



# City of Port Moody

## **Bylaw No. 3361**

A Bylaw to authorize Council to enter into a Housing Agreement pursuant to section 483 of the *Local Government Act*.

The Council of the City of Port Moody enacts as follows:

### **1. Citation**

- 1.1 This Bylaw may be cited as “City of Port Moody Housing Agreement Bylaw, 2022, No. 3361 (3015-3093 Murray Street) (Below-Market Rental)”.

### **2. Authorization**

- 2.1 Council hereby authorizes the agreements, substantially in the form attached hereto as Schedule “A” between the City of Port Moody and Mosaic Moody Yards Properties Ltd., Inc. No. BC1128915 with respect to the following lands:

Lot 78 District Lot 190 Group 1 New Westminster District Plan  
NWP46958  
PID: 006-138-616;

Lot 6 Except: Firstly: The East 20 Feet (Plan With Bylaw Filed 37048)  
Secondly: Part Subdivided By Plan 44466 Thirdly: Part Subdivided By  
Plan 46958; District Lot 190 Group 1 New Westminster District Plan 6245  
PID: 011-179-805; and

Lot 71 District Lot 190 Group 1 New Westminster District Plan 44466  
PID: 007-444-176.

### **3. Execution of Documents**

- 3.1 The Mayor and Corporate Officer are authorized to execute any documents required to give effect to the Housing Agreement.

### **4. Attachments and Schedules**

- 4.1 The following schedules are attached to and form part of this Bylaw:
  - Schedule A – Section 219 Covenant – Housing Agreement Below-Market Rental Housing.

## 5. Severability

- 5.1 If a portion of this Bylaw is found invalid by a court, it will be severed and the remainder of the Bylaw will remain in effect.

**Read a first time** this 10<sup>th</sup> day of May, 2022.

**Read a second time** this 10<sup>th</sup> day of May, 2022.

**Read a third time** this 10<sup>th</sup> day of May, 2022.

**Adopted** this \_\_\_\_ day of \_\_\_\_\_, 2022.

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R. Vagramov  
Mayor

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D. Shermer  
Corporate Officer

I hereby certify that the above is a true copy of Bylaw No. 3361 of the City of Port Moody.

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D. Shermer  
Corporate Officer

**Schedule "A" to Bylaw No. 3361**

**SECTION 219 COVENANT –  
HOUSING AGREEMENT BELOW-MARKET RENTAL HOUSING**

THIS AGREEMENT is dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2022

**BETWEEN:**

MOSAIC MOODY YARDS PROPERTIES LTD., INC. NO. BC1128915  
500 - 2609 GRANVILLE STREET  
VANCOUVER, BC V6H 3H3

(the "**Owner**")

**AND:**

CITY OF PORT MOODY  
100 Newport Drive  
Port Moody, BC V3H 5C3

(the "**City**")

**WHEREAS:**

- A. Section 483 of the *Local Government Act* permits the City to enter into and, by legal notation on title, note on title to lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units, and rent which may be charged for housing units;
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the City in respect of the use of land, construction on land, or the subdivision of land;
- C. The Owner is the owner of the Lands (as hereinafter defined);
- D. The Owner and the City wish to enter into this Agreement (as herein defined) to provide for Below-Market Rental Housing on the terms and conditions set out in this Agreement;
- E. The City adopted City of Port Moody Housing Agreement Bylaw, 2022, No. 3361(3015-3093 Murray Street) (Below-Market Rental) authorizing the City to enter into this Agreement on the terms and conditions contained herein; and
- F. The Owner and the City wish to enter into this Agreement to restrict the use of, and construction on, the Lands on the terms and conditions of this agreement, to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*.

In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree as follows:

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

1.1. In this Agreement, the following words have the following meanings:

- a) **“Agreement”** means this agreement together with all schedules, attachments, and priority agreements attached hereto;
- b) **“BC Housing”** means the British Columbia Housing Management Commission or successor in function;
- c) **“Below-Market Housing Units”** means sixteen (16) Dwelling Units to be constructed in Building 1, the location of which Below-Market Housing Units are set out in Schedule “B” in accordance with this Agreement and in accordance with the following table:

	Total No. of Units	1-Bedroom Units	2-Bedroom Units
Below-Market Housing Units	16	5	Not less than 11

Except that the number of 1-Bedroom Units may be reduced, providing that the number of 2-Bedroom Units are increased correspondingly and the total number of Below-Market Housing Units is not less than sixteen (16).

- d) **“Building 1”** means one of the Buildings that will contain fifty-five (55) Dwelling Units consisting of sixteen (16) Below-Market Housing Units and thirty-nine (39) Rental Housing Units (see Market Rental Housing Agreement between the City and the Owner and dated -----, 2022) , including that portion of the Lands associated with Building 1;
- e) **“Buildings”** means the three, six -storey buildings to be built on the Lands, including Building 1 as contemplated by the Development Authorization, and includes any portion of any such Buildings or structure, but does not include temporary Buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Authorization;
- f) **“City”** and **“City of Port Moody”**, means the City of Port Moody and is called the **“City”** when referring to the corporate entity and **“City of Port Moody”** when referring to the geographic location;
- g) **“CPI”** means the All-Items Consumer Price Index for Canada published from time to time by Statistics Canada, or its successor in function;
- h) **“Daily Amount”** means \$100.00 per day as of January 1, 2022 adjusted annually thereafter by adding thereto an amount calculated by multiplying \$100.00 by the percentage change in the CPI since January 1, 2021 to January 1 of the year that a written notice is delivered to the Owner by the City pursuant to section 6.1 of this Agreement. In the absence of an obvious error or mistake, any calculation by the City of the Daily Amount in any particular year shall be final and conclusive;
- i) **“Development Authorization”** means the development authorization form issued by the City authorizing development of the Lands, or any portion(s) thereof which Development Authorization includes a Development Permit;

