

UNDERTAKING RE: RELEASE OF EXISTING CHARGE

TO: CITY OF VANCOUVER (the "City")

FROM: 4184 INVESTMENTS LTD., INC. NO. BC0559518 (the "Owner")

RE: 3123-3129 West Broadway, legally described as:  
Parcel Identifier: 006-767-966, Lot H Block 54 District Lot 540 Plan 20212 ("Lot H");  
Parcel Identifier: 015-450-384, Lot 9, Except Part in Plan 4166, Block 54 District Lot 540 Plan 229 ("Lot 9"); and  
Parcel Identifier: 015-450-414, The East 1/2 of Lot 10, except the north 5 feet now lane and part in Plan 4166, Block 54 District Lot 540 Plan 229 ("The East 1/2 of Lot 10")  
(together, Lot H, Lot 9, and The East 1/2 of Lot 10 comprise the "Property")

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WHEREAS:

- A. The Owner is the registered owner of the Property and the Owner has applied for a development permit in respect of the Property under development permit application No. DP-2018-00039 (the "DP Application");
- B. As a condition of the Director of Planning approving the DP Application, the Owner is required to make arrangements to the satisfaction of the City's General Manager of Engineering Services and Director of Legal Services for the release of Covenant H26232 upon the demolition of the existing building or redevelopment of Lot 9.


NOW THEREFORE in consideration of the premises and the sum of \$1.00 now paid by the City to the Owner (the receipt and sufficiency of which are hereby acknowledged by the Owner), the Owner hereby agrees that, upon the demolition of the existing building or redevelopment of Lot 9, the Owner will, at its sole cost and expense:

1. prepare and deliver (or cause to be prepared and delivered) to the City a release (the "Release") of Covenant H26232 in registrable form, together with the fee for the discharge of a registered encumbrance (as per the City's Miscellaneous Fees By-law);
2. upon receipt of a copy of the Release executed by the City, file the Release for registration in the Land Title Office; and
3. provide confirmation in writing to the City upon full registration of the Release in the Land Title Office.

DATED: January 9, 2018.

4184 INVESTMENTS LTD.

Per:

  
Authorized Signatory

## NEW WESTMINSTER LAND TITLE OFFICE

APPLICATION TO DEPOSIT PLAN Mar-22-2019 12:42:05.002  
 AT LAND TITLE OFFICE  
 PROVINCE OF BRITISH COLUMBIA

CA7407837

PAGE 1 OF 5 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.732, and a true copy, or a copy of that true copy, is in your possession.

Kristian Nickolas  
 Arciaga F8GH97

Digitally signed by Kristian  
 Nickolas Arciaga F8GH97  
 Date: 2019.03.01 10:10:02  
 -08'00'

## 1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Megan Sedmak, Paralegal, of Fasken Martineau Dumoulin LLP

Barristers & Solicitors

2900 - 550 Burrard Street

Vancouver

BC V6C 0A3

Telephone: 604-631-3131

LTO No.: 11565

File No.: 240584.00107/18386

Document Fees: \$161.54

Deduct LTSA Fees? Yes ☒

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

**SEE SCHEDULE**

## 3. APPLICATION FOR DEPOSIT OF:

PLAN TYPE

Subdivision

PLAN NUMBER

EPP88675

CONTROL NUMBER

154-541-4765

NUMBER OF NEW  
LOTS CREATED

1

## 4. OWNER(S): (updated owner(s) name(s), occupation(s), postal address and postal code)

**4184 INVESTMENTS LTD.**

300 - 526 GRANVILLE STREET

VANCOUVER

V6C 1W6

BRITISH COLUMBIA

CANADA

Incorporation No

BC559518

## 5. ADDITIONAL INFORMATION:

## ADDITIONAL PARCEL INFORMATION

PAGE 2 OF 5 PAGES

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

**006-767-966 LOT H BLOCK 54 DISTRICT LOT 540 PLAN 20212**

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

**015-450-384 LOT 9, EXCEPT PART IN PLAN 4166, BLOCK 54 DISTRICT LOT 540 PLAN 229**

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

**015-450-414 THE EAST 1/2 OF LOT 10, EXCEPT THE NORTH 5 FEET NOW LANE AND  
PART IN PLAN 4166, BLOCK 54 DISTRICT LOT 540 PLAN 229**

## SCHEDULE OF OWNERS AND WITNESSES

PAGE 3 OF 5 PAGES

PLAN NUMBER: EPP88675

CONTROL NUMBER: 154-541-4765

## Witness to All Signatures

\_\_\_\_\_  
[signature]  
BARBARA VANDERBURGH

\_\_\_\_\_  
[fill in witness name]  
Barrister & Solicitor

\_\_\_\_\_  
[fill in occupation]  
2900 - 550 Burrard Street

\_\_\_\_\_  
[fill in address line 1]  
Vancouver, BC V6C 0A3

\_\_\_\_\_  
[fill in address line 2]

## Owner/Charge Owner [as appropriate]

4184 INVESTMENTS LTD.

\_\_\_\_\_  
[fill in corporate registered owner]  
BC0559518

\_\_\_\_\_  
[fill in Incorporation Number]

\_\_\_\_\_  
[signature] Authorized signatory

Dino Bonnis

\_\_\_\_\_  
[fill in the name of signatory]

\_\_\_\_\_  
[signature] Authorized signatory

\_\_\_\_\_  
[fill in the name of signatory]



PLAN NUMBER: EPP88675

CONTROL NUMBER: 154-541-4765

## Witness to All Signatures

[signature]

NICHOLAS KING

[fill in witness name]

A Commissioner for taking Affidavits for British Columbia

[fill in occupation]

#2200, 666 Burrard Street

[fill in address line 1]

Vancouver, BC V6C 2X8

Expires: September 30, 2021

[fill in address line 2]

(NOTE: Consent by a holder of a registered mortgage of the fee simple operates, on deposit of the plan, to extend the mortgage to the whole of the new parcel shown on Plan EPP88675).

I/We, CANADIAN WESTERN BANK of Vancouver, BC, the holders of the following registered charges, consent to the deposit of Plan EPP88675.

CA3574502 and CA3574503

[fill in registration No. of charge]

CANADIAN WESTERN BANK

[fill in the name of charge holder]

[signature]

Stephen Jacobson, AVP

[fill in the name of signatory]

[signature]

Chris Tong, AVP

[fill in the name of signatory]

PLAN NUMBER: EPP88675

CONTROL NUMBER: 154-541-4765

Approval - Approving Officer, LTA s. 88

Plan EPP88675 is Approved under the Land Title Act on February 6, 2019 [date].

[signature] Approving Officer

JOHN GREER

[Fill in name of Approving Officer]

CITY OF VANCOUVER

[Fill in name of municipality, or as case may be]

[include file reference if desired]

## NEW WESTMINSTER LAND TITLE OFFICE

Mar-22-2019 12:42:05.003

EPP88675

SURVEY PLAN CERTIFICATION  
PROVINCE OF BRITISH COLUMBIA

0975

PAGE 1 OF 2 PAGES

By incorporating your electronic signature into this form you are also incorporating your electronic signature into the attached plan and you

(a) represent that you are a subscriber and that you have incorporated your electronic signature to the attached electronic plan in accordance with section 168.73 (3) of the Land Title Act, RSBC 1996 c.250; and

(b) certify the matters set out in section 168.73 (4) of the Land Title Act, Each term used in this representation and certification is to be given the meaning ascribed to it in part 10.1 of the Land Title Act.

Michael Rinsma  
BWRUC2

Digitally signed by Michael Rinsma  
BWRUC2  
DN: c=CA, cn=Michael Rinsma  
BWRUC2, o=BC Land Surveyor,  
ou=Verify ID at www.juricert.com/  
LKUP.cfm?id=BWRUC2  
Date: 2018.12.21 09:52:45 -08'00'

## 1. BC LAND SURVEYOR: (Name, address, phone number)

MICHAEL RINSMA

204 - 218 BLUE MOUNTAIN STREET

mike@targetlandsurveying.ca

COQUITLAM

BC V3K 4H2

☐ Surveyor General Certification [For Surveyor General Use Only]

## 2. PLAN IDENTIFICATION:

Control Number: 154-541-4765

Plan Number: EPP88675

This original plan number assignment was done under Commission #: 975

LTO Document Reference: CA7407837

## 3. CERTIFICATION:

☒ Form 9 ☐ Explanatory Plan ☐ Form 9A

I am a British Columbia land surveyor and certify that I was present at and personally superintended this survey and that the survey and plan are correct.

The field survey was completed on: 2018 December 14 (YYYY/Month/DD)

The checklist was filed under ECR#:

The plan was completed and checked on: 2018 December 21 (YYYY/Month/DD)

220219

☒ None ☐ Strata Form S☒ None ☐ Strata Form U1 ☐ Strata Form U1/U2Arterial Highway ☐Remainder Parcel (Airspace) ☐4. ALTERATION: ☐

## PLAN EPP88675

SCALE 1 : 500



Michael Rinsinc, BCLS 975

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

Mar-22-2019 12:42:05.004

CA7407838 CA7407839

PAGE 1 OF 12 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Kristian Nickolas  
Arciaga F8GH97

Digitally signed by Kristian Nickolas Arciaga F8GH97  
Date: 2019.03.01 10:14:08 -08'00'

## 1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Meghan Sedmak, Paralegal, of Fasken Martineau Dumoulin LLP

Barristers &amp; Solicitors

2900 - 550 Burrard Street

Vancouver

BC V6C 0A3

Telephone: 604-631-3131

LTO No.: 11565

File No.: 240584.00107/18386

File No. LS-18-01528-004 (Shared Use Loading Agreement)

Document Fees: \$143.16

Deduct LTSA Fees? Yes ☒

## 2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

**NO PID NMBR LOT 1 BLOCK 54 DISTRICT LOT 540 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP88675**

STC? YES

Related Plan Number: **EPP88675**

## 3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**SEE SCHEDULE**

## 4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

## 5. TRANSFEROR(S):

**4184 INVESTMENTS LTD. (INCORPORATION NO. BC0559518)  
CANADIAN WESTERN BANK, AS TO PRIORITY**

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

**CITY OF VANCOUVER**

453 WEST 12TH AVENUE

VANCOUVER

V5Y 1V4

BRITISH COLUMBIA

CANADA

## 7. ADDITIONAL OR MODIFIED TERMS:

N/A

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

Officer Signature(s)

BARBARA VANDERBURGH

Barrister &amp; Solicitor

2900 - 550 Burrard Street

Vancouver, BC V6C 0A3

604 631 4937

Execution Date		
Y	M	D
19	01	09

Transferor(s) Signature(s)

4184 INVESTMENTS LTD. by its  
authorized signatory(ies):

Print Name: C. Dino Bonnis

Print Name:

## OFFICER CERTIFICATION:

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

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE 2 of 12 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

NICHOLAS KING

Commissioner for Taking Affidavits in British Columbia

#2200, 666 Burrard Street  
Vancouver, BC V6C 2X8  
Expires: September 30, 2021

(As to all signatures)

Y	M	D
19	01	21

CANADIAN WESTERN BANK by its  
authorized signatory(ies):

Print Name: STEPHEN JACOBSON  
AVP

Print Name: CHRIS TONG  
AVP

JOANNA TRACK

Solicitor

453 WEST 12TH AVENUE  
VANCOUVER, B.C. V5Y 1V4

19	02	25
----	----	----

CITY OF VANCOUVER by its  
authorized signatory:

HEIDI GRANGER

**OFFICER CERTIFICATION:**

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

LAND TITLE ACT  
FORM E

## SCHEDULE

PAGE 3 OF 12 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

Section 219 Covenant  
Article 2, Page 7

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

granting the above Section 219 Covenant priority  
over Mortgage CA3574502 and Assignment of  
Rents CA3574503

Page 12

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION



## TERMS OF INSTRUMENT - PART 2

### SHARED USE LOADING AGREEMENT 3123-3129 WEST BROADWAY

#### Introduction

- A. It is understood and agreed that this Agreement will be read as follows:
  - I. the Transferor, 4184 INVESTMENTS LTD., is called the "Owner"; and
  - II. the Transferee, CITY OF VANCOUVER, is called the "City" or "City of Vancouver" when referring to the corporate entity and "Vancouver" when referring to geographical location";
- B. The Owner is the registered owner of the Lands;
- C. There is a building situated on the Lands known as the "Hollywood Theatre" (the "Theatre");
- D. The Owner made an application under Development Application no. DP-2018-00039 (the "Development Application") to develop on the Lands subject to, among other things, fulfilment of the condition that, prior to the issuance of a Development Permit, the Owner, at no cost to the City, make arrangements to the satisfaction of the General Manager of Engineering Services and the Director of Legal Services for a shared use loading agreement for the sharing of one loading space between the commercial users and Theatre users in the proposed development; and
- E. To satisfy the foregoing condition, the Owner has agreed to enter into this Agreement with the City.

#### Consideration

NOW THEREFORE THIS AGREEMENT WITNESSES that for Ten (\$10) Dollars and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged and agreed to by the parties), the parties, for themselves and their successors and assigns, hereby covenant and agree as follows:

#### Terms of Agreement

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

- 1.1 **Defined Terms.** Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:
  - (a) "Agreement" means this agreement, including the foregoing Recitals, and any schedules attached hereto;
  - (b) "Building" means the buildings which are or will be constructed on the Lands following issuance of, and pursuant to, the Development Permit;



- (c) **"City Engineer"** means the chief administrator, from time to time, of the City's Engineering Services Department and his or her successors in function and their respective nominees;
- (d) **"City Personnel"** means all of the City's elected and appointed officials, officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and invitees;
- (e) **"Commercial Users"** means the owners and tenants of the retail premises within the Building, and their respective invitees;
- (f) **"Development Application"** has the meaning set out in Recital D;
- (g) **"Development Permit"** means a permit issued by the City authorizing development on the Lands (or any portion of the Lands) as contemplated by the Development Application;
- (h) **"Director of Legal Services"** means the chief administrator, from time to time, of the City's Legal Services Department and his or her successors in function and their respective nominees;
- (i) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (j) **"Lands"** means the parcels of land situate in the City of Vancouver, British Columbia, and legally described in Item 2 of the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and includes any parcels into which such lands are consolidated or further subdivided (including, without limitation, a subdivision pursuant to the *Land Title Act* and a subdivision pursuant to the *Strata Property Act*);
- (k) **"Loading Space"** means one (1) "Loading Space, Class B", as such term is defined in the Parking By-law, designated and equipped for the loading and unloading of goods, supplies, equipment and other things to and from the Lands and the Building, as shown on the sketch attached as Schedule "A" hereto and marked as "Commercial Loading and Hollywood Theatre Loading";
- (l) **"Losses"** means all actions, causes of action, claims, compensation, costs, demands, damages, expenses, fines, judgements, legal obligations, liabilities, losses, orders, penalties, suits and builders liens of every nature or kind whatsoever (whether direct, indirect or consequential, including, without limitation, in respect of, incidental to or resulting from any consequential injuries to or death of persons or damage to property or loss of profits and loss of use and damages arising out of delays) and all legal costs on a solicitor-and-own-client basis;
- (m) **"LTO"** means the land title office for the jurisdiction in which the Lands are situate;
- (n) **"Occupancy Permit"** means the first permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing the

use and occupation of any new building, development or partial development on the Lands or any portion of the Lands;

- (o) "Owner" means the Transferor and any successors in title to the Lands or a portion of the Lands and, without limiting the generality of the foregoing, if the Lands are subdivided by way of a strata plan under the *Strata Property Act*, then "Owner" includes the strata corporation thereby created;
- (p) "Parking By-law" means City By-law No. 6059, as amended, supplemented and restated from time to time;
- (q) "Rules and Regulations" means any rules and regulations with respect to the use of and access to the Loading Space which are implemented or issued by the Owner from time to time during such time as this Agreement is registered against the Lands, provided that no such rules and regulations will be enforceable to the extent that they are inconsistent with this Agreement;
- (r) "*Strata Property Act*" means the *Strata Property Act*, S.B.C. 1998, c. 43, and all amendments thereto and re-enactments thereof;
- (s) "Theatre Users" means the owners, operators, and users of the Theatre, and their respective invitees; and
- (t) "*Vancouver Charter*" means the *Vancouver Charter*, S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof.

## 1.2 Interpretation.

- (a) Any interest in land created hereby, including the interests noted in the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and found in certain Articles, Sections, paragraphs or parts of this Agreement, will be construed, interpreted and given force in the context of those portions of this Agreement:
  - (i) that define the terms used in this Agreement;
  - (ii) that deal with the interpretation of this Agreement; and
  - (iii) that are otherwise of general application.
- (b) The word "including" when following any general statement, term, or matter is not to be construed to limit such general statement, term, or matter to the specific items set forth immediately following such word or to similar items whether or not non-limiting language such as "without limitation" or "but not limited to" or words of similar import are used with reference thereto, but rather such general statement, term, or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of such general statement, term, or matter.
- (c) Any Schedules attached to this Agreement constitute an integral part of this Agreement.

- (d) The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.
- (e) Words importing the singular number only will include the plural and *vice versa*, words importing the masculine gender will include the feminine and neuter genders and *vice versa*, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and *vice versa*.
- (f) Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (g) This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached is fully executed and to subsequent amendments to or re-enactments or replacements of such statute or regulations.

## ARTICLE 2 SHARED USE

**2.1 Section 219 Covenant.** Pursuant to Section 219 of the *Land Title Act* of British Columbia, the Owner covenants with the City in respect of the use of any portion of the Lands as follows:

- (a) the Owner will ensure that, at all times after the City issues the Occupancy Permit, all Theatre Users will, together with all Commercial Users, have shared access to and shared use of the Loading Space. Such use will be subject to the following additional restrictions and provisos:
  - (i) access to and use of the Loading Space by either the Commercial Users or the Theatre Users will not be unreasonably withheld or interfered with by, or at the instigation of, either such group; and
  - (ii) the Rules and Regulations; and
- (b) the Owner will ensure that, at all times after the City issues the Occupancy Permit, a contact person is designated to represent the Theatre Users and a contact person is designated to represent the Commercial Users (which may be the same person), which person(s) will be responsible for any coordination that is required between the Theatre Users and the Commercial Users in relation to the shared use of the Loading Space.

