

**EXPLANATION****Heritage Designation By-law  
Re: 2146 Semlin Drive (Kilpin Residence)**

At a public hearing on May 19, 2022, Council approved a recommendation to designate the structure, exterior envelope and exterior building materials of a building at 2146 Semlin Drive as protected heritage property. Enactment of the attached By-law will achieve the designation.

Director of Legal Services  
October 31, 2023

2146 Semlin Drive  
(Kilpin Residence)

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

**A By-law to designate certain real property  
as protected heritage property**

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

1. Council considers that the real property described as:

Structure and exterior envelope  
and exterior building materials  
of the heritage building  
(Kilpin Residence)

2146 Semlin Drive  
Vancouver, B.C.

PID: 003-637-433  
Lot B (Explanatory Plan  
3825) of Lot D  
Block 147  
District Lot 264A  
Plans 361 and 1771

has heritage value or heritage character, and that its designation as protected heritage property is necessary or desirable for its conservation.

2. Council designates the real property described in section 1 of this By-law as protected heritage property under Section 593 of the *Vancouver Charter*.

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

ENACTED by Council this       day of       , 2023

\_\_\_\_\_  
Mayor

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

**EXPLANATION****A By-law to authorize Council entering into a Heritage Revitalization Agreement  
with the Owners of Heritage Properties**

Following the Public Hearing held on May 19, 2022, Council resolved to enter into a by-law to authorize the City to enter into a Heritage Revitalization Agreement regarding 2146 Semlin Drive (Kilpin Residence), pursuant to Section 592 of the Vancouver Charter. Enactment of the attached by-law will accomplish Council's resolution.

Director of Legal Services  
October 31, 2023

2146 Semlin Drive  
(Kilpin Residence)

**BY-LAW NO.**

**A By-law to authorize Council entering into a  
Heritage Revitalization Agreement with the Owner of Heritage Property**

**PREAMBLE**

Council has authority under the *Vancouver Charter* to enter into a Heritage Revitalization Agreement with the owner of heritage property, including terms and conditions to which Council and the owner may agree.

Certain property bearing the civic address of 2146 Semlin Drive, and the following legal description:

PID: 003-637-433  
Lot B (Explanatory Plan 3825) of Lot D  
Block 147  
District Lot 264A  
Plans 361 and 1771

contains a heritage building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the property have agreed to facilitate such conservation, by agreeing to the terms and conditions set out in the attached Heritage Revitalization Agreement.

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

1. Council authorizes the City to enter into a Heritage Revitalization Agreement with the owner, in substantially the form and substance of the Heritage Revitalization 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                      , 2023

\_\_\_\_\_  
Mayor

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



1. Application

**Joanna Track  
453 West 12th Avenue  
Vancouver BC V5Y 1V4**

LS-21-01478 (Heritage Revitalization Agreement)

2. Description of Land

PID/Plan Number	Legal Description
<b>003-637-433</b>	<b>LOT B (EXPLANATORY PLAN 3825) OF LOT D BLOCK 147 DISTRICT LOT 264A PLANS 361 AND 1771</b>

3. Nature of Interest

Type	Number	Additional Information
<b>COVENANT</b>		<b>Section 219 Covenant, Article 2</b>
<b>COVENANT</b>		<b>Section 219 Covenant, Article 3</b>
<b>STATUTORY RIGHT OF WAY</b>		<b>Article 4</b>
<b>EQUITABLE CHARGE</b>		<b>Article 6</b>

4. Terms

Part 2 of this instrument consists of:  
**(b) Express Charge Terms Annexed as Part 2**

5. Transferor(s)

**LANCE MICHAEL WALKER**  
**ADRIENNE MARLENE TANNER**

6. Transferee(s)

**CITY OF VANCOUVER  
453 WEST 12TH AVENUE  
VANCOUVER BC V5Y 1V4**

7. Additional or Modified Terms

8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature


Execution Date

Transferor / Transferee / Party Signature(s)



**LYNN I. RAMSAY, QC**  
BARRISTER & SOLICITOR  
400 - 725 GRAVEVILLE STREET  
VANCOUVER, B.C. V7Y 1G5  
(604) 687-2242

YYY-MM-DD  
2022.4.11

  
**LANCE MICHAEL WALKER**

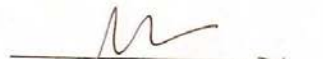
Officer Certification

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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

  
MICHAEL WALKER  
Barrister/Solicitor  
400-725 Graverville St  
Vancouver V7Y1G5  
604-687-2242

YYY-MM-DD  
2022.4.13

  
**ADRIENNE MARLENE TANNER**

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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

\_\_\_\_\_

YYY-MM-DD

**CITY OF VANCOUVER**  
By their Authorized Signatory

\_\_\_\_\_

Officer Certification

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



Land Title Act

## Charge

General Instrument – Part 1

### Electronic Signature

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.

**TERMS OF INSTRUMENT - PART 2**  
**HERITAGE REVITALIZATION AGREEMENT**

**WHEREAS:**

- A. The Owner (as herein defined) is the legal and beneficial owner of the parcel of land at 2146 Semlin Drive in the City of Vancouver (the "**Lands**") which has the legal description shown in Item 2 of the General Instrument Form C - Part 1 of this document.
- B. There is a building situated on the Lands known as the "Kilpin Residence", which is considered to be of heritage value (the "**Heritage Building**").
- C. The Owner wishes to develop the Lands by:
  - (i) subdividing the Lands to create two new parcels, with one parcel containing the Heritage Building and the other parcel containing a new One-Family Dwelling with Secondary Suite; and
  - (ii) conserving, maintaining and validating the Heritage Building as a One-Family Dwelling with Secondary Suite,
 and under development permit application No. DP-2020-00123 (the "**DP Application**") the Owner has applied to the City for a development permit for that purpose.
- D. The Owner proposes that, in exchange for a number of variances to the City of Vancouver's *Zoning & Development By-law* needed for the proposed project as contemplated under the DP Application, the Owner will enter into this heritage revitalization agreement with the City for the conservation of the Heritage Building, will accept the addition of the Heritage Building to the Vancouver Heritage Register in the 'B' evaluation category therein, and will accept the designation of the Heritage Building as a protected heritage property under the provisions of the *Vancouver Charter*.

THEREFORE, pursuant to Section 592 of the *Vancouver Charter*, and in consideration of the payment ten dollars (\$10.00) by the City to the Owner, the mutual obligations and benefits given herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

**1.1 Definitions.** In this agreement, unless explicitly used differently elsewhere herein, the terms defined in this section have the meanings given to them here:

- (a) "**City**" means the municipality of the City of Vancouver continued under the *Vancouver Charter* and "**City of Vancouver**" means its geographic location and area;



- (b) **“Development”** means the proposed development project as described above in the introductory paragraphs hereto to secure the conservation and long-term preservation of the Heritage Building, subdivide the lands into two parcels, and construct a new One-Family Dwelling with Secondary Suite on one of those parcels pursuant to the DP Application;
- (c) **“Development Permit”** means any development permit(s) issued by the City under the DP Application in respect of the Development, as such permit(s) may be modified or amended from time to time, including, without limitation, all final reports, plans, drawings and specifications relating thereto and any amendments thereof;
- (d) **“DP Application”** has the meaning given above in the introductory paragraphs hereto;
- (e) **“General Manager of Planning, Urban Design, and Sustainability”** means City’s General Manager of Planning, Urban Design, and Sustainability appointed under the provisions of the *Vancouver Charter*;
- (f) **“Heritage Building”** has the meaning given above in the introductory paragraphs hereto;
- (g) **“Heritage Building Parcel”** means the parcel of land containing the Heritage Building following subdivision of the Lands as proposed by the Development;
- (h) **“Heritage Consultant”** means an independent heritage building rehabilitation and conservation expert, knowledgeable and experienced in and duly qualified for planning and supervising rehabilitation and conservation work for heritage buildings;
- (i) **“Heritage Designation”** means the City’s designation of the Heritage Building as protected heritage property pursuant to section 593 of the *Vancouver Charter*;
- (j) **“Lands”** has the meaning given above in the introductory paragraphs hereto and includes any other parcels of land into which the Lands may at any time in any way be consolidated or subdivided;
- (k) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250;
- (l) **“New Building”** means the new One-Family Dwelling with Secondary Suite contemplated for construction on the Lands under the DP Application as described in the introductory paragraphs hereto;
- (m) **“New Building Parcel”** means the parcel of land containing the New Building following subdivision of the Lands as proposed by the Development;
- (n) **“One-Family Dwelling with Secondary Suite”** has the meaning given under the *Zoning & Development By-law*;

- (o) “**Owner**” means the registered owner or owners of the Lands and the successors and assigns thereof and, without limitation, if the Lands are subdivided by way of a strata plan under the *Strata Property Act* of British Columbia, then “Owner” includes the strata corporation thereby created;
- (p) “**Strata Property Act**” means the *Strata Property Act*, S.B.C. 1998, c.43;
- (q) “**Subdivision By-law**” means the City’s *Subdivision By-law No. 5208* and any amendments thereto and replacements thereof;
- (r) “**Vancouver Charter**” means the *Vancouver Charter*, S.B.C. 1953, c.55, as amended from time to time, and any and all replacements thereof or any statute enacted in substitution thereof and all regulations applicable thereto and any amendments, replacements and substitutions thereof; and
- (s) “**Zoning & Development By-law**” means the City’s *Zoning & Development By-law No. 3575* and any amendments thereto and replacements thereof.

