



District of West Vancouver

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

(195 – 21st Street)

Effective Date: October 16, 2017

District of West Vancouver

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

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District of West Vancouver

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

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

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

WHEREAS Council published notices of its intention to enter into a phased development agreement with Hollyburn Properties Ltd., and held a public hearing in respect of this bylaw in accordance with the *Local Government Act*; and

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

## **Part 1 Citation**

- 1.1 This bylaw may be cited as “Phased Development Agreement Authorization Bylaw No. 4906, 2016.”

## **Part 2 Authorizes a Phased Development Agreement**

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

## **Schedules**

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

READ A FIRST TIME on October 24, 2016

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

PUBLIC HEARING HELD on November 28, 2016

READ A SECOND TIME on November 29, 2016

READ A THIRD TIME on November 29, 2016

ADOPTED by the Council on October 16, 2017

*[Original signed by Mayor]*

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Mayor

*[Original signed by Municipal Clerk]*

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Municipal Clerk

## **SCHEDULE A PHASED DEVELOPMENT AGREEMENT**

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

BETWEEN:

**DISTRICT OF WEST VANCOUVER**

750 17th Street  
West Vancouver, BC V8V 3T3

(the “**District**”)

AND

**HOLLYBURN PROPERTIES LTD.**

300-1650 Alberni Street  
Vancouver, BC V6G 1B1

(the “**Owner**”)

**GIVEN THAT:**

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

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

## **1.0 DEFINITIONS AND INTERPRETATIONS**

### **1.1** In this Agreement:

**“Amenities”** includes the funds for community benefits to be paid to the District under section 9.0.

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

**“Development”** means the development of the Lands.

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

**“Lands”** means the parcels of lands legally described as:

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

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

**“Term”** means the term of this Agreement set out in section 4.1.

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

## **SCHEDULES**

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

## **APPLICATION OF AGREEMENT**

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

## **2.0 CONDITIONS PRECEDENT**

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

## **3.0 SPECIFIED ZONING BYLAW PROVISIONS**

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

## **4.0 TERM OF AGREEMENT**

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

## **5.0 TERMINATION**

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

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

## **6.0 DEVELOPMENT**

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

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

## 7.0 IMPACTS

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

## 8.0 SECTION 219 COVENANT

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

## 9.0 AMENITIES

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

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

## **10.0 DEVELOPMENT OF LAND FOLLOWING TERMINATION**

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

## **11.0 INDEMNITY AND RELEASE**

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

## 12.0 NO RECOVERY OF AMENITIES

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

## 13.0 ASSIGNMENT OF AGREEMENT

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

## 14.0 AMENDMENT OF AGREEMENT

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

## 15.0 DISPUTE RESOLUTION

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

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

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

#### **16.0 NOTICE**

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

#### **17.0 POWERS PRESERVED**

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

#### **18.0 DISTRICT'S REPRESENTATIVE**

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

#### **19.0 TIME**

19.1 Time is to be the essence of this Agreement.

#### **20.0 BINDING EFFECT**

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

#### **21.0 WAIVER**

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

#### **22.0 CUMULATIVE REMEDIES**

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

**23.0 RELATIONSHIP OF PARTIES**

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

**24.0 SURVIVAL**

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

**25.0 NOTICE OF VIOLATIONS**

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

**26.0 LEGAL FEES**

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

**27.0 ENTIRE AGREEMENT**

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

**28.0 SEVERABILITY**

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

**29.0 COUNTERPART**

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

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

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

\_\_\_\_\_  
Mayor )  
)  
)  
)  
)

\_\_\_\_\_  
Municipal Clerk )

**THE OWNER** by its Authorized )  
signatories: )  
)  
)  
)  
\_\_\_\_\_  
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)

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

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## WHEREAS:

A. The Grantor is the registered owner in fee simple of:

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

(the “**Lands**”)

B. The Grantee is the District of West Vancouver;

C. The Grantor has agreed to develop the Lands in accordance with a Phased Development Agreement dated for reference the 30th day of September, 2016 and made between the Grantor and the Grantee (the “**Phased Development Agreement**”).

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

1. In this Covenant the following terms have the following meanings:

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

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

#### **5. NO BUILD COVENANT**

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

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

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

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

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

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