- j) **“Dwelling Unit”** means each of the two hundred and fifteen (215) residential dwelling units located or to be located in the Buildings and includes, where the context permits, a Below-Market Housing Unit;
- k) **“Eligible Tenant”** means a person who establishes to the satisfaction of the Owner or its Property Manager an annual gross income that is no greater than the applicable HILs for the Vancouver area published from time to time by BC Housing, or otherwise meets the financial criteria for an Eligible Tenant set out herein;
- l) **“Family”** means:
  - i) a person; or
  - ii) two or more persons related by blood, marriage, or adoption or cohabitating in a marriage like relationship;
- m) **“General Manager of Community Development”** means the individual appointed to be the chief administrator from time to time of the Development Planning Division of the City and his or her designate;
- n) **“HILs”** means the Housing Income Levels published by the British Columbia Housing Management Commission or its successors in function;
- o) **“Interpretation Act”** means the Interpretation Act, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;
- p) **“Land Title Act”** means the Land Title Act, R.S.B.C. 1996, Chapter 250, together with all amendments thereto and replacements thereof;
- q) **“Lands”** means the land described in Item 2 of the Land Title Act Form C to which this Agreement is attached; and including the Buildings or a portion of the Buildings, into which said land(s) is or are Subdivided;
- r) **“Local Government Act”** means the Local Government Act, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;
- s) **“LTO”** means the New Westminster Land Title Office or its successor;
- t) **“Owner”** means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or of any part into which the Lands are Subdivided containing the Below-Market Housing Units, and includes any person who is the registered owner in fee simple of all of the Below-Market Housing Units from time to time;
- u) **“Permitted Rent”** means the monthly rent for each particular Below-Market Housing Unit, which Permitted Rent shall not exceed:
  - i) 1/12 of 30% of the HILs that are determined from time to time by BC Housing, and that apply to each particular Below-Market Housing Unit, for example, whether the Below-Market Housing Unit is a one-bedroom, two-bedroom or three or more bedroom Unit; or
  - ii) in the event that BC Housing ceases to determine HILs and such determination is not replaced by a similar publication, then the combined household income with respect to each particular Below-Market Housing Unit shall be determined

by reference to the last published HILs which shall be increased annually by an amount equal to the increase in the CPI commencing January 1 following the year BC Housing ceased determining HILs;

- v) **"Property Manager"** means an entity retained and controlled by the Owner;
- w) **"Real Estate Development Marketing Act"** means the *Real Estate Development Marketing Act*, S.B.C. 2004, Chapter 41, together with all amendments thereto and replacements thereof;
- x) **"Rental Housing"** means a residential Dwelling Unit which is occupied by an Eligible Tenant, at arms-length, for use as rental housing on a not less than month-to-month or longer basis in accordance with this Agreement, and any and all laws applicable thereto, including, without limitation, Residential Tenancy Act and human rights legislation in British Columbia;
- y) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
- z) **"Strata Property Act"** means the *Strata Property Act* S.B.C. 1998, Chapter 43, together with all amendments thereto and replacements thereof;
- aa) **"Subdivide"** means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions, or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, 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*;
- bb) **"Tenancy Agreement"** means a tenancy agreement, lease, licence, or other agreement granting rights to an Eligible Tenant to occupy a Below-Market Housing Unit; and
- cc) **"Term"** commences on the date this Agreement is deposited in the Land Title Office and shall remain in effect in perpetuity.

1.2. In this Agreement:

- a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- d) reference to any enactment includes any regulations, orders, or directives made under the authority of that enactment;
- e) any reference to any enactment is to the enactment in force on the date the Owner signs this Agreement, and to subsequent amendments to or replacements of the enactment;

- f) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- g) time is of the essence;
- h) all provisions are to be interpreted as always speaking;
- i) reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators, and receivers. Wherever the context so requires, reference to a "party" also includes an Eligible Tenant, agent, officer, and invitee of the party;
- j) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter, or calendar year, as the case may be, unless otherwise expressly provided; and
- k) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

## **ARTICLE 2**

### **USE AND OCCUPANCY OF BELOW-MARKET HOUSING UNITS**

- 2.1 The Owner agrees that each Below-Market Housing Unit may only be used as a permanent residence occupied by an Eligible Tenant. A Below-Market Housing Unit must not be occupied by the Owner, the Owner's family or any tenant or guest of the Owner, other than an Eligible Tenant. For the purposes of this Article, "permanent residence" means that the Below-Market Housing Unit is used as the usual, main, regular, habitual, principal residence, abode, or home of the Eligible Tenant.
- 2.2 Within 30 days after receiving notice from the City, the Owner must, in respect of each Below-Market Housing Unit, provide to the City a statutory declaration, substantially in the form to that attached as Schedule "B", certified by the Owner, containing all of the information required to complete the statutory declaration. The City may request such statutory declaration in respect to each Below-Market Housing Unit as often as it deems necessary, acting in its sole discretion.
- 2.3 The Owner hereby authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.
- 2.4 The Owner covenants and agrees with the City that:
  - a) the Below-Market Housing Units must be designed and constructed to the same standard, in terms of layout, workmanship, and materials, as the balance of the Dwelling Units in the Buildings on the Lands;
  - b) fifteen (15) parking stalls will be constructed and assigned to the Below-Market Housing Units with allocation of specific stalls to Below-Market Housing Units determined by the Owner, in its full discretion;
  - c) not less than one storage locker will be constructed and assigned to each of the Below-Market Rental Housing Units;
  - d) the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be registered against title to the Lands in priority to all financial charges and encumbrances at the earliest possible opportunity after execution and delivery by the City;

- e) the Owner will advertise on the internet and print publications that are accessible to members of the general public in the City of Port Moody when there are vacancies for Below-Market Housing Units; and
- f) Building 1 shall not be further Subdivided or stratified such that each of the Below-Market Housing Units becomes separate legal parcels.

