

**LAND TITLE ACT****FORM C**

(Section 219.81)

Province of British Columbia

**GENERAL INSTRUMENT – PART 1**

(This area for Land Title Office Use)

Page 1 of 11 pages

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

---

*signature of applicant, applicant's solicitor or agent*

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:  
(PID) (LEGAL DESCRIPTION)

3. NATURE OF INTEREST: DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Entire Instrument	Transferee

4. TERMS: Part 2 of this instrument consists of (select only one)

- |                                 |                                     |                                       |
|---------------------------------|-------------------------------------|---------------------------------------|
| (a) Filed Standard Charge Terms | <input type="checkbox"/>            | D.F. No.                              |
| (b) Express Charge Terms        | <input checked="" type="checkbox"/> | Annexed as Part 2                     |
| (c) Release                     | <input type="checkbox"/>            | There is no Part 2 of this instrument |

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):

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

7. ADDITIONAL OR MODIFIED TERMS: N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

**Execution Date**

Party(ies) Signature(s)

Y	M	D

by its authorized signatories:

---

SOLICITOR/NOTARY  
PUBLIC/COMMISSIONER  
(as to both signatures)  
Print Name and Address:

---

MAYOR

---

CITY CLERK,

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



Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

TERMS OF INSTRUMENT - PART 2

**SECTION 219 COVENANT**

THIS COVENANT dated the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

BETWEEN:

**PORTE HOMES (CLYDE) LTD.** (Inc. No BC 1155415), a company incorporated under the laws of the Province of British Columbia having an office at 100 – 33 East 8th Avenue, Vancouver, B.C. V5T 1R5

(the "**Covenantor**")

AND:

**CITY OF PORT MOODY**, a corporate municipality under the Local Government Act, c. 1 RSBC 2015, having its office at 100 Newport Drive, Port Moody, BC V3H 3E1

(the "**City**")

RECITALS

- A. The Covenantor is the is the registered owner of those lands and premises situate at 3217-3237 St Johns Street, in the City of Port Moody which are legally described as:

PID: 031-084-273

Lot 1 District Lot 233 Group 1 NWD Plan EPP89830

(the "**Lands**")

- B. The Covenantor has obtained development approval with respect to the Lands and intends to create a single building condominium development containing one hundred and seventeen (117) residential strata units to be constructed over one level of commercial premises and a vehicle parking facility on the Lands (the "**Development**");

- C. Plans for the Development include construction of a steel, woodstone plank and glass canopy (the “**Canopy**”) to provide street level weather protection adjacent to the Development and along and above the sidewalk on St Johns Street (the “**Sidewalk**”);
- D. The Owner has requested permission from the City to encroach upon the Sidewalk, which the City possesses for the benefit of the public, that portion of the Sidewalk shown outlined on the sketch plan attached as Schedule “A” to this agreement (the “**Encroachment Area**”);
- E. Section 219 of the *Land Title Act*, R.S.B.C. 1996, c. 250 permits the registration of a covenant of a positive or negative nature in favour of the City in respect of the use of land or the use of a building on or to be erected on the land.
- F. The Covenantor desires to grant this Covenant and the City is agreeable to accepting the Covenant on the terms and conditions contained herein.

NOW THEREFORE THIS COVENANT WITNESSES that in consideration of the terms of this Covenant and the sum of \$1.00 now paid by the City to the Covenantor, the receipt and sufficiency of which is hereby acknowledged, the City and the Covenantor hereby covenant and agree as follows:

- 1.
  - (a) The City, subject to the terms of this Agreement, grants the Covenantor permission to encroach upon the Encroachment Area at all times and from time to time to enter, re-enter, return, pass, repass, with or without vehicles and equipment on, over and through the Encroachment Area for the purpose of constructing, installing, maintaining, servicing, replacing, using and enjoying the Canopy.
  - (b) The Covenantor covenants to not undertake any construction, excavation or other work in the Encroachment Area, other than the Canopy, without the written permission of the City. The Covenantor shall not permit the Canopy to encroach on any sidewalk other than the Encroachment Area.
- 2. The Covenantor, covenants and agrees with the City as follow:
  - (a) the Lands and any building and structures situated thereon as at the date of this Covenant will not be further built on or added to, as the case may be, without the permission of the City;
  - (b) the Lands shall be used only in conformity with this Covenant;
  - (c) the Lands shall not be used in a manner which damages the Sidewalk;

