTY INC. by
 its authorized signatory(ies):


 Print Name: JUDY LEUNG

Print Name:

OFFICER CERTIFICATION:

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

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

PAGE 2 of 24 PAGES

Officer Signature(s)

Execution Date


Transferor / Borrower / Party Signature(s)

Y	M	D
21		
21	01	11
21		

CITY OF VANCOUVER by its
authorized signatory:

HSBC BANK CANADA by its
authorized signatory(ies):



Print Name: **BARTH STOLL**
VICE PRESIDENT
COMMERCIAL REAL ESTATE


Print Name: **DANIEL JAY**
Senior Account Manager
Commercial Real Estate

COMPUTERSHARE TRUST
COMPANY OF CANADA by its
authorized signatory(ies):

Print Name:

Print Name:


ALEX LYASKALO
A Commissioner for Taking Affidavits
for British Columbia
885 West Georgia St., Vancouver, BC V6C 3G1
Commission Expires: January 31, 2023

OFFICER CERTIFICATION:

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

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

PAGE 2 of 24 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y M D

21

CITY OF VANCOUVER by its
authorized signatory:

21

HSBC BANK CANADA by its
authorized signatory(ies):

Print Name:

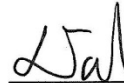
Print Name:

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COMPUTERSHARE TRUST
COMPANY OF CANADA by its
authorized signatory(ies):



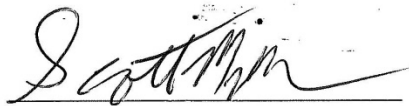
Daniel Lee
Professional, MBS

Print Name:



Stephen Murphy
Manager, MBS

Print Name:



Scott Sydney Markham
Notary Public in and for
The Province of Ontario
100 University Ave., 8th Flr.
Toronto, ONTARIO M5J 2Y1
416-269-9916

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

PAGE 3 OF 24 PAGES

SCHEDULE

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Entire Instrument
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Covenant priority over Mortgage CA6834750 and Assignment of Rents CA6834751
NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Covenant priority over Mortgage CA6834839 and Assignment of Rents CA6834840
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

PAGE 4 OF 24 PAGES

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):

5055 JOYCE PROPERTY INC., INC. NO. BC1143257

HSBC BANK CANADA (as to Priority)

COMPUTERSHARE TRUST COMPANY OF CANADA, INC. NO. A0052313 (as to Priority)

TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT
SECURED RENTAL AND BELOW-MARKET RENTAL HOUSING

5055 JOYCE STREET

WHEREAS:

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

- (i) the Transferor, 5055 JOYCE PROPERTY INC., is called the "Owner" as more particularly defined in Section 1.1; and
- (ii) the Transferee, CITY OF VANCOUVER, is called the "City" or the "City of Vancouver" when referring to corporate entity, and "Vancouver" when referring to geographic location;

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

C. The Owner made an application to rezone the Lands (the "Rezoning Application") from C-2C (Commercial) District to CD-1 (Comprehensive Development) District to permit the development of a 35-storey mixed use building and, after a public hearing to consider the Rezoning Application, the rezoning (the "Rezoning") was approved by City Council in principle, subject to, among other things, fulfilment of the condition that, prior to enactment of the rezoning by-law (the "Rezoning By-law"), the Owner make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services to enter into a Housing Agreement securing all residential units as secured rental housing, including at least 10 units (which, for the purpose of computing permitted floor space ratio per the Rezoning By-law, have an aggregate floor area for dwelling units of approximately 637.4 sq. m, being equivalent to the floor area of approximately one floor in the New Building (as defined below)) to be secured as below-market rental units, to be rented at 20% below the CMHC average market rents for the area, and the remaining units to be secured as market rental units for the longer of 60 years and the life of the New Building, and subject to other conditions set forth in the minutes of the public hearing (collectively, the "Housing Condition"); and

D. The Owner is entering into this Agreement with the City to satisfy the Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 219 of the *Land Title Act*, agree as follows in respect of the use of the Lands and the Building:

ARTICLE 1
DEFINITIONS AND INTERPRETATIONS

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

{01504037v4}

Housing Agreement and Building Use Covenant
5055 Joyce Street

- (a) **"Agreement"** means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) **"Average Market Rents for Zone 10"** means the average rents for 2019 as defined by the Canada Mortgage and Housing Corporation "Rental Market Report" for Private Apartment Average Rents in the Southeast Vancouver Zone 10, issued January 15, 2020;
- (c) **"Below-Market Rental Housing Units"** means a total of at least 10 Rental Housing Units (which, for the purpose of computing permitted floor space ratio per the Rezoning By-law, have an aggregate floor area for dwelling units of approximately 637.4 sq. m, being equivalent to the floor area of approximately one floor in the New Building) which are secured for the Term with average rents at 20% below the Average Market Rents for Zone 10 and **"Below-Market Rental Housing Unit"** means any one of such units;
- (d) **"Building Permit"** means any building permit issued by the City authorizing the building of a New Building as contemplated by the Rezoning By-Law;
- (e) **"City Manager"** means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (f) **"City Personnel"** means the City's elected officials, officers, employees, contractors, subcontractors, agents, licensees, invitees and permittees;
- (g) **"Declaration"** has the meaning ascribed to that term in Section 3.1(g)(ii);
- (h) **"Development Permit"** means any permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing development on the Lands (or any portion of the Lands) as contemplated by the Rezoning;
- (i) **"Director of Legal Services"** means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (j) **"Effective Date"** means the date as of which this Agreement is registered in the LTO;
- (k) **"General Manager of Planning, Urban Design and Sustainability"** means the person appointed from time to time as the City's General Manager of Planning, Urban Design and Sustainability and his or her successors in function and delegates and their respective nominees;
- (l) **"Housing Condition"** has the meaning ascribed to that term in Recital C;

- (m) "Housing Unit" means a self-contained residential unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (n) "Income" of an Occupant means the gross monthly income before income tax from all sources of income of the Occupant, calculated as of the date when the Occupant becomes a resident of the Below-Market Rental Housing Unit, and includes without limitation:
 - (i) income assistance;
 - (ii) employment, including regular overtime, vacation pay and gratuities;
 - (iii) self-employment, including commission sales;
 - (iv) seasonal employment;
 - (v) Employment Insurance and WorkSafe BC insurance;
 - (vi) training allowances;
 - (vii) income from the Resettlement Assistance Program;
 - (viii) child support, maintenance payments or support from family/friends/community;
 - (ix) rental income from real estate or dividends from stocks or bonds, if the real monthly income is greater than the imputed income from the Asset; and
 - (x) pension incomes including:
 - (A) old Age Security, Guaranteed Income Supplement, Allowance, and Allowance for the Survivor (formerly Spousal Allowance);
 - (B) senior's supplement;
 - (C) private pension plans including Registered Retirement Income Funds;
 - (D) Canada Pension Plan, including retirement, disability, orphans, widows, disability for child, etc.
 - (E) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada (included for calculations with an effective date prior to January, 2013); and
 - (F) foreign pensions,

but does not include:

- (xi) earnings of dependent children aged 18 and under (regardless of student status);
- (xii) student loans, equalization payments, student grants and scholarships;
- (xiii) taxable benefits, including living out or travel allowances, medical coverage, uniform allowance, etc.;
- (xiv) Shelter Aid for Elderly Renters and Rental Assistance Program payments;
- (xv) Canada Child Tax Benefits, including the National Child Benefit Supplement, Child Disability Benefit, BC Family Bonus, and BC Earned Income Benefit;
- (xvi) Universal Child Care Benefits;
- (xvii) BC Childcare Subsidy;
- (xviii) income from foster parenting;
- (xix) Child in Home of Relative and Extended Family Program;
- (xx) income from approved live-in care givers;
- (xxi) GST and Income Tax rebates; and
- (i) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada;
- (o) "**Land Title Act**" means the *Land Title Act*, R.S.B.C. 1996, c. 250;
- (p) "**Lands**" means the lands described in Item 2 in the Form C attached hereto, and includes any lots or parcels into which such land is consolidated or further subdivided; provided, however, that if the Lands are at any time subdivided by air space parcel subdivision, and this Agreement is thereafter discharged from one or more of the resulting legal parcels, then "**Lands**" will thereafter mean only the part of the Lands within the legal parcel(s) against which it remains registered;
- (q) "**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;
- (r) "**LTO**" means the land title office for the jurisdiction in which the Lands are situate;
- (s) "**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; provided, however, that if the Lands and the New Building are at any time subdivided by air space parcel subdivision, and this Agreement is thereafter discharged from one or more of the resulting legal parcels, then "New Building" will thereafter mean only the part of the New Building within the legal parcel(s) against which it remains registered;

