



# City of Port Moody

## **Bylaw No. 3202**

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, 2020, No. 3202 (3227-3239 St. Johns Street)”.

### **2. Authorization**

- 2.1 Council hereby authorizes the agreements, substantially in the form attached hereto as Schedule “A” and Schedule “B”, between the City of Port Moody and Porte Development Corporation with respect to the following lands:

LOT 1, DISTRICT LOT 233 GROUP 1 NEW WESTMINSTER DISTRICT PLAN BCP52207;

PID: 029-356-172; and

LOT 170, DISTRICT LOT 233 GROUP 1 NEW WESTMINSTER DISTRICT PLAN 53829;

PID: 005-183-391.

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

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

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

- 4.1 Schedule “A” – Section 219 Covenant – Housing Agreement.
- 4.2 Schedule “B” – Section 219 Covenant – Housing Agreement – No Rental Prohibition.

### **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 25<sup>th</sup> day of February, 2020.

**Read a second time** this 25<sup>th</sup> day of February, 2020.

**Read a third time** this 25<sup>th</sup> day of February, 2020.

**Adopted** this \_\_\_\_ day of \_\_\_\_\_, 2020.

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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. 3202 of the City of Port Moody.

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D. Shermer  
Corporate Officer

TERMS OF INSTRUMENT – PART 2

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**SECTION 219 COVENANT – HOUSING AGREEMENT**

This Agreement dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2020 is

BETWEEN:

**ST. JOHNS PROJECT PROPERTIES Ltd. (Inc. No BC 1155415)**, a company incorporated under the laws of the Province of British Columbia having an office at 100 – 33 East 8<sup>th</sup> Avenue, Vancouver, B.C. V5T 1R5

(the “Developer”)

AND:

**THE CITY OF PORT MOODY**, a municipality incorporated under the *Local Government Act*, having its office at 100 Newport Drive, Port Moody, B.C. V3H 3E1

(the “City”)

WHEREAS:

- A. The Developer is the registered owner of the Lands as defined in Section 1.01;
- B. The Developer wishes to obtain development permission with respect to the Lands and wishes to create a 117 Unit development to be constructed over one level of commercial premises and a vehicle parking facility;
- C. In accordance with the terms set in this Agreement, the Developer has voluntarily agreed that:
  - (ii) eight (8) Units will, for twelve (12) years, provide Market Rental Housing Units;
  - (iii) two (2) Units will, for twenty (20) years, provide Affordable Housing Units;
  - (iv) City Residents will be offered an opportunity to purchase a Unit in the Proposed Development in advance of the general public;
  - (v) a 3% discount on the purchase price of a Unit will be offered for Community Workers; and
  - (vi) it will provide a flexible deposit structure for a limited number of first time buyers;

on the terms and subject to the conditions more particularly set out in this Agreement.

- D. Section 483 of the Local Government Act (British Columbia) authorizes the City, by bylaw, to enter into a Housing Agreement;
- E. 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 or construction on the land;
- F. The City adopted Housing Agreement Bylaw 2019 No. 3202, authorizing the City to enter into this Agreement on the terms and conditions contained herein; and
- G. The Developer 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*.

NOW THEREFORE in consideration of the mutual promises contained herein and in consideration of the payment of \$1.00 by the City to the Developer (the receipt and sufficiency of which is acknowledged by the Developer), the parties covenant and agree with each other as follows, as a Housing Agreement under Section 483 of the *Local Government Act*, Section 219 of the Land Title Act and as a contract and a deed under seal between the parties and the parties hereto further covenant and agree that the Lands shall not be used or built on except in accordance with this Covenant as follows:

## **1. DEFINITIONS**

### **1.01 Definitions**

In this Agreement:

- (a) “Affordable Housing Unit” means a Unit determined by the Developer in the Proposed Development which is made available for rent at a rental rate not exceeding the Permitted Rent for twenty (20) years from the Occupancy Date and “Affordable Housing Units” means more than one Affordable Housing Unit;
- (b) “Agreement” means this Housing Agreement/Section 219 Covenant;
- (c) “City Personnel” means any and all of the City’s elected officials, board members, officers, directors, employees and agents;
- (d) “City Resident” means a person who, at the time such person makes an offer to purchase a Unit, produces a driver’s licence, utility bill, lease or other

evidence reasonably satisfactory to the Developer, indicating that, at the relevant time, such person is a resident of the City of Port Moody;

- (e) "Community Worker" means a person who, at the time such person makes an offer to purchase a Unit, produces evidence reasonably satisfactory to the Developer, indicating that, at the relevant time, such person is a doctor, nurse, first responder or school teacher, working full time in the City of Port Moody;
- (f) "Development Permit" means Development Permit No. \_\_\_\_\_ issued by the City;
- (g) "Developer" includes any successor in title to the Lands or a Unit or person or company that purchases the Lands or a Unit from time to time;
- (h) "Discounted Price First Sale" means, the price at which the Developer has listed a Unit for sale, less 3% of the listed sale price where the purchaser is a Community Worker;
- (i) "Interest" means the property interest of the owner of the Affordable Housing Units;
- (j) "Lands" means the land described in Item 2 of the Land Title Act Form C to which this Agreement is attached;
- (k) "LTO" means the New Westminster Land Title Office;
- (l) "Market Rent" means the rental rate charged by landlords of comparable units in the Tri-Cities (Port Moody, Coquitlam and Port Coquitlam) area;
- (m) "Market Rent Housing Unit" means a Unit, determined by the Developer, in the Proposed Development which is made available for rent at or below Market Rent for twelve (12) years from the Occupancy Date;
- (n) "Occupancy Date" means the date the last occupancy permit is issued by the City for a Unit in the Proposed Development;
- (o) "Permitted Rent" means the rent for each Affordable Housing Unit, which Permitted Rent shall not exceed 90% of the Market Rent;
- (p) "Proposed Development" means the development on the Lands contemplated in the Development Permit and this Agreement;
- (q) "Rental Accommodation" means a Unit that is either a Market Rental Housing Unit or an Affordable Housing Unit;

- (r) "Strata Property Act" means the Strata Property Act (British Columbia) as amended from time to time;
- (s) "Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting a Tenant rights to occupy a Unit;
- (t) "Tenant" means a tenant (including a subtenant) or occupant of an Affordable Housing Unit by way of a Tenancy Agreement;
- (u) "Term" means the term of this Agreement being the useful life of the building that contains the Units;
- (v) "Unit" means a residential dwelling unit to be constructed on the Lands as part of the Proposed Development, and includes an Affordable Housing Unit and a Market Rent Housing Unit; and
- (w) "Unit Purchaser" means the registered owner of a Unit in the Proposed Development from time to time and, in this context, includes the Developer.