2.5 The Owner covenants and agrees with the City that the Owner will not:

- a) be issued a Development Authorization unless the Development Authorization includes the Below-Market Housing Units;
- b) permit occupancy of, or apply for an Occupancy Permit from the City for any Dwelling Units to be constructed in the Buildings unless and until the Below-Market Housing Units have first been constructed and approved for occupancy, as evidenced by the issuance of an Occupancy Permit by the City; and
- c) occupy, nor permit any person to occupy any Below-Market Housing Units, in part or in whole, constructed on the Lands and the City will not be obligated to permit occupancy of any Below-Market Housing Units constructed on the Lands until all of the following conditions are satisfied:
  - i) the Below-Market Housing Units and related uses and areas have been constructed to the satisfaction of the City;
  - ii) the Below-Market Housing Units have received final building permit inspection granting occupancy; and
  - iii) the Owner is not otherwise in breach of any of its obligations under this Agreement or any other agreement between the City and the Owner in connection with the development of the Lands.

### **ARTICLE 3**

#### **DISPOSITION AND ACQUISITION OF BELOW-MARKET HOUSING UNITS**

- 3.1 The Owner will not permit a Below-Market Housing Unit Tenancy Agreement to be leased, subleased or assigned, except to an Eligible Tenant and only pursuant to the terms of this Agreement.
- 3.2 The Owner may not, without the prior written consent of the City, acting in its sole discretion, sell or transfer less than sixteen (16) Below-Market Housing Units in a single or related series of transactions with the result that when the purchaser or transferee of the Below-Market Housing Unit becomes the owner, the purchaser or transferee will be the legal and beneficial owner of not less than sixteen (16) Below-Market Housing Units.
- 3.3 Purposely deleted.
- 3.4 The Owner must not rent, lease, license, or otherwise permit occupancy of any Below-Market Housing Unit except to an Eligible Tenant and except in accordance with the following additional conditions:
  - a) the Below-Market Housing Unit will be used and occupied only pursuant to a Tenancy Agreement;



- b) no Below-Market Housing Unit shall be rented on less than a 30-day rental period, whatsoever;
- c) the monthly rent payable for the Below-Market Housing Unit will not exceed the Permitted Rent applicable to that class of Below-Market Housing Unit;
- d) the Owner will:
  - i) ensure that all Eligible Tenants shall be permitted access to all common property and other common areas, regardless of whether the Lands are Subdivided or stratified;
  - ii) not require the Eligible Tenant to pay any strata fees, strata property contingency reserve fees, or any extra charges or fees charged by the strata corporation for use of any common property, limited common property, or other common areas, storage lockers, facilities, or amenities, including without limitation sanitary sewer, storm sewer, water, other utilities, property or similar tax; provided, however, that, an Owner may charge the Eligible Tenant the cost, if any, of providing cable television, telephone, other telecommunications, gas, or electricity fees and charges or fines relating to the Eligible Tenant's activities or use, provided that if the Below-Market Housing Unit is part of a strata corporation, the Owner shall not charge the Eligible Tenant any of the foregoing costs which are included as part of the strata or similar fees charged by such strata corporation; and
  - iii) be permitted to charge an Eligible Tenant for the use of a parking stall referred to in Section 2.4(b) at a rate not to exceed sixty dollars (\$60.00) per month, subject to an annual adjustment in accordance with the CPI
- e) the Owner will attach a summary page of this Agreement to every Tenancy Agreement setting out the Eligible Tenant's key rights and obligations outlined in this Agreement, and shall provide access to a full copy of this Agreement for their review or records. Each Eligible Tenant shall acknowledge and confirm receipt of this Agreement within each Tenancy Agreement;
- f) the Owner will include in the Tenancy Agreement a clause requiring the Eligible Tenant and each permitted occupant of the Below-Market Housing Unit to comply with this Agreement;
- g) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:
  - i) an Below-Market Housing Unit is occupied by a person or persons other than an Eligible Tenant;
  - ii) the annual income of an Eligible Tenant rises more than 7.5% above the applicable maximum amount specified in section 1.1(k) of this Agreement;
  - iii) the Below-Market Housing Unit is occupied by more than the number of people the City's Buildings inspector determines can reside in the Below-Market Housing Unit given the number and size of bedrooms in the Below-Market Housing Unit and in light of any relevant standards set by the City in any bylaws of the City;
  - iv) the Below-Market Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; or

- v) the Eligible Tenant subleases the Below-Market Housing Unit or assigns the Tenancy Agreement in whole or in part,

and in the case of each breach, the Owner hereby agrees with the City to forthwith provide to the Eligible Tenant a notice of termination. Except for section 3.4(g)(ii) of this Agreement, the notice of termination shall provide that the termination of the tenancy shall be effective thirty (30) days following the date of the notice of termination. In respect to section 3.4(g)(ii) of this Agreement, termination shall be effective on the day that is six (6) months following the date that the Owner provided the notice of termination to the Tenant;

- h) the Tenancy Agreement will identify all occupants of the Below-Market Housing Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Below-Market Housing Unit for more than thirty (30) consecutive days or more than forty-five (45) days total in any calendar year; and
- i) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement to the City upon written request.

