

File No.: 04-1000-20-2020-262

September 9, 2020

s.22(1)

Dear s.22(1)

RE: Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")

I am writing regarding your request of May 8, 2020 under the ***Freedom of Information and Protection of Privacy Act*** for:

In relation to 1296 West Broadway (By-law 12179):

- 1. Agreement with the City requiring the future owner of the building to report energy use data for a period of three years; and**
- 2. Agreement for the provision of public art in accordance with the City's Public Art Policy, including security and development details.**

Date range: November 28, 2017 to April 3, 2019

All responsive records are attached*.

*For part two of your request, the Senior Cultural Planner confirms there are no records related to "security and development details".

Under section 52 of the Act, and within 30 business days of receipt of this letter, you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your FOI request by writing to: Office of the Information & Privacy Commissioner, info@oipc.bc.ca or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number (#04-1000-20-2020-262); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

[Signature on file]

Barbara J. Van Fraassen, BA
Director, Access to Information & Privacy

Barbara.vanfraassen@vancouver.ca

453 W. 12th Avenue Vancouver BC V5Y 1V4

*If you have any questions, please email us at foi@vancouver.ca and we will respond to you as soon as possible. Or you can call the FOI Case Manager at 604.871.6584.

Encl.

:ma

LAND TITLE ACT

Jul-12-2018 09:31:57.004

CA6925742

CA6925743

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.

Wilfred Chan
72WJIW

Digitally signed by
Wilfred Chan 72WJIW
Date: 2018.07.11
21:15:00 -07'00'

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

DENTONS CANADA LLP

Barristers and Solicitors

20th Floor, 250 Howe Street

Vancouver

BC V6C 3R8

Telephone: 604-687-4460

File No. 565483-2 / Wilfred Chan

Matter no.: LS-18-00335-004 (Sustainability)

Document Fees: \$143.16

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

030-417-261

**LOT 1 BLOCK 353 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER
DISTRICT PLAN EPP81033**

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):

1061511 B.C. LTD., INC. NO. 1061511**COMPUTERSHARE TRUST COMPANY OF CANADA, INC. NO. A52313 (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)

Execution Date

Transferor(s) Signature(s)

Wilfred Chan

Barrister & Solicitor

DENTONS CANADA LLP

20th Floor, 250 Howe Street

Vancouver, B.C. V6C 3R8

Telephone (604) 687-4460

Y	M	D
18	07	04

1061511 B.C. LTD. by its authorized
signatory(ies):

Print Name: Anthony Pappajohn

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*, R.S.B.C. 1996, c.250, as to the validity 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)

JAY G. LANCASTER
Barrister & Solicitor
453 West 12th Avenue
Vancouver, B.C. V5Y 1V4

Y	M	D
18	07	11

CITY OF VANCOUVER by its
authorized signatory:

HEIDI GRANGER

Olivia Sabrina Julia Mair
Notary Public in and for the Province of Ontario
100 University Ave., 11th Flr.,
Toronto, ONTARIO M5J 2Y1
416-263-9474

18	07	09
----	----	----

CCOMPUTERSHARE TRUST
COMPANY OF CANADA by its
authorized signatory(ies):

Print Name: Aaron Cao
Professional, MBS

Print Name: Amanda Liu
Professional, MBS

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*, R.S.B.C. 1996, c.262, in 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 2.1

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Priority Agreement

granting above Covenant priority over Mortgage CA4977621 (modified by CA5921618 and CA6792468) and Assignment of Rents CA4977622 (modified by CA5921619 and CA6792469)

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

NO BUILD COVENANT SECTION 219 COVENANT

(1296 WEST BROADWAY)

WHEREAS:

- A. It is understood and agreed that this instrument shall be read as follows:
- (1) the Transferor, **1061511 B.C. 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 owner of the Lands;
- C. The Owner made an application to rezone the Lands from C-3A (Commercial) District to CD-1 (Comprehensive Development) District (the **"Rezoning"**) to permit the development of a 16-storey mixed-use building containing commercial and retail at grade and 153 secured market rental housing units above with underground parking below and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, *inter alia*, fulfilment of certain conditions prior to enactment of the rezoning by-law;
- D. The following condition of the Rezoning has not been fulfilled in whole or in part:
- "7. The applicant will enter into an agreement with the City, on terms and conditions acceptable to the Director of Sustainability and the Director of Legal Services, that requires the future owner of the building to report energy use data, on an aggregated basis, for each building as a whole and certain common areas and building systems. Such an agreement will further provide for the hiring of a qualified service provider to assist the building owner for a minimum of three years in collecting and submitting energy use data to the City."*
- (the **"Sustainability Condition"**);
- E. The Owner has agreed to enter into this Section 219 Covenant (the **"Agreement"**) with the City to obtain enactment of the Rezoning and to register this Agreement on title to the Lands in the LTO to ensure that no construction of any Buildings on the Lands above grade will take place on the Lands until the Sustainability Condition has been completed to the satisfaction of the the General Manager of Engineering Services, the Director of Sustainability and the Director of Legal Services, and the Legal Agreements have been fully executed and fully registered, as required by the City, in the LTO, to the satisfaction of the Director of Legal Services, and the Owner has agreed that this Agreement will remain on title to the Lands until such time as the Sustainability Condition has been met; and
- F. Capitalized terms in this Agreement have the meaning specified in Section 1.1 unless otherwise indicated.

Consideration

In consideration of the payment of \$2.00 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:

ARTICLE 1 DEFINITIONS

1.1 Definitions. The terms defined in this Section 1.1 for all purposes of this Agreement, unless specifically provided herein, will have the following meanings hereinafter specified. The defined terms are:

- (a) **"Agreement"** means this agreement together with any schedules attached hereto;
- (b) **"Building(s)"** means any building, structure or improvement to be installed or constructed on the Lands, or any portion thereof, and that is not installed in an interim or temporary basis in furtherance of the Rezoning;
- (c) **"City Personnel"** means the City's elected officials, officers, employees, contractors, subcontractors, agents, licensees, invitees, and permittees;
- (d) **"Director of Sustainability"** means the City's Director of Sustainability or his/her successors in function and their respective nominees;
- (e) **"Director of Legal Services"** means the chief administrator from time to time of the Legal Services Department of the City and her successors in function and their respective nominees;
- (f) **"General Manager of Engineering Services"** means the general manager from time to time of the Engineering Services Department of the City and his successors in function and their respective nominees;
- (g) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c.250, and all amendments thereto and re-enactments thereof;
- (h) **"Lands"** means the lands located in the City of Vancouver, British Columbia and legally described in Item 2 of the Form C - General Instrument, Part 1 and includes any parcel into which such lands are consolidated or further subdivided;
- (i) **"Legal Agreements"** means any agreement, plan or document that the City Engineer, the Director of Sustainability or the Director of Legal Services determine is required to satisfy all or a portion of the Sustainability Condition, each of which will be in a form and on terms and conditions acceptable to the General Manager of Engineering Services, the Director of Sustainability and the Director of Legal Services, as the case may be, in their unfettered discretion;
- (j) **"LTO"** means the land title office for the jurisdiction in which the Lands are situate;

- (k) **"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* of British Columbia, then "Owner" includes the strata corporation thereby created;
- (l) **"Rezoning"** means the rezoning described in Recital C;
- (m) **"Stage II Building Permit"** means a building permit issued by the City following the date of this Agreement which permits any Building on the Lands to be constructed above grade; and
- (n) **"Sustainability Condition"** has the meaning set out in Recital D.