## **2 COMMENCEMENT OF TERM**

- 2.01 The Term of this Agreement commences on the date City Council adopts Housing Agreement Bylaw \_\_\_\_\_.

## **3 RENTAL ACCOMMODATION**

- 3.01 The Developer covenants and agrees with the City that the Lands and any Unit on, or to be constructed on the Lands, shall be used and occupied only in strict accordance with the terms of the Agreement.

3.02 Purposely Deleted

3.03 Purposely Deleted

3.04 Affordable Housing Units

The Developer further covenants and agrees with the City that the Lands shall contain not less than two (2) Affordable Housing Units and further that despite any sale of the Affordable Housing Units as contemplated under Section 3.06 below:

- (a) each of the Affordable Housing Units will be used and occupied pursuant to a Tenancy Agreement which Tenancy Agreement shall contain a clause entitling the Developer to terminate the Tenancy Agreement if:
  - (i) the Affordable Housing Unit is occupied by more than the number of people the City's building inspector determines can reside in the Affordable Housing Unit given the number and size of bedrooms in the Affordable Housing Unit and in light of any relevant standards set by the City in any bylaws of the City; or
  - (ii) the Affordable Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent;
- (b) a copy of this Agreement shall be attached to all Tenancy Agreements for the Affordable Housing Units;
- (c) the Affordable Housing Units shall not be rented for more than the Permitted Rent;
- (d) the location of Affordable Housing Units will be determined prior to the occupancy of any Unit, will be identified on Schedule "A" hereto by amendment to this Agreement and may not be changed thereafter without the express written permission by the City of Port Moody;
- (e) no Affordable Housing Unit shall be rented for less than a thirty (30) day rental period, whatsoever;
- (f) upon written request of the City, the Developer, or current owner of an Affordable Housing Unit, as the case may be, will provide to the City a written report and if requested, a statutory declaration, confirming to the City's satisfaction the rent charged for the relevant Affordable Housing Units within 30 days of receipt of the request;

- (g) upon receipt of the written report or statutory declaration to be provided under Subsection 3.04(f) above, if the City is not satisfied that the rent charged is 10% below the Market Rent, the City may require that the Market Rent and the consequential Permitted Rent for the Affordable Housing Unit be determined by an independent qualified appraiser;
- (h) The Developer and any current owner of Affordable Housing Units will contact a local not-for-profit organization and obtain a list of tenant candidates for the Affordable Housing Units and the current owner, from time to time, will inform the City each time an Affordable Housing Unit becomes vacant and available for rent.

### 3.05 Market Rent Housing Unit

The Developer further covenants and agrees with the City that the Lands shall contain not less than eight (8) Market Rent Housing Units and further that despite any sale of the Market Rent Housing Units as contemplated under Section 3.06 below:

- (a) each of the Market Rent Housing Units will be used and occupied pursuant to a Tenancy Agreement;
- (b) the location of Market Rent Housing Units will be determined prior to the occupancy of any Unit, will be identified on Schedule "A" hereto by amendment to this Agreement and may not be changed thereafter without the express written permission by the City of Port Moody; and
- (c) no Market Rent Housing Unit shall be rented for less than a thirty (30) day rental period, whatsoever.

### 3.06 Sale of the Units

The Developer covenants and agrees with the City that for the period of time beginning one (1) week prior to the Units first being offered for sale to the general public and ending on the filing in the LTO of a strata plan of the Proposed Development, the Units will not be offered for sale other than on the following terms and conditions:

- (a) Not less than one (1) week prior to the Units being offered for sale to the general public, the Units will be offered for sale to City Residents;



- (b) the advance sale opportunity set out in subsection 3.06(a) shall be appropriately advertised by the Developer in advance of such opportunity;
- (c) Community Workers will be permitted to purchase a Unit at the Discounted Price First Sale; and
- (d) No less than ten (10) first time home purchasers of any Unit will be offered the opportunity to pay their five (5)% down payment in monthly instalments over the course of construction of the Proposed Development.

#### **4. DEMOLITION OF AFFORDABLE HOUSING UNITS OR MARKET RENT HOUSING UNITS**

- 4.01 The Developer will not demolish an Affordable Housing Unit unless the building in which the Affordable Housing Unit is located is damaged or destroyed, to the extent of 75% or more of its value above its foundations, as determined by the City in its sole discretion, and a demolition permit for the Affordable Housing Unit has been issued by the City and the Affordable Housing Unit has been or will be demolished under that permit.
- 4.02 Should a demolition permit be issued in accordance with Section 4.01 before the expiry of twenty (20) years from the Occupancy Date, the Lands shall not be redeveloped unless such redevelopment includes the provision of not less than two (2) equivalent replacement affordable housing units.
- 4.03 Should a demolition permit be issued in respect of any of the Market Rent Housing Units before the expiry of ten (10) years from the Occupancy Date, the Lands shall not be redeveloped unless such redevelopment includes the provision of not less than the number of Market Rent Housing Units demolished pursuant to said demolition permit.

#### **5. STRATA CORPORATION BYLAWS**

- 5.01 This Agreement will be binding upon all strata corporations created upon the strata title Subdivision of the Lands or any subdivided parcel of the Lands.
- 5.02 The Developer further covenants and agrees with the City that this Agreement shall be binding upon all strata corporations created upon the strata title subdivision of the Lands or any building on the Lands pursuant to the *Strata Property Act* and that upon the Lands, or any portion thereof, being subdivided by way of a strata plan pursuant to the *Strata Property Act*, then:

- (a) this Agreement will charge each strata lot and shall be noted on the common property record of the strata corporation; and
- (b) the strata corporation so created will be, at its cost, responsible for the performance and observance of the Developer's covenants and obligations in this Agreement, and the Developer will cause such strata corporation to execute an assumption agreement to give effect to the foregoing, and, upon delivery of such assumption agreement to the City, the Developer will be released from its obligations and liabilities hereunder, except to the extent and for such time that it remains an owner of any one or more of the Units.

