




AGENDA INFORMATION	
<input checked="" type="checkbox"/> Regular Meeting	Date: <u>April 8, 2024</u>
<input type="checkbox"/> Other:	Date: _____

 Dept. Manager	 GM/ Director	 CAO (acting)
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## The District of North Vancouver REPORT TO COUNCIL

March 12, 2024

File: 08.3060.20/044.20

**AUTHOR:** Genevieve Lanz, Director, Legislative Services

**SUBJECT:** Bylaws 8561, 8562, 8563, and 8606: A Mixed-Use Development at 1310 Monashee Drive

### RECOMMENDATION:

THAT "District of North Vancouver Official Community Plan 7900, 2011 Amendment Bylaw 8561, 2022 (Amendment 47)" is ADOPTED;

AND THAT "District of North Vancouver Rezoning Bylaw 1416 (Bylaw 8562)" is ADOPTED;

AND THAT "Housing Agreement Bylaw 8563, 2022 (1310 Monashee Drive - Market and Non-Market Rental Housing)" is ADOPTED;

AND THAT "Phased Development Agreement Bylaw 8606, 2022 (1310 Monashee Drive)" is ADOPTED.

### BACKGROUND:

Bylaws 8561, 8562, 8563, and 8606 received First Reading on December 5, 2022. A Public Hearing for Bylaws 8561, 8562, and 8606 was held and closed on January 31, 2023. Bylaws 8561, 8562, 8563, and 8606 received Second and Third Readings on February 27, 2023.

The bylaws are now ready to be considered for Adoption by Council.

### OPTIONS:

1. Adopt the bylaws;
2. Give no further Readings and abandon the Bylaws at Third Reading; or,
3. Rescind Third Reading and debate possible amendments to the bylaws at Second Reading and return the bylaws to a new public hearing if required.

**SUBJECT: Bylaws 8561, 8562, 8563, and 8606: A Mixed-Use Development at 1310 Monashee Drive**

March 12, 2024

Page 2

Respectfully submitted,



**Genevieve Lanz**

Director, Legislative Services

**Attachments:**

1. Bylaw 8561
2. Bylaw 8562
3. Bylaw 8563
4. Bylaw 8606

REVIEWED WITH:					
<input type="checkbox"/> Community Planning	_____	<input type="checkbox"/> Clerk's Office	_____	External Agencies:	
<input type="checkbox"/> Development Planning	_____	<input type="checkbox"/> Communications	_____	<input type="checkbox"/> Library Board	_____
<input type="checkbox"/> Development Engineering	_____	<input type="checkbox"/> Finance	_____	<input type="checkbox"/> NS Health	_____
<input type="checkbox"/> Utilities	_____	<input type="checkbox"/> Fire Services	_____	<input type="checkbox"/> RCMP	_____
<input type="checkbox"/> Engineering Operations	_____	<input type="checkbox"/> ITS	_____	<input type="checkbox"/> NVRC	_____
<input type="checkbox"/> Parks	_____	<input type="checkbox"/> Solicitor	_____	<input type="checkbox"/> Museum & Arch.	_____
<input type="checkbox"/> Environment	_____	<input type="checkbox"/> GIS	_____	<input type="checkbox"/> Other:	_____
<input type="checkbox"/> Facilities	_____	<input type="checkbox"/> Real Estate	_____		
<input type="checkbox"/> Human Resources	_____	<input type="checkbox"/> Bylaw Services	_____		
<input type="checkbox"/> Review and Compliance	_____	<input checked="" type="checkbox"/> Planning	<i>D.L. 4/2</i>		
<input type="checkbox"/> Climate and Biodiversity	_____				

**The Corporation of the District of North Vancouver****Bylaw 8561**

A bylaw to amend District of North Vancouver  
Official Community Plan Bylaw 7900, 2011

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The Council for The Corporation of the District of North Vancouver enacts as follows:

**Citation**

1. This bylaw may be cited as “District of North Vancouver Official Community Plan 7900, 2011 Amendment Bylaw 8561, 2022 (Amendment 47)”.

**Amendments**

2. District of North Vancouver Official Community Plan Bylaw 7900, 2011 is amended as follows:
  - a) Map 2 Land Use: as illustrated on Schedule A, by changing the land use designation of the property on Map 2 from “Parks, Open Space, and Natural Areas” (POSNA) to “Commercial Residential Mixed-Use Level 1” (CRMU1).

**READ** a first time December 5<sup>th</sup>, 2022

**PUBLIC HEARING** held January 31<sup>st</sup>, 2023

**READ** a second time February 27<sup>th</sup>, 2023

**READ** a third time February 27<sup>th</sup>, 2023

**ADOPTED**

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Mayor

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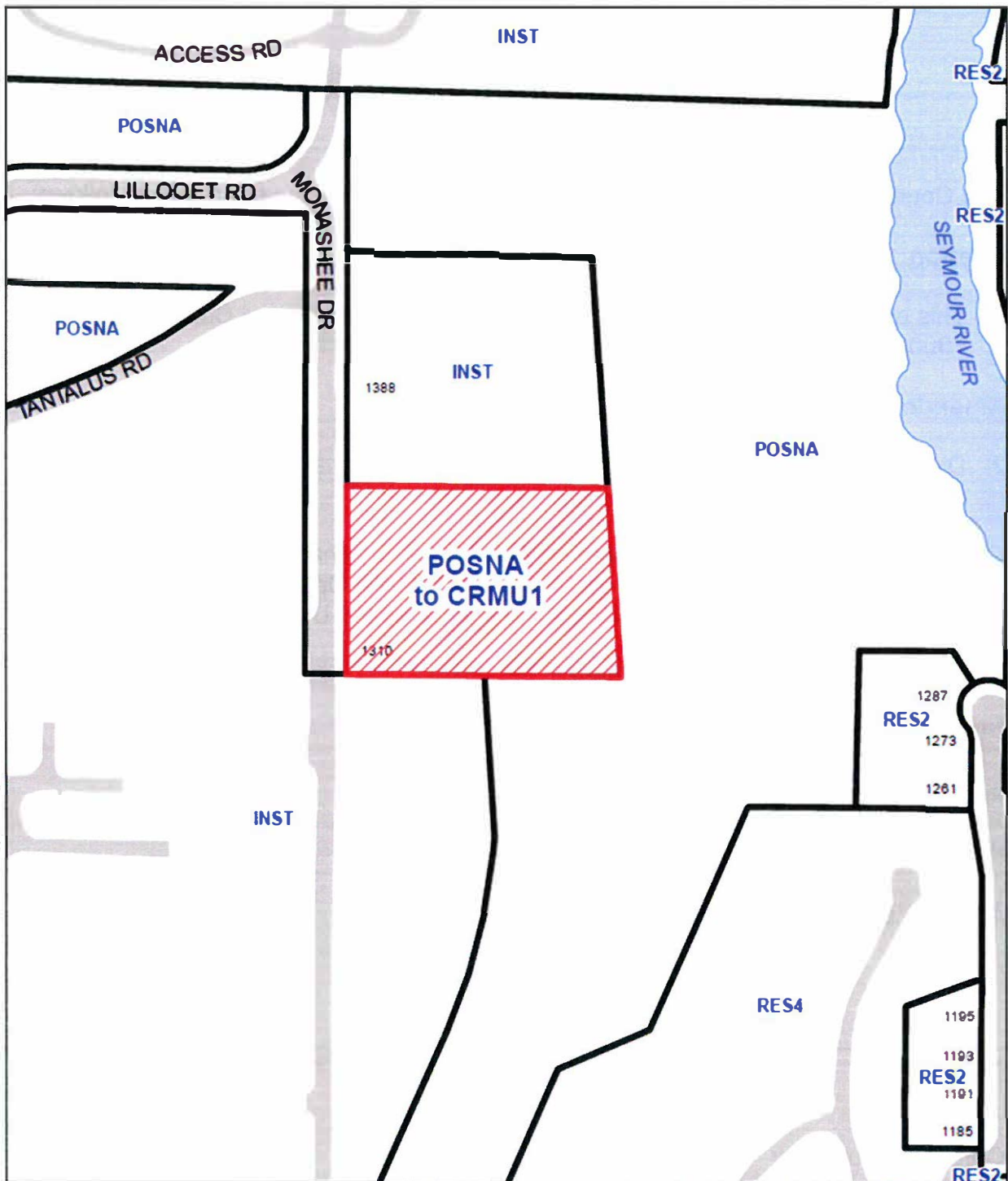
Municipal Clerk

