

EXPLANATION**A By-law to Amend Procedure By-law No. 12577
regarding alignment with the Vancouver Charter**

At the Council meeting on July 9, 2024, Council resolved to amend the Procedure By-law regarding alignment with the Vancouver Charter. Enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
July 23, 2024

BY-LAW NO. _____

**A By-law to Amend Procedure By-law No. 12577
regarding alignment with the Vancouver Charter**

1. This by-law amends the indicated provisions of Procedure By-law No. 12577.
2. In section 1.2, Council strikes the definition of “applicant” and substitutes the following:
““applicant” means the person applying for a zoning amendment;”.
3. In section 1.2, Council strikes the definition of “referral report” and substitutes the following:
““referral report” means a Council report or Council member’s motion requesting that Council decide whether or not to refer a rezoning matter to public hearing or Council meeting if a public hearing is prohibited or optional;”.
4. Council inserts a new section 5.4 (b) as follows:
“(b) a question about a referral report must be limited to the decision to refer or otherwise concern the process leading to the recommendation for referral;”.
5. Council renumbers the remaining sections 5.4 (b), 5.4 (c) and 5.4 (d) as 5.4 (c) and 5.4 (d) and 5.4 (e) respectively.
6. Council strikes section 7.1 and 7.2 and substitutes the following:
“Items which may be spoken to
 - 7.1 Subject to the provisions of this Part 7, a person may speak to:
 - (a) a Council member’s motion,
 - (b) a staff report that contains recommendations, regardless of whether it is presented at a Council meeting or a standing committee meeting, and
 - (c) Council at a special Council meeting, in accordance with Council direction.
 - 7.2 Notwithstanding section 7.1, a person may not speak to:
 - (a) a referral report, except if the referral report recommends that a matter not be referred to a public hearing or a Council meeting, in which case the applicant may speak to that recommendation,
 - (b) a zoning amendment that is being considered at a Council meeting and not at a public hearing, except that the applicant may speak to the proposed amendment,
 - (c) a presentation, or

- (d) a staff report when the only recommendation is to receive for information.
- 7. Council strikes “7.2” from section 7.3 and replaces it with “7.1”.
- 8. Council strikes sections 13.2 and 13.3 and inserts “DELETED”.
- 9. Council strikes section 13.13 and substitutes the following:

“Order of business

13.13 The order of business at a public hearing is:

- (a) roll call;
- (b) opening instructions regarding speakers and public comments; and
- (c) for each agenda item:
 - (i) reading of application and summary of public comments received,
 - (ii) Chair makes first call for speakers,
 - (iii) presentation by staff,
 - (iv) presentation by applicant,
 - (v) questions to staff and/or the applicant,
 - (vi) Chair makes second call for speakers,
 - (vii) Hearing of speakers on speaker list,
 - (viii) Chair makes third and final call for speakers,
 - (ix) 5-minute recess to confirm additional speakers,
 - (x) call by Chair for public comments,
 - (xi) close of speakers list,
 - (xii) closing comments by applicant,
 - (xiii) closing comments by staff,
 - (xiv) Council questions of staff following staff closing comments,
 - (xv) close of public comments pursuant to subsections 13.22 and 13.23,
 - (xvi) debate, and

(xvii) motion.”.

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

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

ENACTED by Council this _____ day of _____, 2024

Mayor

City Clerk

EXPLANATION

**A By-law to amend Vancouver Development Cost Levy By-law No. 9755
regarding 2024 rates**

Enactment of this By-law will implement Council's resolutions on July 10, 2024 to increase rates in 2024, to come into force and take effect on September 30, 2024.

Director of Legal Services
July 23, 2024

SCHEDULE “C”

Category/Use	Total Development Cost Levy (Effective September 30, 2024)	Unit/ area cost
Residential at or below 1.2 FSR and Laneway House	\$59.01	Per m ²
Medium Density Residential Above 1.2 to 1.5 FSR	\$126.98	Per m ²
Higher Density Residential Above 1.5 FSR	\$254.21	Per m ²
NON-RESIDENTIAL		
Industrial (I-2, M-1, M-1A, M-1B, M-2, MC-1, MC-2 Zoning Districts)	\$101.69	Per m ²
Mixed Employment (Light Industrial) (IC-1, IC-2, IC-3, I-1, I-3, I-4, I-1A, I-1B Zoning Districts)	\$190.54	Per m ²
Commercial & Other	\$254.21	Per m ²

Category/Use	Total Development Cost Levy Waiver
For-Profit Affordable Rental Housing – Class A	100%
For-Profit Affordable Rental Housing – Class B	86.24%

Category/Use	Rate	Unit/ area cost
School use	\$5.49	Per m ²
Childcare Use	\$10.00	Per building permit
Temporary Building	\$10.00	
Community Energy Centre	\$10.00	
Cultural Facility	\$10.00	
Community Centre/ Neighbourhood House	\$10.00	
Library	\$10.00	
Public Authority Use	\$10.00	
Social Service Centre	\$10.00	
Works Yard	\$10.00	

EXPLANATION

**A By-law to amend
Vancouver Utilities Development Cost Levy By-law No. 12183
regarding 2024 rates**

Enactment of this By-law will implement Council's resolutions on July 10, 2024 to increase rates in 2024, to come into force and take effect on September 30, 2024.

Director of Legal Services
July 23, 2024

SCHEDULE "C"

Category/Use	Total Development Cost Levy (Effective September 30, 2024)	Unit/ area cost
RESIDENTIAL		
Residential at or below 1.2 FSR and Laneway House	\$36.97	Per m ²
Medium Density Residential Above 1.2 to 1.5 FSR	\$79.65	Per m ²
Higher Density Residential Above 1.5 FSR	\$159.29	Per m ²
NON-RESIDENTIAL		
Industrial (I-2, M-1, M-1A, M-1B, M-2, MC-1, MC-2 Zoning Districts)	\$31.84	Per m ²
Mixed Employment (Light Industrial) (IC-1, IC-2, IC-3, I-1, I-3, I-4, I-1A, I-1B Zoning Districts)	\$59.71	Per m ²
Commercial & Other	\$79.65	Per m ²

Category/Use	Rate	Unit/ Area cost
School use	\$5.49	Per m ²
Childcare Use	\$10.00	Per building permit
Temporary Building	\$10.00	
Community Energy Centre	\$10.00	
Cultural Facility	\$10.00	
Community Centre/ Neighbourhood House	\$10.00	
Library	\$10.00	
Public Authority Use	\$10.00	
Social Service Centre	\$10.00	
Works Yard	\$10.00	

EXPLANATION**A By-law to amend the Area Specific Development Costs Levy By-law No. 9418
regarding 2024 rates**

Enactment of this By-law will implement Council's resolutions on July 10, 2024 to increase rates in 2024, to come into force and take effect on September 30, 2024.

Director of Legal Services
July 23, 2024

EXPLANATION**A By-law to amend Building By-law No. 12511
regarding minimum threshold for sprinkler upgrades**

At the Council meeting on July 9, 2024, Council resolved to amend the Building By-law to institute a minimum threshold for the sprinkler upgrades in existing residential buildings. Enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
July 23, 2024

BY-LAW NO. ____

**A By-law to amend Building By-law No. 12511
regarding minimum threshold for sprinkler upgrades**

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 Article 11.2.1.3. of Division B of Book 1, Council:
 - (a) in Sentence (1), strikes “Sentence (2)” and substitutes ‘Sentences (2) and (4),”.
 - (b) adds a new Sentence (4) as follows:

“**4**) A *building* need not be *sprinklered* in accordance with Sentence (1), if the *construction* value of the *alteration* does not exceed \$250,000.”.
 - (c) strikes out Table 11.2.1.3. including the Notes to Table 11.2.1.3 and substitutes the following:

**“Table 11.2.1.3.
Sprinkler Installation Determination Where Dwelling Units are Added
Forming part of Sentence 11.2.1.3.(1),(2), and (3)**

Existing Dwelling Units	New Dwelling Units Added Over Any 5 year Period ⁽¹⁾				
	1	2-3	4-5	6	>6
0-1	Spr R ⁽²⁾	Spr R	Spr R	Spr R	Spr R
2-4	-	Spr R	Spr R	Spr R	Spr R
5-10	-	-	Spr R	Spr R	Spr R
11-20	-	-	-	Spr R	Spr R
>20	-	-	-	-	Spr R

Notes to Table 11.2.1.3.:

- (1) The creation of dwelling units over the previous 5 years from the date of the proposed building permit application.
- (2) Sprinklers Required.”.

3. In Article 11.2.1.4. of Division B of Book 1, Council:
 - (a) strikes out Sentence (3) and substitutes the following:

“

3) Except as permitted by Sentence (4), where an *alteration* is made to an existing residential *building* containing not more than two principal residential *dwelling units*, a *sprinkler system* shall be installed

a) throughout the *building*, where more than one *dwelling unit* is created, reconstructed, or both,

- b) throughout any *storey* on which a new principal *dwelling unit* is created and all *storeys* below, or
- c) throughout any *storey* on which an *alteration* to the *building* increases the aggregate area of an existing *dwelling unit* by more than 50% of the existing floor area.”; and

(b) adds a new Sentence (4) as follows:

“

4) A *building* need not be *sprinklered* in accordance with Sentence (3), if the *construction* value of the *alteration* does not exceed \$250,000.”.

- 4. In Book I, Division B, Council strikes out Note A-11.2.1.4.(3)(a) Replacement Value.
- 5. This by-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2024

Mayor

City Clerk

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

Following the Public Hearing on September 12, 2023, Council gave conditional approval to the rezoning of the site at 5235-5275 Kersland Drive. The Director of Legal Services has advised that all prior to conditions have been met, and enactment of the attached by-law will implement Council's resolutions.

Director of Legal Services
July 23, 2024

5235-5275 Kersland Drive

BY-LAW NO.

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

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

Zoning District Plan Amendment

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

Designation of CD-1 District

2. The area shown within the heavy black outline on Schedule A is hereby designated CD-1 (872).

Uses

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

- (a) Dwelling Uses, limited to Multiple Dwelling; and
- (b) Accessory Uses customarily ancillary to the uses permitted in this section.

Conditions of Use

4. The design and layout of at least 35% of the total dwelling units must:
- (a) be suitable for family housing; and
 - (b) have 2 or more bedrooms, of which:
 - (i) at least 25% of the total dwelling units must be 2-bedroom units, and
 - (ii) at least 10% of the total dwelling units must be 3-bedroom units.

Floor Area and Density

5.1 Computation of floor area must assume that the site area is 2,658.7 m², being the site area at the time of the application for the rezoning evidenced by this by-law, prior to any dedications.

5.2 The maximum floor space ratio for all uses combined is 2.0.

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

5.4 Computation of floor area must exclude:

- (a) balconies and decks and any other appurtenances which, in the opinion of the Director of Planning, are similar to the foregoing, provided that:
 - (i) the total area of these exclusions must not exceed 12% of the permitted floor area, and
 - (ii) the balconies must not be enclosed for the life of the building;
- (b) patios and roof decks, if the Director of Planning considers the impact on privacy and outlook;
- (c) floors or portions thereof that are used for:
 - (i) off-street parking and loading located at or below base surface, provided that the maximum exclusion for a parking space does not exceed 7.3 m in length,
 - (ii) bicycle storage, and
 - (iii) heating and mechanical equipment, or uses that the Director of Planning considers similar to the foregoing;
- (d) entries, porches and verandahs if the Director of Planning first approves the design; and
- (e) all residential storage area above or below base surface, except that if residential storage area above base surface exceeds 3.7 m² per dwelling unit, there will be no exclusion for any of the residential storage area above base surface for that unit.

5.5 The Director of Planning or Development Permit Board may exclude common amenity areas from the computation of floor area, to a maximum of 10% of the total permitted floor area, if the Director of Planning or Development Permit Board considers the intent of this by-law and all applicable Council policies and guidelines.

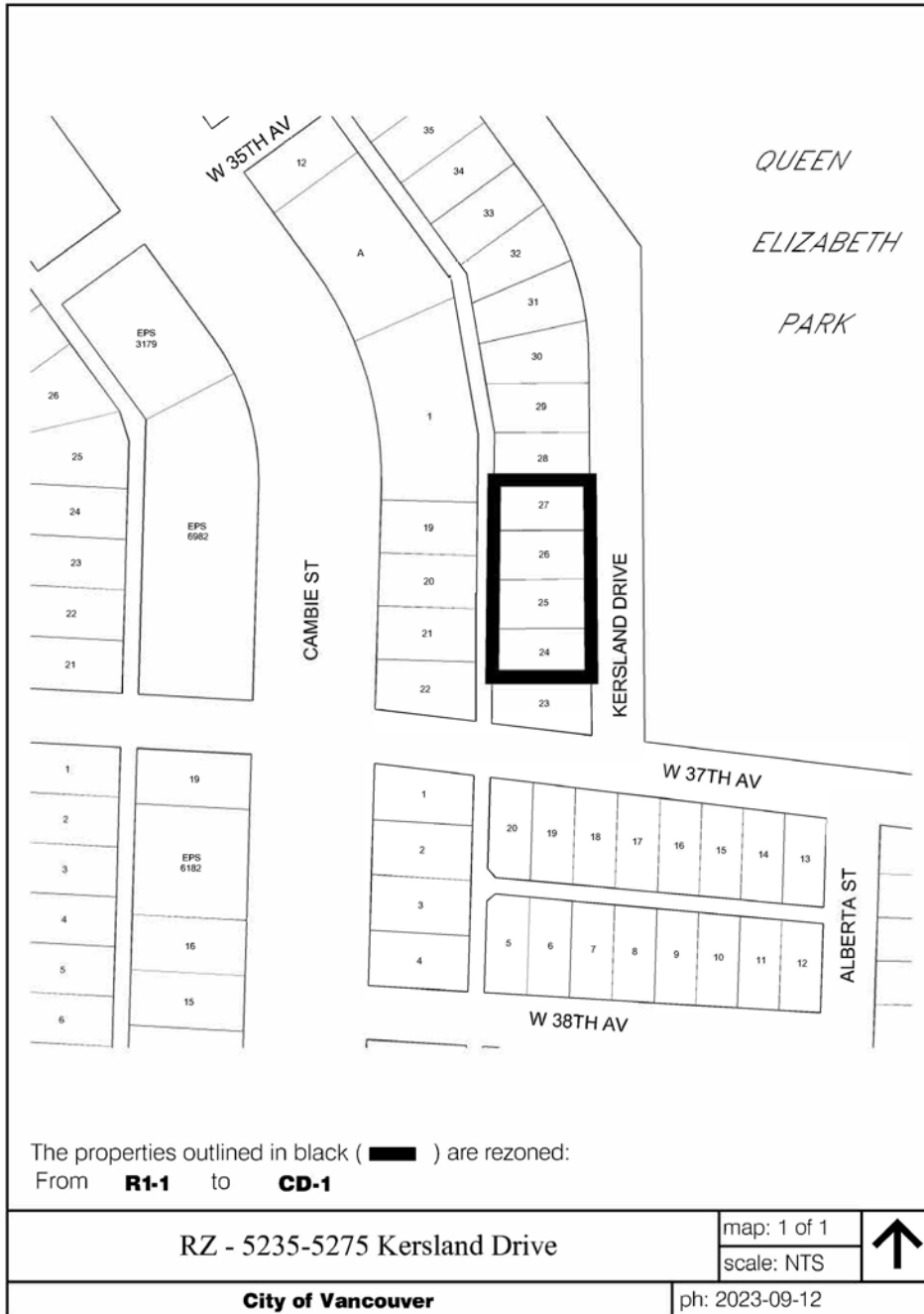
Building Height

6. Building height must not exceed 18.0 m.

Horizontal Angle of Daylight

7.1 Each habitable room must have at least 1 window on an exterior wall of a building.

Schedule A



The properties outlined in black () are rezoned:
From **R1-1** to **CD-1**

RZ - 5235-5275 Kersland Drive

map: 1 of 1

scale: NTS



City of Vancouver

ph: 2023-09-12

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 1065 Pacific Street**

After a public hearing on March 12, 2024, Council approved in principle the land owner's application to rezone the above noted property from RM-5A (Residential) District to CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement securing Social Housing 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 accepted and executed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services
July 23, 2024

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 1065 Pacific 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:

031-982-956

Lot 1 Block 13 District Lot 185 Group 1 New Westminster
District Plan EPP125144

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 , 2024

Mayor

City Clerk



Land Title Act

Charge

General Instrument – Part 1

1. Application

**Robert D.J. Brown
McLachlan Brown Anderson
10th Floor, 938 Howe Street
Vancouver BC V6Z 1N9
604-331-6000**

File No. 60.1244.003
Housing Agreement

2. Description of Land

PID/Plan Number Legal Description

031-982-956 LOT 1 BLOCK 13 DISTRICT LOT 185 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP125144

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Entire Document
PRIORITY AGREEMENT		Granting the Covenant herein priority over Mortgage CB453836 and Assignment of Rents CB453837

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4. Terms

Part 2 of this instrument consists of:

(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

W.F.C. PROPERTIES (PACIFIC) INC., NO.BC1384912

BANK OF MONTREAL, (AS TO PRIORITY)

6. Transferee(s)

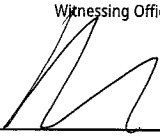
**CITY OF VANCOUVER
A MUNICIPAL CORPORATION
453 WEST 12TH AVENUE
VANCOUVER BC V5Y 1V4**

7. Additional or Modified Terms

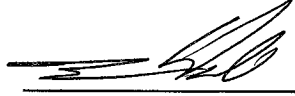


8. Execution(s)

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

ROBERT D.J. BROWN
Barrister & Solicitor
10th Floor, 938 Howe Street
Vancouver, BC V6Z 1N9

Execution Date
YYYY-MM-DD
2024-07-10

Transferor / Transferee / Party Signature(s)
W.F.C. Properties (Pacific) Inc.
By their Authorized Signatory

Name: Bruno Wall

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
YYYY-MM-DD

Transferor / Transferee / Party Signature(s)
Bank of Montreal
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.