#### Affordable and Market Rent Housing Units

- 5.03 Any strata corporation bylaw which purports to prevent, restrict or abridge the right to use the Affordable Housing Units or the Market Rent Housing Units will have no force or effect.
- 5.04 No strata corporation shall pass any bylaws preventing, restricting or abridging the use of the Affordable Housing Units or Market Rent Housing Units as such.
- 5.05 No strata corporation shall pass any bylaw or approve any levies which would result in only the Developer or a tenant of an Affordable Housing Unit or a tenant of a Market Rent 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.

#### 5.06 Strata Bylaw Invalid

The Developer further covenants and agrees with the City that any strata corporation bylaw which prevents, restricts or abridges or purports to prevent, restrict or abridge the right to use any of the Affordable Housing Units or Market Rental Housing Units as Rental Accommodation shall have no force or effect.

#### 5.07 No Bylaw

No strata corporation formed in respect of the Land shall pass any bylaw(s) preventing, restricting or abridging the use of the Lands, the Proposed Development or the Affordable Housing Units or Market Rental Housing Units from time to time as Rental Accommodation.

#### 5.08 Vote

No Unit Purchaser, nor any tenant or mortgagee thereof, shall vote in favour of any strata corporation bylaw purporting to prevent, restrict or abridge the use of the

Lands, the Proposed Development, or the Affordable Housing Units or Market Rental Housing Units from time to time as Rental Accommodation.

## **6. DEFAULT AND REMEDIES**

### **6.01 Notice of Default**

The City may give to the Developer written notice to cure a default under this Agreement within 30 days of receipt of notice. The Developer must act with diligence to correct the default within the time specified in the notice referred to herein.

### **6.02 Costs**

The Developer will pay to the City on demand by the City all the City's costs of exercising its rights or remedies under this Agreement as a consequence of default by the Developer, on a full indemnity basis.

### **6.03 Equitable Remedies**

The City, in addition to its rights under this Agreement or at law, will be entitled to all equitable remedies including specific performance, injunction and declaratory relief, or any of them, to enforce its rights under this Agreement.

### **6.04 Specific Performance and No Penalty or Forfeiture**

The Developer acknowledges and agrees with the City that:

- (a) specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Developer under this Agreement and that 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 Developer of this Agreement. Further, the Developer agrees that the foregoing provision is reasonable given the public interest in preserving the stock of Rental Accommodation in accordance with this Agreement;
- (b) it is entering into this Agreement to benefit the public interest in making the Rental Accommodation available;
- (c) the City's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out; and
- (d) the City's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.

#### 6.05 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.

### 7. LIABILITY

#### 7.01 Indemnity

The Developer will indemnify and save harmless each of the City and the City Personnel 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 the entering into of this Agreement or from any act or omission by the Developer or its officers, directors, employees, agents, contractors, or other persons for whom at law the Developer is responsible or from the Developer's ownership, operation, management or financing of the Proposed Development or any part thereof.

#### 7.02 Release

The Developer hereby releases and forever discharges the City and the City Personnel 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 advice or direction respecting the ownership, operation or management of the Proposed Development or any part thereof which has been or hereafter may be given to the Developer.

### 8. GENERAL PROVISIONS

#### 8.01 City's Power Unaffected

Nothing in this Agreement:

- (a) affects or limits any discretion, rights or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land;

- (b) affects or limits any enactment relating to the use of the Lands or any condition contained in any approval including any development permit concerning the development of the Lands; or
- (c) relieves the Developer from complying with any enactment, including the City's bylaws in relation to the use of the Lands.

#### 8.02 Agreement for Benefit of City Only

The Developer and City agree that, save with respect to the effect of Section 8.18:

- (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 Developer; and
- (c) the City may at any time execute a release and discharge of this Agreement in respect of the Proposed Development or any Unit therein, without liability to anyone for doing so.

#### 8.03 Agreement Runs With the Lands

This Agreement burdens and runs with the Lands. All of the covenants and agreements contained in this Agreement are made by the Developer for itself, its successors and assigns, and all persons who acquire an interest in the Lands after the date of this Agreement.

#### 8.04 No Liability

Notwithstanding anything contained in this Agreement, the parties agree that neither the Developer, nor any successor in title to the Lands, or any portion thereof, will be liable for breaches of or non-observance or non-performance of covenants contained in this Agreement occurring after the date that the Developer or its successors in title, as the case may be, ceases to be the registered or beneficial owner of the Lands or such portion thereof.

#### 8.05 Contractual Obligations

The covenants and agreements on the part of the Developer have been made by the Developer as contractual obligations as well as being made pursuant to Section 483 of the *Local Government Act* (British Columbia) and as such will be binding on the Developer.

#### 8.06 Priority of This Agreement

The Developer will, at its expense, do or cause to be done all acts reasonably necessary to ensure this Agreement is registered against the title to each Unit in

the Proposed Development in priority to all charges and encumbrances which are registered, or pending registration, against title to the Lands in the LTO, save and except those as have been approved by the City or have been granted in favour of the City.

8.07 Agreement to Have Effect as Deed

The City and the Developer each intend by execution and delivery of this Agreement to create both a contract and a deed under seal.

8.08 Waiver

An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.

8.09 Time

Time is of the essence in this Agreement.

8.010 Validity of Provisions

If a Court of competent jurisdiction finds that any part of this Agreement is invalid, illegal, or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

8.011 Extent of Obligations and Costs

Every obligation of a party which is set out in this Agreement will extend throughout the Term and, to the extent that any obligation ought to have been observed or performed prior to or upon the expiry or earlier termination of the Term, such obligation will survive the expiry or earlier termination of the Term until it has been observed or performed.

8.012 Notices

All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, by facsimile transmission, or by personal service, to the following address for each party:

If to the City:

100 Newport Drive

Port Moody, B.C. V3H 3E1

Attention: Planning Department

If to the Developer at the address shown on title in the LTO.

Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; if made by facsimile transmission, on the first business day after the date when the facsimile transmission was transmitted; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the other parties, may designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.

8.013 Further Assurances

Upon request by the City, the Developer will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the City, to give effect to this Agreement.

8.014 Enuring Effect

This Agreement will enure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.

8.015 Housing Agreement/Section 219 Covenant

- (a) The Developer acknowledges and agrees that this Agreement constitutes a Housing Agreement entered into under Section 483 of the *Local Government Act* (British Columbia); and
- (b) The Developer further acknowledges and agrees that the terms and conditions of this Agreement constitute a covenant in respect of the use of the Lands and any Units on or 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 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.
- (c) The Developer acknowledges and agrees that:
  - (i) this Agreement constitutes a Housing Agreement entered into under section 483 of the *Local Government Act*;

- (ii) the City is required to file a notice of Housing Agreement in the Land Titles Office (LTO) against title to the Land; and
- (iii) once such a notice is filed, this agreement binds all persons who acquire an interest in the Land as a Housing Agreement under section 483 of the *Local Government Act*.

#### 8.016 Management and Long-Term Maintenance

The Developer covenants and agrees with the City that, in order to ensure the long-term maintenance of the Affordable Housing Units and the Market Rent Housing Units, it will furnish good and efficient management of the Affordable Housing Units and the Market Rent Housing Units and will permit representatives of the City to inspect the Affordable Housing Units and the Market Rent Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Developer further covenants and agrees that it will maintain the Affordable Housing Units and the Market Rent 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.

#### 8.017 Partial Discharge

In the event the Proposed Development is subdivided by strata plan or air space subdivision plan, or both, the City covenants and agrees to, within a reasonable time after receipt of a written request and being provided with the appropriate partial Release from the Developer to do so, execute the partial Release from title to any strata lot or air space parcel thereby created that does not constitute or contain an Affordable Housing Unit or a Market Rent Housing Unit, as defined herein.

### 9. INTERPRETATION

#### 9.01 References

Gender specific terms include both genders and include corporations. Words in the singular include the plural, and words in the plural include the singular.

#### 9.02 Construction

The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this Agreement is to be construed simply according to its fair meaning, and not strictly for or against either party.

#### 9.03 No Limitation



The word “including” when following any general statement or term is not to be construed to limit the general statement or term to the specific items which immediately follow the general statement or term similar items, whether or not words such as “without limitation” or “but not limited to” are used, but rather the general statement or term is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of the general statement or term.

#### 9.04 Terms Mandatory

The words "shall", "must" and "will" are to be construed as imperative.

#### 9.05 Statutes

Any reference in this Agreement to any statute or bylaw includes any subsequent amendment, re-enactment, or replacement of that statute or bylaw.

#### 9.06 Entire Agreement

The Parties agree that:

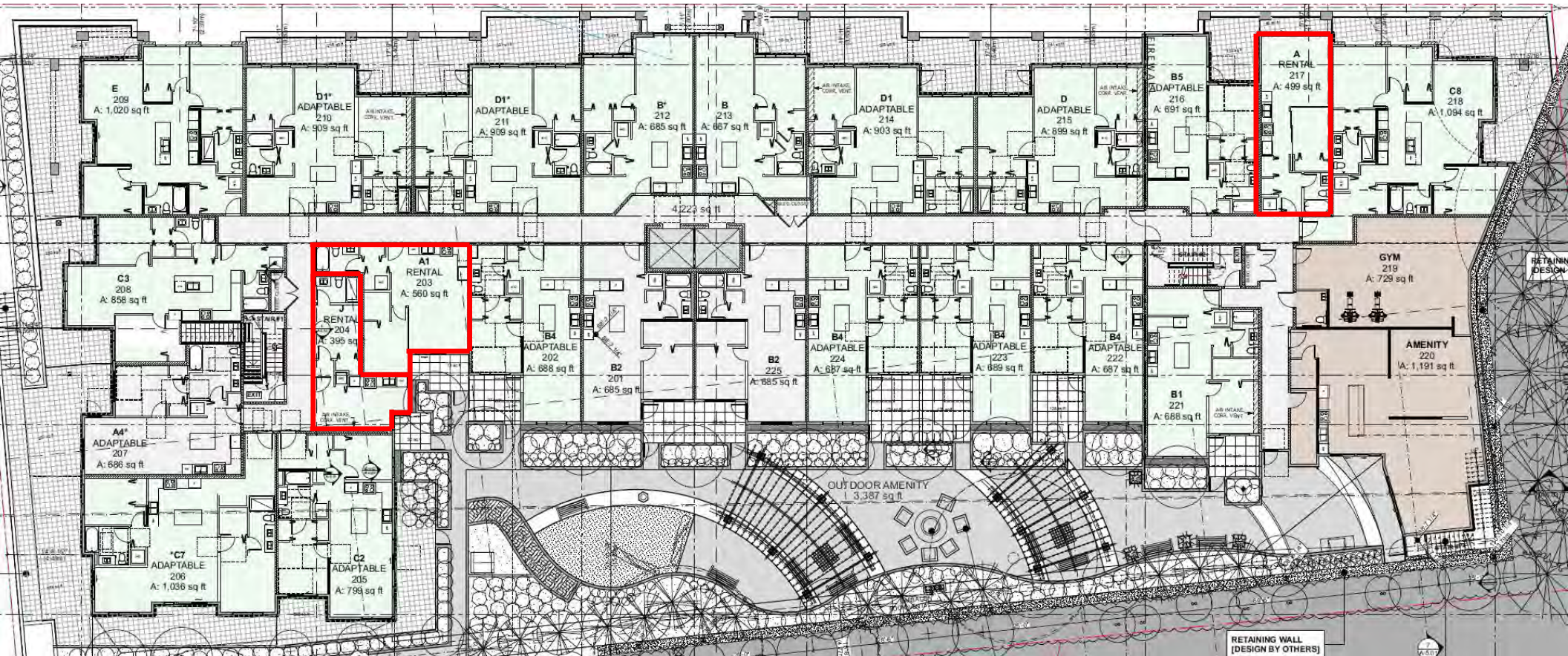
- (a) this is the entire agreement between the City and the Developer concerning its subject, and there are no warranties, representations, conditions or collateral agreements relating to this Agreement, except as included in this Agreement; and
- (b) this Agreement may be amended only by a document executed by the parties to this Agreement and by bylaw, such amendment to be effective only upon adoption by City Council of a bylaw to amend Housing Agreement Bylaw 2019, No. 3202.

