

## EXPLANATION

### **A By-law to amend Zoning and Development By-law No. 3575 to rezone an area to CD-1**

Following the Public Hearing on July 18, 2018 and Council meeting on July 24, 2018, Council gave conditional approval to the rezoning of the site at 4495 Camosun Street (formerly 4175 West 29th Avenue). 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 resolutions.

Director of Legal Services  
March 9, 2021

4495 Camosun Street  
(formerly 4175 West 29th Avenue)

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

**A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area to CD-1**

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

**Zoning District Plan Amendment**

1. This By-law amends the Zoning District Plan attached as Schedule D to By-law No. 3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-742 (b) attached as Schedule A to this By-law, and incorporates Schedule A into Schedule D of By-law No. 3575.

**Definitions**

2. Words in this By-law have the meanings given to them in the Zoning and Development By-law, except that:

Geodetic Datum means the current vertical reference surface adopted and used by the City of Vancouver;

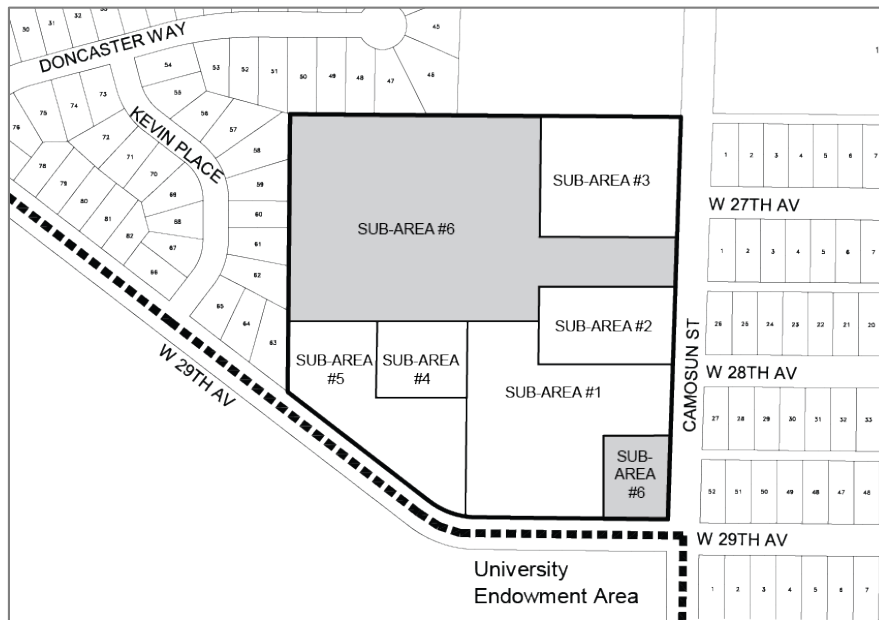
Staff Housing means providing accommodation through dwelling units intended for families where at least one individual is employed as staff or faculty at St. George's School; and

Student Housing means providing accommodation through sleeping units intended for students or other individuals attending programs at St. George's School, except that the sleeping units may contain a sink, and accommodation may be provided for a period of less than one month.

**Sub-areas**

3. The site is to consist of 6 sub-areas generally as illustrated in Figure 1, solely for the purpose of establishing maximum permitted height and establishing permitted uses.

**Figure 1: Sub-Areas for Maximum Permitted Height and Permitted Uses**



**Uses**

4.1 The description of the area shown within the heavy black outline on Schedule A is CD-1 (764).

4.2 Subject to Council approval of the form of development, to all conditions, guidelines and policies adopted by Council. And to the conditions set out in this By-law or in a development permit, the only uses permitted within CD-1 (764), and the only uses for which the Director of Planning or Development Permit Board will issue development permits are:

- (a) Institutional Uses, limited to School – Elementary or Secondary, provided that the enrolment of students attending the school on campus does not exceed 775; and
- (b) Accessory Uses customarily ancillary to the uses listed in this section, including Staff Housing and Student Housing, except that Staff Housing and Student Housing uses are permitted only in sub-areas 4 and 5 as shown in Figure 1.

**Floor Area and Density**

5.1 Computation of floor space ratio must assume that the site consists of 57,056.3 m<sup>2</sup> being the site size at the time of the application for the rezoning evidenced by this By-law, prior to any dedications.

5.2 The floor space ratio for all uses combined must not exceed 0.70.

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

5.4 Computation of floor area must exclude:

- (a) open balconies or sundecks as part of Staff Housing or Student Housing uses and any other appurtenances which, in the opinion of the Director of Planning, are similar to the foregoing, except that:
  - (i) the total area of all such exclusions must not exceed 12% of the Staff Housing or Student Housing floor area in any sub-area, and
  - (ii) no enclosure of balconies is permissible for the life of the building;
- (b) patios and roof gardens, only if the Director of Planning first approves the design of sunroofs and walls; and
- (c) where floors are used for off-street parking and loading, the taking on or discharging of passengers, bicycle storage, heating and mechanical equipment or uses which in the opinion of the Director of Planning are similar to the foregoing, those floors or portions thereof so used, which are at or below the base surface, except that the exclusion for a parking space must not exceed 7.3 m in length.

5.5 Computation of floor area may exclude, at the discretion of the Director of Planning or Development Permit Board:

- (a) amenity areas for Staff Housing, except that the total exclusion for amenity areas must not exceed 10% of the permitted floor area for that use; and
- (b) covered outdoor areas providing weather protection or pedestrian connection between buildings, provided they are at grade level, except that they must remain unenclosed for the life of the building.

5.6 The use of floor area excluded under Sections 5.4 and 5.5 must not include any use other than that which justified the exclusion.

### **Building Heights and Number of Storeys**

6.1 Building height on the site must be measured in metres referenced to Geodetic Datum.

6.2 Building height, measured from the top of the roof slab above the uppermost floor, excluding parapet wall, must not exceed the maximum heights and number of storeys set out in Table 1 below.



**Table 1: Maximum Number of Storeys and Permitted Height**

<b>Sub-area</b>	<b>Maximum Number of Storeys</b>	<b>Maximum building height (Geodetic Datum)</b>
1	4	96.7 m
2	3	93.1 m
3	3	93.1 m
4	6	99.5 m
5	4	92.1 m
6	0	-

### **Horizontal Angle of Daylight**

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

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

7.3 Measurement of the plane or planes referred to in Section 7.2 must be horizontally from the centre of the bottom of each window.

7.4 If:

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

the Director of Planning or Development Permit Board may relax the horizontal angle of daylight requirement.

7.5 An obstruction referred to in Section 7.2 means:

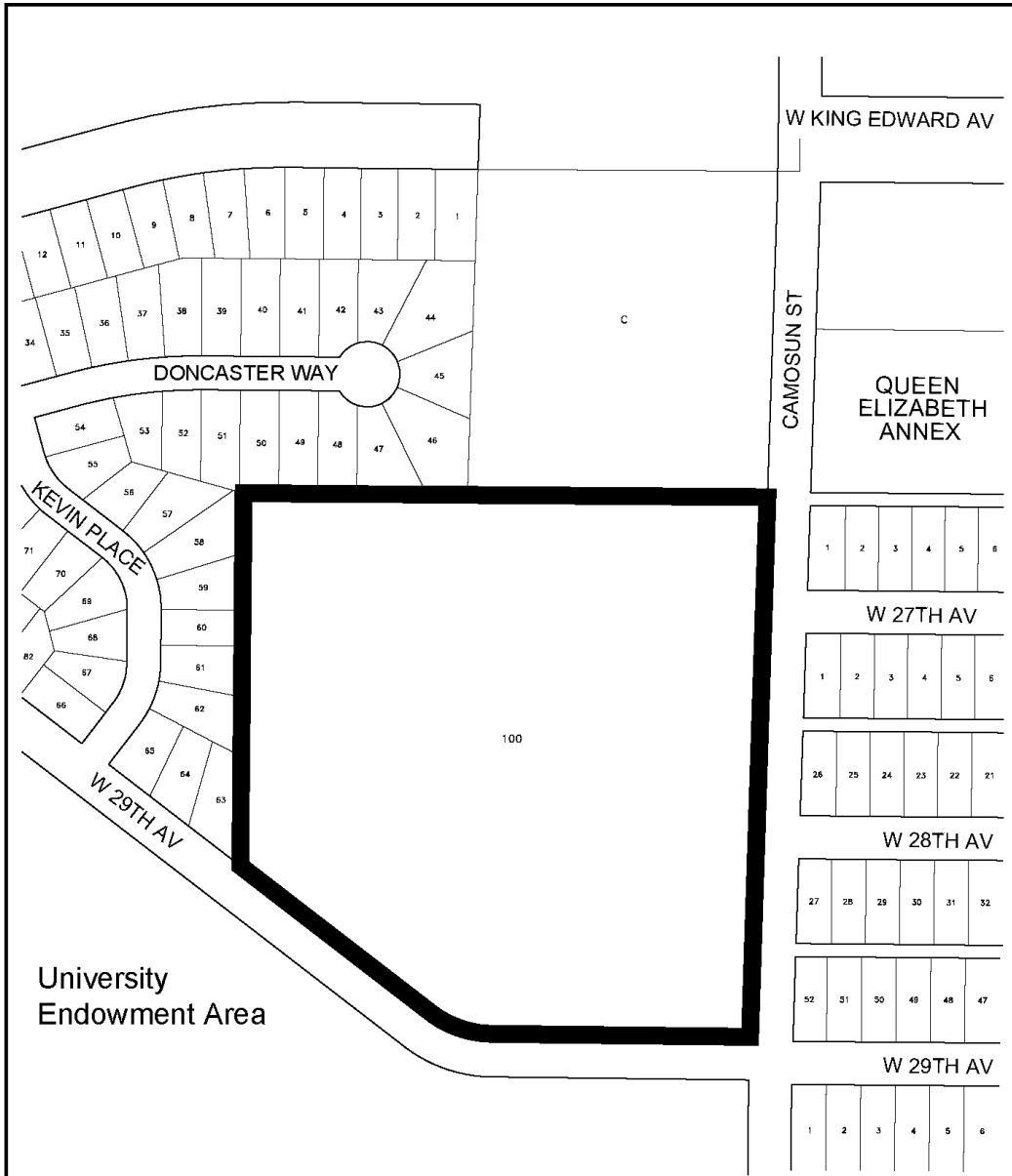
- (a) any part of the same building including permitted projections; or
- (b) the largest building permitted under the zoning on any site adjoining CD-1 (764).

