



District of West Vancouver

8.1

**Zoning Bylaw No. 4662, 2010,
Amendment Bylaw No. 4905, 2016**
(195 21st Street)

(Reference Date: August 23, 2017)

Effective Date:

District of West Vancouver

Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4905, 2016

A bylaw to rezone certain real property located at 195 – 21st Street to CD53 – Comprehensive Development Zone 53 (192 – 21st Street)

Previous amendments: Amendment bylaws 4672, 4677, 4678, 4679, 4689, 4701, 4680, 4710, 4697, 4716, 4712, 4737, 4726, 4736, 4757, 4752, 4767, 4787, 4788, 4784, 4772, 4791, 4805, 4809, 4828, 4854, 4873, 4866, 4895 and 4839.

WHEREAS the Council of The Corporation of the District of West Vancouver deems it expedient to provide for amendments to the Zoning Bylaw;

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 "Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4905, 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 Adds the CD53 Zone & Rezones the Site

- 3.1 Zoning Bylaw No. 4662, 2010, Schedule A, Section 600 'Comprehensive Development Zones' is hereby amended by adding the CD53 – Comprehensive Development Zone 53 (195 – 21st Street), as set out Schedule A to this bylaw.
- 3.2 The Land shown shaded on the map in Schedule B to this bylaw is rezoned from RM2 (Multiple Dwelling Zone 2) to CD53 – Comprehensive Development Zone 53 (195 – 21st Street).

Part 4 Amends the Zoning Maps

4.1 Zoning Bylaw No. 4662, 2010, Schedule A, Section 852, Schedule 2, 'Zoning Maps' is hereby amended by changing the zoning of the Land as shown shaded on the map in Schedule B to this bylaw,

From: RM2 (Multiple Dwelling Zone 2)

To: CD53 – Comprehensive Development Zone 53 (195 – 21st Street)

Part 5 Table of Contents

5.1 Zoning Bylaw No. 4662, 2010, Schedule A, Section 100 'Table of Contents' is hereby amended accordingly.

Schedules

Schedule A: CD53 – Comprehensive Development Zone 53 (195 – 21st Street)

Schedule B: Amendment to Zoning Bylaw No. 4662, 2010, Schedule A, Section 852, Schedule 2, Zoning Maps

READ A FIRST TIME on October 24, 2016

PUBLICATION OF NOTICE OF PUBLIC HEARING on November 20 and 23, 2016

PUBLIC HEARING HELD on November 28, 2016

READ A SECOND TIME on November 29, 2016

READ A THIRD TIME on November 29, 2016

SECOND AND THIRD READING RESCINDED on September 18, 2017

AMENDED on September 18, 2017

READ A SECOND AND THIRD TIME AS AMENDED on September 18, 2017

ADOPTED by the Council on

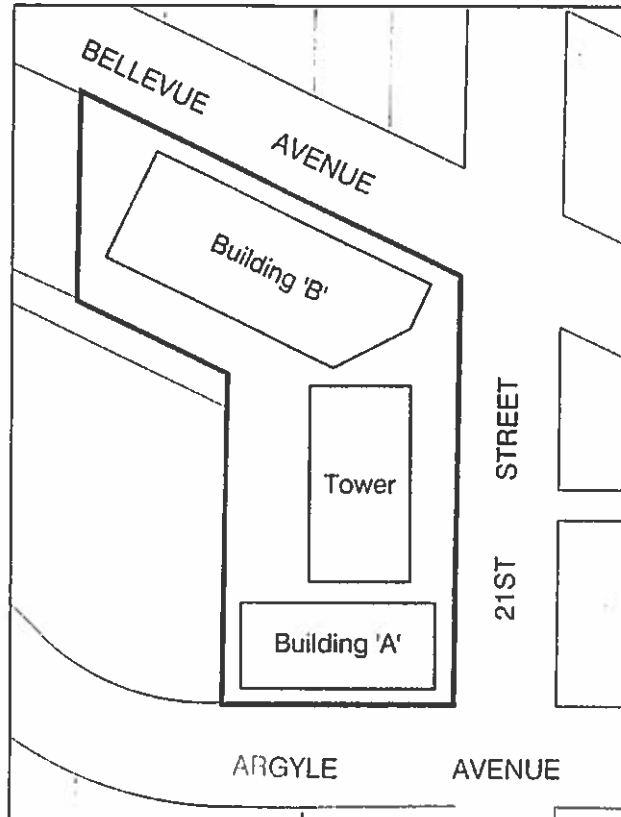
Mayor

Municipal Clerk

Schedule A

653 CD53 (195 – 21st Street)

653.01 Map



653.02 Permitted Uses

- (1) apartment buildings
- (2) child care
- (3) home based business

653.03 Floor Area Ratio

- (1) Maximum: 1.75 FAR
- (2) Additional Permitted Density: 0.75 FAR in addition to the maximum FAR where the subject lands are being used for rental housing secured through a Housing Agreement
- (3) Total: 2.5 FAR