Witnessing Officer Signature

Execution Date

YYYY-MM-DD

Transferor / Transferee / Party Signature(s)

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.

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*, R.S.B.C. 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
SECURED RENTAL AND BELOW-MARKET RENTAL HOUSING

1065 PACIFIC STREET

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, W.F.C. PROPERTIES (PACIFIC) INC. is called the "Owner", as more particularly defined in Section 1.1; and
 - (ii) the Transferee, City of Vancouver, is called the "City" or the "City of Vancouver" when referring to corporate entity continued under the *Vancouver Charter*, and "Vancouver" when referring to geographic location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands (the "Rezoning Application") from RM-5A (Residential) District to CD-1 (Comprehensive Development) District, and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, among other things, fulfilment of the condition that, prior to enactment of the rezoning by-law (upon enactment, the "Rezoning By-law"), the Owner make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services to enter into a Housing Agreement by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter* securing all of the residential units as secured rental housing units with at least 20 percent of the residential floor areas counted in the calculation of the floor space ratio secured as Below-Market Rental Housing Units pursuant to Section 3.1A of the Vancouver DCL Bylaw and the "*Criteria for 100% Secured Rental and Below-Market Housing as an Alternative to Inclusionary Social Housing in the Burrard Corridor of the West End Community Plan*" for the longer of 60 years and life of the New Building, and subject to other conditions set forth in the minutes of the public hearing (collectively, the "Housing Condition"); and
- D. The Owner is entering into this Agreement to satisfy the Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, in satisfaction of the requirements of Section 3.1A of the Vancouver DCL By-law and pursuant to Section 565.2 of the *Vancouver Charter* and Section 219 of the *Land Title Act*, agree as follows, in respect of the use of the Lands and the New Building:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

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

- (a) "Agreement" means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;
- (b) "Below-Market Rental Housing" means a portion of the For-Profit Affordable Rental Housing in a building that is comprised of at least 20% of the residential floor area that is counted in the calculation of the Floor Space Ratio consisting of Dwelling Units with rents per unit type that meet the requirements of Section 2.1(o) of this Agreement, are made available for rent only to Eligible Persons in accordance with this Agreement and comply with the "*Criteria for 100% Secured Rental and Below-Market Housing as an Alternative to Inclusionary Social Housing in the Burrard Corridor of the West End Community Plan*";
- (c) "Below-Market Rental Housing Rent Roll" means a rent roll report providing information regarding each of the Below-Market Rental Housing Units, including the unit number, unit type, unit size and rent;
- (d) "Below-Market Rental Housing Report" means a notarized annual report prepared by the Owner and delivered to the City providing information regarding each of the Below-Market Rental Housing Units to the satisfaction of the General Manager of Planning, Urban Design and Sustainability, substantially in the form attached hereto as Schedule A, with such amendments or additions thereto as may be required by the General Manager of Planning, Urban Design and Sustainability from time to time;
- (e) "Below-Market Rental Housing Units" has the meaning ascribed to that term in Section 2.1(c) and "Below-Market Rental Housing Unit" means any one of such units;
- (f) "Building Permit" means any building permit issued by the City authorizing the building of a New Building as contemplated by the Rezoning By-law and the Development Permit;
- (g) "City" and "City of Vancouver" have the meaning ascribed to those terms in Recital A(ii);
- (h) "City Manager" means the chief administrator from time to time of the City and his or her successors in function and their respective nominees;
- (i) "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;
- (j) "CMHC Rental Market Survey" means the annual Rental Market Survey Data Tables conducted and published by the Canada Mortgage Housing Corporation for the City of Vancouver or if such publication is no longer published by the Canada Mortgage Housing Corporation, such other equivalent publication that is acceptable to the General Manager of Planning, Urban Design and Sustainability;
- (k) "*Criteria for 100% Secured Rental and Below-Market Housing as an Alternative to Inclusionary Social Housing in the Burrard Corridor of the West End Community Plan*" means the Report entitled "*Criteria for 100% Secured Rental and*

Below-Market Housing as an Alternative to Inclusionary Social Housing in the Burrard Corridor of the West End Community Plan" that was approved by the City's elected Council on November 24, 2020;

- (l) "Development Permit" means any development permit issued by the City authorizing the development of the Lands contemplated by the Rezoning By-law;
- (m) "Director of Legal Services" means the chief administrator from time to time of the City's Legal Services Department and her/his successors in function and their respective nominees;
- (n) "Dwelling Unit" has the meaning set out in the City's Zoning and Development By-law No. 3575, as amended or replaced from time to time;
- (o) "Effective Date" means the date as of which this Agreement has been executed by all parties to it;
- (p) "Eligible Person" means a person who:
 - (i) at the beginning of such person's tenancy of a Below-Market Rental Housing Unit, together with all other Occupants of such Below-Market Rental Housing Unit, have an aggregate annual household income that is less than or equal to four (4) times the annual rent of such Below-Market Rental Housing Unit;
 - (ii) thereafter throughout such person's tenancy of a Below-Market Rental Housing Unit, together with all other Occupants of such Below-Market Rental Housing Unit, have an aggregate annual household income that is less than or equal to five (5) times the annual rent of such Below-Market Rental Housing Unit; and
 - (iii) throughout such person's tenancy of a Below-Market Rental Housing Unit, will:
 - (A) not permit such Below-Market Rental Housing Unit to be occupied by a person or persons other than those persons identified in the Tenancy Agreement for more than 60 consecutive days or more than 90 days in total in any calendar year, without the prior written consent of the Owner;
 - (B) not permit such Below-Market Rental Housing Unit to be occupied by a total number of Occupants less than the total number of bedrooms therein;
 - (C) occupy such Below-Market Rental Housing Unit as his or her Principal Residence and not permit any Occupant to occupy such Below-Market Rental Housing Unit unless such Below-Market Rental Housing Unit is the Occupant's Principal Residence;
 - (D) not permit such Below-Market Rental Housing Unit to be vacant for a period of six months or longer, cumulatively within a calendar year, without the prior written consent of the Owner; and

(E) be:

- I. a Canadian citizen;
- II. an individual lawfully admitted into Canada for permanent residency;
- III. a refugee sponsored by the Government of Canada; or
- IV. an individual who has applied for refugee status,

and who, at the start of the tenancy, has resided in British Columbia for the past twelve (12) consecutive months,

or a person who is otherwise deemed to be an Eligible Person by the General Manager of Planning, Urban Design and Sustainability, in their sole discretion;

- (q) **“Floor Space Ratio”** means the figure obtained when the area of the floors of the New Building is divided by the area of the Lands;
- (r) **“For-Profit Affordable Rental Housing”** means multiple Dwelling Units within a building for use as Rental Housing which meets the requirements of Section 3.1A of the Vancouver DCL By-law to be “Class A for-profit affordable rental housing” (as defined therein);
- (s) **“For-Profit Affordable Rental Housing Units”** has the meaning ascribed to that term in Section 2.1(c) and **“For-Profit Affordable Rental Housing Unit”** means any one of such units;
- (t) **“General Manager of Planning, Urban Design and Sustainability”** means the person appointed from time to time as the City’s General Manager of Planning, Urban Design and Sustainability and his/her successors in function and delegates and their respective nominees;
- (u) **“Income”** of an Occupant means the total annual world-wide income before income tax from all sources of the Occupant and includes without limitation, the following income sources:
- (i) income assistance;
 - (ii) employment, including regular overtime, vacation pay and gratuities;
 - (iii) self-employment, including commission sales;
 - (iv) seasonal employment;
 - (v) Employment Insurance and WorkSafe BC insurance;
 - (vi) training allowances;

- (vii) income from the Resettlement Assistance Program;
- (viii) child support, maintenance payments or support from family/friends/community;
- (ix) rental income from real estate or dividends from stocks or bonds, if the real monthly income is greater than the imputed income from the Asset; and
- (x) pension incomes including:
 - (A) old Age Security, Guaranteed Income Supplement, Allowance, and Allowance for the Survivor (formerly Spousal Allowance);
 - (B) senior's supplement;
 - (C) private pension plans including Registered Retirement Income Funds;
 - (D) Canada Pension Plan, including retirement, disability, orphans, widows, disability for child, etc.
 - (E) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada; and
 - (F) foreign pensions,

but does not include:

- (xi) earnings of dependent children aged 18 and under (regardless of student status);
- (xii) student loans, equalization payments, student grants and scholarships;
- (xiii) taxable benefits, including living out or travel allowances, medical coverage, uniform allowance, etc.;
- (xiv) Shelter Aid for Elderly Renters and Rental Assistance Program payments;
- (xv) Canada Child Tax Benefits, including the National Child Benefit Supplement, Child Disability Benefit, BC Family Bonus, and BC Earned Income Benefit;
- (xvi) Universal Child Care Benefits;
- (xvii) BC Childcare Subsidy;
- (xviii) income from foster parenting;
- (xix) Child in Home of Relative and Extended Family Program;
- (xx) income from approved live-in care givers; and

- (xxi) GST and Income Tax rebates;
- (v) "*Land Title Act*" means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (w) "Lands" means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 of the Form C - General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided;
- (x) "Losses" means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, judgements, builders liens, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (y) "New Building" means any 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;
- (z) "Occupancy Permit" means a permit issued by the City authorizing the use and occupation of any New Building, development or partial development on the Lands issued after the Effective Date;
- (aa) "Occupants" means persons for whom a Rental Housing Unit serves as their Principal Residence and an "Occupant" means any one of them, as the context requires;
- (bb) "Owner" means the registered owner of the Lands as of the Effective Date, namely, W.F.C. Properties (Pacific) Inc. and its successors and assigns;
- (cc) "Owner's Personnel" means any and all of the officers, directors, employees, agents, nominees, delegates, permittees, contractors and subcontractors of the Owner;
- (dd) "*Personal Information Protection Act*" means the *Personal Information Protection Act*, S.B.C. 2003, c.63, and all amendments thereto and re-enactments thereof;
- (ee) "Principal Residence" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this agreement, a person may only have one principal residence;
- (ff) "Related Person" means, where the registered or beneficial owner of the Rental Housing Units is:

- (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c.57, then a Related Person is:
 - (A) an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - (B) the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and
- (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (gg) "Rental Housing" means a Dwelling Unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arm's length, for use as rental accommodation, but specifically excluding use as Seniors Supportive or Assisted Housing, on a month-to-month basis or longer in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (hh) "Replacement For-Profit Affordable Rental Housing Units" has the meaning ascribed to that term in Section 2.1(c) and "Replacement For-Profit Affordable Rental Housing Unit" means one such unit;
- (ii) "Replacement Below-Market Rental Housing Units" has the meaning ascribed to that term in Section 2.1(c) and "Replacement Below-Market Rental Housing Unit" means one such unit;
- (jj) "*Residential Tenancy Act*" means the *Residential Tenancy Act* S.B.C. 2002, c. 78 and all amendments thereto and re-enactments thereof;
- (kk) "*Residential Tenancy Regulation*" means the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 and all amendments thereto and re-enactments thereof;
- (ll) "Rezoning Application" has the meaning ascribed to that term in Recital C;
- (mm) "Rezoning By-law" has the meaning ascribed to that term in Recital C;
- (nn) "Seniors Supportive or Assisted Housing" has the meaning set out in the City's Zoning and Development By-law No. 3575, as amended or replaced from time to time;
- (oo) "Statement of Below-Market Rental Housing Unit Eligibility" means a notarized statement, prepared by the Owner and delivered to the City, that states the following in respect of a Below-Market Rental Housing Unit:
 - (i) confirmation that, to the best of the Owner's knowledge based on the most current information available to the Owner pursuant to Section 2.1(g), the Tenant of such Below-Market Rental Housing Unit is an Eligible Person;

- (ii) description of all of the actions and procedures that the Owner has undertaken to verify that the Tenant of such Below-Market Rental Housing Unit is an Eligible Person; and
- (iii) such other information regarding such Below-Market Rental Housing Unit and its Occupants as the General Manager of Planning, Urban Design and Sustainability may otherwise require;

provided that such statement shall not include the names or information of any Tenants or Occupants and shall otherwise be satisfactory to the General Manager of Planning, Urban Design and Sustainability in form and substance;

- (pp) "Tenancy Agreement" means a residential tenancy agreement, lease, licence or other agreement prepared in accordance with the *Residential Tenancy Act*, granting rights to occupy a Below-Market Rental Housing Unit;
- (qq) "Tenant" means an Eligible Person who is a tenant of a Below-Market Rental Housing Unit by way of a Tenancy Agreement;
- (rr) "Term" means the term of this Agreement, which will commence on the Effective Date and will end on the later of:
 - (i) the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building; and
 - (ii) the date as of which the New Building is demolished or substantially destroyed;
- (ss) "Vancouver" has the meaning ascribed to that term in Recital A(ii);
- (tt) "*Vancouver Charter*" means the *Vancouver Charter* S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof; and
- (uu) "*Vancouver DCL By-law*" means the City's Vancouver Development Cost Levy By-law No. 9755, and all amendments thereto and re-enactments thereof.

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.
1. 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.
- (e) Legislation. Any reference to a statute or by-law includes and is a reference to such statute or by-law and to the regulations made pursuant thereto in force on the Effective Date, with all amendments made thereto and as in force from time to time, and to any statute, by-law and regulations that may be passed which have the effect of supplementing or superseding such statutes, by-laws and regulations.
- (f) Time. Time will be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time will be local Vancouver, British Columbia time.

ARTICLE 2 RESTRICTIONS ON USE OF LANDS AND SUBDIVISION

- 2.1 The Owner covenants and agrees with the City, in respect of the use of the Lands and the construction and use of the New Building, that throughout the Term:
- (a) the Lands, the New Building and the For-Profit Affordable Rental Housing Units (including the Below-Market Rental Housing Units) will not be used in any way that is inconsistent with the terms of this Agreement;
- (b) at its sole cost and expense, it will construct, fit and finish the New Building, including the For-Profit Affordable Rental Housing Units (including the Below-Market Rental Housing Units) any amenities and parking spaces, in accordance with this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
- (c) all of the Dwelling Units in the New Building will be used only for the purpose of providing For-Profit Affordable Rental Housing (the "For-Profit Affordable Rental Housing Units"), provided that the For-Profit Affordable Rental Housing Units comprising not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below-Market Rental Housing (the "Below-Market Rental Housing Units"), all in accordance with the terms of this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building, then the Owner will promptly take all steps reasonably

necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired or replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than the same number and type of replacement Dwelling Units as the New Building formerly contained, which replacement Dwelling Units during the remainder of the Term, will also be used only for the purpose of providing For-Profit Affordable Rental Housing (such replacement Dwelling Units hereinafter referred to as a "Replacement For-Profit Affordable Rental Housing Units") and Below-Market Rental Housing (such replacement Dwelling Units hereinafter referred to as a "Replacement Below-Market Rental Housing Units") respectively, in the same percentages as set out in this Section and in accordance with the terms of this Agreement and the applicable by-laws of the City and such Replacement For-Profit Affordable Rental Housing Units and Replacement Below-Market Rental Housing Units will be subject, for the remaining duration of the Term, to the same use restrictions, respectively, as the For-Profit Affordable Rental Housing Units and the Below-Market Rental Housing Units are pursuant to this Agreement;

- (d) not less than:
 - (i) 35% of the For-Profit Affordable Rental Housing Units; and
 - (ii) 35% of the Below-Market Rental Housing Units;
 will have two or more bedrooms;
- (e) each of the Below-Market Rental Housing Units shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Eligible Person and except in accordance with the following conditions:
 - (i) each Below-Market Rental Housing Unit shall be rented only pursuant to a Tenancy Agreement, which Tenancy Agreement shall include a copy of this Agreement;
 - (ii) each Below-Market Rental Housing Unit shall be rented for a monthly rent not exceeding the rent permitted to that type of Below-Market Rental Housing Unit, as described in Section 2.1(o) and the Owner will withhold its consent to any assignment or subletting of a Below-Market Rental Housing Unit in accordance with Section 2.1(e)(v)(D)VI.b;
 - (iii) each Below-Market Rental Housing Unit shall be occupied only by an Eligible Person who is occupying such Below-Market Rental Housing Unit as his or her Principal Residence and the Principal Residence of such other Occupants of the Eligible Person's household as specified in the Tenancy Agreement between the Owner and the Eligible Person for the rental thereof;
 - (iv) each Below-Market Rental Housing Unit shall have at least one Occupant per bedroom thereof;
 - (v) each Tenancy Agreement shall include:

- (A) a clause requiring the Tenant and each permitted Occupant of the respective Below-Market Rental Housing Unit to comply with this Agreement;
- (B) the names of all Occupants of the respective Below-Market Rental Housing Unit;
- (C) a term that is not less than 30 consecutive days;
- (D) clauses providing that:
 - I. the Tenant is and remains an Eligible Person at all times during the term of the Tenancy Agreement;
 - II. any person not identified in the Tenancy Agreement shall not reside at the Below-Market Rental Housing Unit for more than 60 consecutive days or more than 90 days total in any calendar year, unless the Tenant receives prior written consent from the Owner;
 - III. the Below-Market Rental Housing Unit will have at least one Occupant per bedroom thereof;
 - IV. the Below-Market Rental Housing Unit will not be vacant for six months or longer, cumulatively, within a calendar year, without the prior written consent of the Owner;
 - V. the Below-Market Rental Housing Unit will at all times during the term of the Tenancy Agreement be the Principal Residence of the Tenant and the other Occupants in the Tenant's household as specified in the Tenancy Agreement; and
 - VI. the Tenant will not assign or sublet the Below-Market Rental Housing Unit or assign the Tenancy Agreement in whole or in part, except to an Eligible Person and with the consent of the Owner, provided that:
 - a. the Tenant does not receive a fee for such assignment or subletting and the rent paid by the assignee or sublessee does not exceed the rent payable in the Tenancy Agreement; and
 - b. the Owner will withhold its consent and the Tenant acknowledges that it will not be unreasonable for the Owner to do so, if the assignee or sublessee is not an Eligible Person or if the Tenant receives a fee for such assignment or subletting or the rent paid by the assignee or sublessee exceeds the rent payable in the Tenancy Agreement; and

VII. the Tenant acknowledges and agrees that each of the foregoing clauses described in subsections I. to VI. is a material term of the Tenancy Agreement;

(E) a clause:

- I. wherein the Tenant consents to the collection, use and retention by the Owner and disclosure to the City of information, documentation and evidence described in Section 2.1(g); and
- II. requiring the Tenant to deliver to the Owner the information, documentation and evidence described in Section 2.1(g)(ii) every five (5) years following the date on which the Tenant first occupies the Below-Market Rental Housing Unit,

unless otherwise permitted by the General Manager of Planning, Urban Design and Sustainability in his or her sole discretion; and

(vi) subject to any contrary provisions in the *Residential Tenancy Act*, as determined to be contrary by a ruling or decision of any judicial body having jurisdiction, if the Tenant is in breach of any of the material terms described in Section 2.1(e)(v)(D), the Owner will take all necessary steps to end the tenancy of the Tenant in the respective Below-Market Rental Housing Unit, which steps will include:

- (A) providing the Tenant with a written notice specifying the breach forthwith upon the Owner becoming aware of any breach;
- (B) providing the Tenant with a reasonable time to remedy the breach after such written notice has been provided;
- (C) if the Tenant does not remedy the breach within the time specified in Section 2.1(e)(vi)(B), providing the Tenant with a written notice of termination of the Tenancy Agreement that will be effective two (2) months, except in respect of a breach of the material terms specified in Sections 2.1(e)(v)(D)I to 2.1(e)(v)(D)III in which case the termination will be effective six (6) months, following the date that the Owner has delivered such written termination notice to the Tenant; and
- (D) causing all Occupants of the respective Below-Market Rental Housing Unit to vacate the Below-Market Rental Housing Unit upon the effective date of termination;

(f) if the Owner has terminated a Tenancy Agreement for the reasons specified in Sections 2.1(e)(v)(D)I to 2.1(e)(v)(D)III, the Owner shall offer another For-Profit Affordable Rental Housing Unit for rent to the former Tenant, subject to availability for rental of For-Profit Affordable Rental Housing Units and eligibility of the former Tenant in respect of other Below-Market Rental Housing Units;

- (g) in connection with Section 2.1(e), throughout the Term, the Owner shall:
- (i) prior to renting a Below-Market Rental Housing Unit to a prospective tenant, or upon the change of any Occupants residing within a Below-Market Rental Housing Unit from the Occupants listed in the Tenancy Agreement, verify, by obtaining all information, documentation or evidence necessary or such other information, documentation or evidence that the General Manager of Planning, Urban Design and Sustainability may deem necessary, that such prospective tenant is an Eligible Person and that there will be at least one Occupant per bedroom for such Below-Market Rental Housing Unit upon occupancy; and
 - (ii) not less than once every five (5) years after the date on which a Below-Market Rental Housing Unit was rented to a Tenant, verify, by all information, documentation or evidence necessary or such other information, documentation or evidence that the General Manager of Planning, Urban Design and Sustainability may deem necessary, that such Tenant is an Eligible Person and that such Below-Market Rental Housing Unit continues to have at least one Occupant per bedroom;
- (h) the Owner will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any For-Profit Affordable Rental Housing Unit for a term of less than 30 consecutive days at a time;
- (i) except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, beneficial or registered title to any For-Profit Affordable Rental Housing Unit to be sold or otherwise transferred unless title to every one of the For-Profit Affordable Rental Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner, as applicable, and subject to Section 9.9;
- (j) the Owner will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld;
- (k) any sale of any For-Profit Affordable Rental Housing Unit in contravention of the covenant in Section 2.1(i), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(j), 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;
- (l) the Owner will keep and maintain the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings;
- (m) if the New Building or any part thereof, is damaged, it will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state

and condition as existed before such damage occurred reasonable wear and tear excepted;

- (n) the Owner will insure, or cause to be insured the New Building to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands;
- (o) with respect to the Below-Market Rental Housing Units:
 - (i) the rental rates will be as follows:
 - (A) not less than 30% of the Below Market Rental Housing Units will be rented at rates at or below an amount that is 50% below the average market rent applicable to the respective unit type for Zone 2 (or equivalent zone which includes the location of the New Building) according to the CMHC Rental Market Survey:
 - I. for the initial tenancy, at the time when the Occupancy Permit is issued; and
 - II. for all subsequent tenancies, at the time when the respective tenancy of a Below Market Rental Housing Unit commences; and
 - (B) the balance of the Below Market Rental Housing Units will be rented at rates at or below an amount that is 20% below the average market rent applicable to the respective unit type for Zone 2 (or equivalent zone which includes the location of the New Building) according to the CMHC Rental Market Survey:
 - I. for the initial tenancy, at the time when the Occupancy Permit is issued; and
 - II. for all subsequent tenancies, at the time when the respective tenancy of a Below Market Rental Housing Unit commences;
 - (ii) the unit numbers, unit type, unit size and rents to be charged by the Owner to the first Tenants of each of the Below-Market Rental Housing Units in the New Building following issuance of the Occupancy Permit will be set out in a Below-Market Rental Housing Rent Roll and delivered by the Owner to the City for approval by the General Manager of Planning, Urban Design and Sustainability, in his or her sole discretion, prior to the issuance of the Occupancy Permit;
 - (iii) following the issuance of the Occupancy Permit, subject to the terms of this Agreement, including, without limitation, that not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below-Market Rental Housing and provided the Owner has received approval in writing from the General Manager of Planning, Urban Design and Sustainability, in his or her sole discretion, if a Below-Market

Rental Housing Unit is occupied by a Tenant who was formerly an Eligible Person but no longer meets the eligibility requirements therefor, the Owner may substitute and re-assign the designation of such Dwelling Unit as a Below-Market Rental Housing Unit to another Dwelling Unit in the New Building, which is the same unit type and is equal to or greater in size to the Dwelling Unit being substituted, on a one-for-one basis, such that the unit type mix and number of Below-Market Rental Housing Units in the New Building remain unchanged and the initial rent for the newly assigned Below-Market Rental Housing Unit will be set in accordance with Section 2.1(o)(i); and

- (iv) following the issuance of the Occupancy Permit, during a tenancy of a Below-Market Rental Housing Unit, the Owner shall not increase the rent for the Below-Market Rental Housing Unit, except for annual increases in rent by an amount not to exceed the annual allowable increase in rent permitted under the provisions of the *Residential Tenancy Act* and the *Residential Tenancy Regulation*, which as of the date of this Agreement, are Section 43(1)(a) of the *Residential Tenancy Act* and Section 22 of the *Residential Tenancy Regulation*, respectively (as each such section may be amended or replaced from time to time) and if there is a change in tenancy of a Below-Market Rental Housing Unit, the initial rent for the new tenancy will be established in accordance with Section 2.1(o)(i). For clarity, the Owner shall not increase the rent for a Below-Market Rental Housing Unit in any other circumstance, including but not limited to, any rent increases permitted under the *Residential Tenancy Act* or the *Residential Tenancy Regulation* for eligible capital expenses incurred with respect to the New Building or a Below-Market Rental Housing Unit.

ARTICLE 3 BUILDING RESTRICTION ON THE LANDS

- 3.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
 - (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Building Permit, and will take no action, directly or indirectly, to compel the issuance of any Building Permit, until such time as the Owner has confirmed in writing and to the satisfaction of the General Manager of Planning, Urban Design and Sustainability, the rent structure proposed to be charged to the first tenants of the Below-Market Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and size, unit type and mix shall comply with those applicable to the Below-Market Rental Housing Units in accordance with this Agreement and the Development Permit; and
 - (ii) the City will be under no obligation to issue any Building Permit until such time as the Owner has complied with Section 3.1(a)(i); and
 - (b) without limiting the general scope of ARTICLE 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel

for any Losses that may derive from the withholding of a Building Permit until there is compliance with the provisions of this ARTICLE 3.

ARTICLE 4 OCCUPANCY RESTRICTION ON THE LANDS

- 4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not suffer or permit the occupation of, the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the General Manager of Planning, Urban Design and Sustainability, a Below-Market Rental Housing Rent Roll confirming the rents to be charged to the first tenants of the Below-Market Rental Housing Units following issuance of the Occupancy Permit and the unit type mix and size, which rents, unit type and mix shall comply with those applicable to the Below-Market Rental Housing Units in accordance with this Agreement and the Development Permit; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 4.1(a)(i); and
 - (b) without limiting the general scope of ARTICLE 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this ARTICLE 4.

ARTICLE 5 RECORD KEEPING

- 5.1 The Owner will keep accurate records pertaining to the use, occupancy and rental rates charged of/for the Below-Market Rental Housing Units, such records to be to the satisfaction of the General Manager of Planning, Urban Design and Sustainability. The Owner will:
- (a) on each anniversary of the date of issuance of the first Occupancy Permit for any portion of the New Building or at the request of the City, provide an updated Below-Market Rental Housing Report to the General Manager of Planning, Urban Design and Sustainability;
 - (b) within ninety (90) days of a written request by the General Manager of Planning, Urban Design and Sustainability, from time to time, notwithstanding that the Owner may have already provided a Below-Market Rental Housing Report in the same calendar year, complete and deliver to the City a Statement of Below-Market Rental Housing Unit Eligibility in respect of such Below-Market Rental Housing Unit;

- (c) at the request of the General Manager of Planning, Urban Design and Sustainability, from time to time:
 - (i) make such records available for audit, inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and
 - (ii) provide evidence of the insurance required to be taken out pursuant to Section 2.1(n); and
- (d) comply with the *Personal Information Protection Act* in collecting, using, retaining and disclosing the information of any person, Tenant or Occupant pursuant to its obligations under this Agreement and any Tenancy Agreement.

ARTICLE 6 ENFORCEMENT

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

ARTICLE 7 RELEASE AND INDEMNITY

- 7.1 Release and Indemnity. Subject to Section 7.2, the Owner hereby:
- (a) 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, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
 - (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

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

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of or which could not have been sustained “but for” any of the following:
- (i) this Agreement;
 - (ii) the City or City Personnel:
 - A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building or any part thereof;
 - B. withholding any permit pursuant to this Agreement;
 - C. performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement; or
 - D. exercising any of its rights under any Section 219 covenant, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
 - (iii) any negligent act or omission or wilful misconduct of the Owner or any of the Owner’s Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
 - (iv) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement;

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

The indemnities in this ARTICLE 7 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

7.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 7.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 7.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 7.2(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 7.2(b); and

- (c) Regardless of whether the claim is being defended under Section 7.2(a) or Section 7.2(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.

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

ARTICLE 8 NOTICES

- 8.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, will be in writing and will be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:
- (a) if made by registered mail, on the earlier of the day receipt is acknowledged by the addressee or the third day after it was mailed, except when there is a postal service disruption during such period, in which case delivery will be deemed to be completed upon actual delivery of the notice, demand or request; and
 - (b) if personally delivered, on the date when delivered.

If to the City, addressed to:

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

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

If to the Owner, addressed to:

W.F.C. Properties (Pacific) Inc.
 1010 Burrard Street
 Vancouver, BC V6Z 2R9

Attention: President;

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 land title search for that particular parcel of land.

ARTICLE 9 MISCELLANEOUS

- 9.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner will be covenants the burden of which will run with and will bind the Lands and will attach thereto. Upon the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof in accordance with the provisions of Section 9.9, 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.
- 9.2 Agreement to be a First Charge. The Owner agrees to cause, at its sole cost and expense, the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any Crown grant respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of any rezoning or any Development Permit; and
 - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 9.3 Application of Residential Tenancy Act to Termination Notice. The City agrees that, in the event the Owner delivers a termination notice to a Tenant pursuant to Section 2.1(e)(vi), and such termination notice is found to be ineffective by a ruling or decision of any judicial

body having jurisdiction in connection with the *Residential Tenancy Act*, provided that the termination notice was not found to be ineffective by reason of an error by or the negligence of the Owner, including any error by the Owner in delivering the termination notice in accordance with, or complying with the applicable time limits in, the *Residential Tenancy Act* or *Residential Tenancy Regulation*, the Owner shall not be in breach of its obligation to ensure that:

- (a) not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below-Market Rental Housing, as set out in Section 2.1(c) as a result of such termination notice being ineffective and for clarity, the Below-Market Rental Housing Unit to which such ineffective termination notice relates shall continue to count towards the aforementioned twenty (20) percent of the residential floor areas, for the remainder of the period that such Below-Market Rental Housing Unit is rented to the applicable Tenant; and
 - (b) the Below-Market Rental Housing Unit to which such ineffective termination notice relates shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Eligible Person, for the remainder of the period that such Below-Market Rental Housing Unit is rented to the applicable Tenant.
- 9.4 **Enforcement.** This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it will be entitled to court costs on a solicitor and own client basis.
- 9.5 **Severability.** All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 9.6 **Vancouver Charter.** Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 9.7 **Waiver.** The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 9.8 **Further Assurances.** The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that

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

- 9.9 Sale of Lands and New Building or Part Thereof. Prior to the sale or transfer of any legal or beneficial interest (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), and subject always to Sections 2.1(i) and 2.1(j), the Owner of the Lands and the New Building will cause the purchaser/ transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of such Owner under this Agreement. The provisions in this Section 9.9 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage).
- 9.10 Owner's Representations. The Owner represents and warrants to and covenants and agrees with the City that:
- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal 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 interests in the title to the Lands;
 - (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
 - (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.
- 9.11 Liability. Notwithstanding anything to the contrary contained herein, the Owner shall not be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Owner ceases to have any further interest in the Lands.
- 9.12 Enurement. This Agreement will enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement will enure to the benefit of and be binding upon the Owner and its successors and assigns.

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

SCHEDULE A
BELOW-MARKET RENTAL HOUSING REPORT

Unit Number	Previous Unit Number (if substituted)	Unit Type	Unit Floor Area (sq. ft., area counted in FSR calculation)	Tenancy Start or Modified Date (Month, Day, Year)	Length of Current Tenancy (Number of Months)	Initial Monthly Rental Rate	Current Monthly Rental Rate	Maximum Gross Aggregate Household Income (48x initial monthly rent for new tenancies, 60x current monthly rent for existing tenancies)	Aggregate Gross Household Income	Number of Occupants	Eligibility Re-Verification Date (Every 5 Years from Tenancy Start or Modification Date)

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CB453836 and the Assignment of Rents registered under number CB453837;
- (b) "Existing Chargeholder" means BANK OF MONTREAL;
- (c) "New Charges" means the Housing Agreement and Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

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

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

END OF DOCUMENT

EXPLANATION**Authorization to enter into a Housing Agreement
Re: 5755-5791 Oak Street and 1008 West 41st Avenue**

After a public hearing on May 7, 2024, Council approved in principle the land owner's application to rezone the above noted property from C-1 (Commercial) District to CD-1 (Comprehensive Development) District, subject to, among other things, a Housing Agreement securing Social Housing 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 accepted and executed by the applicant, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such Housing Agreement and to authorize the City to enter into the Housing Agreement with the land owner.