### ARTICLE 3 RELEASE AND INDEMNITY

- 3.1 **Release.** Except in each case attributable to the wrongful intentional acts of the City or the City Personnel, the Owner hereby releases the City and all City Personnel from any and all liability for any Losses of any kind that the Owner might experience in connection with this Agreement. This release will survive release or discharge of this Agreement.
- 3.2 **Indemnity.** Except in each case attributable to the wrongful intentional acts of the City or the City Personnel, the Owner will indemnify the City and all City Personnel and will save each of them harmless for and from any Losses suffered, incurred or experienced by any person or entity in connection with this Agreement. This indemnity will survive release or discharge of the Section 219 Covenant granted hereunder.

### ARTICLE 4 NOTICES

- 4.1 **Notice.** Any notice, approval or request required or permitted to be given under this Agreement will be in writing and may be given by delivering such notice, approval or request, or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia:

- (a) in the case of the Owner addressed to it at:

4184 Investments Ltd.  
300 - 526 Granville Street  
Vancouver, BC V6C 1W6  
Attention: Dino Bonnis

- (b) and in the case of the City addressed to it at:

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

with concurrent copies to the City Engineer and the Director of Legal Services,

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery of such notice, approval or request, or on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.



## ARTICLE 5 MISCELLANEOUS

- 5.1 **Agreement Runs With the Lands.** The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated whether by strata plan, subdivision plan or otherwise, provided that notwithstanding anything to the contrary in this Agreement, the liability of the Owner pursuant to this Agreement shall be limited to liability arising while such Owner is the owner of the Lands.
- 5.2 **Amendments.** Any amendment to this Agreement will have no force or effect unless in writing and the City and the Owner have signed the amendments.
- 5.3 **City Court Costs.** In an action to enforce this Agreement in respect of which the Court determines that the position of the City will prevail, the City will be entitled to court costs on a solicitor-client basis.
- 5.4 **City's Other Rights Unaffected.** Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter*, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 5.5 **Damages Insufficient.** The Owner acknowledges that damages may be an inadequate remedy for the City for any breach by the Owner of its obligations under this Agreement and the Owner agrees that the City is entitled to seek and obtain an order for specific performance, injunctive relief (whether prohibitory, mandatory or otherwise) or other equitable relief in connection with any default by the Owner under this Agreement.
- 5.6 **Entire Agreement.** This is the entire agreement between the City and the Owner concerning its subject and it may be changed only in a document executed by the City and the Owner.
- 5.7 **Enurement.** This Agreement will enure to the benefit of and will be binding upon the parties hereto and their respective successors, administrators and permitted assigns.
- 5.8 **Further Assurances.** The parties to this Agreement will do such things and execute such documents and in such form as may reasonably be necessary in order to perfect the intention of this Agreement.
- 5.9 **Joint and Several.** Any covenants, agreements, conditions, or promises made by two or more persons shall be construed as joint as well as several, including any payments or compensation to be paid pursuant to this Agreement. If the Owner consists of more than one person, each such person will be jointly and severally liable to perform the Owner's obligations under this Agreement.
- 5.10 **No Waiver.** No consent or waiver, expressed or implied, by the City of any default by the Owner in observing or performing its obligations under this Agreement will be effective

unless given in writing, or be deemed or construed to be a consent or waiver of any other default. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. Failure on the part of the City to complain of any act or failure to act by the Owner or to declare the Owner in default, irrespective of how long such failure continues, will not constitute a waiver by the City of its rights under this Agreement or at law or in equity. No waiver by the City of any breach of this Agreement operates as a waiver of any other breach of this Agreement.

**5.11 Registration.** The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the Rezoning or any Development Permit; and
- (c) which the Director of Legal Services has determined, in his or her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

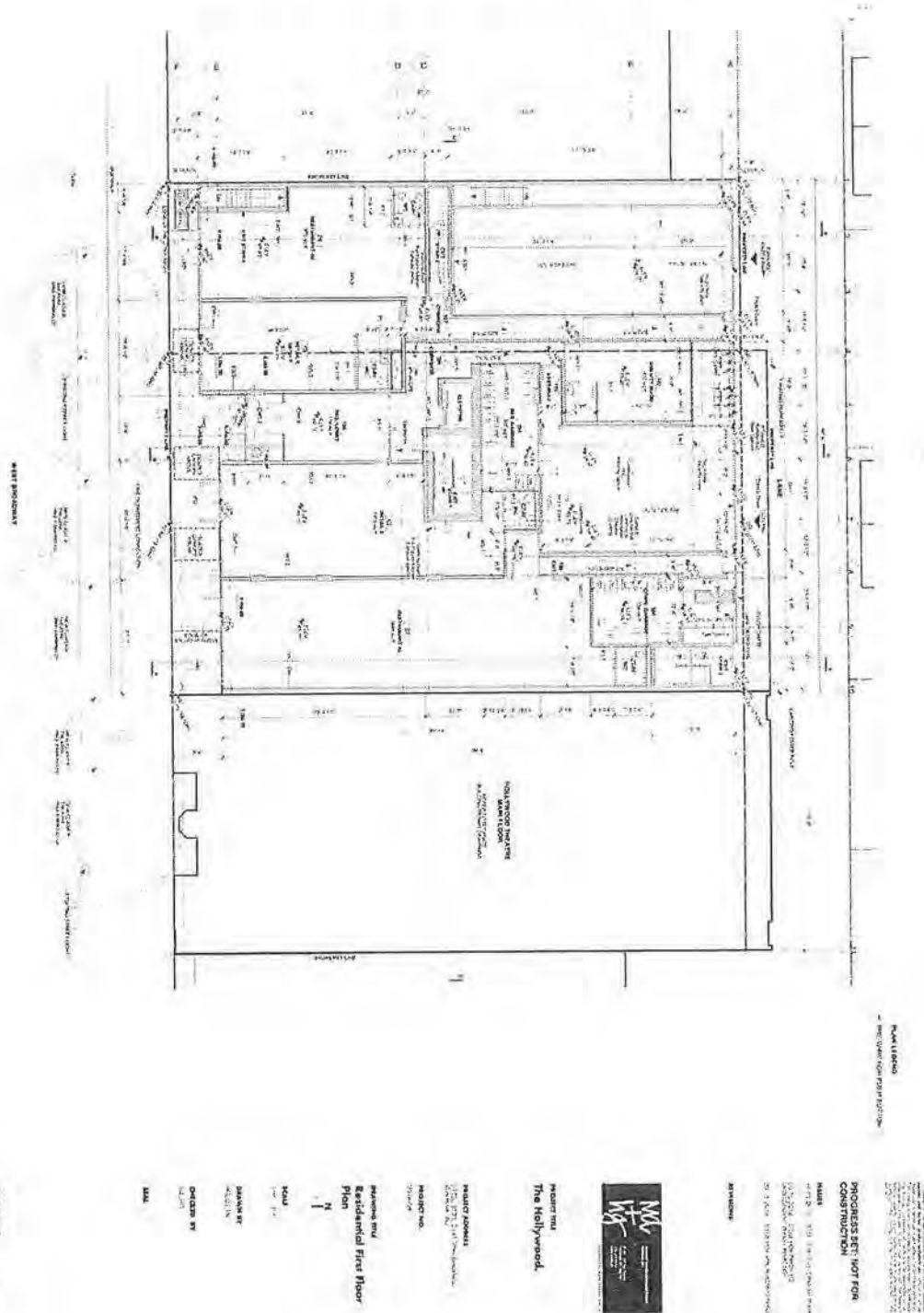
**5.12 Remedies Cumulative.** The remedies provided for in this Agreement will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City in this Agreement will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity. No reference to nor exercise of any specific right or remedy under this Agreement or at law or in equity by the City will prejudice, limit or preclude the City from exercising any other such right or remedy. No such right or remedy will be exclusive or dependent upon any other such right or remedy, but the City may, from time to time, exercise any one or more of such rights or remedies independently, successively, or in combination.

**5.13 Severability.** If a court of competent jurisdiction finds that any provision contained in this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provisions of this Agreement which will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein and such other provisions will be binding and enforceable to the fullest extent permitted at law or in equity.

**5.14 Time of Essence.** Time will be of the essence of this Agreement. If either party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached.

# SCHEDULE A SKETCH SHOWING SHARED LOADING SPACE



[01079936v1]

Shared Use Loading Agreement  
3123-3129 W Broadway

## CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charges" means the Mortgage registered under number CA3574502 and the Assignment of Rents registered under number CA3574503;
- (b) "Existing Chargeholder" means CANADIAN WESTERN BANK;
- (c) "New Charges" means the registrable charges and encumbrances created by and contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

END OF DOCUMENT



Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.732, and a true copy, or a copy of that true copy, is in your possession.

Kristian Nickolas  
Arciaga F8GH97

Digitally signed by Kristian  
Nickolas Arciaga F8GH97  
Date: 2019.04.15 15:21:48  
-07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Megan Sedmak, Paralegal, of Fasken Martineau Dumoulin LLP

Barristers & Solicitors

2900 - 550 Burrard Street

Vancouver

BC V6C 0A3

Telephone: 604-631-3131

LTO No.: 11565

File No.: 240584.00536/18386

Document Fees: \$93.20

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID] [LEGAL

DESCRIPTION]

030-741-131

**LOT 1 BLOCK 54 DISTRICT LOT 540 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP88675**

3. APPLICATION FOR DEPOSIT OF:

PLAN TYPE

PLAN NUMBER

CONTROL NUMBER

NUMBER OF NEW  
LOTS CREATED

Reference or Explanatory

EPP91667

155-441-6196

0

4. OWNER(S) (updated owner(s) name(s), occupation(s), postal address and postal code)

**4184 INVESTMENTS LTD.**

300 - 526 GRANVILLE STREET

VANCOUVER

V6C 1W6

BRITISH COLUMBIA

CANADA

Incorporation No

BC0559518

5. ADDITIONAL INFORMATION:

## NEW WESTMINSTER LAND TITLE OFFICE

Apr-15-2019 15:47:03.002

EPP91667

PAGE 1 OF 2 PAGES

SURVEY PLAN CERTIFICATION  
PROVINCE OF BRITISH COLUMBIA

0975

By incorporating your electronic signature into this form you are also incorporating your electronic signature into the attached plan and you  
 (a) represent that you are a subscriber and that you have incorporated your electronic signature to the attached electronic plan in accordance with section 168.73 (3) of the Land Title Act, RSBC 1996 c.250; and  
 (b) certify the matters set out in section 168.73 (4) of the Land Title Act,  
 Each term used in this representation and certification is to be given the meaning ascribed to it in part 10.1 of the Land Title Act.

Michael Rinsma  
BWRUC2

Digitally signed by Michael Rinsma  
 DN: c=CA, cn=Michael Rinsma  
 BWRUC2, o=BC Land Surveyor,  
 ou=Verify ID at www.juricert.com/  
 LKUP.cfm?id=BWRUC2  
 Date: 2019.04.04 15:16:36 -07'00'

1. BC LAND SURVEYOR: (Name, address, phone number)

MICHAEL RINSMA

204 - 218 BLUE MOUNTAIN STREET

mike@targetlandsurveying.ca

COQUITLAM

BC V3K 4H2

☐ Surveyor General Certification [For Surveyor General Use Only]

2. PLAN IDENTIFICATION:

Control Number: 155-441-6196

Plan Number: EPP91667

This original plan number assignment was done under Commission #: 975

LTO Document Reference: CA7448178

3. CERTIFICATION:

☐ Form 9☒ Explanatory Plan☐ Form 9A

I am a British Columbia land surveyor and certify that

this plan was completed and checked on: 2019 March 28 (YYYY/Month/DD)

that the checklist was filed under ECR#: 223373

and that the plan is correct in accordance with Land Title Office records.

☒ None ☐ Strata Form S☒ None☐ Strata Form U1☐ Strata Form U1/U2Arterial Highway ☐Remainder Parcel (Airspace) ☐4. ALTERATION: ☐

# EXPLANATORY PLAN OF STATUTORY RIGHT OF WAY OVER PART OF LOT 1 BLOCK 54 DISTRICT LOT 540 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP88675

PLAN EPP91667

FOR ACCESS PURPOSES

PURSUANT TO SECTION 99(1)(e), Land Title Act

B.C.G.S. 92G.025

SCALE 1 : 250

2.5 0 5 10  
ALL DISTANCES ARE IN METRES

The intended plot size of this plan is 432mm in width  
by 280mm in height (B size) when plotted at a scale of 1:250.



## LEGEND

m<sup>2</sup> DENOTES SQUARE METRES

INTEGRATED SURVEY AREA No. 31, VANCOUVER

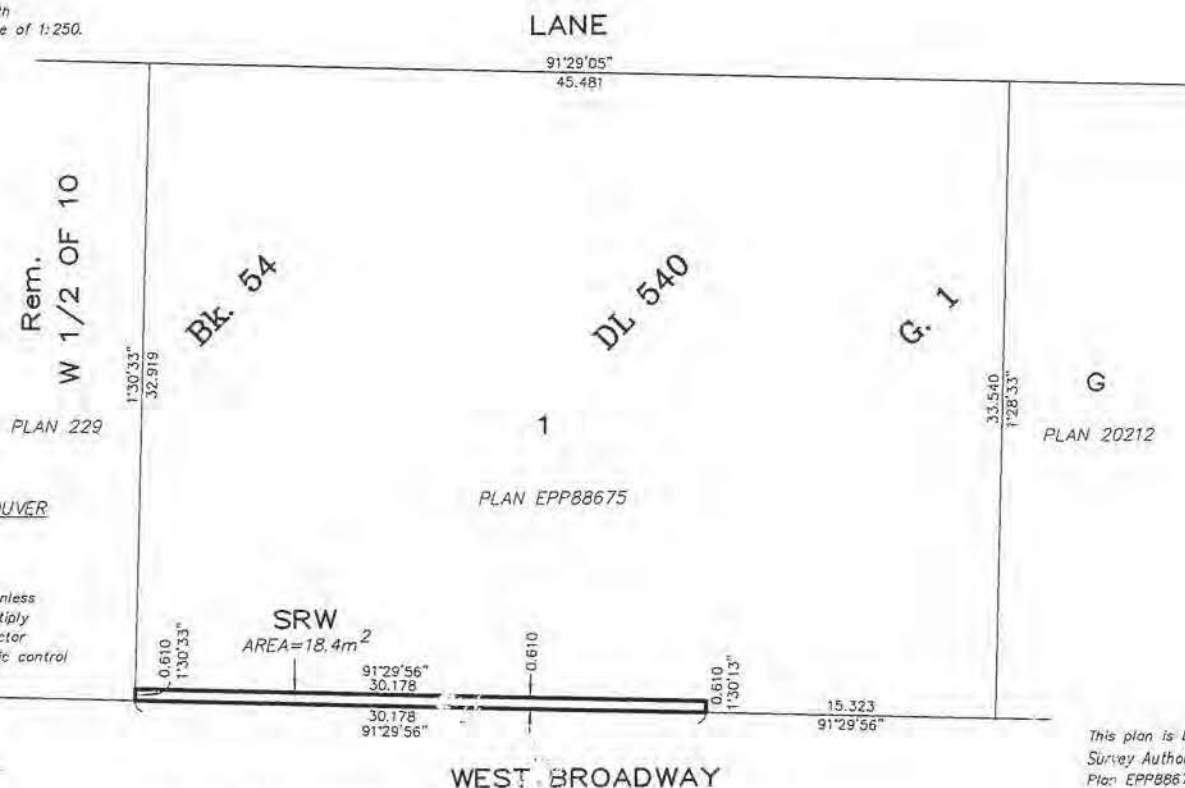
NAD 83 (CSRS) 4.0.0.BC.1.GVRD

Bearings are grid derived from EPP88675

This plan shows horizontal ground-level distances unless  
otherwise specified. To compute grid distances, multiply  
ground-level distances by the average combined factor  
of 0.99960215 which has been derived from geodetic control  
monuments V-3273 and V-997.

**TARGET**  
LAND SURVEYING  
www.targetlandsurveying.ca  
FILE: N3497-Ex Plan SRW

© TARGET LAND SURVEYING (NW) LTD. 2019



THIS PLAN LIES WITHIN THE METRO VANCOUVER REGIONAL DISTRICT

This plan is based on the following Land Title and  
Survey Authority of BC records:  
Plan EPP88675

Michael Rinsma, BCLS 975  
26th day of February, 2019

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Kristian Nickolas  
Arciaga F8GH97

Digitally signed by Kristian  
Nickolas Arciaga F8GH97  
Date: 2019.04.15  
15:23:27 -07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Mayne Young, Paralegal of Fasken Martineau DuMoulin LLP

Barristers and Solicitors

2900 - 550 Burrard Street

Vancouver

BC V6C 0A3

LTO Client No. 11565

Telephone No. 604 631 3131

Matter No. 240584.00536/15325

File No.: LS-18-01528-006 (Bldg Setback)

Document Fees: \$593.28

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

030-741-131

LOT 1 BLOCK 54 DISTRICT LOT 540 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP88675

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.

(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

4184 INVESTMENTS LTD., INC. NO. BC0559518

CANADIAN WESTERN BANK (AS TO PRIORITY)

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

CITY OF VANCOUVER

453 WEST 12TH AVENUE

VANCOUVER

BRITISH COLUMBIA

V5Y 1V4

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

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

Officer Signature(s)

BARBARA VANDERBURGH

Barrister & Solicitor

2900 - 550 Burrard Street

Vancouver, BC V6C 0A3

604 631 4937

Execution Date

Y	M	D
19	04	11

Transferor(s) Signature(s)

4184 INVESTMENTS LTD. by its  
authorized signatory(ies):

Print Name: C. Dino Bonnis

OFFICER CERTIFICATION:

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

LAND TITLE ACT  
FORM D

EXECUTIONS CONTINUED

PAGE 2 of 23 PAGES

Officer Signature(s)

Execution Date

JOANNA TRACK

Solicitor

453 WEST 12TH AVENUE  
VANCOUVER, B.C. V5Y 1V4

Y	M	D
19	04	12

Transferor / Borrower / Party Signature(s)

CITY OF VANCOUVER by its  
authorized signatory:

HEIDI GRANGER

NICHOLAS KING

Commissioner for Taking Affidavits in British Columbia

#2200, 666 Burrard Street  
Vancouver, BC V6C 2X8  
Expires: September 30, 2021

(As to all signatures)

19	04	09
----	----	----

CANADIAN WESTERN BANK by its  
authorized signatory(ies):

Print Name: CHRIS TONG

Print Name: DARREN YOUNG

OFFICER CERTIFICATION:

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

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		over part shown in bold outline on Plan EPP91667 Section 2.1

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Statutory Right of Way priority over Mortgage CA3574502 and Assignment of Rents CA3574503

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 3.1

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Covenant priority over Mortgage CA3574502 and Assignment of Rents CA3574503

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 4.1

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Covenant priority over Mortgage CA3574502 and Assignment of Rents CA3574503

LAND TITLE ACT  
FORM E

SCHEDULE

PAGE 4 OF 23 PAGES

NATURE OF INTEREST  
Equitable Charge

CHARGE NO.

