

CITY OF PORT COQUITLAM

HOUSING AGREEMENT FOR 3620, 3640, 3646, 3650 WESTWOOD STREET AND
3639 and 3643 WOODLAND DRIVE BYLAW, 2023

Bylaw No. 4331

The Council of the Corporation of the City of Port Coquitlam enacts as follows:

1. CITATION

This Bylaw is cited as “Housing Agreement for 3620, 3640, 3646, 3650 Westwood Street and 3639 and 3643 Woodland Drive Bylaw, 2023, No. 4331”.

2. ADMINISTRATION

2.1 The Mayor and the Corporate Officer are authorized to execute the Housing Agreement substantially in the form of the document attached to and forming part of this Bylaw as Schedule “A”, between the City of Port Coquitlam and Mosaic Town and Centre One Holdings Ltd.

2.2 The Agreement is in respect to housing units located on the lands with the civic addresses of 3620, 3640, 3646, 3650 Westwood Street and 3639 and 3643 Woodland Drive (to be consolidated) and legally described as:

- Lot N, Township 39, District Lot 4, New West District, Plan NWP12651, Group 1, Except Plan 44046, (REF PL 29589).
- Lot 125, Township 39, District Lot 4, New West District, Plan NWP37731
- Lot A, Township 39, District Lot 4, New West District, Plan LMP39378
- Lot 85, Township 39, District Lot 4, New West District, Plan NWP34060
- Lot 91, Township 39, District Lot 4, New West District, PLAN NWP34324
- Lot 92, District Lot 4, New West District, Plan NWP34324, Group 1

READ A FIRST TIME this	25 th day of	July, 2023
READ A SECOND TIME this	25 th day of	July, 2023
READ A THIRD TIME this	25 th day of	July, 2023

Mayor

Corporate Officer

SCHEDULE A

SECTION 219 COVENANT — HOUSING AGREEMENT

(Section 219, *Land Title Act*)
(Section 483, *Local Government Act*)

THIS AGREEMENT is dated for reference the date of execution by the City on the Form C or D to which this Agreement is attached and which forms part of this Agreement

BETWEEN:

MOSAIC TOWN AND CENTRE ONE HOLDINGS LTD., having its offices at 500-2609 Granville Street, Vancouver, BC, V6H 3H3

(the “**Owner**”)

AND:

CITY OF PORT COQUITLAM, a municipal corporation having its offices at 2580 Shaughnessy Street, Port Coquitlam, BC, V3C 2A8

(the “**City**”)

WHEREAS:

- A. The Owner is the registered owner of the properties situated, lying and being in the City of Port Coquitlam, in the Province of British Columbia, described in Item 2 of the Form C attached hereto (the “**Lands**”);
- B. The Owner has submitted an application to the City to rezone the Lands (the “**Rezoning Application**”) from R1 (Residential Single Dwelling 1) and CC (Community Commercial) to CD (Comprehensive Development) to permit a development (the “**Development**”) that includes the construction on the Lands of a 30-storey building comprised of approximately four commercial units, 222 residential strata lots and, within the Air Space Parcel (as defined below), 70 residential dwelling units, all of which residential dwelling units within the Air Space Parcel are to be used and occupied only as Rental Housing (the “**Rental Units**”) (the component of the Development containing the Rental Units is referred to herein as the “**Rental Component**”);
- C. In connection with the completion of the Development, the Lands will be subdivided so that the Rental Units are contained in a separate air space parcel (the “**Air Space Parcel**”);
- D. The Rezoning Bylaw was approved on third reading on September 20, 2022, after public hearing on September 20, 2022, subject to a number of preconditions, including that the Owner make arrangements to the satisfaction of the City to enter into a housing agreement pursuant to Section 483 of the *Local Government Act* securing not less than a total floor area of 31,600 square feet of secured non-market rental housing and 18,330 square feet of secured market rental housing in the Development;
- E. 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;

- F. Section 219 of the *Land Title Act* states that a covenant in favour of a municipality may be registered as a charge against title to land and is enforceable against the covenantor and its successors in title even if the covenant is not annexed to land owned by the municipality; and
- G. As a condition of the Rezoning Bylaw to permit the development of the Lands in the manner aforesaid, the Owner has agreed to enter into this Agreement with the City.