7.6 A habitable room referred to in Section 7.1 does not include:

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



**Schedule A**



University  
Endowment Area

The property outlined in black (  ) is rezoned:  
From **RS-5** to **CD-1**

**Z-742(b)**

**RZ - 4175 West 29th Avenue**

map: 1 of 1

scale: NTS



**City of Vancouver**

date: 2018-06-28

**EXPLANATION****A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area to CD-1**

Following the Public Hearing on January 21 and 28, 2020, Council gave conditional approval to the rezoning of the site at 3680 East Hastings Street. 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 resolutions.

Director of Legal Services  
March 9, 2021

3680 East Hastings Street

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

**A By-law to amend  
Zoning and Development By-law No. 3575  
to rezone an area to CD-1**

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

**Zoning District Plan Amendment**

1. This By-law amends the Zoning District Plan attached as Schedule D to By-law No. 3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-763 (c) attached as Schedule A to this By-law, and incorporates Schedule A into Schedule D of By-law No. 3575.

**Designation of CD-1 District**

2. The area shown within the heavy black outline on Schedule A is hereby designated CD-1 (765).

**Definitions**

3. Words in this By-law have the meaning given to them in the Zoning and Development By-law, except that:

- (a) for the purposes of calculating the total dwelling unit area for Section 5.1 of this By-law, "Dwelling Unit Area" is the floor area of each dwelling unit, measured to the inside of all perimeter walls, excluding any floor area as required by Section 6.4 of this By-law; and
- (b) "Moderate Income Rental Housing Units" means dwelling units that meet the requirements of approved Council policies and guidelines for Moderate Income Rental Housing, as secured by a housing agreement registered on title to the property.

**Uses**

4. Subject to Council approval of the form of development, to all conditions, guidelines and policies adopted by Council, and to the conditions set out in this By-law or in a development permit, the only uses permitted within CD-1 (765), and the only uses for which the Director of Planning or Development Permit Board will issue development permits are:

- (a) Dwelling Uses, limited to Dwelling Units in conjunction with any of the uses listed in this By-law;
- (b) Cultural and Recreational Uses, limited to Artist Studio, Arcade, Arts and Culture Indoor Event, Billiard Hall, Bowling Alley, Club, Community Centre or

Neighbourhood House, Fitness Centre, Hall, Library, Museum or Archives, and Theatre;

- (c) Institutional Uses, limited to Child Day Care Facility and Social Service Centre;
- (d) Office Uses;
- (e) Retail Uses, limited to Farmers' Market, Furniture or Appliance Store, Grocery or Drug Store except for Small-scale Pharmacy, Grocery Store with Liquor Store, Liquor Store, Public Bike Share, Retail Store, and Secondhand Store;
- (f) Service Uses, limited to Animal Clinic, Auction Hall, Barber Shop or Beauty Salon, Beauty and Wellness Centre, Cabaret, Catering Establishment, Laundromat or Dry Cleaning Establishment, Neighbourhood Public House, Photofinishing or Photography Studio, Print Shop, Production or Rehearsal Studio, Repair Shop – Class A, Repair Shop – Class B, Restaurant, School – Arts or Self-Improvement, School – Business, School – Vocational or Trade, and Wedding Chapel;
- (g) Utility and Communication Uses, limited to Public Utility and Radio Communication Station; and
- (h) Accessory Uses customarily ancillary to the uses permitted in this section.

### **Conditions of Use**

5.1 A minimum of 20% of the total dwelling unit area must be Moderate Income Rental Housing Units.

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

- (a) be suitable for family housing;
- (b) include two or more bedrooms; and
- (c) comply with Council's "High Density Housing for Families with Children Guidelines".

5.3 The Director of Planning or Development Permit Board may vary the percentage of family units indicated in Section 5.2, taking into consideration all applicable Council policies and guidelines.

5.4 There shall be no dwelling units above the 14-storey.

5.5 Non-residential uses are restricted to the ground floor.

5.6 No portion of the first storey of a building, within a depth of 10.7 m of the front wall of the building facing Hastings Street and extending across its full width, shall be used for residential purposes except for entrances to the residential portion.

5.7 All commercial uses and accessory uses listed in this section shall be carried on wholly within a completely enclosed building except for the following:

- (a) Farmers' Market;
- (b) Neighbourhood Public House;
- (c) Public Bike Share;
- (d) Restaurant; and
- (e) display of flowers, plants, fruits and vegetables in conjunction with a permitted use.

### **Floor Area and Density**

6.1 Computation of floor space ratio must assume that the site consists of 1,295.8 m<sup>2</sup>, being the site size at the time of the application for the rezoning evidenced by this By-law, prior to any dedications.

6.2 The floor space ratio for all uses combined must not exceed 6.96.

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

6.4 Computation of floor area and dwelling unit area must exclude:

- (a) open residential balconies or sun decks and any other appurtenances which, in the opinion of the Director of Planning, are similar to the foregoing, except that:
  - (i) the total area of all such exclusions must not exceed 12% of the permitted residential floor area, and
  - (ii) the balconies must not be enclosed for the life of the building;
- (b) patios and roof gardens only if the Director of Planning first approves the design of sunroofs and walls;
- (c) where floors are used for off-street parking and loading, the taking on or discharging of passengers, bicycle storage, heating and mechanical equipment or uses, which in the opinion of the Director of Planning are similar to the foregoing, those floors or portions thereof so used that are at or below base surface, except that the exclusion for a parking space must not exceed 7.3 m in length;
- (d) amenity areas, recreational facilities and meeting rooms accessory to a residential use, to a maximum total area of 10% of the total permitted residential floor area; and

- (e) all residential storage area above or below base surface, except that if the residential storage area above base surface exceeds 3.7 m<sup>2</sup> for a dwelling unit, there will be no exclusion for any of the residential storage area above base surface for that unit.

6.5 The use of floor area excluded under Section 6.4 must not include any use other than that which justified the exclusion.

6.6 Where floor area associated with storage space is excluded under Section 6.4 (e), a minimum of 20% of the excluded floor area must be located within the Moderate Income Rental Housing Units.

### **Building Height**

7. Building height, measured from base surface to top of parapet, must not exceed 48.8 m.

### **Horizontal Angle of Daylight**

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

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

8.3 Measurement of the plane or planes referred to in Section 8.2 must be horizontally from the centre of the bottom of each window.

8.4 The Director of Planning or Development Permit Board may relax the horizontal angle of daylight requirement if the Director of Planning or Development Permit Board first considers all the applicable policies and guidelines adopted by Council, and:

- (a) the minimum distance of unobstructed view is not less than 3.7 m; or
- (b) the habitable room is within a unit assigned to moderate income households and containing a minimum of three bedrooms, where the horizontal angle of daylight requirements is relaxed for no greater than one of the habitable rooms in the unit.

8.5 An obstruction referred to in Section 8.2 means:

- (a) any part of the same building including permitted projections; or
- (b) the largest building permitted under the zoning on any site adjoining CD-1 (765).

8.6 A habitable room referred to in Section 8.1 does not include:

- (a) a bathroom; or
- (b) a kitchen whose floor area is the lesser of:
  - (i) 10% or less of the total floor area of the dwelling unit; or



- (ii) 9.3 m<sup>2</sup>.