653.04 Number of Units

- (1) Maximum 167 dwelling units

653.05 Site Area

Minimum site area 5,635 square metres

653.06 Site Coverage

Maximum 35%

653.07 Setbacks

Minimum:

Front (south, Argyle Avenue): 6.0 metres

Rear (north, Bellevue Avenue): 4.5 metres

Side (east): 7.0 metres

Side (west, 21st Street): 6.5 metres

653.08 Building Height

1) Maximum:

Building 'A' 12.5 metres

Building 'B' 10 metres

Tower 55 metres

2) Despite Section 120.19, elevator penthouses, solar panels and mechanical equipment are excluded from building height.

3) Despite Section 120.19, the height of Building 'B' is measured from the top of the parkade roof slab.

653.09 Number of Storeys

Maximum:

Building 'A' 4 storeys

Building 'B' 3 storeys

Tower 16 storeys

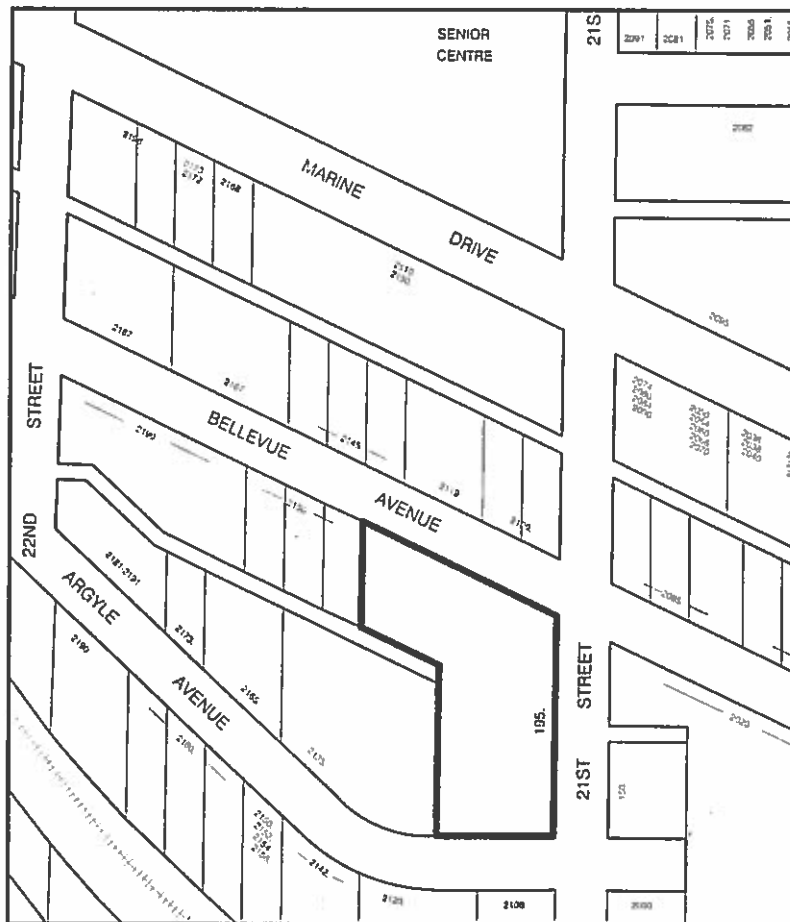
653.10 Off-Street Parking

A minimum of 159 parking spaces shall be provided.

Schedule B

Amendment to Zoning Bylaw No. 4662, 2010, Schedule A, Section 852, Schedule 2, Zoning Maps.

The area shown shaded on the map below rezones the subject site to CD53.



195 - 21st Street

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District of West Vancouver

**Phased Development Agreement Authorization
Bylaw No. 4906, 2016**

(195 – 21st Street)

Effective Date:

Phased Development Agreement Authorization Bylaw No. 4906, 2016

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District of West Vancouver

Phased Development Agreement Authorization Bylaw No. 4906, 2016

A bylaw to enter into a Phased Development Agreement between the District of West Vancouver and Hollyburn Properties Ltd.

WHEREAS under the *Local Government Act* Council may enter into a Phased Development Agreement with a developer;

WHEREAS Council published notices of its intention to enter into a phased development agreement with Hollyburn Properties Ltd., and held a public hearing in respect of this bylaw in accordance with the *Local Government Act*; 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 "Phased Development Agreement Authorization Bylaw No. 4906, 2016."