- 3.5 If the Owner has terminated the Tenancy Agreement, then the Owner shall, subject to applicable law, including the Residential Tenancy Act, use commercially reasonable efforts to cause the Eligible Tenant and all other persons that may be in occupation of the Below-Market Housing Unit to vacate the Below-Market Housing Unit on or before the effective date of termination.

## **ARTICLE 4**

### **DEMOLITION OF BELOW-MARKET HOUSING UNIT**

4.1 :

- a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Below-Market Housing Unit, and the Owner has delivered to the City a copy of the engineer's or architect's report;
- b) the Buildings in which an Below-Market Housing Unit is located is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the City in its sole discretion; or

and, in each case, a demolition permit for the Below-Market Housing Unit has been issued by the City and the Below-Market Housing Unit has been or will be demolished under that permit.

- 4.2 Should a demolition permit be issued in accordance with Section 4.1, the Lands shall not be redeveloped unless such redevelopment includes the provision of not less than sixteen (16) replacement below-market housing units.

## **ARTICLE 5**

### **STRATA CORPORATION BYLAWS**

- 5.1 This Agreement will be binding upon all strata corporations ("**Strata Corporations**") created upon the strata title Subdivision of the Lands or any Subdivided parcel of the Lands, provided however that if the Lands are Subdivided, the City shall, at the

Developer's request and expense, without further City council approval, authorization or bylaw, partially discharge this Agreement from those portions of the Lands, other than Building 1. The Developer acknowledges and agrees that notwithstanding a partial discharge of this Agreement, this Agreement shall be and remain in full force and effect over Building 1 and, but for the partial discharge, otherwise unamended.

- 5.2 Any Strata Corporation bylaw which prevents, restricts, or abridges the right to use the Below-Market Housing Units as Below-Market Housing Units will have no force and effect.
- 5.3 No Strata Corporation shall pass any bylaws preventing, restricting, or abridging the use of the Below-Market Housing Units for Rental Housing.
- 5.4 No Strata Corporation shall pass any bylaw or approve any levies which would result in only an Eligible Tenant of a Below-Market Housing Unit paying any extra charges or fees for the use of any common property, limited common property, or other common areas, facilities, or indoor or outdoor amenities of the strata corporation.
- 5.5 No Strata Corporation shall pass any bylaw which purports to restrict access by Eligible Tenants to all common property, or other common areas, facilities, including all indoor amenity space within Building 1 and all outdoor amenity space on the podium, regardless of whether the Lands are Subdivided or stratified.
- 5.6 Prior the issuance of any occupancy permit, the Owner of the 215 Dwelling Units and the Owner of the Below-Market Housing Units will enter into such cost sharing and cross easement agreements as will be necessary to allow Eligible Tenants to access the parking stalls assigned pursuant to Section 2.4(b) and all residential common property and other residential common areas, facilities, and indoor and outdoor amenities and to apportion and share, as between the Owner of the 215 Dwelling Units and the Owner of the Below-Market Housing Units, the expenses associated with such parking stalls, residential common property and other residential common areas, facilities, and indoor and outdoor amenities on a fair and reasonable basis, provided that the share of those costs to be paid by the Owner of the Below-Market Housing Units shall not exceed the ratio that the habitable area of the Below Market Housing Units bears to the aggregate habitable area of the 215 Dwelling Units.

Without limiting the generality of the preceding paragraph, any such agreement, shall include a provision that the agreement shall not be modified or released without the prior written consent of the City.

5.7 **Commercial Parcels.** If:

- (a) the Lands are Subdivided to create separate parcels, one or more of which parcel(s) will contain commercial only uses and will not be part of any Strata Corporation that contains any Dwelling Unit, (each a "**Commercial Parcel**"); and
- (b) all provisions set out in Section 2.5 have been addressed by the Owner to the satisfaction of the City,

this Agreement shall be released as against such Commercial Parcel(s). at the written request and the sole expense of the Owner.