NOW THIS AGREEMENT WITNESSES that for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge and agree to and will not be denied, the Owner and the City covenant and agree as follows:

ARTICLE 1 – INTERPRETATION

Section 1.01 Definitions.

In this Agreement, the following terms have the following meanings:

“**Agreement**” means this Section 219 Covenant — Housing Agreement together with all schedules, attachments and priority agreements attached hereto;

“**Air Space Parcel**” has the meaning ascribed thereto in Recital C;

“**Air Space Subdivision Plan**” means that air space subdivision plan of the Lands pursuant to which the Rental Component will be contained within the Air Space Parcel;

“**Arbitration Act**” means the *Arbitration Act*, S.B.C. 2020, c. 2, as amended, replaced, restated, or re-enacted from time to time;

“**Building**” means each new building or structure to be built on the Lands as contemplated by the Development Permit, 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 Permit;

“**Building Code**” means the British Columbia Building Code established by the British Columbia Building Code Regulation, B.C. Reg. 264/2012, or as may be amended, replaced, restated, or re-enacted from time to time;

“**City Solicitor**” means the City Solicitor for the City of Port Coquitlam;

“**Commencement Date**” means the date of adoption of the Rezoning Bylaw;

“**Development**” has the meaning ascribed thereto in Recital B;

“**Development Permit**” means the development permit issued, or to be issued, by the City authorizing development on the Lands, as amended from time to time, and the Development contemplated by the Rezoning Bylaw;

“**Eligible Households**” means, for any given time period, priority will be given to those (i) Households identified as being eligible by BC Housing or CMHC and (ii) Households having an annual Household Income that is at or below 80% of the median total income of households for the City of Port Coquitlam as published by Statistics Canada, referred to under the census profile “median total income of households” for Port Coquitlam, City (CY) British Columbia [Census Subdivision], or its successor in

function, for the most recent census year; provided that if Statistics Canada, or its successor in function, discontinues publication of the median total income of households for the City of Port Coquitlam, “**Eligible Households**” shall mean such other income threshold as agreed to in writing by the City and the Housing Operator operating the Non-Market Rental Units from time to time following consultation between the City, the Housing Operator, and the Owner;

“**Fair Market Rent**” means the monthly rent which would be paid for a Rental Unit as between persons dealing in good faith and at arm’s length for a similar residential dwelling of comparable size and number of bedrooms in buildings similar in location, age, quality and materials as the Market Rental Units;

“**Household**” means all of the individuals that occupy or propose to occupy a Rental Unit;

“**Household Income**” means, for any period of time, the aggregate of gross income from all sources of a Household (other than individuals under the age of 19), based on the most recent tax returns filed with the Canada Revenue Agency for that period of time;

“**Housing Operator**” has the meaning ascribed thereto in c);

“**Land Title Act**” means the *Land Title Act*, R.S.B.C., 1996, c. 250, as amended, replaced, restated, or re-enacted from time to time;

“**Land Title Office**” means the New Westminster Land Title Office;

“**Lands**” has the meaning ascribed thereto in Recital A;

“**Local Government Act**” means the *Local Government Act*, R.S.B.C. 2015, c. 1, as amended, replaced, restated, or re-enacted from time to time;

“**Market Rental Unit**” means a Rental Unit for which the monthly rent charged is Fair Market Rent;

“**Non-Market Rent**” means, in respect of a Non-Market Rental Unit, the average monthly rent for all Non-Market Rental Units which shall be no greater than 1/12th of 30% of 80% of the median total income of households for the City of Port Coquitlam as defined by Statistics Canada and updated from time to time (provided that, for any year for which Statistics Canada has not updated such information, the Non-Market Rent for the following year will increase by the increase in the Consumer Price Index (All Items) for the City of Port Coquitlam during the immediately preceding year plus 2% from that payable in the immediately preceding year); (for greater certainty: (1) the Owner will not be in default under this Agreement if it charges Non-Market Rents based on the proviso set out above and if, following subsequent updating of such information by Statistics Canada, such Non-Market Rents are higher than as determined pursuant to such median total income of households as determined by Statistics Canada and (2) the Owner will not be required to reduce the Non-Market Rent in any year if the median total income for households has decreased from what it was for the immediately preceding year);