Part 2 Authorizes a Phased Development Agreement

- 2.1 The District enters into, and the Mayor and Municipal Clerk are authorized to execute, the Phased Development Agreement (attached as Schedule A and forming a part of this bylaw) on behalf of the District and are authorized to execute and deliver such transfers, deeds of land, plans and other documents as are required to give effect to the Phased Development Agreement.

Schedules

Schedule A – Phased Development Agreement between the District of West Vancouver and Hollyburn Properties Ltd.

READ A FIRST TIME on October 24, 2016

PUBLICATION OF NOTICE OF PUBLIC HEARING on November 20 and 23, 2016

PUBLIC HEARING HELD on November 28, 2016

READ A SECOND TIME on November 29, 2016

READ A THIRD TIME on November 29, 2016

ADOPTED by the Council on

Mayor

Municipal Clerk

SCHEDULE A PHASED DEVELOPMENT AGREEMENT

This Agreement dated for reference the 30th day of September, 2016.

BETWEEN:

DISTRICT OF WEST VANCOUVER
750 17th Street
West Vancouver, BC V8V 3T3

(the "District")

AND

HOLLYBURN PROPERTIES LTD.
300-1650 Alberni Street
Vancouver, BC V6G 1B1

(the "Owner")

GIVEN THAT:

- A. The Owner is the owners of lands and premises set out in section 1.1;
- B. The Owner is constructing on the Lands 41 additional purpose-built rental housing units in two new low-rise apartment buildings and retaining the existing high rise apartment building containing 126 units for a total of 167 rental units, adding 23 additional parking spaces and new landscaping with a maximum Floor Area Ratio of 2.5.
- C. The District's Council is considering an amendment to the District's Zoning Bylaw by way of Zoning Bylaw No. 4662, 2010, Amendment Bylaw No. 4905, 2016 (the "Zoning Amendment Bylaw") to permit the development on the Lands;
- D. The Owner has undertaken to provide funds in addition to in-kind amenities in conjunction with the development of the Lands and the parties wish to ensure that the provisions of the Zoning Amendment Bylaw continue to apply to the Lands for the period more particularly set out in this Agreement, and that the funds are provided in accordance with this Agreement;
- E. The Council of the District has, by bylaw, authorized the making of this agreement.

NOW THEREFORE in consideration of the mutual promises set out in this Agreement, the Owner and the District agree pursuant to section 516 of the *Local Government Act* as follows:

1.0 DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement:

"Amenities" includes the funds for community benefits to be paid to the District under section 9.0.

"Approving Officer" means the subdivision approval official appointed for that purpose under the provisions of the *Land Title Act*.

"Development" means the development of the Lands.

"Force Majeure" means any act reasonably beyond the control of the party seeking to invoke the benefit of Force Majeure under this Agreement including but without restricting the generality thereof, severe weather conditions, lightening, earthquakes, fires, floods and storms, strikes, lockouts and industrial disturbances, any acts, rules regulations, order or directives of any government or agency thereof, civil disturbances, explosions, transportation embargoes, or failure or delays in transportation, breakdown or mechanical or operational failure of any technical facilities, excessive electrical power fluctuations, excessive water pressure fluctuations, the order of any Court, or any other causes either herein enumerated or otherwise not reasonably within the control of such party; provided that financial incapacity, insolvency and general economic conditions shall not in any event constitute or deemed to constitute an event of Force Majeure.

"Lands" means the parcels of lands legally described as:

PID 006-702-121
LOT C (EXPLANATORY PLAN 10675) OF LOT 13 BLOCKS 7 TO 12
DISTRICT LOT 775 PLAN 4595

"Specified Zoning Bylaw Provisions" means those provisions of the Zoning Amendment Bylaw that regulate density and use for the purpose of development and are applicable to the Lands and that are adopted pursuant to section 516 of the *Local Government Act*, but do not include any subdivision bylaw provisions or development permit provisions.

"Term" means the term of this Agreement set out in section 4.1.

- 1.2 The headings and captions are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope, extent or intent of this Agreement or any of its provisions.
- 1.3 The word "including" when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope.
- 1.4 A reference to currency means Canadian currency.
- 1.5 A reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation that supplements or supersedes such statute or any such regulation.
- 1.6 This Agreement shall be governed by and construed in accordance with and governed by laws applicable in the Province of British Columbia.
- 1.7 A reference to time or date is to the local time or date in West Vancouver, British Columbia.
- 1.8 A word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa.
- 1.9 A reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice.
- 1.10 A reference to a section means a section of this Agreement, unless a specific reference is provided to a statute.

SCHEDULES

- 1.11 The following Schedule is attached to and forms part of this Agreement:
Schedule A – Enforcement Covenant

APPLICATION OF AGREEMENT

1.12 This Agreement applies to the Lands, and to no other land except to public highway areas expressly referenced to in this Agreement.