## ARTICLE 6

### DEFAULT AND REMEDIES

- 6.1 **Notice of Default.** The City may give to the Owner written notice to cure a default under this Agreement within thirty (30) days of receipt of notice or such longer period as reasonably required if such default cannot be cured by the Owner acting diligently. The notice must specify the nature of the default. The Owner must act with diligence to correct the default within the time specified.
- 6.2 **Costs.** The Owner will pay to the City on demand by the City all the City's costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.
- 6.3 **Damages.** The Owner acknowledges that the City requires Below-Market Housing Units for housing Eligible Tenants for the benefit of the community. The Owner therefore agrees that for each day an Below-Market Housing Unit is occupied in breach of this Agreement, the Owner must pay the City the "Daily Amount" as liquidated damages and not as a penalty, due and payable at the offices of the City on the last day of the calendar month in which the breach occurred unless the Owner is acting with diligence, to the satisfaction of the City, to correct the breach within a reasonable period of time. The Daily Amount is increased on January 1 of each year by the amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase between that previous January 1 and the immediately preceding December 31 in the CPI. The Owner agrees that payment may be enforced by the City in a court of competent jurisdiction as a contract debt.
- 6.4 **Rent Charge.** By this section, the Owner grants to the City a rent charge under section 219 of the Land Title Act, and at common law, securing payment by the Owner to the City of the Daily Amount as described in section 6.3. The City agrees that enforcement of the rent charge granted by this section is suspended until the date that is 30 days after the date on which any amount due under section 6.3 is due and payable to the City in accordance with section 6.3. The City may enforce the rent charge granted by this section by an action for an order for sale or by proceedings for the appointment of a receiver.
- 6.5 **Specific Performance.** The Owner agrees that, without affecting any other rights or remedies the City may have in respect of any breach of this Agreement that continues beyond the cure period, the City is entitled to obtain an order for specific performance of this agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement that continues beyond the cure period. The Owner agrees that this is reasonable given the public interest in ensuring the provision of Below-Market Housing Units to be occupied by Eligible Tenants and restricting occupancy of the Lands in accordance with this Agreement.
- 6.6 **No Penalty or Forfeiture.** The Owner acknowledges and agrees that it is entering into this Agreement to benefit the public interest in providing Below-Market Housing Units for Eligible Tenants, and that the City's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out, and the City's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.
- 6.7 **Cumulative Remedies.** No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit, or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right to remedy, but any party, from time to time, may

exercise any one or more of such rights or remedies independently, successively, or in combination. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

## **ARTICLE 7**

### **MISCELLANEOUS**

**7.1 Housing Agreement/Section 219 Covenant.** The Owner acknowledges and agrees that:

- a) this Agreement includes a housing agreement entered into under section 483 of the Local Government Act;
- b) the Owner may Subdivide the Lands such that the Building 1 is created as a fee simple parcel or air space parcel;
- c) Building 1 shall not be further Subdivided or stratified such that each or any of the Below-Market Housing Units becomes separate legal parcels; and
- d) where the Lands have not yet been Subdivided to create the separate parcels to be charged by this Agreement, the City may file notice of this Agreement in the LTO over the Lands and may register this Agreement as a Land Title Act Section 219 Covenant in the LTO against the title to the Lands.

**7.2** The Owner agrees, pursuant to section 219 of the Land Title Act, that:

- a) the terms and conditions of this Agreement constitute a covenant in respect of the use of the Lands and any Below-Market Housing Units to be constructed on the Lands and annexed to and running with the Lands, and that the Lands shall only be used in accordance with the terms of this Agreement; and
- b) the City may register this Agreement in the LTO against title to the Lands as a covenant pursuant to section 219 of the Land Title Act.

**7.3 No Compensation.** The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the City, for any decrease in the market value of the Lands or for any obligations on the part of the Owner and its successors in title which at any time may result directly or indirectly from the operation of this Agreement.

**7.4 Modification.** Subject to section 7.1 of this Agreement, this Agreement may be modified or amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

**7.5 Management and Long-Term Maintenance.** The Owner covenants and agrees that, in order to ensure the long-term maintenance of the Below-Market Housing Units, it will furnish good and efficient management of the Below-Market Housing Units and will permit representatives of the City to inspect the Below-Market Housing Units at any reasonable time, subject to the notice provisions in the Residential Tenancy Act. The Owner further covenants and agrees that it will maintain the Below-Market Housing Units

in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands. The City acknowledges and agrees that the Below-Market Housing Units need not be managed by the same manager and the manager or managers of any strata lots in the applicable strata plan which are not Below-Market Housing Units.

- 7.6 **Indemnity.** The Owner will indemnify and save harmless the City and each of its elected officials, officers, directors, employees, and agents, and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, actions, loss, damage, costs, and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:
- a) the use or occupancy of any Below-Market Housing Unit;
  - b) any negligent act or omission of the Owner, or its officers, directors, agents, contractors, or other persons for whom at law the Owner is responsible relating to this Agreement;
  - c) the City refusing to issue a Development Authorization, buildings permit, or refusing to permit occupancy of any Building or Buildings, or any portion thereof, constructed on the Lands;
  - d) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Below-Market Housing Unit or the enforcement of any Tenancy Agreement; and
  - e) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.
- 7.7 **Release.** The Owner hereby releases and forever discharges the City and each of its elected officials, officers, employees, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:
- a) construction, maintenance, repair, ownership, lease, license, operation, or management of the Lands or any Below-Market Housing Unit under this Agreement;
  - b) City refusing to issue a Development Authorization or Buildings permit, or refusing to permit occupancy of any Building or Buildings, or any portion thereof, constructed on the Lands; and/or
  - c) exercise by the City of any of its rights under this Agreement or an enactment.
- 7.8 **Survival.** The obligations of the Owner set out in sections 7.6 and 7.7 of this Agreement will survive termination or discharge of this Agreement.
- 7.9 **Priority.** The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be registered against title to the Lands in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Lands save and except those in favour of the City and that a notice under section 483(5) of the Local Government Act will be filed on the title to the Lands.