**Acoustics**

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

Portions of dwelling units	Noise levels (Decibels)
Bedrooms	35
Living, dining, recreation rooms	40
Kitchen, bathrooms, hallways	45

**Zoning and Development By-law**

10. Sections 2 through 14 of the Zoning and Development By-law apply to this CD-1 (765).

**Severability**

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

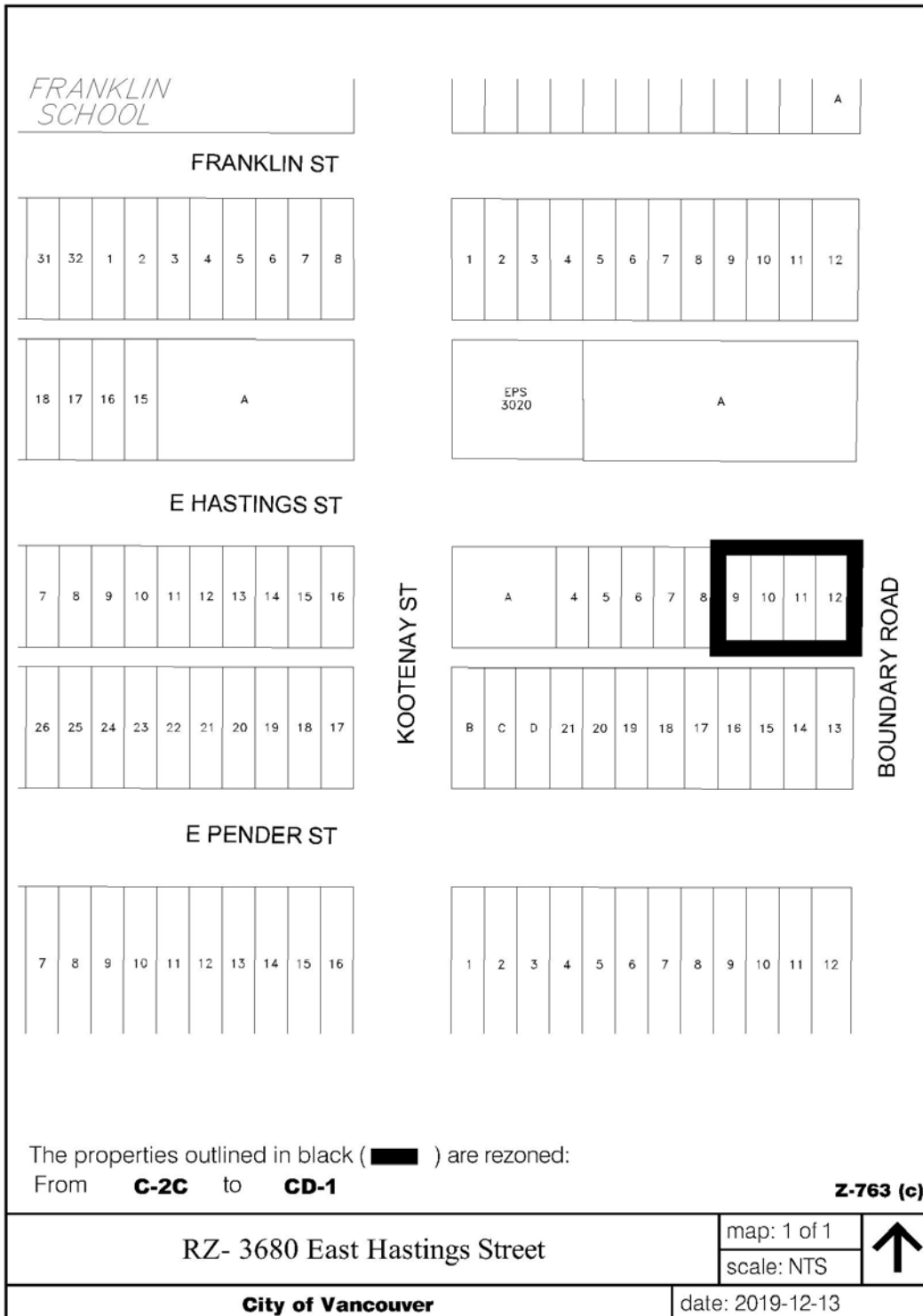
**Force and effect**

12. 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



## EXPLANATION

### **A By-law to amend CD-1 (566) By-law No. 10941 regarding miscellaneous amendments**

Following the Public Hearing on July 7, 2020, Council resolved to amend the CD-1 (566) (Comprehensive Development) District to permit secured rental housing and retail uses on Parcels 14 and 19 with no additional floor area, and to increase Parcel 19 floor area to permit a community energy centre. 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  
March 9, 2021

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

**A By-law to amend  
CD-1 (566) By-law No. 10941  
Regarding Miscellaneous Amendments**

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

1. This By-law amends the indicated provisions of By-law No. 10941.
2. In section 2, Council adds the following new definition, in the correct alphabetical order:

““Community Energy Centre Use” means the use of premises as an energy supply facility that provides heat energy in the form of hot water to buildings through a distribution system;”.
3. In section 3.2, Council:
  - (a) renumbers subsections (b) through (d) as subsections (c) through (e), respectively; and
  - (b) inserts a new subsection (b) as follows:

“(b) Community Energy Centre Use;”.
4. In section 3.4(f), Council strikes out “limited to Public Bike Share” and substitutes “, not including Adult Retail Store, Gasoline Station – Full Service, Gasoline Station – Split Island, Pawn Shop, and Vehicle Dealer”.
5. Council adds a new section 4.8 as follows:

“4.8 In sub-area 2, floor area for office uses may be used for dwelling units used for secured market rental housing.”.
6. In section 5.1, Council strikes out “181 253m<sup>2</sup>” and substitutes “183 111 m<sup>2</sup>”.
7. In section 5.2, Council strikes out “142 364m<sup>2</sup>” and substitutes “142 364 m<sup>2</sup>, excluding dwelling units used as secured market rental housing located in the floor area for office uses in sub-area 2”.
8. In section 5.4, Council adds “retail uses,” after “office uses,”.
9. 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.

10. 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

**EXPLANATION****A By-law to amend East Fraser Lands  
Official Development Plan By-law No. 9393  
regarding miscellaneous amendments**

Following the Public Hearing on July 7, 2020, Council resolved to amend the East Fraser Lands Official Development Plan By-law to permit secured rental housing and retail uses on Parcels 14 and 19 with no additional floor area, and to increase Parcel 19 floor area to permit a community energy centre. 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  
March 9, 2021

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

**A By-law to amend East Fraser Lands  
Official Development Plan By-law No. 9393  
Regarding Miscellaneous Amendments**

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

1. This By-law amends the indicated provisions of Schedule A of the East Fraser Lands Official Development Plan By-law No. 9393.
2. In section 1.1, Council adds the following new definition in the correct alphabetical order:  
  
““community energy centre use” means the use of premises as an energy supply facility that provides heat energy in the form of hot water to buildings through a distribution system;”.
3. In section 3.3, Council strikes out “724 779 m<sup>2</sup>” and substitutes “726 637 m<sup>2</sup>”.
4. In section 3.5.1, Council:
  - (a) in subsection (b), adds “, except that if office floor area in the areas outlined with dotted lines in Figure 20 is used for dwelling units used for secured market rental housing, then the total floor area for dwelling uses in all areas is not to exceed 690 951 m<sup>2</sup>”, after “676 529 m<sup>2</sup>”; and
  - (b) in subsection (c), adds “, excluding any dwelling units used for secured market rental housing that are located in the office floor area in the areas outlined with dotted lines in Figure 20,”.
5. In section 3.5.3, Council:
  - (a) in paragraph (b)(i), strikes out “including a health care facility”;
  - (b) in paragraph (b)(vi), strikes out “retail use accessory to, and in the same building as, a principal use;” and substitutes “retail uses;”;
  - (c) in subsection (c), strikes out “24 900 m<sup>2</sup>” and substitutes “26 758 m<sup>2</sup>”;
  - (d) in subsection (d), adds “and” at the end of the paragraph;
  - (e) strikes out subsection (e); and
  - (f) renumbers subsection (f) as subsection (e).
6. Council adds a new section 3.5.9 as follows:  
  
**“Community energy centre use**  
  
3.5.9 Community energy centre use is permissible in Areas 1 and 3.”.
7. In section 6.1.1, Council:
  - (a) in subsection (a), adds “, except that if office floor area in the areas outlined with dotted lines in Figure 20 is used for dwelling units used for secured market rental