“**Non-Market Rental Unit**” means a Rental Unit occupied by an Eligible Household for which the monthly rent charged is Non-Market Rent;

“**Notice**” has the meaning ascribed thereto in 0;

“Occupancy Permit” means a permit issued by the City authorizing the use and occupation of any building, development or partial development on the Lands;

“Owner” has the meaning ascribed to it on Page 1 hereof and such Owner’s respective successors in title from time to time as the registered or beneficial owner from time to time of any portion of the Lands or, if subdivided as described in the Recitals above, the Air Space Parcel;

“Rental Component” has the meaning ascribed thereto in Recital B;

“Rental Housing” means a dwelling unit that is rented, and which is not occupied by the registered or beneficial owner of the same, but which is made available by such owner to individual third parties at arm’s length, for use as residential rental accommodation on a month-to-month or longer basis in accordance with this Agreement, reasonably prudent landlord-tenant practice for rental residential accommodation, and subject to any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;

“Rental Parking Area” means the portion of the Development to be constructed for the parking of motor vehicles, including drive-aisles and access-ways, by occupants, tenants, and invitees of the Rental Units;

“Rental Parking Stalls” has the meaning ascribed thereto in k), or such other number or mix of parking stalls as is approved by the Development Permit;

“Rental Units” has the meaning ascribed thereto in Recital B;

“Residential Tenancy Act” means the *Residential Tenancy Act*, S.B.C. 2002, c. 78, as amended, replaced, restated, or re-enacted from time to time;

“Rezoning Application” has the meaning ascribed thereto in Recital B;

“Rezoning Bylaw” means the City of Port Coquitlam Zoning Bylaw, 2008, No. 3630, Amendment Bylaw, 2022, No. 4282 enacted in relation to the Rezoning Application;

“Term” has the meaning ascribed thereto in 0; and

“Zoning Bylaw” means the City of Port Coquitlam Zoning Bylaw 2008 No. 3630, as amended, replaced, restated, or re-enacted from time to time.

Section 1.02 Interpretation.

In this Agreement:

- a) any reference to a party herein will be deemed to include the heirs, executors, administrators, successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires;
- b) wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa as the context or the parties so require;

- c) the captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof; and
- d) references to the or this “Agreement” and the words “hereof”, “herein” and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated Recital, Article, Section, subsection or other subdivision is a reference to the designated Recital, Article, Section, subsection or subdivision hereof.

ARTICLE II – TERM

Section 2.01 The term (the “**Term**”) of this Agreement will commence on the Commencement Date and will end on the earlier of (i) the date that is sixty (60) years from the date when the final Occupancy Permit is issued for the originally constructed Rental Component described in Recital B and (ii) the date on which the City notifies the Owner in writing that the City has determined, in its sole discretion and at the sole cost of the Owner, that it is not economical to restore the Rental Component or to keep and maintain the Rental Component in tenantable condition to the standard required by this Agreement, and in such event, the City may abandon, surrender, and release the Owner from this Agreement and, at the Owner’s expense, cause the Notice of this Agreement to be removed from the title to the Lands; provided that any disagreement between the Owner and the City as to whether the City is obliged to abandon, surrender, and release the Owner from this Agreement pursuant to this 0 will be determined by arbitration conducted pursuant to the *Arbitration Act*, the cost of which arbitration will be borne evenly as between the Owner and the City. Each party will bear the cost of its own legal counsel in connection with any arbitration pursuant to this 0.