Director of Legal Services
July 23, 2024

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 5755-5791 Oak Street and 1008 West 41st 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:

NO PID

LOT 1 BLOCK 995 DISTRICT LOT 526 GROUP 1 NEW
WESTMINSTER DISTRICT PLAN EPP121548

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 , 2024

Mayor

City Clerk



Land Title Act

Charge

General Instrument – Part 1

1. Application

Ben Westertep, Barrister and Solicitor (Jayda Peterson)
Lawson Lundell LLP
1600 - 925 West Georgia Street
Vancouver BC V6C 3L2
(604) 685-3456

File No.: 39551-176089
 Oak & 41st Development - Housing Agreement

2. Description of Land

PID/Plan Number	Legal Description
EPP121548	LOT 1 BLOCK 995 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP121548

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Section 219 Covenant
		Entire Agreement
PRIORITY AGREEMENT		Granting the Covenant with a registration number one less than this priority agreement priority over Mortgage CA6235266 , as extended and Assignment of Rents CA6235267, as extended
PRIORITY AGREEMENT		Granting the Covenant with a registration number two less than this priority agreement priority over Mortgage CA6235327, as extended and Assignment of Rents CA6235328, as extended

4. Terms

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

5. Transferor(s)

WEST 41ST AVENUE & OAK STREET INVESTMENTS LTD., NO.BC1449077
THE BANK OF NOVA SCOTIA, 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)

YYYY-MM-DD
2024-07-11

**WEST 41ST AVENUE & OAK STREET
INVESTMENTS LTD.**
By their Authorized Signatory

MEGHAN MURTHA
Barrister & Solicitor
WESGROUP PROPERTIES
#2000 - 595 BURRARD STREET
VANCOUVER, B.C. V6C 0E4
TEL: 778-875-4688

Name:
Name: Ben Jarvis

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)

YYYY-MM-DD

THE BANK OF NOVA SCOTIA
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

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

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.

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
SECURED RENTAL AND BELOW-MARKET RENTAL HOUSING**

5755-5791 OAK STREET AND 1008 WEST 41ST AVENUE

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement will be read as follows:
- (i) the Transferor, **WEST 41ST AVENUE & OAK STREET INVESTMENTS LTD.**, 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 continued under the *Vancouver Charter*, and "**Vancouver**" when referring to geographic location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands (the "**Rezoning Application**") from C-1 (Commercial) District to CD-1 (Comprehensive Development) District, and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, among other things, fulfilment of the condition that, prior to enactment of the rezoning by-law (upon enactment, the "**Rezoning By-law**"), the Owner make arrangements to the satisfaction of the General Manager of Planning, Urban Design and Sustainability and the Director of Legal Services to enter into a Housing Agreement by by-law enacted pursuant to Section 565.2 of the *Vancouver Charter* securing all of the residential units as secured rental housing units with at least 20 percent of the residential floor areas counted in the calculation of the floor space ratio secured as Below-Market Rental Housing Units pursuant to Section 3.1A of the Vancouver DCL Bylaw, for the longer of 60 years and life of the New Building, and subject to other conditions set forth in the minutes of the public hearing (collectively, the "**Housing Condition**"); and
- D. The Owner is entering into this Agreement to satisfy the Housing Condition.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, in satisfaction of the requirements of Section 3.1A of the Vancouver DCL By-law and pursuant to Section 565.2 of the *Vancouver Charter* and Section 219 of the *Land Title Act*, agree as follows, in respect of the use of the Lands and the New Building:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

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

{01586031 v1}

Housing Agreement and Building Use Covenant
5755-5791 Oak Street and 1008 West 41st Avenue

39551.176089.BAW1.25393214.4

- (a) **"Agreement"** means this housing agreement and building use covenant, including the foregoing recitals and all schedules hereto;
- (b) **"Approved Housing Operator"** means a "public housing body" as such term is defined in the *Residential Tenancy Regulation* (British Columbia);
- (c) **"Approved Operator Lease"** means a lease of all of the Below-Market Rental Housing Units to an Approved Housing Operator, in a form acceptable to the General Manager of Planning, Urban Design and Sustainability, acting reasonably;
- (d) **"Below-Market Rental Housing"** means a portion of the For-Profit Affordable Rental Housing in a building that is comprised of at least 20% of the residential floor area that is counted in the calculation of the Floor Space Ratio consisting of Dwelling Units with rents per unit type that meet the requirements of Section 2.1(o) of this Agreement, are made available for rent only to Eligible Persons in accordance with this Agreement and comply with the *Cambie Corridor Plan*;
- (e) **"Below-Market Rental Housing Rent Roll"** means a rent roll report providing information regarding each of the Below-Market Rental Housing Units, including the unit number, unit type, unit size and rent;
- (f) **"Below-Market Rental Housing Report"** means a notarized annual report prepared by the Owner and delivered to the City providing information regarding each of the Below-Market Rental Housing Units to the satisfaction of the General Manager of Planning, Urban Design and Sustainability, substantially in the form attached hereto as Schedule A, with such amendments or additions thereto as may be required by the General Manager of Planning, Urban Design and Sustainability from time to time;
- (g) **"Below-Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Below-Market Rental Housing Unit"** means any one of such units;
- (h) **"Building Permit"** means any building permit issued by the City authorizing the building of a New Building as contemplated by the Rezoning By-law and the Development Permit;
- (i) **"Cambie Corridor Plan"** means the plan for the development of the Cambie Corridor adopted by City Council in 2010, as amended to date;
- (j) **"City"** and **"City of Vancouver"** have the meaning ascribed to those terms in Recital A(ii);
- (k) **"City Manager"** means the chief administrator from time to time of the City and his or her successors in function and their respective nominees;
- (l) **"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;
- (m) **"CMHC Rental Market Survey"** means the annual Rental Market Survey Data Tables conducted and published by the Canada Mortgage Housing Corporation for the City

of Vancouver or if such publication is no longer published by the Canada Mortgage Housing Corporation, such other equivalent publication that is acceptable to the General Manager of Planning, Urban Design and Sustainability;

- (n) **"Development Permit"** means any development permit issued by the City authorizing the development of the Lands contemplated by the Rezoning By-law;
- (o) **"Director of Legal Services"** means the chief administrator from time to time of the City's Legal Services Department and her/his successors in function and their respective nominees;
- (p) **"Dwelling Unit"** has the meaning set out in the City's Zoning and Development By-law No. 3575, as amended or replaced from time to time;
- (q) **"Effective Date"** means the date as of which this Agreement has been executed by all parties to it;
- (r) **"Eligible Person"** means a person who:
 - (i) at the beginning of such person's tenancy of a Below-Market Rental Housing Unit, together with all other Occupants of such Below-Market Rental Housing Unit, have an aggregate annual household Income that is less than or equal to four (4) times the annual rent of such Below-Market Rental Housing Unit;
 - (ii) thereafter throughout such person's tenancy of a Below-Market Rental Housing Unit, together with all other Occupants of such Below-Market Rental Housing Unit, have an aggregate annual household Income that is less than or equal to five (5) times the annual rent of such Below-Market Rental Housing Unit; and
 - (iii) throughout such person's tenancy of a Below-Market Rental Housing Unit, will:
 - (A) not permit such Below-Market Rental Housing Unit to be occupied by a person or persons other than those persons identified in the Tenancy Agreement for more than 60 consecutive days or more than 90 days in total in any calendar year, without the prior written consent of the Owner;
 - (B) not permit such Below-Market Rental Housing Unit to be occupied by a total number of Occupants less than the total number of bedrooms therein;
 - (C) occupy such Below-Market Rental Housing Unit as his or her Principal Residence and not permit any Occupant to occupy such Below-Market Rental Housing Unit unless such Below-Market Rental Housing Unit is the Occupant's Principal Residence;
 - (D) not permit such Below-Market Rental Housing Unit to be vacant for a period of six months or longer, cumulatively within a calendar year, without the prior written consent of the Owner; and

(E) be:

- I. a Canadian citizen;
- II. an individual lawfully admitted into Canada for permanent residency;
- III. a refugee sponsored by the Government of Canada; or
- IV. an individual who has applied for refugee status, and who, at the start of the tenancy, has resided in British Columbia for the past twelve (12) consecutive months,

or a person who is otherwise deemed to be an Eligible Person by the General Manager of Planning, Urban Design and Sustainability, in their sole discretion;

- (s) **“Floor Space Ratio”** means the figure obtained when the area of the floors of the New Building is divided by the area of the Lands;
- (t) **“For-Profit Affordable Rental Housing”** means multiple Dwelling Units within a building for use as Rental Housing which meets the requirements of Section 3.1A of the Vancouver DCL By-law to be “Class A for-profit affordable rental housing” (as defined therein);
- (u) **“For-Profit Affordable Rental Housing Parcel”** means, if the Lands are subdivided by way of the Subdivision, the air space parcel containing, *inter alia*, all of the For-Profit Affordable Rental Housing Units;
- (v) **“For-Profit Affordable Rental Housing Units”** has the meaning ascribed to that term in Section 2.1(c) and **“For-Profit Affordable Rental Housing Unit”** means any one of such units;
- (w) **“General Manager of Planning, Urban Design and Sustainability”** means the person appointed from time to time as the City’s General Manager of Planning, Urban Design and Sustainability and his/her successors in function and delegates and their respective nominees;
- (x) **“Income”** of an Occupant means the total annual world-wide income before income tax from all sources of the Occupant and includes without limitation, the following income sources:
 - (i) income assistance;
 - (ii) employment, including regular overtime, vacation pay and gratuities;
 - (iii) self-employment, including commission sales;
 - (iv) seasonal employment;

- (v) Employment Insurance and WorkSafe BC insurance;
- (vi) training allowances;
- (vii) income from the Resettlement Assistance Program;
- (viii) child support, maintenance payments or support from family/friends/community;
- (ix) rental income from real estate or dividends from stocks or bonds, if the real monthly Income is greater than the imputed Income from the Asset; and
- (x) pension incomes including:
 - (A) old Age Security, Guaranteed Income Supplement, Allowance, and Allowance for the Survivor (formerly Spousal Allowance);
 - (B) senior's supplement;
 - (C) private pension plans including Registered Retirement Income Funds;
 - (D) Canada Pension Plan, including retirement, disability, orphans, widows, disability for child, etc.
 - (E) War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada; and
 - (F) foreign pensions,

but does not include:

- (xi) earnings of dependent children aged 18 and under (regardless of student status);
- (xii) student loans, equalization payments, student grants and scholarships;
- (xiii) taxable benefits, including living out or travel allowances, medical coverage, uniform allowance, etc.;
- (xiv) Shelter Aid for Elderly Renters and Rental Assistance Program payments;
- (xv) Canada Child Tax Benefits, including the National Child Benefit Supplement, Child Disability Benefit, BC Family Bonus, and BC Earned Income Benefit;
- (xvi) Universal Child Care Benefits;
- (xvii) BC Childcare Subsidy;
- (xviii) income from foster parenting;

- (xix) Child in Home of Relative and Extended Family Program;
- (xx) income from approved live-in care givers; and
- (xxi) GST and Income Tax rebates;
- (y) "**Land Title Act**" means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (z) "**Lands**" means the parcel of land situate in Vancouver, British Columbia, and legally described in Item 2 of the Form C - General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided;
- (aa) "**Losses**" means any and all damages, losses, fines, penalties, costs (including legal costs on a solicitor and own client basis), actions, causes of action, claims, demands, judgements, builders liens, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever;
- (bb) "**New Building**" means any 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;
- (cc) "**Occupancy Permit**" means a permit issued by the City authorizing the use and occupation of any New Building, development or partial development on the Lands issued after the Effective Date;
- (dd) "**Occupants**" means persons for whom a Rental Housing Unit serves as their Principal Residence and an "**Occupant**" means any one of them, as the context requires;
- (ee) "**Owner**" means the registered owner of the Lands as of the Effective Date, namely, **WEST 41ST AVENUE & OAK STREET INVESTMENTS LTD.**, and its successors and assigns;
- (ff) "**Owner's Personnel**" means any and all of the officers, directors, employees, agents, nominees, delegates, permittees, contractors and subcontractors of the Owner;
- (gg) "**Personal Information Protection Act**" means the *Personal Information Protection Act*, S.B.C. 2003, c.63, and all amendments thereto and re-enactments thereof;
- (hh) "**Principal Residence**" means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills and, for the purposes of this agreement, a person may only have one principal residence;

- (ii) **"Related Person"** means, where the registered or beneficial owner of the Rental Housing Units is:
 - (i) a corporation (as that term is defined in the *Business Corporations Act*, S.B.C. 2002, c.57, then a Related Person is:
 - (A) an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - (B) the spouse, parent, child, sibling, niece or nephew of any such officer, director or shareholder; and
 - (ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece or nephew of such individual;
- (jj) **"Rental Housing"** means a Dwelling Unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner to the general public, at arm's length, for use as rental accommodation, but specifically excluding use as Seniors Supportive or Assisted Housing, on a month-to-month basis or longer in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;
- (kk) **"Replacement For-Profit Affordable Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Replacement For-Profit Affordable Rental Housing Unit"** means one such unit;
- (ll) **"Replacement Below-Market Rental Housing Units"** has the meaning ascribed to that term in Section 2.1(c) and **"Replacement Below-Market Rental Housing Unit"** means one such unit;
- (mm) **"Residential Tenancy Act"** means the *Residential Tenancy Act* S.B.C. 2002, c. 78 and all amendments thereto and re-enactments thereof;
- (nn) **"Residential Tenancy Regulation"** means the *Residential Tenancy Regulation*, B.C. Reg. 477/2003 and all amendments thereto and re-enactments thereof;
- (oo) **"Rezoning Application"** has the meaning ascribed to that term in Recital C;
- (pp) **"Rezoning By-law"** has the meaning ascribed to that term in Recital C;
- (qq) **"Seniors Supportive or Assisted Housing"** has the meaning set out in the City's Zoning and Development By-law No. 3575, as amended or replaced from time to time;
- (rr) **"Statement of Below-Market Rental Housing Unit Eligibility"** means a notarized statement, prepared by the Owner and delivered to the City, that states the following in respect of a Below-Market Rental Housing Unit:

- (i) confirmation that, to the best of the Owner's knowledge based on the most current information available to the Owner pursuant to Section 2.1(g), the Tenant of such Below-Market Rental Housing Unit is an Eligible Person;
- (ii) description of all of the actions and procedures that the Owner has undertaken to verify that the Tenant of such Below-Market Rental Housing Unit is an Eligible Person; and
- (iii) such other information regarding such Below-Market Rental Housing Unit and its Occupants as the General Manager of Planning, Urban Design and Sustainability may otherwise require;

provided that such statement shall not include the names or information of any Tenants or Occupants and shall otherwise be satisfactory to the General Manager of Planning, Urban Design and Sustainability in form and substance;

- (ss) "**Subdivision**" means a subdivision of the Lands by the deposit of an air space subdivision plan to enable, *inter alia*, all of the For-Profit Affordable Rental Housing Units to be contained within the For-Profit Affordable Rental Housing Parcel;
- (tt) "**Tenancy Agreement**" means a residential tenancy agreement, lease, licence or other agreement prepared in accordance with the *Residential Tenancy Act*, granting rights to occupy a Below-Market Rental Housing Unit;
- (uu) "**Tenant**" means an Eligible Person who is a tenant of a Below-Market Rental Housing Unit by way of a Tenancy Agreement;
- (vv) "**Term**" means the term of this Agreement, which will commence on the Effective Date and will end on the later of:
 - (i) the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building; and
 - (ii) the date as of which the New Building is demolished or substantially destroyed;
- (ww) "**Vancouver**" has the meaning ascribed to that term in Recital A(ii);
- (xx) "**Vancouver Charter**" means the *Vancouver Charter* S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof; and
- (yy) "**Vancouver DCL By-law**" means the City's Vancouver Development Cost Levy By-law No. 9755, and all amendments thereto and re-enactments thereof.

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.
- (f) Legislation. Any reference to a statute or by-law includes and is a reference to such statute or by-law and to the regulations made pursuant thereto in force on the Effective Date, with all amendments made thereto and as in force from time to time, and to any statute, by-law and regulations that may be passed which have the effect of supplementing or superseding such statutes, by-laws and regulations.
- (g) Time. Time will be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time will be local Vancouver, British Columbia time.