- (d) the Lands shall be used in an integrated manner with the Encroachment Area;
  - (e) the Lands shall only be used and developed in accordance with the bylaws of the City of Port Moody as they may be from time to time;
  - (f) the Covenantor shall at all times and at their own expense keep and maintain the Canopy in good and sufficient repair to the satisfaction of the City;
  - (g) the Covenantor shall not make any structural alterations to the Canopy without the prior written consent of the City;
  - (h) if the Covenantor fails to keep the Canopy in good repair to the satisfaction of the City, the City may, in its sole discretion, cause such repairs to be made, including structural changes, as it deems necessary at the Covenantor's expense. The Covenantor shall pay the costs of the repairs to the City forthwith on demand; and
  - (i) if the City requires access for any reason to the Encroachment Area which is impeded by the Canopy, the Covenantor shall, at the Covenantor's sole cost and expense, temporarily remove the Canopy for the time necessary for the City to have access,
3. The restrictions and covenants in this Covenant are covenants running with the Lands.
4. The Covenantor agrees that:
- (a) the covenants, promises and agreements herein contained have been made as contractual obligations as well as being made pursuant to Section 219 of the *Land Title Act* and as such shall be binding on the Covenantor and their successors and assigns; and
  - (b) nothing herein shall be deemed to constitute a waiver of any lawful requirement with which the Covenantor would otherwise have to comply.
5. Nothing in this Covenant affects the City's rights and powers in the exercise of its statutory functions under its statutes, bylaws, resolutions, orders and regulations, all of which may be fully exercised in relation to the Lands as if this Covenant had not been granted.
6. The Covenantor indemnifies and saves harmless the City, and its elected officials, officer, employees, agents, nominees and delegates from all loss, damage, costs,

suits and actions and claims of any kind, however caused, whether known or unknown, arising out of or in any way connected with:

- (a) the grant of this Covenant, including without limitation, the permission to encroach;
  - (b) the existence and use of the Encroachment Area;
  - (c) the construction, maintenance, existence, use or removal of the Canopy; or
  - (d) any injury to person (including bodily injury or death or damage to or loss of property on or about the Encroachment Area).
7. The indemnity in Section 6 includes, without limiting the generality of the foregoing, a claim for loss or injury to persons or to property due to the Covenantor's negligence or to the Covenantor's failure to comply with the City's bylaws or any one of them or with any provision of this Covenant.
8. No finding of negligence, whether joint or several, as against the City in favour of any third party in an action to which the Covenantor was not a party, shall operate to relieve or shall be deemed to relieve the Covenantor in any manner from any liability to the City, whether such liability arises under this Covenant, under the provisions of the *Local Government Act* as amended from time to time or otherwise.
9. The Covenantor releases the City and its elected officials, officer, employees, agents, nominees and delegates from all manner of claims of any kind, whether known or unknown, which the Covenantor now has, or at any time may have, however caused, arising out of or in any way connected with the permission to encroach granted by this Covenant, the existence or use of the Encroachment Area, the construction, maintenance, existence, use or removal of the Canopy, or the exercise by the City of any of its rights in this Covenant.
10. The covenants of the Covenantor contained herein shall be personal and shall be binding upon the Covenantor only during its ownership of any interest in the Lands with the intent that, upon the Covenantor no longer having an interest in any portion of the Lands, the Covenantor shall be freed and discharged from the observance and performance thereafter of the covenants of that party in respect of the Lands in which it no longer has an interest.
11. In the event of subdivision of the Lands by the registration of a strata plan, the Covenantor will cause the strata corporation thereby created (the "Strata

Corporation”) to enter into an agreement in favour of the City, pursuant to which the Strata Corporation will assume and comply with the obligations of the Owner under this Agreement.

12. All amounts owed to the City under this Covenant that are not paid by the end of any calendar year, whether by default or otherwise, shall be deemed to be a charge or lien on the Lands with priority over any claim, lien, privilege or encumbrance of any person except the Crown. The registration of any document is not required to preserve this charge. It is in addition to all other remedies the City has for the collection of the amount owed. The amount of the charge may be collected by the City in the same manner and with the like remedies as ordinary taxes on land and improvements under the *Local Government Act* as amended from time to time.
13. The Covenantor shall at their own expense do or cause to be done all acts within their power reasonably necessary to grant priority to this Covenant over all financial charges and encumbrances which may have been registered against the title to the Lands, except those approved in writing by the City.
14. Every reference to the parties is deemed to include the heirs, executors, administrators, successors, assigns, employees, agents, officers, elected officials and invitees of the parties; this Covenant shall enure to the benefit of and be binding on the Covenantor notwithstanding any rule of law or equity to the contrary. Wherever the singular or masculine is used in this Covenant the same shall be construed as meaning the plural, feminine or body corporate or politic where the context so requires. The parties hereto shall do all things and execute all documents which may be necessary to give proper effect to the intention of this Covenant and this Covenant shall be governed and construed in accordance with the laws of the Province of British Columbia.
15. This Agreement does not give the Covenantor any legal or equitable interest of any kind in the Encroachment Area. The Encroachment Area retains its status as a sidewalk.
16. The Covenantor shall take out and maintain, with such companies and on such terms as are acceptable to the City, at the Covenantor’s expense, at all times while this Agreement is in force, comprehensive general liability insurance covering without limitation premises and operations liability, and contractual liability. The limits of liability for personal injury, property damage and contractual liability combined shall be for not less than \$5,000,000 for each occurrence or such other reasonable amount as may be determined by the City from time to time for each occurrence. The City shall be added as an additional named insured under the policies of comprehensive general liability insurance. A cross