1.2 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.

1.3 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.

1.4 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.

1.5 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 NO DEVELOPMENT COVENANT

2.1 Section 219 Covenant. Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the City in respect of the use of the Lands, notwithstanding that the Owner may be otherwise entitled:

- (a) the Owner will not construct, nor permit to be constructed on the Lands or any portion of the Lands any Building above grade;
- (b) the Owner will take no action nor cause any direct or indirect action to be taken to compel the issuance of any Stage II Building Permit that permits the construction of any Building above grade; and
- (c) the City will not be under any obligation to issue any Stage II Building Permit that permits the construction of any portion of the Building above grade,

until the Sustainability Condition has been completed to the satisfaction of the General Manager of Engineering Services, the Director of Sustainability and the Director of Legal Services, as the case may be, which may include the full execution of

the Legal Agreements as necessary and, as may be required by the City, full registration of same against title to the Lands in the LTO as first registered charges against the Lands save only for any reservations, liens, charges or encumbrances which the Director of Legal Services has determined, in her sole discretion, may rank in priority.

2.2 Discharge. Upon completion of the Sustainability Condition in accordance with Section 2.1, the City will execute a discharge of the Section 219 Covenant granted pursuant to Section 2.1 from the Lands provided however that:

- (a) the City will have no obligation to execute such discharge until a written request therefor from the Owner has been received by the City, which request will include the form of discharge, in registrable form;
- (b) the cost of preparation of such discharge and the cost of registration of same in the LTO will be paid by the Owner; and
- (c) the City will have a reasonable time within which to execute such discharge and return the same to the Owner for registration.

2.3 If Permit Issued Inadvertently. The Owner covenants and agrees that any Stage II Building Permit issued inadvertently or otherwise prior to release or discharge of this Agreement may be revoked by the City at any time and further agrees that if the Owner commences construction of any Building above grade in contravention of this Agreement, the City may pursue all remedies, including, without limitation, injunctive relief.

2.4 Indemnity and Release. The Owner hereby:

- (a) waives, remises, releases and discharges absolutely the City and all City Personnel from and against all damages, losses, costs (including legal costs), actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profit and loss of use and damages arising out of delays) and expenses of every nature or kind whatsoever which may arise or accrue to the Owner or any person, firm or corporation against the City or any City Personnel resulting from, relating to or which may derive from the withholding of any Stage II Building Permit pursuant to this Agreement or the inability of the Owner to construct any Building on the Lands as a result of this Agreement; and
- (b) covenants and agrees to indemnify and save harmless the City and the City Personnel from and against all damages, losses, costs (including legal costs) actions, causes of action, claims, demands, liabilities, indirect or consequential damages (including loss of profits, loss of use and damages arising out of delays), expenses of every nature or kind whatsoever, which may arise or accrue to any person, firm or corporation against the City or any City Personnel or which are suffered or incurred by the City or any City Personnel by reason of or which would not or could not have occurred but for any of the following:
 - (i) the City withholding any Stage II Building Permit pursuant to the terms of this Agreement or the inability of the Owner to construct any Building on the Lands as a result of this Agreement; and

(ii) this Agreement.

The indemnity provided in this Section 2.4 will be an integral part of the Section 219 Covenant granted hereby. The release and indemnification provisions contained in this Agreement will survive the discharge or termination of this Agreement.

ARTICLE 3 EXERCISE OF AUTHORITY

3.1 Exercise of Authority. A power or discretion exercisable under this Agreement by the Director of Legal Services, the General Manager of Engineering Services or the Director of Sustainability may be exercised by his or her respective designate.

ARTICLE 4 NOTICES

4.1 Notices. 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, either by personal delivery 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 it at:

1061511 B.C. LTD.
Suite 670 - 1665 West Broadway
Vancouver, British Columbia
V6J 5A4

Attention: President

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

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

Attention: City Clerk

with concurrent copies to the General Manager of Engineering Services, the Director of Sustainability 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, 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 Priority of Registered Interest. The Owner agrees to cause the registrable interest in land expressly agreed to be granted pursuant to this Agreement to be registered as a first registered charge 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 title to the Lands at the instance of the City, whether in favour of the City or otherwise; 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.

5.2 No Derogation. Nothing contained or implied in this Agreement 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.

5.3 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 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 Lands or any other matter whatsoever.

5.4 City's Costs. In any action to enforce this Agreement in which any Court determines that the position of the City will prevail, the City will be entitled to court costs on a solicitor/client basis.

5.5 Agreement Runs with the Lands. This Agreement will run with the Lands and will bind the Lands and will 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 the Owner shall be bound by the covenants and agreements herein contained only so long as the Owner is the registered owner of the Lands.

5.6 Interpretation. The following provisions will apply to this instrument:

- (a) each of the City and Owner accepts the jurisdiction of the courts of British Columbia;
- (b) if a court finds any provision invalid, illegal, or unenforceable, and severs it from the remainder of this instrument, the remaining provisions are to remain in force and effect;
- (c) time will be of the essence, and if the City or Owner expressly or impliedly waives that requirement, the City or Owner may re-instate it by delivering notice to the other;
- (d) waiver of a default by the City or Owner or failure or delay by the City or Owner in exercising a right or remedy does not mean that the City or Owner waives any other default or that the City or Owner has waived its right to exercise such right or remedy;
- (e) no amendment is to have any force or effect unless the City and Owner have signed it;
- (f) this instrument represents the entire agreement between the City and Owner regarding the matters set out in this instrument, and supersedes all prior agreements, letters of intent, or understandings about those matters;
- (g) the exercise of any particular remedy by the City or Owner under this instrument or at law or at equity will not prejudice or preclude that party from invoking or exercising any other remedy, and no remedy will be exclusive, and each of the City or Owner may exercise all its remedies independently or in combination and, in particular, the Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement;
- (h) 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 grants and agreements under this instrument; and
- (i) if the Owner consists of more than one person, firm, or corporation, the Owner's obligations under this instrument will be joint and several.