ARTICLE 2 RESTRICTIONS ON USE OF LANDS AND SUBDIVISION

- 2.1 The Owner covenants and agrees with the City, in respect of the use of the Lands and the construction and use of the New Building, that throughout the Term:
 - (a) the Lands, the New Building and the For-Profit Affordable Rental Housing Units (including the Below-Market Rental Housing Units) will not be used in any way that is inconsistent with the terms of this Agreement;
 - (b) at its sole cost and expense, it will construct, fit and finish the New Building, including the For-Profit Affordable Rental Housing Units (including the Below-Market Rental Housing Units) any amenities and parking spaces, in accordance with this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City;
 - (c) all of the Dwelling Units in the New Building will be used only for the purpose of providing For-Profit Affordable Rental Housing (the "**For-Profit Affordable Rental Housing Units**"), provided that the For-Profit Affordable Rental Housing Units

comprising not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below-Market Rental Housing (the “**Below-Market Rental Housing Units**”), all in accordance with the terms of this Agreement, the Rezoning By-law, the Development Permit, the Building Permit and all applicable City by-laws and policies and if the New Building is damaged, destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for the New Building, then the Owner will promptly take all steps reasonably necessary to enable it to repair the New Building or build a replacement building or buildings on the Lands, which repaired or replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) will also contain not less than the same number and type of replacement Dwelling Units as the New Building formerly contained, which replacement Dwelling Units during the remainder of the Term, will also be used only for the purpose of providing For-Profit Affordable Rental Housing (such replacement Dwelling Units hereinafter referred to as a “**Replacement For-Profit Affordable Rental Housing Units**”) and Below-Market Rental Housing (such replacement Dwelling Units hereinafter referred to as a “**Replacement Below-Market Rental Housing Units**”) respectively, in the same percentages as set out in this Section and in accordance with the terms of this Agreement and the applicable by-laws of the City and such Replacement For-Profit Affordable Rental Housing Units and Replacement Below-Market Rental Housing Units will be subject, for the remaining duration of the Term, to the same use restrictions, respectively, as the For-Profit Affordable Rental Housing Units and the Below-Market Rental Housing Units are pursuant to this Agreement;

- (d) not less than:
 - (i) 35% of the For-Profit Affordable Rental Housing Units; and
 - (ii) 35% of the Below-Market Rental Housing Units;
 will have two or more bedrooms;

- (e) each of the Below-Market Rental Housing Units shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Eligible Person and except in accordance with the following conditions:
 - (i) each Below-Market Rental Housing Unit shall be rented only pursuant to a Tenancy Agreement, which Tenancy Agreement shall include a copy of this Agreement;
 - (ii) each Below-Market Rental Housing Unit shall be rented for a monthly rent not exceeding the rent permitted to that type of Below-Market Rental Housing Unit, as described in Section 2.1(o) and the Owner will withhold its consent to any assignment or subletting of a Below-Market Rental Housing Unit in accordance with Section 2.1(e)(v)(D)VI.b;
 - (iii) each Below-Market Rental Housing Unit shall be occupied only by an Eligible Person who is occupying such Below-Market Rental Housing Unit as his or her Principal Residence and the Principal Residence of such other Occupants of

the Eligible Person's household as specified in the Tenancy Agreement between the Owner and the Eligible Person for the rental thereof;

- (iv) each Below-Market Rental Housing Unit shall have at least one Occupant per bedroom thereof;
- (v) each Tenancy Agreement shall include:
 - (A) a clause requiring the Tenant and each permitted Occupant of the respective Below-Market Rental Housing Unit to comply with this Agreement;
 - (B) the names of all Occupants of the respective Below-Market Rental Housing Unit;
 - (C) a term that is not less than 30 consecutive days;
 - (D) clauses providing that:
 - I. the Tenant is and remains an Eligible Person at all times during the term of the Tenancy Agreement;
 - II. any person not identified in the Tenancy Agreement shall not reside at the Below-Market Rental Housing Unit for more than 60 consecutive days or more than 90 days total in any calendar year, unless the Tenant receives prior written consent from the Owner;
 - III. the Below-Market Rental Housing Unit will have at least one Occupant per bedroom thereof;
 - IV. the Below-Market Rental Housing Unit will not be vacant for six months or longer, cumulatively, within a calendar year, without the prior written consent of the Owner;
 - V. the Below-Market Rental Housing Unit will at all times during the term of the Tenancy Agreement be the Principal Residence of the Tenant and the other Occupants in the Tenant's household as specified in the Tenancy Agreement; and
 - VI. the Tenant will not assign or sublet the Below-Market Rental Housing Unit or assign the Tenancy Agreement in whole or in part, except to an Eligible Person and with the consent of the Owner, provided that:
 - a. the Tenant does not receive a fee for such assignment or subletting and the rent paid by the assignee or sublessee does not exceed the rent payable in the Tenancy Agreement; and

- b. the Owner will withhold its consent and the Tenant acknowledges that it will not be unreasonable for the Owner to do so, if the assignee or sublessee is not an Eligible Person or if the Tenant receives a fee for such assignment or subletting or the rent paid by the assignee or sublessee exceeds the rent payable in the Tenancy Agreement; and
- VII. the Tenant acknowledges and agrees that each of the foregoing clauses described in subsections I. to VI. is a material term of the Tenancy Agreement;

(E) a clause:

- I. wherein the Tenant consents to the collection, use and retention by the Owner and disclosure to the City of information, documentation and evidence described in Section 2.1(g); and
- II. requiring the Tenant to deliver to the Owner the information, documentation and evidence described in Section 2.1(g)(ii) every five (5) years following the date on which the Tenant first occupies the Below-Market Rental Housing Unit,

unless otherwise permitted by the General Manager of Planning, Urban Design and Sustainability in his or her sole discretion; and

(vi) subject to any contrary provisions in the *Residential Tenancy Act*, as determined to be contrary by a ruling or decision of any judicial body having jurisdiction, if the Tenant is in breach of any of the material terms described in Section 2.1(e)(v)(D), the Owner will take all necessary steps to end the tenancy of the Tenant in the respective Below-Market Rental Housing Unit, which steps will include:

- (A) providing the Tenant with a written notice specifying the breach forthwith upon the Owner becoming aware of any breach;
- (B) providing the Tenant with a reasonable time to remedy the breach after such written notice has been provided;
- (C) if the Tenant does not remedy the breach within the time specified in Section 2.1(e)(vi)(B), providing the Tenant with a written notice of termination of the Tenancy Agreement that will be effective two (2) months, except in respect of a breach of the material terms specified in Sections 2.1(e)(v)(D)I to 2.1(e)(v)(D)III in which case the termination will be effective six (6) months, following the date that the Owner has delivered such written termination notice to the Tenant; and

- (D) causing all Occupants of the respective Below-Market Rental Housing Unit to vacate the Below-Market Rental Housing Unit upon the effective date of termination;
- (f) if the Owner has terminated a Tenancy Agreement for the reasons specified in Sections 2.1(e)(v)(D)I to 2.1(e)(v)(D)III, the Owner shall offer another For-Profit Affordable Rental Housing Unit for rent to the former Tenant, subject to availability for rental of For-Profit Affordable Rental Housing Units and eligibility of the former Tenant in respect of other Below-Market Rental Housing Units;
- (g) in connection with Section 2.1(e), throughout the Term, the Owner shall:
 - (i) prior to renting a Below-Market Rental Housing Unit to a prospective tenant, or upon the change of any Occupants residing within a Below-Market Rental Housing Unit from the Occupants listed in the Tenancy Agreement, verify, by obtaining all information, documentation or evidence necessary or such other information, documentation or evidence that the General Manager of Planning, Urban Design and Sustainability may deem necessary, that such prospective tenant is an Eligible Person and that there will be at least one Occupant per bedroom for such Below-Market Rental Housing Unit upon occupancy; and
 - (ii) not less than once every five (5) years after the date on which a Below-Market Rental Housing Unit was rented to a Tenant, verify, by all information, documentation or evidence necessary or such other information, documentation or evidence that the General Manager of Planning, Urban Design and Sustainability may deem necessary, that such Tenant is an Eligible Person and that such Below-Market Rental Housing Unit continues to have at least one Occupant per bedroom;
- (h) the Owner will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any For-Profit Affordable Rental Housing Unit for a term of less than 30 consecutive days at a time;
- (i) except by way of a tenancy agreement to which the *Residential Tenancy Act* applies or by way of an Approved Operator Lease (provided that the Owner and Approved Housing Operator will deliver a written covenant to the City, in a form acceptable to the General Manager of Planning, Urban Design and Sustainability wherein, *inter alia*, the Approved Housing Operator agrees to comply with the obligations of the Owner herein with respect to the lease or sublease of Below-Market Housing Units), it will not suffer, cause or permit, beneficial or registered title to any For-Profit Affordable Rental Housing Unit to be sold or otherwise transferred unless title to every one of the For-Profit Affordable Rental Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner, as applicable, and subject to Section 10.8;
- (j) the Owner will not suffer, cause or permit, the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director of Legal Services which consent may be arbitrarily withheld;

- (k) any sale of any For-Profit Affordable Rental Housing Unit in contravention of the covenant in Section 2.1(i), and any subdivision of the Lands or the New Building (or any replacement building(s) on the Lands, as applicable) or any part thereof, in contravention of the covenant in Section 2.1(j), 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;
- (l) the Owner will keep and maintain the New Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, to the standard of a reasonable and prudent owner of similar buildings;
- (m) if the New Building or any part thereof, is damaged, it will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred reasonable wear and tear excepted;
- (n) the Owner will insure, or cause to be insured the New Building to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands;
- (o) with respect to the Below-Market Rental Housing Units:
 - (i) the initial rental rate for each tenancy of a Below-Market Rental Housing Unit will not exceed an amount that is 20% below the private apartment average rents for the City of Vancouver applicable to the respective unit type according to the CMHC Rental Market Survey:
 - (A) for the initial tenancy, most recently published at the time when the Occupancy Permit is issued; and
 - (B) for all subsequent tenancies, most recently published at the time when the respective tenancy of a Below-Market Rental Housing Unit commences;
 - (ii) the unit numbers, unit type, unit size and rents to be charged by the Owner to the first Tenants of each of the Below-Market Rental Housing Units in the New Building following issuance of the Occupancy Permit will be set out in a Below-Market Rental Housing Rent Roll and delivered by the Owner to the City for approval by the General Manager of Planning, Urban Design and Sustainability, in his or her sole discretion, prior to the issuance of the Occupancy Permit;
 - (iii) following the issuance of the Occupancy Permit, subject to the terms of this Agreement, including, without limitation, that not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below-Market Rental Housing and provided the Owner has received approval in writing from the General Manager of Planning, Urban Design and Sustainability, in his or her sole discretion, if a Below-Market Rental Housing Unit is occupied by a Tenant who was formerly an Eligible

Person but no longer meets the eligibility requirements therefor, the Owner may substitute and re-assign the designation of such Dwelling Unit as a Below-Market Rental Housing Unit to another Dwelling Unit in the New Building, which is the same unit type and is equal to or greater in size to the Dwelling Unit being substituted, on a one-for-one basis, such that the unit type mix and number of Below-Market Rental Housing Units in the New Building remain unchanged and the initial rent for the newly assigned Below-Market Rental Housing Unit will be set in accordance with Section 2.1(o)(i)(B); and

- (iv) following the issuance of the Occupancy Permit, during a tenancy of a Below-Market Rental Housing Unit, the Owner shall not increase the rent for the Below-Market Rental Housing Unit, except for annual increases in rent by an amount not to exceed the annual allowable increase in rent permitted under the provisions of the *Residential Tenancy Act* and the *Residential Tenancy Regulation*, which as of the date of this Agreement, are Section 43(1)(a) of the *Residential Tenancy Act* and Section 22 of the *Residential Tenancy Regulation*, respectively (as each such section may be amended or replaced from time to time) and if there is a change in tenancy of a Below-Market Rental Housing Unit, the initial rent for the new tenancy will be established in accordance with Section 2.1(o)(i). For clarity, the Owner shall not increase the rent for a Below-Market Rental Housing Unit in any other circumstance, including but not limited to, any rent increases permitted under the *Residential Tenancy Act* or the *Residential Tenancy Regulation* for eligible capital expenses incurred with respect to the New Building or a Below-Market Rental Housing Unit.

ARTICLE 3 BUILDING RESTRICTION ON THE LANDS

- 3.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
 - (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not apply for any Building Permit, and will take no action, directly or indirectly, to compel the issuance of any Building Permit, until such time as the Owner has confirmed in writing and to the satisfaction of the General Manager of Planning, Urban Design and Sustainability, the initial rent amounts proposed to be charged to the first tenants of the Below-Market Rental Housing Units following issuance of the Occupancy Permit, and the unit type mix and size, unit type and mix shall comply with those applicable to the Below-Market Rental Housing Units in accordance with this Agreement and the Development Permit; and
 - (ii) the City will be under no obligation to issue any Building Permit until such time as the Owner has complied with Section 3.1(a)(i); and
 - (b) without limiting the general scope of ARTICLE 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel

for any Losses that may derive from the withholding of a Building Permit until there is compliance with the provisions of this ARTICLE 3.

**ARTICLE 4
OCCUPANCY RESTRICTION ON THE LANDS**

- 4.1 The Owner covenants and agrees with the City in respect of the use of the Lands and the New Building, that:
- (a) the Lands and the New Building will not be used or occupied except as follows:
 - (i) the Owner will not suffer or permit the occupation of, the New Building and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit until such time as the Owner has delivered, to the satisfaction of the General Manager of Planning, Urban Design and Sustainability, a Below-Market Rental Housing Rent Roll confirming the rents to be charged to the first tenants of the Below-Market Rental Housing Units following issuance of the Occupancy Permit and the unit type mix and size, which rents, unit type and mix shall comply with those applicable to the Below-Market Rental Housing Units in accordance with this Agreement and the Development Permit; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit, notwithstanding completion of construction of the New Building until such time as the Owner has complied with Section 4.1(a)(i); and
 - (b) without limiting the general scope of ARTICLE 7, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this ARTICLE 4.

**ARTICLE 5
RECORD KEEPING**

- 5.1 The Owner will keep accurate records pertaining to the use, occupancy and rental rates charged of//for the Below-Market Rental Housing Units, such records to be to the satisfaction of the General Manager of Planning, Urban Design and Sustainability. The Owner will:
- (a) on each anniversary of the date of issuance of the first Occupancy Permit for any portion of the New Building or at the request of the City, provide an updated Below-Market Rental Housing Report to the General Manager of Planning, Urban Design and Sustainability;
 - (b) within ninety (90) days of a written request by the General Manager of Planning, Urban Design and Sustainability, from time to time, notwithstanding that the Owner may have already provided a Below-Market Rental Housing Report in the same calendar year, complete and deliver to the City a Statement of Below-Market Rental Housing Unit Eligibility in respect of such Below-Market Rental Housing Unit;

- (c) at the request of the General Manager of Planning, Urban Design and Sustainability, from time to time:
 - (i) make such records available for audit, inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure; and
 - (ii) provide evidence of the insurance required to be taken out pursuant to Section 2.1(n); and
- (d) comply with the *Personal Information Protection Act* in collecting, using, retaining and disclosing the information of any person, Tenant or Occupant pursuant to its obligations under this Agreement and any Tenancy Agreement.

ARTICLE 6 ENFORCEMENT

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

ARTICLE 7 RELEASE AND INDEMNITY

- 7.1 Release and Indemnity. Except in each case to the extent attributable to the wrongful intentional acts or gross negligence of the City or the City Personnel and subject to Section 7.2, 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, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or

- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

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

- (b) covenants and agrees to indemnify and save harmless the City and City Personnel, from and against all Losses which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to, by reason of or which could not have been sustained “but for” any of the following:

- (i) this Agreement;
- (ii) the City or City Personnel:
 - A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building or any part thereof;
 - B. withholding any permit pursuant to this Agreement;
 - C. performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement; or
 - D. exercising any of its rights under any Section 219 covenant, *Vancouver Charter* Section 562.2 housing agreement or other right granted to the City pursuant to this Agreement; or
- (iii) any negligent act or omission or wilful misconduct of the Owner or any of the Owner’s Personnel in connection with the observance and performance of the obligations of the Owner under this Agreement; or
- (iv) any default in the due observance and performance of the obligations and responsibilities of the Owner under this Agreement;

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

The indemnities in this ARTICLE 7 will be both personal covenants of the Owner and integral parts of the Section 219 covenants granted in this Agreement.

7.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 7.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.

- (b) Section 7.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 7.2(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 7.2(b); and

- (c) Regardless of whether the claim is being defended under Section 7.2(a) or Section 7.2(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.

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

ARTICLE 8 SUBDIVISION OF THE LANDS

- 8.1 Subdivision of the Lands: Notwithstanding Section 2.1(j):

- (a) subject to compliance by the Owner with all applicable requirements of the City's Approving Officer and the City's elected Council, this Agreement and all applicable laws and by-laws, the City will not unreasonably withhold its consent to the Subdivision to enable, *inter alia*, all of the For-Profit Affordable Rental Housing Units to be contained within the For-Profit Affordable Rental Housing Parcel; and
- (b) following the Subdivision and the issuance of an occupancy permit for the For-Profit Affordable Rental Housing Parcel, the Owner may apply to the City for a partial discharge of this Agreement with respect to any legal parcel other than the For-

Profit Affordable Rental Housing Parcel, and the City will on request of the Owner execute and deliver a registrable partial discharge of this Agreement in respect of such other parcel(s), provided that:

- (i) the Director of Legal Services is satisfied that such partial discharge will not unreasonably alter, restrict or limit the City's rights and the Owner's agreements and obligations in respect of the For-Profit Affordable Rental Housing Units or in respect of the For-Profit Affordable Rental Housing Parcel pursuant to this Agreement;
- (ii) any such partial discharge will be in form and substance acceptable to the Director of Legal Services and will be prepared by the Owner at its cost;
- (iii) the City will have a reasonable amount of time to execute and return any such partial discharge; and
- (iv) the preparation and registration of the any such partial discharge will be without cost to the City.

ARTICLE 9 NOTICES

9.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, will be in writing and will be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:

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

If to the City, addressed to:

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

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

If to the Owner, addressed to:

West 41st Avenue & Oak Street Investments Ltd.
Suite 2000 - 595 Burrard Street
Vancouver, BC
V6C 0E4

Attention: President

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 land title search for that particular parcel of land.

