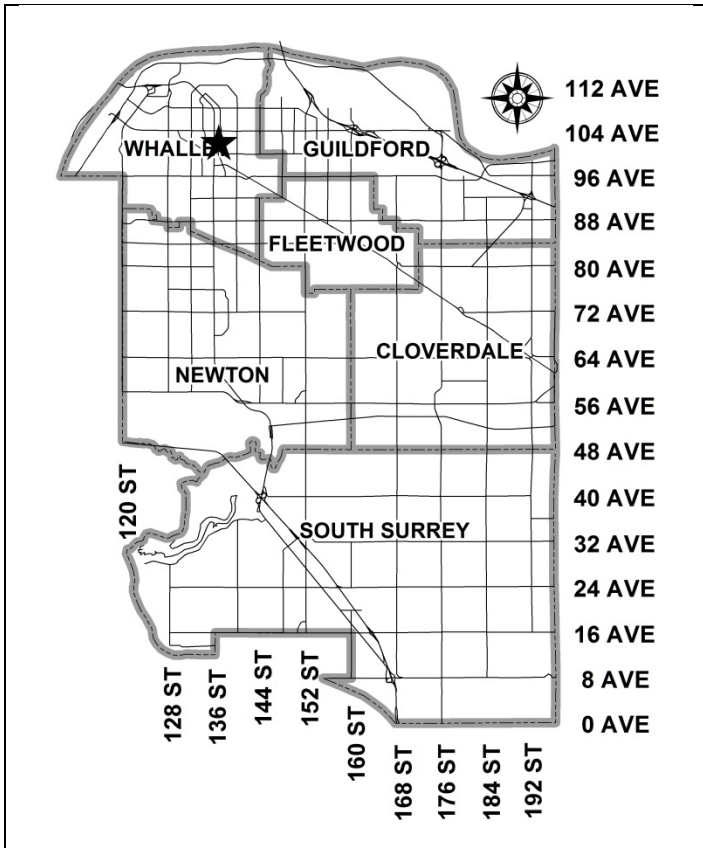


City of Surrey
ADDITIONAL PLANNING COMMENTS

File: 7917-0159-00

Planning Report Date: July 23, 2018



PROPOSAL:

- **OCF Amendment** of Figure 16: Central Business District Densities from "7.5 FAR" to "12.25 FAR"
- **City Centre Plan Amendment** from "Mixed-Use 7.5 FAR" to "Mixed-Use 12.25 FAR"
- **Rezoning** from C-8 to CD
- **Development Permit**

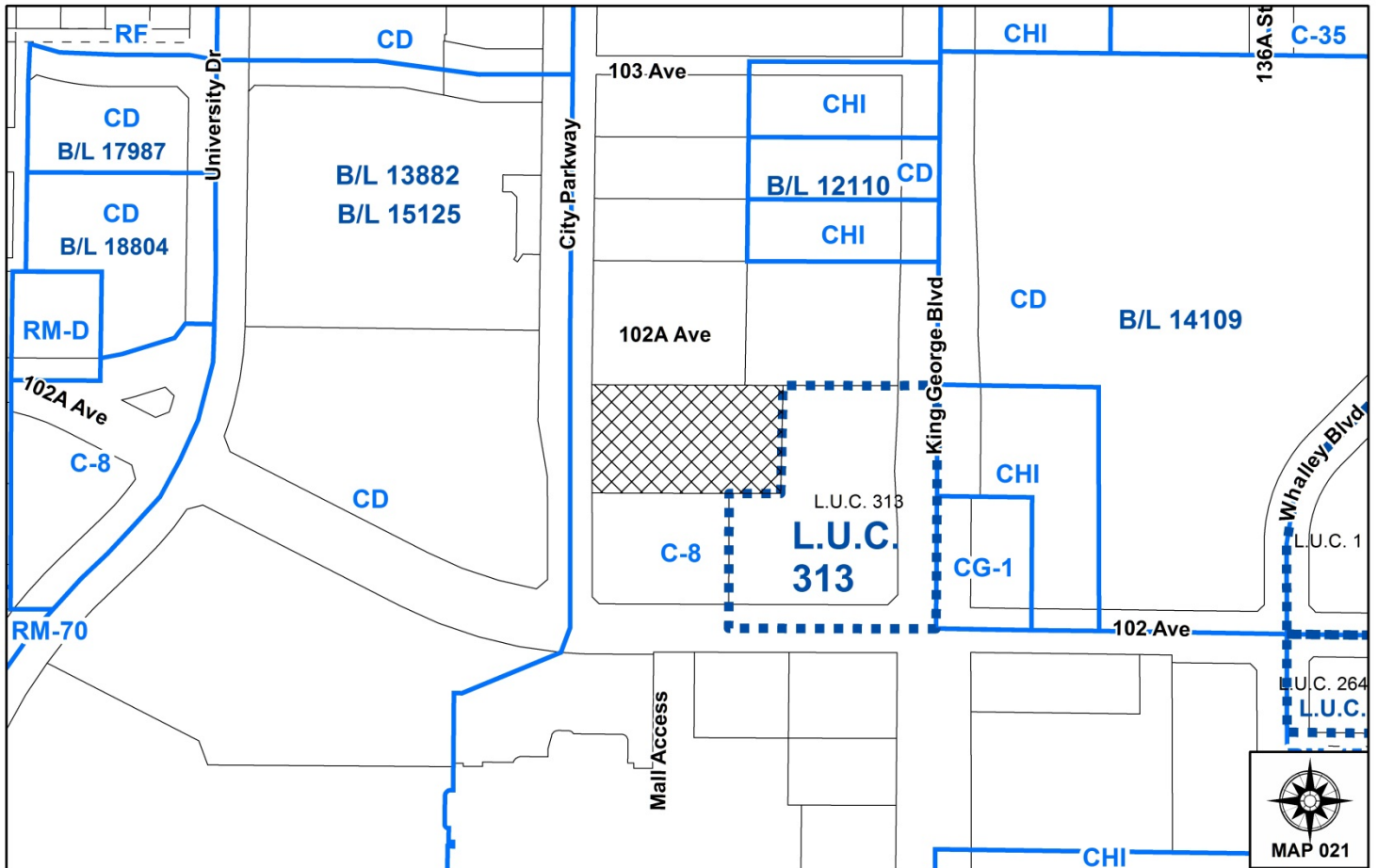
to permit the development of an education-focused mixed-use, high-density, high-rise development in the City Centre.