5.7 Continuing effect. This instrument will enure to the benefit of and bind each of the City and its successors and assigns and the Owner and the Owner's heirs, executors, administrators, successors, and assigns.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority Agreement:

- (a) **“Existing Charges”** means the Mortgage registered under number CA4977621 (modified by CA5921618 and CA6792468) and Assignment of Rents registered under number CA4977622 (modified by CA5921619 and CA6792469);
- (b) **“Existing Chargeholder”** means COMPUTERSHARE TRUST COMPANY OF CANADA;
- (c) **“New Charge”** means the Section 219 Covenant contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 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 Charge to the City; and
- (ii) agrees with the City that the New Charge charges 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 Charge, 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

LAND TITLE ACT
FORM C (Section 233) CHARGE

Jul-12-2018 09:31:57.002

CA6925730

CA6925735

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 25 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.

Wilfred Chan
72WJIW

Digitally signed by
Wilfred Chan 72WJIW
Date: 2018.07.11
20:08:05 -07'00'

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

DENTONS CANADA LLP

Barristers and Solicitors

20th Floor, 250 Howe Street

Vancouver

BC V6C 3R8

Telephone: 604-687-4460

File No. 565483-2 / Wilfred Chan

Matter no.: LS-18-00335-005 (Public Art)

Document Fees: \$429.48

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

030-417-261

LOT 1 BLOCK 353 DISTRICT LOT 526 GROUP 1 NEW WESTMINSTER
DISTRICT PLAN EPP81033

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):

1061511 B.C. LTD., INC. NO. 1061511

COMPUTERSHARE TRUST COMPANY OF CANADA, INC. NO. A52313

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)

Execution Date

Transferor(s) Signature(s)

Wilfred Chan

Barrister & Solicitor

DENTONS CANADA LLP

20th Floor, 250 Howe Street

Vancouver, B.C. V6C 3R8

Telephone (604) 687-4460

Y	M	D
18	07	04

1061511 B.C. LTD. by its authorized
signatory(ies):

Print Name: Anthony Pappajohn

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*, R.S.B.C. 1996, c.250, in relation to this instrument.

**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

PAGE 2 of 25 PAGES

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

JAY G. LANCASTER
Barrister & Solicitor
453 West 12th Avenue
Vancouver, B.C. V5Y 1V4

Y	M	D
18	07	11

CITY OF VANCOUVER by its
authorized signatory:

HEIDI GRANGER

Olivia Sabrina Julia Mair
Notary Public in and for the Province of Ontario
100 University Ave., 11th Flr.,
Toronto, ONTARIO M5J 2Y1
416-263-9474

18	07	09
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COMPUTERSHARE TRUST
COMPANY OF CANADA by its
authorized signatory(ies):

Print Name: Aaron Cao
Professional, MBS

Print Name: Amanda Liu
Professional, MBS

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*, R.S.B.C. 1996, c.248, in relation to the execution of this instrument.

More Signatures

**LAND TITLE ACT
FORM E**

SCHEDULE

PAGE 3 OF 25 PAGES

NATURE OF INTEREST
Covenant

CHARGE NO.

ADDITIONAL INFORMATION
Section 2.1

NATURE OF INTEREST
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION
granting above Covenant priority over Mortgage CA4977621 (modified by CA5921618 and CA6792468) and Assignment of Rents CA4977622 (modified by CA5921619 and CA6792469)

NATURE OF INTEREST
Covenant

CHARGE NO.

ADDITIONAL INFORMATION
Section 3.1

NATURE OF INTEREST
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION
granting above Covenant priority over Mortgage CA4977621 (modified by CA5921618 and CA6792468) and Assignment of Rents CA4977622 (modified by CA5921619 and CA6792469)

NATURE OF INTEREST
Statutory Right of Way

CHARGE NO.

ADDITIONAL INFORMATION
Section 4.1

NATURE OF INTEREST
Priority Agreement

CHARGE NO.

ADDITIONAL INFORMATION
granting above Statutory Right of Way priority over Mortgage CA4977621 (modified by CA5921618 and CA6792468) and Assignment of Rents CA4977622 (modified by CA5921619 and CA6792469)

**TERMS OF INSTRUMENT - PART 2
PUBLIC ART AGREEMENT**

(1296 West Broadway)

WHEREAS:

- A. It is understood and agreed that this Agreement will be read as follows:
- (i) the Transferor, 1061511 B.C. LTD., as more particularly defined in Section 1.1, is called the “**Owner**”; and
 - (ii) the Transferee, CITY OF VANCOUVER, is called the “**City**” or the City of Vancouver when referring to the corporate entity and “**Vancouver**” when referring to geographical location;
- B. The Owner is the registered owner of the Lands;
- C. The Owner made an application to rezone the Lands from C-3A (Commercial) District to CD-1 (Comprehensive Development) District and after a public hearing to consider the rezoning application, the rezoning application was approved by City Council in principle, subject to, inter alia, fulfilment of the following condition prior to enactment of the rezoning by-law (the “**Rezoning**”):
- “8. *Execute an agreement satisfactory to the Directors of Legal Services and Cultural Services for the provision of public art in accordance with the City’s Public Art Policy, such agreement to provide for security in a form and amount satisfactory to the aforesaid officials; and provide development details to the satisfaction of the Public Art Program Manager.*”,
- (the “**Public Art Requirements**”);
- D. To satisfy the foregoing condition the Owner and the City have entered into this Agreement; and
- E. The Statutory Right of Way in this Agreement is necessary for the operation and maintenance of the City’s undertaking.