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Municipal Clerk

Schedule A to Bylaw 8561



**1310 Monashee Drive**  
**OCP Amendment from POSNA to CRMU1**



Published: March 28, 2022

# **The Corporation of the District of North Vancouver**

## **Bylaw 8562**

A bylaw to amend District of North Vancouver Zoning Bylaw 3210, 1965

The Council for The Corporation of the District of North Vancouver enacts as follows:

### **1. Citation**

This bylaw may be cited as "District of North Vancouver Rezoning Bylaw 1416 (Bylaw 8562)".

### **2. Amendments**

2.1 District of North Vancouver Zoning Bylaw 3210, 1965 is amended as follows:

(a) Part 2A, Definitions is amended by adding CD141 to the list of zones that Part 2A applies to.

(b) Section 301 (2) by inserting the following zoning designation:

"4B 141 Comprehensive Development Zone 141                      CD141"

(c) Part 4B Comprehensive Development Zone Regulations by inserting the following the following, inclusive of Schedule B:

**"4B 141 Comprehensive Development Zone 141                      CD141"**

**The CD141 zone is applied to:**

1. LOT B BLOCK 13 DISTRICT LOT 620 PLAN 14068

#### **4B 141 - 1 Intent**

The purpose of the CD141 Zone is to establish specific land use and development regulations to permit a commercial and rental residential mixed-use development.

#### **4B 141 - 2 Permitted Uses**

The following *principal* uses shall be permitted in the CD141 Zone:

a) Uses Permitted Without Conditions:

- i) Not applicable.

b) Conditional Uses:

The following *principal* uses are permitted when the conditions outlined in Section 4B 141 - 3 Conditions of Use, are met:

- i) residential use;
- ii) restaurant use;
- iii) office use;
- iv) retail use; and
- v) service use.

#### **4B 141 - 3 Conditions of Use**

a) **All conditional uses:** All uses of land, buildings and structures are only permitted when the following conditions of use are met:

- i) All aspects of the use are completely contained within an enclosed building except for:
  - a) Parking and loading areas;
  - b) *Outdoor customer service areas*;
  - c) The display of goods; and
  - d) Outdoor amenity areas (plazas, roof decks, play areas, and private or semi-private outdoor spaces).

b) **Residential:** *Residential uses* are only permitted when the following conditions are met:

- i) Each residential unit has access to private or semi-private outdoor space.
- ii) Balcony enclosures are not permitted.
- iii) Residential uses are only permitted when a minimum of 789 m<sup>2</sup> (8,495 sq. ft.) and maximum of 929 m<sup>2</sup> (10,000 sq. ft.) of commercial space is provided.

c) **Restaurant use, office use, retail use, and service use** are only permitted when the following conditions are met:

- i) *Restaurant use, office use, retail use, and service use* are only permitted on the first floor of buildings.

- ii) *Restaurant use, office use, retail use, and service use* gross floor areas combined must not exceed 929 m<sup>2</sup> (10,000 sq. ft.)

#### **4B 141 - 4 Accessory Use**

- a) *Accessory uses* customarily ancillary to the principal uses are permitted.
- b) *Home occupations* in residential dwelling units are permitted.

#### **4B 141 - 5 Density**

- a) For the purpose of calculating *gross floor area*, the following are exempted:
  - i) Parking, storage, mechanical, maintenance areas and any other areas located below grade in a structure which has an exposed exterior wall less than 1.2 m (4 ft.) above finished grade;
  - ii) Unenclosed balcony areas; and
  - iii) Indoor amenity spaces in accordance with "Table 1".

<b>Table 1</b>	
<b>Exempted Area (in accordance with Figure 1)</b>	<b>Maximum Exempted Floor Area</b>
Building A Reading Room	45.5 m <sup>2</sup> (490 sq. ft.)
Building A Meeting/Group Study	41.8 m <sup>2</sup> (450 sq. ft.)
Building A Amenity	145.9 m <sup>2</sup> (1,570 sq. ft.)
Building A Lounge/Social	204.4 m <sup>2</sup> (2,200 sq. ft.)
Building A Bike Repair	41.8 m <sup>2</sup> (450 sq. ft.)
Building A Bike Room	241.5 m <sup>2</sup> (2,600 sq. ft.)
Building A Upper Lounges	156.8 m <sup>2</sup> (1,688 sq. ft.)
<b>Total</b>	<b>877.7 m<sup>2</sup> (9,448 sq. ft.)</b>

- b) The maximum permitted *gross floor area* is increased to 20,808 m<sup>2</sup> (223,970 sq. ft.) and maximum of 315 residential units. :

**4B141 - 6 Setbacks**

- a) Buildings shall be set back from property lines to the closest building face, excluding any underground or partially-exposed parking structure, window wells, balcony or canopy columns, alcove projections or projecting balconies, with said projecting balconies not to exceed a depth of 2 m (6.5 ft.) all as established by development permit and in accordance with "Table 2".

<b>Table 2</b>	
<b>Setback Identifier</b>	<b>Minimum Setback</b>
North	4.6 m (15 ft.)
South	4.6 m (15 ft.)
East	33.5 m (110 ft.)
West	4.6 m (15 ft.)