Upon the expiry of the Term in accordance with this 0, the City will, at the cost of, and upon written request by, the Owner, release the Notice (and any covenant registered pursuant to Section 219 of the *Land Title Act* in respect of this Agreement) from title to the Lands and any portion thereof (including, without limitation, the Air Space Parcel).

Section 2.02 The Owner acknowledges that the City will file in the Land Title Office on title to the Lands this Agreement and a notice in respect of this Agreement (collectively, the “**Notice**”) and any amendments made thereto from time to time in accordance with 0.

ARTICLE III – RESTRICTIONS ON AND CONDITIONS OF USE AND SUBDIVISION

Section 3.01 The Owner covenants and agrees that:

- a) throughout the Term, the Lands and all Buildings situate thereon will not be used in any way that is inconsistent with the terms of this Agreement;
- b) the Owner will construct, and throughout the Term will maintain, not less than the following total floor area of Rental Units:
 - i. 18,330 square feet of Market Rental Units; and
 - ii. 31,600 square feet of Non-Market Rental Units,

in accordance with the Building Code, the Rezoning Bylaw, the Development Permit, any building permit issued pursuant thereto, and the requirements of this Agreement;

- c) in respect of each Non-Market Rental Unit:
- i. at the start of the tenancy in respect of such Non-Market Rental Unit, such Non-Market Rental Unit shall not be occupied by a Household other than an Eligible Household;
 - ii. the monthly rent charged for such Non-Market Rental Unit shall be Non-Market Rent;
 - iii. subject to the terms and conditions of any reciprocal easement agreement between the owner of the Air Space Parcel and the other components of the Development, the occupants thereof will be entitled to access to and use of (on a non-exclusive basis with the occupants of the Market Rental Units and with other users of the Development) all amenity areas available to the Rental Component (including the co-working space located on level 1 of the Development, the indoor amenity space located on level 5 of the Development and the outdoor amenity space of the Development); and
 - iv. all such Non-Market Rental Units shall be operated and managed by one or more of the following entities: (i) a housing society, (ii) BC Housing, (iii) a non-profit housing corporation, or (iv) other entity approved by the City in writing (each a “**Housing Operator**”), and the Owner shall cause each Housing Operator to enter into an agreement with the City, in form and content satisfactory to the City, pursuant to which the Housing Operator has agreed to comply with the terms of this Agreement;
- d) no Rental Unit shall be used for residential tenancies having a term of less than 30 days;
- e) throughout the Term, no Rental Units will be used or occupied except as Rental Housing;
- f) throughout the Term, but subject to 0, the Owner will not suffer, cause, or permit the Lands to be subdivided, including by way of strata plan or air space plan;
- g) throughout the Term, the Owner will not suffer, cause or permit the beneficial or registered title to or any interest in and to the Rental Component, or any portion thereof, to be sold, leased (excepting residential tenancy agreements with individuals), or otherwise transferred unless the transferee(s) of the registered and beneficial title or interest, as applicable to the interest transferred, prior to and as a condition of closing enters into an assumption agreement satisfactory to the City whereby such transferee agrees to be and thereafter remain bound by each and every term and condition of this Agreement applicable to the Owner;
- h) throughout the Term, the Owner will insure, or cause to be insured, the Rental Component and all parts thereof, to the reasonable replacement cost against perils normally insured against in the City of Port Coquitlam by reasonable and prudent owners of similar premises and lands;
- i) throughout the Term and unless and until the City consents otherwise in writing by way of an amendment to this Agreement on request of the Owner, the Owner will keep and maintain the Rental Component, including without limitation the Rental Units, in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted, and fit for human habitation and consistent with the general standards required by the *Residential Tenancy Act* and all other applicable statutes, regulations, bylaws, and rules in effect from time to time for residential rental units of similar age and character in the City of Port Coquitlam from time to time and will comply with the same, including health and safety standards applicable to the Development; provided that, subject to and in accordance with Section 532 of the *Local Government Act*, if the Rental Component or any part of thereof is damaged or destroyed by any means whatsoever including

fire, the Owner will promptly restore, repair, and replace the same whenever and as often as damage occurs to at least as good a state and condition as existed before such damage occurred;