CONSIDERATION

NOW THEREFORE this agreement witnesses that for Ten Dollars and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties, for themselves and their successors and assigns, hereby covenant and agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions. The terms defined in this Section 1.1 will have the following meanings for all purposes in this Agreement, except where specifically otherwise provided herein:

- (a) **“Agreement”** means this agreement, including all of the recitals set forth in this agreement and all schedules attached to this agreement;
- (b) **“Artist Agreement”** has the meaning set out in Section 2.12;
- (c) **“Assessable Building”** means a Building which is not exempt under the Public Art Policy and Procedures;
- (d) **“Building”** means:
 - (i) any building or structure constructed on the Lands at any time following the date this Agreement is fully executed and includes any portion of such building or structure; and
 - (ii) any existing building or structure on the Lands which is removed, modified or altered at any time following the date this Agreement is executed;

that the Director determines is not installed on an interim or temporary basis;

- (e) **“Building Elements”** means the components of the Development which would have existed regardless of the requirement to provide Public Art, including, landscaping, lighting, and components of the Assessable Building;
- (f) **“Building Floor Area”** means, for an Assessable Building, the total square footage of all floor areas included in the calculation of floor space ratio as approved by the Development Permit, excluding any areas devoted to social housing;
- (g) **“Building Permit”** means a building permit issued with respect to the Lands subsequent to the Rezoning By-law;
- (h) **“City Licence”** means a licence granted by the artist and/or photographer to the City which permits the City to use images of the artist’s and/or photographer’s Public Art in publications including on-line publications and web sites which the City uses from time to time to promote the City’s public art programs;

- (i) **“City Manager”** means the chief administrator from time to time of the City and his successors in function and their respective nominees;
- (j) **“City Personnel”** means the City’s elected officials and all officers, employees, contractors, subcontractors, agents, licensees, invitees, and permittees;
- (k) **“Claims”** means all costs, all losses, damages, claims, demands, expenses, (including legal expenses, fees and disbursements on an indemnity basis), fines, causes of action, suits, orders, judgments, penalties, builders liens, legal obligations and compensation of whatsoever kind, incurred, suffered or paid (including, without limitation, in respect of, incidental to or resulting from any consequential injuries to or death of persons or damage to property or any economic loss, including loss of profits and loss of use and damages arising out of delays).
- (l) **“Consultant”** means an experienced and qualified public art consultant hired by the Owner to assist the Owner in carrying out its obligations in this Agreement, and approved by the City;
- (m) **“Detailed Public Art Plan”** means a written proposal from the Consultant to the Director setting out its proposal for the installation of Public Art on the Lands or any other lands, if approved by the Director, which proposal must be in accordance with the Public Art Policy and Procedures and will include:
 - (i) the proposed Public Art or the manner in which the proposed Public Art will be conceived, determined and created for which the approval of the Public Art Committee and the Director is sought;
 - (ii) a statement of the purpose of the proposed Public Art;
 - (iii) the process to select the artist(s) intended to be commissioned to create the proposed Public Art and identify any particular skills or expertise required for the opportunity, if applicable;
 - (iv) if determined, the proposed location(s) for the installation of the Public Art;
 - (v) names and terms of reference for the selection panelists;
 - (vi) a schedule indicating anticipated dates of artist/art selection and installation;
 - (vii) anticipated needs for public engagement, dedication, encroachment, maintenance, or deaccessioning agreements;
 - (viii) a schedule of art process development, fabrication and installation;

- (ix) the Public Art Budget;
- (x) a preliminary summary of any anticipated maintenance considerations that would be included in the Maintenance Plan; and
- (xi) such other information as may be required by the Director;
- (n) **“Development”** means any development to be constructed on the Lands, or any portion thereof, pursuant to the Rezoning By-law or any Development Permit;
- (o) **“Development Permit”** means a development permit issued with respect to the Lands subsequent to the Rezoning By-law;
- (p) **“Director”** means the chief administrator from time to time of the cultural services department of the City of Vancouver and his or her successors in function and their respective nominees;
- (q) **“Director of Legal Services”** means the chief administrator from time to time of the Legal Services Department of the City and her successors in function and their respective nominees;
- (r) **“Event of Force Majeure”** means acts of God or public enemy, wars (declared or undeclared), revolution, riots, insurrections, civil commotions, fires, floods, slides, epidemics, quarantine restrictions, strikes or lockouts, including illegal work stoppages or slowdowns, or stop work orders issued by a court or public authority, including the City (provided that such orders were not issued as a result of an act or omission of the Owner, or anyone employed or retained by the Owner), freight embargos or power failures, provided that any such event or circumstance reasonably constitutes a material disabling event or circumstance which is beyond the reasonable control of a party, does not arise from the neglect or default of a party, and which results in a material delay, interruption or failure by a party in carrying out its duties, covenants or obligations under this Agreement, but which does not mean or include any delay caused by the Owner's lack of funds or financial condition (and for greater certainty, a strike or lockout, including illegal work stoppages or slowdowns, will be considered beyond the reasonable control of a party and not to arise from the neglect or default of that party, it being understood that the terms of settlement of any labour disturbance, dispute, strike or lockout will be wholly in the discretion of that party);
- (s) **“Final Occupancy Permit”** means the last Occupancy Permit for the Development;
- (t) **“Final Report”** means a final report, in electronic and hardcopy format and in form and content satisfactory to the City, which describes, among other things, the Public Art installed; the siting of the Public Art; a brief biography of the artist; the artist's statement on the Public Art; and such other details as the

City, in its sole discretion, may request, which final report will include enclosures as follows:

- (i) a statutory declaration, in a form satisfactory to the Director of Legal Services, sworn by a senior financial officer of the Owner declaring that the Owner has paid in full for each item of the Public Art as set out in the Public Art Budget attached to the statutory declaration, the content of which statutory declaration must be satisfactory to the Director;
 - (ii) Maintenance Plan;
 - (iii) ten (10) professional quality, high resolution images in digital format of the Public Art showing it in context and revealing significant details;
 - (iv) completed forms for the Public Art Registry, which forms will be provided by the City;
 - (v) the City Licence;
 - (vi) a copy of the Artist Agreement;
 - (vii) other details as defined in the Public Art Procedures and Guidelines or specific to the nature of the artwork or as requested by the Director.
- (u) “**Index**” means the average of the residential (Apartment), retail (Shopping Centre) and office (Office) components of CANSIM table 327-0044 for Vancouver published by Statistics Canada (or by a successor or other governmental agency, including a provincial agency) or if such index is no longer published, an index published in substitution for such index or a replacement index designated by the City or if no comparative calculation can reasonably be made by reference to such replacement index then by reference to such other index or other analysis which, in the City’s opinion, most accurately indicates the changes in construction prices in Vancouver during the period in question;
- (v) “**Land Title Act**” means the *Land Title Act*, R.S.B.C. 1996, c.250, and all amendments thereto and re-enactments thereof;
- (w) “**Lands**” means that certain parcel of land situate in Vancouver, British Columbia, more particularly known and described in Item 2 of the Form C forming part of this Agreement, and includes any parcel into which some or all of such land is consolidated or further subdivided;
- (x) “**Letter of Credit**” means a letter of credit which:

- (i) complies in all respects with the City's requirements as set out in the City's Corporate Policy, Policy Number AF-002-02 approved on June 24, 2016, as may be amended or replaced from time to time;
- (ii) complies with any other terms and conditions stated elsewhere in this Agreement to be applicable; and
- (iii) is in all other respects, in form and substance acceptable to the Director of Legal Services;
- (y) **"Maintenance Plan"** means a plan prepared by or with input from the artist in accordance with the Public Art Policy and Procedures and approved by the Director which prescribes the required maintenance program for the Public Art;
- (z) **"LTO"** means the land title office for the jurisdiction in which the Lands are situate;
- (aa) **"Occupancy Permit"** means a permit issued by the City authorizing the use and occupation of any Assessable Building, development or partial development on the Lands or any portion of the Lands;
- (bb) **"Option A"** means the option to provide Public Art on the Lands in accordance with the Public Art Policy and Procedures, including without limitation the obligation to make the Option A Payment;
- (cc) **"Option A Payment"** means a cash payment in Canadian dollars in an amount equal to ten percent (10%) of the Public Art Cost;
- (dd) **"Option B"** means the option to make a payment in lieu of providing Public Art on the Lands in accordance with the Public Art Policy and Procedures;
- (ee) **"Option B Payment"** means a cash payment in Canadian dollars in an amount equal to eighty percent (80%) of the Public Art Cost;
- (ff) **"Owner"** means 1061511 B.C. Ltd. (Incorporation No. BC1061511) and all of its assigns, successors and successors in title to the Lands or any part thereof and, if the Lands are subdivided by way of a Strata Plan then **"Owner"** includes, without limitation, any Strata Corporation(s) thereby created;
- (gg) **"Prime Rate"** means the floating annual percentage rate of interest established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as the prime rate, except that if a court declares or holds that prime rate to be void or unenforceable for any reason including uncertainty, then the prime rate will be deemed to be ten percent (10%) per annum, calculated and compounded monthly;

- (hh) **“Public Art”** means unique and original artwork commissioned and installed on the Lands, or on any City lands if and as approved by the Director, in his sole discretion, in accordance with the Detailed Public Art Plan and the Public Art Policy and Procedures, but specifically does not include the creative contributions of project engineers, architects or landscape architects nor works by manufacturers or prefabricators of artwork. Whether or not the Public Art wrongfully includes such contributions or works, and if so to what extent, will be conclusively determined in the sole opinion of the Director;

- (ii) **“Public Art Budget”** means a budget for the Public Art which is not less than the Public Art Cost and otherwise complies with the requirements of the Public Art Policy and Procedures;

- (jj) **“Public Art Checklist”** means a checklist in the form prescribed by the Public Art Policy and Procedures which must be delivered to the City prior to enactment of Rezoning By-law;

- (kk) **“Public Art Committee”** means the art advisory committee established by the City’s Public Art Committee By-law No. 6870;

- (ll) **“Public Art Cost”** means that amount determined by multiplying the Building Floor Area by the Public Art Rate or by such other calculation approved by the City’s Council which is applicable at the time the Owner submits an application for a Development Permit, all in accordance with the Public Art Policy and Procedures;

- (mm) **“Public Art Policy and Procedures”** means the “Public Art Policy for Rezoned Developments” approved by Council on July 23, 2014 along with the companion guide “Public Art Policy and Procedures for Rezoned Developments” and any and all replacements, amendments and substitutions thereof existing from time to time after execution of this Agreement up to the date of issuance of the Development Permit;

- (nn) **“Public Art Rate”** means \$1.98 per square foot, adjusted in accordance with the formula in Section 2.11;

- (oo) **“Public Art Registry”** means the online database of public art works in the City of Vancouver maintained by the City;

- (pp) **“Public Art Requirements”** has the meaning set out in Recital C;

- (qq) **“Rezoning By-law”** means the rezoning bylaw described in Recital C of this Agreement;

- (rr) **“Section 219 Covenants”** means the covenants contained in this Agreement made pursuant to Section 219 of the *Land Title Act*;

- (ss) **“Statutory Right of Way”** means the statutory right of way made pursuant to Section 218 of the *Land Title Act* and granted by the Owner to the City pursuant to ARTICLE 4;
- (tt) **“Strata Corporation”** means a strata corporation created by the filing of a Strata Plan;
- (uu) **“Strata Plan”** means a strata plan filed in respect of the Lands or any subdivided portion thereof pursuant to the Strata Property Act;
- (vv) **“Strata Property Act”** means the *Strata Property Act*, S.B.C. 1998, c. 43, and all amendments thereto and re-enactments thereof; and
- (ww) **“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 those noted in the Form C attached to and forming part of this Agreement, as being 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) In this Agreement, the words **“include”** and **“including”** are to be construed as meaning **“including, without limitation”**; and
- (c) The Schedules attached to this Agreement constitute an integral part of this Agreement.

1.3 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. 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.

1.4 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.

1.5 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia. Any reference to a statute is to the statute and its regulations in force on the date the Form C General Instrument - Part 1 is fully executed and to subsequent amendments to or replacements of the statute or regulations.

ARTICLE 2 HOLD ON DEVELOPMENT PERMITS, BUILDING PERMITS AND OCCUPANCY PERMITS

2.1 Section 219 Covenant. The Owner covenants with the City pursuant to Section 219 of the *Land Title Act*, in respect of the use of the Lands and the Assessable Buildings as follows:

- (a) the Lands and the Assessable Buildings will not be used in a manner which is inconsistent with this Section 219 Covenant;
- (b) prior to enactment of the Rezoning By-law the Owner will deliver the Public Art Checklist to the City;
- (c) the Owner will satisfy the Public Art Requirements for the Development by way of Option A or Option B;
- (d) if the Owner elects to satisfy the Public Art Requirements by way of Option A, then the Owner will be responsible at its sole cost and expense to commission an artist to conceive, create, design, manufacture and install the Public Art at a cost to the Owner of not less than ninety percent (90%) of the Public Art Cost;
- (e) if the Owner elects to satisfy the Public Art Requirements by way of Option B, then the Owner will make the Option B Payment.
- (f) notwithstanding that the Owner may be otherwise entitled:
 - (i) the Owner will not, and will not suffer or permit any other person to take any action to compel the issuance of a Development Permit; and
 - (ii) agrees that the City will have no obligation to issue a Development Permit,

except if the Owner has completed the requirements of Section 2.2 to the satisfaction of the Director;

- (g) notwithstanding that the Owner may be otherwise entitled, the Owner:

- (i) will not, and will not suffer or permit any other person to take any action to compel the issuance of a Building Permit;
- (ii) agrees that the City will have no obligation to issue a Building Permit; and
- (iii) and the Owner will not, and will not suffer or permit any activities on the Lands which require issuance of a Building Permit,

except if the Owner has completed the requirements of Section 2.3 to the satisfaction of the Director; and

- (h) subject to Section 2.6 and notwithstanding that the Owner may be otherwise entitled, the Owner will not, and will not suffer or permit any other person to:
 - (i) apply for an Occupancy Permit for all or part of an Assessable Building;
 - (ii) take any action to compel issuance of an Occupancy Permit for all or part of an Assessable Building; or
 - (iii) occupy all or part of an Assessable Building,

and agrees that:

- (iv) no Assessable Building will be occupied, and the City will have no obligation to issue an Occupancy Permit, even if the Owner has completed construction of an Assessable Building,

except if the Owner has completed the requirements of Section 2.4 to the satisfaction of the Director.