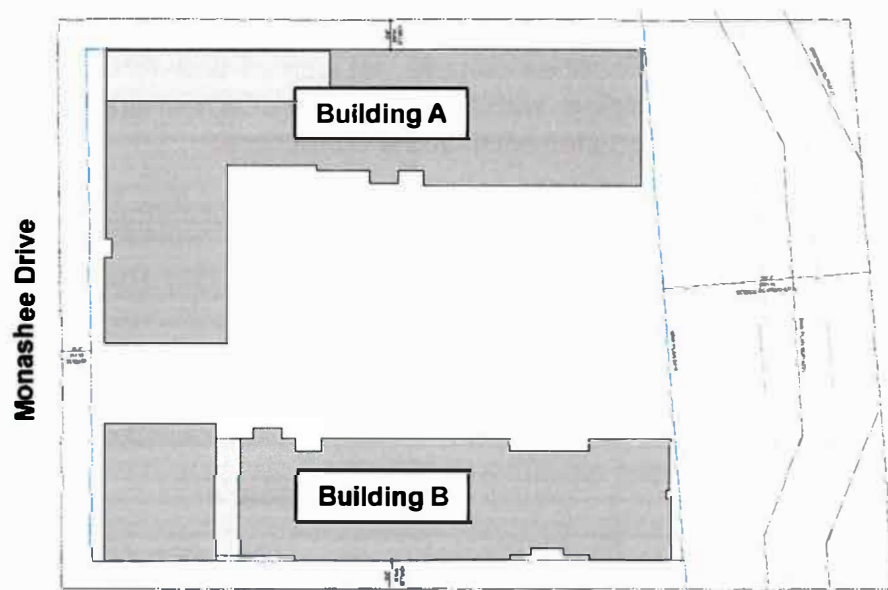


#### **4B141 - 7 Height**

- a) The maximum permitted height for any building in the CD141 Zone, shall be regulated by geodetic elevation as follows, with specific building height provisions based on “Table 3” and “Figure 1”.

<b>Table 3</b>		
<b>Building</b>	<b>Maximum Height (geodetic elevation)</b>	<b>Maximum Storeys</b>
Building A	114.6 m (376.0 ft)	6
Building B	111.9 m (367.1 ft)	6

**Figure 1**



- b) In addition to Part 4 General Regulations, Section 407 Height Exceptions, the following height exceptions shall apply in the CD141 zone: Elevator penthouses, rooftop access stairwells and vestibules, architectural appurtenances, roof deck guard rails, heating, cooling, ventilation and other mechanical equipment required for building operations are permitted above the maximum height limit, provided they are completely screened and integrated into the building's design and do not extend more than 4.9 m (16.1 ft.) above the highest point of the roof surface.

#### **4B 141 – 8 Coverage**

- a) Building Coverage: The maximum building coverage is 50%.
- b) Site Coverage: The maximum site coverage is 55%.

#### **4B 141 – 9 Landscaping and Storm Water Management**

- a) All land areas not occupied by buildings, patios, driveways, and walkways shall be landscaped in accordance with a landscape plan approved by the District of North Vancouver.
- b) A 2 m (6.6 ft.) high screen consisting of a solid fence, or landscaping, or a combination thereof, with minimum 90% opacity, is required to screen from view:
  - i) any utility boxes, vents or pumps that are not located underground and/or within a building; and
  - ii) any solid waste (garbage, recycling, compost) or loading areas or facilities that are not located underground and/or within a building, with the exception of any at-grade temporary staging areas for solid waste containers.

#### **4B 141 – 10 Parking, Loading and Servicing Regulations**

Parking shall be in provided in accordance with Part 10 of this Bylaw with the following exceptions:

- a) Parking shall be provided on the basis of “Table 4” below:

<b>Table 4</b>	
Residential	0.521 spaces per dwelling unit inclusive of 0.035 spaces per dwelling unit for use by persons with disabilities
Shared Commercial and Residential Visitor Parking	46 spaces

The total maximum vehicle parking spaces permitted is 225 spaces.

b) Bicycle storage shall be provided in accordance with Table 5 below.

<b>Table 5</b>		
	<b>Class 1 (Long Term) – Secured Individual Bicycle Storage Spaces</b>	<b>Class 2 (Short Term)</b>
Residential	A minimum of 1.5 spaces for studio or one-bedroom unit and a minimum of 2 spaces for two or more bedroom unit.	6 spaces per every 60 units or portion thereof.
Commercial	A minimum of 1 space for each 250 m <sup>2</sup> (2,691 sq. ft.) of gross floor area.	A minimum of 3 spaces for each 500 m <sup>2</sup> (5,382 sq. ft.) of gross floor area or portion thereof.

c) Except as specifically provided in 4B141 - 10 (a) and (b), parking and loading shall be provided in accordance with Part 10 of this Bylaw.”

(a) The Zoning Map is amended in the case of the lands illustrated on the attached map (Schedule A) by rezoning the land from the “Park, Recreation and Open Space Zone” (PRO) to “Comprehensive Development Zone 141 (CD141).”

**READ** a first time December 5<sup>th</sup>, 2022

**PUBLIC HEARING** held January 31<sup>st</sup>, 2023

**READ** a second time February 27<sup>th</sup>, 2023

**READ** a third time February 27<sup>th</sup>, 2023

**ADOPTED**

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Mayor

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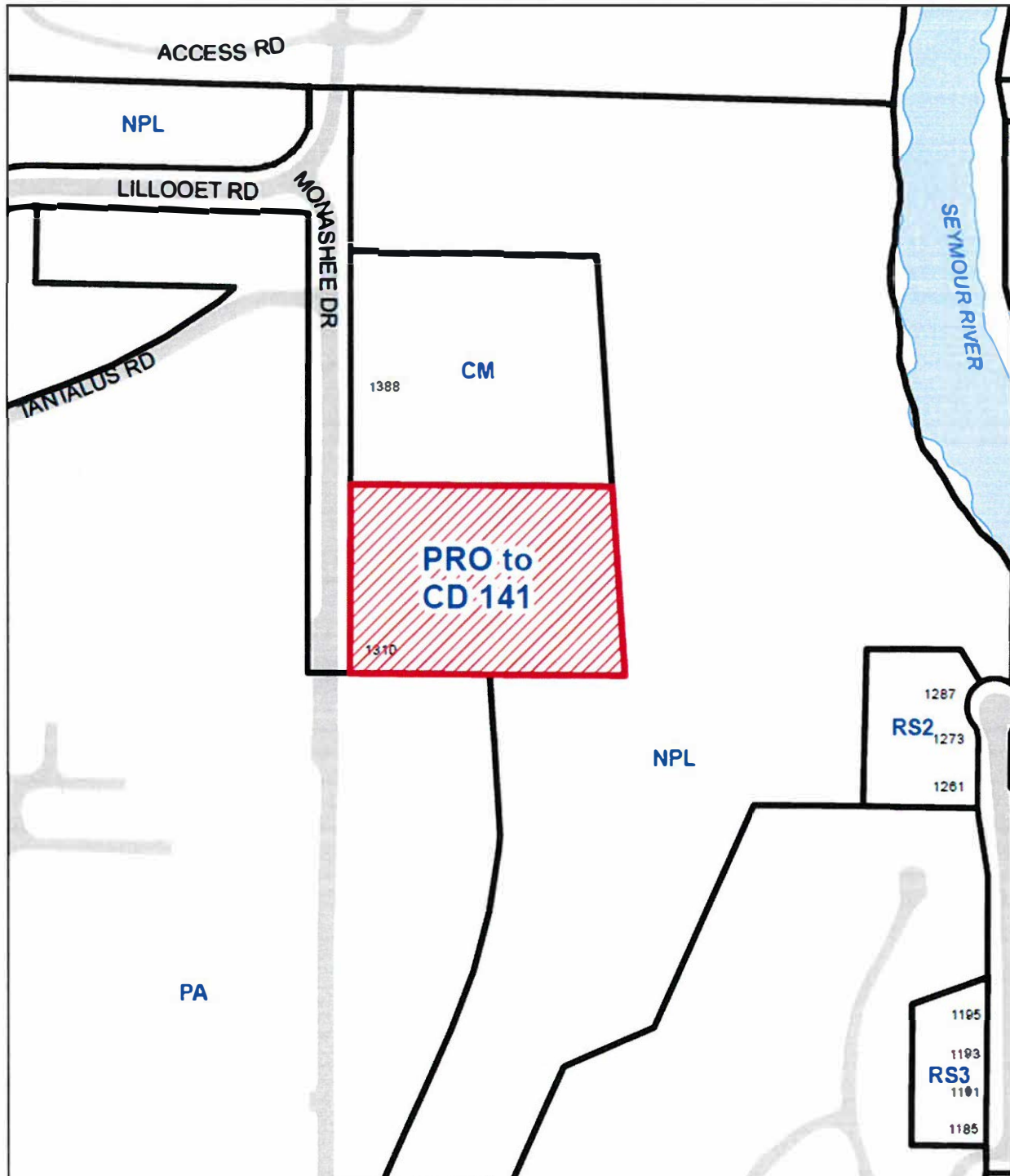
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Municipal Clerk