ARTICLE 10 MISCELLANEOUS

- 10.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner will be covenants the burden of which will run with and will bind the Lands and will attach thereto. Upon the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof in accordance with the provisions of Section 10.8, 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.
- 10.2 Agreement to be a First Charge. The Owner agrees to cause, at its sole cost and expense, the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any Crown grant respecting the Lands;
 - (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of any rezoning or any Development Permit; and
 - (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.
- 10.3 Application of Residential Tenancy Act to Termination Notice. The City agrees that, in the event the Owner or Approved Housing Operator delivers a termination notice to a Tenant pursuant to Section 2.1(e)(vi), and such termination notice is found to be ineffective by a ruling or decision of any judicial body having jurisdiction in connection with the *Residential Tenancy Act*, provided that the termination notice was not found to be ineffective by reason of an error by or the negligence of the Owner or Approved Housing Operator, including any error by the Owner or Approved Housing Operator in delivering the termination notice in accordance with, or complying with the applicable time limits in, the *Residential Tenancy Act* or *Residential Tenancy Regulation*, the Owner shall not be in breach of its obligation to ensure that:

- (a) not less than twenty (20) percent of the residential floor areas that are counted in the calculation of the Floor Space Ratio of the New Building will be used only for the purpose of providing Below-Market Rental Housing, as set out in Section 2.1(c) as a result of such termination notice being ineffective and for clarity, the Below-Market Rental Housing Unit to which such ineffective termination notice relates shall continue to count towards the aforementioned twenty (20) percent of the residential floor areas, for the remainder of the period that such Below-Market Rental Housing Unit is rented to the applicable Tenant; and
 - (b) the Below-Market Rental Housing Unit to which such ineffective termination notice relates shall not be rented, leased, licenced, used or otherwise permitted to be occupied unless it is rented, leased, licenced, used to or occupied by an Eligible Person, for the remainder of the period that such Below-Market Rental Housing Unit is rented to the applicable Tenant.
- 10.4 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 10.5 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 10.6 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 10.7 Further Assurances. The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 10.8 Sale of Lands and New Building or Part Thereof. Prior to the sale or transfer of any legal or beneficial interest (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), and subject always to Sections 2.1(i) and 2.1(j), the Owner of the Lands and the New Building will cause the purchaser/ transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the

purchaser/transferee will agree to be bound by all of the obligations, agreements and indemnities of such Owner under this Agreement. The provisions in this Section 10.8 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage).

For greater certainty, the requirements of this Section 10.8 will not apply to the sale or transfer of any parcel(s) for which the City grants a partial discharge in accordance with Section 8.1.

- 10.9 Owner's Representations. The Owner represents and warrants to and covenants and agrees with the City that:
- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
 - (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
 - (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
 - (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.
- 10.10 Liability. Notwithstanding anything to the contrary contained herein, the Owner shall not be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Owner ceases to have any further interest in the Lands.
- 10.11 Enurement. This Agreement will enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement will enure to the benefit of and be binding upon the Owner and its successors and assigns.
- 10.12 Paramountcy. Notwithstanding anything to the contrary herein, the Owner and City acknowledge and agree that, as it relates to the measurement standard used to determine the minimum portion of Below Market Rental Units in the New Building, in the event of any inconsistency between the provisions of this Agreement, and the provisions of the Rezoning By-law, the provisions of the Re-zoning By-law will control.

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

SCHEDULE A
BELOW-MARKET RENTAL HOUSING REPORT

Unit Number	Previous Unit Number (if substituted)	Unit Type	Unit Floor Area (sq. ft., area counted in FSR calculation)	Tenancy Start or Modified Date (Month, Day, Year)	Length of Occupancy of Current Tenant (Number of Months)	Initial Monthly Rental Rate	Current Monthly Rental Rate	Maximum Gross Aggregate Household Income (4x initial monthly rent for new tenancies, 5x current annual rent for existing tenancies)	Aggregate Gross Household Income	Number of Occupants	Eligibility Re-Verification Date (Every 5 Years from Tenancy Start or Modification Date)

[01586031v1]

Housing Agreement and Building Use Covenant
5755-5791 Oak Street and 1008 West 41st Avenue

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Charges"** means the Mortgage registered under number CA6235266, as extended from time to time, and the Assignment of Rents registered under number CA6235267, as extended from time to time, and the Mortgage registered under number CA6235327, as extended from time to time, and Assignment of Rents registered under number CA6235328, as extended from time to time;
- (b) **"Existing Chargeholder"** means The Bank of Nova Scotia;
- (c) **"New Charges"** means the Housing Agreement and Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

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

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

END OF DOCUMENT

39551.176089.BAW1.25393214.4

{01586031.v1}

Housing Agreement and Building Use Covenant
5755-5791 Oak Street and 1008 West 41st Avenue

EXPLANATION

Authorization to enter into a Housing Agreement Re: 155 East 37th Avenue

After public hearings on July 19 and July 26, 2016, Council approved in principle the land owner's application to rezone the above noted property from RM-3A 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 Community Services, the General Manager of Planning and Development Services, the General Manager of Engineering Services, the General Manager of Real Estate and Facilities Management, the Director of Real Estate Services and the Director of Legal Services. The Housing Agreement was approved by Council under By-law No. 12165 and registered on title to the development lands under land title registration numbers CA6929927 to CA6929935 (the "**Original Housing Agreement**") and the CD-1 By-law was enacted on July 24, 2018 under By-law No. 12195, as amended by By-law No. 12240.

Subsequently, the land owner requested and Council approved at a Council meeting on November 1, 2023, to amend the Original Housing Agreement to, *inter alia*, remove certain occupancy permit holds.

The Housing Agreement appended to this page is an amended and restated housing agreement that gives effect to the foregoing Council approval. It was accepted and executed by the land owner, and the City now seeks enactment of a By-law as contemplated by section 565.2 of the Vancouver Charter, to authorize such amended and restated Housing Agreement and to authorize the City to enter into the amended and restated Housing Agreement with the land owner. Upon registration of this new amended and restated Housing Agreement on title to the development lands, the City will seek a repeal of By-law No.12165 to effect a discharge of the Original Housing Agreement.

Director of Legal Services
July 23, 2024

BY-LAW NO.

**A By-law to enact a Housing Agreement
for 155 East 37th 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:

030-509-807	Lot 1 District Lot 638 Group 1 New Westminster District Plan EPP82101
030-509-874	Lot 2 District Lots 637 and 638 Group 1 New Westminster District Plan EPP8210
030-509-882	Lot 4 District Lots 637 and 638 Group 1 New Westminster District Plan EPP82101
030-509-823	Lot 5 District Lot 638 Group 1 New Westminster District Plan EPP82101
030-509-891	Lot 6 District Lots 637 and 638 Group 1 New Westminster District Plan EPP82101
030-509-912	Lot 7 District Lot 637 Group 1 New Westminster District Plan EPP82101
030-509-921	Lot 8 District Lot 637 Group 1 New Westminster District Plan EPP82101
030-509-831	Lot 9 District Lot 638 Group 1 New Westminster District Plan EPP82101
030-509-904	Lot 10 District Lots 637 and 638 Group 1 New Westminster District Plan EPP82101
030-509-947	Lot 12 District Lot 637 Group 1 New Westminster District Plan EPP82101

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 , 2024

Mayor

City Clerk



1. Application

Kritika Mehandiratta
200-1111 West Georgia Street
Vancouver BC V6E 4S4
604-688-8387

2. Description of Land

PID/Plan Number	Legal Description
030-509-807	LOT 1 DISTRICT LOT 638 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP82101
030-509-874	LOT 2 DISTRICT LOTS 637 AND 638 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP82101
030-509-882	LOT 4 DISTRICT LOTS 637 AND 638 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP82101
030-509-823	LOT 5 DISTRICT LOTS 638 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP82101
030-509-891	LOT 6 DISTRICT LOTS 637 AND 638 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP82101
030-509-912	LOT 7 DISTRICT LOTS 637 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP82101
030-509-921	LOT 8 DISTRICT LOTS 637 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP82101
030-509-831	LOT 9 DISTRICT LOTS 638 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP82101
030-509-904	LOT 10 DISTRICT LOTS 637 AND 638 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP82101
030-509-947	LOT 12 DISTRICT LOTS 637 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP82101



3. Nature of Interest

Type	Number	Additional Information
COVENANT		Article 2, Section 2.1 As to the following lands: PID 030-509-874 Lot 2 Plan EPP82101 ("Lot 2") PID 030-509-882 Lot 4 Plan EPP82101 ("Lot 4") PID 030-509-823 Lot 5 Plan EPP82101 ("Lot 5") PID 030-509-921 Lot 8 Plan EPP82101 ("Lot 8")
PRIORITY AGREEMENT		granting the covenant with one registration number less than this priority agreement priority over Mortgage CA3212928 and Assignment of Rents CA3212929 As to Lot 2, Lot 5 and Lot 8
PRIORITY AGREEMENT		granting the covenant with two registration numbers less than this priority agreement priority over Mortgage CA3212930, as modified by CA8275211 and Assignment of Rents CA3212931 As to Lot 2, Lot 5 and Lot 8
COVENANT		Article 3, Section 3.1 As to the following lands: PID 030-509-807 Lot 1 Plan EPP82101 ("Lot 1") PID 030-509-891 Lot 6 Plan EPP82101 ("Lot 6") PID 030-509-912 Lot 7 Plan EPP82101 ("Lot 7") PID 030-509-831 Lot 9 Plan EPP82101 ("Lot 9") PID 030-509-904 Lot 10 Plan EPP82101 ("Lot 10") PID 030-509-947 Lot 12 Plan EPP82101 ("Lot 12")
PRIORITY AGREEMENT		granting the covenant with one registration number less than this priority agreement priority over Mortgage CA3212928 and Assignment of Rents CA3212929 As to Lot 1, Lot 6, Lot 7, Lot 9, Lot 10 and Lot 12
PRIORITY AGREEMENT		granting the covenant with two registration numbers less than this priority agreement priority over Mortgage CA3212930, as modified by CA8275211 and Assignment of Rents CA3212931 As to Lot 1, Lot 6, Lot 7, Lot 9, Lot 10 and Lot 12
COVENANT		Article 4, Section 4.1 As to Lot 9, Lot 10 and Lot 12
PRIORITY AGREEMENT		granting the covenant with one registration number less than this priority agreement priority over Mortgage CA3212928 and Assignment of Rents CA3212929 As to Lot 9, Lot 10 and Lot 12



Type	Number	Additional Information
PRIORITY AGREEMENT		granting the covenant with two registration numbers less than this priority agreement priority over Mortgage CA3212930, as modified by CA8275211 and Assignment of Rents CA3212931 As to Lot 9, Lot 10 and Lot 12

4. Terms

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

5. Transferor(s)

HOLBORN PROPERTIES LTD. (AS TO LOT 1, LOT 2, LOT 5, LOT 6, LOT 7, LOT 8, LOT 9, LOT 10 AND LOT 12), NO.BC0668711
CITY OF VANCOUVER (AS TO LOT 4)
PROVINCIAL RENTAL HOUSING CORPORATION (AS TO PRIORITY) (AS TO LOT 1, LOT 2, LOT 5, LOT 6, LOT 7, LOT 8, LOT 9, LOT 10 AND LOT 12), NO.BC0052129
BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION (AS TO PRIORITY) (AS TO LOT 1, LOT 2, LOT 5, LOT 6, LOT 7, LOT 8, LOT 9, LOT 10 AND LOT 12)

6. Transferee(s)



<p>CITY OF VANCOUVER 453 WEST 12TH AVENUE VANCOUVER BC V5Y 1V4</p>

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  <hr/> HANG ZENG <i>Barrister & Solicitor</i> 200-1111 WEST GEORGIA STREET VANCOUVER, B.C. V6E 4S4 604 688 8387	Execution Date <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> YYYY-MM-DD 2024-07-26 </div>	Transferor / Transferee / Party Signature(s) Holborn Properties Ltd. (as Transferor) By their Authorized Signatory  <hr/> Joo Kim Tiah
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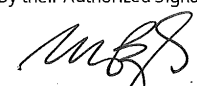
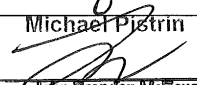
Officer Certification

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 <hr/>	Execution Date <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> YYYY-MM-DD </div>	Transferor / Transferee / Party Signature(s) City of Vancouver (as Transferor) By their Authorized Signatory <hr/>
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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  <hr/> ISMAIL IBRAHIM <i>General Counsel & Corporate Secretary</i> British Columbia Housing Management Commission 1701 – 4555 Kingsway Burnaby, BC V5H 4V8 (604) 433-1811 (as to Michael Pistrin signature)	Execution Date <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> YYYY-MM-DD 2024-05-22 </div>	Transferor / Transferee / Party Signature(s) Provincial Rental Housing Corporation (as to priority) By their Authorized Signatory  <hr/> Michael Pistrin  <hr/> John Brendan McEown
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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

ISMAIL IBRAHIM

General Counsel & Corporate Secretary

British Columbia Housing Management Commission

1701 – 4555 Kingsway

Burnaby, BC V5H 4V8

(604) 433-1711

(as to Michael Pistrin signature)

Execution Date

YYY-MM-DD

2024-05-22

Transferor / Transferee / Party Signature(s)

**British Columbia Housing
Management Commission (as to
priority)**

By their Authorized Signatory

Michael Pistrin

John Brendan McEown

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

YYY-MM-DD

Transferor / Transferee / Party Signature(s)

City of Vancouver (as Transferee)

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.

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

AMENDED AND RESTATED HOUSING AGREEMENT AND BUILDING USE COVENANT
SOCIAL HOUSING155 East 37th Avenue

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement shall be read as follows:
- (i) the Transferor, **HOLBORN PROPERTIES LTD.**, as registered and beneficial owner of the Developer's Lands, Lot 2, Lot 5 and Lot 8, is called the "Developer" as more particularly defined in Section 1.1;
 - (ii) the Transferor, **CITY OF VANCOUVER**, as registered and beneficial owner of Lot 4 is called the "Lot 4 Owner" as more particularly defined in Section 1.1;
 - (iii) the Developer and the Lot 4 Owner are collectively called the "Owners" and each of them an "Owner", as the context requires and as more particularly defined in Section 1.1; and
 - (iv) the Transferee, **CITY OF VANCOUVER**, is called the "City" or the "City of Vancouver" when referring to the corporate entity and "Vancouver" when referring to geographic location;
- B. The Developer is the registered and beneficial owner of the Developer's Lands, Lot 2, Lot 5 and Lot 8;
- C. The Lot 4 Owner is the registered and beneficial owner of Lot 4;
- D. The Developer made an application to rezone the Development Lands from RM-3A (Multi-Family Dwelling) District to CD-1 (Comprehensive Development) District (the "Rezoning") to permit a mixed-use development including: approximately 1,573 dwelling units totalling 149,675 m² (1,610,982 sq. ft.), including 282 social housing units; 3,046 m² (32,786 sq. ft.) of commercial space; a 69-space childcare; a neighbourhood house; and a public plaza and park, 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 prior to enactment of the rezoning by-law (the "Rezoning By-Law"):
- "18. *Make arrangements to the satisfaction of the General Manager of Community Services, the General Manager of Planning and Development Services, the General Manager of Engineering Services, the General Manager of Real Estate and Facilities Management, the Director of Real Estate Services and the Director of Legal Services for the owner to:*
- (i) *Design, construct, equip and convey to the Province of British Columbia a minimum of 234 dwelling units, to be secured as social housing, together with the subdivided parcels of land on which those dwelling*

units are located, in the first two phases of the Little Mountain redevelopment.

- (ii) Complete a minimum of 58 social housing units (beyond the existing 53 replacement units completed and occupied in 2015) prior to occupancy of any market unit in phase 1, except that number may be increased by the General Manager of Community Services in consultation with General Manager of Planning and Development Services, based on the summary of tenant's expressions of interest to return and a summary of their housing needs.
- (iii) Complete the balance of such social housing units prior to the earlier of occupancy of any market unit in phase 2 and issuance of any development permit for any building in phase 3 or 4.
- (iv) Enter into one or more housing agreements pursuant to Section 565.2 of the Vancouver Charter in respect of all such social housing units, in each case:
 - a. For the longer of 60 years or the life of the building, in which such units are located.
 - b. Requiring all such units to be used only for social housing.
 - c. Requiring that no less than 184 of the units will be suitable for families as per the City's Guidelines for High Density Housing for Families with Children.
 - d. Requiring that no less than five percent of the total number of the Social Housing units be suitable as disabled housing as defined by the City's Social Housing Design and Technical Guidelines.
 - e. Containing no-separate-sales and no-stratification covenants.
 - f. Requiring all such units to be made available for rental for a term of not less than one month at a time.
 - g. Providing a first-right-of-refusal for former tenants to relocate into a replacement rental unit on the site at rents comparable to what they formerly paid (adjusted for CPI and subject to normal income testing).
 - h. Requiring that replacement social housing units beyond those allocated to returning residents must be rented at rates no greater than rents affordable to households with incomes below the Housing Income Limits as published by CMHC for metro Vancouver.

- i. *Including such other terms and condition as the Director of Legal Services and the Chief Housing Officer or successor in function may require.”*

(the “Social Housing Condition”); and

E. The Developer, as registered and beneficial owner of the Development Lands, entered into a Housing Agreement with the City which was registered at the Land Title Office on July 13, 2018 under numbers CA6929927 to CA6929935 (the “Original Housing Agreement”) to satisfy the Social Housing Condition.