2.2 Development Permit Requirements - Option A and Option B. Prior to issuance of a Development Permit the Owner will deliver the following to the Director:

- (a) the Detailed Public Art Plan and the Option A Payment; or
- (b) notice that the Owner intends to satisfy the Public Art Requirements through Option B.

For greater certainty, in the case of Option A, the Detailed Public Art Plan must be approved by the Director prior to issuance of a Development Permit.

2.3 Building Permit Requirements - Option A and Option B. Prior to issuance of a Building Permit the Owner will deliver the following to the Director:

- (a) in the case of Option A, a Letter of Credit, in accordance with ARTICLE 7, in an amount equal to ninety percent (90%) of the Public Art Cost; or
- (b) in the case of Option B, a Letter of Credit, in accordance with ARTICLE 7, in an amount equal to the Option B Payment.

2.4 Occupancy Permit Requirements - Option A and Option B. Prior to issuance of an Occupancy Permit the Owner will, subject to Section 2.6:

- (a) for Option A:
 - (i) commission the Public Art and cause it to be installed on the Lands in accordance with the Detailed Public Art Plan, the Public Art Policy and Procedures and the terms of this Agreement; and
 - (ii) deliver the Final Report to the Director in a form and content acceptable to the Director; or
- (b) for Option B, deliver the Option B Payment to the Director, whereupon, the City will return to the Owner the Letter of Credit delivered pursuant to Section 2.3(b).

2.5 Discharge. The City covenants to execute a discharge of the Section 219 Covenant granted pursuant to Section 2.1 from title to the Lands in the LTO upon the Director being satisfied that the Owner has, in the case of Option A fulfilled its obligations pursuant to Section 2.4 and in the case of Option B fulfilled its obligations pursuant to Section 2.3, provided however that:

- (a) the City will have no obligation to execute such discharge until a written request therefor from the Owner has been received by the City, which request will include the form of discharge in registrable form;
- (b) the cost of preparation of such discharge and the cost of registration of same in the LTO will be paid by the Owner; and
- (c) the City will have a reasonable time within which to execute such discharge and return the same to the Owner for registration.

2.6 Deferred Completion - Option A. If the Director is satisfied that the Owner:

- (a) has diligently pursued the completion of its obligations pursuant to Section 2.4; and
- (b) will be able to complete the requirements of Section 2.4 prior to issuance of the Final Occupancy Permit,

the City may issue one or more Occupancy Permits for the Development provided that under no circumstances will the City be required to issue the Final Occupancy Permit prior to the Owner fully discharging its obligations pursuant to Section 2.4.

2.7 Multiple Buildings. If the Development consists of more than one Assessable Building then the Owner may install one piece of Public Art in satisfaction of its obligations under this Agreement for more than one Assessable Building provided the Public Art Cost for such installation is at least equal to the aggregate Public Art Cost attributable to the Building Floor Area for all such Assessable Buildings.

2.8 Building Elements. If the Public Art is incorporated into any Building Elements, then the Public Art Budget will not include the cost of any Building Elements, the intention being that only the incremental increase in the cost of the Development which is directly attributable to the Public Art may be included in the Public Art Budget.

2.9 Location of Public Art. The Public Art is to be installed in a location approved by the Director. The Public Art is to be contained entirely within the Lands and no portion of the Public Art will be installed or encroach onto other lands, including City lands unless approved by the Director in his sole discretion and the Owner has entered into such agreements as deemed necessary by the Director of Legal Services in respect of the Public Art installed or which encroaches onto such other lands. If the Public Art is to be installed on City lands then the Owner will cause ownership of the Public Art to be transferred to the City and will make such arrangements as to copyright as required by the Director and the Director of Legal Services and shall concurrently lodge a non-refundable deposit with the City to cover any estimated or projected maintenance costs in an amount satisfactory to the Director which shall be held by the City for maintenance costs.

2.10 Compliance with Laws. The Owner will ensure that the construction and installation of the Public Art complies with all applicable City by-laws and the laws and lawful requirements of any other authority with jurisdiction over the Lands.

2.11 Annual Adjustment of Public Art Cost. The Owner acknowledges and agrees that the Public Art Rate will be reviewed and may be adjusted annually by Council to reflect increases in the Index. If, however, there has been a decrease in the Index over a particular period, then the Public Art Rate will not be adjusted to reflect the decrease in the Index. For the purposes of calculating the Public Art Cost for the Development, the most recent Public Art Rate approved by Council at the time the Owner submits an application for the Development Permit will apply.

2.12 Agreement with Artist. The Owner must enter into an agreement with the artist and/or photographer of the Public Art (the “**Artist Agreement**”) pursuant to which the artist and/or photographer transfers ownership of the Public Art to the Owner and which sets out the arrangement between the artist and/or photographer and the Owner as to copyright of the Public Art. The Artist Agreement will require the artist and/or photographer to grant the City Licence to the City.

2.13 If Occupancy Permit Issued Inadvertently. The Owner covenants and agrees that any Development Permit, Building Permit or Occupancy Permit for any Assessable Building issued

inadvertently or otherwise prior to release or discharge of the Section 219 Covenant granted pursuant to Section 2.1 may be revoked by the City at any time and further agrees that if the Owner occupies any Assessable Building in contravention of this Agreement, the City may pursue all remedies, including, without limitation, injunctive relief.

2.14 Other Sections Form Part of Covenant. The Owner covenants and agrees that ARTICLE 5 to ARTICLE 11 inclusive of this Agreement will be deemed to be included and form a part of the Section 219 Covenant granted pursuant to Section 2.1.