7.10 **City's Powers Unaffected.** This Agreement does not:

- a) affect or limit the discretion, rights, duties, or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
- c) affect or limit any enactment relating to the use or subdivision of the Lands; or
- d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

7.11 **Agreement for Benefit of City Only.** The Owner and the City agree that:

- a) this Agreement is entered into only for the benefit of the City;
- b) this Agreement is not intended to protect the interests of the Owner, any Eligible Tenant, or any future owner, lessee, occupier, or user of the Lands or the Buildings or any portion thereof, including any Below-Market Housing Unit; and
- c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

7.12 **No Public Law Duty.** Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination, or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

7.13 **Notice.** Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out in the records at the LTO, and in the case of the City addressed:

To:                   The City of Port Moody  
  
                          100 Newport Drive  
  
                          Port Moody, BC V3H 5C3

or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

7.14 **Enuring Effect.** This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

- 7.15 **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.
- 7.16 **Waiver.** All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.
- 7.17 **Sole Agreement.** This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the City and the Owner respecting the use and occupation of the Below-Market Housing Units, and there are no warranties, representations, conditions, or collateral agreements made by the City except as set forth in this Agreement. In the event of any conflict between this Agreement and any other agreement, this Agreement shall, to the extent necessary to resolve such conflict, prevail.
- 7.18 **Further Assurance.** Upon request by the City, the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.
- 7.19 **Covenant Runs with the Lands.** This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided containing the Below-Market Housing Units for the Term. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors, and assigns, and all persons who after the date of this Agreement, acquire an interest in the Lands.
- 7.20 **Equitable Remedies.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.
- 7.21 **No Joint Venture.** Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.
- 7.22 **Applicable Law.** Unless the context otherwise requires, the laws of British Columbia (including, without limitation, the Residential Tenancy Act) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.
- 7.23 **Deed and Contract.** By executing and delivering this Agreement, the Owner intends to create both a contract and a deed executed and delivered under seal.
- 7.24 **Joint and Several.** If the Owner is composed of more than one person, firm, or body corporate, then the covenants, agreements, and obligations of the Owner shall be joint and several.
- 7.25 **Limitation on Owner's Obligations.** The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands or the Buildings, as the case may be, provided however that notwithstanding that the Owner is no longer the registered owner of the Lands or the Buildings, as the case may be, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Lands.



7.26 **Legal Fees** The Owner covenants and agrees with the City that it will, , upon being invoiced by the City, reimburse the City for the City's legal costs incurred in the drafting and negotiating of the Agreement.

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

# **SCHEDULE A** **LOCATION OF BELOW-MARKET HOUSING UNITS**

## **Building 1 - Market Rental with Below-Market Rental Noted Below**

Level	Unit #	Total # of Units on the Level
2	201	2
	204	
3	301	5
	302	
	307	
	308	
	311	
4	401	3
	402	
	411	
5	501	3
	502	
	511	
6	601	3
	602	
	611	

**16 Below-Market Rental**  
**39 Market Rental**



## MURRAY STREET PROJECT

59 ELECTRONIC AVENUE | PORT MOODY, BC, V3H 1X3

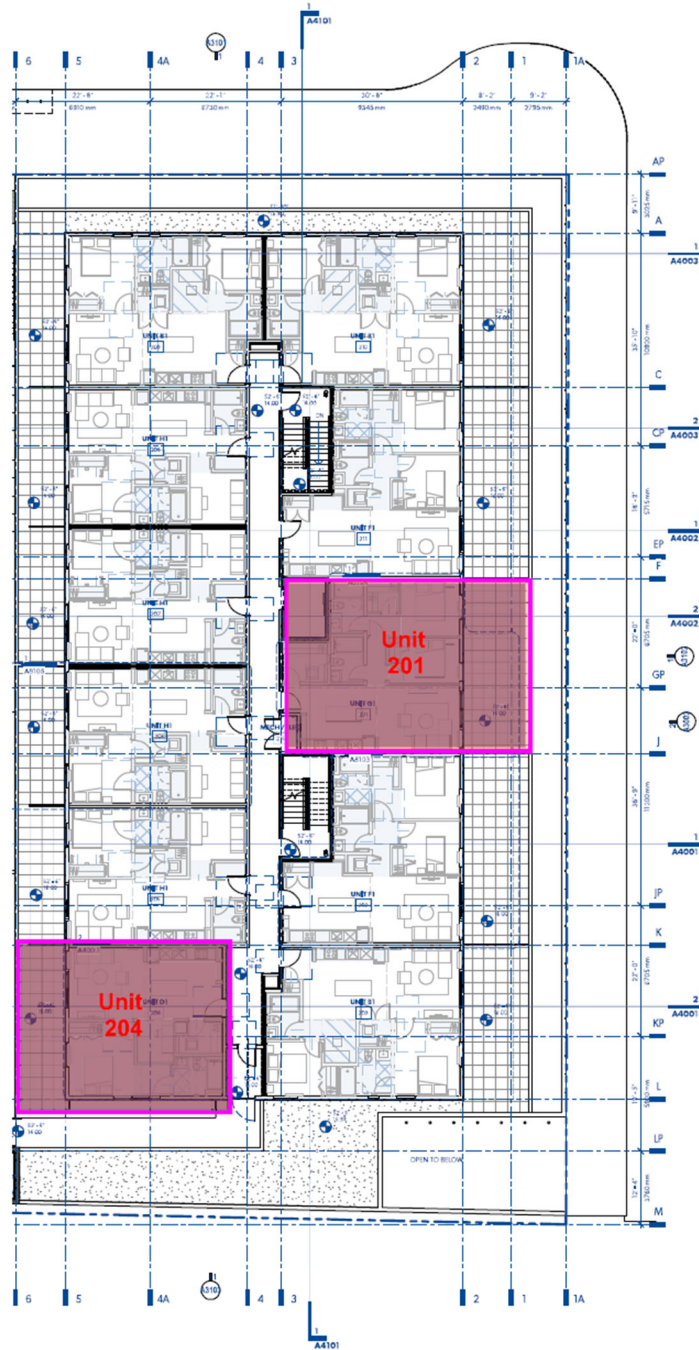
CLIENT

MOSAIC

NO.	DATE	DESCRIPTION
1	2020/01/11	REV SUBMITTALS
2	2020/01/11	FOR PUBLIC DEPARTMENT
3	2020/01/11	FOR PUBLIC DEPARTMENT
4	2020/01/11	FOR PUBLIC DEPARTMENT