- (t) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of any building, development or partial development on the Lands;
- (u) "Occupants" means persons for whom a Rental Housing Unit serves as their principal residence and an "Occupant" means any one of them, as the context requires;
- (v) "Operator" has the meaning ascribed to that term in Section 3.1(f);
- (w) "Owner" means the Transferor, 5055 Joyce Property Inc., and all assigns, successors, and successors in title to the Lands or any part thereof, and if the Lands are subdivided by air space subdivision plan, then "Owner" will thereafter refer to the respective owner of each such legal parcel against which this Agreement remains registered after subdivision, as applicable;
- (x) "Public Hearing Date" means September 15, 2020;
- (y) "Related Person" means, where the registered or beneficial owner of the Rental Housing Units (or Replacement Rental Housing Units, as applicable) is:
 - (i) a corporation (as that term is defined in the *Business Corporations Act*, (British Columbia)), then a Related Person is:
 - A. an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - B. the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and
 - (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (z) "Rental Housing" means a residential unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arms' length, for use as rental accommodation in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;

- (aa) "Rental Housing Units" means a minimum of 350 new residential units intended for Rental Housing, and "Rental Housing Unit" means any one of such units;
- (bb) "Rental Housing Units Air Space Parcel" has the meaning ascribed to that term in Section 4.1(a)(i);
- (cc) "Replacement Rental Housing Unit" has the meaning ascribed to that term in Section 2.1(j), and "Replacement Rental Housing Units" means more than one or all of such units, as the context requires;
- (dd) "Residential Tenancy Act" means the *Residential Tenancy Act*, S.B.C. 2002, c. 78;
- (ee) "Rezoning By-Law" has the meaning ascribed to that term in Recital C;
- (ff) "Term" means the term of this Agreement, which will commence on Effective Date and will end on the later of:
 - (i) the date as of which the New Building is demolished or substantially destroyed; and
 - (ii) 60 years from the date when the final Occupancy Permit is issued for the New Building; and
- (gg) "Vancouver Charter" means the *Vancouver Charter*, S.B.C. 1953, c. 55.

1.2 Interpretation. In this Agreement:

- (a) Party. Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) Singular; Gender. Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References. References to the or this "Agreement" and the words "hereof" "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.

- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.
- (f) Legislation. Any reference to a statute 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 statute, by-law and regulations.
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

ARTICLE 2

RESTRICTIONS ON USE, SALE AND SUBDIVISION

- 2.1 The Owner covenants and agrees 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) at its sole cost and expense, it will construct, fit and finish the New Building containing the Rental Housing Units (including the Below-Market Rental Units), any amenities and parking spaces, in accordance with this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
 - (c) after completion of construction of the Rental Housing Units and thereafter throughout the Term, the Rental Housing Units will be used only for the purpose of providing Rental Housing;
 - (d) throughout the Term, not less than 35% of the Rental Housing Units (or Replacement Rental Housing Units, as applicable) will have two or more bedrooms and be designed to meet the City's "High Density Housing for Families with Children Guidelines";
 - (e) after completion of construction of the Rental Housing Units and thereafter throughout the Term, none of the Rental Housing Units (or Replacement Rental Housing Units, as applicable) will be rented out for less than one month at a time, and in no case for less than at least 30 consecutive days except for the month of February;

