



City of Port Moody

Bylaw No. 3296

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, 2021, No. 3296 (St. Johns Street, St. George Street, and Buller Street – Non-Market Rental Housing)”.

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 1143924 B.C. Ltd. with respect to the following lands:

Lot 5 District Lot 190 Group 1 New Westminster District Plan 11618
PID: 009-553-843

Lot 6 District Lot 190 Group 1 New Westminster District Plan 11618
PID: 009-553-860

Lot 7 District Lot 190 Group 1 New Westminster District Plan 11618
PID: 002-389-886

Strata Lot 1 District Lot 190 Group 1 New Westminster District Strata Plan
EPS669 Together With An Interest In The Common Property In Proportion
To The Unit Entitlement Of The Strata Lot As Shown On Form V
PID: 028-989-627

Strata Lot 2 District Lot 190 Group 1 New Westminster District Strata Plan
EPS669 Together With An Interest In The Common Property In Proportion
To The Unit Entitlement Of The Strata Lot As Shown On Form V
PID: 028-989-635

Strata Lot 3 District Lot 190 Group 1 New Westminster District Strata Plan
EPS669 Together With An Interest In The Common Property In Proportion
To The Unit Entitlement Of The Strata Lot As Shown On Form V
PID: 028-989-643

Strata Lot 4 District Lot 190 Group 1 New Westminster District Strata Plan
EPS669 Together With An Interest In The Common Property In Proportion
To The Unit Entitlement Of The Strata Lot As Shown On Form V
PID: 028-989-651

Lot 1 District Lot 190 Group 1 New Westminster District Plan 11618 Except
Plan 12019
PID: 009-610-812

Lot 2 District Lot 190 Group 1 New Westminster District Plan 11618 Except
Plan 12019
PID: 003-597-393

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 schedule is attached to and forms part of this Bylaw:
- Schedule "A" – Section 219 Covenant – Housing Agreement.

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 9th day of February, 2021.

Read a second time this 9th day of February, 2021.

Read a third time this 10th day of October, 2023.

Adopted this ____ day of _____, 2023.

M. Lahti
Mayor

S. Lam
City Clerk

I hereby certify that the above is a true copy of Bylaw No. 3296 of the City of Port Moody.

S. Lam
Corporate Officer

DRAFT

**SECTION 219 COVENANT - HOUSING AGREEMENT
NON-MARKET RENTAL HOUSING**

THIS AGREEMENT is dated for reference the ____ day of _____, 2023.

BETWEEN:

1143924 B.C. LTD.
#204 - 5740 Cambie Street
Vancouver, B.C.
V5Z 3A6

(the "**Owner**")

AND:

CITY OF PORT MOODY
100 Newport Drive
Port Moody, B.C.
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 non-market rental housing on the terms and conditions set out in this Agreement;
- E. The City adopted Housing Agreement Bylaw, 2021, No. 3296, 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:

City of Port Moody Housing Agreement Bylaw, 2021, No. 3296 (St. Johns Street, St. George Street, and Buller Street – Non-Market Rental Housing)

EDMS#540136

**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 any successor organization or authority that assumes the powers and obligations of the British Columbia Housing Management Commission;
- (c) **"Building"** means the six-storey building to be built on the Lands, which Building will contain Non-Market Housing Units as contemplated by the Development Authorization, and includes any portion of any such building 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;
- (d) **"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;
- (e) **"CPI"** means the All-Items Consumer Price Index for Canada published from time to time by Statistics Canada, or its successor in function;
- (f) **"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, 2022 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;
- (g) **"Development Authorization"** means the development authorization form issued by the City authorizing development of the Lands, or any portion(s) thereof;
- (h) **"Dwelling Unit"** means each of the one hundred and ninety-seven (197) residential dwelling units located or to be located in the Building and includes, where the context permits, a Non-Market Housing Unit;
- (i) **"Eligible Non-Profit Society"** means a not-for-profit housing society (approved by the City) which will acquire legal ownership of the Non-Market Housing Units, and manage the day-to-day operations of the Non-Market Housing Units to which this Agreement applies;
- (j) **"Eligible Tenant"** means:
 - (i) for Rent Geared to Income Units, a Family having a cumulative annual income at or below the applicable Low to Moderate Income Limits set by BC Housing; or