LOCATION: 10240 - City Parkway

ZONING: C-8

OCF DESIGNATION: Central Business District

CITY CENTRE PLAN DESIGNATION: Mixed-Use 7.5 FAR



RECOMMENDATION SUMMARY

- Council rescind Resolution R17-3001 granting Third Reading to OCP Amendment By-law No. 19388 and Resolution R17-3002 granting Third Reading to Rezoning By-law No 19389, and refer the application back to staff to work with the applicant to develop the subject site in accordance with the "Mixed Use 7.5 FAR" designation in the City Centre Plan.

DEVIATION FROM PLANS, POLICIES OR REGULATIONS

- The applicant is seeking an amendment to the Official Community Plan (OCP) and City Centre Plan to permit a higher density.

RATIONALE OF RECOMMENDATION

- Due to the unique nature of the proposed development, which included a combination of academic space and dedicated student housing (33 floors dedicated to fully-furnished "serviced apartments" for students), along with the project location in the Central Downtown District near post-secondary educational facilities, a proposed density increase from "Mixed Use 7.5 FAR" to a new "Mixed-Use 12.25 FAR" designation in the City Centre Plan, and parking relaxation were supported. The necessary OCP Amendment and Rezoning By-laws (Nos. 19388 and 19389) to facilitate the proposed project received Third Reading from Council on November 6, 2017
- One of the conditions of final adoption of the proposed OCP Amendment and Rezoning By-laws (Nos 19388 and 19389) is for the applicant to enter into a Housing Agreement with the City for the purposes of providing for dedicated student rental housing within a portion of the proposed development.
- The applicant is requesting to remove a significant piece of the rationale for supporting the proposal by requesting that the housing agreement not limit occupancy to the portion of the project originally intended as dedicated student housing, to students only, but instead allow flexibility for these units to be rented to the general public. The applicant has indicated that while the proposed units would still be targeted to students they seek the flexibility to rent to non-students, in the event that there are not sufficient students available to fill the spaces.
- Without the certainty of the dedicated student housing component of the project, through the originally conceived housing agreement, the rationale for the proposed density increase and parking relaxations on the subject site is diminished, and the proposal may establish a potentially undesirable precedent.
- Pre-notification letters, as well as public hearing notification, for the subject application proceeded on the basis that the applicant was providing dedicated student rental housing.
- A high rise, mixed-use development could be achieved on the subject site within the density parameters of the City Centre Plan and Official Community Plan. The City Centre Plan Density Bonus Interim Policy allows up to 20% increase in density in exchange for community amenities which would include dedicated rental housing not limited to students.

RECOMMENDATION

The Planning & Development Department recommends that Council rescind Resolution R17-3001 granting Third Reading to OCP Amendment By-law No. 19388 and Resolution R17-3002 granting Third Reading to Rezoning By-law No 19389, and refer the application back to staff to work with the applicant to develop the subject site in accordance with the "Mixed Use 7.5 FAR" designation in the City Centre Plan.

Alternatively,

Should Council support the application to proceed as currently designed, but on the basis of a housing agreement that limits the tenure of the proposed "serviced apartments" to rental only, but not student rental only, Council may rescind Resolution R17-3001 granting Third Reading to OCP Amendment By-law No. 19388 and Resolution R17-3002 granting Third Reading to Rezoning By-law No 19389, and schedule a new Public Hearing for the project with clarification to the public that the project includes 33 floors of "serviced apartments" dedicated for rental housing but not exclusively student rental housing.

DEVELOPMENT CONSIDERATIONS

Background

On October 2, 2017, Council considered an Initial Planning Report from the Planning & Development Department for the proposed OCP amendment and Rezoning of the subject site, located at 10240 City Parkway in the City Centre.

- The applicant is seeking an amendment to the Official Community Plan (OCP) and City Centre Plan to permit a higher density, and is proposing to rezone the subject site to permit the development of a 55-storey tower that will consist of a mix of academic, commercial and residential uses at a proposed density of 12.25 FAR, calculated on the basis of the gross site area.
- The applicant also requests a reduction in parking rates for the residential and educational component of the proposed development.
- The proposed 55-storey mixed-use "Education Centre" tower as originally presented to Council consisted of the following uses:
 - a 6-storey podium comprised of 486 square metres (5,233 sq.ft.) of ground-level commercial retail space, and 5 storeys of college/academic space, including classrooms and offices;
 - 33 floors dedicated to fully-furnished "serviced apartments" for students (subject to a housing agreement to ensure student occupancy);
 - 12 floors of flexible accommodation that provide "short-stay" (not more than 182 days in a 12-month period) hotel accommodations; and
 - Indoor amenity space.