Schedule A to Bylaw 8562



**1310 Monashee Drive**  
**Zoning Amendment from PRO to CD 141**



Published: March 28, 2022

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**The Corporation of the District of North Vancouver****Bylaw 8563**

A bylaw to enter into a Housing Agreement (1310 Monashee Drive)

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The Council for The Corporation of the District of North Vancouver enacts as follows:

**1. Citation**

This bylaw may be cited as "Housing Agreement Bylaw 8563, 2022 (1310 Monashee Drive – Market and Non-Market Rental Housing)".

**2. Authorization to Enter into Agreement**

The Council hereby authorizes a housing agreement between The Corporation of the District of North Vancouver and 1310 Monashee Project Nominee Ltd. substantially in the form attached to this Bylaw as Schedule "A" with respect to lands in the District of North Vancouver legally described as PID: 007-955-316, Lot B Block 13 District Lot 620 Plan 14068.

**3. Execution of Documents**

The Mayor and Municipal Clerk are authorized to execute any documents required to give effect to the Housing Agreement.

**READ** a first time December 5<sup>th</sup>, 2022

**READ** a second time February 27<sup>th</sup>, 2023

**READ** a third time February 27<sup>th</sup>, 2023

**ADOPTED**

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Mayor

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Municipal Clerk

Certified a true copy

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Municipal Clerk

**Schedule A to Bylaw 8563**

**SECTION 219 RENTAL HOUSING AGREEMENT COVENANT  
and RENT CHARGE**

THIS AGREEMENT dated for reference the \_\_ day of \_\_\_\_, 2022

BETWEEN:

**1310 MONASHEE PROJECT NOMINEE LTD.**, a company  
incorporated under the federal laws of Canada having an office at  
404 – 197 Forester Street, North Vancouver, BC V7H 0A6

(the "**Developer**")

AND:

**THE CORPORATION OF THE DISTRICT OF NORTH  
VANCOUVER**, 355 West Queens Road, North Vancouver, BC  
V7N 4N5

(the "**District**")

WHEREAS:

- A. The Developer is the registered owner in fee simple of lands in the District of North Vancouver, British Columbia legally described in Item 2 of the Form C General Instrument Part 1 to which this Agreement is attached and which forms part of this Agreement (the "**Land**");
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the District in respect of the use of land, construction on land or the subdivisions of land;
- C. Section 483 of the *Local Government Act* permits the District to enter into a housing agreement with an owner of land, which agreement may include terms and conditions regarding the occupancy, tenure and availability of dwelling units located on the Land;
- D. The elected council of the District has adopted Housing Agreement Bylaw 8563, 2022 authorizing the District to enter into this Agreement; and
- E. The Developer and the District wish to enter into this Agreement to restrict the subdivision and use of, and construction on, the Land 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 sum of \$10.00 now paid by the District to the Developer and other good and valuable consideration, the receipt and sufficiency of which the Owner hereby acknowledges, the parties covenant and agree pursuant to section 219 of the *Land Title Act* (British Columbia) as follows:

1. **Definitions** – In this Agreement and the recitals hereto:

- (a) “*Affordable Rental Units*” means collectively the seven (7) studio Dwelling Units, sixteen (16) one bedroom Dwelling Units, six (6) two bedroom Dwelling Units, and three (3) three bedroom Dwelling Units shown in Schedule “A”, provided that the Owner may from time to time, subject to obtaining the prior written approval of the Director substitute other Dwelling Units in the Buildings as the Affordable Rental Units in place of the Dwelling Units shown on Schedule “A”, provided that the mix of the types of Affordable Rental Units does not change and the aggregate number of Affordable Rental Units in the Buildings will always be no less than 32. The Director’s approval of a proposed substitute Dwelling Unit will not be withheld provided that the proposed substitute Dwelling Unit is, in the reasonable opinion of the Director, at least equal to the Dwelling Unit being substituted in type, size, quality and condition;
- (b) “*Annual Allowable Adjustment*” means an increase in the Maximum Rate for an Affordable Rental Unit once each calendar year by the lesser of:
  - (i) the 12 month average percent increase in the Consumer Price Index for the previous calendar year; or
  - (ii) the annual rent increase amount provided for in the *Residential Tenancy Act* and regulations made thereunder; or
  - (iii) the average percent increase over the previous calendar year in the rent charged for the Market Rental Units of similar type and size which are occupied at any time during the previous calendar year.

If the 12 month average percent change in the Consumer Price Index for any calendar year is less than zero then the Maximum Rate for the following year must not be increased, but may be decreased at the Owner’s discretion;
- (c) “*Approving Officer*” means the approving officer for the District appointed under the *Land Title Act*;
- (d) “*Buildings*” means the two (2) buildings on the Land contemplated by Development Permit No. \_\_\_\_\_ and by the Development Covenant and each, a “Building”;
- (e) “*Consumer Price Index*” means the all-items consumer price index published by Statistics Canada, or its successor in function, for British Columbia (based on a calendar year);

- (f) “*Development Covenant*” means the covenant under section 219 of the *Land Title Act* dated for reference \_\_\_\_\_, 20\_\_ granted by the Owner to the District and registered at the LTO against the Land under number CA\_\_\_\_\_;
- (g) “*Director*” means the District’s General Manager of Planning, Permits and Properties and his or her designate;
- (h) “Discount” means, the actual discount between the average of the rental rates under the residential tenancy agreements for the Affordable Rental Units of a certain type and the average of the rental rates under the residential tenancy agreements for the Market Rental Unit, at such time, always on a same type basis;
- (i) “*Discounted Rental Rate*” means for each Affordable Rental Unit and subject to section 13:
  - (i) for the calendar year in which a certificate of final occupancy is issued for the Building which contains such Affordable Rental Unit by the District, the amount set out in Schedule “B” for the applicable Affordable Rental Unit increased by the Annual Allowable Adjustment from the calendar year in which this Agreement is executed and delivered by both parties until the calendar year in which the final occupancy permit is issued for such Building; and
  - (ii) for each subsequent calendar year, an amount not greater than the rent for the preceding calendar year increased by the Annual Allowable Adjustment for such preceding calendar year;
- (j) “*Dwelling Unit*” has the meaning given to it in the Zoning Bylaw;
- (k) “*Eligibility Requirements*” means:
  - (i) aggregate annual household gross income that is less than or equal to 333% of the annual rent for the type of Affordable Rental Unit proposed to be rented (which rent, for greater certainty, may not be greater than the Maximum Rate for the unit), where said aggregate income is established by way of true copies of the previous year’s income tax returns for each household member or individual who will reside in the Affordable Rental Unit provided, however, a person will be deemed not to meet the Eligibility Requirements if the Owner has reasonable grounds to believe that such person is not in need of subsidized housing (e.g. seniors with a substantial assets or students with financial support from parents) even if such person would otherwise meet the criteria set out above; and
  - (ii) a household size and composition that is commensurate with and justifies the types of the subject Affordable Rental Unit. For example, a household consisting of two (2) adults would not be commensurate with and would not justify a three-bedroom Affordable Rental Unit;

