



District of West Vancouver

Housing Agreement Authorization Bylaw No. 5010, 2019
(Amica Lions Gate/Maison Senior Living)

Effective Date: November 4, 2019

District of West Vancouver

Housing Agreement Authorization Bylaw No. 5010, 2019

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District of West Vancouver

Housing Agreement Authorization Bylaw No. 5010, 2019

A bylaw to enter into a Housing Agreement.

WHEREAS a local government may enter into a housing agreement with an owner of land, under section 483 of the *Local Government Act*,

NOW THEREFORE, the Council of The Corporation of the District of West Vancouver enacts as follows:

Part 1 Citation

- 1.1 This bylaw may be cited as Housing Agreement Authorization Bylaw No. 5010, 2019.

Part 2 Severability

- 2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsection, paragraph, subparagraph, clause or phrase.

Part 3 Housing Agreement

- 3.1 The District of West Vancouver is authorized to enter into a housing agreement under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*, substantially in the form attached to this bylaw as Schedule A, in respect of the land located at 727 Keith Road, West Vancouver and legally described as PID:007-887-302 LOT 2 SOUTH EAST ¼ OF DISTRICT LOT 1047 PLAN 14144.
- 3.2 The Mayor and Corporate Officer are authorized to execute the agreement referred to in section 3.1 of this Bylaw.

Schedule

Schedule A – Housing Agreement and Covenant

READ A FIRST TIME on June 10, 2019

READ A SECOND TIME on July 8, 2019

READ A THIRD TIME on July 8, 2019

ADOPTED by the Council on November 4, 2019

[Original signed by Mayor]

Mayor

[Original signed by Corporate Officer]

Corporate Officer

Schedule A – HOUSING AGREEMENT

PART 2 – TERMS OF INSTRUMENT

HOUSING AGREEMENT, COVENANT and RENT CHARGE (Section 483 *Local Government Act* and Section 219 *Land Title Act*)

THIS AGREEMENT dated for reference the ___ day of _____, 2019 is

BETWEEN:

Maison/BayBridge Senior Living Inc.
Suite 100 – 2489 Bellevue Avenue
West Vancouver, BC V7V 1E1

(the “**Owner**”)

AND:

DISTRICT OF WEST VANCOUVER
750 17th Street
West Vancouver, BC V7V 3T3

(the “**District**”)

WHEREAS:

- A. The Owner is the registered owner of land located in the District of West Vancouver and more particularly described as:

PID: 007-887-302

Lot 2, South East ¼ of District Lot 1047 Plan 14144

(the “**Land**”);

- B. The Owner wishes to construct on the Land a development consisting of approximately 48 residential dwelling units, the occupancy of which units shall be restricted to individuals who are at least 55 years of age (“**Seniors**”);
- C. Section 483 of the *Local Government Act* permits the District to enter into and note on title to land, agreements which include conditions respecting the availability of housing units to identified classes of persons;
- D. Section 219 of the *Land Title Act* permits the registration of a covenant prohibiting the subdivision of land subject to the covenant; and

- E. The Owner and the District wish to enter into this Agreement, which shall be a housing agreement and a covenant, to provide rental housing for Seniors, on the terms and conditions set out herein.

In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the District covenant and agree pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this Agreement, in addition to the definitions included in the recitals, the following words and terms have the following meanings:

- (a) “CPI” means Canada’s federal consumer price index published by Statistics Canada (or by a successor or other governmental agency) or if such index is no longer published, an index published in substitution for such index or a replacement index designated by the District;
- (b) “Daily Amount” means \$500.00 per day as of January 1, 2020, adjusted annually thereafter to the amount calculated by multiplying \$500.00 by the non-compounded percentage change in the CPI since January 1, 2020, to January 1 of the year that a written notice is delivered to the Owner by the District pursuant to section 3.1 of this Agreement. In the absence of obvious error or mistake, any calculation by the District of the Daily Amount in any particular year shall be final and conclusive;
- (c) “Dwelling Unit” means a self-contained area or set of rooms that contains sleeping and washroom facilities, and is suitable and intended to be used for residential accommodation;
- (d) “Lot A” means the lands at 825 Taylor Way, legally described as PID 029-405-157 Lot A South East ¼ of District Lot 1047 New Westminster District Plan EPP44863 Except Part in Plan EPP48263;
- (e) “Rental Dwelling Units” means the [48] new Dwelling Units to be constructed on the Land, generally as shown on the plan attached as Schedule A hereto, for the purpose of providing rental housing for Seniors including housing for short-term stay for Seniors;
- (f) “Subdivide”, “Subdividing”, or “Subdivision” means to divide, apportion, consolidate or subdivide the Land or any building on the Land, or the ownership or right to possession or occupation of the Land or any building on the Land, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land*

Title Act, the Strata Property Act, or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or a “shared interest in land” as defined in the Real Estate Development Marketing Act.

ARTICLE 2 RESTRICTIONS ON USE, OCCUPANCY AND SUBDIVISION

- 2.1 No Subdivision** – The Owner shall not subdivide the Land or any building on the Land.
- 2.2 Use and Occupancy** – The Owner agrees that every Rental Dwelling Unit on the Land shall be used and occupied only as residential rental accommodations for Seniors including housing for short-term stay for Seniors.
- 2.3 Occupancy Verification** – Within two weeks of the District delivering to the Owner, in writing, a request for occupancy verification, the Owner will provide to the District a written statement of the Owner confirming that the occupancy of every Rental Dwelling Unit complies with section 2.2, provided that the District may make a request under this section no more than once in a calendar year.
- 2.4 Consolidation of Land** – Notwithstanding the provisions of section 2.1, the Owner shall be permitted to consolidate the Land with Lot A and from and after such consolidation the charge created by this Agreement shall apply only to the Rental Dwelling Units and shall not charge any part of the consolidated lands formerly part of Lot A, except to the extent the Rental Dwelling Units are constructed partially on Lot A.

ARTICLE 3 DEFAULT AND REMEDIES

- 3.1 Payment of Daily Amount** – The Owner agrees that, in addition to any other remedies available to the District under this Agreement or at law or in equity, if a Rental Unit is used or occupied in breach of this Agreement or the Owner is otherwise in breach of any of its obligations under this Agreement, and the Owner fails to rectify such breach within thirty (30) days of receipt of written notice from the District setting out the details of such breach, the Owner will pay the Daily Amount to the District for every day that the breach continues after receipt of the District’s notice. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the District for the same which invoice may only be provided if the breach is not rectified within the time period contemplated above.
- 3.2 Rent Charge** – The Owner hereby grants to the District a perpetual rent charge against the Land securing payment by the Owner to the District of any amount payable by the Owner pursuant to section 3.1 of this Agreement. The Owner agrees that the District, at its option, may enforce payment of such outstanding

amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the District at law or in equity. This rent charge is created both under section 219(6) of the Land Title Act as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law. Enforcement of this rent charge by the District does not limit, or prevent the District from enforcing, any other remedy or right the District may have against the Owner.

ARTICLE 4 MISCELLANEOUS

- 4.1 Nature of Agreement** – The Owner acknowledges and agrees that this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act*, a covenant under section 219 of the *Land Title Act*, and integral to the covenant, a rent charge.
- 4.2 Indemnity** – The Owner will indemnify and save harmless the District and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:
- (a) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
 - (b) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Land or any Rental Dwelling Unit; or
 - (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.
- 4.3 Release** – The Owner hereby releases and forever discharges the District and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:
- (a) construction, maintenance, repair, ownership, lease, license, operation or management of the Land or any Rental Dwelling Unit under this Agreement; or
 - (b) the exercise by the District of any of its rights under this Agreement.