ADDITIONAL INFORMATION  
Section 6.1

NATURE OF INTEREST  
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION  
granting the above Equitable Charge priority over  
Mortgage CA3574502 and Assignment of Rents  
CA3574503

11

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION



**TERMS OF INSTRUMENT - PART 2**  
**STATUTORY RIGHT OF WAY**  
**PUBLIC ACCESS/BUILDING SETBACK**

**Introduction**

- A. It is understood and agreed that this Agreement will be read as follows:
- (1) the Transferor, 4184 INVESTMENTS LTD., is called the "Owner"; and
  - (2) the Transferee, CITY OF VANCOUVER, is called the "City" when referring to the corporate entity and "City of Vancouver" when referring to geographical location;
- B. The Owner is the registered and beneficial owner of the Lands;
- C. The Owner made an application under Development Application no. DP-2018-00039 (the "Development Application") to develop on the Lands subject to, among other things, fulfilment of the condition that, prior to the issuance of a Development Permit, the Owner make arrangements for the provision of a surface statutory right of way in favour of the City for public pedestrian use over the south 2 feet of the Lands adjacent to West Broadway; and
- D. To satisfy the foregoing condition, the Owner has agreed to enter into this Agreement with the City.

**Consideration**

In consideration of the payment of one dollar and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties) the Owner and the City agree as follows:

**Terms of Agreement**

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATION**

- 1.1 **Defined Terms.** Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:
- (a) "Agreement" means this agreement and all schedules attached hereto;
  - (b) "Approval" means written approval by the City Engineer on completion of the Owner's Works in accordance with the terms and conditions of this Agreement;
  - (c) "Approved Plans and Specifications" means the plans and specifications for the Owner's Works within the SRW Area approved by the City Engineer pursuant to Section 3.1(d);



- (d) "Building Permit" means a building permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing construction of any New Building on the Lands, or any portion of the Lands;
- (e) "City Engineer" means the chief administrator from time to time of the City's Engineering Services Department and his successors in function and their respective nominees;
- (f) "City Personnel" means all of the City's elected and appointed officials, officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and invitees;
- (g) "day" means a calendar day;
- (h) "Development Permit" means a permit issued by the City authorizing development on the Lands (or any portion of the Lands) as contemplated by the Development Application;
- (i) "Director of Legal Services" means the chief administrator from time to time of the Legal Services Department of the City and her/his successors in function and their respective nominees;
- (j) "*Land Title Act*" means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (k) "Lands" means the parcel of land situate in the City of Vancouver, British Columbia, and legally described in Item 2 of the Form C - General Instrument - Part 1, and includes any parcels into which such land is consolidated or further subdivided (including a subdivision pursuant to the *Land Title Act* and a subdivision pursuant to the *Strata Property Act*);
- (l) "Landscaping" means all landscaping, within the SRW Area, including but not limited to lawns, trees, shrubs, garden flowers and other living things;
- (m) "Losses" means all damages, losses, costs, actions, causes of action, claims, demands, judgements, builders liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays);
- (n) "LTO" means the land title office for the jurisdiction in which the Lands are situate;
- (o) "Modification Agreement" has the meaning described in Section 2.7;
- (p) "New Building" means any building, improvement or structure constructed on the Lands in accordance with a Development Permit after the date of execution of this Agreement by the Owner;
- (q) "Occupancy Permit" means a municipal permit authorizing the use and occupation of all or part of any New Building on the Lands as authorized by a Development Permit;

- (r) **"Owner"** means the Transferor and its successors and assigns and, without limitation, if the Lands are subdivided by way of a strata plan under the *Strata Property Act*, then "Owner" includes the strata corporation thereby created;
- (s) **"Owner's Works"** means all work to be done by the Owner within the SRW Area pursuant to the Approved Plans and Specifications and pursuant to any Development Permit including a sidewalk system and all other improvements and items necessary or desirable or incidental to a sidewalk system and which may include, without limitation, pavement or concrete or other surfaces, an appropriate base, supports, curbs, lighting, drainage systems, Landscaping thereon and all related elements and amenities to be installed and other services, utilities and facilities which may be necessary or desirable, in the opinion of the City Engineer and to the satisfaction of the City Engineer, in connection with the construction, maintenance, repair, replacement, or use of the SRW Area and all renewals, substitutions, additions, relocations and reconstructions thereof in and over or under the SRW Area;
- (t) **"person"** means any individual, association, society, corporation, firm, joint stock company, joint venture, partnership, trust, or unincorporated organization or other legal entity;
- (u) **"Prime Rate"** means at any time, the per annum rate of interest published by the main branch in the City of Vancouver of the Bank of Montreal, or its successor at such time, as its reference rate for setting rates of interest on loans of Canadian dollars to customers in Canada and referred to by such bank as its "prime rate", provided however that if such bank publishes more than one such reference rate at any time, the Prime Rate will be the highest thereof, and provided further that, if a court holds that this definition of Prime Rate is vague, uncertain or otherwise defective, then the Prime Rate will be three percent (3%) greater than the per annum rate of interest established by the Bank of Canada as the rate payable on overnight loans by Schedule I - Canadian Chartered Banks;
- (v) **"Registration Plan"** means a survey plan satisfactory to the City Engineer, prepared in registrable form by a B.C. Land Surveyor in good standing in the Province of British Columbia defining the boundaries of the SRW Area;
- (w) **"SRW Area"** means that portion of the Lands shown within bold outline on Explanatory Plan EPP91667, a reduced copy of which plan is attached hereto as Schedule A; and
- (x) **"Strata Property Act"** means the *Strata Property Act*, S.B.C. 1998, c. 43, and all amendments thereto and re-enactments thereof.

## 1.2 Interpretation.

- (a) **Headings.** The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement.

- (b) **Number.** Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.
- (c) **Schedules.** Any Schedules attached to this Agreement constitute an integral part of this Agreement.
- (d) **Including.** The word "including" when following any general statement, term, or matter is not to be construed to limit such general statement, term, or matter to the specific items set forth immediately following such word or to similar items whether or not non limiting language such as "without limitation" or "but not limited to" or words of similar import are used with reference thereto, but rather such general statement, term, or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of such general statement, term, or matter.
- (e) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
- (f) **Reference to Statute.** Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is executed by the City and to subsequent amendments to or replacements of the statute or regulations.

## ARTICLE 2 STATUTORY RIGHT OF WAY

2.1 **Grant of Statutory Right of Way.** Pursuant to Section 218 of the *Land Title Act*, the Owner agrees that the Owner grants to the City absolutely and in perpetuity the full, free and uninterrupted right, liberty, easement, and statutory right of way on, over, and upon the SRW Area at all times hereafter for the purpose of:

- (a) permitting all members of the public at their will and pleasure to pass, be on, and repass along and across the surface of the SRW Area, or any portion thereof (24 hours a day, seven (7) days a week):
  - (i) on foot;
  - (ii) in wheelchairs or similar devices which afford mobility to injured or disabled pedestrians;
  - (iii) using baby carriages, children's strollers, or similar devices which afford mobility to young pedestrians and their parents/guardians; or
  - (iv) walking or carrying a bicycle, skateboard or similar device, but expressly excluding the right to ride or use a bicycle, skateboard, motorized vehicle or any other mode of conveyance (except those expressly permitted by Sections 2.1(a)(ii) and 2.1(a)(iii)); and

- (b) permitting the City and City Personnel to enter on the SRW Area with workers, vehicles, equipment, tools and materials for the purpose of inspecting the SRW Area and the Owner's Works and carrying out any of the Owner's obligations as set out in this Agreement if the Owner fails, within applicable cure periods, to fulfil such obligations, including, without limitation, the obligation to maintain repair and replace when necessary, and the following will apply:
  - (i) the City will give thirty (30) days' written notice to the Owner of the City's intention to carry out such work, which notice will include a reasonable description of the Owner's default, provided that no notice will be required in the event of emergency or apprehended emergency, in the sole opinion of the City Engineer; and
  - (ii) if the Owner is unable to rectify such default within thirty (30) days after receipt of the notice in subparagraph (i) above (except that if the Owner, by reason of the nature of the default, cannot in the opinion of the City Engineer rectify it within thirty (30) days, the Owner will have a further reasonable period, as agreed to by the City Engineer, to rectify so long as the Owner proceeds promptly and diligently), then the Owner covenants to forthwith pay to the City all costs and expenses incurred by the City undertaking such work, including all fees paid to expert consultants plus an additional twenty percent (20%) of all such costs to cover administrative overhead upon the City issuing invoices for same, together with interest on all such amounts at the Prime Rate plus three percent (3%) per annum commencing as of the fifth (5<sup>th</sup>) business day after the date of delivery of each such invoice to the Owner; and
- (c) exercising, enforcing and taking the benefit of such by-laws, statutes and laws that could be exercised, enforced and taken the benefit of if the SRW Area were dedicated street or lane in the City of Vancouver.

**2.2 City Not Bound.** In the event that the City elects to undertake any of the Owner's obligations under this Agreement then, notwithstanding any other provisions of this Agreement:

- (a) the City will not be bound by any timing, scheduling or deadline requirements contained in this Agreement or otherwise;
- (b) the City will not be bound by any design or construction obligations of the Owner as set out in this Agreement or otherwise; and
- (c) nothing in this Article 2 will limit, modify or amend the obligations of the Owner to, at its sole expense, design, construct, install, complete and maintain the Owner's Works in accordance with this Agreement and any Development Permit.

**2.3 Use of SRW Area by Public.** The City will not give permission to the public to pass, be on and to repass on the SRW Area, or any portion thereof, until completion of the Owner's Works and the issuance of Approval, but on issuance of the Approval the City's permission will be deemed to have been given and the following will apply:



- (a) the City may withdraw and reinstate such permission to the public from time to time as the City will see fit by notice in writing to the Owner;
- (b) for so long as the City gives its permission as aforesaid, the Owner will, following the completion of construction of the Owner's Works, permit the public to pass and repass along and across the SRW Area, at all times; and
- (c) the City Engineer may give such notice for the City.

2.4 **Interruption of Public Use by Owner.** The Owner may temporarily interrupt the public use and enjoyment of the SRW Area but only with the prior written consent of the City Engineer and to the extent reasonably necessary for the Owner to:

- (a) carry out maintenance, repair and replacement work which the Owner is expressly permitted or required to carry out under this Agreement; or
- (b) carry out maintenance, repair and replacement work to any New Building;

provided however that such prior written consent will not be required in the event of an emergency or apprehended emergency.

2.5 **No City Obligation.** Nothing in this Agreement implies that the City has any obligation to the Owner or to anyone else to exercise any of its rights under Section 2.1.

2.6 **SRW Not Interrupted by Default of the City.** No default by the City with respect to the Statutory Right of Way and no act or failure to act by the City in connection with the Statutory Right of Way will result or be deemed to result in the interruption, suspension, or termination of the right of way, and the Owner will refrain from seeking any judgment, order, declaration, or injunction to that effect.

2.7 **Modification of Agreement.** If a Registration Plan is required in accordance with Section 3.1(e)(viii)(B), the Owner, at its sole cost and expense, will arrange for the preparation, in registrable form and to the satisfaction of the Director of Legal Services of a modification of, or replacement for, this Agreement (the "**Modification Agreement**") which will redefine the SRW Area to be the area defined by the Registration Plan prepared in accordance with Section 3.1(e)(viii)(B). The Owner will deliver the Modification Agreement to the Director of Legal Services for execution by the City and once fully executed the Owner, at its sole cost and expense, will take all necessary steps to register the Modification Agreement and the Registration Plan against title to the Lands at the LTO to the satisfaction of and in priority acceptable to the Director of Legal Services, provided that until this Agreement is modified, the statutory right of way set out in this Agreement will remain registered as a charge against the Lands.

2.8 **City Not Responsible for Enforcement.** The Owner acknowledges and agrees that the City will not be responsible for the enforcement of any restriction or the exercise of any right or obligation noted in Section 2.1.

2.9 **Statutory Right of Way Necessary.** The statutory right of way is necessary for the operation and maintenance of the City's undertaking.

- 2.10 **Other Sections Form Part of Statutory Right of Way.** The Owner covenants and agrees with the City that Sections 5.1 to 10.22 inclusive of this Agreement will be deemed to be included in and form part of this statutory right of way made pursuant to Section 218 of the *Land Title Act*.

**ARTICLE 3  
DESIGN, CONSTRUCTION, INSTALLATION  
OF THE OWNER'S WORKS AND HOLD ON PERMITS**

- 3.1 **Section 219 Covenant.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants with the City in respect of the use of any portion of the Lands as follows:
- (a) the Lands will not be used in a manner contrary to this covenant;
  - (b) the Owner, at its sole expense, will be responsible for designing and constructing the Owner's Works in accordance with the terms and conditions of this Agreement;
  - (c) the Owner will not request, cause or suffer the issuance of a Development Permit or Building Permit for any New Building and the City will not be obligated to issue a Development Permit or Building Permit for any New Building unless and until the City Engineer has approved the plans and specifications for the Owner's Works in accordance with Section 3.1(d);
  - (d) the Owner will prepare and submit to the City Engineer for approval, detailed plans and specifications for the design of the Owner's Works and if the City Engineer provides comments to the Owner on the plans and specifications and requests amendments to them, the Owner will amend those plans and specifications to the extent that the City Engineer considers necessary or desirable, and re-submit them to the City Engineer until they are satisfactory to the City Engineer and he issues his approval in writing;
  - (e) the Owner will not request, cause or suffer the issuance of any Occupancy Permit for any New Building on the Lands until the Owner has constructed the Owner's Works for the SRW Area in accordance with the Development Permit and all other permits issued by the City and this Agreement and in particular, without limiting the foregoing, the Owner will:
    - (i) take all steps necessary to apply for and obtain the issuance of all approvals and permits required at law for the Owner's Works from all government bodies having jurisdiction, and pay all requisite statutory fees for such applications and issuances;
    - (ii) carry out the Owner's Works continuously, diligently, in a good and workmanlike manner, strictly according to the Approved Plans and Specifications and the requirements of this Agreement, and accepted industry standard construction practice;
    - (iii) advise the City Engineer regularly, and at such intervals as the City Engineer otherwise requires, of the progress of the Owner's Work;

- (iv) allow the City Engineer, and the City's employees and agents, to inspect the Owner's Works as frequently as the City Engineer deems necessary to confirm that the Owner's Works are being carried out according to the Approved Plans and Specifications and the requirements of this Agreement and in such manner as the City Engineer deems necessary or desirable;
- (v) ensure that all materials used in the Owner's Works are of good quality, free from defect and suitable for the uses to which they will be put;
- (vi) correct promptly all defects or variations in construction as reported to the Owner by its contractor or the City Engineer;
- (vii) on completion of the Owner's Works according to the Approved Plans and Specifications and the requirements of this Agreement, obtain the Approval; and
- (viii) deliver to the City Engineer, in a form and content satisfactory to the City Engineer:
  - (A) one copy of a topographic survey of the SRW Area prepared by a B.C. Land Surveyor in good standing in the Province of British Columbia showing the location of all surface features and the Owner's Works intended to be part of the SRW Area in relation to the boundaries of the SRW Area; and
  - (B) if any portion of the Owner's Works are outside the SRW Area the SRW Area will be increased to include the total area of the Owner's Works and the Owner, at its sole cost and expense, will cause a Registration Plan to be prepared, defining the increased boundaries of the SRW Area, such that all of the Owner's Works are wholly within the SRW Area, and
- (ix) if applicable, take all necessary steps required to satisfy the Owner's obligations pursuant to Section 2.7 to the satisfaction of the Director of Legal Services,

and the Owner agrees that notwithstanding that the Owner may be otherwise entitled, the City will not be obligated to issue any Occupancy Permit for any New Building until the Owner has complied with this Section 3.1(e).

- 3.2 If Permits Issued Inadvertently.** The Owner covenants and agrees that any permit for any New Building issued inadvertently or otherwise prior to the Owner complying with the requirements in Section 3.1(c) (as to the Development Permit) or in Section 3.1(e) (as to the Occupancy Permit) may be revoked by the City at any time until the owner complies with the applicable requirement and further agrees that if the Owner commences construction of any building or occupancy of any New Building in contravention of this Agreement, the City may pursue all remedies, including injunctive relief.

- 3.3 **Other Sections Form Part of this Covenant.** The Owner covenants and agrees that Sections 5.1 to 10.22 inclusive of this Agreement will be deemed to be included in and form part of this covenant made pursuant to Section 219 of the *Land Title Act*.