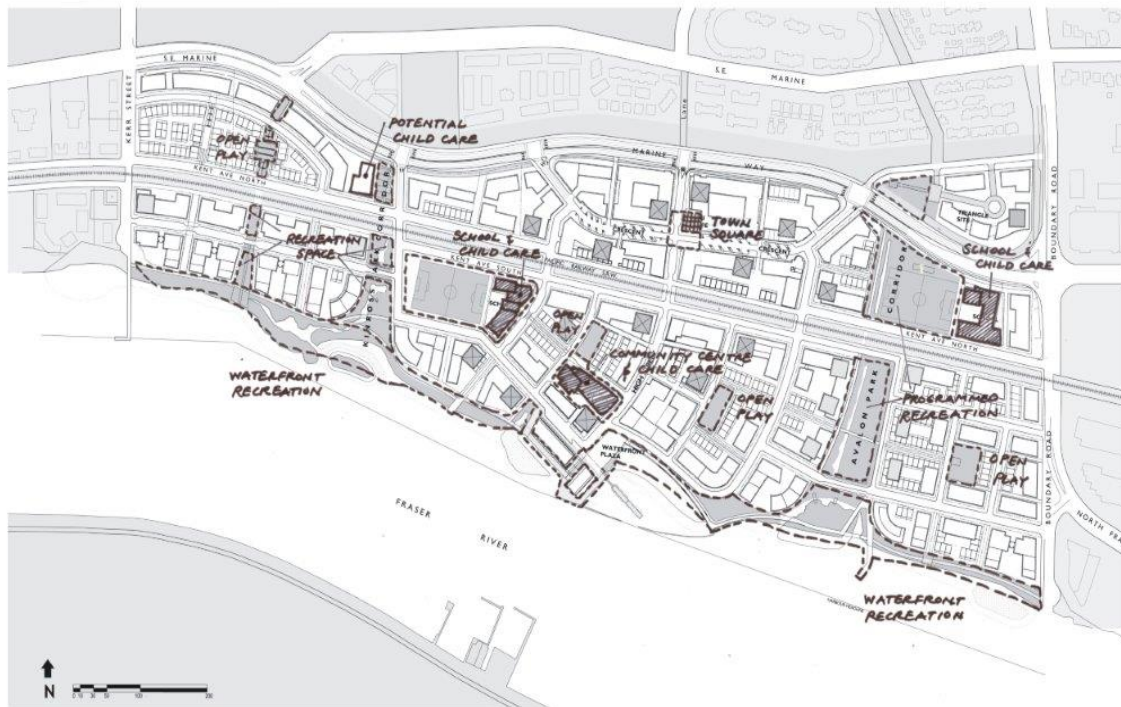
housing, then it is to include residential floor area consisting of approximately 313 950 m<sup>2</sup>;

- (b) in subsection (b), strikes out “23 350 m<sup>2</sup>” and substitutes “25 673 m<sup>2</sup>”;
- (c) in subsection (c), strikes out “24 900 m<sup>2</sup>” and substitutes “26 758 m<sup>2</sup>”; and
- (d) in subsection (g), strikes out “on Parcel 19” and substitutes “in the community centre”.

8. In section 7, Council strikes out Figure 6 and substitutes the following:

**“Figure 6. Cultural, recreational, and school uses**

“



”

9. In section 7, Council adds the following new figure in the correct numerical order:

**“Figure 20. Areas in which office floor area may be used for secured market rental housing**





10. 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.

11. 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

## EXPLANATION

### **A By-law to amend Street Name By-law No. 4054 regarding the naming of new streets and street extensions in the new St. Paul's Hospital Development**

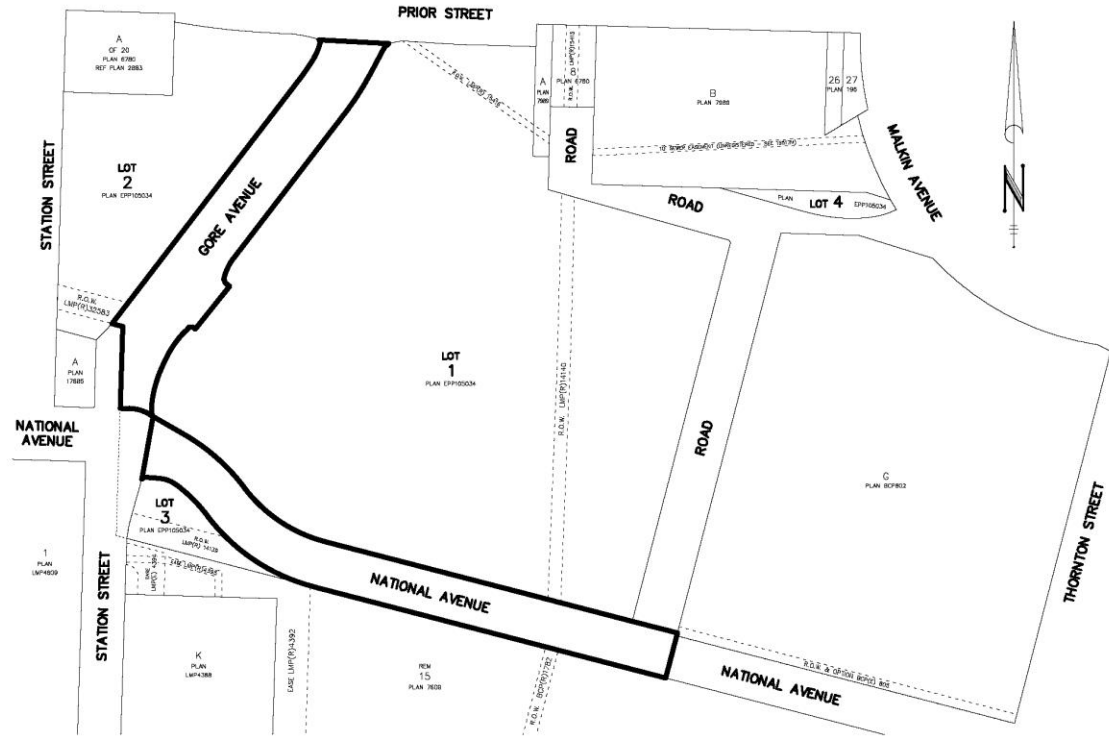
Enactment of the attached By-law will implement Council's resolution of February 10, 2021 to name new streets and street extensions as set out in the attached By-law.

Director of Legal Services  
March 9, 2021



**PLAN TO ACCOMPANY BY-LAW TO AMEND STREET NAME  
BY-LAW No. 4054.**

DRAWING NOT TO SCALE



L12152

L12152

APPENDIX A

AFP MAP: Q-9,10

THIS PLAN LIES WITHIN THE GREATER VANCOUVER REGIONAL DISTRICT

ENGINEERING SERVICES  
FEBRUARY 16 2021

Y:\LAND\_SURVEY\APP\2020\DWG\L12152 - Street Name - Core National.dwg

**EXPLANATION**

**A By-law to amend Street Name By-law No. 4054  
regarding the naming of a new street  
in the new St. Paul's Hospital Development**

Enactment of the attached By-law will implement Council's resolution of February 10, 2021 to name a new street as set out in the attached By-law.

Director of Legal Services  
March 9, 2021

**BY-LAW NO.**

**A By-law to amend Street Name By-law No. 4054  
regarding the naming of a new street  
in the new St. Paul's Hospital Development**

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

1. Council amends By-law No. 4054 by:
  - (a) assigning the name "Nora Hendrix Way" to the new public street between Gore Avenue and Thornton Street, running north from National Avenue as labelled on the plan marginally numbered LF12143, attached to and forming part of this By-law as Appendix A; and
  - (b) adding to the "Official Street Name Map of the City of Vancouver", which is the plan marginally numbered L325, attached to and forming part of By-law No. 4054, that portion of public street named "Nora Hendrix Way" located as shown on the plan marginally numbered LF12143.
2. 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.
3. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this     day of                                     , 2021