#### 9.07 Governing Law

This Agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia. As evidence of their agreement to be bound by the terms of this instrument, the City and the Developer hereto have executed the *Land Title Act* Form C that is attached hereto and forms part of this Agreement.

## Schedule A - Affordable Housing Units

### Rental Units at Clyde. Level 2: A, A1 and J (below market)





## Schedule A - Affordable Housing Units

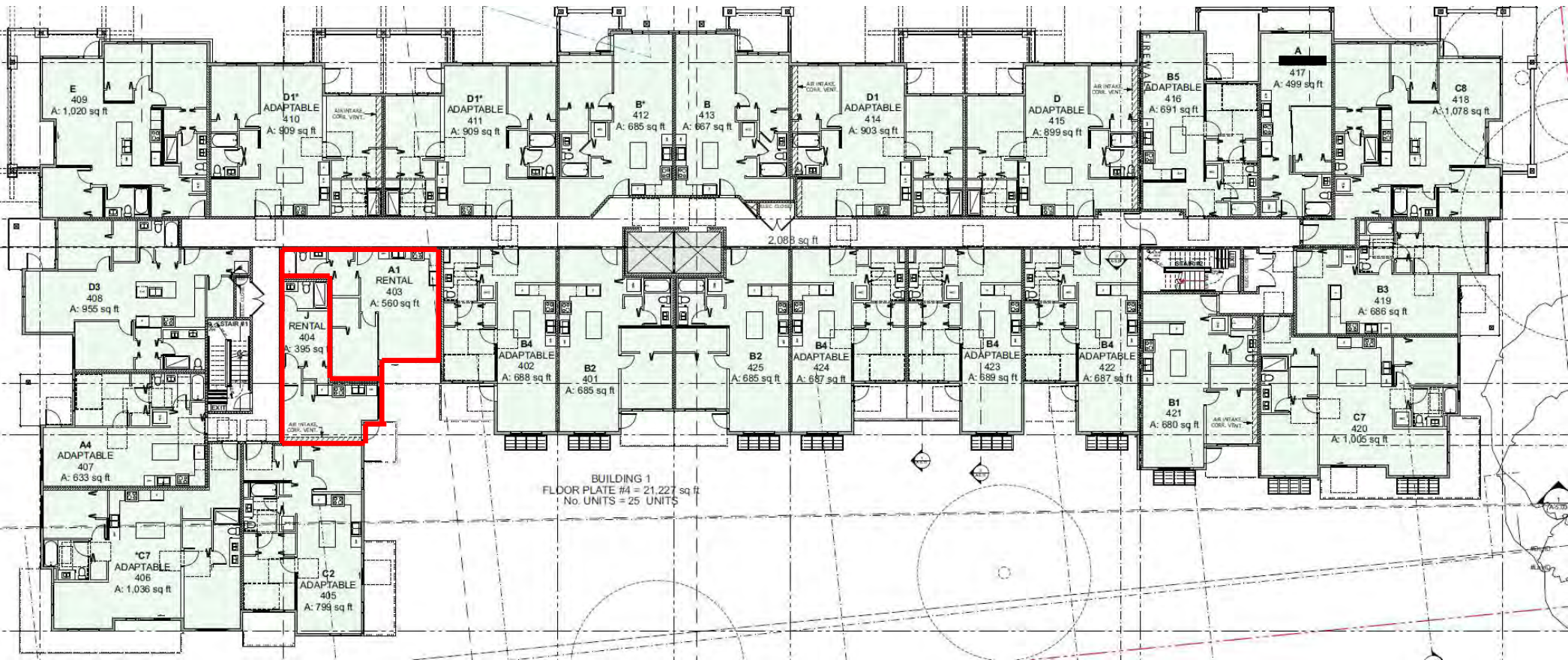
### Rental Units at Clyde. Level 3: A, A1 and J (below market)





## Schedule A - Affordable Housing Units

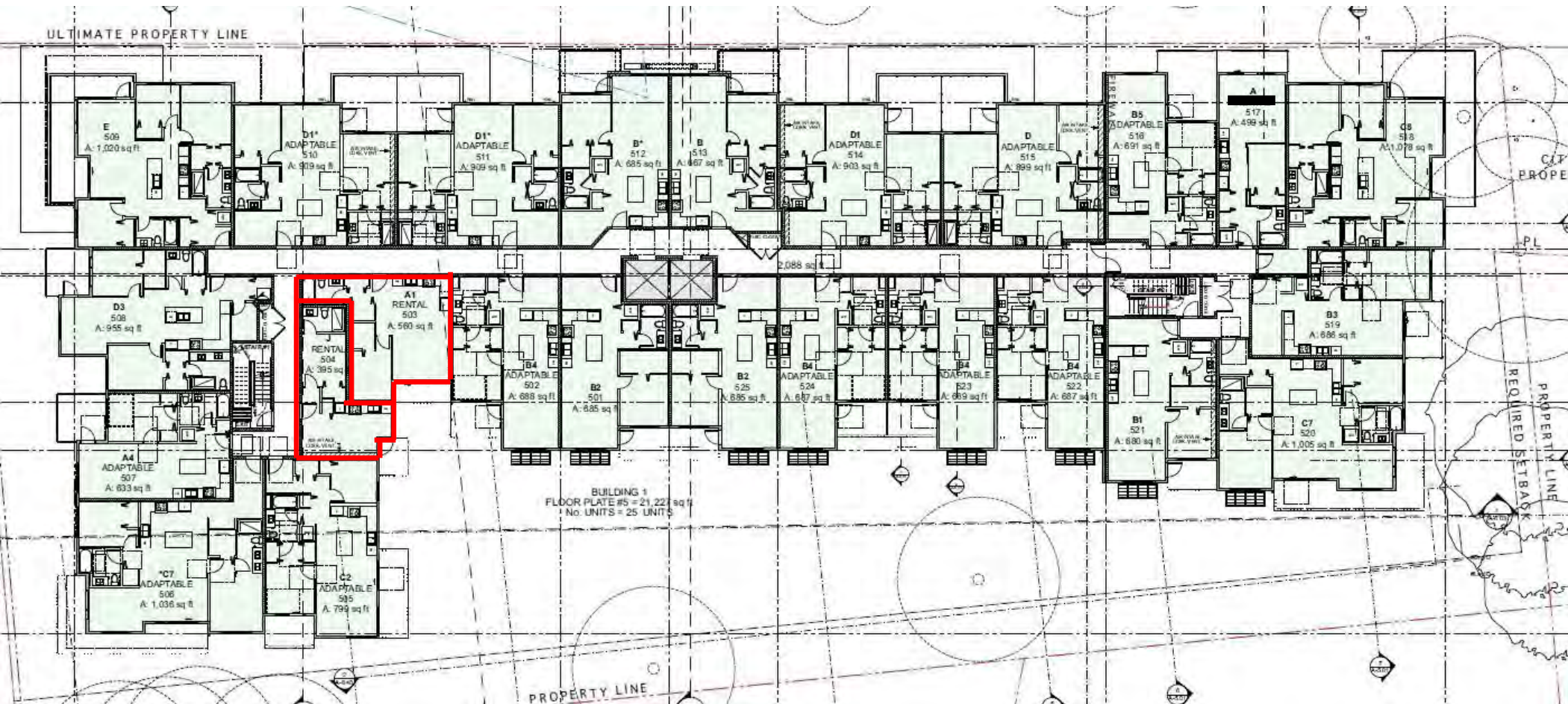
### Rental Units at Clyde. Level 4: A1 and J





