

4320 Slocan Street

BY-LAW NO. 10826

**A By-law to enact a Housing Agreement
for 4320 Slocan Street**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a Housing Agreement with the owner of certain lands described as:

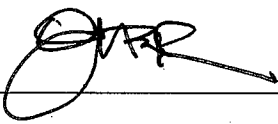
PID: 029-178-941

LOT A BLOCK 2 THSL PLAN EPP34457

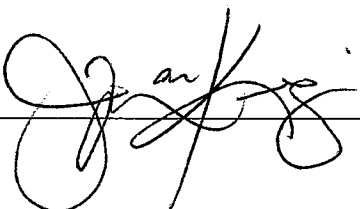
in substantially the form and substance of the Housing Agreement attached to this By-law as Schedule A, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City, and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this 5th day of November , 2013



Mayor



City Clerk

SCHEDULE A

FORM_C_V19 (Charge)

LAND TITLE ACT
FORM C (Section 233) CHARGE

GENERAL INSTRUMENT - PART 1 Province of British Columbia

LOCK

PAGE 1 OF 9 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.

[Empty signature box]

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

Import Profile

Mary Jang, Agent

AYDIN BIRD, Business Lawyers

Tel: 604-266-5828

530 North Office Tower, 650 West 41 Avenue

File: 19978-001

Vancouver

BC V5Z 2M9

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

029-178-941

LOT A BLOCK 2 THSL PLAN EPP34457

No PID NMBR

STC? YES

Pick up STC?

Use 30 Parcel Schedule

Use 3 Parcel Schedule

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Use Schedule

Covenant

Section 219

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):

Use Schedule

YEN HOY ENTERPRISES LTD. (INC. NO. 57024)

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

Use Schedule

CITY OF VANCOUVER

453 WEST 12 AVENUE

VANCOUVER

BRITISH COLUMBIA

V5Y 1V4

CANADA

Joint Tenants?

7. ADDITIONAL OR MODIFIED TERMS:

Use Schedule

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)

Florence Louie Yen

Barrister & Solicitor

530 North Office Tower

650 West 41 Avenue

Vancouver, BC V5 2M9

Tel: 604-266-5828

Y	M	D
13	10	

YEN HOY ENTERPRISES LTD.
by its authorized signatory:

Name: George Yen

OFFICER CERTIFICATION:

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

More Signatures

TERMS OF AGREEMENT - PART 2

STIR HOUSING AGREEMENT
4320 Slocan Street

WHEREAS:

- A. It is understood and agreed that this instrument and Agreement shall be read as follows:
- (i) the Transferor, Yen Hoy Enterprises Ltd., is called the "Owner", as more particularly defined in section 1.1; and
 - (ii) the Transferee, City of Vancouver, is called the "City" or the "City of Vancouver" when referring to corporate entity, and "Vancouver" when referring to geographic location;
- B. The Owner is the registered and beneficial owner of the Lands;
- C. The Owner has applied to rezone the Lands by CD-1 by-law (when and as enacted, the "Rezoning By-law"), to permit construction of a four-storey mixed use commercial and residential building with 41 units of for-profit affordable rental housing, two at-grade commercial rental units and related parking and amenity space, and wishes to qualify, pursuant to the City's Short Term Incentives for Rental ("STIR") program, for a waiver of the development cost levies that would otherwise be payable by the Owner in respect of those residential units;
- D. Following a public hearing on February 21, 2013, the Owner's said rezoning application was conditionally approved by City Council, subject to the condition that the Owner, *inter alia*:
- Execute a housing agreement pursuant to the STIR program to secure all 41 residential units in this development as rental for the life of the building or 60 years, whichever is longer, and to include registrable covenants in respect of all such units prohibiting stratification and separate sales and subject to such other terms and conditions as are satisfactory to the Director of Legal Services and the Managing Director of Social Development.
- E. In order to qualify for the STIR program, the Owner must:
- (i) satisfy the City Manager that the Designated Units qualify as For-Profit Affordable Rental Housing;
 - (ii) register against title to the Lands, a legal instrument satisfactory to the Director of Legal Services as to form, substance and priority of registration, restricting the tenure of the Designated Units to rental only for the life of the Building or 60 years, whichever is longer, or such other term as the City and the Owner may agree; and
 - (iii) comply with all other City-imposed conditions applicable; and
- F. The City Manager has concluded that the Designated Units qualify, or will qualify when the Building is completed, as For-Profit Affordable Rental Housing and the Owner is entering into this Agreement to satisfy the other pre-conditions to eligibility for a waiver of the subject