2.0 CONDITIONS PRECEDENT

- 2.1 The obligations of the parties under this Agreement are subject to the fulfillment of the following conditions precedent:
- a) Council of the District, in its sole and unfettered discretion, has adopted the Zoning Amendment Bylaw and a bylaw to authorize the making of this agreement in accordance with s. 516(1) to 516(3) of the *Local Government Act*;
 - b) The District has otherwise complied with all relevant provisions of the *Community Charter*, the *Local Government Act* and all other applicable enactments.

3.0 SPECIFIED ZONING BYLAW PROVISIONS

- 3.1 For the Term of this Agreement, any amendment or repeal of the Specified Zoning Bylaw Provisions shall not apply to the Lands, subject to:
- (a) the express limits set out in section 516 of the *Local Government Act*;
 - (b) the termination of this Agreement under section 5.0; or
 - (c) changes that the Owner agrees to in writing shall apply.

4.0 TERM OF AGREEMENT

4.1 The Term of this Agreement is five (5) years from the reference date of this Agreement.

5.0 TERMINATION

- 5.1 The parties may terminate this Agreement at any time by written agreement, subject to the Council of the District adopting a bylaw to terminate this Agreement in accordance with the same procedures, terms and conditions required to adopt the bylaw to enter into this Agreement;
- 5.2 If the Owner does not comply with any of the provisions of this Agreement, other than as a result of or due to an act or omission of the District, the District may at its option terminate the Agreement before the expiry of the Term by providing notice in writing to the Owner, provided that:

- (a) in the case of a failure on the Owner's part to pay a sum of money or to provide a security for an obligation, the District has, at least thirty (30) days prior to giving such notice, advised the Owner in writing of the alleged failure to pay or to provide the security (the "Default Notice") and the Owner has not corrected the failure to the reasonable satisfaction of the District within that thirty (30) day period;
- (b) in the case of any other failure on the Owner's part to comply with the provisions of this Agreement, the District has, at least sixty (60) days prior to giving such notice, provided the Owner with a Default Notice in respect of such failure, and the Owner has not corrected the failure or deficiency in performance to the reasonable satisfaction of the District, within that sixty (60) day period; or
- (c) if a failure or deficiency (but for certainty, not including a failure to pay a sum of money or provide security as referred to in section 5.2(a)) requires longer than sixty (60) days to remedy, the Owner has failed to substantially commence remedying such failure or deficiency within sixty (60) days after receipt of the Default Notice to the reasonable satisfaction of the District and further has failed to diligently pursue remedying the failure or deficiency thereafter.

6.0 DEVELOPMENT

- 6.1 Except as expressly provided in this Agreement, nothing in this Agreement shall relieve the Owner from any obligation or requirement arising under any applicable statute, bylaw or regulation in respect of the subdivision and development of the Lands, and without limiting the generality of the foregoing, the Owner shall remain fully responsible to ensure that the development of the Lands is in full compliance with all requirements of the bylaws of the District including those respecting land development, zoning, subdivision and building construction. Nothing in this Agreement shall relieve the District of the authority to utilize any contractual, statutory or common law remedy it may have to enforce this Agreement.
- 6.2 Without limiting the generality of section 6.1, in connection with any application for approval of subdivision or development of the Lands, the Owner must obtain all development permits required under the District's Official Community Plan as amended from time to time, and in respect of any subdivision must obtain the approval of the Approving Officer, and must comply with all applicable enactments and bylaws in connection with that subdivision.

- 6.3 The parties acknowledge that the Approving Officer is an independent statutory officer, and that nothing in this Agreement shall be interpreted as prejudicing or affecting the duties and powers of the Approving Officer in respect of any application to subdivide the Lands.
- 6.4 Subject to every other provision of this Agreement, the Owner may develop the Lands in phases, and may determine the sequence and timing of each phase.

7.0 IMPACTS

- 7.1 The Owner, acting reasonably and in a timely manner, shall address reasonable construction and development concerns raised by the District by way of written notice under this Agreement.

8.0 SECTION 219 COVENANT

- 8.1 The Owner shall execute, deliver and register in the Land Title Office a Covenant under section 219 of the *Land Title Act*, in the form and with the content of Schedule A, concurrently with and conditional upon the adoption of the Zoning Amendment Bylaw, with the intention that this covenant shall be registered against title to the Lands in order to secure the obligations of the owner of the Lands to use and develop the Lands in accordance with the provisions of this agreement.

