



District of West Vancouver

Housing Agreement Authorization Bylaw No. 4907, 2016

Reference Date: August 23, 2017

Effective Date: October 16, 2017

District of West Vancouver

**Housing Agreement Authorization
Bylaw No. 4907, 2016**

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District of West Vancouver

**Housing Agreement Authorization
Bylaw No. 4907, 2016**

A bylaw to enter into housing agreement under section 483 of the *Local Government Act*.

WHEREAS the District of West Vancouver and Hollyburn Properties Ltd. are to enter into a housing agreement under section 483 of the *Local Government Act* to restrict the use of some of the land; and

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This bylaw may be cited as “Housing Agreement Authorization Bylaw No. 4907, 2016.”

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Housing Agreement

- 3.1 The District of West Vancouver is authorized to enter into a housing agreement under section 483 of the *Local Government Act*, substantially in the form of attached to this bylaw as Schedule A, with Hollyburn Properties Ltd. or its nominee, in respect of the land located at 195 – 21st Street, West Vancouver, BC and legally described as: PID: 006-702-121, LOT C (EXPLANATORY PLAN 10675) OF LOT 13 BLOCKS 7 TO 12 DISTRICT LOT 775 PLAN 4595.
- 3.2 The Mayor and Municipal Clerk are authorized to execute and deliver the housing agreement.

Schedule

Schedule A – Housing Agreement

READ A FIRST TIME on October 24, 2016

READ A SECOND TIME on November 29, 2016

READ A THIRD TIME on November 29, 2016

SECOND AND THIRD READING RESCINDED on June 26, 2017

AMENDED on June 26, 2017

READ A SECOND AND THIRD TIME AS AMENDED on June 26, 2017

THIRD READING RESCINDED on September 18, 2017

AMENDED on September 18, 2017

READ A THIRD TIME AS AMENDED on September 18, 2017

ADOPTED by the Council on October 16, 2017

[Original signed by Mayor]

Mayor

[Original signed by Municipal Clerk]

Municipal Clerk

SCHEDULE A – HOUSING AGREEMENT

PART 2 – TERMS OF INSTRUMENT

HOUSING AGREEMENT AND COVENANT (Section 483 *Local Government Act* and Section 219 *Land Title Act*)

THIS AGREEMENT dated for reference the 19th day of July 2017, is

BETWEEN:

HOLLYBURN PROPERTIES LIMITED, INC.NO. 758442
250 – 18TH Street, West Vancouver, BC V7V 3V5

(the “Owner” as more fully defined in section 1.1 of this Agreement)

AND:

DISTRICT OF WEST VANCOUVER, 750 17th Street, West
Vancouver, B.C., V7V 3T3

(the “District”)

WHEREAS:

- A. The Owner is the registered owner of the Lands (as hereinafter defined);
- B. Located on the Lands is a 16 storey building containing 126 residential rental units, shown as “Tower” on the sketch plan attached as Schedule “A” (the “Tower”). The Owner has applied to rezone the Lands to permit the construction of a 3 storey building containing 29 units, shown as “Building ‘B’ on Schedule “A” (“Building “B”)), and a 4 storey building containing 12 units, shown as “Building ‘A’ on Schedule “A” (“Building “A”)), all in addition to the Tower, for a total of 167 units;
- C. Section 483 of the *Local Government Act* permits the District to enter into and note on title to lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units, and rent that may be charged for housing units;
- D. Section 219 of the *Land Title Act* permits the registration of a covenant of a positive or negative nature in favour of the District in respect of the use of land and construction on land; and
- E. The Owner and the District wish to enter into this Agreement (as hereinafter defined) to provide long-term market rental housing on the terms and conditions set out in this Agreement.

In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the District covenant and agree pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

- 1.1 Definitions** – In this Agreement, the following words have the following meanings:
- (a) “Agreement” means this agreement together with all Land Title Office forms, schedules, appendices, attachments and priority agreements attached hereto;
 - (b) “CPI” means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function;
 - (c) “Daily Amount” means \$500.00 per day as of January 1, 2016 adjusted annually thereafter by adding thereto an amount calculated by multiplying \$500.00 by the percentage change in the CPI since January 1, 2016, to January 1 of the year that a written notice is delivered to the Owner by the District pursuant to section 5.1 of this Agreement. In the absence of obvious error or mistake, any calculation by the District of the Daily Amount in any particular year shall be final and conclusive;
 - (d) “Dwelling Unit” means a residential dwelling unit or units located or to be located on the Lands, and includes single family detached dwellings, duplexes, townhouses, auxiliary residential dwelling units, apartments and condominiums;
 - (e) “family member” means:
 - (i) a spouse of the Owner,
 - (ii) a parent or child of the Owner, or
 - (iii) a parent or child of the spouse of the Owner;
 - (f) “*Interpretation Act*” means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;
 - (g) “Lands” means the following lands and premises located at 195 21st Street, West Vancouver, British Columbia and any part, including a building or a portion of a building, into which said lands are Subdivided:

Parcel Identifier: 006-702-121
Lot C (Explanatory Plan 10675) of Lot 13 Blocks 7 to 12 District Lot 775 Plan 4595;

- (h) “*Land Title Act*” means the *Land Title Act*, R.S.B.C. 1996, Chapter 250, together with all amendments thereto and replacements thereof;
- (i) “*Local Government Act*” means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;
- (j) “LTO” means the Vancouver Land Title Office or its successor;
- (k) “Owner” means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or of any part into which the Lands are Subdivided, and includes any person who is a registered owner in fee simple of a Dwelling Unit from time to time, and any person who has a legal ownership interest in the entity which is the registered owner in fee simple of a Dwelling Unit or the Lands from time to time;
- (l) “*Residential Tenancy Act*” means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
- (m) “Selected Individual” means an employee and/or family member of the Owner, selected by the Owner to occupy one Dwelling Unit under sections 2.2 and 2.3;
- (n) “*Strata Property Act*” means the *Strata Property Act* S.B.C. 1998, Chapter 43, together with all amendments thereto and replacements thereof;
- (o) “Subdivide” means to divide, apportion, consolidate or subdivide the Lands or any building on the Lands, or the ownership or right to possession or occupation of the Lands or any building on the Lands, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or a “shared interest in land” as defined in the *Real Estate Development Marketing Act*;
- (p) “Tenancy Agreement” means a tenancy agreement, lease, license or other agreement granting rights to occupy a Dwelling Unit; and
- (q) “Tenant” means an occupant of a Dwelling Unit by way of a Tenancy Agreement.

ARTICLE 2 USE AND CONSTRUCTION OF LANDS AND SECURED RENTAL UNITS

2.1 Use of Lands – The Owner covenants and agrees that the Lands, any development on the Lands, and all Dwelling Units on the Lands shall only be used as rental dwelling units, pursuant to a Tenancy Agreement.

2.2 Use of Dwelling Units – The Owner agrees that each Dwelling Unit may only be used as a residence occupied by a Tenant. Save and except for one Dwelling Unit, a Dwelling Unit must not be occupied by the Owner, the Owner's family members or any guest of the Owner. One Dwelling Unit may be occupied by the Selected Individual and/or the Selected Individual's spouse, in their sole discretion, under a Tenancy Agreement, and if not so occupied, that Dwelling Unit must not be occupied by the Owner, the Owner's family members or any guest of the Owner.

2.3 Selected Individual – The Owner shall inform the District of the name of the Selected Individual within 30 days of selection. For certainty, the Owner may only select one person to be the Selected Individual for the entire duration for this Agreement, and upon the Selected Individual ceasing to occupy a Dwelling Unit, no other persons may be named as the Selected Individual.

2.4 Short-term Rentals Prohibited – The Owners agrees that no Dwelling Unit may be rented to or tenanted by any person for a term of less than thirty (30) days.

2.5 No Subdivision to Allow Separate Sale – The Owner acknowledges that the District will not support applications for stratification or Subdivision of the Lands or any part thereof in any manner that would allow the Dwelling Units to be sold independently of each other.

2.6 District Authorized to Make Inquiries – The Owner hereby irrevocably authorizes the District to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

2.7 Expiry of Housing Agreement – The District covenants and agrees with the Owner that this Agreement shall cease to apply,

- (a) for Dwelling Units located in Building "A", from and after the sixtieth (60th) anniversary of the date this Agreement was registered in the Land Title Office, or the demolition of all Dwelling Units located in Building "A", whichever is later;
- (b) for Dwelling Units located in Building "B", from and after the sixtieth (60th) anniversary of the date this Agreement was registered in the Land Title Office, or the demolition of all Dwelling Units located in Building "B", whichever is earlier, provided however that demolition has not occurred before the fortieth (40th) anniversary of the date this Agreement was registered in the Land Title Office; and
- (c) for Dwelling Units located in the Tower, from and after the twentieth (20th) anniversary of the date this Agreement was registered in the Land Title Office, or the demolition of all Dwelling Units located in the Tower, whichever is later.

Upon expiry under all of (a), (b) and (c), the Owner may provide to the District a discharge of this Agreement, which the District shall execute and return to the Owner for filing in the Land Title Office.