- (l) “Force Majeure” means any governmental order or embargo (provided that such order was not issued as the result of any act or fault of the Owner, or of any one employed by it directly or indirectly), fire or explosion, flood, wind, water, earthquake, snowfall, inclement weather affecting construction conditions, act of God, epidemic, pandemic or other similar circumstances beyond the reasonable control of the Owner and not avoidable by the exercise of commercially reasonable effort or foresight by the Owner;
- (m) “*Guaranteed Units*” has the meaning given to it in subsection 10(a);
- (n) “*Land*” has the meaning given to it in Recital A hereto;
- (o) “*LTO*” means the Lower Mainland Land Title Office and any successor of that office;
- (p) “*Market Rental Units*” means all of the Dwelling Units in the Buildings which are not Affordable Rental Units;
- (q) “*Maximum Rate*” means the Discounted Rental Rate for each Affordable Rental Unit or another rental rate for each Affordable Rental Unit that is consented to in writing in advance by the Director pursuant to section 4 herein;
- (r) “*Owner*” means the Developer and any other person or persons registered in the LTO as owner of the Land from time to time, or of any parcel into which the Land are consolidated or subdivided, whether in that person’s own right or in a representative capacity or otherwise;
- (s) “*Proposed Development*” has the meaning given to it in the Development Covenant;
- (t) “*Society*” means a registered housing society approved in writing by the District;
- (u) “*Students, Staff and Faculty*” has the meaning given to it in subsection 9(a)(i);
- (v) “*Students, Staff or Faculty Residential Tenancy Agreement*” has the meaning given to it in subsection 9(e);
- (w) “*Zoning Amendment Bylaw*” means District of North Vancouver Rezoning Bylaw 1416 (No. 8562); and
- (x) “*Zoning Bylaw*” means the District of North Vancouver Zoning Bylaw No. 3210, 1965 as modified by the Zoning Amendment Bylaw and as further amended, consolidated, re-enacted or replaced from time to time.

2. **No Subdivision** – Except as set out herein, the Land and any improvements from time to time thereon (including without limitation the Buildings), may not be subdivided by any means whatsoever, including, without limitation, by subdivision plan, strata plan, fractional interest, lease or otherwise. Despite the foregoing:

- (a) the Land may be subdivided to create one air space parcel for the portion of the Proposed Development required for the Affordable Rental Units, no more than two (2) air space parcels for the commercial portion(s) of the Buildings, and a remainder parcel for the balance for the Land unless otherwise approved by the Director acting reasonably; or
- (b) the Proposed Development on the Land may also be subdivided under the Strata Property Act to create no more than four (4) strata lots, one for the Market Rental Units, one for the Affordable Rental Units, and no more than two (2) for the commercial portion(s) of the Buildings unless otherwise approved by the Director acting reasonably,

provided always that the development on the Land (including the Buildings) and the proposed air space subdivision or strata subdivision, as the case may be, comply with the Zoning Bylaw and with all requirements set out in the Development Covenant and in Development Permit No. [REDACTED].

The Owner and the District acknowledge and agree that the subdivision to create the air space parcels contemplated in subsection 2(a) is subject to all applicable enactments and to the authority of the Approving Officer, and, for greater certainty, the Approving Officer may impose additional conditions or requirements on the approval of any subdivision to create the said air space parcel or otherwise.

3. **The Housing Society** – No building or structure on the Land shall be occupied for any purpose and the District shall not issue any occupancy permit in respect of any building or structure on the Land, and the Owner shall not offer for rent any Affordable Rental Units or Market Rental Units in the Buildings or enter into any residential tenancy agreements in respect of any said Dwelling Units, unless and until the Owner has:
  - (a) entered into a lease, licence or operating agreement with the Society in respect of the Affordable Rental Units, said agreement to be in form and substance acceptable to the District; and
  - (b) caused the Society to enter into a separate agreement with the District in form and substance acceptable to the District and the Owner regarding the operation of the Affordable Rental Units.
4. **Changing the Discounted Rental Rate** – With the written consent of the Owner, the Society, as the agent of the Owner, may request in writing that the Director consent to the Society charging a rental rate for each Affordable Rental Unit that is different from the Discounted Rental Rate, and the Director will not unreasonably refuse such a request provided that the Director is satisfied, in his or her discretion, that the change in rental rates would be fair and would result in lower rent, on an annual aggregate basis, for the Affordable Rental Units.
5. **Use of Market Rental Units** – No Market Rental Unit in the Buildings may be used for any purpose whatsoever:

- (a) save and except for the purpose of rental housing pursuant to arm's length month-to-month residential tenancy agreements or arm's length residential tenancy agreements with terms not exceeding one year in duration (including all periods in respect of which any rights or renewal, contingent or otherwise have been granted); and
  - (b) unless the Owner is in full compliance with all requirements of this Agreement that are applicable to the said Market Rental Unit, including, without limitation, all of the requirements in sections 9, 10, 11 and 12 herein.
- 6. **Use of Affordable Rental Units** - No Affordable Rental Unit will be used for any purposes whatsoever:
  - (a) save and except for the purpose of providing rental accommodation in the Affordable Rental Unit to tenants meeting the Eligibility Requirements pursuant to arm's length month-to-month residential tenancy agreements or residential tenancy agreements with terms not exceeding one year in duration (including all periods in respect of which any rights or renewal, contingent or otherwise have been granted), where said tenancy agreements comply with all of the requirements of section 8; and
  - (b) unless the Owner and the Society are in full compliance with all requirements of this Agreement that are applicable to the said Affordable Rental Unit, including, without limitation, all of the requirements in sections 9, 10, 11 and 12 herein.
- 7. **Occupancy Restriction** – No Affordable Rental Unit may be occupied except by:
  - (a) a person who falls within the meaning of Students, Staff and Faculty, as defined in section 9(a) (subject always to any suspension by the Director of the requirement in subsection 10(a)), and who meets the Eligibility Requirements pursuant to month-to-month residential tenancy agreements or residential tenancy agreement with terms not exceeding one year in duration that complies with section 8; and
  - (b) the other members of the household of the person referred to in section 7(a), provided that the income of all members of such household (other than income of legal dependents of any member of such household up to a maximum of \$10,000 per year per dependent) is included in the determination of eligibility under the Eligibility Requirements.
- 8. **Tenancy Agreements for Affordable Rental Units** - The Owner shall not suffer, cause or permit occupancy of any Affordable Rental Unit except pursuant to a residential tenancy agreement that:
  - (a) is entered into by the Owner and, as tenant, a person at arm's length from the Owner. For the purpose of this Agreement, "at arm's length" means:



- (i) not in any other contractual relationship with the Owner or the Society or any director, officer or other senior employee of the Owner or the Society;
- (ii) unrelated by blood, marriage or personal relationship to any director, officer or other senior employee of the Owner or the Society; and
- (iii) not employed by any corporate entity that is an affiliate of the Owner or the Society, as that term is defined in the *British Columbia Business Corporations Act* as of the date of this Agreement,

provided that the Director may, in his or her sole discretion, relax the restrictions contained in this subsection 8(a) upon the written request of the Owner on a case-by-case basis. Any such relaxation in relation to any particular residential tenancy agreement is not to be construed as or constitute a waiver of the requirements in relation to any other residential tenancy agreement. No relaxation of the restrictions in this subsection 8(a) will be effective unless it is granted in writing by the Director prior to the execution and delivery of the residential tenancy agreement to which the relaxation relates.

- (b) does not, in relation to any Affordable Rental Unit, require payment of rent or any other consideration for the Affordable Rental Unit directly or indirectly that exceeds the Maximum Rate for such Affordable Rental Unit, but the tenant may be required to pay:
  - (i) additional consideration for parking, storage and bicycle storage provided that the additional consideration does not exceed the following amounts:
    - A. for a storage locker: an amount not exceeding the amount charged from time to time for a storage locker to tenants in the Market Rental Units of the same type discounted by the Discount for such type;
    - B. for a bicycle storage locker/space: an amount not exceeding the amount charged from time to time for a bicycle storage locker/space to tenants in the Market Rental Units of the same type discounted by the Discount for such type; and
    - C. for a parking stall: an amount that does not exceed the amount charged from time to time for a parking stall to tenants in the Market Rental Units of the same type discounted by the Discount for such type; and
  - (ii) third party providers directly for utilities, internet services and, if approved by the Director acting reasonably, other services not usually included in rent except the cost of hydronic heat, air conditioning or hot water which must be included in Maximum Rate no matter who may be providing these services;

- (c) does not require the rent to be prepaid at an interval greater than monthly;
- (d) prohibits the tenant from subletting the unit, assigning the tenancy agreement, or operating the unit on a short term rental basis (less than one month), except to the extent that the *Residential Tenancy Act* restricts or prohibits such prohibitions and except to the extent set out in subsection 9(e)(iii);
- (e) requires the tenant to provide within 30 days of demand true copies of the most recent filed income tax returns or assessment notices from Canada Revenue Agency for each occupant of the unit;
- (f) contains a provision that, if the tenant ceases to qualify for the Affordable Rental Unit because he or she no longer meets the Eligibility Requirements, the Society, may end the tenancy agreement by giving the tenant the notice to end the tenancy required in accordance with section 49.1 of the *Residential Tenancy Act* (or successor legislation) and
- (g) meets all of the requirements for a Students, Staff or Faculty Residential Tenancy Agreement as set out in Section 9(e) herein.

9. **Capilano University Students, Staff and Faculty Priority**

- (a) If an occupancy permit is issued for the Dwelling Units in the first Building to be constructed on the Land (the “**First Building**”) at any time from:
  - (i) January 1 to April 30 in any year, then at least 75% of the Dwelling Units in the First Building must remain available exclusively for rental by students enrolled in at least one semester-long course at Capilano University or staff or faculty employed at Capilano University (the “**Students, Staff and Faculty**”) for a period which shall expire at the earlier of:
    - A. the date that is eight (8) months from the date that such occupancy permit was issued; and
    - B. the date that at least 75% of the Dwelling Units in the First Building are occupied by Students, Staff and Faculty pursuant to residential tenancy agreements that satisfy all of the requirements of this Agreement;
  - (ii) May 1 to August 31 in any year, then at least 75% of the Dwelling Units in the First Building must remain available exclusively for rental by Students, Staff and Faculty for a period which shall expire at the earlier of:
    - A. the date that is four (4) months from the date that such occupancy permit was issued; and

- B. the date that at least 75% of the Dwelling Units in the First Building are occupied by Students, Staff and Faculty pursuant to residential tenancy agreements that satisfy all of the requirements of this Agreement; or
- (iii) September 1 to December 31 in any year, then at least 75% of the Dwelling Units in the First Building must remain available exclusively for rental by Students, Staff and Faculty for a period which shall expire at the earlier of:
  - A. the date that is ten (10) months from the date that such occupancy permit was issued; and
  - B. the date that at least 75% of the Dwelling Units in the First Building are occupied by Students, Staff and Faculty pursuant to residential tenancy agreements that satisfy all of the requirements of this Agreement;
- (b) If an occupancy permit is issued for the Dwelling Units in the second Building to be constructed on the Land (the “**Second Building**”) at any time from:
  - (i) January 1 to April 30 in any year, then at least 75% of the Dwelling Units in the Second Building must remain available exclusively for rental by Students, Staff and Faculty for a period which shall expiry on the earlier of:
    - A. the date that is eight (8) months from the date that such occupancy permit was issued;
    - B. the date that at least 75% Dwelling Units in the Second Building are occupied by Students, Staff and Faculty pursuant to residential tenancy agreements that satisfy all of the requirements of this Agreement; and
    - C. the date that at least 75% of the Dwelling Units in the Buildings are occupied by Students, Staff and Faculty pursuant to residential tenancy agreements that satisfy all of the requirements of this Agreement;
  - (ii) May 1 to August 31 in any year, then at least 75% of the Dwelling Units in the Second Building must remain available exclusively for rental by Students, Staff and Faculty for a period which shall expire at the earlier of:
    - A. the date that is four (4) months from the date that such occupancy permit was issued;
    - B. the date that at least 75% of the Dwelling Units in the Second Building are occupied by Students, Staff and Faculty pursuant to



residential tenancy agreements that satisfy all of the requirements of this Agreement; and

- C. the date that at least 75% of the Dwelling Units in the Buildings are occupied by Students, Staff and Faculty pursuant to residential tenancy agreements that satisfy all of the requirements of this Agreement; or
- (iii) September 1 to December 31 in any year, then at least 75% of the Dwelling Units in the Second Building must remain available exclusively for rental by Students, Staff and Faculty for a period which shall expire at the earlier of:
- A. the date that is ten (10) months from the date that such occupancy permit was issued;
  - B. the date that at least 75% of the Dwelling Units in the Second Building are occupied by Students, Staff and Faculty pursuant to residential tenancy agreements that satisfy all of the requirements of this Agreement; and
  - C. the date that at least 75% of the Dwelling Units in the Buildings are occupied by Students, Staff and Faculty pursuant to residential tenancy agreements that satisfy all of the requirements of this Agreement;
- (c) After the expiry of the initial exclusivity period set out in subsections 9(a) and 9(b), as applicable, each vacant Dwelling Unit in the applicable Building must be made available exclusively for rental by the Students, Staff and Faculty for a period of 14 days after the date that a Notice to End Tenancy has been delivered by the Owner or the applicable tenant;
- (d) After the expiry of the 14 day exclusivity period set out in subsection 9(c) a Market Rental Unit that has not been rented to Students, Staff or Faculty may be rented to the general public (subject to section 10), provided that if the Owner wishes to offer to the general public a rental rate for such Market Rental Unit that is more favourable than the rental rate offered to Students, Staff or Faculty during the 14 day exclusivity period set out in subsection 9(c), the Owner must first make the Market Rental Unit exclusively available to Students, Staff or Faculty at the more favourable rental rate for a period of 14 days; and
- (e) The residential tenancy agreement offered by the Owner or the Society, as the agent of the Owner (the “**Students, Staff or Faculty Residential Tenancy Agreement**”), as the case may be, to Students, Staff and Faculty in respect of a Dwelling Unit in the Buildings must:
- (i) contain an unconditional acknowledgment and agreement that the person who signs the tenancy agreement as the primary tenant is a person who

falls within the meaning of Students, Staff and Faculty, as defined in subsection 9(a)(i);