development cost levies otherwise applicable.

NOW THEREFORE THIS AGREEMENT WITNESSES that for good and valuable consideration (the receipt and sufficiency of which the parties hereby acknowledge and agree to) the Owner and the City, in satisfaction of the requirements of Section 3.1 of the Vancouver DCL By-law and pursuant to Section 565.2 of the *Vancouver Charter* and Section 219 of the *Land Title Act*, agree as follows, in respect of the use of the Lands and the Buildings:

1. **Definitions.** In this Agreement the following terms have the definitions now given:

- (a) **"Agreement"** means this STIR housing agreement and building use covenant, including the foregoing recitals;
- (b) **"Building"** means any building or structure on the Lands (other than temporary buildings or structures on the Lands during the period of, and required for the purposes of, construction) used, occupied or constructed on the Lands at any time following the date this Agreement is fully executed, and includes and any other building or structure used, occupied or constructed on the Lands to replace and such building, and any portion of any such building or structure; and **"Buildings"** means all such buildings and structures;
- (c) **"Building Permit"** means any building permit issued by the City authorizing the building of a Building as contemplated by the Development Permit;
- (d) **"City"** means the Transferee, the municipality of the City of Vancouver continued under the *Vancouver Charter*;
- (e) **"City Manager"** means the chief administrator from time to time of the City and her/his successors in function and their respective nominees;
- (f) **"City Personnel"** means any and all of the elected and appointed officials, and officers, employees, agents, nominees, delegates, permittees, contractors, subcontractors and volunteers of the City;
- (g) **"Commencement Date"** means the date as of which this Agreement has been executed by all parties to it;
- (h) **"Designated Units"** means all Residential Units contained within the Building, being 41 such Units, together with all related common service and amenity areas and systems, subject to final approval by the City as to form and contents, and **"Designated Unit"** means any one of them;
- (i) **"Development Permit"** means any development permit issued by the City authorizing the development on the Lands contemplated by the Rezoning By-law;
- (j) **"Director of Legal Services"** means the chief administrator from time to time of the City's Legal Services Department and her/his successors in function and their respective nominees;

- (k) **"For-Profit Affordable Rental Housing"** means three or more new dwelling units in the same building or project, determined by the City Manager under Section 3.1 of the Vancouver DCL By-law to be affordable, but does not include alterations of or extensions to such units, where "determined by the City Manager" means which the City Manager, after considering the finishing, size, location and other design consideration and proposed rents, considers to be affordable; and **"For-Profit Affordable Rental Housing Unit"** means any one of such units;
- (l) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c.250, and amendments thereto and re-enactments thereof;
- (m) **"Lands"** means the parcel described in Item 2 in the Form C attached hereto;
- (n) **"Losses"** means all damages, losses, costs, actions, causes of action, claims, demands, builders liens, liabilities, expenses, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays);
- (o) **"Managing Director of Social Development"** means the chief administrator from time to time of the City's Social Development Department and his/her successors in function and their respective nominees;
- (p) **"Occupancy Permit"** means a permit issued by the City authorizing the use and occupation of any Building, development or partial development on the Lands;
- (q) **"Owner"** means the registered and beneficial owner of the Lands, being Yen Hoy Enterprises Ltd. as of the Commencement Date, and includes any and all of the its respective assigns and successors as registered or beneficial owner of the Lands or any part thereof;
- (r) **"Replacement Designated Unit"** is defined in Section 2(b);
- (s) **"Residential Unit"** means a self-contained dwelling unit, comprised of two or more rooms, including toilet, bathing and cooking facilities;
- (t) **"Rezoning By-law"** is defined in Recital C;
- (u) **"STIR"** is defined in Recital C;
- (v) **"Term"** means the term of this Agreement, which will commence on the Commencement Date and will end on:
 - (i) the 60 year anniversary of that commencement date; or
 - (ii) the date as of which the Building is demolished or substantially destroyed, whichever occurs later;
- (w) **"Vancouver DCL By-law"** means the City's Vancouver Development Cost Levy By-law No. 9755 as amended from time to time, as in force and effect as of the reference date of this Agreement; and