ARTICLE 2  
SECTION 219 COVENANT  
CONSERVATION OF HERITAGE BUILDING

2.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that:

- (a) nobody will in any way use or occupy the New Building or any part thereof and nobody will apply for or take any other action to compel the City, and, notwithstanding that the New Building may be ready for occupancy, the City will be under no obligation to issue any occupancy permit for the New Building or any part thereof at any time after this agreement is registered on title to the Lands, until:
  - (i) the Owner has submitted or caused to be submitted to the General Manager of Planning, Urban Design, and Sustainability a signed written statement prepared by a Heritage Consultant stating explicitly that the Heritage Building is in the same or better condition as it was in immediately prior to commencement of construction of the New Building, and that construction of the New Building has not caused any damage to the Heritage Building, or if damage has been caused, the Heritage Building has been fully restored to the condition it was in prior to construction of the New Building in accordance with Parks Canada’s *Standards & Guidelines for the Conservation of Historic Places in Canada*; and
  - (ii) the City has given the Owner a written notice or confirmation by which the City explicitly accepts or confirms its acceptance of the written statement required in subsection (i) above;
- (b) the City may revoke at any time any occupancy permit(s) issued for the New Building prior to the City giving the Owner the written notice or confirmation described in section 2.1(a)(ii) above, and in such circumstances the Owner, on

reasonable notice from the City, will ensure that anyone occupying any part of any such building vacates it immediately on such revocation of occupancy permit(s), and if anyone continues to occupy any portion of any part of the New Building in contravention of such revocation, this agreement and any applicable City by-laws, the City, at the Owner's expense, may pursue all remedies available to it, including, without limitation, injunctive relief, to ensure that the New Building is vacated and unoccupied in accordance with this agreement;

- (c) the Owner, at the Owner's expense, will do all things reasonably necessary to conserve the Heritage Building and keep it in good condition in all respects at all times;
- (d) at all times after and while this agreement is registered on title to the Lands, the Owner, at the Owner's expense, shall keep the Heritage Building insured to full replacement value against all perils, including, without limitation, damage or destruction by earthquake;
- (e) except for maintenance and repair work, the Owner will not and will not suffer or permit anyone else to do anything at any time to renovate, alter, modify or reconfigure or that will result in any alteration, modification or reconfiguration of the Heritage Building in any way except as may be permitted or required by this agreement and/or any development and/or heritage alteration permits issued by the City;
- (f) the Owner shall not at any time and shall not suffer or permit anyone else to at any time do anything that will obscure, deface or remove in any way any heritage related commemorative plaque the City, at its expense, may attach to the Heritage Building or the Lands pursuant to the statutory right of way granted to pursuant to Article 4 hereof;
- (g) if at any time for any reason the Heritage Building is damaged in any way or destroyed, the Owner, at the Owner's expense, and to the City's satisfaction, shall repair it or replace it with a replica building, except that if the Owner *bona fide* believes that to do so would be uneconomical, in which case, and if for that reason the Owner wishes to demolish it as damaged or wishes not to replicate it, as the case may be, the Owner, at the Owner's expense, and in consultation with and to the satisfaction of the City, will prepare an economic analysis therefor, but taking into consideration only land related economic factors, such as, for example, but without limitation, the estimated cost to repair or replicate the Heritage Building, as the case may be, the anticipated market value of the repaired or replicated building, the incentives given by the City for this agreement and the Heritage Designation, the estimated value of the Lands under the zoning otherwise applicable thereto, after which the City and the Owner, together, on the basis of that analysis, will determine whether in the circumstances it would be uneconomical to repair or replicate the Heritage Building, failing which the matter in all respects will be determined by arbitration by a single arbitrator in Vancouver, British Columbia, in accordance with the provisions of the *Arbitration Act*, RSBC 1996 c. 55, and if the Owner and the City agree or if in arbitration it is determined that it would be uneconomical for the Owner to be required to repair or replicate the

Heritage Building, then the Owner may request of the City's Mayor and Council that this agreement be discharged from title to the Lands and the Heritage Designation be cancelled;

- (h) if at any time, in default under this agreement, the Owner, in the City's opinion, fails to perform its obligations as required hereby to conserve the Heritage Building and fails to rectify any such default within thirty (30) days, or within such other longer time as the City may explicitly permit, after notice from the City to so rectify such default, the City, on the Owner's behalf and at the Owner's expense, may, but will be under not be obligated to, rectify the Owner's default; and
- (i) the Owner acknowledges and agrees that, notwithstanding that this agreement and the Heritage Designation will result in restrictions with respect to the future use and development and therefore may affect the value of the Lands, the Owner has received full and fair compensation therefor and the Owner hereby waives and renounces any and all claims for any further or other compensation by reason of this agreement and/or the Heritage Designation and acknowledges and agrees that the requirements of Section 595(1) of the *Vancouver Charter* have been fully satisfied, and the Owner hereby releases the City and its officials, officers, employees and agents from any liability for any loss, injury, damage or expense of any kind the Owner may suffer, incur or experience and the Owner will indemnify the City for any loss, injury, damage or expense the City may incur, suffer or experience and for any complaint, demand, claim, action, suit or judgment for any loss, injury, damage or expense anyone else may suffer, incur or experience arising out of or in any way connected this agreement and/or the Heritage Designation. The release and promise of indemnification contained in this paragraph will survive discharge and termination of this agreement.

### ARTICLE 3

#### SECTION 219 COVENANT - NO SEPARATE SALE

3.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees, as a covenant and agreement running with, charging and binding the Lands, that no portion of the Lands, including, without limitation, the Heritage Parcel and the New House Parcel, will at any time be sold separately from any other portion of the Lands and that all of the Lands, including, without limitation, the Heritage Parcel and the New House Parcel, will be owned at all times by the same person or persons.

3.2 Within a reasonable time of the Owner's request after an Occupancy Permit has been issued by the City for the New Building, the City, at the Owner's expense, will discharge from title to the Lands the Section 219 covenant contained in this Article 3.

### ARTICLE 4

#### STATUTORY RIGHT OF WAY

4.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City, effective at all times from and after the date upon which the City issues the Development Permit, a statutory right of way to enter, be and move about on the Lands:

- (a) to install, maintain, repair and replace on the exterior of the Heritage Building or at the perimeter of the Lands, at the City's expense, and in consultation with the Owner as to location, a commemorative plaque; and
- (b) in the event the Owner, in the City's opinion, is in default of any of its obligations under this agreement to conserve, repair, replace or replicate the Heritage Building, to carry out any such obligations of the Owner hereunder as the City may choose.

4.2 The statutory right of way granted in the preceding paragraph is necessary for the operation and maintenance of the City's undertaking.

4.3 Notwithstanding any other provision of this agreement, nothing herein obligates the City to exercise any of the rights granted to it by way of the statutory right of way contained herein.

#### **ARTICLE 5 DEBTS OWED TO CITY**

5.1 If the City, pursuant to this agreement, enters upon the Lands or any of them to perform any of the Owner's obligations hereunder to conserve, repair, replace or replicate the Heritage Building:

- (a) there will be no express or implied warranties as to the quality of any work the City may so carry out or the suitability of the materials for the purposes for which they are put; and
- (b) the Owner will pay to the City, forthwith on demand, to the extent the City has not taken payment for such costs from any letters of credit provided to the City hereunder, as reimbursement for expenses incurred, the full amount of all costs the City incurs to carry out work to conserve, repair, replace or replicate the Heritage Building, plus twenty percent (20%) of such costs as fair compensation for the City's overhead, and any such amounts the Owner does not pay or fails to pay to the City forthwith on demand will bear interest, until paid in full, at the prime lending rate at the Bank of Montreal's main branch in the City of Vancouver, plus three percent (3%), calculated monthly and not in advance.

#### **ARTICLE 6 EQUITABLE CHARGE**

6.1 The Owner hereby grants to the City an Equitable Charge over the Lands, which charge will run with, charge and bind the Lands, for the payment of all sums (including all interest thereon) which may at any time be payable by the Owner to the City under the terms of this agreement or otherwise at law.

6.2 The Equitable Charge the Owner has granted to the City herein may be enforced by the appointment of a receiver for the sale of the Lands.

**ARTICLE 7  
BY-LAW VARIATIONS**

7.1 To permit:

- (a) the subdivision of the Lands in the Land Title Office approximately as shown in the survey plan attached as Schedule "A", in order to create the Heritage Building Parcel and the New Building Parcel, with the retention of the Heritage Building on the Heritage Building Parcel and construction of the New Building on the New Building Parcel upon and after such subdivision (subject to approval by the subdivision approving officer and fulfilment of any conditions set for such approval); and
- (b) the conservation, repair, replacement and replication of the Heritage Building from time to time;

it is agreed that:

- (c) for the New Building Parcel, the City's *Subdivision By-law* is hereby varied such that the required minimum parcel area is reduced to 297.2 sq m;
- (d) for the Heritage Building Parcel, the RT-5 District Schedule of the City's *Zoning & Development By-law* is hereby varied as follows:
  - (i) Section 4.6 is varied to reduce the minimum rear yard requirement to 1.9 m (east);
  - (ii) Section 4.16.1 is varied to increase the maximum building depth to 50% of the site depth;
- (e) for the New Building Parcel, the RT-5 District Schedule of the City's *Zoning & Development By-law* is hereby varied as follows:
  - (i) Section 4.4 is varied to reduce the minimum front yard requirement to 2.8 m (south);
  - (ii) Section 4.5 is varied to reduce the minimum side yard requirement on the west side of the New Building Parcel to 1.6 m;
  - (iii) Section 4.6 is varied to reduce the minimum rear yard requirement to 2.8 m (north);
  - (iv) Section 4.7 is varied to increase the maximum floor space ratio to 0.80; and
  - (v) Section 4.16.1 is varied to increase the maximum building depth to 69% of the site depth.

## ARTICLE 8 SUBDIVISION

8.1 **Subdivision.** The Lands shall not be subdivided at any time hereafter, either under the provisions of the *Land Title Act* or the *Strata Property Act*, except to create the Heritage Building Parcel and the New Building Parcel as herein contemplated.