- (ii) for Shelter Rate Units with one bedroom, a Family having a cumulative income that is less than the amount set by the Province of British Columbia in connection with the provision of income assistance; or
 - (iii) for Shelter Rate Units with two bedrooms, a Family with a minimum of one member having an annual income that is less than the amount set by the Province of British Columbia in connection with the provision of income assistance, and any additional member of the Family having an annual income at or below the applicable Low to Moderate Income Limits set by BC Housing.
- (k) **"Family"** means:
 - (i) a natural person;
 - (ii) two or more natural persons related by blood, marriage, or adoption or cohabitating in a marriage like relationship; or
 - (iii) two or more natural persons jointly residing in the same Non-Market Housing Unit.
- (l) **"General Manager of Planning and Development"** means the individual appointed to be the chief administrator from time to time of the Development Applications Division of the City and his or her designate;
- (m) **"Interpretation Act"** means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;
- (n) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250, together with all amendments thereto and replacements thereof;
- (o) **"Lands"** means the land described in Item 2 of the *Land Title Act* Form C to which this Agreement is attached; and including the Building or a portion of the Building, into which said land(s) is or are Subdivided;
- (p) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;
- (q) **"Low to Moderate Income Limits"** means:
 - (i) for residential units with less than two (2) bedrooms, a gross household income that does not exceed the median income for couples without children in BC, as determined by BC Housing from time to time. For 2023, this figure is \$82,310 (compared to \$77,430 in 2022); and
 - (ii) for residential units with two (2) or more bedrooms, a gross household income that does not exceed the median income for families with children in BC, as determined by BC Housing from time to time. For 2023, this figure is \$128,810 (compared to \$120,990 in 2022).
- (r) **"LTO"** means the New Westminster Land Title Office or its successor;

- (s) **"Non-Market Housing Units"** means ten (10) Dwelling Units to be constructed in the Building on the Lands in accordance with this Agreement and in accordance with the following table:

	Total No. of Units	1-Bedroom Units	2-Bedroom Units
Shelter Rate Units	6	3	3
Rent Geared to Income Units	4	2	2
Total	10	5	5

- (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 Non-Market Housing Units, and includes any person who is a registered owner in fee simple of a Non-Market Housing Unit from time to time;
- (u) **"Permitted Rent"** means the rent for each particular Non-Market Housing Unit which is equal to either:
- (i) Shelter Rate for the Shelter Rate Units; or
 - (ii) Rent Geared to Income for the Rent Geared to Income Units;
- (v) **"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;
- (w) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
- (x) **"Rent Geared to Income"** means no more than thirty (30)% of an Eligible Tenant's Family income as set by the BC Housing Low to Moderate Income Limits, provided however, that the Eligible Tenant will pay the rent as stipulated by the Owner regardless of their actual gross household income, so long as the stipulated rent is less than the Permitted Rent;
- (y) **"Rent Geared to Income Units"** means the Non-Market Housing Units to be rented at no more than the Rent Geared to Income;
- (z) **"Shelter Rate"** means that shelter portion of income assistance, as determined by BC Housing from time-to-time;
- (aa) **"Shelter Rate Units"** means the Non-Market Housing Units to be rented at less than or equal to the Shelter Rate;
- (bb) **"Strata Bylaw"** means any bylaw enacted or passed by the council of the Strata Corporation;
- (cc) **"Strata Corporation"** has the meaning ascribed thereto in section 5.1;

- (dd) **"Strata Property Act"** means the *Strata Property Act* S.B.C. 1998, Chapter 43, together with all amendments thereto and replacements thereof;
- (ee) **"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*;
- (ff) **"Tenancy Agreement"** means a tenancy agreement, lease, licence, or other agreement granting rights to an Eligible Tenant to occupy a Non-Market Housing Unit;
- (gg) **"Term"** means the term of this Agreement being the lesser of 60 years from the date this Agreement is registered, or the useful life of the Building that contains the Non-Market Housing Units; and
- (hh) **"Transfer Amount"** means \$10.00.