9.0 AMENITIES

- 9.1 The Owner covenants and agrees to deliver to the District one (1) year from the referenced date of this agreement, or one (1) year from the date of adoption of the Zoning Amendment Bylaws, whichever comes first, payment of a cash contribution to the District in the amount of \$1,046,155 for deposit to the District's Affordable Housing Fund.
- 9.2 The Owner covenants and agrees to deliver to the District a clean unconditional, irrevocable letter of credit in the amount of \$1,046,155 (the "**Letter of Credit**") before or on the execution of this Agreement as security for the payment under section 9.1.
- 9.3 On receipt of the payment in accordance with the requirements of section 9.1, the District will release the Letter of Credit referred to in section 9.2. If the Owner does not make the payment in accordance with the requirements of section 9.1, the District may without notice to the Owner draw down the full outstanding balance of the Letter of Credit and hold and retain the cash in lieu thereof and thereafter, the Owner is not obligated to make the payment referred to in section 9.1.

- 9.4 The Letter of Credit shall be issued in a form, and by a bank, satisfactory to the District. If the Letter of Credit provided under section 9.2 (or any replacement or substitute therefore) will expire prior to September 30, 2017, then the Owner shall deliver to the District, at least 30 days prior to its expiry, a replacement or substitute Letter of Credit issued on like terms and conditions. If the Owner fails to do so, the District without notice to Owner may draw down the full outstanding balance of the Letter of Credit, as applicable, (or any replacement or substitute therefore), and hold and retain the cash in lieu thereof.

10.0 DEVELOPMENT OF LAND FOLLOWING TERMINATION

- 10.1 Development of the Lands shall continue to be governed by the section 219 Covenant attached as Schedule A, during and after the Term of this Agreement.

11.0 INDEMNITY AND RELEASE

- 11.1 The Owner shall indemnify and keep indemnified the District from any and all claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever, whether based in law or equity, whether known or unknown, which anyone has or may have against the District or which the District incurs as a result of any loss, damage or injury, including economic loss or deprivation, arising out of or connected with or any breach by the Owner of this Agreement.
- 11.2 The Owner hereby releases, save harmless and forever discharges the District of and from any claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever which the Owner can or may have against the District, whether based in law or equity, whether known or unknown, for any loss, damage or injury, including economic loss or deprivation, that the Owner may sustain or suffer arising out of or connected with this Agreement, including the restrictions and requirements of this Agreement, the provisions of the Amenities and the development of the Lands as contemplated under this Agreement, or any breach by the Owner of any covenant in this Agreement, save and except as a result of any breach by the District of this Agreement.
- 11.3 The indemnity and release provisions of sections 11.1 and 11.2 shall survive the expiry or termination of this Agreement.

12.0 NO RECOVERY OF AMENITIES

- 12.1 The Owner covenants and agrees that expiry of the Agreement and any termination in accordance with section 5.0 or otherwise, does not entitle the Owner to recover any portion of the Amenities or seek restitution in relation thereto or in relation to any other obligation of the Owner as performed (and the Owner specifically agree that the Specified Zoning Bylaw Provisions of this Agreement for the period prior to expiry or termination provides sufficient consideration for the Amenities) and the release and indemnity provisions under sections 11.1 and 11.2 apply in this regard.
- 12.2 The Owner covenants and agrees it will not commence or advance a legal proceeding of any kind to seek to quash, set aside, hold invalid this Agreement, or the Zoning Amendment Bylaw, or to recover any portion of the Amenities provided under this Agreement, or seek restitution in relation to any of the Amenities provided under this agreement, and if the Owner does any of the foregoing, the District may provide this Agreement to the Court as a full and complete answer.
- 12.3 Without any limitation, section 9.1 applies whether or not the Owner proceeds with any development on the Lands.

13.0 ASSIGNMENT OF AGREEMENT

- 13.1 Except as provided in this section 13.1 and 13.2, the Owner shall not be entitled to assign this Agreement or to effect or allow a Change of Control without the prior written consent of the District, such consent to be in the sole and absolute discretion of the District provided that the Owner shall be entitled to assign this Agreement without the consent of, but with notice to the District to an affiliate of the Owner, as that term is defined in the *Business Corporations Act* (British Columbia); each being an "Assignee", and no further assignment shall be permitted by an Assignee except with the consent of the District as described above. In the event of any such assignment, the Owner shall not be released from their obligations under this Agreement and the Assignee shall be bound by the terms of this Agreement.
- 13.2 In section 13.1, "Change of Control" means a transfer by sale, assignment or otherwise of any shares, voting rights or interests in the Owner which results in a change of the party or parties who, as of the date hereof, exercise voting control of the Owner.

14.0 AMENDMENT OF AGREEMENT

14.1 The Owner and the Director of Planning, Land Development, and Permits may in writing agree to minor amendments to this Agreement, and for that purpose a "minor amendment" is a change or amendment to Schedule A of this Agreement.