liability clause shall be made part of the policies of comprehensive general liability insurance. All policies shall provide that they shall not expire, be cancelled or be materially changed without at least thirty (30) days prior written notice to the City by registered mail. Prior to the commencement of any work hereunder, and otherwise as the City may request, the Covenantor shall file with the City certified copies of each insurance policy required hereunder, or such other proof satisfactory to the City that all such policies are in force as may be applicable. Should the Covenantor neglect to obtain or maintain insurance as aforesaid or to deliver the policy or policies thereof to the City, the City shall have the right to, but shall not be obligated to, obtain or maintain such insurance, and the Covenantor hereby appoints the City its true and lawful attorney to do all things necessary for this purpose. All monies expended by the City for insurance premiums under the provisions of this Section shall be charged to the Covenantor and payable by the Covenantor to the City forthwith on demand.

17.

- (a) If the Covenantor violates any provision of this Agreement, or of the City's bylaws, the City may terminate all the Covenantor's rights under this Agreement on two weeks' notice in writing to the Covenantor.
- (b) The City, acting reasonably, may at any time in its sole discretion withdraw the rights it has granted to the Covenantor in this Agreement on six months' notice in writing to the Covenantor.
- (c) On receipt of written notice under Subsections (a) or (b), the Covenantor shall, within the time period stated in the notice, at their expense, remove the Canopy and fill up any excavation or disturbance made, constructed or maintained with respect to it, and otherwise restore the Encroachment Area to the satisfaction of the City.
- (d) Where the Council of the City, acting reasonably, considers that, in its sole discretion It is in the public interest to shorten the time limits in this Section, the Council may do so.
- (e) Notwithstanding any provision of this Agreement, the Owner shall not be entitled to compensation for injurious affection or disturbance resulting in any way from the removal of the Canopy and, without limitation, shall not be entitled to business losses, loss of profit, loss of market value, relocation costs or other consequential loss by reason of the removal of the Canopy or by reason of the termination of this Agreement.

18. The City's servants or agents shall have the right at any and all times to enter into and upon the Lands for the purpose of constructing, maintaining, inspecting or removing any public works or utility in the vicinity of the Encroachment Area or for the purpose of maintaining or removing the Canopy under this Agreement.
19. This Agreement does not in any way restrict the right of the City at any time to widen, raise, lower or alter, or grant licences, privileges or rights to other parties over, in and under, the Sidewalk , even if the effect of the alteration in width or elevation or both, or the granting of licenses, rights and privileges, may be to render the Canopy, the Encroachment Area, or both useless for the purposes of the Covenantor.
20. The waiver of default by either party shall not be deemed to be a waiver of any subsequent default by that party.
21. Whenever it is required or desired that either party deliver or serve a notice on the other, the delivery or service shall be deemed to be satisfactory if and deemed to have occurred when the notice has been:
  - (a) served personally, on the date of service; or
  - (b) mailed by pre-paid registered mail, on the date received or on the sixth day after mailing in any Canada Post office, whichever is the earlier, so long as the notice is mailed to the party at the address on the first page of this Agreement for that party or to an address to which the parties from time to time may in writing agree, except that in the event of a strike or disruption in postal service, the notice shall not be deemed to be received until actually received.
22. Any opinion which the City is entitled to form in this Agreement may be formed on behalf of the City by the General Manager of Engineering & Operations, in which event the opinion of the General Manager of Engineering & Operations shall be deemed to be the opinion of the City for the purposes of this Agreement.
23. Nothing in this Agreement exempts the Covenantor from complying with all applicable laws, including all municipal bylaws, or from obtaining all required permits and licenses relating to the use of the Encroachment Area or the Canopy.
24. If any part of this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Agreement.

25. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

IN WITNESS WHEREOF the parties have executed the Forms C & D attached to this Agreement.

**SCHEDULE "A"**

**"Encroachment Area"**

**END OF DOCUMENT**