## Schedule A - Affordable Housing Units

### Rental Units at Clyde. Level 5: A1 and J



## **CONSENT AND PRIORITY AGREEMENT**

In consideration of the sum of TEN (\$10.00) DOLLARS and other good and valuable consideration, **ROYAL BANK OF CANADA** (the “**Prior Charge Holder**”), the holder of the following financial charge(s) registered in the New Westminster Land Title Office against title to the Lands charged by this instrument:

**Mortgage No. CA6686720 and**  
**Assignment of Rents No. CA6686721**

(the “**Security**”)

for itself and its successors and assigns, hereby consents to the granting and registration of the within Section 219 Covenant (the “**Charge**”) and grants priority to the Charge over the Security and to the Prior Charge Holder’s right, title and interest in and to the Lands charged by this instrument, in the same manner and to the same effect as if the Charge had been executed, delivered and registered prior to the execution, delivery and registration of the Security and prior to the advance of any money under the Security.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Charge Holder has executed the *Land Title Act* Form C or D which is attached hereto and forms part of this Agreement.

TERMS OF INSTRUMENT – PART 2

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**SECTION 219 COVENANT – HOUSING AGREEMENT – NO RENTAL PROHIBITION**

This Agreement dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2020 is

BETWEEN:

**ST. JOHNS PROJECT PROPERTIES Ltd. (Inc. No BC 1155415)**, a company incorporated under the laws of the Province of British Columbia having an office at 100 – 33 East 8<sup>th</sup> Avenue, Vancouver, B.C. V5T 1R5

(the “Developer”)

AND:

**THE CITY OF PORT MOODY**, a municipality incorporated under the *Local Government Act*, having its office at 100 Newport Drive, Port Moody, B.C. V3H 3E1

(the “City”)

WHEREAS:

- A. The Developer is the registered owner of the Lands as defined in Section 1.01;
- B. The Developer wishes to obtain development permission with respect to the Lands and wishes to create a 117 Unit development to be constructed over one level of commercial premises and a vehicle parking facility;
- C.

In accordance with the terms set in this Agreement, the Developer has voluntarily agreed that all Units are and will remain available for rental on the terms and subject to the conditions more particularly set out in this Agreement.

- D. 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 or construction on the land;
- E. The Developer 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 a covenant under section 219 of the *Land Title Act*.

NOW THEREFORE in consideration of the mutual promises contained herein and in consideration of the payment of \$1.00 by the City to the Developer (the receipt and sufficiency of which is acknowledged by the Developer), the parties covenant and agree with each other as follows, as a Section 219 of the Land Title Act and as a contract and a deed under seal between the parties and the parties hereto further covenant and agree that the Lands shall not be used or built on except in accordance with this Covenant as follows:

## **1. DEFINITIONS**

### **1.01 Definitions**

In this Agreement:

- (a) "Agreement" means this Housing Agreement/Section 219 Covenant;
- (b) "City Personnel" means any and all of the City's elected officials, board members, officers, directors, employees and agents;
- (c) "Development Permit" means Development Permit No. \_\_\_\_\_ issued by the City;
- (d) "Developer" includes any successor in title to the Lands or a Unit or person or company that purchases the Lands or a Unit from time to time;
- (e) "Lands" means the land described in Item 2 of the Land Title Act Form C to which this Agreement is attached;
- (f) "LTO" means the New Westminster Land Title Office;
- (g) "Proposed Development" means the development on the Lands contemplated in the Development Permit and this Agreement;
- (h) "Rental Accommodation" means a Unit that is, at the sole discretion of the Unit Purchaser, who owns such Unit, made available for rent to a Tenant for residential use;
- (i) "Section 219 Covenant/ Housing Agreement" means that agreement that is registered immediately before this Agreement;
- (i) "Strata Property Act" means the Strata Property Act (British Columbia) as amended or replaced from time to time;



- (j) "Tenant" means a tenant (including a subtenant) or occupant of an Unit by way of a Tenancy Agreement;
- (k) "Term" means the term of this Agreement being the useful life of the building that contains the Units;
- (l) "Unit" means a residential dwelling unit to be constructed on the Lands as part of the Proposed Development; and
- (m) "Unit Purchaser" means the registered owner of a Unit in the Proposed Development from time to time and, in this context, includes the Developer.

## **2 RENTAL ACCOMMODATION**

2.01 The Developer covenants and agrees with the City that the Lands and any Unit on, or to be constructed on the Lands, shall be used and occupied only in strict accordance with the terms of the Agreement.