ARTICLE 3 MAINTENANCE OF PUBLIC ART

3.1 Section 219 Covenant. The Owner covenants with the City pursuant to Section 219 of the *Land Title Act*, in respect of the use of the Lands and the Assessable Buildings that following the installation of the Public Art on the Lands the Owner will comply with the requirements of Sections 3.2 to 3.5 at its sole cost and expense.

3.2 Repair and Maintain. The Owner will repair and maintain the Public Art for the life of the Development in accordance with the Maintenance Plan.

3.3 No Removal or Relocation. The Owner will not remove the Public Art from the Lands or relocate the Public Art to a different location on the Lands without the prior written approval of the Director.

3.4 Safety Hazard or Unreasonable Disturbance. If at any time following the final installation of the Public Art the Director determines that the Public Art:

- (a) is causing or will cause a safety hazard either on or off the Lands; or
- (b) is causing or will cause an unreasonable disturbance either on or off the Lands,

then the Owner will comply with any directions issued by the Director to prevent the safety hazard or unreasonable disturbance, as applicable. For the purposes of this Section 3.4, whether the Public Art is causing or will cause a safety hazard or unreasonable disturbance will be determined by the Director in his or her sole discretion.

3.5 Damage and Deterioration. If the Public Art:

- (a) is damaged or has deteriorated beyond repair other than as a result of the Owner's failure to repair and maintain the Public Art in accordance with the Maintenance Plan; or
- (b) has become an unreasonable financial burden on the Owner to maintain and repair in accordance with the Maintenance Plan other than as a result of the Owner's failure to repair and maintain the Public Art in accordance with the Maintenance Plan,

then the Owner may apply to the Director to request an adjustment to or waiver of the Owner's obligations under this Article 3. For the purposes of Section 3.5(b), to determine whether the Public Art has become an unreasonable financial burden on the Owner the Director may compare the Owner's annual maintenance costs to the maintenance costs incurred by owners of art work that are similar to the Public Art in age, material, composition and size. The Owner will provide the Director with any information which the Director may require to consider the Owner's application including maintenance and expenditure records.

3.6 Other Sections Form Part of Covenant. The Owner covenants and agrees that ARTICLE 5 to ARTICLE 11 inclusive of this Agreement will be deemed to be included and form a part of the Section 219 Covenant granted pursuant to Section 3.1.

ARTICLE 4 STATUTORY RIGHT OF WAY

4.1 Right of Way Grant. Pursuant to Section 218 of the *Land Title Act*, the Owner grants to the City absolutely and in perpetuity an easement by way of statutory right of way on and over the Lands for the purposes described in Section 4.2 and on the terms and conditions contained in this Agreement. The right will be full, free and uninterrupted.

4.2 Right of Way Purposes. At any time the City or the City Personnel may enter the Lands with workers, vehicles, equipment, tools and materials for the purpose of inspecting the Public Art 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, the obligation to maintain and repair the Public Art or take any actions as a result of directions issued by the Director pursuant to Section 3.4 all in accordance with this Agreement.

4.3 No City Obligation. Nothing in Section 4.2 implies that the City has any obligation to the Owner or anyone else to exercise any of its rights under Section 4.2.

4.4 Right of Way Continuance. No default by the City under this Agreement 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.

4.5 Other Sections Form Part of Statutory Right of Way. The Owner covenants and agrees with the City that ARTICLE 5 to ARTICLE 11 inclusive of this Agreement will be deemed to be included and form part of the Statutory Right of Way granted pursuant to Section 4.1.

ARTICLE 5 OWNER DEFAULT

5.1 Owner's Default. If the Owner defaults in observing or performing any obligation under this Agreement then the Owner will rectify such default within fifteen days after receipt of notice from the City, except that if the Owner, by reason of the nature of the default, cannot in the opinion of the Director rectify it within fifteen days, the Owner will

have a further reasonable period to rectify so long as the Owner proceeds promptly and diligently. If the Owner fails to rectify such default within the permitted time period or if the City, in case of emergency, does not consider that it has time to deliver such notice, the City may rectify the default on the Owner's behalf. If any default by the Owner results in the need for the Owner to take positive action to rectify such default, the Owner will take such positive action as the City considers necessary, and, if the Owner fails to do so, the City may apply to court for a mandatory injunction requiring the Owner to take such action. This Section 5.1 will survive termination or release of this Agreement.

5.2 Costs. The Owner will pay to the City on demand the aggregate of the City's costs of rectifying any default of the Owner under this Agreement and a sum equal to twenty percent of those costs on account of the City's overhead, and any other money the Owner may owe to the City from time to time pursuant to this Agreement. If the Owner does not pay the City within thirty days after the date the Owner receives any such demand, the arrears will bear interest from the date of demand to the date of payment at the Prime Rate plus three percent per annum, calculated and compounded monthly not in advance. This Section 5.2 will survive termination or release of this Agreement.

ARTICLE 6 SUBDIVISION UNDER STRATA PROPERTY ACT

6.1 Subdivision. If the Owner subdivides the Lands by way of the *Strata Plan*, it will do so only on the condition that the Public Art will not be located within one or more strata lots or part of a strata lot or limited common property but will form part of the common property of the Strata Corporation thereby created. Upon subdivision of the Lands by Strata Plan:

- (a) the Statutory Right of Way and the Section 219 Covenants will charge each strata lot within, and additionally will be noted as a charge against the common property of, the Strata Corporation;
- (b) the Strata Corporation(s) so created will perform and observe the Owner's covenants in this Agreement; and
- (c) the liability of each strata lot owner for the performance and observance of the Owner's covenants and obligations in this Agreement will be in proportion to the unit entitlement of his or her strata lot as established under the *Strata Property Act*.

ARTICLE 7 LETTER OF CREDIT - OPTION A

7.1 Letter of Credit Security for Owner's Obligations. As security for the Owner's obligations under Option A or Option B, the Owner will deliver the Letter of Credit to the City prior to the issuance of a Building Permit.

7.2 Letter of Credit Realization. If the Owner defaults in observing or performing any of its obligations under ARTICLE 2 and does not rectify that default within the cure periods set

out in Section 5.1, or within such longer period as the Director may specify in the notice having regard to the nature of the default, or if the financial institution which issued the Letter of Credit notifies the City that it does not intend to renew it, or if the Letter of Credit does not at any time comply, in any other way, with the requirements of this Agreement, the City may present the Letter of Credit to its issuer and cash and realize on the Letter of Credit and use the Letter of Credit proceeds to fulfil the Owner's obligations or to reimburse the City for any amounts incurred by the City as a result of the Owner being in default of its obligations under this Agreement.