2.8 Not Binding on CMHC – Clauses 5.1 [Payment of Daily Rent] and 5.2 [Rent Charge] shall not be binding on the Canada Mortgage Housing Corporation (“CMHC”) or any mortgagee of the Lands which is an “Approved Lender”, as defined in the *National Housing Act*, R.S.C. 1985, C.N-11, who holds a mortgage insured pursuant to the *National Housing Act*. If, during foreclosure by such an Approved Lender, the court approves a sale of the Lands to CMHC or any arms-length bona fide purchaser, then the District will abandon Clauses 5.1 and 5.2 and cause them to be unenforceable and released from this Agreement and from the records registered on title to the Lands.

ARTICLE 3 DISPOSITION AND ACQUISITION OF SECURED RENTAL UNITS

3.1 Occupancy of Dwelling Units – The Owner must not rent, lease, license or otherwise permit occupancy of any Dwelling Unit except in accordance with the following additional conditions:

- (a) save and except as provided for in section 2.2, a Dwelling Unit will be used or occupied only pursuant to a Tenancy Agreement;
- (b) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:
 - (i) other than visitors contemplated by section 3.1(a), a Dwelling Unit is occupied by a person or persons other than the Tenant;
 - (ii) a Dwelling Unit is occupied by more than the number of people the District’s building inspector determines can reside in a Dwelling Unit given the number and size of bedrooms in the Dwelling Unit and in light of any relevant standards set by the District in any bylaws of the District;
 - (iii) the Tenant makes a Dwelling Unit available to any person or persons for any form of short term rental,

and in the case of each breach, the Owner hereby agrees with the District to forthwith provide to the Tenant a notice of termination. The notice of termination shall provide that the termination of the tenancy shall be effective thirty (30) days following the date of the notice of termination;

- (c) the Tenancy Agreement will identify all occupants of the Dwelling Unit and will stipulate that anyone not identified in the Tenancy Agreement will be

- prohibited from residing at the Dwelling Unit for more than thirty (30) consecutive days or more than forty-five (45) days total in any calendar year; and
- (d) the Owner will make available to every new Tenant one off-street vehicle parking space, located on the Lands, at no additional cost to the Tenant, unless a Tenant does not desire an off-street vehicle parking space. For the purposes of this subsection, a “new Tenant” is a Tenant who enters into a Tenancy Agreement with the Owner after the date that this Agreement is registered in the LTO.

3.2 No Separate Sale – The Owner covenants with the District that the Owner will not sell or transfer, or agree to sell or transfer, any interest in any building on the Lands, a Dwelling Unit on the Lands other than a full interest in the fee simple title to all Dwelling Units, and to an agency or individual that will assume the obligations set out in this Agreement.

ARTICLE 4 DEMOLITION OF BUILDING CONTAINING DWELLING UNITS

4.1 Demolition – The Owner will not demolish a Dwelling Unit or a building containing a Dwelling Unit unless:

- (a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm’s length to the Owner and who has been approved in writing by the District, acting in its sole discretion, that it is no longer reasonable or practical to repair or replace any structural component of the building containing a Dwelling Unit, and the Owner has delivered to the District a copy of the engineer’s or architect’s report; or
- (b) the building containing a Dwelling Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the District, in its sole discretion,

and, in each case, a demolition permit for the building containing a Dwelling Unit has been issued by the District and the building containing a Dwelling Unit has been demolished under that permit.

4.2 Post-Demolition -- Following demolition, the Owner will use and occupy any replacement building and Dwelling Unit in compliance with this Agreement to the same extent and in the same manner as this Agreement applies to the original Dwelling Unit, except as provided for in section 4.3

4.3 Building “B” – Notwithstanding section 4.2, if Building “B” is demolished from or after the fortieth (40th) anniversary of the date this Agreement was registered in the Land Title Office, then the Owner will not be obligated to use and occupy any replacement building or Dwelling Unit in compliance with this Agreement.

4.4 Arbitration – If a disagreement arises pursuant to section 4.1(a) only, the same will be settled by arbitration, in compliance with the *Arbitration Act* (British Columbia). The arbitration will be conducted by a single arbitrator agreed to by the parties which arbitrator will be at arm's length from both parties. If the parties cannot agree to an arbitrator, each party will select a third party, and together the selected third parties will agree to and select an arbitrator. The costs and expense of the arbitration will be dealt with as follows:

- (a) each party will bear its own expense of preparing and presenting its case to the arbitrator, irrespective of whether any such expense was incurred or contracted for prior to the commencement of the arbitration process, including the expenses of appraisals, witnesses, professional reports and legal representation; and
- (b) the fees of the arbitrator will be paid as determined by the arbitrator.