8.2 Following subdivision of the Lands into the Heritage Building Parcel and the New Building Parcel as herein contemplated;

- (a) subject to section 8.2(b) below, the burdens, obligations, covenants, statutory right of way and Equitable Charge contained in this agreement will continue to charge each of the new parcels so created;
- (b) following subdivision of the Lands to create the Heritage Building Parcel and the New Building Parcel, the City acknowledges and agrees that the ongoing covenants herein with respect to maintenance of the Heritage Building, the statutory right of way in Article 4 herein, and the Equitable Charge in Article 6 herein will not apply to the New Building Parcel, and the City will, at the Owner's request and expense, request of the Registrar of the Land Title Office that all legal notations referring to the Heritage Designation be removed from title to the New Building Parcel, provided that the legal notation referring to this heritage revitalization agreement must remain on title to the New Building Parcel for so long as the New Building Parcel wishes to retain the *Zoning & Development By-law* variances granted under Article 7 of this agreement;
- (c) this agreement may be separately amended or terminated in respect of the Heritage Building Parcel by the City and the owner of the Heritage Building Parcel, without the consent of the owner of the New Building Parcel, and vice versa; and
- (d) the Owner of the Heritage Building Parcel will not suffer, cause or permit the Heritage Building or the Heritage Building Parcel, or any part thereof, to be subdivided by a strata plan under the provisions of the *Strata Property Act* without the prior written consent of the City, which consent may be arbitrarily withheld.

8.3 For certainty, nothing in this Agreement shall be interpreted to mean that the City is obligated to approve an application for a subdivision of the Lands under the *Land Title Act*.

## ARTICLE 9 NOTICES

9.1 Any notice, request or communication required or permitted to be given hereunder will be in writing and will be deemed to have been duly given if delivered to the party or mailed in Canada by prepaid registered post addressed to the party as follows:

- (a) if to the Owner, to the Owner's address as shown in the Land Title Office records; and
- (b) if to the City:



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

**Attention:** *City Clerk and Director of Legal Services,*

or to such other address in Canada as any party may specify in writing to the other parties, provided that if and when the owner of the Lands or any part thereof should change, then to the address as set out in the State of Title Certificate for the Lands or such part thereof, and such notice will be deemed to have been received, if delivered, on the date of delivery, and if mailed as aforesaid within Canada then on the third (3<sup>rd</sup>) business day following its mailing, provided that if mailed, should there be between the time of the mailing and the actual receipt of the notice, a mail strike, slowdown or other labour dispute which might affect delivery of such notice, then such notice will only be effective if and when actually delivered.

#### **ARTICLE 10 GENERAL**

**10.1 Joint and Several Liability.** If the Owner is more than one party, such parties shall be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this agreement.

**10.2 Priority of Registration.** The Owner, at his, her or its expense, after execution of this agreement, shall do or cause to be done all things and acts necessary to ensure that this agreement is registered against title to the Lands with priority over all other encumbrances on title to the Lands as the City may require.

**10.3 Perfection of Intention.** The parties hereto will do such things and execute such further and other documents and instruments and do such further and other acts as may be reasonably necessary to implement and carry out the provisions and intent of this agreement and to ensure timely and effective registration in the Land Title Office.

**10.4 Waiver.** No failure on the part of the City to exercise and no delay in exercising any right under this agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.

**10.5 Time of Essence.** Time will be of the essence in respect of this agreement.

**10.6 Enurement.** This agreement shall enure to the benefit of and be binding upon the Owner and its successors and trustees, and this agreement shall charge and run with the Lands and with any parcel, lot or part into which the Lands may be subdivided or consolidated and shall enure to the benefit of and be binding upon the Owner's successors in title and trustees and successors and all parties claiming through such owners.



**10.7 City's Other Rights and Obligations.** Nothing contained or implied in this agreement will derogate from the obligations of the Owner under any other agreement with the City or 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 other laws, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this agreement had not been executed and delivered by the Owner and the City.

**10.8 Headings.** The division of this agreement into articles, sections and paragraphs and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this agreement.

**10.9 Number.** Words contained herein importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

**10.10 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 therein.

**10.11 Severability.** All provisions of this agreement are severable in that if any court or other lawful authority having jurisdiction to decide the matter finds for any reason that one or more of them is void or unenforceable, then such void or unenforceable provisions will be severed from this agreement and all other provisions herein will continue to be binding and enforceable.

**10.12 City Approvals.** In this agreement, where City "approval", "acceptance", "consent" or similar authorization or agreement is required, unless provided for otherwise in this agreement, such "approval", "acceptance", "consent" or similar City agreement or authority must be provided in writing, by the City departments, employees, officers or designates, as the case may be, that are authorized to provide such "approval", "acceptance", "consent" or similar authorization or agreement. Any purported "approval", "acceptance" "consent" or similar authorization or agreement provided by a City department, employee, officer or designate, as the case may be, that is not authorized to provide the same, shall be of no force or effect.

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



**EXPLANATION****A By-law to amend  
Zoning and Development By-law No. 3575**

Following the Public Hearing on October 19, 2023, Council resolved to amend the Zoning and Development By-law to facilitate arts and culture events. Enactment of the attached By-law will implement Council's resolutions.

Director of Legal Services  
October 31, 2023

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

**A By-law to amend  
Zoning and Development By-law No. 3575  
to facilitate arts and culture events**

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

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

2. Council strikes the definition “Arts and Culture Indoor Event” from section 2, and replaces it with:

“

Arts and Culture Event	An event of an artistic or cultural nature, including but not limited to visual, performing, media, literary, craft or interdisciplinary arts, which occurs not more than 6 days per month.
------------------------	---

”.

3. Council strikes the word “Indoor” from “Arts and Culture Indoor Event” in the definition of “Cultural and Recreational Uses” in section 2.

4. Council strikes the word “indoor” from section 4.8.1 (t).

5. Council strikes the word “indoor” from section 11.2.2 and section 11.2.2.1.

6. Council strikes the word “Indoor” from the use “Arts and Culture Indoor Event” in section 2.1 of the following District Schedules:

- (a) C-2,
- (b) C-2B,
- (c) C-2C,
- (d) C-2C1,
- (e) C-3A,
- (f) C-5, C-5A and C-6,
- (g) C-7 and C-8,
- (h) FC-1,
- (i) FC-2,
- (j) I-1,
- (k) I-1A,
- (l) I-1B,
- (m) I-1C,
- (n) I-2,
- (o) I-3,
- (p) I-4,
- (q) IC-1,
- (r) IC-2,
- (s) IC-3,
- (t) M-1,

- (u) M-1A,
- (v) M-1B,
- (w) M-2,
- (x) MC-1 and MC-2,
- (y) HA-1 and HA-1A,
- (z) HA-2, and
- (aa) HA-3.

7. Council strikes the word “Indoor” from the use “Arts and Culture Indoor Event” in the following CD-1 By-laws:

- (a) CD-1 (1) or By-law No. 3568,
- (b) CD-1 (60) or By-law No. 4491,
- (c) CD-1 (117) or By-law No. 4986,
- (d) CD-1 (136) or By-law No. 5270,
- (e) CD-1 (328) or By-law No. 7337,
- (f) CD-1 (427) or By-law No. 8978,
- (g) CD-1 (435) or By-law No. 9116,
- (h) CD-1 (551) or By-law No. 10754,
- (i) CD-1 (596) or By-law No. 11159,
- (j) CD-1 (614) or By-law No. 11294,
- (k) CD-1 (622) or By-law No. 11407,
- (l) CD-1 (626) or By-law No. 11487,
- (m) CD-1 (633) or By-law No. 11577,
- (n) CD-1 (637) or By-law No. 11622,
- (o) CD-1 (638) or By-law No. 11623,
- (p) CD-1 (647) or By-law No. 11691,
- (q) CD-1 (652) or By-law No. 11742,
- (r) CD-1 (658) or By-law No. 11754,
- (s) CD-1 (659) or By-law No. 11770,
- (t) CD-1 (662) or By-law No. 11784,
- (u) CD-1 (665) or By-law No. 11801,
- (v) CD-1 (672) or By-law No. 11888,
- (w) CD-1 (673) or By-law No. 11895,
- (x) CD-1 (677) or By-law No. 11900,
- (y) CD-1 (679) or By-law No. 11930,
- (z) CD-1 (682) or By-law No. 11933,
- (aa) CD-1 (683) or By-law No. 11952,
- (bb) CD-1 (684) or By-law No. 11944,
- (cc) CD-1 (685) or By-law No. 11950,
- (dd) CD-1 (694) or By-law No. 12073,
- (ee) CD-1 (696) or By-law No. 12105,
- (ff) CD-1 (704) or By-law No. 12195,
- (gg) CD-1 (705) or By-law No. 12176,
- (hh) CD-1 (706) or By-law No. 12177,
- (ii) CD-1 (707) or By-law No. 12178,
- (jj) CD-1 (708) or By-law No. 12241,
- (kk) CD-1 (711) or By-law No. 12254,
- (ll) CD-1 (714) or By-law No. 12298,
- (mm) CD-1 (715) or By-law No. 12299,
- (nn) CD-1 (719) or By-law No. 12304,

(oo) CD-1 (723) or By-law No. 12363,  
 (pp) CD-1 (728) or By-law No. 12425,  
 (qq) CD-1 (731) or By-law No. 12496,  
 (rr) CD-1 (733) or By-law No. 12498,  
 (ss) CD-1 (734) or By-law No. 12509,  
 (tt) CD-1 (741) or By-law No. 12665,  
 (uu) CD-1 (742) or By-law No. 12666,  
 (vv) CD-1 (745) or By-law No. 12726,  
 (ww) CD-1 (746) or By-law No. 12744,  
 (xx) CD-1 (753) or By-law No. 12812,  
 (yy) CD-1 (756) or By-law No. 12861,  
 (zz) CD-1 (759) or By-law No. 12870,  
 (aaa) CD-1 (760) or By-law No. 12871,  
 (bbb) CD-1 (765) or By-law No. 12914,  
 (ccc) CD-1 (768) or By-law No. 12940,  
 (ddd) CD-1 (770) or By-law No. 12946,  
 (eee) CD-1 (772) or By-law No. 12962,  
 (fff) CD-1 (775) or By-law No. 12995,  
 (ggg) CD-1 (776) or By-law No. 12996,  
 (hhh) CD-1 (777) or By-law No. 13002,  
 (iii) CD-1 (779) or By-law No. 13061,  
 (jjj) CD-1 (780) or By-law No. 13062,  
 (kkk) CD-1 (781) or By-law No. 13082,  
 (lll) CD-1 (784) or By-law No. 13107,  
 (mmm) CD-1 (785) or By-law No. 13103,  
 (nnn) CD-1 (786) or By-law No. 13104,  
 (ooo) CD-1 (787) or By-law No. 13108,  
 (ppp) CD-1 (790) or By-law No. 13114,  
 (qqq) CD-1 (792) or By-law No. 13144,  
 (rrr) CD-1 (793) or By-law No. 13154,  
 (sss) CD-1 (794) or By-law No. 13147,  
 (ttt) CD-1 (799) or By-law No. 13210,  
 (uuu) CD-1 (801) or By-law No. 13221,  
 (vvv) CD-1 (817) or By-law No. 13353,  
 (www) CD-1 (820) or By-law No. 13416,  
 (xxx) CD-1 (830) or By-law No. 13482,  
 (yyy) CD-1 (832) or By-law No. 13484,  
 (zzz) CD-1 (834) or By-law No. 13486,  
 (aaaa) CD-1 (837) or By-law No. 13489,  
 (bbbb) CD-1 (843) or By-law No. 13588, and  
 (cccc) CD-1 (844) or By-law No. 13589.