#### ARTICLE 4 MAINTENANCE OBLIGATIONS

- 4.1 **Section 219 Covenant.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the City as covenants and agreements running with and binding the Lands that:
- (a) the Lands will not be used in a manner contrary to this covenant;
  - (b) the Owner will take on all responsibility and liability associated with the use, occupation, existence, maintenance, repair and replacement of the Owner's Works and the SRW Area and no such responsibility will rest with the City, City Personnel including the City Engineer;
  - (c) following issuance of the Approval, the Owner, at its sole expense, will maintain, repair, regrade and replace (when necessary) the Owner's Works to the satisfaction of the City Engineer and in particular, without limiting the foregoing, the Owner will:
    - (i) keep the SRW Area free of ice and snow;
    - (ii) at all times keep the Owner's Works in good repair and condition appropriate for the use of the SRW Area by the public, all to the satisfaction of the City Engineer;
    - (iii) keep the SRW Area lit from dusk until dawn and when foggy, or such other hours as approved by the City Engineer;
    - (iv) replace the Owner's Works which cannot be kept in good repair and appearance with items of equal kind, value and utility and obtain the prior written consent of the City Engineer to any major or structural repairs;
    - (v) maintain the Landscaping in good appearance and remove and replace all diseased, overgrown or dead plants, shrubs and trees;
    - (vi) keep the SRW Area in a neat, tidy, safe and unobstructed condition at all times, except during repair or maintenance thereof;
    - (vii) not construct, install or suffer the construction or installation of any buildings or structures on or in the SRW Area, other than any buildings or structures approved in any applicable Development Permit, Building Permit or the Approved Plans and Specifications, which approved buildings or structures may include building portions below grade for underground parking, without the prior written consent of the City Engineer;



- (viii) not construct, install, place or suffer the construction, installation or placement of any fences, gates, patios, table chairs, door swings, public art or other devices or items which may impede, restrict or limit access, or which are intended to impede, restrict or limit access, to the SRW Area by members of the public, without the prior written consent of the City Engineer;
- (ix) empty any litter receptacles situated on the SRW Area at a frequency necessary to maintain the SRW Area in a neat, tidy, safe and unobstructed condition and otherwise at a frequency approved by the City Engineer;
- (x) not do nor suffer anything which adversely affects the public use and enjoyment of the SRW Area, except as permitted or required by this Agreement;
- (xi) not grant any easements, statutory rights of way or other grants, leases or licences through the SRW Area without the prior approval of the City Engineer;
- (xii) not install any signs which denote the SRW Area as being private property; and
- (xiii) not alter the SRW Area except to repair or replace the Owner's Works as permitted or required by this Agreement; and
- (d) the Owner will at all times carry and maintain such general liability and other insurance for claims for personal injury, death or property damage arising out of any use or enjoyment of the SRW Area and the rights of way hereby granted, as would a prudent owner of a property and space similar to the SRW Area, and promptly upon demand, provide the City with copies of insurance policies evidencing the same.

4.2 **Other Sections Form Part of this Covenant.** The Owner covenants and agrees that Sections 5.1 to 10.22 inclusive of this Agreement will be deemed to be included in and form part of this covenant made pursuant to Section 219 of the *Land Title Act*.

## ARTICLE 5 RELEASE AND INDEMNITY

5.1 **Release.** Except in each case to the extent attributable to the wrongful intentional acts of the City or the City Personnel, the Owner will not make any claims against the City or City Personnel and hereby releases and discharges the City and City Personnel from and against all Losses which may, at any time, arise or accrue to the Owner, in connection with this Agreement including, without limitation:

- (a) by reason of the City or City Personnel:
  - (i) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Owner's Works;
  - (ii) inspecting the Owner's Works;

- (iii) performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement;
  - (iv) exercising any of its rights under any statutory right of way granted to the City pursuant to this Agreement; or
  - (v) withholding any permits pursuant to this Agreement.
- (b) that arise out of, or would not have been incurred but for:
- (i) the design, construction or installation (including any defective materials or faulty workmanship) of the Owner's Works; or
  - (ii) this Agreement,

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

**5.2 Release to Survive.** The release set out in Section 5.2 will survive the expiration or earlier termination of this Agreement.

**5.3 Indemnity.** Except in each case to the extent attributable to the wrongful intentional acts of the City or the City Personnel, the Owner hereby covenants and agrees with the City to indemnify and save harmless and reimburse the City and City Personnel from and against all Losses which may arise or accrue to the Owner or any person against the City or City Personnel or which the City or City Personnel may pay, incur, sustain or be put to by reason of or which would not or could not have been sustained "but for" any of the following:

- (a) the construction, installation, existence, maintenance, repair, replacement, use or occupation of the Owner's Works or the SRW Area;
- (b) this Agreement, including the withholding of any permits by the City pursuant to this Agreement;
- (c) any personal injury, property damage or death occurring in or upon the SRW Area in whole or part from the exercise of the statutory right of way in this Agreement by any party; or
- (d) the release by the City of any or all of the City's rights under this Agreement or the loss of any rights purported to be granted hereby;
- (e) the City or City Personnel:
  - (i) reviewing, accepting or approving the design, specifications, materials and methods for construction of the Owner's Works;
  - (ii) inspecting the Owner's Works;
  - (iii) performing any work in accordance with the terms of this Agreement or requiring the Owner to perform any work pursuant to this Agreement; or

- (iv) exercising any of its rights under any statutory right of way granted to the City pursuant to this Agreement; or
- (f) any and all Losses which may arise or accrue to any person, firm or corporation including a member of the public against the City or any City Personnel or which the City or any City Personnel may, incur, sustain or be put to, by reason of:
  - (i) any negligent act or omission or wilful misconduct of the Owner or any of its contractors, subcontractors, employees, agents, licensees, invitees and permittees in connection with the exercise of the obligations or responsibilities of the Owner under this Agreement; or
  - (ii) any default in the due observance and performance of the obligations or responsibilities of the Owner under this Agreement,

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

- 5.4 **Indemnities to Survive.** The indemnities set out in Section 5.4 will be both personal covenants of the Owner and an integral part of the Section 219 covenants granted in this Agreement and such indemnities will survive the expiration or earlier termination of this Agreement.
- 5.5 **Obligations Continue.** The Owner's obligations to release, indemnify and save harmless the City and City Personnel pursuant to Sections 5.1 and 5.3 of this Agreement will continue to apply even if any of the Owner's obligations are undertaken by the City pursuant to the terms of this Agreement or otherwise.

## ARTICLE 6 EQUITABLE CHARGE

- 6.1 **Equitable Charge.** The Owner hereby grants to the City an equitable charge over the Lands for the payment of all sums which may at any time hereafter be payable by the Owner to the City under the terms of this Agreement (including without limitation pursuant to the indemnity provisions contained in this Agreement). This Section 6.1 will survive the expiration or earlier termination of this Agreement. This equitable charge may be enforced by the appointment of a receiver for the sale of the Lands.

## ARTICLE 7 SUBDIVISION

- 7.1 **Subdivision.** If the Lands are subdivided at any time hereafter either under the provisions of the *Land Title Act* or under the *Strata Property Act* or under other similar legislation enacted from time to time then upon the deposit of a plan of subdivision, strata plan, or similar plan as the case may be:
- (a) subject to Section 7.2 herein, the rights and benefits of this Agreement herein granted will be annexed to and run with each of the new parcels, lots, or other subdivided parcels and areas so created; and

- (b) the burdens, obligations, covenant, statutory right of way and equitable charge contained in this Agreement will continue to charge each of the new parcels, lots, or other subdivided parcels and areas so created.

**7.2 Subdivision by Strata Plan.** If the Lands, or any portion thereof, are subdivided by a strata plan, this Agreement will charge title to the strata lots and the common property comprising such strata plan and:

- (a) the SRW Area will form part of the common property of such strata plan and will not form a strata lot or part of a strata lot;
- (b) the Section 219 covenants and obligations therein and the statutory right of way and equitable charge granted herein will be registered against each individual strata lot and noted on the common property record;
- (c) the strata corporation or the strata corporations created will perform and observe the Owner's covenants in this Agreement, solely at the expense of the strata lot owners;
- (d) the liability of each strata lot owner for the performance and observance of the Owner's covenants herein will be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan; and
- (e) no part of the Owner's Works will form part of or be located within any strata lot or part of any strata lot and any Owner's Works not contained within the SRW Area will be contained within the common property established by the strata plan,

provided that, if the Lands are first subdivided by air space plan and then one or more of these parcels are further subdivided by strata plan, the easements and covenants registered concurrently with the air space plan may designate the air space parcel or the remainder, and therefore the strata corporation, responsible to perform and observe the Owner's covenants in this Agreement.

## ARTICLE 8 TRANSFER OF LANDS

- 8.1 Transfer of Lands.** Except in respect of the sale of individual residential strata lots, the Owner covenants and agrees with the City that upon any sale, transfer or conveyance of the Lands, or any portion thereof, to any person, trust, corporation, partnership or other entity, the Owner will obtain from such person, trust, corporation, partnership or entity and deliver to the City a duly executed acknowledgement, in form and substance satisfactory to the Director of Legal Services, of the terms of this Agreement and an assumption of the continuing obligations of the Owner pursuant to this Agreement relative to that portion of the Lands sold, transferred or conveyed to such person, trust, corporation, partnership or entity.



## ARTICLE 9 NOTICES

- 9.1 **Notice.** Any notice, approval or request required or permitted to be given under this Agreement will be in writing and may be given by delivering such notice, approval or request, or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia:

- (a) in the case of the Owner addressed to it at:

4184 Investments Ltd.  
300 - 526 Granville Street  
Vancouver, British Columbia  
V6C 1W6  
Attention: Dino Bonnis

- (b) and in the case of the City addressed to it at:

City of Vancouver  
453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia  
V5Y 1V4  
Attention: City Clerk

with a copy to the Director of Legal Services and the City Engineer,

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery of such notice, approval or request or, on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.

## ARTICLE 10 MISCELLANEOUS

- 10.1 **Severability.** All the obligations and covenants contained in this Agreement are severable, so that if any one or more of the obligations or covenants are held by or declared by a court of competent jurisdiction to be void or unenforceable, the balance of the obligations and covenants will remain and be binding.
- 10.2 **Joint and Several.** Any covenants, agreements, conditions, or promises made by two or more persons will be construed as joint as well as several, including any payments or compensation to be paid pursuant to this Agreement. If the Owner consists of more than one person, each such person will be jointly and severally liable to perform the Owner's obligations under this Agreement.
- 10.3 **Registration.** The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this Agreement to be registered as first registered

charges against the Lands, save only for any reservations, liens, charges or encumbrances:

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered against any of the titles to the Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of any Development Permit; and
- (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this Agreement.

- 10.4 **City's Other Rights Unaffected.** Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* as amended from time to time and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.
- 10.5 **Damages Insufficient.** The Owner acknowledges that damages may be an inadequate remedy for the City for any breach by the Owner of its obligations under this Agreement and the Owner agrees that the City is entitled to seek and obtain an order for specific performance, injunctive relief (whether prohibitory, mandatory or otherwise) or other equitable relief in connection with any default by the Owner under this Agreement.
- 10.6 **Agreement for Benefit of City.** The Owner and the City hereby acknowledge, agree and declare that this Agreement is entered into for the sole purpose of benefiting the City and, in particular, acknowledge, agree and declare that this Agreement is not designed to protect or promote the interests of the Owner or any mortgagee of the Owner, or any future owner or occupier of the Lands and any improvements on the Lands or any other person or corporation whatsoever, and the City may, at its sole option, execute a release of this Agreement at any time without liability to anyone for so doing.
- 10.7 **City Court Costs.** In an action to enforce this Agreement in respect of which the Court determines that the position of the City will prevail, the City will be entitled to court costs on a solicitor-client basis.
- 10.8 **Owner's Costs.** Unless otherwise provided, the Owner will be responsible for all costs and expenses incurred to comply with its obligations under this Agreement.
- 10.9 **Future Assurances.** The parties to this Agreement will do such things and execute such documents and in such form as may reasonably be necessary in order to perfect the intention of this Agreement.
- 10.10 **No Liability.** The parties agree that neither the Owner nor any successor in title to the Lands, or portions thereof, will be liable for breaches or non-observance or non-



performance of covenants herein occurring as the same relate to any portion of the Lands after it has ceased to be the registered owner of such portion, but the Owner, or its successors in title, as the case may be, will remain liable after ceasing to be the registered owner of any portion of the Lands for all breaches of and non-observance of covenants herein as the same relate to such portion that occur prior to the Owner, or any successor in title, as the case may be, ceasing to be the registered owner of such portion.

- 10.11 **Assignment by City.** The City, upon prior written notice to the Owner, may assign all or any part of this Agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing such public facilities and services as are contemplated by this Agreement; and the City may designate licensees and permittees for any and all purposes of this Agreement.
- 10.12 **No Waiver.** No consent or waiver, expressed or implied, by the City of any default by the Owner in observing or performing its obligations under this Agreement will be effective unless given in writing, or be deemed or construed to be a consent or waiver of any other default. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. Failure on the part of the City to complain of any act or failure to act by the Owner or to declare the Owner in default, irrespective of how long such failure continues, will not constitute a waiver by the City of its rights under this Agreement or at law or in equity. No waiver by the City of any breach of this Agreement operates as a waiver of any other breach of this Agreement.
- 10.13 **Owner's Duties as Occupier.** Nothing in this Agreement will abrogate or limit the Owner's duties and liability as occupier of the Lands.
- 10.14 **Remedies Cumulative.** The remedies provided for in this Agreement will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for the City in this Agreement will be deemed to be in addition to and not, except as herein expressly stated, restrictive of the remedies of the City at law or in equity. No reference to nor exercise of any specific right or remedy under this Agreement or at law or in equity by the City will prejudice, limit or preclude the City from exercising any other such right or remedy. No such right or remedy will be exclusive or dependent upon any other such right or remedy, but the City may, from time to time, exercise any one or more of such rights or remedies independently, successively, or in combination.
- 10.15 **Time of Essence.** Time will be of the essence of this Agreement.
- 10.16 **Owner's Representations and Warranties.** The Owner represents and warrants to and covenants and agrees with the City that:
  - (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;

- (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
- (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

**10.17 Design/Construction Responsibility.** Despite the rights of approval and inspection given to the City and the City Engineer in this Agreement, none of those things will:

- (a) remove any design, construction or supervisory responsibility for the Owner's Works from the Owner, all of which will remain exclusively with the Owner, or impose any responsibility for such design, construction or supervision on the City or City Personnel;
- (b) relieve or be deemed to relieve the Owner from observing or performing its obligations under this Agreement; or
- (c) constitute a waiver or release, or be deemed to constitute a waiver or release, by the City of any obligation of the Owner under this Agreement, or of any liability of the Owner.

**10.18 Agreement Runs with the Lands.** This Agreement will run with and bind the Lands and will attach to and run with each and every part into which the Lands or the SRW Area, respectively, may be subdivided or consolidated whether by strata plan, subdivision plan or otherwise.

**10.19 No Assignment.** The Owner will not assign this Agreement or any of its rights or obligations hereunder except in strict accordance with this Agreement.

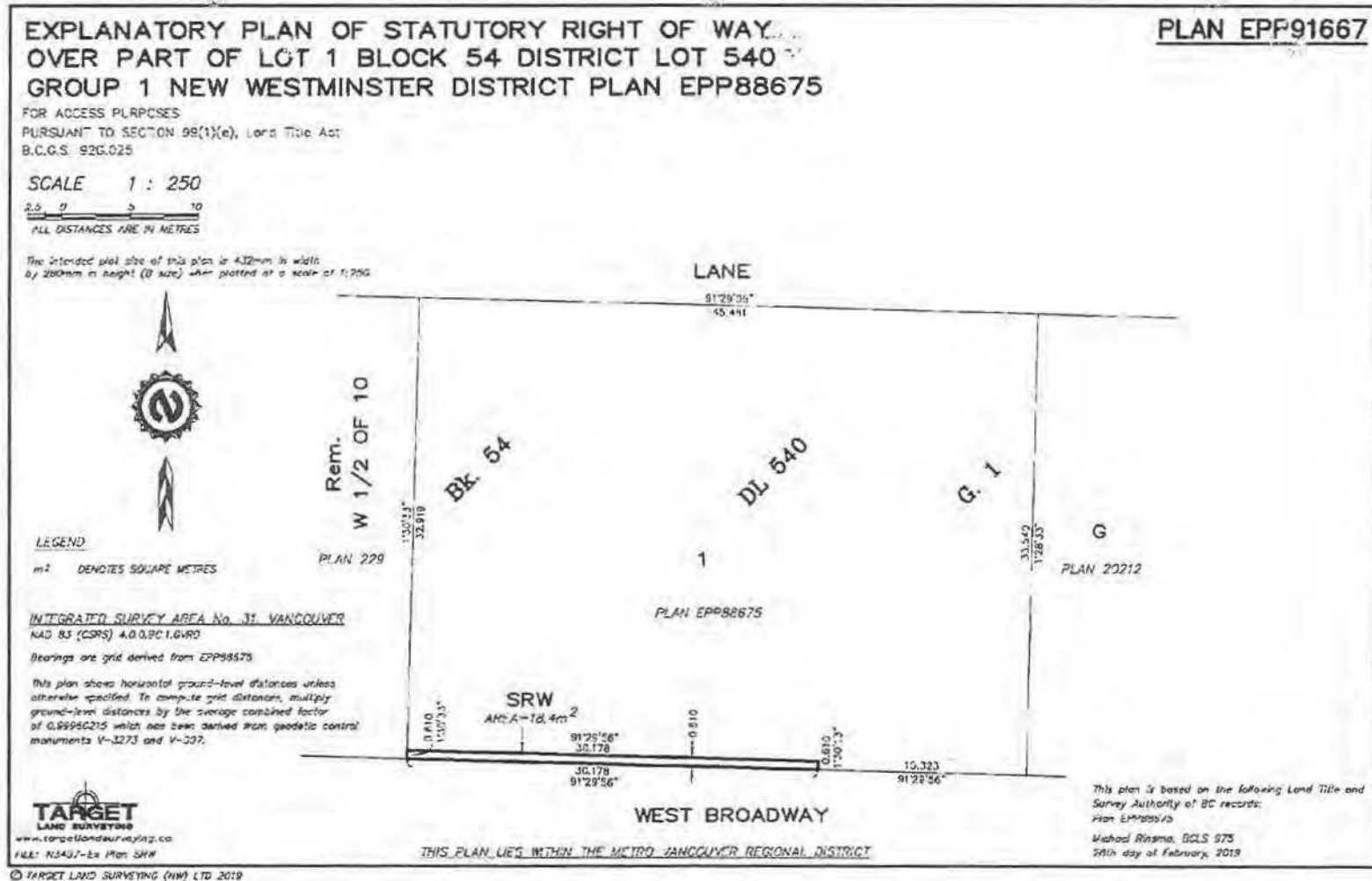
**10.20 Entire Agreement.** This is the entire agreement between the City and the Owner concerning its subject and it may be changed only in a document executed by the City and the Owner.

**10.21 Amendments.** Any amendment to this Agreement will have no force or effect unless the City and the Owner have signed the amendments

**10.22 Effect of Agreement.** This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors, administrators and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the General Instrument - Part 1 which is attached hereto and forms part hereof.