- (x) “**Vancouver Charter**” means the *Vancouver Charter* S.B.C. 1953, c.55, as amended or replaced from time to time.

2. **Use of Lands and Buildings.** The Owner covenants and agrees with the City that, during the Term:

- (a) the Lands and the Buildings shall not be used in any way that is inconsistent with the terms of this Agreement;
- (b) the Designated Units shall be used only for the purpose of providing For-Profit Affordable Rental Housing, and if the Building is destroyed or demolished before the end of the Term, then any replacement building(s) built on the Lands (together with any remaining undestroyed or undemolished building) shall also contain not less than the same number and type of replacement Designated Units as the Building formerly contained, which replacement Designated Units shall also be used only for the purpose of providing For-Profit Affordable Rental Housing (each such replacement Designated Unit hereinafter referred to as a “**Replacement Designated Unit**”), in accordance with the terms of this Agreement and the applicable by-laws of the City;
- (c) it will not rent or sublet, nor will it allow to be rented or sublet, any Designated Units (or Replacement Designated Unit, as applicable) for a term of less than 30 consecutive days;
- (d) it will not suffer, cause or permit, beneficial or registered title to any of the Designated Units (or any Replacement Designated Unit, as applicable) to be sold or otherwise transferred unless title to every one of the Designated Units (or each Replacement Designated Unit, as applicable) is sold or otherwise transferred together and as a block to the same beneficial and legal owner, and subject to Section 17;
- (e) it will not suffer, cause or permit, the Building (or any replacement building(s) on the Lands) or any part thereof, to be subdivided by subdivision plan or strata plan; and
- (f) that any sale of any Designated Unit (or any Replacement Designated Unit, as applicable) in contravention of the covenant in Section 2(d), and any subdivision of the Buildings (or any replacement building(s) on the Lands) or any part thereof, in contravention of the covenant in Section 2(e), will in each case be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title or plan, as the case may be, at the Owner's expense.

3. **Construction of Designated Units.** The Owner shall construct, fit and finish the Designated Units in accordance with the Development Permit, the Building Permit and all applicable City by-laws and policies, all to the satisfaction of the City.

4. **Record Keeping.** The Owner shall keep accurate records pertaining to the use and rental of the Designated Units (and any Replacement Designated Unit, as applicable) as For-Profit Affordable Rental Housing, such records to be to the satisfaction of the City Manager. At the request of the City Manager, from time to time, the Owner shall make these records available

for inspection and copying by City staff, subject to applicable restrictions in any tenancy, privacy and other laws which place limitations on such disclosure.

5. Repair, Maintain and Insure. The Owner shall keep and maintain the Building (or any replacement building(s) on the Lands) and all parts thereof in good repair and in a safe, clean, neat and tidy condition, and shall insure it to the full replacement cost against perils normally insured against in Vancouver by reasonable and prudent owners of similar buildings and lands. If the Building or any part thereof is damaged, the Owner shall promptly restore and repair it whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred.

Prior to the issuance of an occupancy permit for the Building or any part thereof, the Owner shall provide the City with such proof of the insurance required to be taken out pursuant to this Section 5, in form and substance satisfactory to the City. Thereafter and throughout the Term, forthwith upon request by the City, the Owner shall provide the City with similar proof of insurance.