- The applicant also volunteered an additional amenity contribution above and beyond the required City Centre Amenity Charges and City Centre specific Development Cost Charges in the form of a cash contribution of \$1,214,610.00.
- The requested additional density for the subject proposal was deemed to have merits for various reasons including but not limited to, the rationale that the proposal was to consist of a unique combination of academic space and dedicated student accommodations.
- As the majority of students were to be expected to reside within the Education Centre, and the required parking spaces for the residential component were anticipated to overlap the university/college component of the proposed development, the proposed parking relaxation was also deemed to have merit, when associated with a housing agreement to ensure student occupancy.
- The applicant also previously agreed to contribute \$740,000 to the City's Traffic Management program to mitigate the deficiency in onsite parking.
- After holding a Public Hearing on the basis of the proposal described above, Council subsequently granted Third Reading to the proposed OCP Amendment and Rezoning by-laws (Nos. 19388 and 19389) to facilitate the proposed project on November 6, 2017.
- One of the conditions of final adoption of the proposed OCP Amendment and Rezoning By-laws (Nos 19388 and 19389) is for the applicant to enter into a Housing Agreement with the City for the purposes of providing for dedicated student rental housing within the student accommodation portions of the development.

Current Proposal

- Subsequent to receiving Third Reading, the applicant has advised staff that it is no longer their intention to enter into a housing agreement to ensure that the 33 floors of "serviced apartments" are dedicated exclusively for student housing.
- The applicant has advised that they require flexibility for the tenancy of the "serviced apartments" in order to maximize occupancy and eliminate vacancies throughout the year.
- A draft housing agreement has been submitted to staff that states that the "serviced apartments" would be made available as rental accommodation for students, families of students, faculty and staff during the academic year. However, the draft housing agreement also states that, should these units not be leased or rented to the individuals listed above, the units may be offered to the general public.
- Although the proposed development would no longer include the certainty of dedicated student housing, the applicant continues to seek the proposed increased density of 12.25 FAR and the proposed parking reduction.

Discussion

- Proposals to increase density beyond the maximums established by City policy are considered on a case-by-case basis, and are carefully evaluated on the basis of their individual merits and particularly their consistency with the OCP vision and policies, and the vision and guiding principles of the appropriate secondary plan. Such increases also typically include a significant community benefit as rationale for support.
- The City Centre Plan vision and guiding principles identify the City Centre as a "centre for major employment, services, higher-density housing, commercial, cultural, entertainment and institutional activity and also an area known for its green urban infrastructure of parks and plazas, greenways, planted boulevards and rain gardens, natural features including fish bearing creeks, riparian areas and spectacular views to the North Shore mountains". The City Centre Plan seeks to achieve this vision and follow its guiding principles through an appropriate balance of land use, density and built form.
- The proposed increased density on the subject from 7.5 FAR to 12.25 FAR is a significant departure from the density designations in both the OCP and City Centre Plan. However, due to the unique nature of the proposal, which included a combination of academic space and dedicated student housing, along with the project's proposed location in the Central Downtown District close to post-secondary educational facilities, the proposed density increase was deemed to have merit. Furthermore, due to the combination of academic space and dedicated student accommodation, the proposed parking relaxation was also supported.
- The applicant is now proposing to remove a significant aspect of the rationale for supporting the proposal by requesting that the originally intended dedicated student housing units have the flexibility to be offered as non-student rental units.
- Should the subject application be allowed to proceed at the density currently proposed, without the dedicated student housing requirement, this may be considered as representing a lower threshold for allowing density increases in the City Centre.
- Increased density in the City Centre beyond that outlined in the City Centre Plan, without sufficient supporting rationale, would put pressures on the Plan's guiding principles and could impact the Plan's overall vision.
- Pre-notification letters and Public Hearing notification for the subject application proceeded on the basis that the applicant was providing dedicated student housing. Should the subject application be allowed to proceed at the density currently proposed without the dedicated student housing component, a new Public Hearing will be required to solicit comments from the public on a revised proposal.

Applicant's Justification

- The applicant's position is that the proposed development should be allowed to proceed in its present form, with the proposed density increase and parking reduction, despite the elimination of certainty on the dedicated student housing component.

- The applicant contends that the draft housing agreement submitted to staff meets the intent of providing student accommodation yet provides the necessary flexibility to ensure that the "serviced apartments" are not left vacant at any time during the year, therefore providing certainty to project financiers.
- The applicant has confirmed that the CIBT Education Group (CIBT) will ultimately retain ownership of the proposed Education Centre and has earmarked it as their education "Mega-Centre" showcase building. CIBT currently has four properties offering student accommodation in Metro Vancouver. Each property has a "longstanding history of 100% student occupancy" without restrictive covenants or housing agreements, according to the applicant. The applicant also advises that the underground parking facilities in these buildings are mostly vacant throughout the year.
- The applicant highlights that there is a need for dedicated rental housing in the City Centre.
- Any requirement to increase cash-in-lieu to offset the deficiency in parking stalls or to increase the community benefit will, according to the applicant, put the project at risk. Similarly, the applicant indicates that should Council not offer support for the revised project proposal, that the project may no longer be viable in Surrey.

CONCLUSION

- Due to the unique nature of the proposed development, which included a combination of academic space and dedicated student housing (33 floors dedicated to fully-furnished "serviced apartments" for students), along with the site location in the Central Downtown District, a proposed density increase from "Mixed Use 7.5 FAR" to a new "Mixed-Use 12.25 FAR" designation in the City Centre Plan, and parking relaxation were supported. The necessary OCP Amendment and Rezoning By-laws (Nos. 19388 and 19389) to facilitate the proposed project received Third Reading from Council on November 6, 2017
- One of the conditions of final adoption of the proposed OCP Amendment and Rezoning By-laws (Nos 19388 and 19389) is for the applicant to enter into a Housing Agreement with the City for the purposes of providing for dedicated student rental housing within a portion of the proposed development.
- The applicant is requesting to remove a significant piece of the rationale for supporting the proposal by requesting that the housing agreement not limit occupancy to the portion of the project originally intended as dedicated student housing, to students only, but instead allow flexibility for these units to be rented to the general public. The applicant has indicated that while the proposed units would still be targeted to students they seek the flexibility to rent to non-students, in the event that there are not sufficient students available to fill the spaces.
- Without the certainty of the dedicated student housing component of the project, through the originally conceived housing agreement, the rationale for the proposed density increase and parking relaxations on the subject site is diminished, and the proposal may establish a potentially undesirable precedent.
- Pre-notification letters, as well as public hearing notification, for the subject application proceeded on the basis that the applicant was providing dedicated student rental housing.