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".

The Schedule to this Agreement listed below is an integral part of this Agreement:

Schedule A – Statutory Declaration

**ARTICLE 2
USE AND OCCUPANCY OF NON-MARKET HOUSING UNITS**

- 2.1 The Owner agrees that each Non-Market Housing Unit may only be used as a permanent residence occupied by one Eligible Tenant. A Non-Market Housing Unit must not be occupied by the Owner, the Owner's family members, or any tenant or guest of the Owner, other than an Eligible Tenant. For the purposes of this Article, "permanent residence" means that the Non-Market Housing Unit is used as the usual, main, regular, habitual, principal residence, abode, or home of the Eligible Tenant.
- 2.2 Within thirty (30) days after receiving notice from the City, the Owner must, in respect of each Non-Market Housing Unit, provide to the City a statutory declaration, substantially in the form as is attached hereto as Schedule A, 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 Non-Market Housing Unit no more than once in any calendar year; provided, however, notwithstanding that the Owner may have already provided such statutory declaration in the particular calendar year, the City may request and the Owner shall provide to the City as requested by the City in respect to a Non-Market Housing Unit if, in the City's determination, acting reasonably, the City believes that the Owner is in breach of any of its obligations under this Agreement.
- 2.3 The Owner hereby authorizes the City to make such inquiries, subject to compliance with applicable laws including privacy laws, 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 Non-Market Housing Units must be designed and constructed to the same standard, in terms of layout, workmanship, and materials, as the balance of the comparable Dwelling Units in the Building on the Lands;
 - (b) 8 stalls, being 0.8 of a parking stall per unit, will be constructed and assigned to the Non-Market Housing Units on a first-come-first serve basis;
 - (c) 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;

- (d) 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 Non-Market Housing Units; and
- (e) the Owner will not stratify the Building into more than 197 residential strata lots, with ten (10) of the 197 residential strata lots containing the Non-Market Housing Units.

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 Non-Market Housing Units; and
- (b) occupy, nor permit any person to occupy any Non-Market Housing Units, in part or in whole, and the City will not be obligated to permit occupancy of any Non-Market Housing Units constructed on the Lands until all of the following conditions are satisfied:
 - (i) the Non-Market Housing Units and related uses and areas have been constructed to the satisfaction of the City;
 - (ii) the Non-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 NON-MARKET HOUSING UNITS

- 3.1 The Owner will not permit a Non-Market Housing Unit to be 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 ten (10) Non-Market Housing Units in a single or related series of transactions with the result that upon the completion of such transaction(s), the purchaser or transferee will be the legal and beneficial owner of less than ten (10) Non-Market Housing Units.
- 3.3 The Owner may not, without the prior written consent of the City, acting in its sole discretion, sell or transfer the Non-Market Housing Units to any entity other than an Eligible Non-Profit Society and for an amount greater than the Transfer Amount. This section 3.3 will not apply upon the windup of the Strata Corporation.
- 3.4 The Owner must not rent, lease, license, or otherwise permit occupancy of any Non-Market Housing Unit except to an Eligible Tenant and except in accordance with the following additional conditions:
 - (a) the Non-Market Housing Unit will be used or occupied only pursuant to a Tenancy Agreement;