## SCHEDULE A



© TARGET LAND SURVEYING (NW) LTD 2019

Statutory Right of Way - Public Access Agreement/Building Setback  
3123-3129 W Broadway

[01122421v1]

## CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Charge"** means the Mortgage registered under number CA3574502 and the Assignment of Rents registered under number CA3574503;
- (b) **"Existing Chargeholder"** means CANADIAN WESTERN BANK;
- (c) **"New Charges"** means the Statutory Right of Way, the Section 219 Covenants and the Equitable Charge contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

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

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

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

END OF DOCUMENT

File No. LS-18-01528

# MEMORANDUM

May 16, 2019

By Email

TO: Kristen Lambertson, Cultural Spaces and Infrastructure – Cultural Services  
Graham Lougheed, Land Survey  
Randy Zeegers, Parking Management Branch  
Terry Wilson, Development and Major Projects Branch

CC: Sarah Robin, Project Facilitation Branch  
David Autiero - Development, Buildings & Licensing

FROM: Joanna Track, Solicitor

SUBJECT: Civic Address: 3123 – 3141 West Broadway (Hollywood Theatre)  
Parcel Identifier/ 030-741-131, Lot 1 Block 54 District Lot 540 Group 1 New  
Legal Description: Westminster District Plan EPP88675 (the "Lands")  
4184 Investments Ltd. (the "Owner") – DP-2018-00039

***You are responsible for familiarizing yourselves with all permit conditions and/or pre-permit deliverables contained in the following agreements and ensuring that the required Stop Actions (aka: Holds) are entered into POSSE. Stop Actions may be requested through the Addressing Group by sending an email to "CS Address Coordinator". For further information, please contact David Autiero, Manager – Project Facilitation Group.***

<u>Responsible Staff</u>	<u>Condition No.</u>	
separately reported to Zlatan Jankovic (Heritage), copied Sarah Robin	2.2 – 2.3	Heritage Revitalization Agreement and Designation (Hollywood Theatre)
Kristen Lambertson	2.5	Community Use Agreement
Graham Lougheed	2.8	Undertaking to Replace Encroachment Agreement M72987
Graham Lougheed	2.9	Undertaking to Release Covenant H26232
Randy Zeegers	2.10	Shared Use Loading Agreement
Terry Wilson		Public Access/Building Setback Statutory Right of Way

{01176141v1}

City of Vancouver, Law Department  
453 West 12<sup>th</sup> Avenue  
Vancouver, BC V5Y 1V4  
Canada  
Telephone: (604) 873-7512  
Fax: (604) 873-7445

**Site/Delivery Address:**  
401-515 West 10<sup>th</sup> Avenue  
Vancouver, BC V5Z 4A8  
Canada



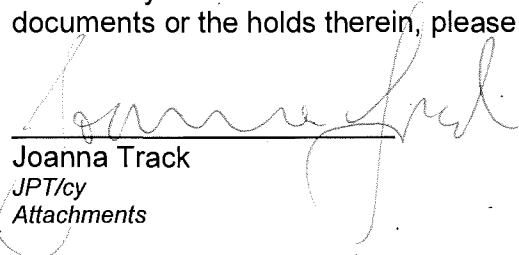
Please be advised that the following documents were deposited for registration against the Lands in the Land Title Office on March 22, 2019 (unless otherwise noted) and the same are now fully registered as noted below:

1. **Community Use Agreement (condition 2.5)** registered under numbers CA7407833 to CA7407836
2. **Undertaking to Replace Encroachment Agreement M72987 (condition 2.8)** was executed by an authorized signatory of the Owner on January 9, 2019
3. **Undertaking to Release Covenant H26232 (off-site parking) (condition 2.9)** was executed by an authorized signatory of the Owner on January 9, 2019
4. **Subdivision of lands with lane dedication**
  - Application to deposit Subdivision Plan EPP88675 (CA7407837)
  - Subdivision Plan EPP88675
5. **Shared Use Loading Agreement (conditions 2.10)** registered under numbers CA7407838 to CA7407839
6. **Public Access / Building Setback Statutory Right of Way (post Prior to Letter condition)** was deposited at the Land Title Office on April 15, 2019 and registered under numbers CA7448179 to CA7448186
  - Associated Explanatory Plan EPP91667 registered under number CA7448178

<u>Stop Action/Hold</u>	<u>Reason</u>	<u>Contact</u>
Development Permit Holds	<b>Article 3 (Sections 3.1(c) and 3.1(d))</b> – maintain hold until the plans and specifications for the design of the Owner's Works has been submitted to the City Engineer and the City Engineer has approved such plans and specifications	• General Manager of Engineering Services
Occupancy Permit Holds	<b>Article 3 (Sections 3.1(e))</b> – maintain hold until the Owner's Works for the SRW Area have been completed in accordance with a Development Permit; all other permits	• General Manager of Engineering Services

Accordingly, enclosed, for your records, are copies of the above-noted documents and a title search for the Lands.

We trust you will find this to be in order. However, if you have any questions about the documents or the holds therein, please contact the writer.

  
 Joanna Track  
 JPT/cy  
 Attachments



**From:** "Robin, Sarah" <Sarah.Robin@vancouver.ca>

**To:** "Freeman, John" <John.Freeman@vancouver.ca>

**Date:** 5/28/2019 2:28:01 PM

**Subject:** FW: Reporting: 3123 - 3141 West Broadway (DP-2018-00039) - 4184 Investments Ltd.

**Attachments:** 4184 INVESTMENTS (DP-2018-00039) - E-binder (3123 - 3141 West Broadway) (01176779xD3527).pdf  
4184 INVESTMENTS LTD. - Reporting Memo (DP) - registration of Charges on Lands (except Heritage conditions) (01176773xD3527).pdf

Hi John,

Forwarding to you, as I've realized you were not copied on this.

Best,  
Sarah

---

**From:** Yip, Chia-Li

**Sent:** Thursday, May 16, 2019 4:04 PM

**To:** Lambertson, Kristen; Loughheed, Graham; Zeegers, Randy; Wilson, Terry

**Cc:** Robin, Sarah; Autiero, David; Track, Joanna

**Subject:** RE: Reporting: 3123 - 3141 West Broadway (DP-2018-00039) - 4184 Investments Ltd.

Ooops, here are the attachments.

Thanks,

Chia-Li Yip (82757)  
Legal Assistant

---

**From:** Yip, Chia-Li

**Sent:** May-16-19 4:02 PM

**To:** Lambertson, Kristen; Loughheed, Graham; Zeegers, Randy; Wilson, Terry

**Cc:** Robin, Sarah; Autiero, David; Track, Joanna

**Subject:** Reporting: 3123 - 3141 West Broadway (DP-2018-00039) - 4184 Investments Ltd.

Hi All,

The documents required per Development Application No. DP-2018-00039 are now fully registered at the Land Title Office, or, in the instances of conditions 2.8 and 2.9, have been executed by the Owner. Attached for your records are our reporting memo and an E-binder containing the documents noted in the memo. Please note that fulfillment of the Heritage conditions was separately reported to Zlatan Jankovic of the Heritage Group.

Thanks,

**Chia-Li Yip** | Legal Assistant | City of Vancouver | Main: 604.873.7512 | Direct: 604.606.2757 | chia-li.yip@vancouver.ca

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

**Courier:** #401 – 515 West 10<sup>th</sup> Avenue, Vancouver, BC V5Z 4A8

This e-mail and the information it contains are privileged and confidential, and only the intended recipient may use it. The City of Vancouver prohibits unauthorized use. If you are not the intended recipient, please immediately send this e-mail back to the sender and delete the original.

**\*\*Please note that couriers and visitors need to sign in at the Concierge Desk on the ground floor in Development Services to gain access to our offices\*\***

3123 - 3141 West Broadway  
DP-2018-00039 - LTO registration: March 22 and April 15, 2019  
4184 Investments Ltd.

Description	Tab No.
Title Search PID: 030-741-131, Lot 1 Block 54 District Lot 540 Group 1 New Westminster District Plan EPP88675	1
Community Use Agreement (CA7407833 - CA7407836)	2
Undertaking to Replace Encroachment Agreement M72987	3
Undertaking to Release Covenant H26232 (off-site parking)	4
Application to deposit Subdivision Plan EPP88675 (CA7407837)	5
Subdivision Plan EPP88675	6
Shared Use Loading Agreement (CA7407838 - CA7407839)	7
Application to Deposit Explanatory Plan EPP91667 (CA7448178)	8
Explanatory Plan EPP91667	9
Pedestrian Access/Building Setbacks Statutory Right of Way (CA7448179 - CA7448186)	10

Joanna Track  
Law File: LS-18-01528-000

**TITLE SEARCH PRINT**

File Reference: 240584.00536BLV

2019-05-08, 12:45:09

Requestor: Karen Wright

**\*\*CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN\*\***

<b>Title Issued Under</b>	SECTION 98 LAND TITLE ACT
<b>Land Title District</b> Land Title Office	VANCOUVER VANCOUVER
<b>Title Number</b> From Title Number	CA7407837 BB1163556 BB1163557 CA2031534
<b>Application Received</b>	2019-03-22
<b>Application Entered</b>	2019-03-28
<b>Registered Owner in Fee Simple</b> Registered Owner/Mailing Address:	4184 INVESTMENTS LTD., INC.NO. BC0559518 300 - 526 GRANVILLE STREET VANCOUVER, BC V6C 1W6
<b>Taxation Authority</b>	Vancouver, City of
<b>Description of Land</b> Parcel Identifier; Legal Description:	030-741-131 LOT 1 BLOCK 54 DISTRICT LOT 540 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP88675
<b>Legal Notations</b>	NOTICE OF INTEREST, BUILDERS LIEN ACT (S.3(2)), SEE CA2987318 FILED 2013-02-07  NOTICE OF INTEREST, BUILDERS LIEN ACT (S.3(2)), SEE CA3308576 FILED 2013-08-23  HERETO IS ANNEXED EASEMENT CA3767385 OVER LOT H PLAN 20212 PART FORMERLY THE E 1/2 LOT 10 BLK 54 DL 540 PL 229 EXCEPT THE N 5 FT, AND PL 4166 PART FORMERLY LOT 9 PL 229 EXCEPT PL 4166



**TITLE SEARCH PRINT**

File Reference: 240584.00536BLV

2019-05-08, 12:45:09

Requestor: Karen Wright

HERETO IS ANNEXED EASEMENT CA7243329 OVER THE WEST 1/2 OF LOT 10  
(EXCEPT THE  
NORTH 5 FEET NOW LANE AND PART IN PLAN 4166) PLAN 229

NOTICE OF HERITAGE DESIGNATION BYLAW, VANCOUVER CHARTER, SECTION 593,  
SEE CA7253045

NOTICE OF HERITAGE REVITALIZATION AGREEMENT, VANCOUVER CHARTER,  
SECTION 592, SEE CA7268755

**Charges, Liens and Interests**

Nature:	COVENANT
Registration Number:	H26232
Registration Date and Time:	1980-04-24 12:02
Registered Owner:	CITY OF VANCOUVER
Remarks:	L.T.A. S. 215 PART FORMERLY THE E 1/2 LOT 10 BLK 54 DL 540 PL 229 EXCEPT THE N 5 FT, AND PL 4166
Nature:	EASEMENT AND INDEMNITY AGREEMENT
Registration Number:	M72987
Registration Date and Time:	1984-09-13 13:44
Registered Owner:	CITY OF VANCOUVER
Remarks:	PART FORMERLY LOT H PL 20212
Nature:	MORTGAGE
Registration Number:	CA3574502
Registration Date and Time:	2014-01-31 10:35
Registered Owner:	CANADIAN WESTERN BANK
Nature:	ASSIGNMENT OF RENTS
Registration Number:	CA3574503
Registration Date and Time:	2014-01-31 10:35
Registered Owner:	CANADIAN WESTERN BANK
Nature:	EASEMENT
Registration Number:	CA3767385
Registration Date and Time:	2014-06-06 14:59
Remarks:	APPURTENANT TO LOT 9 (EXCEPT PART IN PLAN 4166) PLAN 229 AND THE EAST 1/2 OF LOT 10 (EXCEPT THE NORTH 5 FEET NOW LANE AND PART IN PLAN 4166) PLAN 229 PART FORMERLY LOT H PL 20212

**TITLE SEARCH PRINT**

File Reference: 240584.00536BLV

20 19-05-08, 12:45:09  
Requestor: Karen Wright

Nature: EASEMENT  
Registration Number: CA7243328  
Registration Date and Time: 2018-12-11 14:24  
Remarks: APPURTENANT TO THE WEST 1/2 OF LOT 10 (EXCEPT THE NORTH 5 FEET NOW LANE AND PART IN PLAN 4 166)  
PLAN 229

Nature: COVENANT  
Registration Number: CA7268756  
Registration Date and Time: 2018-12-21 15:19  
Registered Owner: CITY OF VANCOUVER

Nature: PRIORITY AGREEMENT  
Registration Number: CA7268757  
Registration Date and Time: 2018-12-21 15:19  
Remarks: GRANTING CA7268756 PRIORITY OVER CA3574502 AND CA3574503

Nature: COVENANT  
Registration Number: CA7268758  
Registration Date and Time: 2018-12-21 15:19  
Registered Owner: CITY OF VANCOUVER  
Remarks: RESTRICTS DEALINGS

Nature: PRIORITY AGREEMENT  
Registration Number: CA7268759  
Registration Date and Time: 2018-12-21 15:19  
Remarks: GRANTING CA7268758 PRIORITY OVER CA3574502 AND CA3574503

Nature: STATUTORY RIGHT OF WAY  
Registration Number: CA7268760  
Registration Date and Time: 2018-12-21 15:19  
Registered Owner: CITY OF VANCOUVER

Nature: PRIORITY AGREEMENT  
Registration Number: CA7268761  
Registration Date and Time: 2018-12-21 15:19  
Remarks: GRANTING CA7268760 PRIORITY OVER CA3574502 AND CA3574503

Nature: EQUITABLE CHARGE  
Registration Number: CA7268762  
Registration Date and Time: 2018-12-21 15:19  
Registered Owner: CITY OF VANCOUVER

**TITLE SEARCH PRINT**

File Reference: 240584.00536BLV

2019-05-08, 12:45:09  
Requestor: Karen Wright

Nature: PRIORITY AGREEMENT  
Registration Number: CA7268763  
Registration Date and Time: 2018-12-21 15:19  
Remarks: GRANTING CA7268762 PRIORITY OVER CA3574502 AND CA3574503

Nature: STATUTORY RIGHT OF WAY  
Registration Number: CA7407833  
Registration Date and Time: 2019-03-22 12:42  
Registered Owner: CITY OF VANCOUVER  
Remarks: INTER ALIA  
PART FORMERLY LOT H PLAN 20212

Nature: PRIORITY AGREEMENT  
Registration Number: CA7407834  
Registration Date and Time: 2019-03-22 12:42  
Remarks: GRANTING CA7407833 PRIORITY OVER CA3574502 AND CA3574503

Nature: COVENANT  
Registration Number: CA7407835  
Registration Date and Time: 2019-03-22 12:42  
Registered Owner: CITY OF VANCOUVER  
Remarks: INTER ALIA  
PART FORMERLY LOT H PLAN 20212

Nature: PRIORITY AGREEMENT  
Registration Number: CA7407836  
Registration Date and Time: 2019-03-22 12:42  
Remarks: GRANTING CA7407835 PRIORITY OVER CA3574502 AND CA3574503

Nature: COVENANT  
Registration Number: CA7407838  
Registration Date and Time: 2019-03-22 12:42  
Registered Owner: CITY OF VANCOUVER

Nature: PRIORITY AGREEMENT  
Registration Number: CA7407839  
Registration Date and Time: 2019-03-22 12:42  
Remarks: GRANTING CA7407838 PRIORITY OVER CA3574502 AND CA3574503



**TITLE SEARCH PRINT**

File Reference: 240584.00536BLV

20 19-05-08, 12:45:09

Requestor: Karen Wright

Nature: STATUTORY RIGHT OF WAY  
Registration Number: CA7448179  
Registration Date and Time: 2019-04-15 15:47  
Registered Owner: CITY OF VANCOUVER  
Remarks: PART IN PLAN EPP91667

Nature: PRIORITY AGREEMENT  
Registration Number: CA7448180  
Registration Date and Time: 2019-04-15 15:47  
Remarks: GRANTING CA7448179 PRIORITY OVER CA3574502 AND CA3574503

Nature: COVENANT  
Registration Number: CA7448181  
Registration Date and Time: 2019-04-15 15:47  
Registered Owner: CITY OF VANCOUVER

Nature: PRIORITY AGREEMENT  
Registration Number: CA7448182  
Registration Date and Time: 2019-04-15 15:47  
Remarks: GRANTING CA7448181 PRIORITY OVER CA3574502 AND CA3574503

Nature: COVENANT  
Registration Number: CA7448183  
Registration Date and Time: 2019-04-15 15:47  
Registered Owner: CITY OF VANCOUVER

Nature: PRIORITY AGREEMENT  
Registration Number: CA7448184  
Registration Date and Time: 2019-04-15 15:47  
Remarks: GRANTING CA7448183 PRIORITY OVER CA3574502 AND CA3574503

Nature: EQUITABLE CHARGE  
Registration Number: CA7448185  
Registration Date and Time: 2019-04-15 15:47  
Registered Owner: CITY OF VANCOUVER

Nature: PRIORITY AGREEMENT  
Registration Number: CA7448186  
Registration Date and Time: 2019-04-15 15:47  
Remarks: GRANTING CA7448185 PRIORITY OVER CA3574502 AND CA3574503

**Duplicate Infeasible Title**

NONE OUTSTANDING

**TITLE SEARCH PRINT**

File Reference: 240584.00536BLV

2019-05-08, 12:45:09  
Requestor: Karen Wright

**Transfers**

NONE

**Pending Applications**

NONE

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

Mar-22-2019 12:42:05.001

CA7407833 CA7407836

PAGE 1 OF 17 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Kristian Nickolas  
Arciaga F8GH97

Digitally signed by Kristian  
Nickolas Arciaga F8GH97  
Date: 2019.03.22  
10:03:14 -07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)  
Megan Sedmak, Paralegal, of Fasken Martineau Dumoulin LLP  
Barristers & Solicitors  
2900 - 550 Burrard Street  
Vancouver BC V6C 0A3  
Document Fees: \$286.32

Telephone: 604-631-3131

LTO No.: 11565

File No.: 240584.00107/18386

File No. LS-18-01528-002 (Community Use Agreement)