8. Council inserts “(a) arts and culture event,” in correct alphabetical order in section 2.2.1 of the following District Schedules:

(a) C-2,  
 (b) C-2B,  
 (c) C-2C,  
 (d) C-2C1,  
 (e) C-3A,  
 (f) C-5, C-5A and C-6,

- (g) C-7 and C-8,
- (h) FC-1,
- (i) HA-1 and HA-1A, and
- (j) HA-3, and

re-letters the subsequent subsections accordingly.

9. Council inserts “arts and culture event,” after the word “except for,” in section 2.2.2 (a) of the following District Schedules:

- (a) I-1,
- (b) I-1A,
- (c) I-1B,
- (d) I-1C,
- (e) I-3,
- (f) IC-1,
- (g) IC-2, and
- (h) IC-3.

10. Council inserts “(i) arts and culture event,” in correct numerical order in section 2.2.2 (a) of the FC-2 District Schedule and renumbers the remaining subsections accordingly.

11. Council inserts “(i) arts and culture event”, in correct numerical order in section 2.2.2 (c) of the MC-1 District Schedule and the MC-2 District Schedule and rennumbers the remaining subsections accordingly.

12. Council inserts “(a) arts and culture event,” in correct alphabetical order in section 2.2.2 of the HA-2 District Schedule and re-letters the subsequent subsections accordingly.

13. Council strikes the word “indoor” from section 2.1 (h) of the (BCPED) B.C. Place/Expo District Schedule.

14. Council strikes the word “indoor” from section 2. (h) of the FCCDD (False Creek Comprehensive Development District).

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

ENACTED by Council this            day of            , 2023

Mayor

City Clerk

**EXPLANATION****A By-law to amend the License By-law No. 4450**

Following the Public Hearing on October 19, 2023, Council resolved to amend the License By-law to facilitate arts and culture events. Enactment of the attached by-law will implement Council's resolutions.

Director of Legal Services  
October 31, 2023



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

**A By-law to amend the License By-law No. 4450  
to facilitate arts and culture events**

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

1. This By-law amends the indicated provisions of the License By-law.
2. In section 2, Council strikes the definition of “Arts and culture indoor event” and replaces it with:

““Arts and culture event” means an event of an artistic or cultural nature, including but not limited to visual, performing, media, literary, craft or interdisciplinary arts, for a maximum of 250 persons unless subject to a fire permit, which occurs not more than six days per month in a building or adjacent outdoor space, not approved for assembly occupancy.”.

3. Council strikes the word “indoor” anywhere it exists in section 10.3.1A.
4. Council strikes subsections 10.3.1A (9) to (12) and replaces them as follows:

“(9) The person organizing, promoting, or holding an arts and culture event must not permit the number of persons in the premises to exceed the maximum occupant load permitted under the Fire By-law.

(10) The person organizing, promoting or holding an arts and culture event with liquor service must provide supervisory staff in accordance with the following table:

Number of Persons Attending	Required Supervisory Staff
Under 100	2
101-150	3
151-200	4
201-250	5
251 or more	No less than 5 and in accordance with Fire Permit

(11) The person organizing, promoting or holding an arts and culture event with liquor service must ensure that all organizers, employees and supervisory staff wear a name tag that is clearly visible.”.

5. In Schedule “A”, Council strikes “Arts and Culture Indoor Event” and its related fees and license terms and replaces them as follows:

“Arts and culture event



**EXPLANATION****A By-law to amend the Building By-law No. 12511**

Following the Public Hearing on October 19, 2023, Council resolved to amend the Building By-law to facilitate arts and culture events. Enactment of the attached by-law will implement Council's resolutions.

Director of Legal Services  
October 31, 2023

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

**A By-law to amend the Building By-law No. 12511  
to facilitate arts and culture events**

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

1. This By-law amends the indicated provisions of Building By-law No. 12511.
2. In Book 1, Division A, Section 1.4.1.2 Council strikes the definition of “Arts and culture indoor event” and replaces it with:

**“Arts and culture event** means an event of an artistic or cultural nature, including but not limited to visual, performing, media, literary, craft or interdisciplinary arts, which occurs no more than six days per month in a *building* or part of a *building* not approved for *assembly occupancy*, or in a designated outdoor area.”.

3. In Book 1, Division B, Section 11.6.1.2, Council strikes 11.6.1.2.(3) and replaces it with:

**“3)** The alternative compliance measures provided in Article 11.6.2.1. apply to *existing buildings* used for *arts and culture events* and do not apply to new work, which must conform to the requirements for new *construction* in other Parts of this By-law.”.

4. In Book 1, Division B, Section 11.6.2.1, Council strikes 11.6.2.1. including Table 11.6.2.1 and replaces it with:

**“11.6.2.1. Alternative Compliance Measures**

**1)** Where the occupancy of an existing building or portion of an existing building is classified as Group D offices, Group E retail, Group F Division 2 production or rehearsal studio, wholesale, warehouse, or factory, or Group F Division 2 artist studio without living accommodations, the major occupancy may be classified as a temporary Group A Division 2 major occupancy for an arts and culture event where

- a) the *arts and culture event* is located in the *first storey* or the *storey* below the *first storey*,
- b) the *floor area* containing the *arts and culture event* complies with the fire and life safety requirements of Sentences (2) and (3), and
- c) an *Occupant Load* plan acceptable to the *Fire Chief* is obtained where an *arts and culture event* has an *occupant load* of more than 60 persons or where alcohol is served in connection with a Special Occasion Liquor License issued by the Province, or
- d) an approved Security Assessment by the Vancouver Police Department is obtained where an *Arts and culture event* is a public event with an *occupant load* of more than 60 persons or where alcohol is served in connection with a Special Occasion Liquor License issued by the Province.

**2)** *Floor area* used for an *arts and culture event* shall

- a) be constructed of concrete supported by solid ground without suspended slab, or certified by a *registered professional*, to be suitable for *assembly*

*occupancy* and designed to a minimum specified uniformly distributed *live load* of 4.8 kPa,

- b) include at least one *accessible* entrance conforming with Subsection 11.3.7.1.(1)(d) or (e),
- c) be sprinklered in a basement used for an *arts and culture event*,
- d) except as required by Clause 11.6.2.1(4)(b), be provided with a fire alarm or at least one designated *supervisory staff* posted at each required egress door, but in no case shall there be fewer than two *supervisory staff* for an *arts and culture event*, and
- e) include emergency lighting
  - i) inside washrooms or, in the case of a single toilet room, immediately outside the entrance door and visible under the closed toilet room door, and
  - ii) in locations leading from the *arts and culture event* to the *street* as described in Sentence 3.2.7.3.(1).

**3)** *Means of egress* from *floor areas* used for an *arts and culture event* shall include

- a) *exits* in compliance with the requirements of Section 3.4. with respect to size, travel distance, and number, as applicable to a Group A, Division 2 *major occupancy*, except that not less than
  - i) one *exit* is permitted where the *occupant load* does not exceed 60 persons, or
  - ii) two *exits* are permitted where the *occupant load* does not exceed 250 persons, and
- b) *exit* signs installed over or adjacent to exits and in common paths of travel where the *occupant load* exceeds 60 persons.

**4)** *Floor area* used for an *arts and culture event* which occurs more than 3 days per month or occurs with any other arts and culture event more than 3 days per month, shall

- a) include a fire separation to adjacent occupancies or uses
- b) be served by a permanent or temporary fire alarm system, and
- c) except where the floor area is *sprinklered*, draperies, fabrics or combustible hangings shall be flame retardant and other combustible finishes shall be of *fire-retardant-treated wood* or have a Flame-spread rating of not more than 150 (see Note A-11.6.2.1.(4)).

**5)** An arts and culture event shall include portable fire extinguishers installed in accordance with the Fire By-law, with

- a) at least one extinguisher at the main entrance and at each egress door leading from the *arts and culture event floor area*, and
- b) the approved fire emergency procedures and security plan with approved maximum *occupant load* posted beside each portable extinguisher at the main entrance and at each egress door leading from the *arts and culture event*.

**6)** Cooking which generates grease-laden vapour is not permitted at an *arts and culture event*, unless commercial cooking and ventilation equipment, installed under *permit* and conforming with Article 6.3.1.7., is used.”.

5. Council adds the following notes to the end of Part 11:

“Notes to Part 11

**A-11.6.2.1.(4) Combustible Finishes** – Combustible finishes have been associated with the rapid propagation of fire within assembly occupancies. Such materials will often be affixed to wall and ceiling surface, or loose hanging materials will be provided so as to improve the appearance of a space or reduce hard surface that reflect sound.

Sentence 11.6.2.1.(4) is intended to limit the type of built-in combustible wall and ceiling finishes and hanging materials (such as draperies or fabrics) to reduce the risk to occupants where the space is not protected by fire sprinklers, which can respond to a fire before rapid fire propagation occurs.

Loose fabric materials should be flame retardant, which is commonly demonstrable through a product listing identifying that it meets the requirements of CAN/ULC-S109. Built-in combustible finishes must demonstrate a flame-spread rating of not more than 150 which is readily demonstrable by listings confirming the product meets the requirement of CAN/ULC-S102, or they may be constructed with fire retardant-treated wood.”.