### **2.02 Rental Disclosure Statement**

The Developer covenants and agrees with the City that no Unit in any building on, or to be constructed on, the Lands, shall be occupied or used for any purpose whatsoever unless and until the Developer has:

- (a) before the first Unit in the Proposed Development is either offered for sale or conveyed to a Unit Purchaser without being offered for sale, filed with the Superintendent of Real Estate a Rental Disclosure Statement pursuant to the Strata Property Act, designating all of the Units on, or to be constructed on the Lands in the Proposed Development, as rental available strata lots such that each and every Unit may, while this Agreement is in place, either be occupied by a Unit Purchaser or rented to a Tenant; and
- (b) given a copy of the filed Rental Disclosure Statement to each prospective Unit Purchaser of any Unit in the Proposed Development before the prospective Unit Purchaser enters into an agreement to purchase a Unit.

### **2.03 Rental Accommodation**

The Developer further covenants and agrees with the City that despite any strata corporation bylaws to the contrary, each and every Unit on, or to be constructed on the Lands, must always be available for either:

- (a) use or occupation by the Unit Purchaser (and/or any family members, guests or invitees of the Unit Purchaser and any other person permitted to use or occupy a Unit by the Unit Purchaser at the Unit Purchaser's sole discretion without condition); or
- (b) as Rental Accommodation, as determined by each Unit Purchaser, acting in that Unit Purchaser's sole discretion, for periods in excess of thirty (30) days.

2.04 The Developer and any subsequent Unit Purchaser will provide notice of this Agreement to any potential Unit Purchaser prior to any such potential Unit Purchaser entering into an agreement of purchase and sale, agreement for sale, or option or similar right to purchase as part of the Disclosure Statement for any part of the Proposed Development prepared by the Developer pursuant to the *Real Estate Development Marketing Act* (British Columbia) in respect of the Proposed Development.

2.05 A Unit Purchaser may, but is not obligated to, rent or lease the Unit Purchaser's Unit.

2.06 Occupancy and Use of Units

For greater certainty, and notwithstanding anything else contained herein, nothing contained herein will be interpreted or construed as restricting or preventing any Unit Purchaser and/or any family members, guests or invitees of the Unit Purchaser from occupying and residing in the Unit Purchaser's Unit and using such Unit for such purposes as the Unit Purchaser may determine, in his, hers or its sole discretion, from time to time (including, without limitation, renting or leasing his, her or its Unit to such person or persons from time to time for such periods of time and on such terms and conditions as the Unit Purchaser may determine, in his, hers or its sole discretion.

2.07 This Agreement shall be read and construed subject to the terms of the Section 219 Covenant/Housing Agreement in connection with the Affordable Rental Units and the Market Rental Housing Units. For certainty, upon the termination of the Section 219 Covenant/Housing Agreement, this Agreement will apply to the Affordable Rental Units and the Market Rental Housing Units.

### 3. STRATA CORPORATION BYLAWS

3.01 This Agreement will be binding upon all strata corporations created upon the strata title Subdivision of the Lands or any subdivided parcel of the Lands.

3.02 The Developer further covenants and agrees with the City that this Agreement shall be binding upon all strata corporations created upon the strata title subdivision of the Lands or any building on the Lands pursuant to the *Strata Property Act* and that upon the Lands, or any portion thereof, being subdivided by way of a strata plan pursuant to the Strata Property Act, then:

- (a) this Agreement will charge each strata lot and shall be noted on the common property record of the strata corporation; and
- (b) the strata corporation so created will be, at its cost, responsible for the performance and observance of the Developer's covenants and obligations in this Agreement, and the Developer will cause such strata corporation to execute an assumption agreement to give effect to the foregoing, and, upon delivery of such assumption agreement to the City, the Developer will be released from its obligations and liabilities hereunder, except to the extent and for such time that it remains an owner of any one or more of the Units.

3.03 Strata Bylaw Invalid

The Developer further covenants and agrees with the City that any strata corporation bylaw which prevents, restricts or abridges or purports to prevent, restrict or abridge the right to use any of the Units as Rental Accommodation shall have no force or effect.

3.04 No Bylaw

No strata corporation formed in respect of the Lands shall pass any bylaw(s) preventing, restricting or abridging the use of the Lands, the Proposed Development or the Units from time to time as Rental Accommodation.

3.05 Vote

No Unit Purchaser, nor any tenant or mortgagee thereof, shall vote in favour of any strata corporation bylaw purporting to prevent, restrict or abridge the use of the Lands, the Proposed Development, or the Units from time to time as Rental Accommodation.

**4. DEFAULT AND REMEDIES**

4.01 Notice of Default

The City may give to the Developer written notice to cure a default under this Agreement within 30 days of receipt of notice. The Developer must act with

diligence to correct the default within the time specified in the notice referred to herein.

#### 4.02 Costs

The Developer will pay to the City on demand by the City all the City's costs of exercising its rights or remedies under this Agreement as a consequence of default by the Developer, on a full indemnity basis.

#### 4.03 Equitable Remedies

The City, in addition to its rights under this Agreement or at law, will be entitled to all equitable remedies including specific performance, injunction and declaratory relief, or any of them, to enforce its rights under this Agreement.

#### 4.04 Specific Performance and No Penalty or Forfeiture

The Developer acknowledges and agrees with the City that:

- (a) specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Developer under this Agreement and that 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 Developer of this Agreement. Further, the Developer agrees that the foregoing provision is reasonable given the public interest in preserving the stock of Rental Accommodation in accordance with this Agreement;
- (b) it is entering into this Agreement to benefit the public interest in making the Rental Accommodation available;
- (c) the City's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out; and
- (d) the City's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.

#### 4.05 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.

## **5. LIABILITY**

### **5.01 Indemnity**

The Developer will indemnify and save harmless each of the City and the City Personnel 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 the entering into of this Agreement or from any act or omission by the Developer or its officers, directors, employees, agents, contractors, or other persons for whom at law the Developer is responsible or from the Developer's ownership, operation, management or financing of the Proposed Development or any part thereof.

### **5.02 Release**

The Developer hereby releases and forever discharges the City and the City Personnel 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 advice or direction respecting the ownership, operation or management of the Proposed Development or any part thereof which has been or hereafter may be given to the Developer.