6. Substantial or Complete Destruction. In the event of the substantial or complete destruction or demolition of the Building prior to the 60 year anniversary of the date when this Agreement has been executed by all parties to it, the Owner shall promptly take all steps reasonably necessary to enable it to build a replacement building or buildings on the Lands, which building(s) shall be subject to the same use restrictions as the Building pursuant to this Agreement for the duration of the Term.

7. Enforcement. This Agreement may be enforced by mandatory and prohibitory orders of the court. In any action to enforce this Agreement if the City is entitled to court costs, it shall be entitled to court costs on a solicitor and own client basis.

8. Release and Indemnity. The Owner hereby releases, and agrees to indemnify and save harmless, the City and all City Personnel for and from any Losses suffered, incurred or experienced by any person or entity, including, without limitation, the Owner, the City and any/all City Personnel, in connection with, that arises out of, or that would not have been incurred "but for", this Agreement. This indemnity will survive release or discharge of the Section 219 Covenant given hereby.

9. Notices. All notices, demands or requests of any kind which one party may be required or permitted to give to the other in connection with this Agreement, shall be in writing and shall be given by registered mail or personal delivery, addressed as set forth below. Any such notice, demand or request will be deemed given:

- (a) if made by registered mail, on the earlier of the day receipt is acknowledged by the addressee or the third day after it was mailed, except when there is a postal service disruption during such period, in which case delivery will be deemed to be completed upon actual delivery of the notice, demand or request; and
- (b) if personally delivered, on the date when delivered.

If to the City, addressed to:
 City of Vancouver
 453 West 12th Avenue
 Vancouver, British Columbia
 V5Y 1V4

Attention: Managing Director of Social Development
 with copy to Director of Legal Services

If to the Owner, addressed to:
 Yen Hoy Enterprises Ltd.
 #502 - 2695 Granville Street
 Vancouver, British Columbia
 V6H 3H4

Attention: Mr. Vincent Yen

or to such other address in Canada as either party may specify in writing to the other party in the manner described above, provided that if and when the owner of the Land or any part thereof should change, in the absence of any such specification, then to the address as set out in the State of Title Certificate for that particular parcel of land.

10. Agreement Runs With the Lands. The covenants and agreements set forth herein on the part of the Owner shall be covenants the burden of which shall run with and shall bind the Lands and shall attach thereto and run with each and every part into which the same may be subdivided or consolidated, subject always to Sections 2(d), 2(e) and 2(f).

11. Enurement. This Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and its successors and assigns.

12. 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.

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

14. 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 herein provided will be cumulative and not exclusive of any other remedies provided by law and

all remedies stipulated for the City herein 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.

15. Perfection of Intention. The Owner shall, after execution hereof, do or cause to be done at its own cost and expense all things and acts necessary to ensure that this Agreement is noted on title to the Lands as a charge against title to the Lands with priority over all other encumbrances except those in favour of the City.

16. Further Assurances. Each party shall execute such further and other documents and instruments and do such further and other acts as may be necessary to implement and carry out the provisions and intent of this Agreement.

17. Sale of Lands or Buildings. Prior to the sale or transfer of any legal or beneficial interest in the Lands and/or the Buildings or any part thereof (other than the transfer of an interest by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage), subject always to Sections 2(d), (e) and (f), the Owner shall cause the purchaser/transferee to enter into an assumption agreement with the City, in form and substance satisfactory to the Director of Legal Services, pursuant to which the purchaser/transferee shall agree to be bound by all of the obligations, agreements and indemnities of the Owner under this Agreement. The provisions in this Section 17 shall apply equally to all subsequent purchasers/transferees (other than a mortgagee that has first granted the Section 219 Covenant contained herein priority, in form and substance satisfactory to the City, over its mortgage).

18. Date of Agreement. This Agreement is dated for reference April 15, 2013.

IN WITNESS WHEREOF the parties have executed this Agreement on the Forms C or D which are a part hereof.

END OF DOCUMENT