ARTICLE 5 DEFAULT AND REMEDIES

5.1 Payment of Daily Amount – The Owner agrees that, in addition to any other remedies available to the District under this Agreement or at law or in equity, if a Dwelling Unit is used or occupied in breach of this Agreement or the Owner is otherwise in breach of any of its obligations under this Agreement, and the failure of the Owner to rectify such breach within thirty (30) days of receipt of written notice from the District setting out the details of such breach, the Owner will pay the Daily Amount to the District for every day that the breach continues after forty-five (45) days' written notice from the District to the Owner stating the particulars of the breach. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the District for the same.

5.2 Rent Charge – The Owner hereby grants to the District a perpetual rent charge against the Lands securing payment by the Owner to the District of any amount payable by the Owner pursuant to section 5.1 of this Agreement. The Owner agrees that the District, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the District at law or in equity. This rent charge is created both under section 219(6) of the *Land Title Act* as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law. Enforcement of this rent charge by the District does not limit, or prevent the District from enforcing, any other remedy or right the District may have against the Owner.

ARTICLE 6 MISCELLANEOUS

6.1 Housing Agreement – The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under section

483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*,

- (b) the District may file notice of, and register, this Agreement in the LTO pursuant to section 483(5) of the *Local Government Act* against the title to the Lands.

6.2 Modification – This Agreement may be modified or amended from time to time, by written consent of the Owner and a bylaw duly passed by the Council of the District and thereafter if it is signed by the District and the Owner

6.3 Indemnity – The Owner will indemnify and save harmless the District and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- (a) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Dwelling Unit or the enforcement of any Tenancy Agreement; or
- (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

6.4 Release – The Owner hereby releases and forever discharges the District and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:

- (a) construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Dwelling Unit under this Agreement; or
- (b) the exercise by the District of any of its rights under this Agreement.

6.5 Survival – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.

6.6 Priority – The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be noted and registered against title to the Lands in priority to all financial charges and financial encumbrances which may have been registered or are pending registration against title to the Lands save and except those specifically approved in advance in writing by the District

or in favour of the District, and that a notice under section 483(5) of the *Local Government Act* will be filed on the title to the Lands.

6.7 District's Powers Unaffected – This Agreement does not:

- (a) affect, fetter or limit the discretion, rights, duties or powers of the District under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) impose on the District any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
- (c) affect or limit any enactment relating to the use or subdivision of the Lands; or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

6.8 Agreement for Benefit of District Only – The Owner and the District agree that:

- (a) this Agreement is entered into only for the benefit of the District;
- (b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier or user of the Lands or the building or any portion thereof, including any Dwelling Unit; and
- (c) the District may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

6.9 No Public Law Duty – Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.

6.10 Notice – Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out on title to the Lands in the records at the LTO, and in the case of the District at the address listed above, to the attention of the Director of Planning or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

6.11 Enuring Effect – This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

6.12 Severability – If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

6.13 Waiver – All remedies of the District will be cumulative and may be exercised by the District in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the District exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

6.14 Whole Agreement – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the District and the Owner respecting the use and occupation of the Dwelling Unit, and there are no warranties, representations, conditions or collateral agreements made by the District except as set forth in or contemplated by this Agreement.

6.15 Further Assurance – Upon request by the District the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the District to give effect to this Agreement.

6.16 Agreement Runs with Lands – This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided in perpetuity. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement acquire an interest in the Lands.

6.17 Equitable Remedies – The Owner acknowledges and agrees that damages would be an inadequate remedy for the District for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

6.18 No Joint Venture – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the District or give the Owner any authority to bind the District in any way.

6.19 Applicable Law – The laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

6.20 Deed and Contract – By executing and delivering this Agreement the

Owner intends to create both a contract and a deed executed and delivered under seal.

6.21 Joint and Several – If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

6.22 Limitation on Owner's Obligations – The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands provided however that notwithstanding that the Owner is no longer the registered owner of the Lands, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Lands.