## **6. GENERAL PROVISIONS**

### **6.01 City's Power Unaffected**

Nothing in this Agreement:

- (a) affects or limits any discretion, rights or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land;
- (b) affects or limits any enactment relating to the use of the Lands or any condition contained in any approval including any development permit concerning the development of the Lands; or
- (c) relieves the Developer from complying with any enactment, including the City's bylaws in relation to the use of the Lands.

### **6.02 Agreement for Benefit of City Only**

The Developer and 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 Developer;  
and
- (c) the City may at any time execute a release and discharge of this Agreement in respect of the Proposed Development or any Unit therein, without liability to anyone for doing so.

#### 6.03 Agreement Runs With the Lands

This Agreement burdens and runs with the Lands. All of the covenants and agreements contained in this Agreement are made by the Developer for itself, its successors and assigns, and all persons who acquire an interest in the Lands after the date of this Agreement.

#### 6.04 No Liability

Notwithstanding anything contained in this Agreement, the parties agree that neither the Developer, nor any successor in title to the Lands, or any portion thereof, will be liable for breaches of or non-observance or non-performance of covenants contained in this Agreement occurring after the date that the Developer or its successors in title, as the case may be, ceases to be the registered or beneficial owner of the Lands or such portion thereof.

#### 6.05 Contractual Obligations

The covenants and agreements on the part of the Developer have been made by the Developer as contractual obligations as well as being made pursuant to Section 483 of the *Local Government Act* (British Columbia) and as such will be binding on the Developer.

#### 6.06 Priority of This Agreement

The Developer will, at its expense, do or cause to be done all acts reasonably necessary to ensure this Agreement is registered against the title to each Unit in the Proposed Development in priority to all charges and encumbrances which are registered, or pending registration, against title to the Lands in the LTO, save and except those as have been approved by the City or have been granted in favour of the City.

#### 6.07 Agreement to Have Effect as Deed

The City and the Developer each intend by execution and delivery of this Agreement to create both a contract and a deed under seal.

#### 6.08 Waiver

An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.

6.09 Time

Time is of the essence in this Agreement.

6.10 Validity of Provisions

If a Court of competent jurisdiction finds that any part of this Agreement is invalid, illegal, or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

6.11 Extent of Obligations and Costs

Every obligation of a party which is set out in this Agreement will extend throughout the Term and, to the extent that any obligation ought to have been observed or performed prior to or upon the expiry or earlier termination of the Term, such obligation will survive the expiry or earlier termination of the Term until it has been observed or performed.

6.12 Notices

All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, by facsimile transmission, or by personal service, to the following address for each party:

If to the City:

100 Newport Drive  
Port Moody, B.C. V3H 3E1

Attention: Planning Department

If to the Developer at the address shown on title in the LTO.

Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; if made by facsimile transmission, on the first business day after the

date when the facsimile transmission was transmitted; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the other parties, may designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.

#### 6.13 Further Assurances

Upon request by the City, the Developer will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the City, to give effect to this Agreement.

#### 6.14 Enuring Effect

This Agreement will enure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.

#### 6.15 Section 219 Covenant and Housing Agreement

- (a) The Developer acknowledges and agrees that this Agreement constitutes a Housing Agreement entered into under Section 483 of the *Local Government Act* (British Columbia); and
- (b) The Developer further acknowledges and agrees that the terms and conditions of this Agreement constitute a covenant in respect of the use of the Lands and any Units on or 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 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.
- (c) The Developer acknowledges and agrees that:
  - (i) this Agreement constitutes a Housing Agreement entered into under section 483 of the *Local Government Act*;
  - (ii) the City is required to file a notice of Housing Agreement in the Land Titles Office (LTO) against title to the Land; and
  - (iii) once such a notice is filed, this agreement binds all persons who acquire an interest in the Land as a Housing Agreement under section 483 of the *Local Government Act*.

### 7. INTERPRETATION



#### 7.01 References

Gender specific terms include both genders and include corporations. Words in the singular include the plural, and words in the plural include the singular.

#### 7.02 Construction

The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this Agreement is to be construed simply according to its fair meaning, and not strictly for or against either party.

#### 7.03 No Limitation

The word "including" when following any general statement or term is not to be construed to limit the general statement or term to the specific items which immediately follow the general statement or term similar items, whether or not words such as "without limitation" or "but not limited to" are used, but rather the general statement or term is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of the general statement or term.

#### 7.04 Terms Mandatory

The words "shall", "must" and "will" are to be construed as imperative.

#### 7.05 Statutes

Any reference in this Agreement to any statute or bylaw includes any subsequent amendment, re-enactment, or replacement of that statute or bylaw.

#### 7.06 Entire Agreement

The Parties agree that:

- (a) this is the entire agreement between the City and the Developer concerning its subject, and there are no warranties, representations, conditions or collateral agreements relating to this Agreement, except as included in this Agreement; and
- (b) this Agreement may be amended only by a document executed by the parties to this Agreement and by bylaw, such amendment to be effective only upon adoption by City Council of a bylaw to amend Housing Agreement Bylaw \_\_\_\_\_.

7.07 Governing Law

This Agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia. As evidence of their agreement to be bound by the terms of this instrument, the City and the Developer hereto have executed the *Land Title Act* Form C that is attached hereto and forms part of this Agreement.

## **CONSENT AND PRIORITY AGREEMENT**

In consideration of the sum of TEN (\$10.00) DOLLARS and other good and valuable consideration, **ROYAL BANK OF CANADA** (the “**Prior Charge Holder**”), the holder of the following financial charge(s) registered in the New Westminster Land Title Office against title to the Lands charged by this instrument:

**Mortgage No. CA6686720 and**

**Assignment of Rents No. CA6686721**

(the “**Security**”)

for itself and its successors and assigns, hereby consents to the granting and registration of the within Section 219 Covenant (the “**Charge**”) and grants priority to the Charge over the Security and to the Prior Charge Holder’s right, title and interest in and to the Lands charged by this instrument, in the same manner and to the same effect as if the Charge had been executed, delivered and registered prior to the execution, delivery and registration of the Security and prior to the advance of any money under the Security.

As evidence of its agreement to be bound by the terms of this instrument, the Prior Charge Holder has executed the *Land Title Act* Form C or D which is attached hereto and forms part of this Agreement.