- (ii) meet all of the requirements in section 7 if the Dwelling Unit is an Affordable Rental Unit;
- (iii) be for a fixed term not to exceed one (1) year continuing on a month to month basis thereafter; and
- (iv) stipulate that, the tenant may not sublease the Dwelling Unit, unless:
  - A. the tenant has obtained the consent of the Owner, or the Society as the agent of the Owner, in writing, which consent must not be unreasonably withheld;
  - B. the rent under the sublease does not exceed the rent under the Students, Staff or Faculty Residential Tenancy Agreement; and
  - C. if the Dwelling Unit is an Affordable Rental Unit, the subtenant meets the Eligibility Requirements.

For greater certainty, nothing in this Section 9 affects in any way the Owner's obligations under Section 10 herein.

#### 10. **Guaranteed Students, Staff and Faculty Housing**

- (a) At all times:
  - (i) all of the Affordable Rental Units; and
  - (ii) at least 29 studio Market Rental Units, 59 one bedroom Market Rental Units, 24 two bedroom Market Rental Units, and 14 three bedroom Market Rental Units, or any other mix of Market Rental Units approved by the Director, acting reasonably, provided that such mix results in (i) the total amount of the Guaranteed Units, as such term is hereinafter defined, comprising at least 50% of all of the Dwelling Units in the Buildings, and (ii) 50% of the gross floor area of the Guaranteed Units, as such term is hereinafter defined, comprising at least 50% of the gross floor area of all of the Dwelling Units in the Buildings

(collectively, the "**Guaranteed Units**")

must be occupied by Students, Staff and Faculty pursuant to residential tenancy agreements that, in the case of the Affordable Rental Units, satisfy all of the requirements of this Agreement and, in the case of the balance of the Guaranteed Units, satisfy all of the requirements of this Agreement other than sections 5, 6, 7 and 8 herein. If, contrary to this section, all of the Guaranteed Units are not occupied by Students, Staff and Faculty pursuant to residential tenancy

agreements that satisfy the requirements of this Agreement, as above, then the shortfall number of Guaranteed Units must remain vacant until occupied by Students, Staff and Faculty pursuant to residential tenancy agreements that satisfy all of the requirements of this Agreement. In the event of Force Majeure, the Director may, in his or her sole discretion, temporarily relax the restrictions contained in this subsection 10(a) upon the written request of the Owner. No relaxation of the restrictions in this subsection 10(a) will be effective unless it is granted in writing by the Director. The duration of the relaxation will be determined by the Director in his or her discretion.

- (b) In the event that:
  - (i) the annual vacancy rate for all types of Dwelling Units in rental apartment buildings in the District of North Vancouver exceeds 4% for the year immediately preceding the application by the Owner contemplated by this subsection 10(b); and
  - (ii) at least 70 of the Guaranteed Units are vacant for at least two (2) consecutive months,

then the Owner may apply to the Director for a suspension of the requirement in subsection 10(a), provided that the Owner has made commercially reasonable efforts to rent the vacant Guaranteed Units to Students, Staff and Faculty and if the Director is satisfied, acting reasonably, that the Owner has made such commercially reasonable efforts, the Director will grant the suspension. No suspension is valid unless it is granted by the Director in advance and in writing.

- (c) A suspension granted by the Director under subsection 10(b) will expire after twelve (12) months unless the Owner applies to the Director for an extension of the suspension. The Director will grant such extension if he or she is satisfied, as at the date of expiry, that at least 70 of the Guaranteed Units have been vacant for at least two (2) consecutive months and that the Owner has made commercially reasonable efforts to rent the vacant Guaranteed Units to Students, Staff and Faculty.
- (d) All resident tenancy agreements must clearly state on the first page whether or not the agreement is a Students, Staff or Faculty Residential Tenancy Agreement.
- (e) If a Dwelling Unit is rented to two (2) or more individual tenants not all of whom are Students, Staff and Faculty, and if the Dwelling Unit subsequently ceases to be occupied by at least one (1) individual tenant who falls within the meaning of Students, Staff and Faculty, then the Dwelling Unit may continue to be occupied by such tenants but the Dwelling Unit will no longer qualify as a Dwelling Unit occupied by Students, Staff and Faculty, and the next Dwelling Unit of the same bedroom count that becomes available in either of the Buildings will be designated as a Guaranteed Unit to which this Section 10 shall apply, in order to maintain the Guaranteed Unit count as set out in this Section 10.

11. **Advertising Requirements**

- (a) The Owner must advertise to Students, Staff and Faculty the availability from time to time of Dwelling Units in the Buildings.
- (b) During the applicable initial availability periods set out in subsections 9(a) and 9(b), the advertising must be for the entire duration of the said initial availability period.
- (c) Upon the expiry of the applicable initial exclusivity period the advertising to Students, Staff and Faculty for a Dwelling Unit must be for the duration of the 14 day exclusivity period set out in subsection 9(c);
- (d) The Owner must consult with Capilano University regarding advertising, and the advertising must be specifically targeted at Students, Staff and Faculty. The catchment area of the advertising, the type and extent of the advertising, and the content of the advertising must be acceptable to the Director, acting reasonably.

12. **Rental Application Process** – The Owner or the Society, as the agent of the Owner, must:

- (a) accept applications for residential occupancy of all Dwelling Units in the Buildings, including the Affordable Rental Units, from Students, Staff and Faculty;
- (b) accept applications for residential occupancy of the Affordable Rental Units only from applicants meeting the Eligibility Requirements;
- (c) maintain a housing waiting list for Students, Staff and Faculty;
- (d) maintain a second separate housing waiting list of all eligible applicants for the Affordable Rental Units (the “**Affordable Housing List**”);
- (e) where Affordable Rental Units become available for occupancy, offer the Affordable Rental Units to Students, Staff and Faculty on the Affordable Housing List on a priority basis in accordance with subsection 12(d) in the order in which their applications were accepted, unless the person no longer meets the Eligibility Requirements; and
- (f) subject to the restrictions in section 10, where Dwelling Units in the Buildings that are not Affordable Rental Units become available for occupancy, offer such Dwelling Units first to Students, Staff and Faculty on a priority basis in accordance with subsection 12(c) in the order in which their applications were accepted, and thereafter to persons who are not Students, Staff and Faculty in the order in which their applications were accepted; and
- (g) make the housing lists available to the District immediately upon request.