6. 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.

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

ENACTED by Council this                      day of                      , 2023

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Mayor

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City Clerk

**EXPLANATION****A By-law to amend Fire By-law No. 12472**

Following the Public Hearing on October 19, 2023, Council resolved to amend the Fire By-law to facilitate arts and culture events. Enactment of the attached by-law will implement Council's resolutions.

Director of Legal Services  
October 31, 2023

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

**A By-law to amend Fire By-law No. 12472 to facilitate arts and culture events**

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

1. This By-law amends the indicated provisions of Fire By-law No. 12472.
2. In Division A, Article 1.4.1.2 Council strikes the definition of “Arts and culture indoor event” and replaces it with the following:

“Arts and culture event means an event of an artistic or cultural nature, including but not limited to visual, performing, media, literary, craft or interdisciplinary arts, which occurs not more than six days per month in a building, a portion of a building, or an associated outdoor area not approved for assembly occupancy.”.

3. In Division B, Article 2.7.1.3 Council strikes 2.7.1.3.(1) and replaces it as follows:

**“2.7.1.3. Occupant Load**

1) Every building with an assembly occupancy over 60 persons must have an occupant load permit, except that the temporary use of a building for an arts and culture event for not more than 250 persons shall not require an occupant load permit provided that the temporary maximum permissible occupant load for the arts and culture event has been calculated pursuant to the provisions of this By-law.”.

4. In Division C, Article 1.5.1.1, Council strikes Article 1.5.1.1.(1) and (2) and replaces them as follows:

**“1.5.1.1. When a Permit is Required**

1) Except as provided in Sentence (2), every building with an assembly occupancy designed for more than 60 persons shall have an occupant load permit.

2) The temporary use of a building for an arts and culture event for not more than 250 persons shall not require an occupant load permit if the temporary occupant load for the arts and culture event has been calculated pursuant to the provisions of this By-law.”.

5. 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.

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

ENACTED by Council this \_\_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
Mayor

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



**EXPLANATION****A By-law to amend the Procedure By-law No. 12577  
regarding public hearing dates**

Enactment of the attached By-law is in accordance with Council direction.

Director of Legal Services  
October 31, 2023

**A By-law to amend the Procedure By-law No. 12577  
regarding public hearing dates**

1. This By-law amends the provisions of the Procedure By-law No. 12577.
2. Council strikes section 2.3(2), and replaces it as follows:  
  
“(2) Public hearings may be commenced, as required, at 6:00 p.m. on Tuesdays and Thursdays, except during the month of August.”.
3. This By-law is to come into force and take effect on January 1, 2024

\_\_\_\_\_  
Mayor

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

**EXPLANATION****Authorization to enter into a Housing Agreement  
Re: 3279-3297 Vanness Avenue**

After a public hearing on October 1, 2019 Council approved in principle the land owner's application to rezone the above noted property from CD-1 District (225) to a new CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. The Housing Agreement was approved by Council under By-law No. 13170 and registered on title to the development lands under land title registration number CA9495466 (the "Original Housing Agreement").

British Columbia Housing Management Commission, as mortgagee, has requested certain amendments to the Housing Agreement, that were satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services and accordingly a new Housing Agreement was prepared.

The new Housing Agreement was accepted and executed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner. Upon registration of this new Housing Agreement on title to the development lands, the City will seek a repeal of By-law No. 13170 to effect a discharge of the Original Housing Agreement.

Director of Legal Services  
October 31, 2023

**BY-LAW NO.**

**A By-law to enact a Housing Agreement  
for 3279-3297 Vanness Avenue**

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

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

031-564-704

Lot 1 Blocks 23 and 24 District Lots 36 and 51 Group 1  
New Westminster District Plan EPP111639

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                      , 2023

\_\_\_\_\_  
Mayor

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



1. Application

JULIA THIELMANN  
Miller Thomson LLP  
2200, 700 West Georgia Street  
Vancouver BC V7Y 1K8  
6046872242

CLTVanness File No. 0202846.0025  
Replacement Housing Agreement  
Part II Terms Doc ID 71104524

2. Description of Land

PID/Plan Number	Legal Description
031-564-704	LOT 1 BLOCKS 23 AND 24 DISTRICT LOTS 36 AND 51 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP111639

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 Covenant Entire Agreement
PRIORITY AGREEMENT		Granting the Covenant contained herein priority over Lease CA9698120 See page 14 of Part II Terms
PRIORITY AGREEMENT		Granting the Covenant contained herein priority over Option to Purchase CB394050 See page 15 of Part II Terms
PRIORITY AGREEMENT		Granting the Covenant contained herein priority over Mortgage CB394051, Assignment of Rents CB394052 and Mortgage CB394053 See page 16 of Part II Terms

4. Terms

Part 2 of this instrument consists of:  
(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

CITY OF VANCOUVER  
CLT 0010 COMMUNITY SOCIETY, NO.S0070813, AS TO PRIORITY  
PROVINCIAL RENTAL HOUSING CORPORATION, AS TO PRIORITY  
BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION, AS TO PRIORITY

6. Transferee(s)

CITY OF VANCOUVER  
453 WEST 12TH AVENUE  
VANCOUVER BC V5Y 1V4



7. Additional or Modified Terms

8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

WESLEY Y. L. CHAN  
453 WEST 12<sup>TH</sup> AVENUE  
VANCOUVER, B.C. V5Y 1V4  
BARRISTER & SOLICITOR

~~(as to all signatories)~~

YYYY-MM-DD

2023-10-23

CITY OF VANCOUVER  
By their Authorized Signatory

Name:

JEFFREY M. GREENBERG

Name:

CITY OF VANCOUVER  
By their Authorized Signatory

Name:

Name:

Officer Certification

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



Land Title Act  
**Charge**  
General Instrument – Part 1

Witnessing Officer Signature



**JULIA THIELMANN**  
BARRISTER & SOLICITOR  
700 WEST GEORGIA STREET  
SUITE 2200  
VANCOUVER, B.C. V7Y 1K8  
OFFICER CERTIFICATION  
(604) 687-2242

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.

Execution Date

YYYY-MM-DD

2023-10-06

Transferor / Transferee / Party Signature(s)

**CLT 0010 COMMUNITY SOCIETY**  
By their Authorized Signatory

  
Name: Tiffany Dizit

Witnessing Officer Signature

\_\_\_\_\_

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

**PROVINCIAL RENTAL HOUSING  
CORPORATION**  
By their Authorized Signatory

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

(as to all signatures)

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

**BRITISH COLUMBIA HOUSING  
MANAGEMENT COMMISSION**  
By their Authorized Signatory

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



Land Title Act  
**Charge**  
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

**CLT 0010 COMMUNITY SOCIETY**  
By their 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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

**PROVINCIAL RENTAL HOUSING CORPORATION**  
By their Authorized Signatory

Name: **Michael Pistrin**

(as to all signatures)

CHARLOTTE K. WONG  
*Barrister & Solicitor*  
2110 Burquitlam Drive  
Vancouver, BC V5P 2P1

2023-09-06

Name: **Martin Austin**

**BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION**  
By their Authorized Signatory

Name: **Michael Pistrin**

**(AS TO BOTH SIGNATURES)**





Land Title Act  
**Charge**  
General Instrument – Part 1

  
Name: **Martin Austin**

**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.

**Electronic Signature**

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.

TERMS OF INSTRUMENT - PART 2  
HOUSING AGREEMENT AND BUILDING USE COVENANT  
(Social Housing)

3279 - 3297 VANNESS AVENUE.

WHEREAS:

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

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

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

C. The Owner made an application to rezone the Lands from CD-1 District (225) to a new CD-1 (Comprehensive Development) District (the "Rezoning") to permit the development of a residential building with 102 social housing units 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 following condition:

"9. *Make arrangements to the satisfaction of the General Manager of Arts, Culture and Community Services and the Director of Legal Services to enter into a Housing Agreement and Section 219 Covenant securing all residential units as social housing units 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 the social housing units will be legally and beneficially owned by a non-profit corporation, or by or on behalf of the City, the Province of British Columbia, or Canada as a single legal entity and used only to provide rental housing for terms of not less than one month at a time and prohibiting the separate sale or transfer of legal or beneficial ownership of any such units;*
- (iv) *requiring such units to be used for "social housing" as that term is defined in the Vancouver Development Cost Levy By-law No. 9755;*
- (v) *Such other terms and conditions as the General Manger of Arts, Culture and Community Services and the Director of Legal Services may in their sole discretion require.*

*Note to Applicant: This condition will be secured by a Housing Agreement to be entered into by the City by by-law enacted pursuant to Section 595.2 of the Vancouver Charter.*

(the "Social Housing Condition"); and

D. The Owner and the City are now entering into this Agreement to satisfy the Social Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 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 INTERPRETATIONS

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

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) "BC Housing" means British Columbia Housing Management Commission or its successors in function;
- (c) "City" and "City of Vancouver" are defined in Recital A(ii);
- (d) "City Manager" means the chief administrator from time to time of the City and his/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) "CMHC" means Canada Mortgage and Housing Corporation or its successors in function;
- (g) "Commencement Date" means the date as of which this Agreement has been submitted to the Land Title Office;
- (h) "Development" means the development on the Lands described in Recital C as contemplated by the Rezoning;
- (i) "Development Permit" means a development permit issued by the City authorizing development on the Lands or any portion of the Lands as contemplated by the Rezoning at any time following the date this Agreement is fully executed by the parties;