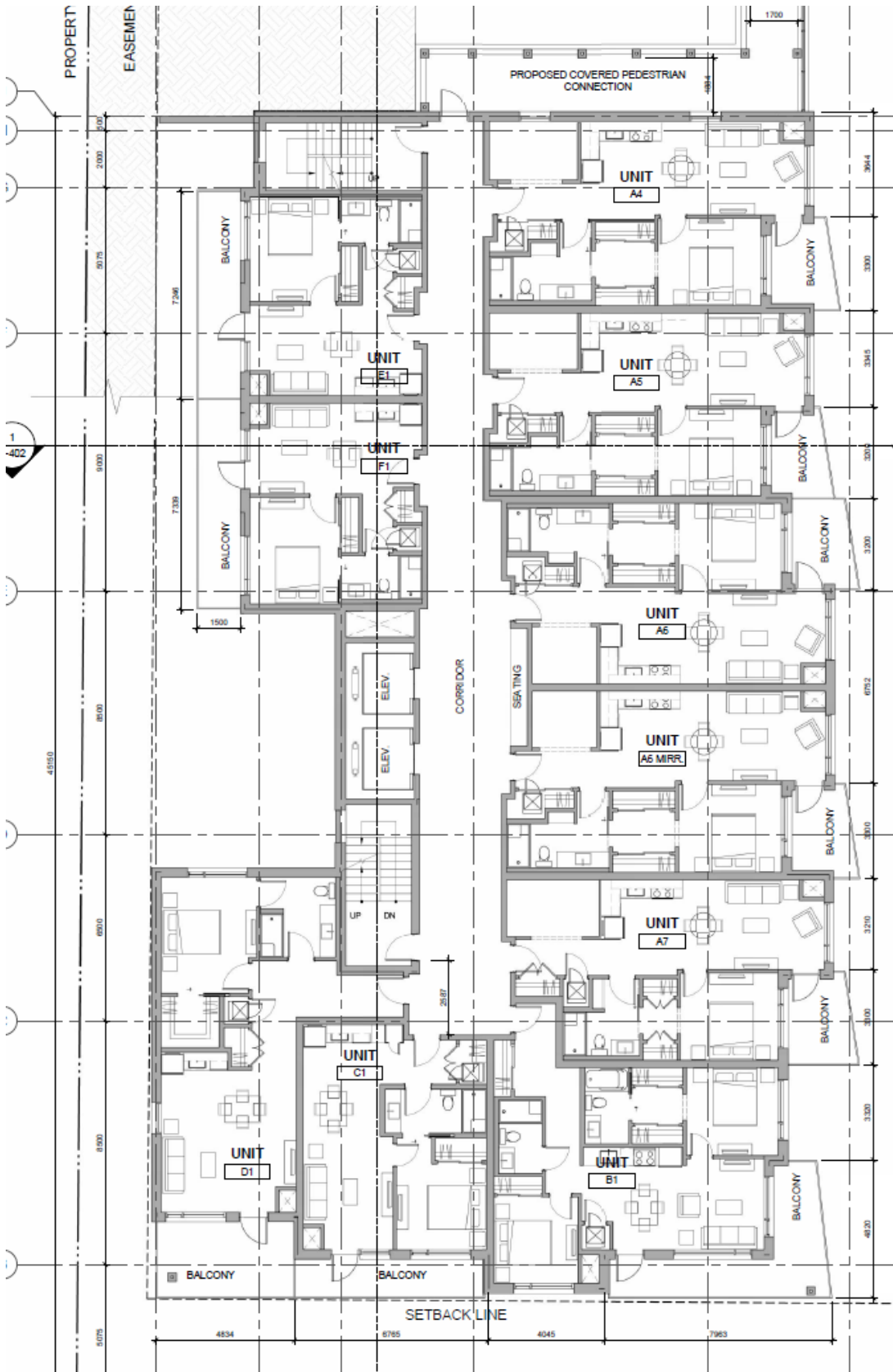
- 4.4 Survival** – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.
- 4.5 Priority** – The Owner will do everything necessary, at the Owner’s expense, to ensure that this Agreement will be noted and registered against title to the Land in priority to all financial charges and financial encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in advance in writing by the District or in favour of the District, and that a notice under section 483(5) of the *Local Government Act* will be filed on the title to the Land. If a financial charge and/or financial encumbrance have been registered or are pending registration against title to the Land as of the date of this Agreement, the Owner shall obtain from the applicable chargee(s) a consent and priority agreement substantially in the form attached hereto as Schedule B as soon as practicable after the date hereof and, in any event, within 60 days of the date hereof.
- 4.6 District’s Powers Unaffected** – This Agreement does not:
- (a) affect, fetter or limit the discretion, rights, duties or powers of the District under any enactment or at common law, including in relation to the use or subdivision of the Land;
 - (b) impose on the District any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - (c) affect or limit any enactment relating to the use or subdivision of the Land;
or
 - (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
- 4.7 Agreement for Benefit of District Only** – The Owner and the District agree that:
- (a) this Agreement is entered into only for the benefit of the District;
 - (b) this Agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Land or the building or any portion thereof, including any Rental Dwelling Unit; and
 - (c) the District may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner, provided that a release and discharge under this Section shall terminate the Agreement including, for certainty, the rent charge contemplated in Section 3.2 and the burden and charge of this Agreement on the Land referenced in Section 4.15.