- j) throughout the Term, upon issuance of an Occupancy Permit for the Rental Component, the Owner will post and will at all times maintain, and update from time to time as applicable, signage at the main entrance to the Rental Component which signage clearly sets out the then current name and contact information for the building operator or manager for means of contact for residents and other persons;
- k) throughout the Term, the Owner confirms and acknowledges that at all times within the Rental Parking Area, there will be not less than 48 parking stalls (the “**Rental Parking Stalls**”) and not less than 70 bicycle stalls, provided however that in the event the City requires a number or mix of parking stalls different from those set out in the Development Permit, “**Rental Parking Stalls**” shall mean the number and mix of parking stalls prescribed in the Development Permit, and without limiting the foregoing, the Owner agrees and acknowledges that the Owner, including any tenant, resident or other occupant of or visitor to any Rental Unit, will not do anything and will not enter into any arrangement with any person that prevents or could prevent the Rental Parking Stalls being available for rent by the tenants, residents or other occupant of or visitors to the Rental Units, as applicable; provided that it is acknowledged by the City that up to two (2) of the Rental Parking Stalls may be assigned for the exclusive use of a resident, tenant, or other occupant of any one Rental Unit as determined by the Owner from time to time;
- l) throughout the Term, the Owner will not amend the number or composition of the Rental Units or the Rental Parking Stalls once an Occupancy Permit for the Rental Component has been issued, without the prior written consent of the City, which consent may be arbitrarily withheld;
- m) throughout the Term, the Owner will not demolish the Rental Component or any portion thereof without the prior written consent of the City and, in any case, without a demolition permit therefor issued by the City in the City’s sole discretion, and following any such demolition the Owner will use and occupy any replacement rental development that may be constructed within the Rental Component in compliance with this Agreement to the same extent and in the same manner as this Agreement applies to the original Rental Component or portion thereof; and
- n) the Owner will include in each tenancy agreement in respect of a Non-Market Rental Unit, to the extent permitted by the *Residential Tenancy Act*, a clause entitling the Owner to terminate such tenancy agreement if:
 - i. the Non-Market Rental Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and/or
 - ii. the tenant of such Non-Market Rental Unit subleases the Non-Market Rental Unit or assigns the tenancy agreement in the whole or in part,

and in the case of each such event, the Owner may, at its option, provide to the tenant under the applicable tenancy agreement a notice of termination, unless termination of such tenancy agreement by the Owner would not be permitted in the circumstances pursuant to the *Residential Tenancy Act* or the *Human Rights Code* or any other applicable law. Such notice of termination will provide that the termination of the tenancy will be effective two (2) months following the date of such notice or as required by the *Residential Tenancy Act* in the

circumstances described in subparagraphs (i) and (ii) above, or such longer period as the Owner considers to be fair and reasonable given the circumstances of the termination.

Section 3.02 For greater certainty, the City confirms and agrees that:

- a) there are no restrictions under this Agreement on the monthly rent which the Owner may require the occupant of a Market Rental Unit to pay or on any additional costs such as fees for parking and bicycle storage and charges for utility services (such as gas, water, sewer, garbage and recycling, television, telephone, internet and other services not usually included in rent, whether payable to the Owner or to any third-party utility provider) which the Owner may require the occupant of a Market Rental Unit to pay;
- b) there are no restrictions under this Agreement on any additional costs such as fees for parking and bicycle storage and charges for utility services (such as gas, water, sewer, garbage and recycling, television, telephone, internet and other services not usually included in rent, whether payable to the Owner or to any third-party utility provider) which the Owner may require the occupant of a Non-Market Rental Unit to pay, provided that such additional costs for parking and bicycle storage cannot exceed the cost therefor charged to occupants of the Market Rental Units; and
- c) the Owner will be obligated to ensure that a Non-Market Rental Unit is occupied by an Eligible Household only at the start of the tenancy in respect of such Non-Market Rental Unit and the Owner will not be deemed to be in default under this Agreement if such Household subsequently ceases to be an Eligible Household.