- (j) **"Director of Legal Services"** means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (k) **"Dwelling Unit"** means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (l) **"General Manager of Arts, Culture and Community Services"** means the chief administrator from time to time of the Arts, Culture and Community Services Department of the City and his/her successors in function and their respective nominees;
- (m) **"Housing Income Limit" or "HIL"** means the income required to pay the average market rent for an appropriately sized unit in the private market in Vancouver, determined annually by the British Columbia Housing Management Commission or its successors in function, which is derived from the Canada Mortgage and Housing Corporation's Annual Rental Market Survey or an equivalent publication (as approved by the General Manager of Arts, Culture and Community Services);
- (n) **"Land Title Act"** means the Land Title Act, R.S.B.C. 1996, c. 250;
- (o) **"Lands"** means the lands described in Item 2 in the Form C attached hereto; provided, however, that if the Lands are at any time subdivided by air space parcel subdivision, and this Agreement is thereafter discharged from one or more of the resulting legal parcels, then **"Lands"** will thereafter mean only the part of the Lands within the legal parcel(s) against which it remains registered;
- (p) **"Losses"** means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (q) **"New Building"** means each new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;
- (r) **"Occupancy Permit"** means a permit issued by the City authorizing the use and occupation of any New Building, development or partial development on the Lands;
- (s) **"Owner"** means the Transferor, CITY OF VANCOUVER, and any successors in title to the Lands or a portion of the Lands;
- (t) **"Rental Housing"** means a Dwelling Unit which is not occupied by the registered or beneficial owner of the same, but which is made available by such owner to the general public (subject to Article 2), at arms length, for use

as rental accommodation on a month-to-month or longer basis in accordance with this Agreement, and pursuant to reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto;

- (u) **"Replacement Social Housing Unit"** has the meaning ascribed to that term in section 2.1(b) and **"Replacement Social Housing Units"** means all of such units;
- (v) **"Residential Tenancy Act"** means the Residential Tenancy Act S.B.C. 2002, c. 78;
- (w) **"Rezoning"** means the rezoning of the Lands as described in Recital C;
- (x) **"Social Housing"** has the meaning ascribed to that term in the Vancouver Development Cost Levy By-law No. 9755, namely Rental Housing:
  - (i) in which at least 30% of the dwelling units are occupied by households with incomes below Housing Income Limits, as set out in the current "Housing Income Limits" table published by the British Columbia Housing Management Commission, or equivalent publication;
  - (ii) which is owned by a non-profit corporation, by a non-profit co-operative association, or by or on behalf of the City, the Province of British Columbia or Canada; and
  - (iii) in respect of which the registered owner or ground lessee of the freehold or leasehold title to the land on which the housing is situate has granted to the City a Section 219 covenant, housing agreement, or other security for the housing commitments required by the City, registered against the freehold or leasehold title, with such priority of registration as the City may require;
- (y) **"Social Housing Condition"** has the meaning ascribed to that term in Recital C;
- (z) **"Social Housing Units"** has the meaning ascribed to that term in Section 2.1(b), and **"Social Housing Unit"** means any one of such Social Housing Units;
- (aa) **"Term"** means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
  - (i) the date as of which the New Building is demolished or substantially destroyed; and
  - (ii) 60 years from the date when the final Occupancy Permit is issued for the New Building; and
- (bb) **"Vancouver Charter"** means the Vancouver Charter S.B.C. 1953, c. 55.

## 1.2 Interpretation. In this Agreement:

- (a) Party. Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) Singular; Gender. Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.
- (d) References. References to the or this "Agreement" and the words "hereof" "herein" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Section, subsection or other subdivision is a reference to the designated Recital, Section, subsection or subdivision hereof.
- (e) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

## ARTICLE 2 RESTRICTIONS ON USE AND SUBDIVISION

### 2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) it will design, construct, equip and finish within the New Building such number of Dwelling Units as approved in the Development Permit, all of which will be

for use only as Social Housing (the “**Social Housing Units**”), in accordance with the Development Permit, any building permit issued pursuant thereto and the requirements 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, 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 New Building or replacement building(s) will contain not less than the same number and type of replacement Social Housing Units as the New Building formerly contained (each such replacement Social Housing Unit hereinafter referred to as a “**Replacement Social Housing Unit**”) and will be subject, for the duration of the Term, to the same use restrictions as the Social Housing Units and the New Building are pursuant to this Agreement. Notwithstanding the foregoing, the City and the Owner acknowledge and agree that if at the time of such damage, destruction or demolition, BC Housing, CMHC or an Approved Lender (as that term is defined under the *National Housing Act* (Canada)) as successor holds a mortgage charging the Lands and/or the New Building, including a mortgage charging the leasehold interest in the Lands, then any insurance proceeds received may, at the option of such mortgagee, be applied to repair the New Building or rebuild a replacement building or buildings on the Lands, be paid to the Owner (as the mortgagor) or be applied or paid partly in one way and partly in another, or be applied, in the sole discretion of the mortgagee, in whole or in part towards all indebtedness under such mortgage, whether due or not then due;

- (c) throughout the Term the New Building will be used only in a manner that ensures its continued compliance with the definition of Social Housing;
- (d) throughout the Term, not less than 30% of the Social Housing Units will be:
  - (i) occupied only by households with incomes below the then current applicable HIL; and
  - (ii) each rented at a rate no higher than 30% of the aggregate household income of the members of the household occupying such Social Housing Unit;
- (e) throughout the Term, the Social Housing Units will only be used for the purpose of providing Rental Housing;
- (f) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Social Housing Unit to be sold or otherwise transferred (other than by way of mortgage, covenant, right of way or easement) unless:
  - (i) every Social Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner; and
  - (ii) the sale or transfer is to the Provincial Rental Housing Corporation pursuant to the exercise of a registered Option to Purchase, to a non-profit corporation or a non-profit co-operative association to whom the

Provincial Rental Housing Corporation subsequently transfers title to, or to the City or it otherwise obtains the express written consent of the City;

- (g) throughout the Term, it will not suffer, cause or permit the Lands, or any part thereof, to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld;
- (h) throughout the Term, any sale or other transfer of title to a Social Housing Unit in contravention of the covenant in Section 2.1(f), and any subdivision of the Lands in contravention of Section 2.1(g), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense;
- (i) throughout the Term, the Social Housing Units will only be rented on a month-to-month or longer basis and in no case for less than one month;
- (j) throughout the Term, not less than 35% of the Social Housing Units will have at least two bedrooms and will be designed to be suitable for families with children in accordance with the City's *Family Room: Housing Mix Policy for Rezoning Projects* policy;
- (k) throughout the Term, it will insure, or cause to be insured, the Lands and the New Building and all parts thereof to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands; and
- (l) throughout the Term, it will keep and maintain the Lands and the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition. If the Lands or the New Building or any part thereof is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred.

### ARTICLE 3 OCCUPANCY RESTRICTION ON THE LANDS

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

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



- (i) proof of the insurance, consistent with the requirements of Section 2.1(k), is in force and effect; and
    - (ii) a final rent roll confirming the rents to be charged to the first occupants of the Social Housing Units following issuance of the Occupancy Permit, the unit type mix and size, which rents, unit type mix and size will comply with those applicable to the Social Housing Units; and
  - (b) the City will be under no obligation to issue any Occupancy Permit for the New Building or any part thereof, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 3.1(a).
- 3.2 Without limiting the general scope of ARTICLE 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 for the New Building until there is compliance with the provisions of this ARTICLE 3.

#### ARTICLE 4 RECORD KEEPING

- 4.1 The Owner will keep accurate records pertaining to the use and occupancy of the Social Housing Units. Such records will be to the satisfaction of the City. At the request of the City, from time to time, the Owner will make such records available for inspection and copying by the City. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

#### ARTICLE 5 ENFORCEMENT

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

#### ARTICLE 6 RELEASE AND INDEMNITY

- 6.1 Release and Indemnity. Subject to Section 6.2, the Owner hereby:
- (a) 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, except to the extent such Losses are caused by the gross negligence or wrongful intentional acts of the City or City Personnel; and

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of 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;
  - (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;
  - (iv) 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
  - (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, except to the extent such Losses are caused by the gross negligence of wrongful intention acts of the City of City Personnel.

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

6.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 6.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 6.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.2(a) in the following circumstances:
  - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
  - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
  - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 6.2(b); and

- (c) Regardless of whether the claim is being defended under Section 6.2(a) or Section 6.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

6.3 Survival of Release and Indemnities. The release and indemnities in this Article 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 7 NOTICES

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

- (a) If to the City:

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

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

- (b) If to the Owner:

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

Attention: Director of Real Estate

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 shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which

the same may be subdivided or consolidated. Upon the sale or transfer of the legal or beneficial interest in the Lands, the parties agree that the covenants and agreements herein contained shall only be binding upon the transferring party in respect of a breach or acts or omissions occurring during its ownership of the Lands, and the transferring party shall otherwise be released from all covenants and agreements herein contained following such sale or transfer of the legal or beneficial interest in the Lands.

- 8.2 Agreement to be a First Charge. The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
  - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
  - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 8.3 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 8.4 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 8.5 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 8.6 Further Assurances. The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to

ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.

- 8.7 Perfection of Intention. The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter* and also registered as a charge against title to the Lands with priority over all other encumbrances except those in favour of the City.
- 8.8 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City that:
- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
  - (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
  - (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
  - (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.
- 8.9 Enurement. This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.

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

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## Consent and Priority Agreement

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For \$1.00 and other good and valuable consideration, CLT 0010 COMMUNITY SOCIETY, the registered holder of the following lease registered in the Vancouver/New Westminster Land Title Office:

Lease CA9698120

("Lease")

against title to the lands charged by the within charge, for themselves and their successors and assigns, hereby consent to the granting and registration of the within charge and grants priority to the within charge over the Lease and their rights, title and interest in and to the lands charged by the within charge in the same manner and to the same effect as if the within charge had been executed, delivered and registered prior to the execution, delivery and registration of the Lease and prior to the advance of any money under the Lease.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Chargee has executed the Land Title Form C which is attached hereto and forms part of this Agreement.

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## Consent and Priority Agreement

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For \$1.00 and other good and valuable consideration, PROVINCIAL RENTAL HOUSING CORPORATION, the registered holder of the following option registered in the Vancouver/New Westminster Land Title Office:

Option to Purchase CB394050  
of Lease CA9698120

("Option")

against title to the lands charged by the within charge, for themselves and their successors and assigns, hereby consent to the granting and registration of the within charge and grants priority to the within charge over the Option and their rights, title and interest in and to the lands charged by the within charge in the same manner and to the same effect as if the within charge had been executed, delivered and registered prior to the execution, delivery and registration of the Option and prior to the advance of any money under the Option.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Chargee has executed the Land Title Form C which is attached hereto and forms part of this Agreement.