- (f) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) to be sold or otherwise transferred unless title to every Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and unless such transferee concurrently enters into an assumption agreement as contemplated by Section 10.9;
- (g) throughout the Term, it will not suffer, cause or permit the Lands or the New Building to be subdivided by strata plan or air space plan or otherwise without the prior written consent of the City, which consent may be arbitrarily withheld, subject to Article 4;
- (h) throughout the Term, any sale of a Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) in contravention of the covenant in Section 2.1(f), and any subdivision in contravention of Section 2.1(g), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (i) throughout the Term, it will insure, or cause to be insured, the New Building and all parts thereof to the full replacement cost against perils normally insured against in the City of Vancouver by reasonable and prudent owners of similar buildings and lands; and
- (j) after completion of construction of the Rental Housing Units and thereafter throughout the Term, it will keep and maintain the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) is damaged or destroyed before the end of the Term, the Owner will promptly restore and repair the same (each such replacement Rental Housing Unit hereinafter referred to as a "Replacement Rental Housing Unit") whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred.

ARTICLE 3 BELOW-MARKET RENTAL HOUSING UNITS

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 average initial starting monthly rents for all Below-Market Rental Housing Units of the same residential unit type will be at or below 20% below the Average Market Rents for Zone 10 for such residential unit type, as follows:

Below-Market Rental Housing Unit Type	Average initial starting rents
Studio	\$878
1-bedroom	\$1,050

2-bedroom	\$1,494
3-bedroom	\$1,682

- (b) as of the Effective Date, the rents proposed to be charged by the Owner to the first Occupants of the Below-Market Rental Housing Units in the New Building following issuance of the Occupancy Permit are as set forth in the rent roll attached hereto as Schedule A;
- (c) it will not apply for any Development Permit, and will take no action, directly or indirectly, to compel the issuance of any Development Permit, until such time as the Owner has delivered to, and to the satisfaction of, the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services, an updated rent roll indicating the agreed maximum average initial monthly rents for the Below-Market Rental Housing Units secured at 20% below the Average Market Rents for Zone 10, and the City will be under no obligation to issue any Development Permit until such time as the Owner has complied with this requirement;
- (d) rent increases for the Below-Market Housing Rental Units will be capped at the *Residential Tenancy Act* maximum annual allowable increase, as published by the Province of British Columbia, regardless of a change in occupancy. For certainty, the rents to be charged by the Owner to the first Occupants of the Below-Market Rental Housing Units as set forth in the rent roll attached hereto as Schedule A may be increased by the *Residential Tenancy Act* maximum annual allowable increase for every full year between the Public Hearing Date to the date of issuance of an Occupancy Permit for the Below-Market Rental Housing Units or the date that a Below-Market Rental Housing Unit is occupied by the first Occupant, whichever happens later;
- (e) each Below-Market Rental Housing Unit will be rented only:
 - (i) to Occupants having a total combined Income that is between \$30,000 - \$80,000 per year as at the Effective Date, provided that such amount shall be adjusted by increasing such amount by the difference between the Consumer Price Index (British Columbia Monthly for All Items as published by Statistics Canada) existing as at the Effective Date and the date that such Occupant becomes a resident of a Below-Market Rental Housing Unit; and
 - (ii) where the rent level for such Below-Market Rental Housing Unit does not exceed 30% of the Occupants' total combined Income;
- (f) it will engage Collingwood Neighbourhood House or an alternative non-profit housing provider as approved by the City (the "Operator") to ensure the Below-Market Rental Housing Units are rented only to Occupants that meet the Income levels set out in subsection (e) above;
- (g) it will ensure that the Operator:

- (i) establishes policies and procedures for establishing rent and asset calculations and submits these to the City for approval; and
- (ii) obtains a declaration (the "Declaration") and supporting documentation as evidence of the Income and assets of each Occupant of a Below-Market Rental Housing Unit as of the time of the initial occupancy and every five (5) years thereafter. The said Declaration will be in a form approved by the City as may be amended by the City from time to time. The Owner will ensure that the Operator maintains a copy of each Occupant's documentation in a file available to the City on request. The Income of any person occupying a Below-Market Rental Housing Unit as his or her principal residence will be included for the purpose of determining the Occupants' total combined Income; and
- (h) on an annual basis, or at the request of the City from time to time, it will submit a report to the City, in form and contents to be pre-approved by the City, on the operation of the Below-Market Rental Housing Units, and such report must include, in respect of the previous 12 months (or lesser period of time, if applicable, at the beginning of the Term or otherwise), a rent roll for the Below-Market Rental Housing Units, showing the Occupant name, rental rate, and proof of income eligibility testing, and such other information as the City may require in order to confirm the Below-Market Rental Housing Units are being used and occupied in accordance with this Agreement.

ARTICLE 4 SUBDIVISION OF THE LANDS AND THE NEW BUILDING

4.1 Notwithstanding Section 2.1(f) and 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 Rental Housing Units to be contained within one air space parcel (the "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 subdivision and the issuance of a final Occupancy Permit for the 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 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 Rental Housing Units, or in respect of the 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;
- (iv) the preparation and registration of any such discharge will be without cost to the City; and
- (v) the City will not be obligated to execute any such discharge in respect of any parcel that is subject to an Occupancy Permit hold hereunder.

- 4.2 Following such subdivision and partial discharge, this Agreement will be read and applied such that the obligations herein will apply only to any parcel in which the Rental Housing Units are contained.

ARTICLE 5 OCCUPANCY RESTRICTION ON THE LANDS

- 5.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the 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, any part of the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for the Lands or any part of the New Building; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit permitting the use and occupation of the Lands or any part of the New Building, notwithstanding completion of construction of the New Building,

until such time as the Owner provides the City with:

- (iii) proof that insurance consistent with the requirements of Section 2.1(i) is in force and effect as of Occupancy Permit issuance, in form and substance satisfactory to the City; and
- (iv) confirmation that the Rental Housing Units will be used as Rental Housing as of Occupancy Permit issuance, in form and substance satisfactory to the City;

- (v) an updated rent roll indicating the agreed maximum average initial monthly rents for the Below-Market Rental Housing Units secured at 20% below the Average Market Rents for Zone 10, to the satisfaction of, the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services; and
- (b) without limiting the general scope of ARTICLE 8, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this ARTICLE 5.

ARTICLE 6 RECORD KEEPING

- 6.1 The Owner will, throughout the Term, keep accurate records pertaining to the use, rental rates charged and occupancy of/for the Rental Housing Units (or Replacement Rental Housing Units, as applicable), such records to be in form and substance to the satisfaction of the General Manager of Planning, Urban Design and Sustainability. At the request of the City, from time to time, the Owner will make such records available for inspection and copying by the City on a confidential basis. The City acknowledges that the Owner's records pertaining to occupancy and rental rates for the Rental Housing Units is proprietary information of the Owner, the release of which is likely to be harmful to the Owner's competitive position among other things and the City will comply with the Owner's statutory obligations with respect to privacy of such information and the provisions of the *Freedom of Information and Protection of Privacy Act* (British Columbia) as amended and replaced from time to time. The Owner will also, throughout the Term, forthwith upon request by the City, provide the City with proof of the insurance required to be taken out pursuant to Section 2.1(i), in form and substance satisfactory to the City.

ARTICLE 7 ENFORCEMENT

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

ARTICLE 8 RELEASE AND INDEMNITY

- 8.1 Release and Indemnity. Subject to Section 8.2, the Owner hereby:
- (a) releases and discharges the City and all City Personnel from 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 to the extent that such reviewing, accepting or approving is connected to matters covered under this Agreement;
 - B. withholding any permit pursuant to this Agreement; or
 - C. exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or
- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel, except to the extent that any such Losses are the result of any gross negligence or wrongful intentional acts on the part of the City or 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,

except to the extent that any such Losses are the result of any gross negligence or wrongful intentional acts on the part of the City or City Personnel.