- A high rise, mixed-use development could be achieved on the subject site within the density parameters of the City Centre Plan and Official Community Plan. The City Centre Plan Density Bonus Interim Policy allows up to 20% increase in density in exchange for community amenities which would include dedicated rental housing not limited to students.

On the basis of the above, The Planning & Development Department recommends that Council rescind Resolution R17-3001 granting Third Reading to OCP Amendment By-law No. 19388 and Resolution R17-3002 granting Third Reading to Rezoning By-law No 19389, and refer the application back to staff to work with the applicant to develop the subject site in accordance with the "Mixed Use 7.5 FAR" designation in the City Centre Plan.

However, should Council support the application to proceed as currently designed, but on the basis of a housing agreement that limits the tenure of the proposed "serviced apartments" to rental only, but not student rental only, Consider may rescind Resolution R17-3001 granting Third Reading to OCP Amendment By-law No. 19388 and Resolution R17-3002 granting Third Reading to Rezoning By-law No 19389, and schedule a new Public Hearing for the project with clarification to the public that the project includes 33 floors of "serviced apartments" dedicated for rental housing but not exclusively student rental housing.

INFORMATION ATTACHED TO THIS REPORT

The following information is attached to this Report:

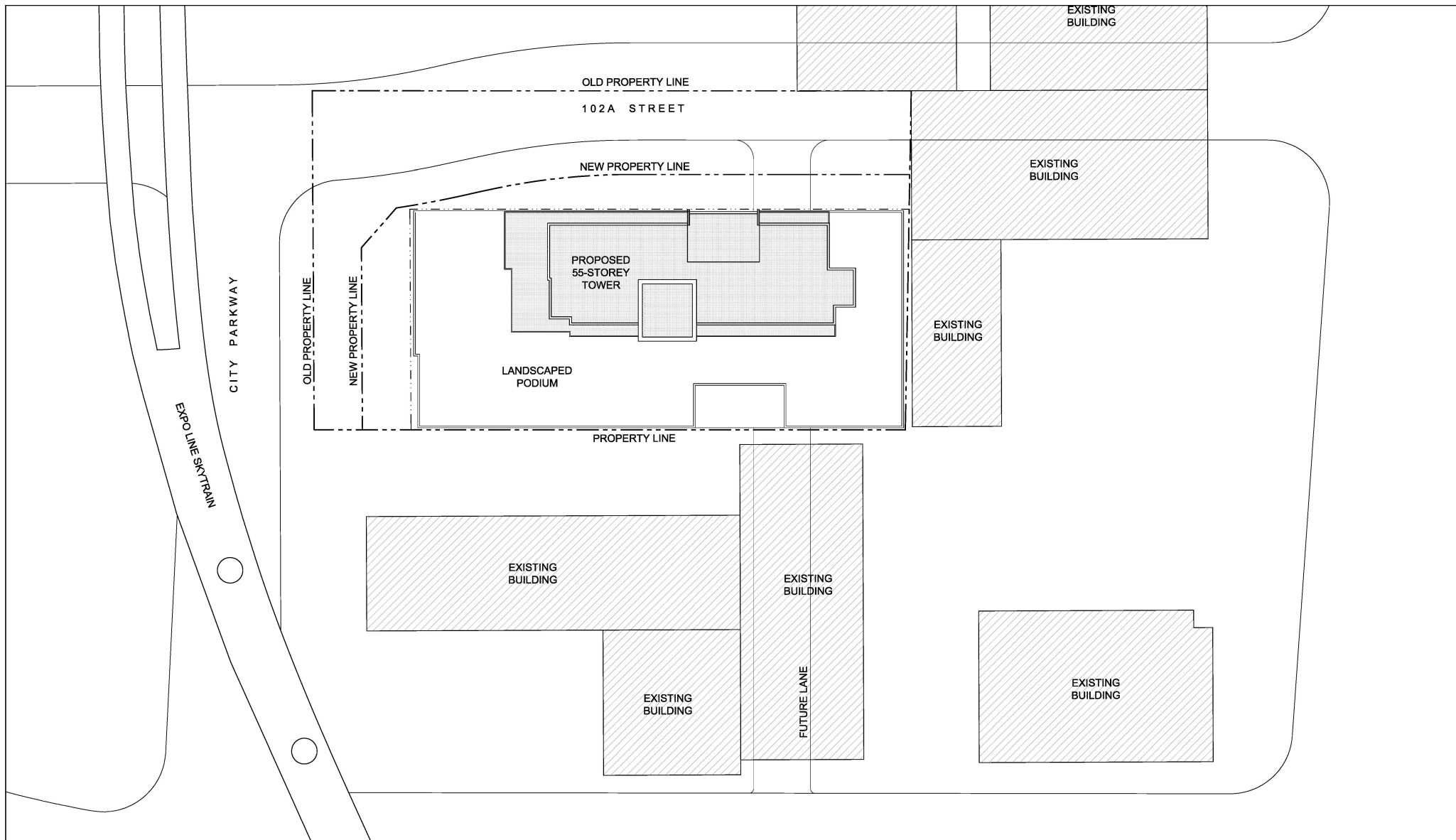
Appendix I.	Lot Owners and Action Summary (Confidential)
Appendix II.	Site Plan
Appendix III.	City Centre Plan
Appendix IV.	Aerial Photo
Appendix V.	Letter from the Applicant
Appendix VI.	Draft Housing Agreement