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## Consent and Priority Agreement

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For \$1.00 and other good and valuable consideration, BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION, the registered holder of the following financial charges registered in the Vancouver/New Westminster Land Title Office:

Mortgage CB394051  
Assignment of Rents CB394052  
Mortgage CB394053  
all of Lease CA9698120

("Security")

against title to the lands charged by the within charge, for themselves and their successors and assigns, hereby consent to the granting and registration of the within charge and grants priority to the within charge over the Security and their rights, title and interest in and to the lands charged by the within charge in the same manner and to the same effect as if the within charge had been executed, delivered and registered prior to the execution, delivery and registration of the Security and prior to the advance of any money under the Security.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Chargee has executed the Land Title Form C which is attached hereto and forms part of this Agreement.

END OF DOCUMENT

**EXPLANATION****Authorization to enter into a Housing Agreement  
Re: 1190 Burrard Street**

After a public hearing on July 6, 2021, Council approved in principle the land owner's application to rezone the above noted property from Downtown District (DD) to CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement being entered into by the City and the land owner, on terms satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services. The Housing Agreement was approved by Council under By-law No. 13339 and registered on title to the development lands under land title registration numbers CB56687 to CB56690 (the "Original Housing Agreement").

British Columbia Housing Management Commission, as mortgagee, has requested certain amendments to the Housing Agreement, that were satisfactory to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services and accordingly a new Housing Agreement was prepared.

The new Housing Agreement was accepted and executed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner. Upon registration of this new Housing Agreement on title to the development lands, the City will seek a repeal of By-law No. 13339 to effect a discharge of the Original Housing Agreement.

Director of Legal Services  
October 31, 2023

**BY-LAW NO.**

**A By-law to enact a Housing Agreement  
for 1190 Burrard 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:

031-725-902

Lot 1 Block 90 District Lot 541 Group 1 New Westminster  
District Plan EPP117646

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                      , 2023

\_\_\_\_\_  
Mayor

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



1. Application

JULIA THIELMANN  
Miller Thomson LLP  
2200, 700 West Georgia Street  
Vancouver BC V7Y 1K8  
6046872242

CLT Burrard File No. 0202846.0026  
Replacement Housing Agreement  
Part II Terms Doc ID 65807403

2. Description of Land

PID/Plan Number      Legal Description

031-725-902      LOT 1 BLOCK 90 DISTRICT LOT 541 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP117646

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 Covenant Entire Agreement
PRIORITY AGREEMENT		Granting the Covenant contained herein priority over Lease CA9656756 See page 13 of Part II Terms
PRIORITY AGREEMENT		Granting the Covenant contained herein priority over Option to Purchase CA9764866 See page 14 of Part II Terms
PRIORITY AGREEMENT		Granting the Covenant contained herein priority over Mortgage CA9764867 and Assignment of Rents CA9764868 See page 15 of Part II Terms

4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

CITY OF VANCOUVER  
CLT 0007 COMMUNITY SOCIETY, NO.S0070810, AS TO PRIORITY  
PROVINCIAL RENTAL HOUSING CORPORATION, AS TO PRIORITY  
BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION, AS TO PRIORITY

6. Transferee(s)

CITY OF VANCOUVER  
453 WEST 12TH AVENUE  
VANCOUVER BC V5Y 1V4



7. Additional or Modified Terms

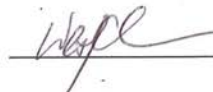
8. Execution(s)

This instrument creates, assigns, modifies, enlarges 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.

Witnessing Officer Signature


Execution Date

Transferor / Transferee / Party Signature(s)

  
**WESLEY Y. L. CHAN**  
453 WEST 12<sup>TH</sup> AVENUE  
VANCOUVER, B.C. V5Y 1V4  
BARRISTER & SOLICITOR

YYYY-MM-DD  
  
2023-10-23

**CITY OF VANCOUVER**  
By their Authorized Signatory

  
Name:  
**JEFFREY M. GREENBERG**

~~(as to all signatures)~~

Name:

**CITY OF VANCOUVER**  
By their Authorized Signatory

Name:

Name:

**Officer Certification**

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



Land Title Act

## Charge

General Instrument – Part 1

Witnessing Officer Signature

**JULIA THIELMANN**  
**BARRISTER & SOLICITOR**  
**700 WEST GEORGIA STREET**  
**SUITE 2200**  
**VANCOUVER, B.C. V7Y 1K8**  
Officer Certification (804) 687-2242

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.

Execution Date

YYYY-MM-DD

2023-10-06

Transferor / Transferee / Party Signature(s)

**CLT 0007 COMMUNITY SOCIETY**  
By their Authorized Signatory

  
Name: Tiffany Duzeta

Witnessing Officer Signature

---

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

**PROVINCIAL RENTAL HOUSING CORPORATION**  
By their Authorized Signatory

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

(as to all signatures)

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

**BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION**  
By their Authorized Signatory

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



Land Title Act  
**Charge**  
General Instrument – Part 1

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

**CLT 0007 COMMUNITY SOCIETY**  
By their 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.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

**PROVINCIAL RENTAL HOUSING CORPORATION**  
By their Authorized Signatory

Name: **Michael Pistrin**

(as to all signatures)

Name: **Martin Austin**

**BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION**  
By their Authorized Signatory

Name: **Michael Pistrin**

**(AS TO BOTH SIGNATURES)**



Name:

**Martin Austin**

**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.

**Electronic Signature**

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.



TERMS OF INSTRUMENT - PART 2

HOUSING AGREEMENT AND BUILDING USE COVENANT  
(Social Housing)

1190 BURRARD STREET

WHEREAS:

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

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

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

C. The Owner made an application to rezone the Lands from Downtown District (DD) to CD-1 (Comprehensive Development) District to allow construction of a 17-storey mixed use building with 154 social housing units, 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 following condition:

"2.5. *Make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability (or successor in function) and the Director of Legal Services (or successor in function) to enter into a Housing Agreement and Section 219 Covenant securing all dwelling units as social housing for the longer of 60 years and the life of the building, which will contain the following terms and conditions:*

- (a) *A no separate-sales covenant;*
- (b) *A no stratification covenant;*
- (c) *That the social housing units will be legally and beneficially owned by a non-profit corporation, or by or on behalf of the city, the Province of British Columbia, or Canada as a single legal entity and used only to provide rental housing for terms of not less than one month at a time and prohibiting the separate sale or transfer of legal or beneficial ownership of any such units;*
- (d) *Requiring such units to be used for "social housing", as that term is defined in the Vancouver Development Cost Levy By-law No. 9755;*
- (e) *Not less than 30 per cent of the social housing units will be occupied only by households with incomes below the then current applicable Housing Income Limits, as set out in the current "Housing Income Limits" table published by the British Columbia Housing Management*

*Commission, or equivalent publication, and each rented at a rate no higher than 30 per cent of the aggregate household income of the members of the household occupying such social housing unit; and*

- (f) *Such other terms and conditions at the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services may in their sole discretion require."*

(the "Social Housing Condition"); and

D. The Owner and the City are now entering into this Agreement to satisfy the Social Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, pursuant to Section 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 INTERPRETATIONS

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

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing Recitals;
- (b) "BC Housing" means British Columbia Housing Management Commission or its successors in function;
- (c) "City" and "City of Vancouver" are defined in Recital A(ii);
- (d) "City Manager" means the chief administrator from time to time of the City and his/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) "CMHC" means Canada Mortgage and Housing Corporation or its successors in function;
- (g) "Commencement Date" means the date as of which this Agreement has been submitted to the Land Title Office;
- (h) "Development" means the development on the Lands described in Recital C as contemplated by the Rezoning;
- (i) "Development Permit" means a development permit issued by the City authorizing development on the Lands or any portion of the Lands as contemplated by the Rezoning at any time following the date this Agreement is fully executed by the parties;

- (j) **"Director of Legal Services"** means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (k) **"Dwelling Unit"** means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (l) **"General Manager of Planning, Urban Design and Sustainability"** means the chief administrator from time to time of the Planning, Urban Design and Sustainability Department of the City and his/her successors in function and their respective nominees;
- (m) **"Housing Income Limit" or "HIL"** means the income required to pay the average market rent for an appropriately sized unit in the private market in Vancouver, determined annually by the British Columbia Housing Management Commission or its successors in function, which is derived from the Canada Mortgage and Housing Corporation's Annual Rental Market Survey or an equivalent publication (as approved by the General Manager of Planning, Urban Design and Sustainability);
- (n) **"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;
- (o) **"Lands"** means the lands described in Item 2 in the Form C attached hereto; provided, however, that if the Lands are at any time subdivided by air space parcel subdivision, and this Agreement is thereafter discharged from one or more of the resulting legal parcels, then **"Lands"** will thereafter mean only the part of the Lands within the legal parcel(s) against which it remains registered;
- (p) **"Losses"** means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (q) **"New Building"** means each new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit;
- (r) **"Occupancy Permit"** means a permit issued by the City authorizing the use and occupation of any New Building, development or partial development on the Lands;
- (s) **"Owner"** means the Transferor, CITY OF VANCOUVER, and any successors in title to the Lands or a portion of the Lands;
- (t) **"Rental Housing"** means a Dwelling Unit which is not occupied by the registered or beneficial owner of the same, but which is made available by such owner to the general public (subject to Article 2), at arm's length, for use as rental accommodation on a month-to-month or longer basis in accordance

with this Agreement, and pursuant to reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto;