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

8.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 8.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 8.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 8.2(a) in the following circumstances:

- (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
- (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
- (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided, however, that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 8.2(b).

- (c) Regardless of whether the claim is being defended under Section 8.2(a) or Section 8.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

- 8.3 Survival of Release and Indemnities. The release and indemnities in this ARTICLE 8 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

ARTICLE 9 NOTICES

- 9.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, shall be in writing and shall be given by prepaid registered mail or personal delivery, addressed as follows:

- (a) If to the City:

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

Attention: City Clerk, with concurrent copies to the Chief Housing Officer and the Director of Legal Services

(b) If to the Owner:

5055 Joyce Property Inc.
Floor 6, 1067 West Cordova Street
Vancouver, British Columbia
V6C 1C7

Attention: Director

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

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

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

ARTICLE 10 MISCELLANEOUS

- 10.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated; provided that notwithstanding anything to the contrary in this Agreement, the parties agree that neither the Owner or any successor in title to the Lands shall be liable for breaches of or non-observance or non-performance of covenants herein occurring as the same relate to any portion of the Lands after it has ceased to be the registered owner of such portion.
- 10.2 Enurement. This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.
- 10.3 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants will remain and be binding.
- 10.4 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so

elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

- 10.5 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 10.6 Perfection of Intention. The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a charge against title to the Lands.
- 10.7 Priority of Registration. The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
 - (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
 - (c) which the Director of Legal Services has determined, in her/his sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 10.8 Further Assurances. Each party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.
- 10.9 Transfer of Lands. The Owner covenants and agrees with the City that concurrent with any sale, transfer or conveyance of any portion of the Lands charged by this Agreement (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted priority over its mortgage for the Section 219 Covenant contained herein, in form and substance satisfactory to the City), subject to Sections 2.1(f) and 2.1(g), to any person, trust, corporation, partnership or other entity, the Owner will obtain from such person, trust, corporation, partnership or entity and deliver to the City a duly executed acknowledgement, in form and substance satisfactory to the Director of Legal Services, of the terms of this Agreement and an assumption of the continuing obligations of the Owner pursuant to this Agreement

relative to that portion of the Lands sold, transferred or conveyed to such person, trust, corporation, partnership or entity. Provided any such purchaser/transferee enters in to an assumption agreement as provided in this Section 10.9, 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.

10.10 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
- (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
- (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

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

SCHEDULE A

Rent Roll

Unit #*	Type	Average Initial Starting Monthly Rent**
601	1 bedroom	\$1,050.00
602	2 bedroom	\$1,494.00
603	1 bedroom	\$1,050.00
604	2 bedroom	\$1,494.00
605	1 bedroom	\$1,050.00
606	1 bedroom	\$1,050.00
607	2 bedroom	\$1,494.00
608	1 bedroom	\$1,050.00
609	3 bedroom	\$1,682.00
610	1 bedroom	\$1,050.00

* In accordance with the Rezoning Application dated March 11, 2020, the approximate FSR area of the Below-Market Rental Housing Units to be located on level 6 of the New Building is 637.4 square metres.

** The average initial starting monthly rent is based on the Average Market Rent for Zone 10, and those rents may be increased by the *Residential Tenancy Act* maximum annual allowable increase for every full year between the Public Hearing Date to the date of issuance of an Occupancy Permit for the Below-Market Rental Housing Units or the date that a Below-Market Rental Housing Unit is occupied by the first Occupant, whichever happens later.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Charges"** means the Mortgage registered under number CA6834750 and the Assignment of Rents registered under number CA6834751;
- (b) **"Existing Chargeholder"** means HSBC BANK CANADA;
- (c) **"New Charge"** means the Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Charges"** means the Mortgage registered under number CA6834839 and the Assignment of Rents registered under number CA6834840;
- (b) **"Existing Chargeholder"** means COMPUTERSHARE TRUST COMPANY OF CANADA;
- (c) **"New Charge"** means the Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

END OF DOCUMENT