Deduct LTSA Fees? Yes ☒

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

006-767-966 LOT H BLOCK 54 DISTRICT LOT 540 PLAN 20212

STC? YES ☐

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION  
SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)  
(a) ☐ Filed Standard Charge Terms D.F. No. (b) ☒ Express Charge Terms Annexed as Part 2  
A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):  
4184 INVESTMENTS LTD. (INCORPORATION NO. BC0559518)  
CANADIAN WESTERN BANK, AS TO PRIORITY

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

453 WEST 12TH AVENUE  
VANCOUVER

V5Y 1V4

BRITISH COLUMBIA  
CANADA

7. ADDITIONAL OR MODIFIED TERMS:  
N/A

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

Officer Signature(s)

BARBARA VANDERBURGH  
Barrister & Solicitor  
2900 - 550 Burrard Street  
Vancouver, BC V6C 0A3  
604 631 4937

Execution Date		
Y	M	D
19	01	09

Transferor(s) Signature(s)

4184 INVESTMENTS LTD. by its  
authorized signatory(ies):

Print Name: C. Dino Bonnis

Print Name:

## OFFICER CERTIFICATION:

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

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE 2 of 17 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

NICHOLAS KING

Y	M	D
19	01	21

CANADIAN WESTERN BANK by its  
authorized signatory(ies):

Commissioner for Taking Affidavits in British Columbia

#2200, 666 Burrard Street  
Vancouver, BC V6C 2X8  
Expires: September 30, 2021

Print Name: STEPHEN JACOBSON  
AVP

(As to all signatures)

Print Name: CHRIS TONG  
AVP

JOANNA TRACK

19	02	25
----	----	----

CITY OF VANCOUVER by its  
authorized signatory:

Solicitor

453 WEST 12TH AVENUE  
VANCOUVER, B.C. V5Y 1V4

HEIDI GRANGER

**OFFICER CERTIFICATION:**

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

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

PAGE 3 OF 17 PAGES

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Statutory Right of Way		Article 2, Pages 7-11

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Statutory Right of Way priority over Mortgage CA3574502 and Assignment of Rents CA3574503  Page 17

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Covenant		Section 219 Covenant Article 3, Pages 11-12

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Priority Agreement		granting the above Section 219 Covenant priority over Mortgage CA3574502 and Assignment of Rents CA3574503  Page 17

NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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## TERMS OF INSTRUMENT - PART 2

### COMMUNITY USE AGREEMENT HOLLYWOOD THEATRE

#### BACKGROUND:

- A. It is understood and agreed that this instrument shall be read as follows:
  - (a) the Transferor, 4184 INVESTMENTS LTD., is called the "Owner"; and
  - (b) the Transferee, CITY OF VANCOUVER, is called the "City" when referring to the corporate entity and the "City of Vancouver" when referring to geographical location.
- B. There is a building situated on the Theatre Lands, known as the "Hollywood Theatre", which is listed on the Vancouver Heritage Register in the 'B' evaluation category and is considered to be of heritage value (the "Theatre Building").
- C. The Owner wishes to develop the Theatre Lands in conjunction with the Adjacent Lands by:
  - (a) rehabilitating the Theatre Building;
  - (b) constructing on the Lands, to the west of the Theatre Building, a new six-storey mixed-use building containing approximately forty (40) dwelling units and commercial units on the ground floor (the "New Building");
  - (c) limiting the use of the Theatre Building to theatre use only; and
  - (d) either:
    - (i) consolidating the Lands pursuant to the provisions of the *Land Title Act* to create a single parcel upon which both the New Building and the Theatre Building will be located;
    - (ii) consolidating the Adjacent Lands pursuant to the provisions of the *Land Title Act* to create a single parcel upon which the New Building will be located, with the Theatre Building continuing to be located on the existing Theatre Lands;
    - (iii) consolidating and subdividing the Lands pursuant to the provisions of the *Land Title Act* to create two new parcels, one parcel upon which the New Building will be located and a separate parcel upon which the Theatre Building is located,

PROVIDED only one of the above options be undertaken;

and under development permit application No. DP-2018-00039 (the "DP Application") has applied to the City for a development permit for that purpose.

- D. The Director of Planning has approved the DP Application subject to, among other things, fulfilment of the following condition:

**"Community Use Agreement condition:**

- 2.5 Enter into a Community Use Agreement, which may include a Statutory Right of Way and Section 219 Covenant, to secure on a cost recovery basis the use of and access to the restored Hollywood Theatre for local non-profit arts and cultural purposes, for a minimum number of hours per month in perpetuity, with final details of such use to be agreed upon prior to the issuance of the development permit, together with such other terms and conditions required all to the satisfaction of the Director of Legal Services and the Managing Director of Cultural Services."

- E. The Owner has agreed to enter into this agreement to permit Community Organizations to have use of the Theatre Building on certain terms and conditions as set out herein.

NOW THEREFORE in consideration of the sum of Ten Dollars (\$10.00) now paid by the City to the Owner, the matters referred to in the foregoing recitals, the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties) the parties hereto hereby covenant and agree as follows:

**ARTICLE 1  
INTERPRETATION**

**1.1 Definitions.** Terms defined in this Section 1.1, unless specifically otherwise provided in this agreement, will have the following meanings for all purposes of this agreement:

- (a) **"Adjacent Lands"** means, together, those parcels of land situate in the City of Vancouver, Province of British Columbia, legally described as PID: 015-450-384, Lot 9, Except Part in Plan 4166, Block 54 District Lot 540 Plan 229 and PID: 015-450-414, The East ½ of Lot 10, Except the North 5 Feet Now Land and Part in Plan 4166, Block 54 District Lot 540 Plan 229;
- (b) **"Arts, Culture and Community Services General Manager"** means the chief administrator from time to time of the City's Arts, Culture and Community Services department and his or her successors in function and respective nominees;
- (c) **"City Personnel"** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (d) **"Community Organization"** means a non-profit arts and/or cultural organization based within the City of Vancouver;
- (e) **"Director of Legal Services"** means the chief administrator from time to time of the Law Department of the City of Vancouver and his or her successors in function and respective nominees;
- (f) **"Lands"** means, together, the Theatre Lands and the Adjacent Lands;

- (g) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250;
- (h) **"Losses"** means all damages, losses, costs, actions, causes of action, claims, demands, builders liens, liabilities and expenses of any kind (including but not limiting the generality of the foregoing, in respect of injury, death or damage to any person or property);
- (i) **"LTO"** means the Vancouver Land Title Office;
- (j) **"Managing Director of Cultural Services"** means the Managing Director of Cultural Services for the City or the person acting in that capacity from time to time, except, where the City does not have any person acting in that capacity, "Managing Director of Cultural Services" means the person designated from time to time by the City to administer this agreement;
- (k) **"New Building"** has the meaning given in the introductory paragraphs of this agreement;
- (l) **"Owner"** means 4184 INVESTMENTS LTD. and all of its assigns, successors and successors in title to the Lands;
- (m) **"Prime Rate"** means at any time, the per annum rate of interest published by the main branch in the City of Vancouver of The Bank of Montreal, or its successor at such time, as its reference rate for setting rates of interest on loans of Canadian dollars to customers in Canada and referred to by such bank as its "prime rate", provided however that if such bank publishes more than one such reference rate at any time, the Prime Rate will be the highest thereof, and provided further that, if a court holds that this definition of Prime Rate is vague, uncertain or otherwise defective, then the Prime Rate will be three (3%) percent greater than the per annum rate of interest established by the Bank of Canada as the rate payable on overnight loans by Schedule I Canadian Chartered Banks;
- (n) **"Statutory Right of Way"** means the statutory right of way granted by the Owner in favour of the City pursuant to Article 2; and
- (o) **"Theatre Building"** has the meaning given in the introductory paragraphs of this agreement;
- (p) **"Theatre Lands"** means that parcel of land situate in the City of Vancouver, Province of British Columbia, legally described as PID: 006-767-966 Lot H Block 54 District Lot 540 Plan 20212.

**1.2 Interpretation.** The following provisions apply to this agreement:

- (a) sections and headings are for convenient reference, and are not to affect the meanings of provisions;
- (b) use of the singular or masculine includes the plural, feminine, or body corporate, and vice versa;
- (c) the laws of British Columbia are to govern its interpretation and enforcement;

- (d) each of the City and the Owner accepts the jurisdiction of the courts of British Columbia;
- (e) if a court finds any provision invalid, illegal, or unenforceable, and severs it from this agreement, the remaining provisions will remain in force and effect;
- (f) time will be of the essence, and if the City or the Owner expressly or impliedly waives that requirement, the City or the Owner may re-instate it by delivering notice to the other;
- (g) waiver of a default by the City or the Owner does not mean that the City or the Owner waives any other default;
- (h) no amendment is to have any force or effect unless the City and the Owner have signed it;
- (i) this agreement represents the entire agreement between the City and the Owner regarding the matters set out in this agreement, and supersedes all prior agreements, understandings, letters of intent, negotiations, or discussion about such matters;
- (j) any reference to a statute is to the statute and its regulations in force on the date the City signs the Form C, and to subsequent amendments to or replacements of the statute or regulations;
- (k) the Owner will execute and deliver to the City, on request by the City from time to time, such further assurances and instruments as the City may require to give full force and effect to the Owner's obligations under this agreement or to effect registration of the Statutory Right of Way and the section 219 covenant referred to in Article 3; and
- (l) if the Owner consists of more than one party, such parties will be jointly and severally liable to the City for the performance and observance of this agreement.

## ARTICLE 2 STATUTORY RIGHT OF WAY

**2.1 Grant of Statutory Right of Way.** Pursuant to section 218 of the *Land Title Act*, the Owner hereby grants to the City the full, free and uninterrupted right, liberty, easement and statutory right of way on, over, upon and within the Theatre Lands at all times hereafter specified, for the purposes of:

- (a) permitting Community Organizations to use the Theatre Building for arts and cultural presentations and events, in particular but not exclusive of live music and film presentations, for a minimum of twenty-four (24) hours per month during regular licensed hours of operation, including prime-time weekday and weekend evening (5pm onwards) and matinee performance times, provided that:
  - (i) use of the Theatre Building by Community Organizations will be on a cost-recovery basis for the Owner. For certainty, the Owner will not require such Community Organizations to pay a booking fee for the use of the Theatre Building, but the Owner may recover its actual operational costs



resulting from a Community Organization's use of the Theatre Building directly from that Community Organization, including but not limited to:

- (A) costs for any required technical, sound, projection, and lighting services;
- (B) any additional utility costs incurred by the Owner as a result of the Community Organization's use of the Theatre Building, over and above routine operational utility costs; and
- (C) any supplementary janitorial service over and above routine janitorial service required pursuant to Section 3.1(a)(ii).

Notwithstanding the foregoing, Community Organizations may choose to bring in their own technical support services at their own cost. The Owner acknowledges and agrees that the City shall not be responsible for any such operational costs associated with the use of the Theatre Building by any Community Organization pursuant to this agreement;

- (ii) all Community Organizations must schedule their use of the Theatre Building with the Owner (or its designated Theatre Building operator) at least eight (8) weeks in advance of the desired event date. The Owner may allow Community Organizations to make bookings less than eight (8) weeks in advance of the desired event date in its discretion and subject to Theatre Building availability;
- (iii) in the event that the Theatre Building is booked by Community Organizations for less than twenty-four (24) hours in any month, the Owner may but is not obligated to allow any un-used hours to be carried forward in its discretion;
- (iv) in the event that one or more Community Organizations wish to use the Theatre Building for more than twenty-four (24) hours in a particular month (or such total number of hours as may be reallocated to that month, in the Owner's discretion, pursuant to subsection (iii) above), then such additional use will be negotiated directly between the particular Community Organization and the Owner (or its designated Theatre Building operator);
- (v) the Owner may require such Community Organizations to abide by the limitations contained in Section 2.7 and any reasonable rules, regulations and security arrangements established by the Owner and communicated to the City and such Community Organizations from time to time;
- (vi) all Community Organizations will have adequate commercial general liability insurance (minimum \$2,000,000 per occurrence/aggregate including tenant's legal liability) adding the City and the Owner as additional insureds, and the Owner (or its designated Theatre Building operator) may require evidence of such insurance prior to any booking. The Owner may allow alternative insurance coverage with the prior written consent of the Managing Director of Cultural Services;



- (vii) the Owner will ensure that the general content of this agreement is made easily accessible to the public, either on the Theatre Building's website or other similar mode of public promotion, to the satisfaction of the Managing Director of Cultural Services;
  - (viii) the Owner will, no later than March 31<sup>st</sup> of each year, provide the Managing Director of Cultural Services with an annual report for the previous calendar year that includes, but is not limited to, the names of all Community Organizations who booked the Theatre Building in the previous calendar year, and the dates, times, and types of events that Community Organizations booked in the previous calendar year pursuant to this agreement, to the satisfaction of the Managing Director of Cultural Services; and
- (b) permitting City Personnel to enter the Theatre Building with equipment, tools and materials for the purpose of inspecting the Theatre Building and carrying out the Owner's obligations as set out in Section 3.1(a)(i)(A) if the Owner defaults in observing or performing such obligations and the following will apply:
- (i) the City will provide prior reasonable notice of its intention to inspect the Theatre Building;
  - (ii) the City will not exercise its right to carry out the Owner's obligations as set out in Section 3.1(a)(i)(A) without first giving 30 days' written notice to the Owner of the City's intention to carry out such work if the Owner does not remedy such default within the stated 30 day period (or if a remedy is not practicable within such period, commence remedying such default within the stated 30 day period), which notice will include a reasonable description of the Owner's default, provided that no notice will be required in the event of emergency or apprehended emergency, in the sole opinion of the Arts, Culture and Community Services General Manager; and
  - (iii) the Owner covenants to forthwith pay to the City all costs and expenses incurred by the City in undertaking such work, including all fees paid to expert consultants plus an additional twenty percent (20%) of all such costs to cover administrative overhead upon the City issuing invoices for same, together with interest on all such amounts at the Prime Rate plus three percent (3%) per annum commencing as of the 5<sup>th</sup> business day after the date of delivery of such invoice to the Owner.

**2.2 Access.** In the event that the City requires access to the Theatre Building for any purpose pursuant to section 2.1(b), the Owner will provide the City with such access upon the City giving the Owner (or its designated Theatre Building operator) at least 24 hours prior notice.

**2.3 Right to Bar Entry.** The Owner may bar entry to or eject from the Theatre Building any member of the public who:

- (a) acts in a disorderly or offensive manner, interferes with or obstructs any other person, appears intoxicated or commits or appears to commit an illegal act;
- (b) presents an apparent threat to the safety of others or to the security of the Theatre Building;

- (c) fails to comply with any rule, regulation or security arrangement established by the Owner in accordance with Section 2.1(a)(vi);
- (d) is flagged as a potential or past problem or liability patron, as noted on the theatre security data base or BAR WATCH; or
- (e) has previously or may impede the business and/or safety of the Owner, operators or staff of the Theatre Building.

**2.4 Interruption of Public Use by Owner.** Upon seven (7) days' prior notice to the City, the Owner may temporarily interrupt the use and enjoyment of part or all of the Theatre Building permitted by this agreement, but only to the extent reasonably necessary for the Owner to carry out maintenance, repair and replacement work which the Owner is expressly permitted or required to carry out under this agreement, provided that no notice will be required in the event of emergency or apprehended emergency, in the sole opinion of the Owner or its delegate.

**2.5 Statutory Right of Way Not Interrupted by Default by City.** No default by the City or any permittee of the City under this agreement (including any Community Organization) and no act or failure to act by the City in connection with the Statutory Right of Way will result or be deemed to result in the interruption, suspension or termination of the Statutory Right of Way, and the Owner will refrain from seeking any judgment, order, declaration or injunction to that effect.

**2.6 Impairment of Statutory Right of Way by Owner.** The Owner will take no action nor pass any bylaw or rule which would have the effect of prohibiting, preventing or impairing the City or any permittee of the City (including any Community Organization) from fully utilizing the Theatre Building for the purposes set out in this agreement, including any limitation on access to the Theatre Building or any negative impact on the uses of the Theatre Building permitted by this agreement.

**2.7 Limitation on Statutory Right of Way.** In exercising its rights under Section 2.1, the City will only use, and the City will only permit its permittees (including any Community Organization) to use, those portions of the Theatre Lands as are reasonably necessary to access the Theatre Building and will use designated pathways and entrances so as to minimize disruption to other users of the Theatre Lands or the Adjacent Lands.

**2.8 No City Obligation.** Nothing in this agreement implies that the City has any obligation to the Owner or to anyone else to exercise any of its rights under Section 2.1.

**2.9 Modification.** Once the New Building has been completed and the Lands have been consolidated and/or subdivided as described in the introductory paragraphs of this agreement, the Owner may, at its option and as reasonably necessary, arrange for a modification, extension, replacement, or partial discharge of this agreement (the "**Modification Agreement**") which will specify the area of the Lands to be charged by the Statutory Right of Way or the area from which the Statutory Right of Way is to be discharged, and cause a registrable plan (the "**Registration Plan**") to be prepared depicting such area. The Modification Agreement will be to the satisfaction of the Director of Legal services. The Owner will deliver the Modification Agreement to the Director of Legal Services for execution by the City and once fully executed the Owner will take all necessary steps to register the Modification Agreement and the Registration Plan against title to the Lands or appropriate portion of the Lands at the LTO to the satisfaction of and in priority acceptable to the Director of Legal Services, provided that until the Modification

and Registration Plan are registered, this agreement will remain as a charge against the Theatre Lands.

**2.10 Other Sections Form Part of Statutory Right of Way.** The Owner covenants and agrees with the City that Sections 4.1 to 6.11 inclusive of this agreement will be deemed to be included in and form part of the Statutory Right of Way.

**2.11 Statutory Right of Way Necessary.** The Statutory Right of Way granted herein is necessary for the operation and maintenance of the City's undertaking.