- 4.8 No Public Law Duty** – Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.
- 4.9 Notice** – Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out on title to the Land in the records at the Land Title Office, and in the case of the District at the address listed above, to the attention of the Director of Planning or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.
- 4.10 Enuring Effect** – This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 4.11 Severability** – If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.
- 4.12 Waiver** – All remedies of the District will be cumulative and may be exercised by the District in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the District exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.
- 4.13 Whole Agreement** – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the District and the Owner respecting the use and occupation of the Rental Dwelling Unit, and there are no warranties, representations, conditions or collateral agreements made by the District except as set forth in or contemplated by this Agreement.
- 4.14 Further Assurance** – Upon request by the District the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the District, acting reasonably, to give effect to this Agreement.
- 4.15 Agreement Runs with Land** – This Agreement burdens and runs with the Land in perpetuity, and for clarity, this Agreement shall burden and remain as a charge on the title to the Land and shall restrict the use of any Rental Dwelling Unit

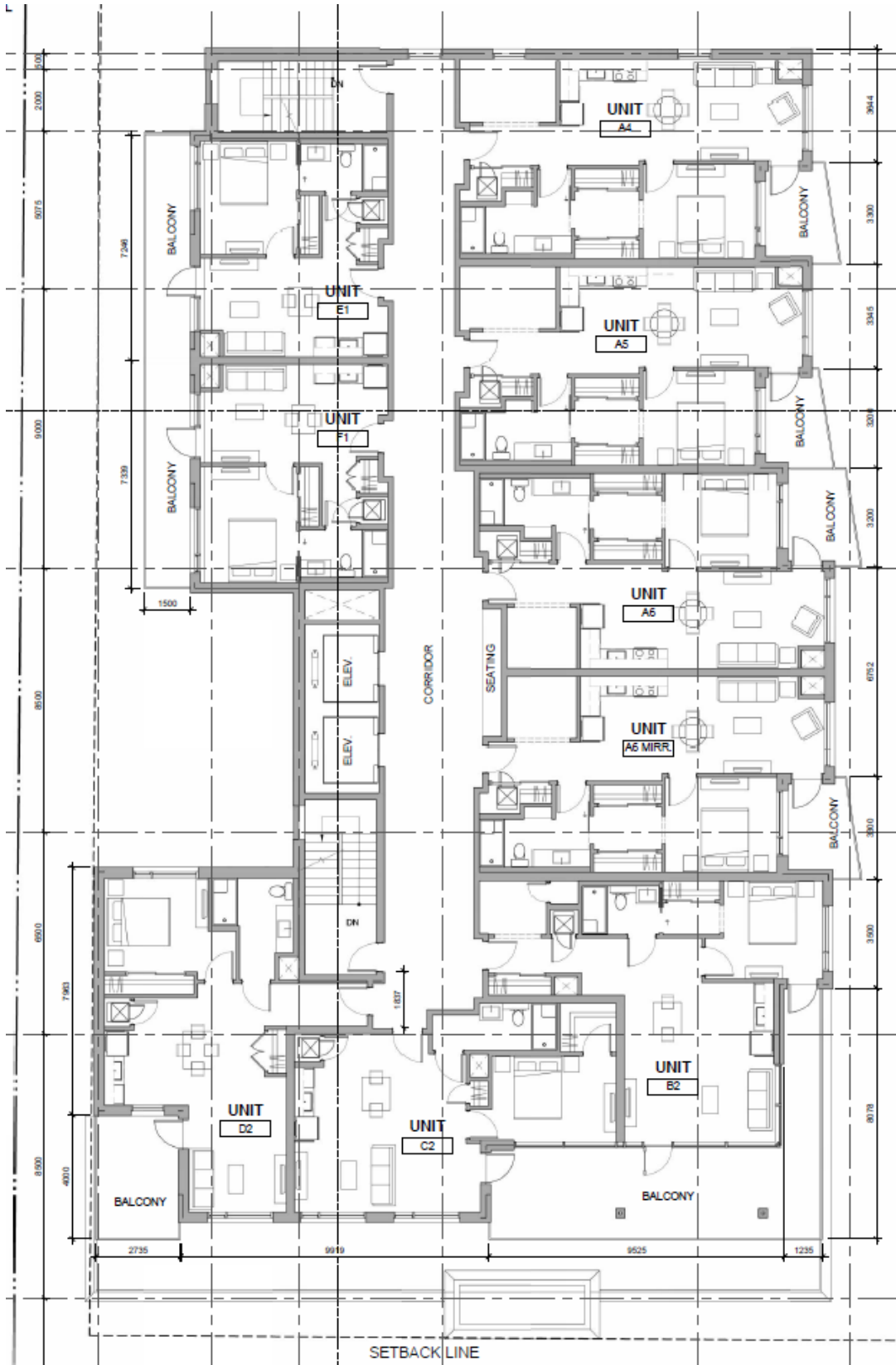
constructed on the Land, including any Dwelling Unit in a building constructed following demolition of a previously-constructed building on the Land. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement acquire an ownership interest in the Land.