- (b) no Non-Market Housing Unit shall be rented on less than a thirty (30) day rental period, whatsoever;
- (c) the monthly rent payable for the Non-Market Housing Unit will not exceed the Permitted Rent applicable to that class of Non-Market Housing Unit;
- (d) the initial monthly rent payable for the Non-Market Housing Unit set out under the terms of a Tenancy Agreement will not exceed the Permitted Rent applicable to that type of Non-Market Housing Unit. Nothing in this Agreement will prohibit the Owner from increasing the monthly rent for the Non-Market Housing Unit at the times and in the amounts permitted under the *Residential Tenancy Act*, provided the rent does not exceed the Permitted Rent applicable to that class of Non-Market Housing Unit;
- (e) the Owner will:
 - (i) ensure that all Eligible Tenants shall be permitted access to all common property and other common areas, facilities, and indoor and outdoor amenities, including the outdoor swimming pool and associated fitness centre, regardless of whether the Lands are Subdivided or stratified; and
 - (ii) in its capacity as owner of the Non-Market Housing Unit, 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, 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, City fees and charges or fines relating to the Eligible Tenant's activities or use, provided that if the Non-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;
- (f) the Owner will attach a copy of this Agreement to every Tenancy Agreement;
- (g) the Owner will include in the Tenancy Agreement a clause requiring the Eligible Tenant and each permitted occupant of the Non-Market Housing Unit to comply with this Agreement;
- (h) the Owner will include in each Tenancy Agreement provisions entitling the Owner to terminate the Tenancy Agreement in accordance with the *Residential Tenancy Act* if:
 - (i) a Non-Market Housing Unit is occupied by a person or persons other than an Eligible Tenant;
 - (ii) upon 6 months' written notice, the before tax annual income of an Eligible Tenant rises more than 7.5% above the applicable maximum amount specified in section ARTICLE 1(j) of this Agreement, for a period greater than 12 months;

- (iii) the Non-Market Housing Unit is occupied by more than the number of persons the City's building inspector determines can reside in the Non-Market Housing Unit given the number and size of bedrooms in the Non-Market Housing Unit and in light of any relevant standards set by the City in any bylaws of the City;
- (iv) the Non-Market Housing Unit remains vacant for three consecutive months or longer, except in the case where the Non-Market Housing Unit is under repair, notwithstanding the timely payment of rent; and/or
- (v) the Eligible Tenant subleases the Non-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(h)(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. With respect to section 3.4(h)(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;

- (i) the Tenancy Agreement will identify all occupants of the Non-Market Housing Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Non-Market Housing Unit for more than thirty (30) consecutive days or more than forty-five (45) days total in any calendar year; and
 - (j) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement to the City upon written request.
- 3.5 For greater certainty, if there is any conflict between the *Residential Tenancy Act* and this Agreement with respect to the termination of a Tenancy Agreement or any other provision of a Tenancy Agreement, the *Residential Tenancy Act* will govern.
- 3.6 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 Non-Market Housing Unit to vacate the Non-Market Housing Unit on or before the effective date of termination.

ARTICLE 4

DEMOLITION OF NON-MARKET HOUSING UNIT

- 4.1 The Owner will not demolish a Non-Market Housing Unit unless:
- (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 Non-Market Housing Unit, and the Owner has delivered to the City a copy of the engineer's or architect's report; or

- (b) the Building in which a Non-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 the Building's insurer;

and, in each case, a demolition permit for the Non-Market Housing Unit has been issued by the City and the Non-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 the same number of replacement non-market housing units.

ARTICLE 5 STRATA CORPORATION BYLAWS

- 5.1 This Agreement will be binding upon all strata corporations (each a "**Strata Corporation**") created upon the strata title Subdivision of the Lands or any Subdivided parcel of the Lands that contain the Non-Market Housing Units.
- 5.2 Any Strata Bylaw which prevents, restricts, or abridges the right to use the Non-Market Housing Units as non-market rental accommodation will have no force and effect.
- 5.3 No Strata Corporation shall pass any Strata Bylaws preventing, restricting, or abridging the use of the Non-Market Housing Units as rental accommodation.
- 5.4 No Strata Corporation shall pass any Strata Bylaw or approve any levies which would result in only the Owner or the Eligible Tenant of a Non-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 Strata Bylaw which purports to restrict access to Eligible Tenants to all common property, or other common areas, facilities, or indoor and outdoor amenities, including the outdoor swimming pool and associated fitness centre, regardless of whether the Lands are Subdivided or stratified.