15.0 DISPUTE RESOLUTION

15.1 If a dispute arises between the parties in connection with this Agreement, the parties agree to use the following procedure as a condition precedent to any party pursuing other available remedies:

- (a) either party may notify the other by written notice ("**Notice of Dispute**") of the existence of a dispute and a desire to resolve the dispute by mediation;
- (b) a meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute;
- (c) if, within forty-eight (48) hours after such a meeting or such further period as is agreeable to the parties (the "**Negotiation Period**"), the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation and to bear equally the costs of mediation;
- (d) the parties will jointly appoint a mutually acceptable mediator (who must be an expert in the subject matter of the dispute), within forty-eight (48) hours of the conclusion of the Negotiation Period;
- (e) the parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days following appointment of the mediator or for such longer period as the parties may agree. If the parties are not successful in resolving the dispute through mediation or if the mediation has not commenced within fourteen (14) days following the appointment of the mediator or if the parties cannot agree upon the mediator appointment, then the parties agree that the dispute will be settled by a single arbitrator in accordance with the *Commercial Arbitration Act*, R.S.B.C. 1996, Chapter 55, as amended. The decision of the arbitrator will be final and binding and will not be subject to appeal on a question of fact, law, or mixed fact and law; and
- (f) the costs of mediation or arbitration will be awarded by the mediator or arbitrator in his or her absolute discretion.

15.2 In no event shall the foregoing be construed as impeding or affecting the District's authority to enforce its zoning and other regulatory bylaws.

16.0 NOTICE

16.1 Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address provided in writing.

17.0 POWERS PRESERVED

17.1 Except as expressly set out in this Agreement, nothing in this Agreement shall prejudice or affect the rights and powers of the District in the exercise of its powers, duties or functions under the *Community Charter* or the *Local Government Act* or any of its bylaws, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement has not been execute and deliver to the Owner, subject only to section 516 of the *Local Government Act*.

18.0 DISTRICT'S REPRESENTATIVE

18.1 Any option, decision, act or expression of satisfaction or acceptance of the District provided for in this Agreement may be taken or made by the Chief Administrative Officer or their designate, unless expressly provided to be taken or made by another official of the District.

19.0 TIME

19.1 Time is to be the essence of this Agreement.

20.0 BINDING EFFECT

20.1 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

21.0 WAIVER

21.1 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

22.0 CUMULATIVE REMEDIES

22.1 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

23.0 RELATIONSHIP OF PARTIES

23.1 No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.

24.0 SURVIVAL

24.1 All representations and warranties set forth in this Agreement and all provision of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

25.0 NOTICE OF VIOLATIONS

25.1 Each party shall promptly notify the other party of any matter which is likely to continue to give rise to a violation of its obligations under this Agreement.

26.0 LEGAL FEES

26.1 The Owner shall promptly on receipt of an invoice from the District reimburse the District for its reasonable legal and appraisal fees incurred in relation to the development of the Lands.

27.0 ENTIRE AGREEMENT

27.1 The whole agreement between the parties is set forth in this document and no representations, warranties or conditions, express or implied, have been made other than those expressed.

28.0 SEVERABILITY

28.1 Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

29.0 COUNTERPART

29.1 This Agreement may be executed in counterpart with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as the day and year first above written.

DISTRICT OF WEST VANCOUVER by)
its Authorized signatories:)
)
)
)

Mayor)
)
)
)
)

Municipal Clerk)

THE OWNER by its Authorized)
signatories:)
)
)
)
_____)
)
)
)
_____)

SCHEDULE A (to the Phased Development Agreement)**Enforcement Covenant****TERMS OF INSTRUMENT – PART 2**

WHEREAS:

- A. The Grantor is the registered owner in fee simple of:
- PID 006-702-121
LOT C (EXPLANATORY PLAN 10675) OF LOT 13 BLOCKS 7 TO 12
DISTRICT LOT 775 PLAN 4595
- (the “Lands”)
- B. The Grantee is the District of West Vancouver;
- C. The Grantor has agreed to develop the Lands in accordance with a Phased Development Agreement dated for reference the 30th day of September, 2016 and made between the Grantor and the Grantee (the “Phased Development Agreement”).

NOW THEREFORE, in consideration of the payment of the sum of \$10.00 by the Grantee to the Grantor and the premises and the covenants herein contained and for other valuable consideration, receipt and sufficiency of which is hereby acknowledged by the properties, each of the parties hereto covenants and agrees with the other as follows:

1. In this Covenant the following terms have the following meanings:
- (d) “**Development**” means the Development of the Lands contemplated by the Phased Development Agreement and includes an activity that alters the Lands or any vegetation on the Lands in preparation for or in connection with the installation on the Lands of buildings, improvements, works or services, including without limitation, a highway;
 - (e) “**Grantor**” means the Grantor as shown on the Form C attached hereto; and
 - (f) “**Grantee**” means the Grantee as shown on the Form C attached hereto.