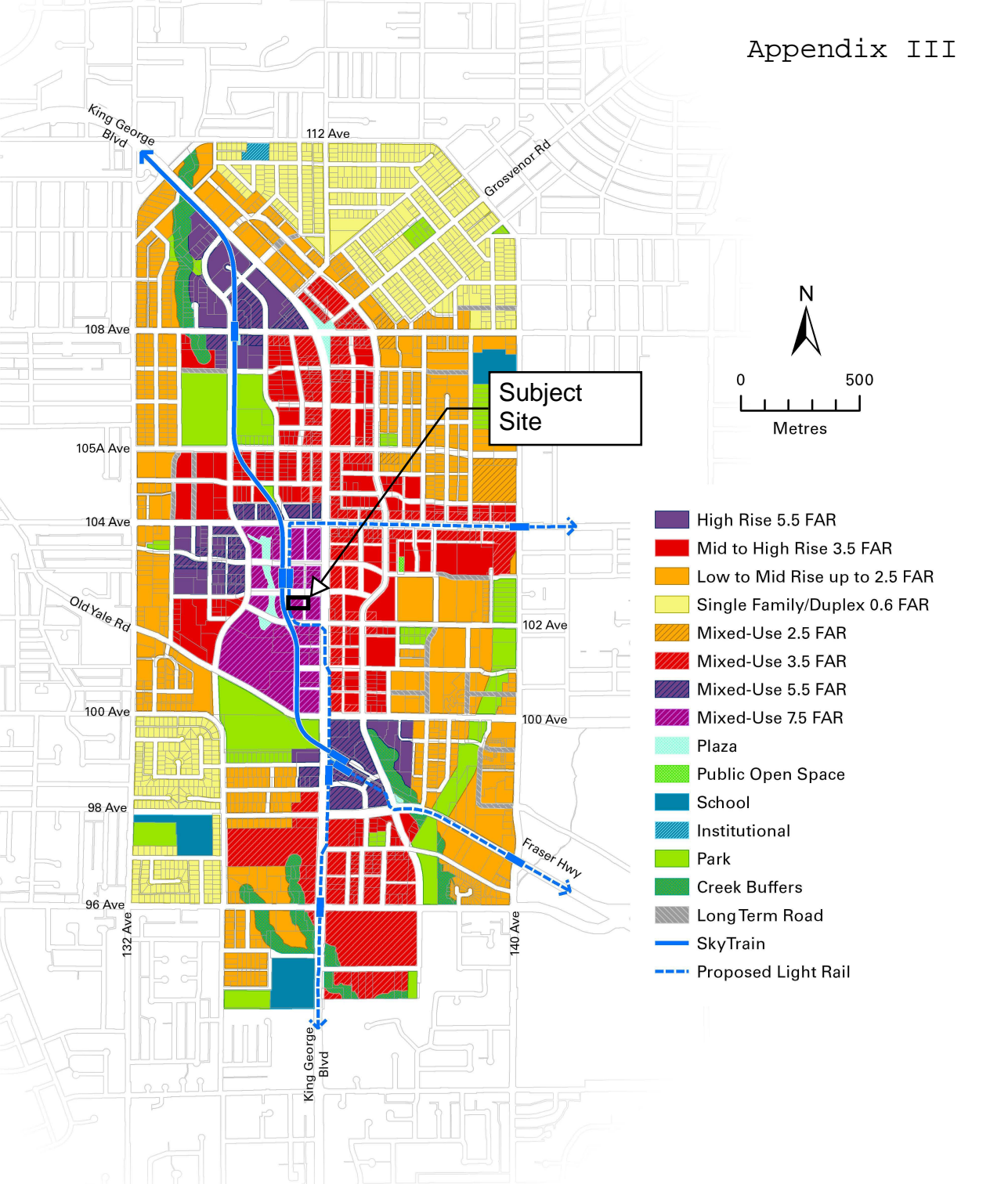
original signed by Ron Gill

Jean Lamontagne
General Manager
Planning and Development

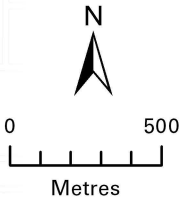
CA/cm

APPENDIX I HAS BEEN
REMOVED AS IT CONTAINS
CONFIDENTIAL INFORMATION





Subject Site



- High Rise 5.5 FAR
- Mid to High Rise 3.5 FAR
- Low to Mid Rise up to 2.5 FAR
- Single Family/Duplex 0.6 FAR
- Mixed-Use 2.5 FAR
- Mixed-Use 3.5 FAR
- Mixed-Use 5.5 FAR
- Mixed-Use 7.5 FAR
- Plaza
- Public Open Space
- School
- Institutional
- Park
- Creek Buffers
- Long Term Road
- SkyTrain
- Proposed Light Rail





City of Surrey
13450 - 104 Avenue
Surrey, BC, Canada V3T 1V8

May 14, 2018

VIA Email

Attention:
RON GILL, MA, MCIP, RPP
Manager, Area Planning and Development, North Division
Approving Officer

Dear Sir,

RE: 10240 - City Parkway

On November 7, 2017, 10240 City Parkway achieved 3rd reading for a comprehensive, education focused residential project. Located on a key site within Surrey City Centre, the project is poised to bring major transformational impact to the community and to become a prime destination for people seeking convenient accommodation with easy access to the nearby Universities and Colleges. Its unique and thoughtful architectural design includes a modern 4-storey columned plaza which creates bright, publicly accessible open space, allowing local residents and visitors a safe and vibrant place to gather and be part of a community.