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 Non-Market Housing Units for housing Eligible Tenants for the benefit of the community. The Owner therefore agrees that for each day a Non-Market Housing Unit is occupied in breach of this Agreement with such breach caused solely by the Owner, 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 thirty (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 Non-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 Non-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 not, without the prior written consent of the City, acting in its sole discretion, sell or transfer less than ten (10) Non-Market Housing Units in a single or related series of transactions with the result that when the purchaser or transferee of the Non-Market Housing Units becomes the owner, the purchaser or transferee will be the legal and beneficial owner of not less than ten (10) Non-Market Housing Units;
- (c) the Owner may not, without the prior written consent of the City, acting in its sole discretion, sell or transfer the Non-Market Housing Units to any entity other than an Eligible Non-Profit Society and for an amount greater than the Transfer Amount, provided however, this section 7.1(c) will not apply to a windup of the strata corporation;
- (d) it will not make any application during the Term to Subdivide the Building into more than 197 residential strata lots, which shall contain all ten (10) Non-Market Housing Units. Nothing in this Agreement will prohibit the Owner from organizing a separate section in the Strata Corporation comprising of all the Non-Market Housing Units. For clarity the Owner may Subdivide the Lands such that the Building comprises its own airspace parcel or may Subdivide the Lands; and
- (e) 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. Subject to section 2.4(e), if this Agreement is filed in the LTO as a notice under section 483 of the *Local Government Act* or registered as a Section 219 Covenant, prior to the Lands having been Subdivided, then once separate legal parcels are created and/or the Lands are subdivided, this Agreement will charge and secure only the legal parcels including strata lots or subdivided lands which contain the Non-Market Housing Units, then the City shall at the Owner's request, without further City council approval, authorization, or bylaw, partially discharge this Agreement accordingly. The Owner acknowledges and agrees that notwithstanding a partial discharge of this Agreement, this Agreement shall be and remain in full force and effect and, but for the partial discharge, otherwise unamended.

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 Non-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 Non-Market Housing Units, it will furnish good and efficient management of the Non-Market Housing Units and will permit representatives of the City to inspect the Non-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 Non-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 Non-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 Non-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 Non-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, building permit, or refusing to permit occupancy of any building, 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 Non-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 Non-Market Housing Unit under this Agreement;
 - (b) City refusing to issue a Development Authorization or building permit, or refusing to permit occupancy of any building, or any portion thereof, constructed on the Lands by reason of the Owner being in breach of this Agreement; 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 as a legal notation.
- 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 Building or any portion thereof, including any Non-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 in writing, 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 **Inuring Effect.** This Agreement will extend to and be binding upon and inure 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 Non-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 Non-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* and the *Strata Property 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 Building, as the case may be, provided however that notwithstanding that the Owner is no longer the registered owner of the Lands or the Building, 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.

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

SCHEDULE A**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 "**Non-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 _____ at the Land Title Office (the "**Housing Agreement**") in respect of the Non-Market Housing Unit.
3. For the period from _____ to _____, the Non-Market Housing Unit was occupied only by the Eligible Tenants (as defined in the Housing Agreement), who continue to meet all Eligible Tenant criteria and whose names and current addresses appear below:

[Names, addresses and phone numbers of Eligible Tenants and their employer(s)]
4. The rent charged each month for the Non-Market Housing Unit is as follows:
 - (a) the monthly rent on the date three hundred and sixty-five (365) days before this date of this certificate:

\$ _____ per month;
 - (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 ninety (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 Non-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

Signature

PRIORITY AGREEMENT

_____ (the "**Charge Holder**") 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 _____, respectively (the "**Bank Charges**").

The Charge Holder, 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 Charge Holder) 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