2. The Grantor covenants with the Grantee that it will construct and cause to be constructed any building or structure on the Lands in accordance with the Phased Development Agreement dated for reference the 30th day of June, 2016.
3. If the Grantor is in breach of an obligation under the Phased Development Agreement, or the Grantee terminates the Phased Development Agreement as a result of a breach of the Phased Development Agreement by the Grantor, the Grantor covenants that it shall not further subdivide the Lands, under the *Land Title Act* (British Columbia) or the *Strata Property Act* (British Columbia) or Regulations under those Acts, construct any improvements on the Lands, or alter the use of the Lands, without the consent of the District.
4. The restrictions and covenants herein contained shall be covenants running with the Lands and shall be perpetual, and shall continue to bind all of the Lands when subdivided, and shall be registered in the Land Title Office pursuant to section 219 of the *Land Title Act*. Subject to the Grantor completing its obligations under the Phased Development Agreement and complying with all other applicable bylaws, the Grantee agrees to discharge this Agreement from title to the Lands (or the applicable portion thereof) upon the issuance by the District of an occupancy permit in respect of any building constructed on the Lands (or the applicable portion thereof).

5. NO BUILD COVENANT

The Grantor covenants and agrees with the District that until the Grantor fulfills its obligation under s. 9.0 of the Phase Development Agreement:

- a. the Grantor shall not suffer, cause or permit any buildings, structures or improvements which require a development or a building permit to be built, erected or installed, or any excavation in respect thereof to be commenced, on the Lands;
- b. the Grantor shall not apply for any building permit and shall not take any action, directly or indirectly, to compel the issuance of a development permit or a building permit in respect of any building, structure or improvement, including any required excavation in respect thereof, on the Lands;
- c. the Grantee shall not be under any obligation to issue a development permit or a building permit in respect of any building, structure or improvement on the Lands; and
- d. the Grantor shall not suffer, cause or permit the Lands to be occupied or used for any purpose except uses that are lawful as of the reference date of this Agreement.

- e. the Grantor and the Grantee agree that the No Build Covenant is in force until the completion of s. 9.0 of the Phased Development Agreement.
6. The Grantor and the Grantee agree that the enforcement of this Agreement shall be entirely within the discretion of the Grantee and that the execution and registration of this covenant against the title to the Lands shall not be interpreted as creating any duty on the part of the Grantee to the Grantor or to any other person to enforce any provision or the breach of any provision of this Agreement.
7. Nothing contained or implied herein shall prejudice or affect the rights and powers of the Grantee in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Agreement had not been executed and delivered by the Grantor.
8. The Grantor hereby releases and forever discharges the Grantee, its officers, employees and agents, of and from any claim, cause of action, suit, demand, expenses, costs and expenses, and legal fees whatsoever which the Grantor can or may have against the said Grantee for any loss or damage or injury, including economic loss, that the Grantor may sustain or suffer arising out of the breach of this Agreement by the Grantor or a party for whom the Grantor is at responsible at law.
9. The Grantor covenants and agrees to indemnify and save harmless the Grantee, its officers, employees and agents, from any and all claims, causes of action, suits, demands, expenses, costs and expenses, and legal fees whatsoever that anyone might have as owner, occupier or user of the Lands, or by a person who has an interest in or comes onto the Lands, or by anyone who suffers loss of life or injury, including economic loss, to his person or property, that arises out of breach of this Agreement by the Grantor or a party for whom the Grantor is at responsible at law.
10. It is mutually understood, acknowledged and agreed by the parties hereto that the Grantee has made no representations, covenants, warranties guarantees, promises or agreements (oral or otherwise) with the Grantor other than those contained in this Agreement.
11. This Agreement shall be registered as a first charge against the Lands and the Grantor agrees to execute and deliver all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
12. The Grantor shall pay the legal fees of the Grantee in connection with the preparation and registration of this Agreement. This is a personal covenant between the parties.

13. The Grantor covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions hereinbefore set out. Notwithstanding the foregoing, it is understood and agreed by the Grantee that this Agreement shall only be binding upon the Grantor as personal covenants during the period of its ownership of the Lands.
14. This Agreement shall ensure to the benefit of the Grantee and shall be binding upon the parties hereto and their respective heirs, executors, successors and assigns.
15. Wherever the expressions "Grantor" and "Grantee" are used herein, they shall be construed as meaning the plural, feminine or body corporate or politic where the context or the parties so require.
16. The Grantor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
17. Time is of the essence of this Agreement.
18. If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.