On April 23rd, 2018, the City Parkway development team presented a draft housing agreement to Surrey City staff that the applicant believes to have met the spirit and intent of the prior-to condition. The prior-to condition requires a housing agreement "providing for dedicated student rental housing within a portion of the proposed development." The housing agreement stresses the aim of the applicant to provide student accommodations and yet provides the flexibility to rent to non-students, in the event that there are not sufficient students available to fill the spaces. It is the applicant's position that the draft housing agreement achieves the City objectives while allowing the applicant to demonstrate to financiers that the project will not be subjected to extraordinary vacancies. We write to request that careful consideration be given to accepting the draft housing agreement instead of risking the project by re-opening 3rd Reading, previously approved by City Council.

As indicated at the meeting with City Staff, the applicant stated that if the prior-to condition cannot be met by the draft housing agreement and the language is not accepted, that the applicant is seriously considering moving the project to a municipality that will accommodate their requirements.

It would be tragic to lose such a tremendous innovative education focused project; it would represent a significant loss to the "University District" of Surrey City Centre and a sizeable loss in terms of putting "more feet on the street" .

As you are aware, the applicant is an education provider that targets primarily domestic students and international students and operates Sprott Shaw College, Sprott Shaw Language College, Vancouver International College and CIBT School of Business, amongst others.

In addition to the academic component, the applicant holds property investments focused on developing education-related real estate, such as student hotels, serviced apartments and education “super centres”. CIBT Education Group will ultimately retain ownership of the proposed education Centre and earmarked it as their education “Mega-Centre” showcase building.

The applicant, at present, has four properties in operations and three properties under development in Metro Vancouver:

In Operation:

- GEC Viva, corner of Howe and Drake, downtown Vancouver;
- GEC Granville, corner of Granville and Drake, downtown Vancouver;
- GEC Burnaby Heights, on Hastings Street in Burnaby;
- GEC Pearson at Cambie Street and West 60 Avenue in Vancouver (possession in June 2018);

Under Development:

- GEC King Edward at Cambie Street and West King Edward in Vancouver
- GEC Education Super Center, corner of Cambie Road and River Rd, Richmond
- Global Education City (Richmond), corner of No. 3 Road and Alderbridge Way, Richmond

The applicant has successfully developed residential housing that provides student accommodation in neighbouring major city centres. Each of the above mentioned operating properties have a longstanding history of 100% student occupancy. These properties have achieved this without any restrictive covenants.

RATIONALE FOR THE HOUSING AGREEMENT

- The applicant is seeking to enter into a Housing Agreement that would restrict the residential use in the building to secured market rentals and to the extent reasonably possible, ensure that the dwelling units are made available as rental accommodation for students, families of students, faculty and staff during the academic year.
- The housing agreement wording would allow the operator to fill vacant units, in the summer months in particular, with other users like summer camp participants or sports teams.
- Furthermore, the housing agreement would allow the operator to fill vacant units with citizens of Surrey seeking affordable housing rather than having the units sit vacant while seeking a student to fill the space.

- See attached Housing Agreement.

RATIONALE TO MAINTAIN PARKING RELAXATION

- Similar operations that provide such accommodation that are managed by CIBT Education Group currently operate in the City of Vancouver and City of Burnaby including:
 - GEC Viva, at the corner of Drake Street and Howe Street; and
 - GEC Burnaby Heights, at the corner of East Hastings and Gamma; and
 - GEC Granville, at the corner of Drake Street and Granville Street
- In the applicant's other rental buildings electively occupied by students throughout the lower mainland, the applicant notes that the parkades are mostly vacant year-round.
- The City Parkway educators such as Sprott Shaw College and other educational institutions will supply U-passes as part of enrollment. GEC currently provides accommodation to students attending Simon Fraser University (downtown and Burnaby campus), Kwantlen Polytechnic University (Richmond campus), University of British Columbia, Emily Carr University, Capilano University, Langara College, and 100 other public and private educational institutions in Metro Vancouver. With Simon Fraser University (Surrey) and the soon to open Kwantlen Polytechnic University (Surrey) located across the street, Douglas College, Sprott Shaw College (Surrey), Sprott Shaw Language College (Surrey) and Steinberg College within 2 kilometers from the proposed site, and no housing facilities offered by these educational institutions, GEC is expecting to fill the City Parkway location with many students studying at these colleges and universities.
- Further, the proposed development is also situated directly across from Surrey Central SkyTrain Station and a proposed future Light Rail Transit stop and therefore supports objectives in the City Centre Plan to create walkable, transit-oriented developments. The subject site is located in the Central Downtown District, which is envisioned as having the highest densities in the City Centre, with a vibrant civic, educational, entertainment and cultural focus.
- The applicant further notes that the viability of the project is jeopardised when the cost of additional parking is factored in. Each additional parkade level beyond P5 is exponentially more expensive to build. Recovering these cost through the residential rental accommodations could risk the projects viability and may jeopardize the applicants ability to provide reasonably affordable short and long-stay housing for students in close proximity to a centre of education and thereby, jeopardizes the City of Surrey's opportunity to have this rental stock in close proximity to Simon Fraser University, the forthcoming Kwantlen Polytechnic University in 3 Civic Plaza, and the UBC Medical Faculty at Surrey Memorial Hospital.



- The applicant has previously agreed to contribute a total of \$740,000 to the City's Traffic Management program to offset the deficiency in onsite parking. Any further contribution would put the project at risk.
- The applicant has also previously volunteered an additional amenity contribution above and beyond the required City Centre Amenity Charges and City Centre specific Development Cost Charges in the form of a cash contribution of \$1,214,610.00, which can be allocated towards amenity needs in the City Centre Plan area.
- The proposed building design is consistent with the City Centre design guidelines and includes a high level of architectural design detailing, high quality material palette and strong focus on creating a quality streetscape and inviting public realm.