ARTICLE IV – OCCUPANCY RESTRICTION ON THE LANDS

Section 4.01 Throughout the Term, the Owner covenants and agrees with the City that, notwithstanding that the Owner may be otherwise entitled, the Owner will not, and will not suffer or permit any other person to occupy the Non-Market Rental Units, except as otherwise provided in this Agreement, unless the Owner has delivered to the City, in form satisfactory to the City's Director of Development Services, in her or his sole discretion from time to time, evidence that the Non-Market Rental Units are owned or operated by, or leased to, for the duration of the Term, a Housing Operator.

The Owner agrees that in the event that an agreement in respect of the operation of the Non-Market Rental Units, as aforesaid, is surrendered, terminated, or discharged from title, as the case may be, prior to the expiry of the Term, or if title to the Non-Market Rental Units is transferred prior to the expiry of the Term, the Owner will forthwith provide the City with written notice of such surrender, termination, discharge, or transfer.

ARTICLE V – RECORD KEEPING

Section 5.01 The Owner will keep accurate records pertaining to the use and occupancy of the Rental Component, including but not limited to: 1) rent rolls that detail the specific monthly rent received for each of the Non-Market Rental Units; and 2) detailed tenant files which include evidence that tenants of Non-Market Rental Units meet the eligibility criteria for Non-Market Rental Units, such records to be to the satisfaction of the City. At the request of the City, from time to time (but no more often than once per calendar year), the Owner will make such records available for inspection and copying by the City and, if required by the City, accompanied by a Statutory Declaration in form satisfactory to the City. The City will comply with the Owner's statutory obligations with respect to privacy of such information.

Section 5.02 Notwithstanding anything to the contrary in 0 above, any lender to the Owner which acquires title to the Rental Component shall only be required to use commercially reasonable efforts to satisfy the obligations in 0.

ARTICLE VI – SUBDIVISION OF THE LANDS

Section 6.01 Notwithstanding f), subject to compliance with all applicable requirements of the City's Approving Officer and City Council, this Agreement, and all applicable laws and by-laws, the City will not unreasonably withhold its consent to a subdivision of the Lands by the deposit of an air space subdivision plan, provided that the Rental Component will thereafter be contained within one single air space parcel, and the residents, tenants, or other occupants of, or visitors to, the Rental Component are provided with registered easements that grant, *inter alia*, use and access to facilities and amenities for the exclusive or shared use of the Rental Component, including without limitation, the Rental Parking Area.

Section 6.02 The Owner acknowledges and agrees with the City as follows:

- a) as the Lands have not yet been subdivided to create the Air Space Parcel as of the date of this Agreement, the City may file the Notice of this Agreement in the Land Title Office on title to the Lands, provided that preparation and land title filing costs for such Notice will be borne by the Owner; and
- b) following the deposit of the Air Space Subdivision Plan and the issuance of a final Occupancy Permit for the Rental Component, the Owner may apply to the City for a partial release of the Notice (and any covenant registered pursuant to Section 219 of the *Land Title Act* in respect of this Agreement) from title to all of the Lands other than the Air Space Parcel, and the City Solicitor shall be entitled, without further City Council approval, authorization or bylaw, to consent to the release of the Notice (and any covenant registered pursuant to Section 219 of the *Land Title Act* in respect of this Agreement) as aforesaid such that the Notice (and any covenant registered pursuant to Section 219 of the *Land Title Act* in respect of this Agreement)

is filed solely upon the title of the Air Space Parcel, and if desired by the City in the City's sole discretion, to fully release the Notice (and any covenant registered pursuant to Section 219 of the *Land Title Act* in respect of this Agreement) and to file a new Notice (including any covenant registered pursuant to Section 219 of the *Land Title Act* in respect of this Agreement) in replacement against title to the Air Space Parcel, and this Agreement shall be and remain in full force and effect and, but for the partial release or full release, as applicable, unamended, provided further that:

- i. the City Solicitor is satisfied that such release will not unreasonably alter, restrict, or limit the City's rights and the Owner's agreements and obligations in respect of the Rental Component or in respect of the Air Space Parcel pursuant to this Agreement;
- ii. any such partial or full release will be prepared by the Owner at its sole cost and will be in form and substance acceptable to the City Solicitor;
- iii. the City will have a reasonable amount of time to review, execute, and return any such release to the Owner; and

- iv. all preparation and land title filing costs associated with any such partial release will be borne by the Owner;

and provided always that the Air Space Parcel will not be further subdivided by strata plan or otherwise for the entirety of the Term of this Agreement.