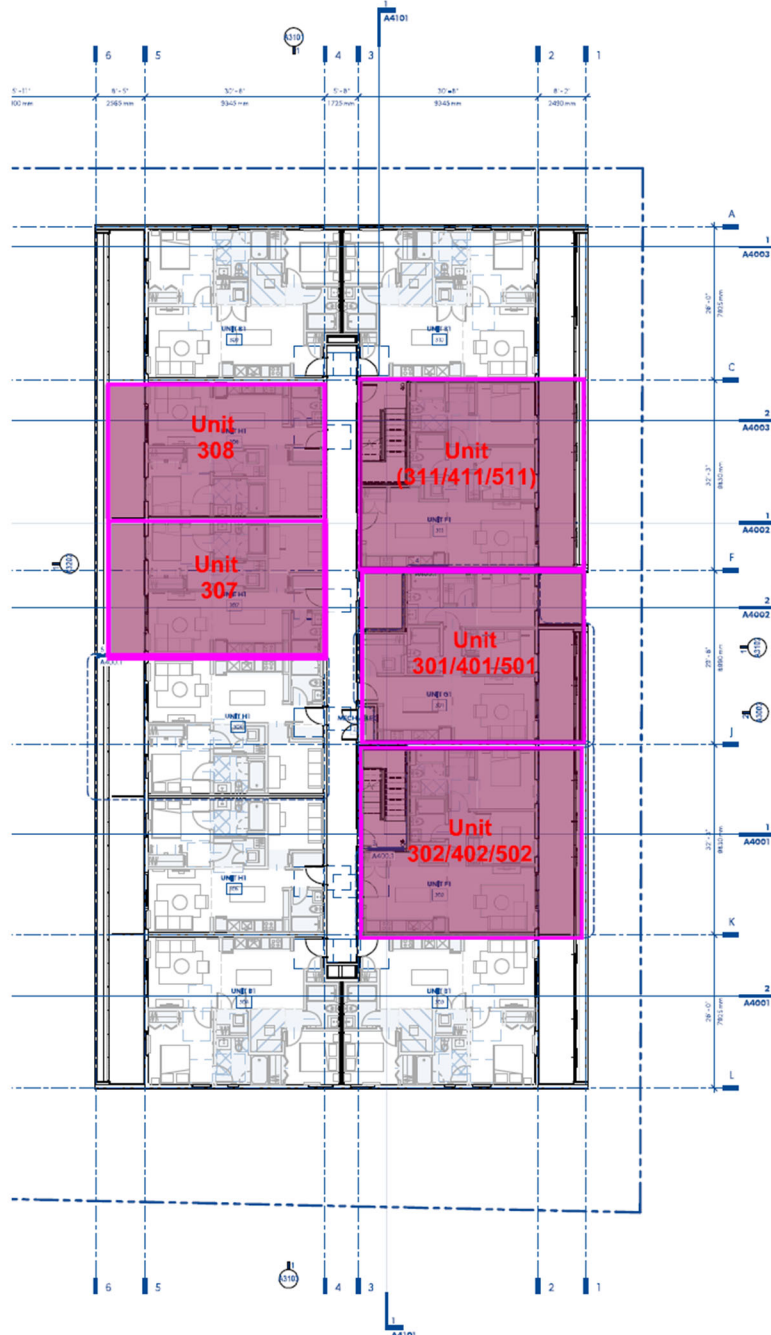
SHEET DATE: March 2, 2022  
TIME STAMP: 2022-03-02 11:08:04 PM