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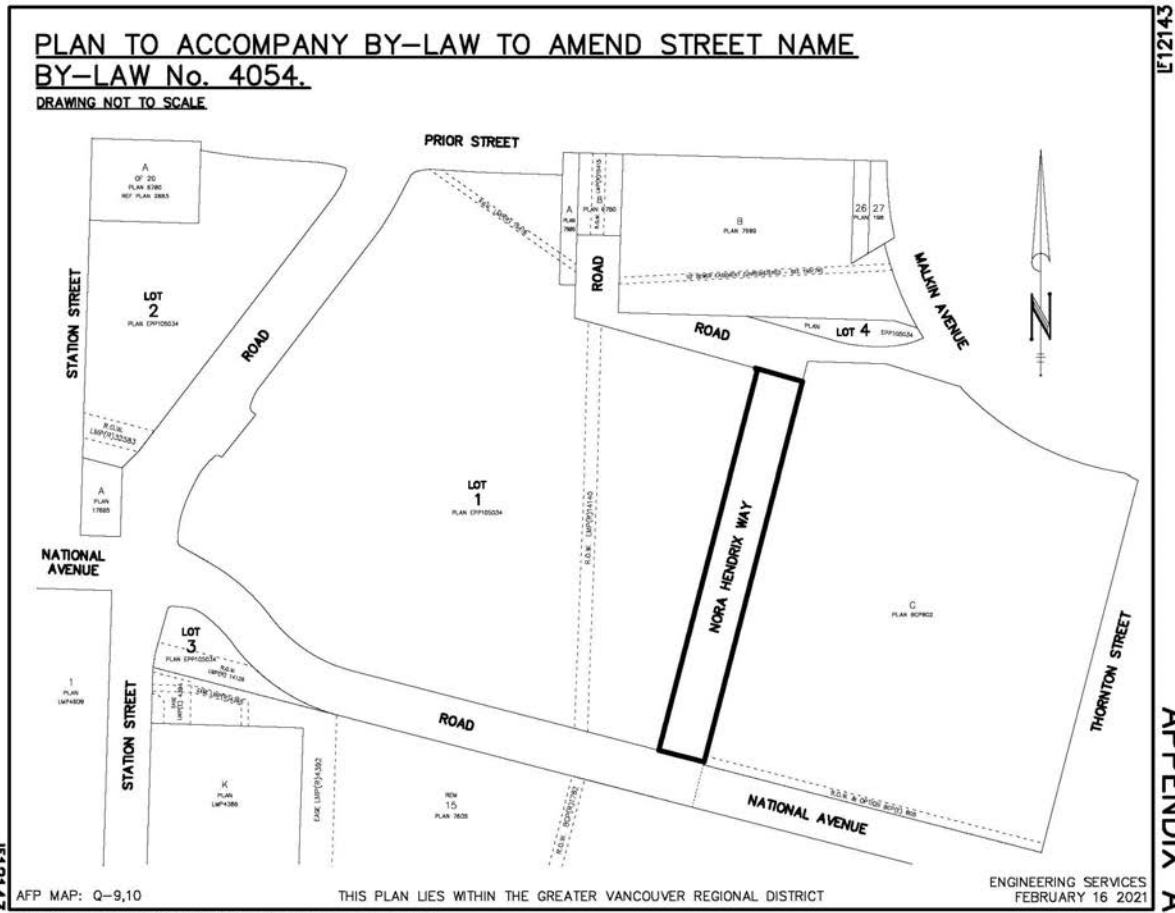
Mayor

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Acting City Clerk

**PLAN TO ACCOMPANY BY-LAW TO AMEND STREET NAME**  
**BY-LAW No. 4054.**

**DRAWING NOT TO SCALE**



L12143

L12143

APPENDIX A

AFP MAP: Q-9,10

THIS PLAN LIES WITHIN THE GREATER VANCOUVER REGIONAL DISTRICT

ENGINEERING SERVICES  
FEBRUARY 16 2021

Y:\LAND\_SURVEY\APP\2020\DWG\L12143 - Street Name - Nora Hendrix.dwg

**EXPLANATION****A By-law to amend Street Name By-law No. 4054  
regarding the naming of new streets and street extensions  
in the Pearson Dogwood Development**

Enactment of the attached By-law will implement Council's resolution of February 10, 2021 to name new streets and street extensions as set out in the attached By-law.

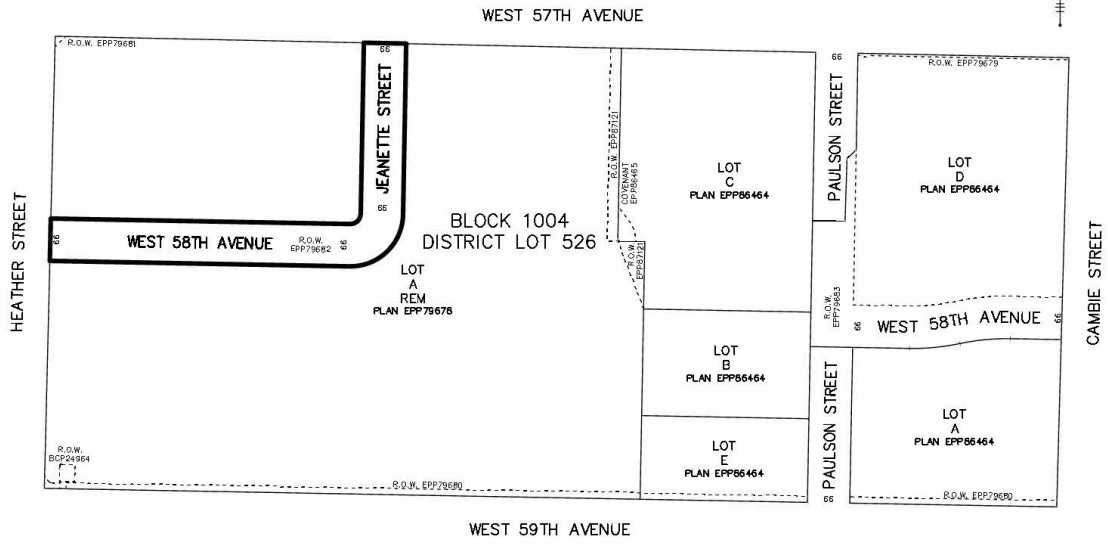
Director of Legal Services  
March 9, 2021





# PLAN TO ACCOMPANY A BY-LAW TO AMEND STREET NAME BY-LAW No. 4054.

DRAWING NOT TO SCALE



AFP  
MAP: N, O-22, 23

ENGINEERING SERVICES  
DEC 1, 2020

**EXPLANATION**  
**Authorization to enter into a Housing Agreement**  
**Re: 3235 - 3561 Clive Avenue**

Following a public hearing on February 25, 2020, Council approved the rezoning of the referenced lands subject to a number of conditions, including a condition that the owner of these lands first 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 at least six residential units as secured market rental housing for the longer of 60 years or the life of the building, and subject to other conditions referenced in the minutes of public hearing for February 25, 2020.

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

Director of Legal Services  
March 9, 2021

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

**A By-Law to enact a Housing Agreement  
for 3235 - 3261 Clive 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 legally described as:

NO PID                      Lot 1 Blocks 149 to 153 District Lot 37 Group 1 Plan EPP106807

in substantially the form and substance of the Housing Agreement attached to this By-law as Schedule A, and also authorizes the execution of the Housing Agreement by the Director of Legal Services on behalf of the City and the delivery of the Housing Agreement to the owner on such terms and conditions as the Director of Legal Services deemed 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

## Schedule A

### Housing Agreement

FORM\_C\_V27 (Charge)

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

PAGE 1 OF 20 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)  
**Andrea Shaw, TERRA LAW CORPORATION**  
**Suite 2800 - 650 West Georgia Street**  
**Vancouver BC V6B 4N7**  
 Phone 604-628-8975  
 Client No. 12544 Doc No. 1589057  
 File No. 504431  
 #20-00482-005 - Housing Agreement  
 Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
 [PID] [LEGAL DESCRIPTION]  
**NO PID NMBR LOT 1 BLOCKS 149 TO 153 DISTRICT LOT 37 GROUP 1 PLAN EPP106807**  
 STC? YES  
 Related Plan Number: **EPP106807**

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**

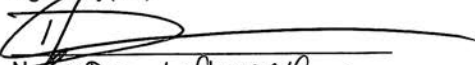
6. TRANSFEREE(S): (including postal address(es) and postal code(s))  
**CITY OF VANCOUVER**  
**453 WEST 12TH AVENUE**  
**VANCOUVER BRITISH COLUMBIA**  
**V5Y 1V4 CANADA**

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)  
  
**Renita S. Swamy**  
 Barrister & Solicitor  
 Terra Law Corporation  
 Suite 2800 - 650 West Georgia St.  
 Vancouver, BC V6B 4N7  
 604-628-8962

Execution Date		
Y	M	D
21	02	25

Transferor(s) Signature(s)  
**NEXST CLIVE DEVELOPMENT LTD. by its authorized signatory(ies):**  
  
 Name: **Dan Laflamme**  
 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)

\_\_\_\_\_

\_\_\_\_\_

See Affidavit of Execution

\_\_\_\_\_

Execution Date		
Y	M	D
21		
21	02	24
21		

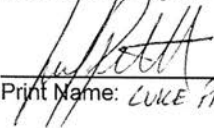
Transferor / Borrower / Party Signature(s)

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

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

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

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

  
\_\_\_\_\_  
Print Name: LUKE PRETY

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

CITY OF VANCOUVER by its authorized signatory:

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

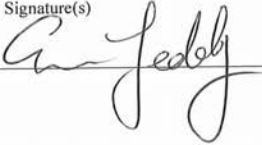
OFFICER CERTIFICATION:

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)




**EMAN JEDDY**  
*Barrister & Solicitor*  
1600 - 925 WEST GEORGIA ST.  
VANCOUVER, B.C. V6C 3L2  
(604) 685-3456

Execution Date

Y	M	D
21	02	26
21		
21		

Transferor / Borrower / Party Signature(s)

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

  
Print Name:

**IRVING D. LASKIN**  
*Barrister & Solicitor*  
1600 - 925 WEST GEORGIA ST.  
VANCOUVER, B.C. V6C 3L2  
(604) 685-3456

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

Print Name:

Print Name:

CITY OF VANCOUVER by its authorized signatory:

Name:

OFFICER CERTIFICATION:

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

FORM\_E\_V27

LAND TITLE ACT  
FORM E

## SCHEDULE

PAGE 3 OF 20 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 219 Covenant Entire Instrument
Priority Agreement		granting the Section 219 Covenant with one registration number less than this Priority Agreement priority over Mortgage CA7423199 and Assignment of Rents CA7423200
Priority Agreement		granting the Section 219 Covenant with two registration numbers less than this Priority Agreement priority over Mortgage CA7680638 and Assignment of Rents CA7680639



FORM\_E\_V27

**LAND TITLE ACT  
FORM E****SCHEDULE**

PAGE 4 OF 20 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):**

NEXST CLIVE DEVELOPMENT LTD. (INCORPORATION NO. BC1144795)  
HMT HOLDINGS INC. (INCORPORATION NO. A0074963), as to Priority  
SCHEMING INVESTMENTS LTD. (INCORPORATION NO. BC0938049), as to Priority

## TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT RENTAL HOUSING  
3235 - 3261 CLIVE AVENUE

## WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (I) the Transferor, NEXST CLIVE DEVELOPMENT LTD., is called the "Owner", as more particularly defined in Section 1.1(r); and
  - (II) the Transferee, CITY OF VANCOUVER, is herein called the "City" (as more particularly defined in Section 1.1(c));
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands from CD-1 (Comprehensive Development) District to a new CD-1 (Comprehensive Development) District (the "Rezoning") to increase the floor space ratio from 1.20 to 2.25 and to increase the maximum building height from 11.9 metres to 21.4 metres to permit the development of a six-storey residential building fronting Vanness Avenue and three-and-one-half-storey townhouses fronting Clive Avenue consisting of a total of 68 residential units (62 strata-titled units and six market rental units), all over two-and-one-half levels of underground parking (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*, fulfilment of the condition that, prior to enactment of the rezoning bylaw (the "Rezoning Bylaw"), 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 and/or Section 219 Covenant for 60 years or the life of the building, whichever is greater, to subdivide the development lands by either: (i) an air space subdivision to create an air space parcel; or (ii) a strata plan to create one single strata lot, containing at least six residential units of secured market rental housing units, subject to the following conditions and requirements:*
- (a) *a no separate-sales covenant;*
  - (b) *a no stratification covenant (on air space parcel or from single strata lot);*
  - (c) *a provision that none of such units will be rented for less than one month at a time;*
  - (d) *a covenant that, if the residential units of secured market rental housing are contained within a single strata lot, a rental disclosure statement pursuant to the Strata Property Act, will be duly filed and delivered in accordance with the Real Estate Development Marketing*

*Act, designating such strata lot as rental for a period of not less than 200 years and that no bylaw that restricts the rental of such strata lot will be adopted prior to the first conveyance of a strata lot in the development; and*

- (e) *such other terms and conditions as the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services may in their sole discretion require.*

*Note to Applicant: A Housing Agreement is to be entered into the City by by-law enacted pursuant to Section 565.2 of the Vancouver Charter prior to enactment of the rezoning by-law.”;*

- D. Subsequent to the aforementioned public hearing, the City agreed to permit the creation of two strata lots to contain the six Rental Housing Units on the terms set out herein; and
- E. The Owner is entering into this Agreement to satisfy the foregoing conditions.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 565.2 of the *Vancouver Charter* and to Section 219 of the *Land Title Act*, agree as follows in respect of the use of the Lands and the New Building:

#### ARTICLE 1 DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions.** Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:
- (a) **“Agreement”** means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;
  - (b) **“Building Permit”** means any building permit issued by the City authorizing the building of a New Building as contemplated by the Development Permit;
  - (c) **“City”** means the City of Vancouver as a corporate entity;
  - (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 of Vancouver”** means, save only for its use in Section 1.1(c), the City of Vancouver as a geographical location;
  - (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) **“Development”** means the development on the Lands described in Recital C and approved by a Development Permit;

- (h) “Development Permit” means any development permit issued by the City authorizing the development of any portion of the Lands contemplated by the Rezoning Bylaw;
- (i) “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;
- (j) “Dwelling Unit” means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (k) “Effective Date” means the date as of which this Agreement has been executed by all parties to it;
- (l) “General Manager of Planning, Urban Design and Sustainability” means the chief administrator from time to time of the City’s Planning, Urban Design and Sustainability Department and her/his successors in function and their respective nominees;
- (m) “Land Title Act” means the *Land Title Act*, R.S.B.C. 1996, c. 250, as may be amended or replaced from time to time;
- (n) “Lands” means the parcel of land situate in the City of Vancouver 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;
- (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 and any building or structure on the Lands being renovated, upgraded or refurbished as contemplated by any 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 any 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 NEXST CLIVE DEVELOPMENT LTD., and its successors and permitted assigns;

- (s) **“Related Person”** means, where the registered or beneficial owner of the Rental Housing Units is:
  - (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c. 57), then a Related Person is:
    - (A) an officer, director or shareholder of such corporation or of another entity which is a shareholder of such corporation; or
    - (B) the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder referred to in Section 1.1(s)(i)(A); 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 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 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) **“Rental Housing Units”** means not less than six new residential units of Rental Housing to be contained within the New Building upon its completion, as part of the Development, which units will comply with the terms in this Agreement and the Development Permit applicable to the same, and **“Rental Housing Unit”** means any one of them;
- (v) **“Rental Housing Units Air Space Parcel”** has the meaning ascribed to such term in Section 3.1(a)(i);
- (w) **“Rental Housing Units Strata Lots”** has the meaning ascribed to such term in Section 3.1(a)(ii);
- (x) **“Replacement Rental Housing Unit”** has the meaning ascribed to that term in Section 2.1(c) and **“Replacement Rental Housing Units”** means all of such units;
- (y) **“Residential Tenancy Act”** means the *Residential Tenancy Act*, S.B.C. 2002, c. 78, as may be amended or replaced from time to time;
- (z) **“Rezoning”** means the rezoning of the Lands as described in Recital C;
- (aa) **“Rezoning Bylaw”** has the meaning ascribed to it in Recital C;

- (bb) “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; and
  - (ii) the date as of which the New Building is demolished or substantially destroyed;
- (cc) “Vancouver” has the meaning ascribed to that term in Recital A(ii); and
- (dd) “*Vancouver Charter*” means the *Vancouver Charter*, S.B.C. 1953, c. 55, as may be amended or replaced from time to time.

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 bylaw includes and is a reference to such statute or bylaw and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute, bylaw and regulations that may be passed which have the effect of supplementing or superseding such statutes, bylaws 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 **Use of Lands.** 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) it will construct, fit and finish, at its sole cost and expense, the New Building containing not less than six Rental Housing Units (not less than 33% of which Rental Housing Units will have at least two bedrooms), in accordance with this Agreement, the Development Permit, the Building Permit and all applicable City bylaws 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 of the Rental Housing Units in the New Building will be used only for the purpose of providing Rental Housing in accordance with the terms of this Agreement, and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building, then then it will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired or replacement building(s) on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than six Rental Housing Units, which replacement Rental Housing Units will also be used only for the purpose of providing Rental Housing (each such replacement Rental Housing Unit hereinafter referred to as a “**Replacement Rental Housing Unit**”), in accordance with the terms of this Agreement and the applicable bylaws of the City and which Replacement Rental Housing Units will be subject, for the remaining duration of the Term, to the same use restriction as the Rental Housing Units are pursuant to this Agreement;
  - (d) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) for a term of less than one month at a time;
  - (e) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) to be sold or otherwise transferred unless title to every one of the Rental Housing Units (or Replacement Rental Housing Units, as applicable) is sold or otherwise transferred together and as a block to the same legal or beneficial owner, as applicable, and subject to Section 8.7;

- (f) throughout the Term, it will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld, subject to ARTICLE 3;
- (g) throughout the Term, that any sale of any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) in contravention of the covenant in Section 2.1(e), and any subdivision of the Lands or the 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(f), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (h) if the Rental Housing Units are contained within the Rental Housing Strata Lots:
  - (i) a rental disclosure statement pursuant to the *Strata Property Act*, S.B.C. 1998, c. 43, will be duly filed and delivered in accordance with the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41, designating such Rental Housing Strata Lots as rental for a period of not less than 200 years and no bylaw that restricts the rental of the Rental Housing Units in such Rental Housing Strata Lots will be adopted prior to the first conveyance of a strata lot in the development; and
  - (ii) concurrently with the registration of the strata plan to create the Rental Housing Strata Lots, the Owner will cause to be filed a "No Separate Sale" covenant pursuant to Section 219(2)(d) of the *Land Title Act* prohibiting the separate sale of the Rental Housing Strata Lots in form and substance satisfactory to the City;
- (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 a state and condition that is equal to or greater than the state and condition thereof as existed before such damage occurred; and
- (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 the City of Vancouver by reasonable and prudent owners of similar buildings and lands.