F. The Developer subsequently transferred Lot 4 to the Lot 4 Owner;

G. The Rezoning By-law was enacted on July 24, 2018, under By-law No. 12195 and the Development Lands were rezoned thereby to CD-1 (704), as amended by By-law No. 12240;

H. The Developer and the Lot 4 Owner entered into the City Building Agreement providing for the design and construction by the Developer, as development manager for the Lot 4 Owner, of a building, containing, *inter alia*, not less than 48 of the Social Housing Units, a neighbourhood house, a childcare facility and a public plaza on Lot 4;

I. The Developer requested and the City’s elected Council agreed by resolution passed on November 1, 2023 to amend the Social Housing Condition by deleting subconditions (ii) and (iii) and replacing them with the following:

“(ii) *complete:*

- (a) *a minimum of 48 social housing units (beyond the existing 53 replacement units completed and occupied in 2015) in Building AB on Lot 4, Plan EPP82101 prior to occupancy of any market unit in phase 1, phase 2, phase 3 or phase 4; and*
- (b) *the balance of such social housing units prior to the occupancy of any market unit in phase 3 or phase 4 and the issuance of any development permit for any building in phase 3 or phase 4; and*
- (iii) *the foregoing condition (ii) is separate from and in addition to any other permit holds that may be required in other rezoning enactment conditions herein;”; and*

J. The Owner and the City are entering into this Housing Agreement to amend and replace the Original Housing Agreement on the terms and conditions herein.

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*, 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) "Applicable HIL Rent Rate" means the monthly rent rate for a Social Housing Unit based on the applicable HIL calculated as follows:

Thirty (30%) Percent x the applicable HIL / 12;
- (c) "Building" means any building or structure used, occupied or constructed on the Lands at any time following the date the Original Housing Agreement was fully executed and includes a portion of such building or structure but does not include temporary buildings or structures on the Lands during the period of and required for the purposes of construction on the Lands;
- (d) "Building Permit" means a building permit issued by the City authorizing construction of a Building or any portion thereof, at any time following the date this Agreement is fully executed by the parties;
- (e) "*Builders Lien Act*" means the British Columbia *Builders Lien Act*, S.B.C., c. 45;
- (f) "City Building" means the building and improvements that will include, *inter alia*, the City Social Housing Units, that the Developer is required to construct for the Lot 4 Owner, pursuant to the conditions of the Rezoning and the City Building Agreement;
- (g) "City Building Agreement" means the agreement entered into between the Lot 4 Owner and the Developer registered at the Land Title Office on March 14, 2023 under registration numbers CB515759-CB515760 providing for the design and construction by the Developer, as development manager for the Lot 4 Owner, of a building, containing, *inter alia*, not less than 48 of the Social Housing Units, a neighbourhood house, a childcare facility and a public plaza on Lot 4;
- (h) "City Manager" means the chief administrator from time to time of the City and his/her successors in function and their respective nominees;
- (i) "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;
- (j) "City Social Housing Units" means the 48 Social Housing Units the Developer is required to construct for the Lot 4 Owner within the City Building, pursuant to the conditions of the Rezoning and the City Building Agreement;
- (k) "Commencement Date" means the date as of which this Agreement has been executed by all parties to it;

- (l) **“Complete”** means:
- (i) design, construct, equip and finish in accordance with the Social Housing Condition, the Rezoning By-law, the Development Permit, any Building Permit issued pursuant thereto, the requirements of this Agreement and the City Building Agreement (with respect to the City Social Housing Units only); and
 - (ii) obtain an Occupancy Permit for;
- and **“Completed”** and **“Completion”** shall have the respective corresponding meanings;
- (m) **“CPI”** means the Consumer Price Index for the City of Vancouver;
- (n) **“CPI Increase”** means the percentage increase in the CPI from the CPI for the last year that a Returning Tenant rented a unit in the Original Buildings to the CPI for year in which the Returning Tenant first occupies a Social Housing Unit;
- (o) **“Development”** means the development on the Development Lands described in Recital C and approved by the Development Permit;
- (p) **“Development Lands”** means, collectively, the Lands and Lot 3;
- (q) **“Development Permit”** means any development permit issued by the City authorizing the development of any portion of the Lands contemplated by the Rezoning By-law;
- (r) **“Developer”** means Holborn Properties Ltd. and its assigns and successors in title to the Developer’s Lands, Lot 2, Lot 5 and Lot 8 or any portion thereof;
- (s) **“Developer’s Lands”** means, collectively, Lot 1, Lot 6, Lot 7, Lot 9, Lot 10 and Lot 12;
- (t) **“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;
- (u) **“Disabled Housing”** has the meaning ascribed to such term in the *Building By-law (2014)* No. 10908, as may be amended from time to time;
- (v) **“Dwelling Unit”** means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (w) **“Eligible Tenants”** means the tenants who were residents in the Original Buildings, displaced by the redevelopment of the Development Lands and meet the income testing protocol to be established by the Owners, as described in Section 2.1(j), and **“Eligible Tenant”** means any one of them;

- (x) “**Eligible Tenant Summary Report**” means a summary of the Eligible Tenants’ expressions of interest to rent the Social Housing Units and a summary of their housing needs;
- (y) “**Existing Social Housing Building**” means the building and improvements constructed on Lot 3 by the Developer and completed in April 2015, comprised of the Existing Social Housing Units;
- (z) “**Existing Social Housing Units**” means the 53 Dwelling Units constructed by the Developer on Lot 3 for use as Social Housing contained within the Existing Social Housing Building;
- (aa) “**General Manager of Arts, Culture and Community Services**” means the chief administrator from time to time of the City’s Arts, Culture and Community Services Department and his/her successors in function and their respective nominees;
- (bb) “**General Manager of Planning and Development Services**” means the chief administrator from time to time of the City’s Planning and Development Services Department and his/her successors in function and their respective nominees;
- (cc) “**Housing Income Limit**” or “**HIL**” means the income limit for subsidized housing (for each category of dwelling unit) in Vancouver, determined annually by British Columbia Housing Management Commission which is derived from Canada Mortgage and Housing Corporation’s Annual Rent Market Survey or, if British Columbia Housing Management Commission ceases to exist or to establish and/or publish such limits annually or at some other regular period acceptable to the City, then such gross annual income limits as the City may set from time to time based on the British Columbia Housing Management Commission’s methods last used for establishing such limits;
- (dd) “**Land Title Act**” means the Land Title Act, R.S.B.C. 1996, c. 250;
- (ee) “**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;
- (ff) “**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;
- (gg) “**Lot 1**” means the lands legally described as:

PID: 030-509-807
 Lot 1 District Lot 638 Group 1 New Westminster District Plan EPP82101;

- (hh) “**Lot 2**” means the lands legally described as:
 PID: 030-509-874
 Lot 2 District Lots 637 and 638 Group 1 New Westminster District Plan EPP82101;
- (ii) “**Lot 3**” means the lands legally described as:
 PID: 030-509-815
 Lot 3 District Lot 638 Group 1 New Westminster District Plan EPP82101;
- (jj) “**Lot 4**” means the lands legally described as:
 PID: 030-509-882
 Lot 4 District Lot 638 Group 1 New Westminster District Plan EPP82101;
- (kk) “**Lot 4 Owner**” means City of Vancouver, in its capacity as the registered and beneficial owner of Lot 4, and its assigns and successors in title to Lot 4 or any portion thereof;
- (ll) “**Lot 5**” means the lands legally described as:
 PID: 030-509-823
 Lot 5 District Lot 638 Group 1 New Westminster District Plan EPP82101;
- (mm) “**Lot 5 Social Housing Units**” has the meaning set out in Section 2.1(b)(i)B;
- (nn) “**Lot 5 Social Housing Building**” means the New Building in which such Lot 5 Social Housing Units are a part and all its component parts and facilities;
- (oo) “**Lot 6**” means the lands legally described as:
 PID: 030-509-891
 Lot 6 District Lots 637 and 638 Group 1 New Westminster District Plan EPP82101
- (pp) “**Lot 7**” means the lands legally described as:
 PID: 030-509-912
 Lot 7 District Lot 637 Group 1 New Westminster District Plan EPP82101;
- (qq) “**Lot 8**” means the lands legally described as:
 PID: 030-509-921
 Lot 8 District Lot 637 Group 1 New Westminster District Plan EPP82101;
- (rr) “**Lot 8 Social Housing Units**” has the meaning set out in Section 2.1(b)(i)B;
- (ss) “**Lot 9**” means the lands legally described as:
 PID: 030-509-831

Lot 9 District Lot 638 Group 1 New Westminster District Plan EPP82101;

- (tt) “**Lot 10**” means the lands legally described as:
- PID: 030-509-904
Lot 10 District Lots 637 and 638 Group 1 New Westminster District Plan EPP82101;
- (uu) “**Lot 11**” means the lands legally described as:
- PID: 030-509-939
Lot 11 District Lots 637 and 638 Group 1 New Westminster District Plan EPP82101;
- (vv) “**Lot 12**” means the lands legally described as:
- PID: 030-509-947
Lot 12 District Lot 637 Group 1 New Westminster District Plan EPP82101;
- (ww) “**Market Units**” means the residential Dwelling Units being developed and constructed by the Developer on Lot 1, Lot 6, Lot 7, Lot 9, Lot 10 and Lot 12, or any part thereof and “**Market Unit**” means any one of them, as the context requires;
- (xx) “**New Buildings**” means the new buildings or structures to be built on the Social Housing Parcels that includes one or more Social Housing Unit as contemplated by the Development Permit, and includes any portion of any such buildings or structures, but does not include temporary buildings or structures on the Social Housing Parcels during the period of, and required for the purposes of, any construction contemplated by the Development Permit and does not include any building or structure constructed or installed on the Lands by or on behalf of the City pursuant to the TMH Licence Agreement and “**New Building**” means any one of them, as the context requires; provided, however, that if the Social Housing Parcels and the New Buildings are at any time subdivided by air space parcel subdivision, and this Agreement is thereafter discharged from one or more of the resulting legal parcels, then “**New Building**” will thereafter mean only the part of the New Building within the legal parcel(s) against which it remains registered;
- (yy) “**Occupancy Permit**” means a permit issued by the City authorizing the use and occupation of any Building, building, development or partial development on the Lands;
- (zz) “**Original Buildings**” means the buildings built on or around 1954 on the Development Lands by the Government of Canada and containing 224 social housing units in a mix of three-storey walk-up apartments and row houses and which buildings were demolished between 2009 - 2014;
- (aaa) “**Owners**” means collectively, the Developer and the Lot 4 Owner, and includes all of their respective assigns and successors in title and “**Owner**” means either of them, as the context requires;

- (bbb) **“Owner’s Personnel”** means an Owner and any of the Owner’s directors, officers, employees or agents;
- (ccc) **“Permit”** means any Development Permit or Building Permit or Occupancy Permit applied for in respect of any Building to be constructed on the Lands, or any portion thereof, following the execution of the Original Housing Agreement;
- (ddd) **“Phase 1”** means the first of four planned phases in the Development being constructed on the Phase 1 Lots ;
- (eee) **“Phase 1 Lots”** means collectively, Lot 1, Lot 2 and Lot 4;
- (fff) **“Phase 2”** means the second of four planned phases in the Development being constructed on the Phase 2 Lots;
- (ggg) **“Phase 2 Lots”** means collectively, Lot 5, Lot 6, Lot 7 and Lot 8;
- (hhh) **“Phase 3”** means the third of four planned phases in the Development being constructed on the Phase 3 Lots;
- (iii) **“Phase 3 Lots”** means collectively, Lot 9 and Lot 10;
- (jjj) **“Phase 4”** means the fourth of four planned phases in the Development being constructed on the Phase 4 Lot;
- (kkk) **“Phase 4 Lot”** means Lot 12;
- (lll) **“PRHC”** means the Provincial Rental Housing Corporation, and includes its successor(s) in function if any;
- (mmm) **“PRHC Social Housing Units”** has the meaning ascribed to that term in Section 2.1(b)(i);
- (nnn) **“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, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto;
- (ooo) **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;
- (ppp) **“Residential Tenancy Act”** means the Residential Tenancy Act S.B.C. 2002, c. 78;
- (qqq) **“Returning Tenants”** means the Eligible Tenants who accept the Owner’s offer to relocate to the New Building after completion of its construction as contemplated by Section 2.1(i), and **“Returning Tenant”** means any one of them;

- (rrr) **“Rezoning”** has the meaning ascribed to that term in Recital C;
- (sss) **“Rezoning By-law”** has the meaning ascribed to that term in Recital C;
- (ttt) **“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;
- (uuu) **“Social Housing Condition”** has the meaning ascribed to that term in Recital C;
- (vvv) **“Social Housing Units”** has the meaning ascribed to that term in Section 2.1(b), and **“Social Housing Unit”** means any one of such Units;
- (www) **“Social Housing Parcels”** means the following parcels on which one or more of the Social Housing Units will be constructed:
- (i) Lot 2;
 - (ii) Lot 4;
 - (iii) Lot 5; and
 - (iv) Lot 8;
- and **“Social Housing Parcel”** means any one of such parcels;
- (xxx) **“Term”** means the term of this Agreement, which will commence on the Commencement Date for all of the New Buildings and their respective of Social Housing Parcels and in respect of each New Building and its respective Social Housing Parcel, will end on the later of:
- (i) the date as of which, for each New Building, such New Building is demolished or substantially destroyed; and

- (ii) 60 years from the date when the final Occupancy Permit is issued for such New Building;

and for greater certainty the term will commence on the Commencement Date for each New Building and Social Housing Parcel but may terminate on a different date for each of the New Buildings and its respective Social Housing Parcel;

- (yy) “**TMH Licence Agreement**” means the licence agreement dated effective as of February 16, 2018 between the City, as licensee, and Holborn Properties Ltd., as licensor, in respect of temporary modular housing (as amended from time to time); and
- (zz) “**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.
- (f) Legislation. Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto in force on the Commencement Date, 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 Pursuant to Section 219 of the *Land Title Act*, each Owner covenants and agrees with the City in respect of the use of its respective Social Housing Parcel that:
- (a) throughout the Term, the Social Housing Parcels and the New Buildings will not be used in any way that is inconsistent with the terms of this Agreement;
 - (b) the Developer will Complete:
 - (i) within one or more of the New Buildings not less than 234 Dwelling Units (the “PRHC Social Housing Units”) for use only as Social Housing (of which 53 units have been constructed in the Existing Social Housing Building), as follows:
 - A. not less than 58 PRHC Social Housing Units (or such greater number of Social Housing Units as the General Manager of Arts, Culture and Community Services, in consultation with the General Manager of Planning and Development Services, may determine, based on the Eligible Tenant Summary Report) shall be Completed on Lot 2 and beneficial and legal title thereto transferred to PRHC prior to the earlier of:
 - I. the occupancy and the issuance of any Occupancy Permit for any Market Unit in Phase 3 or Phase 4; and
 - II. the issuance of any Development Permit for any building or development in Phase 3 or Phase 4; and
 for clarity, the 58 PRHC Social Housing Units shall be in addition to the Existing Social Housing Units; and
 - B. the balance of such PRHC Social Housing Units (being 123 PRHC Social Housing Units, 54 of which will be Completed on Lot 5 (the “Lot 5 Social Housing Units”) and 69 of which will be Completed on Lot 8 (the “Lot 8 Social Housing Units”), subject to any adjustment of Social Housing Units being required to be constructed in subsection 2.1(b)(i)A, above, shall, with respect to the Lot 5 Social Housing Units and Lot 8 Social Housing Units, be Completed and beneficial and legal title thereto transferred to PRHC; prior to the earlier of:
 - I. the occupancy and the issuance of any Occupancy Permit for any Market Unit in Phase 3 or Phase 4; and

- II. the issuance of any Development Permit for any Building or development in Phase 3 or Phase 4; and

for clarity, the PRHC Social Housing Units shall not include any building, structure or units constructed or installed on the Lands by or on behalf of the City pursuant to the TMH Licence Agreement; and

- (ii) within the City Building, the City Social Housing Units for use only as Social Housing, prior to the issuance of any Occupancy Permit for any Market Unit on the Developer’s Lands;

(the PRHC Social Housing Units and the City Social Housing Units will collectively be referred to as the “Social Housing Units”),

- (c) if a New Building is destroyed or demolished before the 60 year anniversary of the issuance of the final Occupancy Permit for such New Building, then the Owner thereof will promptly take all steps reasonably necessary to enable it to build a replacement building or buildings on the respective Social Housing Parcel, which replacement building(s) will contain not less than the same number and type of replacement Social Housing Units as the respective 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 respective Term, to the same use restrictions as the Social Housing Units and the New Building are pursuant to this Agreement;
- (d) throughout the Term, the Social Housing Units will only be used for the purpose of providing Social Housing;
- (e) throughout the Term, not less than 184 of the Social Housing Units (or Replacement Social Housing Units, as applicable) will contain two or more bedrooms and will be designed to meet the City’s “High Density Housing for Families with Children Guidelines”;
- (f) without limiting Section 2.1(e), the unit mix for the City Social Housing Units is proposed to be the following, subject to final building design:

<u>UNIT TYPE</u>	<u>UNIT COUNT</u>
STUDIO	12 units
ONE BEDROOM	8 units
TWO BEDROOMS	16 units
<u>THREE BEDROOMS</u>	<u>12 units</u>

TOTAL:	48 units
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which unit mix may be amended by General Manager of Arts, Culture and Community Services and/or the General Manager of Planning and Development Services in their sole discretion, in consultation with the Owner, subject always to Section 2.1(d); and the unit mix for the PRHC Social Housing Units is proposed to be the following, subject to final building design:

<u>UNIT TYPE</u>	<u>UNIT COUNT</u>
ONE BEDROOM	48 units
TWO BEDROOMS	96 units
THREE BEDROOMS	69 units
FOUR BEDROOMS	18 units
<u>FIVE BEDROOMS</u>	<u>3 units</u>
TOTAL:	234 units

which unit mix may be amended by agreement among the General Manager of Arts, Culture and Community Services, the General Manager of Planning and Development Services, the Owner and PRHC, subject always to Section 2.1(e);

- (g) throughout the Term, not less than five percent (5%) of the total number of Social Housing Units will be suitable for Disabled Housing;
- (h) subject to Section 2.1(i), throughout the Term:
 - (i) each PRHC Social Housing Unit; and
 - (ii) not less than 30% of the City Social Housing Units,
 shall be rented at monthly rates no higher than the Applicable HIL Rent Rate;
- (i) it will provide each Eligible Tenant with a right of first refusal to occupy a Social Housing Unit after the New Buildings, in which the respective Social Housing Units are situated, are ready for occupancy and at an initial monthly rent rate equal to the last monthly rent rate paid by the Eligible Tenant for his or her rental of a unit in the Original Building, as adjusted by the CPI Increase;
- (j) it will establish an income testing protocol for prospective returning tenants to ensure that they are qualified to be Eligible Tenants and that the Social Housing

Units that are available to rent by Eligible Tenants are available to low and moderate income households;

- (k) throughout the Term, except by way of a tenancy agreement to which the *Residential Tenancy Act* applies:
 - (i) the Developer will not suffer, cause or permit, beneficial or registered title to any PRHC Social Housing Unit to be sold or otherwise transferred unless every PRHC Social Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner, provided that the Developer may transfer the PRHC Social Housing Units to PRHC in three separate transactions, as contemplated in Sections 2.1(b)(i)A and 2.1(b)(i)B, respectively; and
 - (ii) the Lot 4 Owner will not suffer, cause or permit, beneficial or registered title to any City Social Housing Unit to be sold or otherwise transferred unless every City Social Housing Unit is sold or otherwise transferred together and as a block to the same legal and beneficial owner; and

the transferee complies with Section 10.8;

- (l) throughout the Term, it will not suffer, cause or permit its Social Housing Parcel, 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;
- (m) throughout the Term, any sale or other transfer of title to a Social Housing Unit in contravention of the covenant in Section 2.1(k), and any subdivision of the Social Housing Parcels in contravention of Section 2.1(l), 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;
- (n) throughout the Term, the Social Housing Units (or Replacement Social Housing Units, as applicable) will only be rented on a month-to-month or longer basis and in no case for less than at least 30 consecutive days;
- (o) throughout the Term, it will insure, or cause to be insured, its Social Housing Parcels and the New Buildings 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
- (p) throughout the Term, it will keep and maintain its Social Housing Parcels and the New Buildings and all parts thereof in good repair and in a safe, clean, neat and tidy condition. If a Social Housing Parcel or a New Building or any part thereof is damaged, its 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;

provided, however, that notwithstanding the foregoing, subject to the City Building Agreement, the Owners each agree that the Developer will have the sole responsibility

of satisfying the Owners' obligations under this Agreement until the final occupancy permit for a New Building is issued, following which the party comprising the Owners that is the registered owner of the respective Social Housing Parcel on which the New Building is situate, will be responsible for the obligations herein arising after the date such occupancy permit is issued only insofar as it relates to such Social Housing Parcel and New Building and the Developer will continue to be responsible for the balance of the obligations hereunder for any remaining New Building that has not been Completed, except that the Developer remains solely responsible for the obligations under Sections 2.1(b), 2.1(e), 2.1(f) and 2.1(g) that relate to all of the Social Housing Parcels until all of the New Buildings are Completed..

ARTICLE 3

OCCUPANCY RESTRICTION ON THE DEVELOPER'S LANDS - CITY SOCIAL HOUSING UNITS

- 3.1 Pursuant to Section 219 of the *Land Title Act*, the Developer covenants and agrees with the City in respect of the use of the Developer's Lands that notwithstanding that the Developer may be otherwise entitled:
- (a) the Developer's Lands will not be used or occupied except as follows:
 - (i) the Developer will not apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, any Market Unit on the Developer's Lands and will take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for any Market Unit on the Developer's Lands until such time as:
 - A. the Social Housing Units described in Section 2.1(b)(ii), including the New Building in which such Social Housing Units are a part and all its component parts and facilities have been Completed; and
 - (ii) the City will be under no obligation to issue any Occupancy Permit permitting the use and occupation of any Market Unit on the Developer's Lands, notwithstanding completion of construction of any Market Unit on the Developer's Lands, until such time as:
 - A. the Social Housing Units described in Section 2.1(b)(ii), including the New Building in which such Social Housing Units are a part and all its component parts and facilities have been Completed; and
 - (b) without limiting the general scope of ARTICLE 8, the Developer does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any Losses that may derive from the withholding of an Occupancy Permit until there is compliance with the provisions of this ARTICLE 3.
- 3.2 The City covenants to execute a discharge of the Section 219 Covenant granted pursuant to Section 3.1 from the Developer's Lands upon the Director of Legal Services being

satisfied that the Developer has completed the requirements under Section 3.1(a)(i)A, provided however that:

- (a) the City will have no obligation to execute such discharge until a written request therefor from the Developer has been received by the City, which request will include the form of discharge, in registrable form;
 - (b) the cost of preparation of such discharge and the cost of registration of same in the LTO will be paid by the Developer; and
 - (c) the City will have a reasonable time within which to execute such discharge and return the same to the Developer for registration.
- 3.3 The Developer covenants and agrees that any Occupancy Permit permitting the use of and occupation of any Market Unit on the Developer's Lands issued inadvertently or otherwise prior to release or discharge of the Section 219 Covenant in Section 3.1 may be revoked by the City at any time and further agrees that if the Developer undertakes any construction in contravention of this Agreement, the City may pursue all remedies, including, without limitation, injunctive relief.

**ARTICLE 4
DEVELOPMENT AND OCCUPANCY RESTRICTIONS ON THE PHASE 3 LOTS AND PHASE 4
LOT - PRHC SOCIAL HOUSING UNITS**

- 4.1 Pursuant to Section 219 of the *Land Title Act*, the Developer covenants and agrees with the City in respect of the use of the Phase 3 Lots and the Phase 4 Lot that notwithstanding that the Developer may be otherwise entitled:
- (a) the Phase 3 Lots and the Phase 4 Lot will not be used or occupied except as follows:
 - (i) the Developer will not:
 - A. apply for any Occupancy Permit in respect of, and will not suffer or permit the occupation of, any Market Unit in Phase 3 or Phase 4; and
 - B. suffer or permit any part of, any new Building in Phase 3 or Phase 4 to be built;
- and will:
- C. take no action, directly or indirectly, to compel the issuance of any Occupancy Permit for any Market Unit in Phase 3 or Phase 4; and
 - D. take no action, directly or indirectly, to compel the issuance of any Development Permit for any new Building in Phase 3 or Phase 4 and no such Development Permit for any new Building in Phase 3 or Phase 4 will be issued;

until such time as:

- E. with respect to the Lot 5 Social Housing Units and Lot 8 Social Housing Units:
 - I. Occupancy Permits have been issued for the Lot 5 Social Housing Units and Lot 8 Social Housing Units described in Section 2.1(b)(i)B, including the New Buildings in which such Lot 5 Social Housing Units and Lot 8 Social Housing Units, respectively, are a part and all its component parts and facilities; and
 - II. beneficial and legal titles to the Lot 5 Social Housing Units and Lot 8 Social Housing Units described in 2.1(b)(i)B has been transferred to PRHC;
- (ii) the City will be under no obligation to issue:
 - A. any Occupancy Permit permitting the use and occupation of any Market Unit in Phase 3 or Phase 4 notwithstanding completion of construction of any Market Unit in Phase 3 or Phase 4; or
 - B. any Development Permit for any new Building in Phase 3 or Phase 4;

until such time as:

- C. with respect to the Lot 5 Social Housing Units and Lot 8 Social Housing Units:
 - I. Occupancy Permits have been issued for the Lot 5 Social Housing Units and Lot 8 Social Housing Units described in Section 2.1(b)(i)B, including the New Buildings in which such Lot 5 Social Housing Units and Lot 8 Social Housing Units, respectively, are a part and all its component parts and facilities; and
 - II. beneficial and legal titles to the Lot 5 Social Housing Units and Lot 8 Social Housing Units described in 2.1(b)(i)B has been transferred to PRHC; and
- (b) without limiting the general scope of ARTICLE 8, the Developer 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 or Development Permit until there is compliance with the provisions of this ARTICLE 4.

4.2 The City covenants to execute:

- (a) a discharge of the Section 219 Covenant granted pursuant to Section 4.1 from the Phase 3 Lots and the Phase 4 Lot upon the Director of Legal Services being satisfied that the Developer has completed the requirements under Sections 4.1(a)(i)E and 4.1(a)(i)F provided however that:
 - (i) the City will have no obligation to execute such discharge until a written request therefor from the Developer has been received by the City, which request will include the form of discharge, in registrable form;
 - (ii) the cost of preparation of such discharge and the cost of registration of same in the LTO will be paid by the Owner; and
 - (iii) the City will have a reasonable time within which to execute such discharge and return the same to the Developer for registration.
- 4.3 The Developer covenants and agrees that any Permit issued inadvertently or otherwise prior to release or discharge of the Section 219 Covenant in Section 4.1 may be revoked by the City at any time and further agrees that if the Developer undertakes any construction in contravention of this Agreement, the City may pursue all remedies, including, without limitation, injunctive relief.

**ARTICLE 6
RECORD KEEPING**

- 6.1 Each Owner will keep accurate records pertaining to the use and occupancy of the Social Housing Units on its respective Social Housing Parcel. Such records will be to the satisfaction of the City. At the request of the City, from time to time, each 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 the privacy of such information.

**ARTICLE 7
ENFORCEMENT**

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

**ARTICLE 8
RELEASE AND INDEMNITY**

- 8.1 Release and Indemnity. Subject to Section 8.2, each Owner hereby:
- (a) releases and discharges the City and all City Personnel from and against all Losses which may arise or accrue to the Owner and covenants and agrees to indemnify and save harmless the City and all City Personnel from and against all Losses which may arise, accrue or be incurred by the City or any City Personnel or which are made by any person, firm or corporation against the City or any City Personnel or which the City or any City Personnel may pay, incur, sustain or be put to:

- (i) by reason of the City or City Personnel:
 - A. reviewing, accepting or approving the design, specifications, materials and methods for construction of the New Building;
 - B. withholding any permit pursuant to this Agreement; or
 - C. exercising any of its rights under any Section 219 covenant or other right granted to the City pursuant to this Agreement; or
- (ii) that otherwise arise out of, or would not have been incurred but for this Agreement;

except where such Losses are the result of, or relate in any way to any negligent acts or omissions on the part of the City or the City Personnel; and

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

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

8.2 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires an Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 8.2(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 8.2(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 8.2(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or

- (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

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

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

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

ARTICLE 9 NOTICES

- 9.1 All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, 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 Developer:

Holborn Properties Ltd.
200-1111 West Georgia Street
Vancouver, British Columbia
V6E 4S4

Attention: Director of Development;

(c) If to the Lot 4 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:

(d) 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

(e) if personally delivered, on the date when delivered,

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

ARTICLE 10 MISCELLANEOUS

- 10.1 Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of each Owner shall be covenants the burden of which shall run with and shall bind the respective 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 any legal or beneficial interest in the Lands and/or the New Building or any part thereof in accordance with the provisions of Section 10.8, 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.
- 10.2 Agreement to be a First Charge. Each 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 its respective part of the Lands, save only for any reservations, liens, charges or encumbrances:
- (a) contained in any Crown grant 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.
- 10.3 Enforcement. This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it will be entitled to court costs on a solicitor and own client basis.
- 10.4 Severability. All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable; the balance of the obligations and covenants will remain and be binding.
- 10.5 Vancouver Charter. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 10.6 Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City herein will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity.
- 10.7 Further Assurances. The Owner will execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement including all acts necessary to ensure that this Agreement is noted on title to the Lands as a housing agreement pursuant to Section 565.2 of the *Vancouver Charter*.
- 10.8 Sale of Lands or New Building. Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the New Building or any part thereof (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the Director of Legal Services, over its mortgage), subject always to Sections 2.1(k) and 2.1(m), the Owner will cause the purchaser/transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee will agree to be bound by all of the applicable obligations, agreements and indemnities of the Owner under this Agreement, insofar as they relate to the part of the Lands and/or the New Building that is being transferred. The provisions in this Section 10.8 will apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the

Section 219 Covenant contained herein priority, in form and substance satisfactory to the Director of Legal Services, over its mortgage).

- 10.9 Perfection of Intention. Each 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.
- 10.10 Owner's Representations and Warranties. Each 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 respective portion of the Lands of which it is the registered owner 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 respective portion of the Lands of which it is the registered owner;
 - (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 the respective portion of the Lands of which it is the registered owner or any other matter whatsoever.
- 10.11 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 each 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.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Charges"** means the Mortgage registered under number CA3212928 and the Assignment of Rents registered under number CA3212929;
- (b) **"Existing Chargeholder"** means Provincial Rental Housing Corporation;
- (c) **"New Charges"** means the registrable charges and encumbrances created by and contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge Lot 1, Lot 2, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, Lot 10 and Lot 12 in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to Lot 1, Lot 2, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, Lot 10 and Lot 12, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Charges"** means the Mortgage registered under number CA3212930, as modified by Modification CA8275211 and the Assignment of Rents registered under number CA3212931;
- (b) **"Existing Chargeholder"** means British Columbia Housing Management Commission;
- (c) **"New Charges"** means the registrable charges and encumbrances created by and contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charges to the City; and
- (ii) agrees with the City that the New Charges charge Lot 1, Lot 2, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, Lot 10 and Lot 12 in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charges, and they had been registered against title to Lot 1, Lot 2, Lot 5, Lot 6, Lot 7, Lot 8, Lot 9, Lot 10 and Lot 12, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

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

END OF DOCUMENT

EXPLANATION

**Subdivision By-law No. 5208 amending By-law
Re: 2596-2660 East 41st Avenue**

Enactment of the attached By-law will delete 2596-2660 East 41st Avenue from the maps forming part of Schedule A of the Subdivision By-law, and implement Council's resolution of July 11, 2023 dealing with the rezoning of the property, and is consequential to the rezoning of the property.

Director of Legal Services
July 23, 2024

2596-2660 East 41st Avenue

BY-LAW NO.

A By-law to amend Subdivision By-law No. 5208

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

1. Council amends Schedule A of the Subdivision By-law in accordance with the plan labelled Schedule A and attached to and forming part of this by-law, by deleting the following properties from the R1-1 maps forming part of Schedule A of the Subdivision By-law:

- (a) PID: 007-469-632; Lot 4 Except the North 17 Feet Now Road Block 5 District Lot 721 Plan 1828;
- (b) PID: 014-267-071; Lot 5 Except the North 17 Feet Now Road Block 5 District Lot 721 Plan 1828;
- (c) PID: 014-267-101; Lot 6 Except the North 17 Feet Now Road Block 5 District Lot 721 Plan 1828;
- (d) PID: 014-267-128; Lot 7 Except the North 17 Feet Now Road Block 5 District Lot 721 Plan 1828;
- (e) PID: 004-488-491; Lot 8 Block 5 District Lot 721 Plan 1828; and
- (f) PID: 002-443-015; Lot 9 Except the North 17 Feet Now Road Block 5 District Lot 721 Plan 1828;

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


ENACTED by Council this _____ day of _____, 2024

Mayor

City Clerk

By-law No. _____ being a By-law to amend By-law No. 5208
 being the Subdivision By-law



The properties outlined in black () are deleted from the R1-1 maps forming part of Schedule A of the Subdivision By-law

2596-2660 East 41st Avenue

map: 1 of 1

scale: NTS



City of Vancouver

date: 2024-07-05

EXPLANATION

**A By-law to amend the Sign By-law
Re: 1943-1999 East Hastings Street**

At the Public Hearing on March 9, 2021, Council resolved to amend the Sign By-law for this site. Enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
July 23, 2024

1943-1999 East Hastings Street

BY-LAW NO.

A By-law to amend Sign By-law No.11879

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

1. This by-law amends the indicated provisions of Sign By-law No. 11879.
2. Council amends Schedule A (CD-1 Zoning Districts regulated by Part 9) by adding the following:

“

1943-1999 East Hastings Street	CD-1(870)	14096	C-2
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”

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

ENACTED by Council this _____ day of _____, 2024

Mayor

City Clerk

EXPLANATION

**A By-law to amend
Noise Control By-law No. 6555
Re: 1943-1999 East Hastings Street**

Following the Public Hearing on March 9, 2021, Council resolved to amend the Noise Control By-law for this site. Enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
July 23, 2024

1943-1999 East Hastings Street

BY-LAW NO. _____

**A By-law to amend
Noise Control By-law No. 6555**

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

- 1. This by-law amends the indicated provisions of Noise Control By-law No. 6555.
- 2. Council amends Schedule B (Intermediate Zone) by adding the following:

“

870	14096	1943-1999 East Hastings Street
-----	-------	--------------------------------

”

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

ENACTED by Council this day of , 2024

Mayor

City Clerk