- (u) **"Replacement Social Housing Unit"** has the meaning ascribed to that term in section 2.1(b) and **"Replacement Social Housing Units"** means all of such units;
- (v) **"Residential Tenancy Act"** means the Residential Tenancy Act S.B.C. 2002, c. 78, as may be amended or replaced from time to time;
- (w) **"Rezoning"** means the rezoning of the Lands as described in Recital C;
- (x) **"Social Housing"** has the meaning ascribed to that term in the Vancouver Development Cost Levy By-law No. 9755, namely Rental Housing:
  - (i) in which at least 30% of the dwelling units are occupied by households with incomes below housing income limits, as set out in the current "Housing Income Limits" table published by the British Columbia Housing Management Commission, or equivalent publication;
  - (ii) which is owned by a non-profit corporation, by a non-profit co-operative association, or by or on behalf of the City, the Province of British Columbia or Canada; and
  - (iii) in respect of which the registered owner or ground lessee of the freehold or leasehold title to the land on which the housing is situate has granted to the City a Section 219 covenant, housing agreement, or other security for the housing commitments required by the City, registered against the freehold or leasehold title, with such priority of registration as the City may require;
- (y) **"Social Housing Condition"** has the meaning ascribed to that term in Recital C;
- (z) **"Social Housing Units"** has the meaning ascribed to that term in Section 2.1(b), and **"Social Housing Unit"** means any one of such Social Housing Units;
- (aa) **"Term"** means the term of this Agreement, which will commence on the Commencement Date and will end on the later of:
  - (i) the date as of which the New Building is demolished or substantially destroyed; and
  - (ii) 60 years from the date when the final Occupancy Permit is issued for the New Building; and
- (bb) **"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 date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

## ARTICLE 2 RESTRICTIONS ON USE AND SUBDIVISION

### 2.1 The Owner covenants and agrees that:

- (a) throughout the Term, the Lands and the New Building will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) it will design, construct, equip and finish within the New Building such number of Dwelling Units as approved in the Development Permit, all of which will be for use only as Social Housing (the “**Social Housing Units**”), in accordance with the Development Permit, any building permit issued pursuant thereto and the requirements 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, 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 New Building or replacement building(s) will contain not less than the same number and type of replacement Social Housing Units as the New Building formerly contained (each such replacement Social Housing Unit hereinafter referred to as a “**Replacement Social Housing Unit**”) and will be subject, for the duration of the Term, to the same use restrictions as the Social Housing Units and the New Building are pursuant to this Agreement. Notwithstanding the foregoing, the City and the Owner acknowledge and agree that if at the time of such damage, destruction or demolition, BC Housing, CMHC or an Approved Lender (as that term is defined under the *National Housing Act* (Canada)) as successor holds a mortgage charging the Lands and/or the New Building, including a mortgage charging the leasehold interest in the Lands, then any insurance proceeds received may, at the option of such mortgagee, be applied to repair the New Building or rebuild a replacement building or buildings on the Lands, be paid to the Owner (as the mortgagor) or be applied or paid partly in one way and partly in another, or be applied, in the sole discretion of the mortgagee, in whole or in part towards all indebtedness under such mortgage, whether due or not then due;

- (c) throughout the Term the New Building will be used only in a manner that ensures its continued compliance with the definition of Social Housing;
- (d) throughout the Term, not less than 30% of the Social Housing Units will be:
  - (i) occupied only by households with incomes below the then current applicable HIL; and
  - (ii) each rented at a rate no higher than 30% of the aggregate household income of the members of the household occupying such Social Housing Unit;
- (e) throughout the Term, the Social Housing Units will only be used for the purpose of providing Rental Housing;
- (f) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any Social Housing Unit to be sold or otherwise transferred (other than by way of mortgage, covenant, right of way or easement) unless:
  - (i) every Social Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner; and
  - (ii) the sale or transfer is to the Provincial Rental Housing Corporation pursuant to the exercise of a registered Option to Purchase, to a non-profit corporation or a non-profit co-operative association to whom the Provincial Rental Housing Corporation subsequently transfers title to, or to the City or it otherwise obtains the express written consent of the City;

- (g) throughout the Term, it will not suffer, cause or permit the Lands, or any part thereof, to be subdivided by strata plan or air space plan without the prior written consent of the City, which consent may be arbitrarily withheld;
- (h) throughout the Term, any sale or other transfer of title to a Social Housing Unit in contravention of the covenant in Section 2.1(f), and any subdivision of the Lands in contravention of Section 2.1(g), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan; as the case may be, at the Owner's expense;
- (i) throughout the Term, the Social Housing Units will only be rented on a month-to-month or longer basis and in no case for less than one month at a time;
- (j) throughout the Term, all of the Social Housing Units will be owned by a non-profit corporation, by a non-profit co-operative association, or by or on behalf of the City, the Province of British Columbia or Canada;
- (k) throughout the Term, it will insure, or cause to be insured, the Lands and the New Building and all parts thereof to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands; and
- (l) throughout the Term, it will keep and maintain the Lands and the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition. If the Lands or the New Building or any part thereof is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred.

### ARTICLE 3 OCCUPANCY RESTRICTION ON THE LANDS

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

- (a) the Owner will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for the New Building, until such time as the Owner has delivered, to the General Manager of Planning, Urban Design and Sustainability, in form and substance satisfactory to the General Manager of Planning, Urban Design and Sustainability:
  - (i) proof of the insurance, or confirmation of self-insurance, consistent with the requirements of Section 2.1(k), is in force and effect;
  - (ii) a final rent roll confirming the rents to be charged to the first occupants, listed by unit bedroom type, of the Social Housing Units following issuance of the Occupancy Permit satisfy the requirements of Section 2.1(d); and

- (iii) evidence the unit type mix and size of the constructed, equipped and finished Social Housing Units satisfy the requirements set out in the Development Permit; and
  - (b) the City will be under no obligation to issue any Occupancy Permit for the New Building or any part thereof, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 3.1(a).
- 3.2 Without limiting the general scope of ARTICLE 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 for the New Building until there is compliance with the provisions of this ARTICLE 3.

#### **ARTICLE 4 RECORD KEEPING**

- 4.1 The Owner will keep accurate records pertaining to the use and occupancy of the Social Housing Units. Such records will be to the satisfaction of the City. At the request of the City, from time to time, the Owner will make such records available for inspection and copying by the City. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

#### **ARTICLE 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 3.2, the Owner hereby:
  - (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:
    - (i) by reason of the City or City Personnel:
      - A. withholding any permit pursuant to this Agreement; or
      - B. exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or
    - (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;



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

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of:
  - (i) any negligent act or omission or wilful misconduct of the Owner or any of the Owner's Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
  - (ii) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement,

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

The indemnities in this ARTICLE 6 will be both personal covenants of the Owner (subject to Section 8.1) and integral parts of the Section 219 covenants granted in this Agreement.

#### 6.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 6.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 6.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 6.2(a) in the following circumstances:
  - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
  - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
  - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be

unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 6.2(b); and

- (c) Regardless of whether the claim is being defended under Section 6.2(a) or Section 6.2(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

- 6.3 Survival of Release and Indemnities. The release and indemnities in this Article 6 will remain effective, and survive any modification of, or partial release or release of the covenants created by this Agreement, and any termination of this Agreement, whether by fulfilment of the covenants contained in this Agreement or otherwise.

#### ARTICLE 7 NOTICES

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

- (a) If to the City:

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

Attention: City Clerk, with concurrent copies to the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services

- (b) If to the Owner:

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

Attention: Director of Real Estate

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 shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated. Upon the sale or transfer of the legal or beneficial interest in the Lands, the parties agree that the covenants and agreements herein contained shall only be binding upon the transferring party in respect of a breach or acts or omissions occurring during its ownership of the Lands, and the transferring party shall otherwise be released from all covenants and agreements herein contained following such sale or transfer of the legal or beneficial interest in the Lands.
- 8.2 Agreement to be a First Charge. The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
  - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Development Permit; and
  - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 8.3 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 8.4 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised

in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

- 8.5 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 8.6 Further Assurances. The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 8.7 Perfection of Intention. The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter* and also registered as a charge against title to the Lands with priority over all other encumbrances except those in favour of the City.
- 8.8 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City that:
  - (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
  - (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
  - (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
  - (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.
- 8.9 Enurement. This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.

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

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## Consent and Priority Agreement

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For \$1.00 and other good and valuable consideration, CLT 0007 COMMUNITY SOCIETY, the registered holder of the following lease registered in the Vancouver/New Westminster Land Title Office:

Lease CA9656756

("Lease")

against title to the lands charged by the within charge, for themselves and their successors and assigns, hereby consent to the granting and registration of the within charge and grants priority to the within charge over the Lease and their rights, title and interest in and to the lands charged by the within charge in the same manner and to the same effect as if the within charge had been executed, delivered and registered prior to the execution, delivery and registration of the Lease and prior to the advance of any money under the Lease.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Chargee has executed the Land Title Form C which is attached hereto and forms part of this Agreement.

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## Consent and Priority Agreement

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For \$1.00 and other good and valuable consideration, PROVINCIAL RENTAL HOUSING CORPORATION, the registered holder of the following option registered in the Vancouver/New Westminster Land Title Office:

Option to Purchase CA9764866  
of Lease CA9656756

("Option")

against title to the lands charged by the within charge, for themselves and their successors and assigns, hereby consent to the granting and registration of the within charge and grants priority to the within charge over the Option and their rights, title and interest in and to the lands charged by the within charge in the same manner and to the same effect as if the within charge had been executed, delivered and registered prior to the execution, delivery and registration of the Option and prior to the advance of any money under the Option.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Chargee has executed the Land Title Form C which is attached hereto and forms part of this Agreement.

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## Consent and Priority Agreement

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For \$1.00 and other good and valuable consideration, BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION, the registered holder of the following financial charges registered in the Vancouver/New Westminster Land Title Office:

Mortgage CA9764867  
Assignment of Rents CA9764868  
both of Lease CA9656756

("Security")

against title to the lands charged by the within charge, for themselves and their successors and assigns, hereby consent to the granting and registration of the within charge and grants priority to the within charge over the Security and their rights, title and interest in and to the lands charged by the within charge in the same manner and to the same effect as if the within charge had been executed, delivered and registered prior to the execution, delivery and registration of the Security and prior to the advance of any money under the Security.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Chargee has executed the Land Title Form C which is attached hereto and forms part of this Agreement.

END OF DOCUMENT