LEVEL 2  
OVERALL PLAN  
**A1002**



Below Market Rental Units  
(Level 2) - 2

Total number of the Below  
Market Rental Units across all  
levels (2-6) - 16



Below Market Rental Units (Level 3) - 5

Below Market Rental Units (Level 4) - 3

Below Market Rental Units (Level 5) - 3

## MURRAY STREET PROJECT

59 ELECTRONIC AVENUE | PORT MOODY, BC, V3H 1X3

100% BP DRAFT SET

2022-03-02

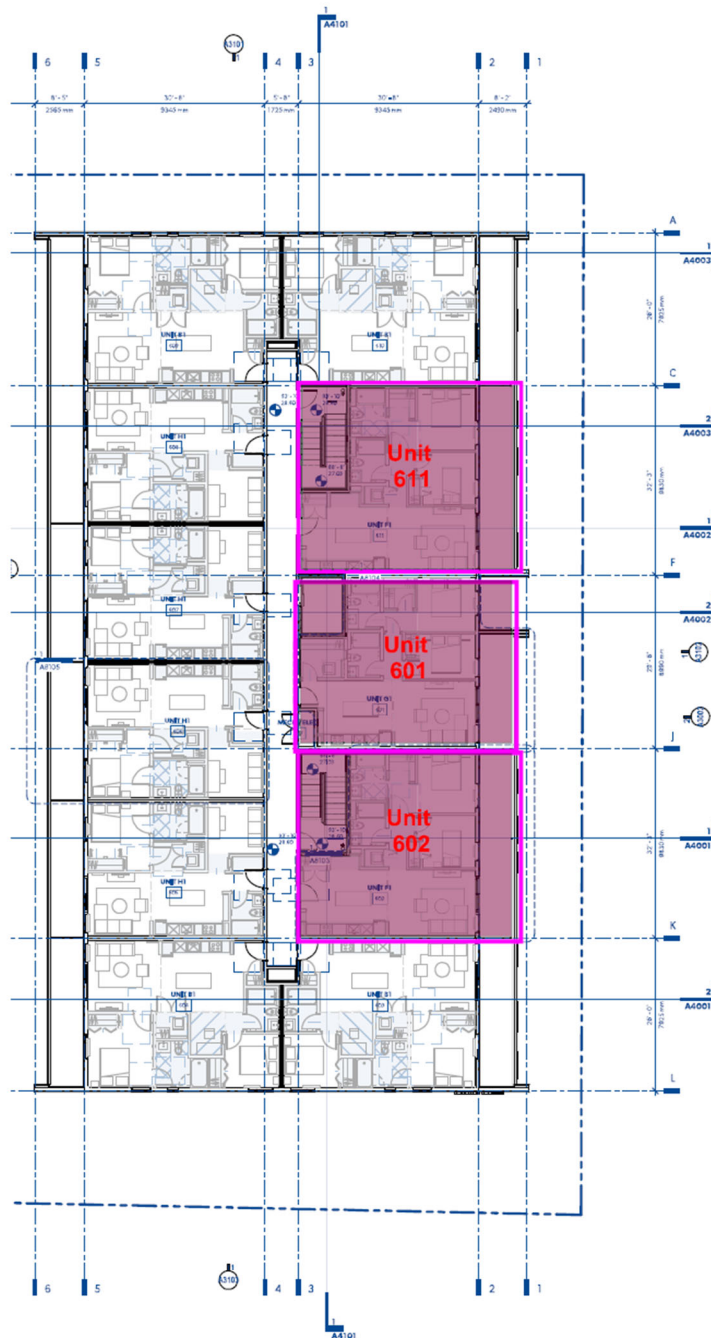
CLIENT

MOSAIC

NO.	DATE	DESCRIPTION
1	2022-03-02	ISSUES

SHEET DATE: March 2, 2022  
TIME STAMP: 2022-03-02 11:08:00 PM

LEVEL 3-5  
(TYPICAL)  
OVERALL PLAN  
**A1003**



## MURRAY STREET PROJECT

59 ELECTRONIC AVENUE | PORT MOODY, BC, V3H 1X3

100% BP DRAFT SET

2022-03-02

CLIENT

MOSAIC

NO.	DATE	DESCRIPTION
10	2022/03/02	BP Submission
9	2022/03/02	Plan including client input
8	2022/03/02	Plan including client input
7	2022/03/02	OP Resolution - ADD BS

SHEET DATE March 2, 2022  
TIME STAMP 2022-03-02 11:28:18 AM

LEVEL 6  
OVERALL PLAN  
A1004

**SCHEDULE "B"**  
**FORM OF STATUTORY DECLARATION**

OWNER'S STATUTORY DECLARATION

I, \_\_\_\_\_ of \_\_\_\_\_, British Columbia,  
*[in my capacity as \_\_\_\_\_ of the Owner and without personal liability (if applicable),]* do  
certify that:

1. I am the owner (the "Owner") or authorized signatory of the Owner of  
\_\_\_\_\_ (the "Below-Market Housing Unit") and make this certificate to  
the best of my personal knowledge.
2. This certificate is made pursuant to the housing agreement registered as  
CA \_\_\_\_\_ at the Land Title Office (the "Housing Agreement") in respect of the  
Below-Market Housing Unit.
3. For the period from \_\_\_\_\_ to \_\_\_\_\_, the Below-Market Housing Unit was  
occupied only by the Eligible Tenant (as defined in the Housing Agreement) whose  
names and current addresses appear below:  
*[Names, addresses and phone numbers of Eligible Tenants]*
4. The rent charged each month for the Below-Market Housing Unit is as follows:
  - a. the monthly rent on the date 365 days before this date of this certificate:  
\$ \_\_\_\_\_ per month for one (1) bedroom Below-Market Housing Units;  
and  
\$ \_\_\_\_\_ per month for two (2) bedroom Below-Market Housing Units;
  - b. the rent on the date of this certificate: \$ \_\_\_\_\_; and
  - c. the proposed or actual rent that will be payable on the date that is 90 days after  
the date of this certificate: \$ \_\_\_\_\_
5. I acknowledge and agree to comply with the Owner's obligations under the Housing  
Agreement, and other charges in favour of the City noted or registered in the Land Title  
Office against the land on which the Below-Market Housing Unit is situated and confirm  
that the Owner has complied with the Owner's obligations under the Housing  
Agreement.
6. I make this Statutory Declaration, conscientiously believing it to be true and knowing that  
the City of Port Moody will be relying upon the statements made herein.

Owner

\_\_\_\_\_  
Signature

## PRIORITY AGREEMENT

The Bank of Nova Scotia(the "**Chargeholder**") is the holder of Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the Lower Mainland LTO under numbers CA6332190, and CA6332191, respectively (the "**Bank Charges**").

The Chargeholder, being the holder of the Bank Charges, by signing the Form C General Instrument attached hereto as Part I, in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Section 483 Housing Agreement and Section 219 Covenant and hereby covenants that this Section 483 Housing Agreement and Section 219 Covenant shall bind the Bank Charges in the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Section 483 Housing Agreement and Section 219 Covenant had been registered prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified, and without reservation or limitation.

END OF DOCUMENT