- 4.16 Equitable Remedies** – The Owner acknowledges and agrees that damages alone would be an inadequate remedy for the District for any breach of this Agreement and that in addition to payment of the Daily Amount or any other monetary relief to which the District may be entitled, the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief.
- 4.17 No Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venture, or partner of the District or give the Owner any authority to bind the District in any way.
- 4.18 Applicable Law** – The laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.
- 4.19 Deed and Contract** – By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.
- 4.20 Joint and Several** – If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the *Land Title Act* Form C and D which is attached to and forms part of this Agreement.



Third Floor Plan



Fifth Floor Plan

SCHEDULE B**FORM OF CONSENT AND PRIORITY AGREEMENT**

WHEREAS **[name of charge]** (the "Chargeholder") is the holder the following charges all registered in the Vancouver Land Title Office:

[list of applicable registered instrument(s)]

(collectively the "Charge"), which Charge encumbers the Land (the "Land") described in item 2 of the *Land Title Act* Form C attached hereto.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE DESCRIBED IN ITEM 6 OF THE LAND TITLE ACT FORM C ATTACHED HERETO TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Housing Agreement, Covenant and Rent Charge attached hereto (together referred to as the "Covenant") and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Land.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder's right, title and interest in and to the Land, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form D above which is attached hereto and forms part of this Agreement.

END OF DOCUMENT