With the housing agreement in place, we note that this project will fulfill many of the objectives in the City of Surrey **2018 Affordable Housing Strategy**, which is focused on supporting the efforts of developers to build purpose built rental buildings.

We look forward to discussing this with you further and to getting the City Parkway project back on track. Please feel free to contact me at 604-488-4886

Sincerely,

WESTSTONE GROUP

A handwritten signature in black ink, appearing to read "Robert Dominick".

Robert Dominick
Vice President

TERMS OF INSTRUMENT – PART 2

**SECTION 219 COVENANT
(Rental Housing and Public Art)**

BETWEEN:

CITY OF SURREY
13450 104 Avenue
Surrey, British Columbia
V3T 1V8

(the “City”)

OF THE FIRST PART

AND:

GEC EME GP INC.
(Inc. No. _____)
1200 – 777 West Broadway
Vancouver, British Columbia
V5Z 4J7

(the “Covenantor”)

OF THE SECOND PART

WHEREAS:

- A. The Covenantor is the current registered owner of those certain lands and premises located at 10240 City Parkway, Surrey, B.C. and legally described as follows:

PID: 008-517-169
Lot 121 Section 27 Block 5 North Range 2 West New Westminster District Plan
38392;

(the “Lands”);

- B. Section 219 of the *Land Title Act* (RSBC 1996, c. 250) provides, inter alia, that a covenant, whether of a negative or positive nature, may be registered as a charge against the title to land, in favour of a municipality or the Crown, and that the covenant is enforceable against the Covenantor and the successors in title of the Covenantor;

- C. Section 483 of the *Local Government Act* (RSBC 2015, c.1) authorizes the City by bylaw to enter into a housing agreement;
- D. The Covenantor wishes to construct a building (the “Rental Building”) on a portion of the Lands, which building will contain the Dwelling Units and the Non-Residential Units; and
- E. The Covenantor and the City wish to enter into this Agreement to restrict the use and occupancy of the Dwelling Units, on the terms and conditions set out herein, to have effect as a covenant under section 219 of the *Land Title Act*.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT pursuant to section 219 of the *Land Title Act*, and in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration and the sum of One Dollar (\$1.00) now paid by the City to the Covenantor (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto covenant and agree that the Lands shall not be used or built on except in accordance with this Covenant as follows:

1. DEFINED TERMS

- 1.1 In and for the purpose of this Agreement, the following words have the following meanings:
 - (a) “**Agreement**” means this document and any amendments to or modifications of the same;
 - (b) “**Dwelling Unit**” means each of the 246 residential dwelling units to be constructed within the Rental Building. “**Dwelling Units**” means all of the Dwelling Units in aggregate;
 - (c) “**Non-Residential Units**” means collectively, all non-residential units, Tourist Accommodation Units and amenity spaces constructed within the Rental Building;
 - (d) “**Subdivide**” means to divide, apportion, consolidate or subdivide the Lands, or any portion thereof, or the ownership or right to possession or occupation of the Lands, or any portion thereof, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act* R.S.B.C. 1996, Chapter 250 and the *Strata Property Act*, S.B.C. 1998, Chapter 43, together with all amendments thereto and replacements thereof, or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or “shared interest in land” as defined in the *Real Estate Development Marketing Act*, S.B.C. 2004, Chapter 41, together with all amendments thereto and replacements thereof; and
 - (e) “**Tourist Accommodation Unit**” means each of the 192 tourist accommodation units to be constructed within the Rental Building. “**Tourist Accommodation Units**” means all of the Tourist Accommodation Units in aggregate;

2. NON-RESIDENTIAL UNITS

- 2.1 The Non-Residential Units are expressly exempted from the application of this Agreement.
- 2.2 Where the Lands have not yet been Subdivided to create separate legal parcels, the City may, subject to Section 2.1 above, register this Agreement as a *Land Title Act* Section 219 covenant in the LTO against title to the Lands or any portion thereof. If this Agreement is registered as a *Land Title Act* Section 219 covenant prior to the Lands being Subdivided to create separate legal parcels, it is the intention of the parties that this Agreement will, once separate legal parcels are created, and/or the Lands are Subdivided, charge and secure only the legal parcels which contain the Dwelling Unit(s) and the Covenantor may make a written request for partial discharge of this Agreement accordingly, and upon receipt of a registrable form of discharge the City will execute and return the same to the Covenantor within a reasonable period of time. The Covenantor acknowledges and agrees that in the event that Dwelling Unit(s) is or are in a strata plan, this Agreement shall remain noted on the index of the common property of the strata corporation stored in the applicable land title office.

3. RESTRICTIONS ON USE AND OCCUPANCY OF DWELLING UNITS

- 3.1 The Covenantor shall be solely responsible for leasing or otherwise renting out the Dwelling Units from time-to-time on such terms as the Covenantor determines, provided such terms are in accordance with this Agreement.
- 3.2 The Covenantor covenants and agrees to operate the Dwelling Units as rental residential units and agrees that the Dwelling Units shall be available for rent for so long as the City requires this Agreement to be registered against title to the Lands, or portions thereof, as applicable.
- 3.3 Without limiting the generality of paragraphs 3.1 and 3.2, and in consideration of the academic activity intended and expected to be conducted within the Rental Building, the Covenantor shall, to the extent reasonably possible, ensure that the Dwelling Units are made available as rental accommodation for students, families of students, faculty and staff during the academic year. If, notwithstanding the Covenantor's compliance with this section, one or more Dwelling Units are not leased or rented by students, families of students, faculty and staff, the Covenantor may lease or rent such Dwelling Unit(s) to other persons without being in breach of this Agreement.
- 3.4 The City may from time to time require that the Covenantor provide written proof of compliance with section 3 of this Agreement and the Covenantor agrees to provide the City with such proof in a form reasonably satisfactory to the City.