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

**3.1 Subdivision.** Notwithstanding Section 2.1(f):

- (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:

- (i) the deposit of an air space subdivision plan, to enable all of the Rental Housing Units to be contained within one air space parcel (the “**Rental Housing Units Air Space Parcel**”); or
  - (ii) the deposit of a strata plan to enable the creation of no more than 64 strata lots on the following conditions:
    - (A) no more than two strata lots, each of which must contain no less than two Rental Housing Units (collectively, the “**Rental Housing Units Strata Lots**”) may be created in respect of all Rental Housing Units; and
    - (B) such strata plan having been approved by the City to ensure compliance with Section 3.1(a)(ii)(A); and
- (b) following such a subdivision and the issuance of a final Occupancy Permit for the Rental Housing Units Air Space Parcel or the Rental Housing Units Strata Lots, as applicable, 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 or the Rental Housing Units Strata Lots and associated common property, as applicable, 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, the Rental Housing Units Air Space Parcel or the Rental Housing Units Strata Lots, as applicable, 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.

**ARTICLE 4  
OCCUPANCY RESTRICTION ON THE LANDS**

- 4.1 No Occupancy.** 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 General Manager of Planning, Urban Design and Sustainability, in form and substance satisfactory to the General Manager of Planning, Urban Design and Sustainability, proof of the insurance, consistent with the requirements of Section 2.1(k), is in force and effect; 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 6, 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  
ENFORCEMENT**

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

**ARTICLE 6  
RELEASE AND INDEMNITY**

- 6.1 Release and Indemnity.** Subject to Section 6.3, except to the extent caused by the gross negligence or wrongful intentional acts of the City or City Personnel, the Owner hereby:
- (a) will not make any claims against the City or City Personnel and releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner in connection with this Agreement, including without limitation:
    - (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) performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement;
  - (C) withholding any permit pursuant to this Agreement; or
  - (D) exercising any of its rights under any Section 219 Covenant or other right granted to the City pursuant to this Agreement; or
- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement,

whether or not such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel; and

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of or which could not have been sustained "but for" any of the following:
- (i) this Agreement;
  - (ii) 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;
    - (C) performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement; or
    - (D) 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
  - (iii) 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
  - (iv) 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.

- 6.2** The indemnities in this ARTICLE 6 will be both personal covenants of the Owner and integral parts of the Section 219 Covenant granted in this Agreement.

### 6.3 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 6.3(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 6.3(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.3(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 6.3(b).

- (c) Regardless of whether the claim is being defended under Section 6.3(a) or Section 6.3(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.

- 6.4 **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 7 NOTICES

- 7.1 **Notices.** 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 to the City, addressed to:

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

Attention: General Manager of Planning, Urban Design and Sustainability with a concurrent copy to the Director of Legal Services

(b) If to the Owner, addressed to:

Nexst Clive Development Ltd.  
#100-1682 West 7th Avenue  
Vancouver, BC V6J 4S6

Attention: Harrison Han

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 8 MISCELLANEOUS

**8.1 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.

**8.2 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 the 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.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 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.
- 8.7 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 in the Lands by way of mortgage), subject always to Sections 2.1(e) and 2.1(f), the Owner will cause the purchaser/transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of the Owner under this Agreement. The provisions in this Section 8.7 will apply equally to all subsequent purchasers/transferees (other than the transfer of an interest in the Lands by way of mortgage).

- 8.8 Severability.** All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 8.9 *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, bylaws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 8.10 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.

IN WITNESS WHEREOF the parties 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 Mortgage CA7423199 and the Assignment of Rents CA7423200;
- (b) “Existing Chargeholder” means HMT HOLDINGS INC.;
- (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:

- (e) consents to the Owner granting the New Charges to the City; and
- (f) 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 Mortgage CA7680638 and the Assignment of Rents CA7680639;
- (b) "Existing Chargeholder" means SCHEMING INVESTMENTS 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:

- (e) consents to the Owner granting the New Charges to the City; and
- (f) 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**

CANADA  
PROVINCE OF  
BRITISH COLUMBIA

AFFIDAVIT OF EXECUTION

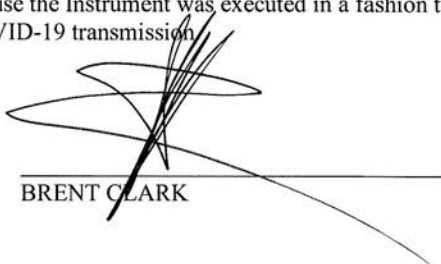
I, BRENT CLARK, of Suite 2900, 550 Burrard Street, in the City of Vancouver, Province of British Columbia, do solemnly declare that:

1. I am 19 years of age or older and have knowledge of the authorized signatory (the “**Authorized Signatory**”) signing on behalf of Scheming Investments Ltd. (the “**Company**”) in the Form C – Charge attached as Exhibit A (the “**Instrument**”) and of the Company.
2. The Authorized Signatory:
  - a. is an authorized signatory of the Company; and
  - b. was authorized by the Company to execute the Instrument.
3. The Company existed at the time the Instrument was executed and is legally entitled to hold, charge and dispose of land in British Columbia.
4. The Authorized Signatory’s signature was not certified by an officer under Part 5 of the *Land Title Act*, R.S.B.C. 1996, c. 250 because the Instrument was executed in a fashion to maintain social distancing and prevent COVID-19 transmission.

SWORN BEFORE ME at the City of Vancouver, British Columbia, on this 24<sup>th</sup> day of February, 2021

A Commissioner for taking Affidavits in and for the Province of British Columbia.

GLEN NESBITT  
Barrister & Solicitor  
Fasken Martineau DuMoulin LLP  
2900 - 550 Burrard Street  
Vancouver, BC V6C 0A3  
604 631 4833

  
BRENT CLARK

**EXPLANATION****Authorization to enter into a Housing Agreement  
Re: 4185 Main Street**

The land owner applied to the City develop the Lands pursuant to Development Application DP-2019-00944 to permit the development of a four-storey mixed-use building with retail on the ground floor and residential on the second to fourth floor's. The Development Application was approved, subject to, among other things, a Housing Agreement being entered into by the City and the land owner securing 10 residential units as secured marked rental housing for the longer of 60 years or the life of the building, which agreement was to be on terms satisfactory to the General Manager of Planning and Development Services and the Director of Legal Services. The Housing Agreement was accepted and executed by the land owner, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services  
March 9, 2021

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

**A By-law to enact a Housing Agreement  
for 4185 Main 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 Number                      LOT A BLOCK 1 DISTRICT LOT 631 NEW  
WESTMINSTER DISTRICT PLAN EPP56546

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

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)  
**John V Lee, Lawyer**

6235 - 4000 No 3 Road  
Richmond BC V6X 0J8

t: 604-238- 7388  
200266 B & M  
20-01238-001 - Housing Agreement

Deduct LTSA Fees? Yes

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

**NO PID NMBR LOT A BLOCK 1 DISTRICT LOT 631 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP56546**

STC? YES

Related Plan Number: **EPP56546**

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):

**B & M INVESTMENT LTD., INC.NO. 380254**

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

**CITY OF VANCOUVER**

453 WEST 12TH AVENUE  
VANCOUVER

BRITISH COLUMBIA  
CANADA

V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:

N/A

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

Officer Signature(s)

  
**JOHN V LEE**  
Lawyer & Notary Public  
6235-4000 No. 3 Road,  
Richmond, B.C. Canada, V6X 0J8  
Tel: 604-238-7388  
Fax: 604-238-7383

Execution Date

Y	M	D
21		

Transferor(s) Signature(s)

**B & M INVESTMENT LTD., by its authorized signatory(ies):**

  
Name: **Bell Yuen**

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
21		

Transferor / Borrower / Party Signature(s)

CITY OF VANCOUVER, by its  
authorized signatory:

\_\_\_\_\_  
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

Entire Instrument

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

TERMS OF INSTRUMENT - PART 2  
HOUSING AGREEMENT AND BUILDING USE COVENANT  
RENTAL HOUSING  
4185 Main Street

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- I. the Transferor, **B & M INVESTMENT LTD.**, is called the “**Owner**”, as more particularly defined in Section 1.1(r); 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 develop the Lands pursuant to Development Application DP-2019-00944 (the “**Development Application**”) to permit the development of a four-storey mixed use building with retail on the ground floor and residential on the second to fourth floor’s (the “**Development**”), which Development Application was approved in principle, subject to, among other things, fulfilment of the condition that, prior to issuance of a Development Permit, the Owner will:
- “Make arrangements to the satisfaction of the General Manager of Planning and Development Services and the Director of Legal Services to enter into a Housing Agreement and Section 219 Covenant securing 10 residential units, as secured market rental housing for the longer of 60 years or the life of the building, 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.*
  - iv. Such other terms and conditions as the General Manager of Planning and Development Services and the Director of Legal Services may in their sole discretion require.”*
- D. The Owner is entering into this Agreement to satisfy the foregoing conditions.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 565.2 of the *Vancouver Charter* and to Section 219 of the *Land Title Act*, agree as follows in respect of the use of the Lands and the New Building:



**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

1.1 **Definitions.** Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:

- (a) **“Agreement”** means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;
- (b) **“Building Permit”** means any building permit issued by the City authorizing the building of a New Building as contemplated by 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”** has the meaning ascribed to it in Recital C;
- (g) **“Development Application”** has the meaning ascribed to it in Recital C;
- (h) **“Development Permit”** means any development permit issued by the City authorizing the development of the Lands contemplated by the Development Application;
- (i) **“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;
- (j) **“Dwelling Unit”** means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (k) **“Effective Date”** means the date as of which this Agreement has been executed by all parties to it;
- (l) **“General Manager of Planning, Urban Design and Sustainability”** means the chief administrator from time to time of the City’s Planning, Urban Design and Sustainability Department and her/his successors in function and their respective nominees;
- (m) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c. 250, as may be amended or replaced from time to time;
- (n) **“Lands”** means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 of the 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 and any building or structure on the Lands being renovated, upgraded or refurbished as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;
- (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 B & M Investment Ltd., and its successors and permitted assigns;
- (s) **“Related Person”** means, where the registered or beneficial owner of the Rental Housing Units is:
  - (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c. 57), then a Related Person is:
    - (A) an officer, director or shareholder of such corporation or of another entity which is a shareholder of such corporation; or
    - (B) the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder referred to in paragraph (A); 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 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 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) **“Rental Housing Units”** means at least ten (10) new residential units of Rental Housing to be contained within the New Building upon its completion, as part of the Development, which units will comply with the terms in this Agreement and the Development Permit applicable to the same, and **“Rental Housing Unit”** means any one of them;
- (v) **“Replacement Rental Housing Unit”** has the meaning ascribed to that term in Section 2.1(c) and **“Replacement Rental Housing Units”** means all of such units;

- (w) “**Residential Tenancy Act**” means the *Residential Tenancy Act*, S.B.C. 2002, c. 78, as may be amended or replaced from time to time;
- (x) “**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; and
  - (ii) the date as of which the New Building is demolished or substantially destroyed;
- (y) “**Vancouver**” has the meaning ascribed to that term in Recital A(ii); and
- (z) “**Vancouver Charter**” means the *Vancouver Charter*, S.B.C. 1953, c. 55, as may be amended or replaced from time to time.

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 **Use of Lands.** 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) it will construct, fit and finish, at its sole cost and expense, the New Building containing not less than ten Rental Housing Units, 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 Rental Housing Units in the New Building will be used only for the purpose of providing Rental Housing in accordance with the terms of this Agreement, and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the Final Occupancy permit for the New Building, then then it will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired or replacement building(s) on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than ten Rental Housing Units, which replacement Rental Housing Units will also be used only for the purpose of providing Rental Housing (each such replacement Rental Housing Unit hereinafter referred to as a “**Replacement Rental Housing Unit**”), in accordance with the terms of this Agreement and the applicable by-laws of the City and which Replacement Rental Housing Units will be subject, for the remaining duration of the Term, to the same use restriction as the Rental Housing Units are pursuant to this Agreement;
- (d) throughout the Term, it will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) for a term of less than one month at a time;
- (e) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) to be sold or otherwise transferred unless title to every one of the Rental Housing Units (or Replacement Rental Housing Units, as applicable) is sold or otherwise transferred together and as a block to the same legal or beneficial owner, as applicable, and subject to Section 8.7;
- (f) throughout the Term, it will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise,

{01445847v3}

Housing Agreement and Building Use Covenant  
4185 Main Street

without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld; provided, however, the Owner may, without obtaining any such consent, subdivide the Lands by strata plan or airspace subdivision plan so long as all of the Rental Housing Units are contained within one strata lot or one airspace parcel, respectively;

- (g) throughout the Term, that any sale of any Rental Housing Unit (or Replacement Rental Housing Unit, as applicable) in contravention of the covenant in Section 2.1(e), and any subdivision of the Lands or the 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(f), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (h) throughout the Term, it will 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;
- (i) 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 a state and condition that is equal to or greater than the state and condition thereof as existed before such damage occurred; and
- (j) 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.

**ARTICLE 3  
OCCUPANCY RESTRICTION ON THE LANDS**

**3.1 No Occupancy.** 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 General Manager of Planning, Urban Design and Sustainability, in form and substance satisfactory to the General Manager of Planning, Urban Design and Sustainability and proof of the insurance, consistent with the requirements of Section 2.1(j), is in force and effect; 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 3.1(a)(i); and
- (b) without limiting the general scope of ARTICLE 5, 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 3.

**ARTICLE 4  
ENFORCEMENT**

4.1 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 5  
RELEASE AND INDEMNITY**

5.1 **Release and Indemnity.** Subject to Section 5.2, the Owner hereby:

- (a) will not make any claims against the City or City Personnel and releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner in connection with this Agreement, including without limitation:
  - (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) performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement;
    - (C) withholding any permit pursuant to this Agreement; or
    - (D) exercising any of its rights under any Section 219 Covenant or other right granted to the City pursuant to this Agreement; or
  - (ii) that 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 or which could not have been sustained "but for" any of the following:
  - (i) this Agreement;
  - (ii) the release by the City or any or all of the City's rights under this Agreement or the loss of any rights purported to be granted hereby;

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- (iii) 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;
    - (C) performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement; or
    - (D) exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or
  - (iv) any negligent act or omission or willful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
  - (v) 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.

The indemnities in this ARTICLE 5 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

**5.2 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 5.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 5.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 5.2(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 5.2(b).

- (c) Regardless of whether the claim is being defended under Section 5.2(a) or Section 5.2(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.

**5.3 Survival of Release and Indemnities.** The release and indemnities in this ARTICLE 5 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 6 SUBDIVISION OF THE LANDS

**6.1 By Air Space Subdivision Plan.** Notwithstanding Section 2.1(f):

- (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 and the New Building by the deposit of an air space subdivision plan, provided that all the Rental Housing Units will thereafter be contained within a single air space parcel or remainder parcel (the "**Rental Housing Parcel**"); and
- (b) following such subdivision and the issuance of a final occupancy permit for the Rental Housing Parcel, the Owner may apply to the City for a partial discharge of this Agreement (the "**Discharge**") with respect to any legal parcel other than the Rental Housing Parcel, and the City will on request of the Owner execute and deliver a registrable Discharge in respect of such other parcel(s) provided, that:
  - (i) the Director of Legal Services is satisfied that the 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 Parcel, pursuant to this Agreement;
  - (ii) the 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 the Discharge; and
  - (iv) the preparation and registration of the Discharge will be without cost to the City.

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6.2 **Partial Discharge.** Notwithstanding anything else contained herein, following the subdivision and partial discharge contemplated in Section 6.1, this Agreement will be read and applied so that the obligations and restrictions contained herein will apply only to the Rental Housing Parcel and this Agreement and the obligations and restrictions contained herein will not apply to any other portions of the Lands.

**ARTICLE 7  
NOTICES**

7.1 **Notices.** 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 to the City, addressed to:

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

Attention: General Manager of Planning, Urban Design and Sustainability with a concurrent copy to the Director of Legal Services

- (b) If to the Owner, addressed to:

**B & M Investment Ltd.**  
9320 Algoma Drive  
Richmond, British Columbia V7A 3P7

Attention: Bernard Yuen

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 8  
MISCELLANEOUS**

8.1 **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.

**8.2 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 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.

**8.3 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.

**8.4 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, subject to Section 8.8, be binding upon the Owner and its successors and assigns.

**8.5 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.

**8.6 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.

**8.7 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 in the Lands by way of mortgage), subject always to Sections 2.1(e) and 2.1(f), the

Owner will cause the purchaser/transferee of the Rental Housing Parcel 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 of the Rental Housing Parcel will agree to be bound by all of the obligations, agreements and indemnities of the Owner under this Agreement. The provisions in this Section 8.7 will apply equally to all subsequent purchasers/transferees of the Rental Housing Parcel (other than the transfer of an interest in the Lands by way of mortgage).

**8.8 No Liability.** Despite Section 8.4 to the contrary, provided the parties comply with Section 8.7, the parties agree that neither the Owner nor any successor in title to the Lands, or portions thereof, will be liable for breaches or non-observance or non-performance of covenants herein occurring as the same relate to any portion of the Lands after the Owner or any successors in title, as the case might be, has ceased to be the registered owner of such portion, but the Owner, or its successors in title, as the case may be, will remain liable after ceasing to be the registered owner of any portion of the Lands for all breaches of and non-observance of covenants herein as the same relate to such portion that occur prior to the Owner, or any successor in title, as the case may be, ceasing to be the registered owner of such portion.

**8.9 Severability.** All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.

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

**8.11 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.

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

END OF DOCUMENT