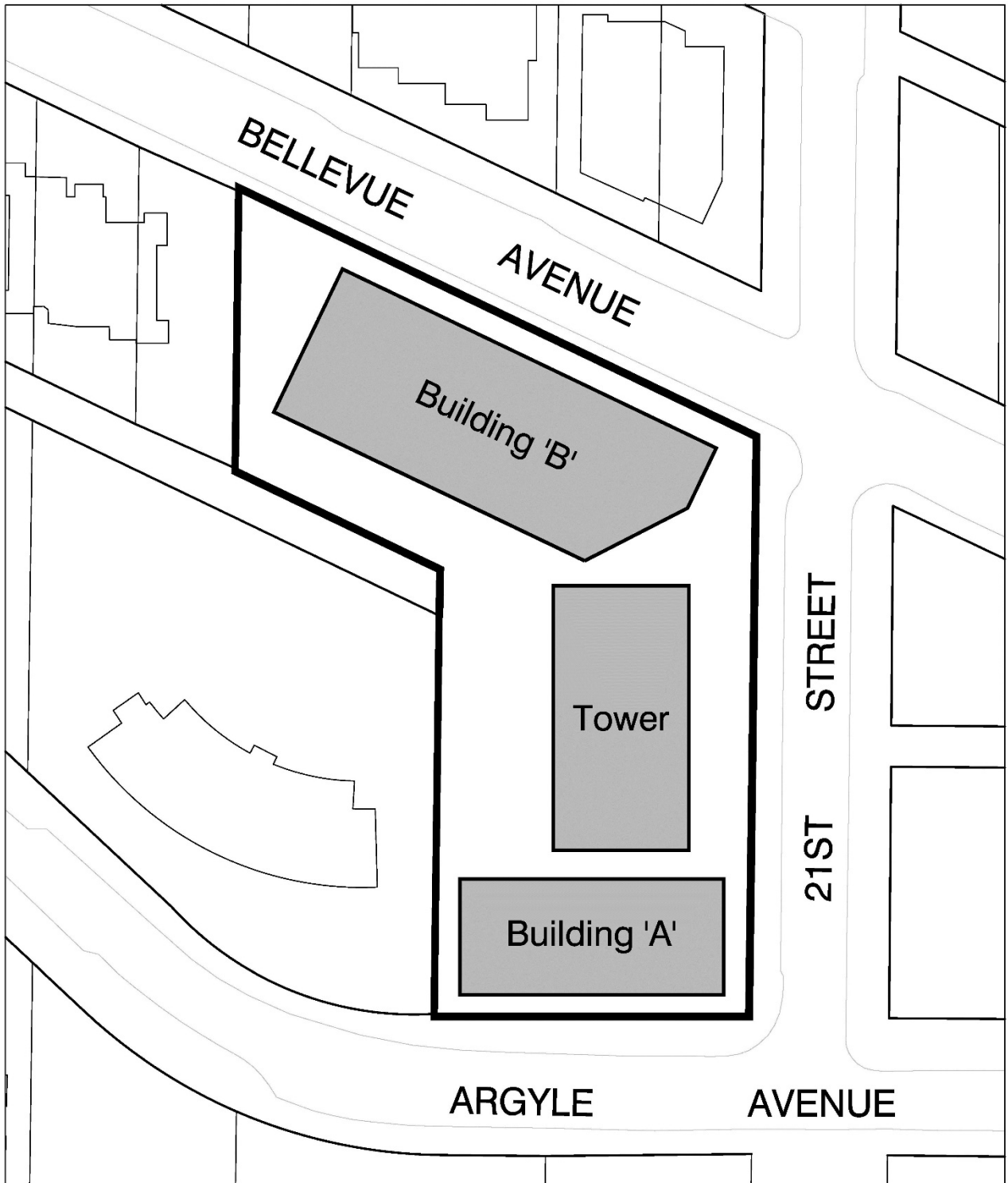
6.23 Interpretation – In this Agreement:

- (a) reference to the singular includes a reference to the plural, and *vice versa*, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (f) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (g) time is of the essence;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a “party” is a reference to a party to this Agreement and to that party’s respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a “party” also includes a Tenant, agent, officer and invitee of the party;
- (j) reference to a “day”, “month”, or “year” is a reference to a calendar day, calendar month, calendar or calendar year, as the case may be, unless otherwise expressly provided; and

- (k) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the *Land Title Act* Form C and D which is attached to and forms part of this Agreement.

Schedule "A"



CONSENT AND PRIORITY AGREEMENT

WHEREAS COMPUTERHSARE TRUST COMPANY OF CANADA, INC. NO. A-52313 (the "Chargeholder") is the holder the following charges all registered in the Vancouver Land Title Office:

- Mortgage under number BB1277205 (as modified by CA4507942);
- Assignment of rents under BB1277206 (as modified by CA4507943);
- Mortgage under number CA4497717; and
- Assignment of rents under number CA4497718,

(collectively the "Charge"), which Charge encumbers the lands (the "Lands") described in item 2 of the *Land Title Act* Form C attached hereto.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant and Rent Charge attached hereto (together referred to as the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

END OF DOCUMENT