If the Letter of Credit proceeds exceed the amounts required by the City under this Section 7.2, the City will pay the surplus to the Owner after request for such payment from the Owner and after the City is satisfied that it will not incur or have the obligation to pay any further amounts arising from the Owner's default. Under no circumstances will the City be required to return any surplus to the Owner prior to completion of the Public Art and installation of the Public Art on the Lands. If those proceeds are not sufficient to satisfy those amounts, the Owner will pay any deficiency to the City within five days of demand, from time to time. If the Owner does not do so, the City, without limiting its other rights or remedies under this Agreement or at law or at equity, may sue the Owner for payment of the deficiency and interest thereon at a rate equal to the Prime Rate plus three percent per annum, calculated and compounded monthly, from the date of receipt by the Owner of the demand for payment of the deficiency to the date the Owner pays the deficiency to the City.

7.3 Letter of Credit Return. Upon receipt of a written request from the Owner, the City will return the Letter of Credit to the Owner provided the Director is satisfied that the Owner has fulfilled the requirements of Section 2.4.

ARTICLE 8 INDEMNITY AND RELEASE

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

- (a) the City or City Personnel exercising any of its or their rights under this Agreement or based on any decision made by the City or City Personnel pursuant to this Agreement including, without limitation, the City withholding the issuance of any Development Permit, Building Permit or Occupancy Permit; or
- (b) otherwise as a result of this Agreement and the requirements set out herein,

whether or not such Claims are the result of or relate in any way to any negligent acts or omissions on the part of the City or City Personnel. This indemnity will survive the discharge or any termination of this Agreement.

8.2 Release. The Owner hereby waives, remises, releases and discharges absolutely the City and all City Personnel from and against all Claims which may arise or accrue to the Owner resulting from, relating to or which may derive from:

- (a) the City or City Personnel exercising any of its or their rights under this Agreement or based on any decision made by the City or City Personnel pursuant to this Agreement including, without limitation, the City withholding the issuance of any Development Permit, Building Permit or Occupancy Permit; or
- (b) otherwise as a result of this Agreement and the requirements set out herein,

whether or not such Claims are the result of or relate in any way to any negligent acts or omissions on the part of the City or City Personnel. The release provided for in this Section 8.2 will survive the discharge or termination of this Agreement.

8.3 Conduct of Proceedings.

- (a) In the event that a claim is made against the City which, pursuant to the terms of this Agreement, requires the Owner to indemnify the City or City Personnel, then the City will give notice of such claim to the Owner and, subject to Section 8.3(b), the Owner will have the right, upon written notice to the City, to conduct the proceedings in defence of the claim.
- (b) Section 8.3(a) will not apply and the City will have the right to conduct the defence of any claim described in Section 8.3(a) in the following circumstances:
 - (i) where the City Manager determines that the proper administration of the municipal government requires that decisions with respect to the claim be made by the City;
 - (ii) where the City Manager determines that the public interest requires that the matter be resolved in an open and public way; or
 - (iii) where, in the opinion of the City Manager, the claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential claims affecting or involving the City;

provided however that if the City wishes to settle any claim, the City will not do so without the prior consent of the Owner, which consent will not be unreasonably withheld. In conducting any defence or making any settlement, the City will act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of claims, suits, demands, actions or proceedings which would not be indemnified against under the provisions of this Section 8.3(b); and

- (c) Regardless of whether the claim is being defended under Section 8.3(a) or Section 8.3(b), the party having conduct of the proceedings will, upon written request of the other party, provide to the other party all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

ARTICLE 9 EXERCISE OF AUTHORITY

9.1 Director of Legal Services. A power or discretion exercisable under this Agreement by the Director of Legal Services may be exercised by his designate.

9.2 Director. A power or discretion exercisable under this Agreement by the Director may be exercised by his designate.

ARTICLE 10 NOTICES

10.1 Notices. 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, either by personal delivery, 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 it at:

1061511 B.C. Ltd.
Suite 670 - 1665 West Broadway
Vancouver, British Columbia
V6J 5A4

Attention: President

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

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

Attention: City Clerk

with concurrent copies to the Director 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 11 MISCELLANEOUS

11.1 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.

11.2 Joint and Several. Subject to Section 6.16.1(c), 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.

11.3 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 the Rezoning; 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.

11.4 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 roads and the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

11.5 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.

11.6 Force Majeure. If an Event of Force Majeure occurs or is likely to occur, the Owner will promptly notify the City of the particulars of the relevant event or circumstance and, if reasonably possible, supply supporting evidence. The Owner will use its reasonable commercial efforts to remove, curtail or contain the cause of the delay, interruption or failure (provided that the terms of settlement of any labour disturbance, dispute, strike or lockout will be wholly in the discretion of the Owner) and to resume, with the least possible delay, its compliance with duties, covenants and obligations under this Agreement. Neither the City nor the Owner will be liable to the other for any delay, interruption or failure in the performance of its duties, covenants, or obligations under this Agreement if caused by an Event of Force Majeure, and the date limited for the performance of such duties, covenants or obligations under this Agreement will be postponed for a period equal to the delay occasioned by such an Event of Force Majeure.

11.7 Assignment. 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.

11.8 Assignment by Owner. 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, except for any transfer to a purchaser of a residential strata lot created upon the subdivision of the Lands pursuant to a strata plan, the Owner will obtain from such person a duly executed acknowledgement 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.

11.9 No Waiver. The Owner acknowledges and agrees that no failure on the part of the City to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by the City of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies 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.

11.10 Time of Essence. Time will be of the essence of this Agreement.

11.11 City's Costs. In any action to enforce this Agreement in which any Court determines that the position of the City will prevail, the City will be entitled to court costs on a solicitor/client basis.

11.12 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.

11.13 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 the terms hereof 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 agreements 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.

11.14 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.

11.15 Remedies. The exercise of any particular remedy by the City or Owner under this instrument or at law or at equity will not prejudice or preclude that party from invoking or exercising any other remedy, and no remedy will be exclusive, and each of the City or Owner may exercise all its remedies independently or in combination and, in particular, the Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

11.16 Enurement. This Agreement will enure to the benefit of and bind each of the City and its successors and assigns and the Owner and the Owner's successors and assigns.

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

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority Agreement:

- (a) **“Existing Charges”** means the Mortgage registered under number CA4977621 (modified by CA5921618 and CA6792468) and Assignment of Rents registered under number CA4977622 (modified by CA5921619 and CA6792469);
- (b) **“Existing Chargeholder”** means COMPUTERSHARE TRUST COMPANY OF CANADA;
- (c) **“New Charges”** means the Section 219 Covenants and the Statutory Right of Way contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the respective meanings ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 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