### ARTICLE 3 SECTION 219 COVENANT

**3.1 Owner Covenants.** Pursuant to Section 219 of the *Land Title Act*, the Owner covenants with the City in respect of the use of the Theatre Lands that:

- (a) the Owner, at its expense, will equip and furnish the Theatre Building to a standard appropriate for basic community arts and cultural use, and will maintain the Theatre Building and such equipment and furnishings for use in accordance with the Statutory Right of Way and, in particular, without limiting the foregoing, the Owner will:
  - (i) keep the Theatre Building in good repair and pleasing appearance for use in accordance with this agreement and will repair, repaint and redecorate from time to time as would a reasonable and prudent Owner of similar premises; provided that if, in the reasonable opinion of the Arts, Culture and Community Services General Manager, repairs are required in order to abate a health and/or safety concern and the Owner has failed to carry out such repairs, the Arts, Culture and Community Services General Manager may provide notice that such repairs are required and the following will apply:
    - (A) on receipt of any such notice the Owner will undertake such repairs including replace any fittings, equipment and furnishings in the Theatre Building which cannot be kept in good repair, with items of equal kind, utility and value, and the Owner will discharge these obligations as expeditiously as reasonably practicable;
    - (B) if any Community Organization causes damage while using the Theatre Building, the Owner acknowledges and agrees that the City is not responsible for any expenses incurred by the Owner in repairing such damage or replacing equipment or furnishings that cannot be repaired, and the Owner may seek to recover such costs directly from the Community Organization;
    - (C) if any Community Organization provides any equipment or furnishings for use in the Theatre Building, the Owner acknowledges and agrees that the City is not responsible for maintaining any such equipment or furnishings;
  - (ii) keep the Theatre Building in a clean and safe condition at all times and, subject to Section 2.1(a)(ii), will pay for routine janitorial service;

- (iii) pay all fees for the Theatre Building and pay for all heat, ventilation, air conditioning, electricity and water provided to the Theatre Building which are to be paid by the Owner and none of the City or the City's permittees (including any Community Organization) will be required to bear any such costs, except that Community Organizations may be required to bear any additional utility costs incurred by the Owner as a result of the Community Organization's use of the Theatre Building, over and above routine operational utility costs, in accordance with section 2.1(a)(i)(B);
- (iv) keep the utilities and services for the Theatre Building, including heat, ventilation, air conditioning, electricity and water, in good repair and working order, at no cost to the City or the City's permittees (including any Community Organization); and
- (v) keep the Theatre Building adequately lit during such times as it is in use pursuant to the Statutory Right of Way;
- (b) if requested by the City, the Owner will provide written permission for the City to place a sign bearing the words "Community Space" or similar at the main entrance to the Theatre Building, provided that the size and location of such sign must be approved by the Owner; and
- (c) the Owner will not suffer, cause or permit any use of the Theatre Lands or the Theatre Building which would prevent or interfere with exercise of the Statutory Right of Way.

**3.2 Other Sections Form Part of This Covenant.** The Owner covenants and agrees with the City that Sections 4.1 to 6.11 inclusive of this agreement will be deemed to be included in and form part of this covenant made pursuant to section 219 of the *Land Title Act*.

#### ARTICLE 4 DISPUTES

**4.1 Resolution of Disputes.** Any issues arising out of this agreement will be dealt with in the following manner:

- (a) firstly, through prompt and collaborative discussions at the staff/operational level;
- (b) if a resolution is not achieved within 15 business days of the dispute arising, or an extended period of time as may be agreed to between the parties, the dispute will be referred to the Owner's President and the Arts, Culture and Community Services General Manager;
- (c) failing resolution between the Owner's President and the Arts, Culture and Community Services General Manager within 15 business days of the dispute being referred to them, the matter will be elevated to the City's City Manager and the Owner's President;
- (d) if the dispute remains unresolved 30 business days after the process described above has been exhausted, the parties must refer the matter to mediation under the rules of the *Mediate BC Society*; and



- (e) if the dispute is not resolved through mediation within 30 business days of the commencement of mediation, then if both parties agree, the dispute will be referred to and finally resolved by arbitration under the British Columbia *Arbitration Act* and the rules of the BCICAC.

**4.2 Forum.** An arbitration or mediation under this Article 4 will be decided by a sole arbitrator or mediator, as the case may be, in Vancouver, British Columbia.

**4.3 Intent.** It is the intention that all disputes be resolved in a fair, efficient and timely manner without incurring undue expense.

## ARTICLE 5 INDEMNITY AND RELEASE

**5.1 Release by Owner.** The Owner, for itself and its successors and assigns, hereby releases and forever discharges the City and City Personnel from any and all Losses suffered or incurred by the Owner in connection with this agreement.

**5.2 Release by City.** The City, for itself and its successors and assigns, hereby releases and forever discharges the Owner and its directors, officers, employees, contractors and agents from any and all Losses suffered or incurred by the City or City Personnel in connection with this agreement.

**5.3 Indemnity by Owner.** The Owner hereby covenants and agrees with the City to indemnify and save harmless and reimburse the City and City Personnel (the "**City Indemnified Parties**"), from and against all Losses which may arise or accrue to the City Indemnified Parties or any person, firm or corporation against the City Indemnified Parties or any of them or which the City Indemnified Parties or any of them may pay, incur, sustain or be put to by reason of or which would not or could not have been sustained "but for" any of the following:

- (a) any breach of this agreement by the Owner or anyone for whom the Owner is responsible at law; and
- (b) any personal injury, property damage or death occurring in the Theatre Building or on the Theatre Lands in whole or in part from any defect or deficiency in the design, construction or condition of the Theatre Building or the Theatre Lands or any negligent act or omission on the part of the Owner or anyone for whom the Owner is responsible at law,

except to the proportionate extent that such Losses were caused by the gross negligence or wilful misconduct of the City or City Personnel.

**5.4 Owner Not Responsible.** The Owner will not be responsible for the loss or damage to furnishings and chattels brought to or used in the Theatre Building by City Personnel or the City's permittees, including loss or damage to personal items of City Personnel or the City's permittees.

**5.5 Indemnity by City.** The City hereby covenants and agrees to save harmless and indemnify and reimburse the Owner and its directors, officers, employees, contractors and agents from and against all Losses arising in any way out of or connected with any breach of this agreement by the City or anyone for whom the City is responsible at law, or with the use of the Theatre Building by the City, City Personnel, or members of the public as permittees of the City



(unless the Owner is responsible under Section 5.3(b)), except to the proportionate extent that such Losses were caused by the gross negligence or willful misconduct of the Owner or its directors, officers, employees, contractors and/or agents. For greater certainty, if the Losses arise from the use of the Theatre Building by a Community Organization, the Owner's recourse will be directly against the Community Organization and the City's indemnity will not apply.

**5.6 Release and Indemnity to Survive.** The releases and indemnities created by Sections 5.1, 5.2, 5.3 and 5.5 will remain effective and will survive any modification of, or partial release or release of the covenants contained in this agreement, and any termination of this agreement, whether by fulfilment of the covenants contained in this agreement or otherwise.

## ARTICLE 6 GENERAL PROVISIONS

**6.1 Notice.** Any notice, approval or request required or permitted to be given under this agreement will be in writing and may be given by delivering such notice, approval or request to a representative of the party for whom it is intended or by mailing such notice, approval or request by prepaid registered mail from any post office in British Columbia and:

(a) in the case of the Owner, addressed to:

4184 Investments Ltd.  
300 - 526 Granville Street  
Vancouver, British Columbia  
V6C 1W6

Attention: Dino Bonnis

(b) and in the case of the City, addressed to:

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

Attention: Arts, Culture and Community Services General Manager

or at such other address as the parties may from time to time advise by notice in writing. Any such notice, approval or request will be deemed to have been received on the date of delivery of such notice, approval or request or, on the third business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effective if actually delivered.

**6.2 Agreement to be a First Charge.** The Owner agrees to cause the registrable interests in land expressly agreed to be granted pursuant to this agreement to be registered as first registered charges against the Theatre Lands, save only for any reservations, liens, charges or encumbrances:

(a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia;

- (b) registered against title to the Theatre Lands at the instance of the City, whether in favour of the City or otherwise, as a condition of the rezoning or development of the Theatre Lands or the Adjacent Lands or otherwise; or
- (c) which the Director of Legal Services has determined, in her sole discretion, may rank in priority to the registrable interests in land granted pursuant to this agreement.

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

**6.4 Assignment by City.** The City, upon prior written notice to the Owner, may assign all or any part of this agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing such public facilities and services as are contemplated by this agreement; and the City may designate licensees and permittees for any and all purposes of this agreement.

**6.5 Remedies Cumulative.** The remedies provided for in this agreement will be cumulative and not exclusive of any other remedies provided by law or in equity.

**6.6 City's Court Costs.** In an action to enforce this agreement in respect of which a Court determines that the position of the City will prevail, the City will be entitled to court cost on a solicitor-client basis.

**6.7 Agreement for Benefit of City.** The Owner and the City hereby acknowledge, agree and declare that this agreement is entered into for the sole purpose of benefitting the City and, in particular, acknowledge, agree and declare that this agreement is not designed to protect or promote the interests of the Owner or any other person or corporation whatsoever, and the City may, at its sole option, execute a release of this agreement at any time without liability to anyone for so doing.

**6.8 Agreement Runs with the Lands.** This agreement will run with the Theatre Lands and will bind the Theatre Lands.

**6.9 Owner's Representations.** The Owner represents and warrants to and covenants and agrees with the City that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this agreement and to bind all legal and beneficial interests in the title to the Theatre Lands created by this agreement;
- (b) upon execution and delivery of this agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Theatre Lands;

- (c) this agreement will be fully and completely binding upon the Owner in accordance with the terms hereof and the Owner will perform all of its obligations under this agreement in accordance with the terms hereof; and
- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Theatre Building, the Theatre Lands, or any other matter whatsoever.

**6.10 Owner's Duties as Occupier.** Nothing in this agreement will abrogate or limit the Owner's duties and liability as occupier of the Theatre Building.

**6.11 Effect of Agreement.** This agreement will enure to the benefit of and bind each of the City and the Owner and their respective successors and assigns.

TO WITNESS THIS AGREEMENT each of the City and the Owner has executed this agreement on the General Instrument - Part 1 which is attached hereto and forms a part hereof.

## CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) **"Existing Charges"** mean the Mortgage registered under number CA3574502 and the Assignment of Rents registered under number CA3574503;
- (b) **"Existing Chargeholder"** means CANADIAN WESTERN BANK;
- (c) **"New Charges"** means the Statutory Right of Way and Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For ten dollars and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

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

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

END OF DOCUMENT

UNDERTAKING RE: REPLACEMENT OF EXISTING CHARGE

TO: CITY OF VANCOUVER (the "City")

FROM: 4184 INVESTMENTS LTD., INC. NO. BC0559518 (the "Owner")

RE: 3123 - 3129 West Broadway, legally described as:  
Parcel Identifier: 006-767-966, Lot H Block 54 District Lot 540 Plan 20212; Parcel Identifier: 015-450-384, Lot 9, Except Part in Plan 4166, Block 54 District Lot 540 Plan 229; and  
Parcel Identifier: 015-450-414, The East 1/2 of Lot 10, Except the North 5 Feet Now Lane and Part in Plan 4166, Block 54 District Lot 540 Plan 229  
(together, the "Property")

---

WHEREAS:

- A. The Owner is the registered owner of the Property and the Owner has applied for a Development Permit pursuant to Development Application DP-2018-00039 (the "Development Application") in connection with the Property;
- B. As a condition of the Director of Planning approving the Development Application, the Owner is required to make arrangements to the satisfaction of the City's General Manager of Engineering Services and Director of Legal Services for the replacement of Easement and Indemnity Agreement M72987 with a new Easement and Indemnity Agreement with an updated survey plan covering all theatre building elements which encroach onto City property, upon completion of the required work to the theatre building's exterior and prior to issuance of an occupancy permit for any new building on the Property.

NOW THEREFORE in consideration of the premises and the sum of \$1.00 now paid by the City to the Owner (the receipt and sufficiency of which are hereby acknowledged by the Owner), the Owner hereby agrees that upon completion of all required work to the theatre building's exterior and in any case prior to the issuance by the City of an occupancy permit for any building or other improvement constructed by the Owner on the Property the Owner will, at its sole cost and expense:

- 1. prepare and deliver (or cause to be prepared and delivered) to the City a Release (the "Release") of the Easement and Indemnity Agreement M72987 in registrable form, together with the fee for the discharge of a registered encumbrance (as per the City's Miscellaneous Fees By-law);
- 2. prepare and deliver (or cause to be prepared and delivered) to the City a new BC Land Surveyor's Location Certificate showing the extent of all building encroachments onto City property (the "Survey Plan");
- 3. execute a new Easement and Indemnity Agreement (the "Replacement Agreement") in registrable form, prepared by the City using the City's standard form Easement and Indemnity Agreement, and deliver executed copies of the Replacement Agreement to the City;



3. upon receipt of copies of the Release and the Replacement Agreement executed by the City, file the Release, the Replacement Agreement and the Survey Plan for registration in the Land Title Office; and
4. provide confirmation in writing to the City upon full registration of the Release, the Replacement Agreement and the Survey Plan in the Land Title Office.

DATED: January 9, 2018.

4184 INVESTMENTS LTD.

Per:

  
Authorized Signatory

UNDERTAKING RE: RELEASE OF EXISTING CHARGE

TO: CITY OF VANCOUVER (the "City")

FROM: 4184 INVESTMENTS LTD., INC. NO. BC0559518 (the "Owner")

RE: 3123-3129 West Broadway, legally described as:  
Parcel Identifier: 006-767-966, Lot H Block 54 District Lot 540 Plan 20212 ("Lot H");  
Parcel Identifier: 015-450-384, Lot 9, Except Part in Plan 4166, Block 54 District Lot 540 Plan 229 ("Lot 9"); and  
Parcel Identifier: 015-450-414, The East 1/2 of Lot 10, except the north 5 feet now lane and part in Plan 4166, Block 54 District Lot 540 Plan 229 ("The East 1/2 of Lot 10")  
(together, Lot H, Lot 9, and The East 1/2 of Lot 10 comprise the "Property")

---

WHEREAS:

- A. The Owner is the registered owner of the Property and the Owner has applied for a development permit in respect of the Property under development permit application No. DP-2018-00039 (the "DP Application");
- B. As a condition of the Director of Planning approving the DP Application, the Owner is required to make arrangements to the satisfaction of the City's General Manager of Engineering Services and Director of Legal Services for the release of Covenant H26232 upon the demolition of the existing building or redevelopment of Lot 9.


NOW THEREFORE in consideration of the premises and the sum of \$1.00 now paid by the City to the Owner (the receipt and sufficiency of which are hereby acknowledged by the Owner), the Owner hereby agrees that, upon the demolition of the existing building or redevelopment of Lot 9, the Owner will, at its sole cost and expense:

- 1. prepare and deliver (or cause to be prepared and delivered) to the City a release (the "Release") of Covenant H26232 in registrable form, together with the fee for the discharge of a registered encumbrance (as per the City's Miscellaneous Fees By-law);
- 2. upon receipt of a copy of the Release executed by the City, file the Release for registration in the Land Title Office; and
- 3. provide confirmation in writing to the City upon full registration of the Release in the Land Title Office.

DATED: January 9, 2018.

4184 INVESTMENTS LTD.

Per:

  
Authorized Signatory

## NEW WESTMINSTER LAND TITLE OFFICE

APPLICATION TO DEPOSIT PLAN Mar-22-2019 12:42:05.002  
 AT LAND TITLE OFFICE  
 PROVINCE OF BRITISH COLUMBIA

CA7407837

PAGE 1 OF 5 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.732, and a true copy, or a copy of that true copy, is in your possession.

Kristian Nickolas  
 Arciaga F8GH97

Digitally signed by Kristian  
 Nickolas Arciaga F8GH97  
 Date: 2019.03.01 10:10:02  
 -08'00'

## 1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Megan Sedmak, Paralegal, of Fasken Martineau Dumoulin LLP

Barristers & Solicitors

2900 - 550 Burrard Street

Vancouver

BC V6C 0A3

Telephone: 604-631-3131

LTO No.: 11565

File No.: 240584.00107/18386

Document Fees: \$161.54

Deduct LTSA Fees? Yes ☒

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

**SEE SCHEDULE**

## 3. APPLICATION FOR DEPOSIT OF:

PLAN TYPE

Subdivision

PLAN NUMBER

EPP88675

CONTROL NUMBER

154-541-4765

NUMBER OF NEW  
LOTS CREATED

1

## 4. OWNER(S): (updated owner(s) name(s), occupation(s), postal address and postal code)

**4184 INVESTMENTS LTD.**

300 - 526 GRANVILLE STREET

VANCOUVER

V6C 1W6

BRITISH COLUMBIA

CANADA

Incorporation No

BC559518

## 5. ADDITIONAL INFORMATION:

## ADDITIONAL PARCEL INFORMATION

PAGE 2 OF 5 PAGES

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

**006-767-966 LOT H BLOCK 54 DISTRICT LOT 540 PLAN 20212**

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

**015-450-384 LOT 9, EXCEPT PART IN PLAN 4166, BLOCK 54 DISTRICT LOT 540 PLAN 229**

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

**015-450-414 THE EAST 1/2 OF LOT 10, EXCEPT THE NORTH 5 FEET NOW LANE AND  
PART IN PLAN 4166, BLOCK 54 DISTRICT LOT 540 PLAN 229**

## SCHEDULE OF OWNERS AND WITNESSES

PAGE 3 OF 5 PAGES

PLAN NUMBER: EPP88675

CONTROL NUMBER: 154-541-4765

## Witness to All Signatures

\_\_\_\_\_  
[signature]  
BARBARA VANDERBURGH

\_\_\_\_\_  
[fill in witness name]  
Barrister & Solicitor

\_\_\_\_\_  
[fill in occupation]  
2900 - 550 Burrard Street

\_\_\_\_\_  
[fill in address line 1]  
Vancouver, BC V6C 0A3

\_\_\_\_\_  
[fill in address line 2]

## Owner/Charge Owner [as appropriate]

4184 INVESTMENTS LTD.

\_\_\_\_\_  
[fill in corporate registered owner]  
BC0559518

\_\_\_\_\_  
[fill in Incorporation Number]

\_\_\_\_\_  
[signature] Authorized signatory

Dino Bonnis

\_\_\_\_\_  
[fill in the name of signatory]

\_\_\_\_\_  
[signature] Authorized signatory

\_\_\_\_\_  
[fill in the name of signatory]



PLAN NUMBER: EPP88675

CONTROL NUMBER: 154-541-4765

## Witness to All Signatures

[signature]

NICHOLAS KING

[fill in witness name]

A Commissioner for taking Affidavits for British Columbia

[fill in occupation]

#2200, 666 Burrard Street

[fill in address line 1]

Vancouver, BC V6C 2X8

Expires: September 30, 2021

[fill in address line 2]

(NOTE: Consent by a holder of a registered mortgage of the fee simple operates, on deposit of the plan, to extend the mortgage to the whole of the new parcel shown on Plan EPP88675).