ARTICLE VII – INDEMNITY

Section 7.01 As an integral part of this Agreement, pursuant to Section 219(6)(a) of the *Land Title Act*, the Owner hereby indemnifies the City from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses, demands, losses and expenses (including the full amount of all legal fees and disbursements incurred by the City to enforce the restrictions under 0 of this Agreement) at any time suffered or incurred by, or brought against, the City, or any of its elected or appointed officials, officers, employees or agents, arising from or connected with any breach of this Agreement or the enforcement by the City of this Agreement.

Section 7.2 The Owner covenants and agrees with the City that, in addition to any other remedies available to the City under this Agreement or at law or equity, if the Owner defaults under the terms of this Agreement, including without limitation omitting, failing or neglecting to carry out any of its obligations contained in this Agreement and doing or carrying out an act contrary to the Owner's obligations contained in this Agreement:

- a) the Owner shall rectify such default within 30 days' of receipt of written notice of such default to the Owner by the City;
- b) if the Owner fails to cure such default to the satisfaction of the City within the required time frame specified in a), the City may deliver to the Owner a second notice in respect of such default and, if the Owner fails to cure such default to the satisfaction of the City within 30 days after receipt by the Owner of such second notice, then the City may, but is under no obligation to, enter onto the Lands and rectify such default to the extent considered necessary

by the City (provided that if the City, in case of emergency, does not consider that it has time to deliver either the notice referred to in a) or such second notice, it may, but is under no obligation to, enter onto the Lands and rectify such default to the extent considered necessary by the City);

- c) if the Owner fails to take such positive action as the City considers necessary to rectify any default as provided for herein, the City may apply to court for a mandatory or prohibitive order requiring the Owner to take such action; and
- d) the Owner shall pay to the City on demand the aggregate of the City's costs of rectifying any default of the Owner under this Agreement together with any other fees, costs, and other amounts the Owner may owe to the City from time to time pursuant to or arising from this Agreement, plus a sum equal to 15% of the collective amount of such fees, costs, and other monies on account of the City's overhead costs, provided that the City will be entitled to grant full or partial relief to the Owner from such obligation to pay, and if the Owner fails to pay such amounts to the City within 30 days from the date the Owner receives any such demand from the City, any and all arrears will bear interest from the date of demand to the date of payment at the prime rate of the Bank of Nova Scotia plus 3% per annum.

Section 7.03 Survival of Indemnity. This 0 will remain effective, and will survive any modification of, or partial release or release of the covenants created by this Agreement, and the termination of this Agreement, whether by fulfillment of the covenants contained in this Agreement or otherwise.

ARTICLE VIII – GENERAL PROVISIONS

Section 8.01 Amendment.

- a) This Agreement may be amended from time to time by agreement between the Owner and the City. Except as otherwise expressly provided in this Agreement, the amendment agreement must be by an instrument in writing duly executed by the Owner and the City.
- b) Without limiting the generality of 0a), the Owner and the City agree that if BC Housing or Canada Mortgage and Housing Corporation (“**CMHC**”) requires any reasonable changes to this Agreement in order for the Owner or the Housing Operator to secure financing from BC Housing or CMHC in relation to the operation of the Non-Market Rental Units, then the parties will use commercially reasonable efforts to amend this Agreement to address the requirements of BC Housing or CMHC concerns, as the case may be, and to file replacements, or modifications, to this Agreement and any other charges registered on title to the Lands, to the extent required to reflect such amendment, within a reasonable time.