*, the registered holder of a charge by way of * against the within described property which said charge is registered in the Land Title Office under number *, for and in consideration of the sum of One (\$1.00) Dollar paid by the Grantee to the said Charge holder (the receipt whereof is hereby acknowledged), agrees with the Grantee, its successors and assigns, that the within section 219 Covenant shall be an encumbrance upon the within described property in priority to the said charge in the same manner and to the same effect as if it had been dated and registered prior to the said charge.

IN WITNESS WHEREOF the parties hereto hereby acknowledge that this Agreement has been duly executed and delivered by the parties executing Form C (pages 1 and 2) attached hereto.



District of West Vancouver

Housing Agreement Authorization Bylaw No. 4907, 2016

Reference Date: August 23, 2017

Effective Date:

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

SECOND AND THIRD READING RESCINDED on September 18, 2017

AMENDED on September 18, 2017

READ A SECOND AND THIRD TIME AS AMENDED on September 18, 2017

ADOPTED by the Council on

Mayor

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.

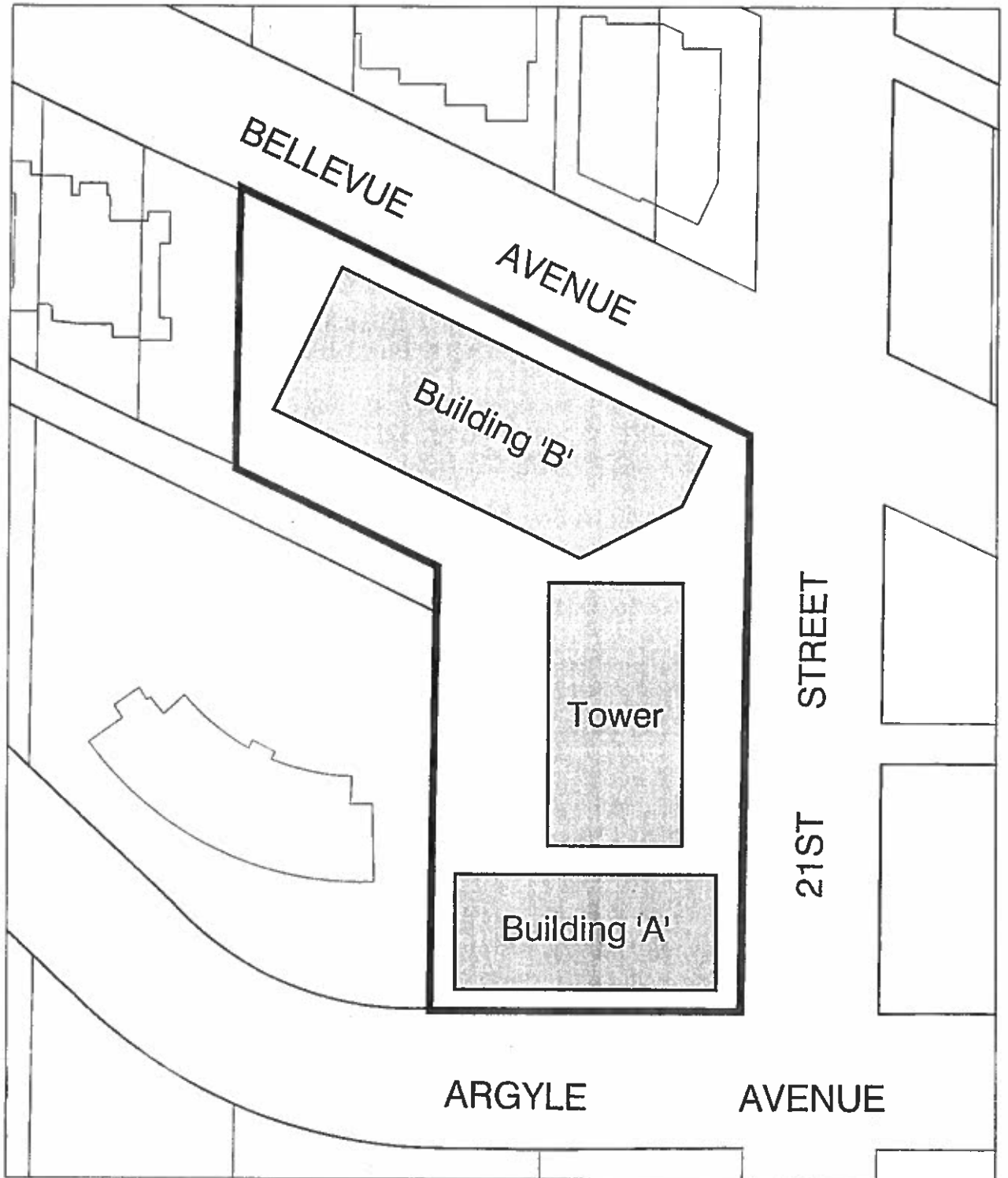
6.23 Interpretation – In this Agreement:

- (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