I/We, CANADIAN WESTERN BANK of Vancouver, BC, the holders of the following registered charges, consent to the deposit of Plan EPP88675.

CA3574502 and CA3574503

[fill in registration No. of charge]

CANADIAN WESTERN BANK

[fill in the name of charge holder]

[signature]

Stephen Jacobson, AVP

[fill in the name of signatory]

[signature]

Chris Tong, AVP

[fill in the name of signatory]

PLAN NUMBER: EPP88675

CONTROL NUMBER: 154-541-4765

Approval - Approving Officer, LTA s. 88

Plan EPP88675 is Approved under the Land Title Act on February 6, 2019 [date].

[signature] Approving Officer

JOHN GREER

[Fill in name of Approving Officer]

CITY OF VANCOUVER

[Fill in name of municipality, or as case may be]

[include file reference if desired]

## NEW WESTMINSTER LAND TITLE OFFICE

Mar-22-2019 12:42:05.003

EPP88675

SURVEY PLAN CERTIFICATION  
PROVINCE OF BRITISH COLUMBIA

0975

PAGE 1 OF 2 PAGES

By incorporating your electronic signature into this form you are also incorporating your electronic signature into the attached plan and you

(a) represent that you are a subscriber and that you have incorporated your electronic signature to the attached electronic plan in accordance with section 168.73 (3) of the Land Title Act, RSBC 1996 c.250; and

(b) certify the matters set out in section 168.73 (4) of the Land Title Act, Each term used in this representation and certification is to be given the meaning ascribed to it in part 10.1 of the Land Title Act.

Michael Rinsma  
BWRUC2

Digitally signed by Michael Rinsma  
BWRUC2  
DN: c=CA, cn=Michael Rinsma  
BWRUC2, o=BC Land Surveyor,  
ou=Verify ID at www.juricert.com/  
LKUP.cfm?id=BWRUC2  
Date: 2018.12.21 09:52:45 -08'00'

## 1. BC LAND SURVEYOR: (Name, address, phone number)

MICHAEL RINSMA

204 - 218 BLUE MOUNTAIN STREET

mike@targetlandsurveying.ca

COQUITLAM

BC V3K 4H2

☐ Surveyor General Certification [For Surveyor General Use Only]

## 2. PLAN IDENTIFICATION:

Control Number: 154-541-4765

Plan Number: EPP88675

This original plan number assignment was done under Commission #: 975

LTO Document Reference: CA7407837

## 3. CERTIFICATION:

☒ Form 9 ☐ Explanatory Plan ☐ Form 9A

I am a British Columbia land surveyor and certify that I was present at and personally superintended this survey and that the survey and plan are correct.

The field survey was completed on: 2018 December 14 (YYYY/Month/DD) The checklist was filed under ECR#: 220219  
The plan was completed and checked on: 2018 December 21 (YYYY/Month/DD)

☒ None ☐ Strata Form S☒ None ☐ Strata Form U1 ☐ Strata Form U1/U2Arterial Highway ☐Remainder Parcel (Airspace) ☐4. ALTERATION: ☐

**SUBDIVISION PLAN OF  
THE EAST 1/2 OF LOT 10, EXCEPT THE NORTH 5 FEET NOW LANE  
AND PART IN PLAN 4166, PLAN 229,  
LOT 9, EXCEPT PART IN PLAN 4166, PLAN 229, AND  
LOT H PLAN 20212  
ALL OF BLOCK 54 DISTRICT LOT 540 GROUP 1 NEW WESTMINSTER DISTRICT**

**PLAN EPP88675**

PURSUANT TO SECTION 57, Land Title Act  
B.C.G.S. 92G.025

**SCALE 1 : 500**

5 0 10 20 30  
ALL DISTANCES ARE IN METRES

The intended plot size of this plan is 560mm in width  
and 432mm in height (C size) when plotted at a scale of 1:500.

**LEGEND**

- ⊕ DENOTES CONTROL MONUMENT FOUND
- DENOTES LEAD PLUG FOUND
- DENOTES LEAD PLUG SET
- DENOTES STANDARD IRON POST FOUND
- DENOTES STANDARD IRON POST SET
- W DENOTES WITNESS
- NSP DENOTES NOT SUITABLE FOR POSTING
- ha DENOTES HECTARES
- m<sup>2</sup> DENOTES SQUARE METRES
- U DENOTES ORIGIN UNKNOWN
- (c) DENOTES CALCULATED

Note:  
This plan shows one or more witness points which are not  
set on the true corner(s).



UTM Zone 10 Coordinates  
Northing 5456857.359  
Easting 487053.018  
Point Combined Factor:  
0.9996023  
Estimated horizontal  
positional accuracy 0.01

**INTEGRATED SURVEY AREA No. 31, VANCOUVER**

NAD 83 (CSRS) 4.0, 0.8C, 1.0VND  
Grid bearings are derived from observations between  
geodetic control monuments V-3273 and V-997.

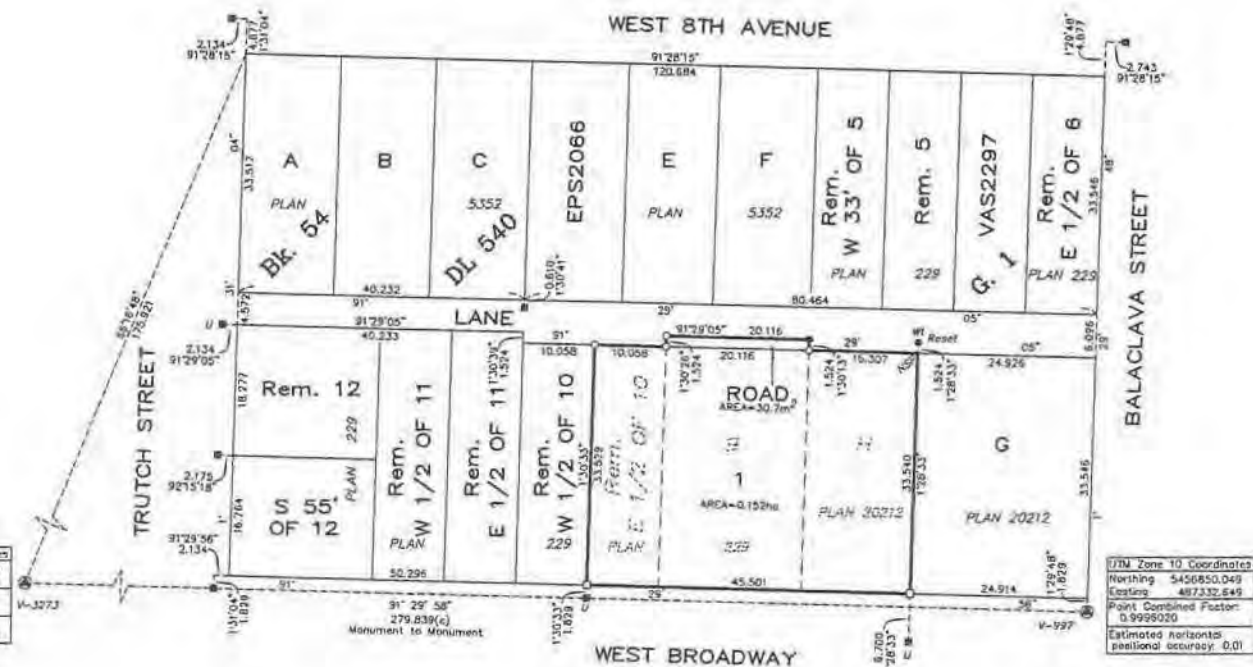
This plan shows horizontal ground-level distances unless  
otherwise specified. To compute grid distances, multiply  
ground-level distances by the average combined factor  
of 0.9996023 which has been derived from geodetic control  
monuments V-3273 and V-997.

The UTM coordinates and estimated horizontal positional  
accuracy achieved are derived from the MASCO7 published  
coordinates and standard deviations for geodetic control  
monuments V-3273 and V-997.

**TARGET**  
LAND SURVEYING  
www.targetlandsurveying.com  
FILE: N3497-SUBDIVISION

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THIS PLAN LIES WITHIN THE METRO VANCOUVER REGIONAL DISTRICT



UTM Zone 10 Coordinates  
Northing 5456850.049  
Easting 487332.649  
Point Combined Factor:  
0.9996020  
Estimated horizontal  
positional accuracy 0.01

This plan lies within the jurisdiction of the Approving Officer  
for the City of Vancouver.

The field survey represented by this plan was completed on  
the 14th day of December 2018.

Michael Rissna, BCLS 975

LAND TITLE ACT

Mar-22-2019 12:42:05.004

CA7407838 CA7407839

FORM C (Section 233) CHARGE

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 12 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Kristian Nickolas  
Arciaga F8GH97

Digitally signed by Kristian  
Nickolas Arciaga F8GH97  
Date: 2019.03.01  
10:14:08 -08'00'

## 1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

Meghan Sedmak, Paralegal, of Fasken Martineau Dumoulin LLP

Barristers &amp; Solicitors

2900 - 550 Burrard Street

Vancouver

BC V6C 0A3

Telephone: 604-631-3131

LTO No.: 11565

File No.: 240584.00107/18386

File No. LS-18-01528-004 (Shared Use Loading Agreement)

Document Fees: \$143.16

Deduct LTSA Fees? Yes ☒

## 2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

**NO PID NMBR LOT 1 BLOCK 54 DISTRICT LOT 540 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP88675**

STC? YES

Related Plan Number: **EPP88675**

## 3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

**SEE SCHEDULE**

## 4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

## 5. TRANSFEROR(S):

**4184 INVESTMENTS LTD. (INCORPORATION NO. BC0559518)****CANADIAN WESTERN BANK, AS TO PRIORITY**

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

**CITY OF VANCOUVER**

453 WEST 12TH AVENUE

VANCOUVER

BRITISH COLUMBIA

V5Y 1V4

CANADA

## 7. ADDITIONAL OR MODIFIED TERMS:

N/A

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

Officer Signature(s)

BARBARA VANDERBURGH

Barrister &amp; Solicitor

2900 - 550 Burrard Street

Vancouver, BC V6C 0A3

604 631 4937

Execution Date

Y	M	D
19	01	09

Transferor(s) Signature(s)

4184 INVESTMENTS LTD. by its  
authorized signatory(ies):

Print Name: C. Dino Bonnis

Print Name:

## OFFICER CERTIFICATION:

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



**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

PAGE 2 of 12 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

NICHOLAS KING

Commissioner for Taking Affidavits in British Columbia

#2200, 666 Burrard Street

Vancouver, BC V6C 2X8

Expires: September 30, 2021

(As to all signatures)

Y	M	D
19	01	21

CANADIAN WESTERN BANK by its  
authorized signatory(ies):

Print Name: STEPHEN JACOBSON  
AVP

Print Name: CHRIS TONG  
AVP

JOANNA TRACK

Solicitor

453 WEST 12TH AVENUE

VANCOUVER, B.C. V5Y 1V4

19	02	25
----	----	----

CITY OF VANCOUVER by its  
authorized signatory:

HEIDI GRANGER

**OFFICER CERTIFICATION:**

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

LAND TITLE ACT  
FORM E

## SCHEDULE

PAGE 3 OF 12 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Covenant

Section 219 Covenant  
Article 2, Page 7

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

granting the above Section 219 Covenant priority  
over Mortgage CA3574502 and Assignment of  
Rents CA3574503

Page 12

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

## TERMS OF INSTRUMENT - PART 2

### SHARED USE LOADING AGREEMENT 3123-3129 WEST BROADWAY

#### Introduction

- A. It is understood and agreed that this Agreement will be read as follows:
  - I. the Transferor, 4184 INVESTMENTS LTD., is called the "Owner"; and
  - II. the Transferee, CITY OF VANCOUVER, is called the "City" or "City of Vancouver" when referring to the corporate entity and "Vancouver" when referring to geographical location";
- B. The Owner is the registered owner of the Lands;
- C. There is a building situated on the Lands known as the "Hollywood Theatre" (the "Theatre");
- D. The Owner made an application under Development Application no. DP-2018-00039 (the "Development Application") to develop on the Lands subject to, among other things, fulfilment of the condition that, prior to the issuance of a Development Permit, the Owner, at no cost to the City, make arrangements to the satisfaction of the General Manager of Engineering Services and the Director of Legal Services for a shared use loading agreement for the sharing of one loading space between the commercial users and Theatre users in the proposed development; and
- E. To satisfy the foregoing condition, the Owner has agreed to enter into this Agreement with the City.

#### Consideration

NOW THEREFORE THIS AGREEMENT WITNESSES that for Ten (\$10) Dollars and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged and agreed to by the parties), the parties, for themselves and their successors and assigns, hereby covenant and agree as follows:

#### Terms of Agreement

### ARTICLE 1 DEFINITIONS AND INTERPRETATION

- 1.1 **Defined Terms.** Terms defined in this Section 1.1, unless specifically otherwise provided in this Agreement, will have the following meanings:
  - (a) "Agreement" means this agreement, including the foregoing Recitals, and any schedules attached hereto;
  - (b) "Building" means the buildings which are or will be constructed on the Lands following issuance of, and pursuant to, the Development Permit;

- (c) **"City Engineer"** means the chief administrator, from time to time, of the City's Engineering Services Department and his or her successors in function and their respective nominees;
- (d) **"City Personnel"** means all of the City's elected and appointed officials, officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and invitees;
- (e) **"Commercial Users"** means the owners and tenants of the retail premises within the Building, and their respective invitees;
- (f) **"Development Application"** has the meaning set out in Recital D;
- (g) **"Development Permit"** means a permit issued by the City authorizing development on the Lands (or any portion of the Lands) as contemplated by the Development Application;
- (h) **"Director of Legal Services"** means the chief administrator, from time to time, of the City's Legal Services Department and his or her successors in function and their respective nominees;
- (i) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (j) **"Lands"** means the parcels of land situate in the City of Vancouver, British Columbia, and legally described in Item 2 of the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and includes any parcels into which such lands are consolidated or further subdivided (including, without limitation, a subdivision pursuant to the *Land Title Act* and a subdivision pursuant to the *Strata Property Act*);
- (k) **"Loading Space"** means one (1) "Loading Space, Class B", as such term is defined in the Parking By-law, designated and equipped for the loading and unloading of goods, supplies, equipment and other things to and from the Lands and the Building, as shown on the sketch attached as Schedule "A" hereto and marked as "Commercial Loading and Hollywood Theatre Loading";
- (l) **"Losses"** means all actions, causes of action, claims, compensation, costs, demands, damages, expenses, fines, judgements, legal obligations, liabilities, losses, orders, penalties, suits and builders liens of every nature or kind whatsoever (whether direct, indirect or consequential, including, without limitation, in respect of, incidental to or resulting from any consequential injuries to or death of persons or damage to property or loss of profits and loss of use and damages arising out of delays) and all legal costs on a solicitor-and-own-client basis;
- (m) **"LTO"** means the land title office for the jurisdiction in which the Lands are situate;
- (n) **"Occupancy Permit"** means the first permit issued by the City at any time following the date this Agreement is fully executed by the parties authorizing the

use and occupation of any new building, development or partial development on the Lands or any portion of the Lands;

- (o) "Owner" means the Transferor and any successors in title to the Lands or a portion of the Lands and, without limiting the generality of the foregoing, if the Lands are subdivided by way of a strata plan under the *Strata Property Act*, then "Owner" includes the strata corporation thereby created;
- (p) "Parking By-law" means City By-law No. 6059, as amended, supplemented and restated from time to time;
- (q) "Rules and Regulations" means any rules and regulations with respect to the use of and access to the Loading Space which are implemented or issued by the Owner from time to time during such time as this Agreement is registered against the Lands, provided that no such rules and regulations will be enforceable to the extent that they are inconsistent with this Agreement;
- (r) "*Strata Property Act*" means the *Strata Property Act*, S.B.C. 1998, c. 43, and all amendments thereto and re-enactments thereof;
- (s) "Theatre Users" means the owners, operators, and users of the Theatre, and their respective invitees; and
- (t) "*Vancouver Charter*" means the *Vancouver Charter*, S.B.C. 1953, c. 55, and all amendments thereto and re-enactments thereof.

## 1.2 Interpretation.

- (a) Any interest in land created hereby, including the interests noted in the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached, and found in certain Articles, Sections, paragraphs or parts of this Agreement, will be construed, interpreted and given force in the context of those portions of this Agreement:
  - (i) that define the terms used in this Agreement;
  - (ii) that deal with the interpretation of this Agreement; and
  - (iii) that are otherwise of general application.
- (b) The word "including" when following any general statement, term, or matter is not to be construed to limit such general statement, term, or matter to the specific items set forth immediately following such word or to similar items whether or not non-limiting language such as "without limitation" or "but not limited to" or words of similar import are used with reference thereto, but rather such general statement, term, or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of such general statement, term, or matter.
- (c) Any Schedules attached to this Agreement constitute an integral part of this Agreement.



- (d) The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.
- (e) Words importing the singular number only will include the plural and *vice versa*, words importing the masculine gender will include the feminine and neuter genders and *vice versa*, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and *vice versa*.
- (f) Any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (g) This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the General Instrument - Part 1 to which these Terms of Instrument - Part 2 are attached is fully executed and to subsequent amendments to or re-enactments or replacements of such statute or regulations.

## ARTICLE 2 SHARED USE

**2.1 Section 219 Covenant.** Pursuant to Section 219 of the *Land Title Act* of British Columbia, the Owner covenants with the City in respect of the use of any portion of the Lands as follows:

- (a) the Owner will ensure that, at all times after the City issues the Occupancy Permit, all Theatre Users will, together with all Commercial Users, have shared access to and shared use of the Loading Space. Such use will be subject to the following additional restrictions and provisos:
  - (i) access to and use of the Loading Space by either the Commercial Users or the Theatre Users will not be unreasonably withheld or interfered with by, or at the instigation of, either such group; and
  - (ii) the Rules and Regulations; and
- (b) the Owner will ensure that, at all times after the City issues the Occupancy Permit, a contact person is designated to represent the Theatre Users and a contact person is designated to represent the Commercial Users (which may be the same person), which person(s) will be responsible for any coordination that is required between the Theatre Users and the Commercial Users in relation to the shared use of the Loading Space.