Section 8.02 Legislation. Any reference to a law or statute herein includes and is a reference to such law or statute and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any law or statute or applicable regulation amending, replacing, or superseding any of the same.

Section 8.03 Time. Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party(ies). If a time is specified in this Agreement for observing or performing any obligation, such time shall be Pacific Standard Time.

Section 8.04 No Effect on Rights. Nothing contained or implied herein will prejudice the rights and powers of the City in the exercise of its functions under any public and private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and this Agreement does not 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, nor does this Agreement relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

Section 8.05 Benefit of City. The City is a party to this Agreement for the purpose only of receiving the covenants, promises and agreements as provided in the terms of this Agreement and is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Lands, the Development or any portion thereof and the City may at any time execute a release for the discharge of the Notice of this Agreement without liability to anyone for doing so, and without obtaining the consent of the Owner.

Section 8.06 Agreement Runs with the Lands. Following the filing of the Notice in the Land Title Office, subject to b), this Agreement and, if applicable, any amendments thereto, will be binding on all persons who acquire an interest in the land affected by this Agreement, as amended if applicable, and any parcel from which it is subdivided by any means and any parcel into which it is consolidated. It is further expressly agreed that this Agreement may be modified or amended from time to time, by

consent of the Owner and a bylaw duly passed by City Council and thereafter if an amendment is signed by the City and the Owner.

Section 8.07 Housing Agreement/Section 219 Covenant. The Owner acknowledges and agrees that this Agreement constitutes both a covenant under Section 219 of the *Land Title Act* and a housing agreement under Section 483 of the *Local Government Act*.

Section 8.08 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 such applicable portions thereof, provided however that notwithstanding that the Owner is no longer the registered owner of the Lands or any portion thereof, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Lands or such portions thereof, as the case may be.

Section 8.09 Enurement. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

Section 8.10 Further Assurances. The parties will do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

Section 8.11 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.

Section 8.12 Severability. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, 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.

Section 8.13 Waiver. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

Section 8.14 No Fiduciary Relationship. Nothing contained in this Agreement will be deemed in any way, or for any purpose, to constitute the City a partner, agent or legal representative of the Owner in the conduct of any business or otherwise, or a member of a joint venture or joint enterprise with the Owner, or to create any fiduciary relationship between the City and the Owner.

Section 8.15 Joint and Several. If the Owner consists of more than one person, firm, or corporation, from time to time, the Owner's obligations under this Agreement shall be joint and several.

Section 8.16 Survival. Subject to 0, and notwithstanding anything contained herein, the Owner covenants and agrees that the obligations of the Owner, including without limitation those set out in 0, shall survive termination or release of this Agreement.

Section 8.17 Notice. Whenever it is required or desired that either party will deliver or serve a notice on the other, delivery or service will be deemed to be satisfactory if and deemed to have occurred when:

- a) the Clerk of the City or the Owner, or its successor in title, or a director of the Owner or successor in title, if applicable, has been served personally, on the date of service; or

- b) mailed by prepaid registered mail, on the date received or on the sixth day after receipt of mailing by any Canada Post office, whichever is the earlier, so long as the notice is mailed to, in the case of the City, at the address provided in this Agreement, or in the case of the Owner, or its successor in title, at the address noted on the Certificate of Title for the Lands, or to whatever address a party may from time to time provide to the other party.

Section 8.18 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City that:

- a) the Owner has the full and complete power, authority, and capacity to enter into, execute, and deliver this Agreement and to bind its interest in the Lands with the interests in lands created hereby;
- b) upon execution and delivery of this Agreement and the filing of the Notice, the interests in land created hereby will encumber the Owner's interest in the Lands;
- c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
- d) the foregoing representations, warranties, covenants, and agreements will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

Section 8.19 Counterparts. This Agreement may be executed and delivered by the parties hereto in one or more counterparts, each of which will be an original.

IN WITNESS WHEREOF, each of the parties has duly executed this Agreement on the Forms C and D to which this Agreement is attached and which form part of this Agreement, effective as of the date first written above.