4. PUBLIC ART

- 4.1 Whereas, in consideration of the Covenantor agreeing to operate the Dwelling Units as rental residential units as provided for herein, it is anticipated that the contribution for public art required by the City in relation to the Dwelling Units shall be reduced by [*insert details of applicable reduction, e.g. xx%*] from the contribution for public art that would ordinarily be required for a development such as the Rental Building in this area of the City of Surrey.
- 4.2 Notwithstanding any other provision of this Agreement, the City agrees that if the Covenantor pays to the City, for the public art contribution, at least 0.25% of the estimated construction cost of the Dwelling Units as reflected in [*the building permit application for*

the Rental Building] [or] [as certified by the Covenantor's architect/cost consultant], this Agreement shall terminate and the City, upon receipt of a registrable form of discharge, will execute and return the discharge to the Covenantor within a reasonable period of time.

5. ENFORCEMENT

5.1 If the Covenantor fails to enforce compliance with the terms and conditions of section 3 of this Agreement, then it is specifically understood and agreed that the City will be entitled, but will not be obliged, to enforce the terms and conditions of section 3 of this Agreement.

5.2 For the purpose of this Agreement, the Covenantor, without the need for further authorization, writing or documents, hereby irrevocably appoints the City as its agent with respect to the enforcement of this Agreement and with respect to exercising all remedies set out in this Agreement and all other remedies available at law to the Covenantor that relate to this Agreement.

6. LIABILITY

6.1 The Covenantor will indemnify and save harmless the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from all claims, demands, actions, damages, costs and liabilities, which all or any of them shall or may be liable for or suffer or incur or be put to by reasons of or arising out of failure of the Covenantor to comply with the terms and conditions of this Agreement.

6.2 Provided that the City is in compliance with the terms and conditions of this Agreement, the Covenantor hereby releases and forever discharges the City and each of its elected and appointed officials, employees and agents and their respective administrators, successors and permitted assigns, of and from any and all claims, demands, actions, damages, economic loss, costs and liabilities which the Covenantor now has or hereafter may have with respect to or by reasons of or arising out of the fact that the Lands are encumbered by this Agreement.

7. NOTICE

7.1 Any notice or other documents to be given or delivered pursuant to this Agreement will be addressed to the property party as follows:

as to the City:

City of Surrey
13450 - 104 Avenue
Surrey, B.C. V3T 1V8
Attention: General Manager, Planning & Development Dept.

as to the Covenantor:

GEC EME GP INC.
1200 – 777 West Broadway
Vancouver, British Columbia
V5Z 4J7
Attention: _____

or such other address as such party may direct. Any notice or other documents to be given or delivered pursuant to this Agreement will be sufficiently given or delivered if delivered to the particular party at its address set out or determined in accordance with this section and shall be deemed complete two (2) days after the day of delivery.

- 7.2 It is specifically agreed that for any notice or document to be validly given or delivered pursuant to this Agreement, such notice or document must be hand delivered and not mailed.

8. MISCELLANEOUS

- 8.1 The burden of the covenants herein provided for shall run with the Lands and will be personal and binding upon the Covenantor during the Covenantor's seisen of or ownership of any interest in the Lands.
- 8.2 Notwithstanding anything to the contrary, the Covenantor shall not be liable under any breach of any covenants and agreements contained herein after the Covenantor ceases to have any further interest in the Lands.
- 8.3 The fee simple estate in and to the Lands will not pass or vest in the City under or by virtue of these presents and the Covenantor may fully use and enjoy the Lands except only for the requirements provided for in this Agreement.
- 8.4 The covenants and agreements on the part of the Covenantor and herein provided for have been made by the Covenantor as contractual obligations as well as having been made pursuant to section 219 of the *Land Title Act* and as such will be binding on the Covenantor.

9. GENERAL

- 9.1 The captions, section numbers and article numbers appearing in this Agreement are inserted for convenience of reference and shall in no way define, limit, construe or describe the scope of intent of this Agreement or in any way affect this Agreement.
- 9.2 Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter gender and vice versa and words importing persons shall include firms and corporations and vice versa.
- 9.3 Unless otherwise stated, a reference in this Agreement to a numbered or lettered article, section, paragraph or clause refers to the article, section, paragraph or clause bearing that number or letter in this Agreement.
- 9.4 The words "hereof", "herein" and similar expressions used in any section, paragraph or clause of this Agreement shall relate to the whole of this Agreement and not to that section, paragraph or clause only unless otherwise expressly provided.

- 9.5 Nothing in this Agreement:
- (a) affects or limits any discretion, rights, powers, duties or obligations of the City under any enactment or at common law, including in relation to the uses or subdivision of the Lands; or
 - (b) relieves the Covenantor from complying with any enactment, including the City's by-laws.
- 9.6 An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.
- 9.7 Time is of the essence of this Agreement. If any party waives this requirement, that party may reinstate it by delivering notice to the other party.
- 9.8 This Agreement shall be construed in accordance with and governed by the laws of the Province of British Columbia.
- 9.9 If a court of competent jurisdiction finds that any part of this Agreement is invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 9.10 Upon request by the City, the Covenantor will promptly do such acts and execute such documents as the City may reasonably require, in the opinion of the City, to give effect to this Agreement.
- 9.11 This Agreement is the entire agreement between and among the parties concerning the subject matter hereof and there are no warranties, representations, conditions or collateral agreements relating to this Agreement, except as included in this Agreement.
- 9.12 This Agreement may be enforced by prohibitory and mandatory court order of the Court. In any action to enforce this Agreement, the City shall be entitled to court costs on a solicitor and own client basis.
- 9.13 This Agreement shall enure to the benefit of and be binding upon the parties and their successors and assigns.