13. **Adjustment to Discounted Rental Rate** – If the Owner establishes to the satisfaction of the Director that:

- (a) the average Annual Allowable Adjustment over any consecutive five (5) year period has not kept pace with: (i) the average annual increase in the operating costs for the Buildings (excluding debt financing) over said five (5) year period; and (ii) the average annual increases in the District of North Vancouver median rents as published by CMHC for the studio, one-bedroom, two-bedroom and three-bedroom Affordable Rental Units over the same said (5) year period, or, if CMHC stops publishing such data then by another method satisfactory to the Director; and
- (b) the financial viability of the Buildings has been materially compromised as a result of the circumstance described in subsection 13(a),

then the Owner may apply to the Director for an increase in the Discounted Rental Rate, with said increase not to exceed the then current Metro Vancouver median rents as published by CMHC for the studio Affordable Rental Units, one-bedroom Affordable Rental Units, two-bedroom Affordable Rental Units, and the three-bedroom Affordable Rental Units, as applicable, or, if CMHC stops publishing such data then by another method satisfactory to the Director. The Owner acknowledges and agrees that approval of said increase in the Discounted Rental Rate will be in the sole and unfettered discretion of the Director. The Owner may only apply for an adjustment in the Discounted Rental Rate pursuant to this section once in any five (5) year period, where the first five (5) year period commences on the 5<sup>th</sup> anniversary of the reference date of this Agreement, and where the second and each subsequent five (5) year period commences of the expiry of the preceding five (5) year period.

14. **Duty to Account and Report** – In addition to the other covenants and obligations to be performed by the Owner hereunder, the Owner covenants and agrees that it will:

- (a) keep or cause to be kept separate true and accurate records and accounts in accordance with generally accepted accounting principles regarding the rental income earned from both the Market Rental Units and the Affordable Rental Units;
- (b) deliver to the District, on or before January 31 in each calendar year, and otherwise upon request of the District, a current and up to date rent roll for all Dwelling Units in the Buildings indicating at a minimum, as at January 31, the total number of Guaranteed Units, the number of tenants in each of the Guaranteed Units who qualify as Students, Staff and Faculty, the unit type of each Guaranteed Unit, and a list of each of all of the corresponding Students, Staff or Faculty Residential Tenancy Agreements, with the address of each, the reference date of each and the unit type of each (e.g. studio, one bedroom, two bedroom, or three bedroom); and



- (c) on the written request of the District, copies of all current tenancy agreements in respect of all Dwelling Units in the Buildings.
- 15. **Statutory Declaration** – Within seven (7) days after receiving notice from the District, the Owner must deliver to the District a statutory declaration, substantially in the form attached as Schedule “C”, sworn by the Owner (or a director or officer of the Owner if the Owner is a corporation) under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration.
- 16. **Damages and Rent Charge**
  - (a) The Owner acknowledges that the District requires compliance with the provisions in this Agreement for the benefit of the community. The Owner therefore agrees that for each day the Land is occupied in breach of this Agreement, the Owner must pay the District \$200.00 (the “**Daily Amount**”), as liquidated damages and not as a penalty, due and payable at the offices of the District on the last day of the calendar month in which the breach occurred. The Daily Amount is increased on January 1 each calendar year by the twelve (12) month average percent increase in the Consumer Price Index for the previous calendar year. The Owner agrees that payment may be enforced by the District in a court of competent jurisdiction as a contract debt.
  - (b) By this section, the Owner grants to the District a rent charge under section 219 of the *Land Title Act*, and at common law, securing payment by the Owner to the District of the amounts described in subsection 16(a). The District agrees that enforcement of the rent charge granted by this section is suspended until the date that is 30 days after the date on which any amount due under subsection 16(a) is due and payable to the District in accordance with subsection 16(a). The District may enforce the rent charge granted by this section by an action for an order for sale or by proceedings for the appointment of a receiver.
  - (c) The Director may, in his or her sole discretion, grant to the Owner full or partial relief from the obligation to pay liquidated damages on a case-by-case basis if the Owner establishes to the satisfaction of the Director, in the Director’s discretion, that the breach for which the Daily Amount is payable was inadvertent. No such relief in relation to any particular default is to be construed as or deemed to constitute relief in relation to any other default other default.
- 17. **Specific Performance** – The Owner agrees that, without affecting any other rights or remedies the District may have in respect of any breach of this Agreement, the District is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement. The Owner agrees that this is reasonable given the public interest in restricting occupancy of the Land in accordance with this Agreement.

18. **Indemnity** – Except for the negligence of the District or its employees, agents or contractors, the Owner will indemnify and save harmless each of the District and its elected officials, board members, officers, directors, employees, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of any act or omission by the Owner, or its officers, directors, employees, agents, contractors, or other persons for whom at law the Owner is responsible or the Owner's ownership, operation, management or financing of the Dwelling Units in the Buildings or any part thereof, or the use and occupancy of any Dwelling Units in the Buildings by anyone.
19. **Release** – Except to the extent such advice or direction is given negligently, the Owner hereby releases and forever discharges the District, its elected officials, board members, officers, directors, employees 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 advice or direction respecting the ownership, operation or management of any Dwelling Units in the Buildings or any part thereof which has been or hereafter may be given to the Owner by all or any of them.
20. **Survival** – The covenants of the Owner set out in Sections 18 and 19 will survive termination of this Agreement and continue to apply to any breach of the Agreement or claim arising under this Agreement during the ownership by the Owner or any Dwelling Unit therein, as applicable.
21. **Notice of Housing Agreement** – For clarity, the Owner acknowledges and agrees that:
  - (a) this Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 483 of the *Local Government Act*;
  - (b) the District is required to file a notice of housing agreement in the LTO against title to the Land; and
  - (c) once such a notice is filed, this Agreement, as a housing agreement under section 483 of the *Local Government Act*, binds all persons who acquire an interest in the Land in perpetuity.
22. **Compliance with Laws** – The Owner will at times ensure that the Land is used and occupied in compliance with all statutes, laws, regulations, bylaws, and orders of the District and other authorities having jurisdiction, including all rules, regulations, policies, guidelines and the like under or pursuant to them.
23. **Cost** – The Owner shall comply with all requirements of this Agreement at its own cost and expense, and shall pay the reasonable costs and expenses incurred and payment and expenditures made by the District, including without limitation, all survey, advertising, legal fees and disbursements and the District's administration costs (as determined by the

District's charge out rate for District staff time) in connection with the preparation or enforcement of this Agreement and all other covenants, agreements and statutory rights of way granted by the Owner to the District or entered into between the owner to the District in respect of the development of the Land contemplated in this Agreement and ancillary documents and any modifications, discharges and partial discharges of them from time to time, and the costs of registration of such documents in the LTO.

24. **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 Land.

25. **Interpretation** – In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) any reference to a statute or by-law includes and is a reference to such statute or by-law and to the regulations made pursuant thereto, with all amendments made thereto and as in force from time to time, and to any statute, by-law and regulations that may be passed which have the effect of supplementing or superseding such statute, by-law and regulations;
- (c) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (d) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (e) reference to the "Land" or to any other parcel of land is a reference also to any parcel into which it is subdivided or consolidated by any means (including the removal of interior parcel boundaries) and to each parcel created by any such subdivision or consolidations;
- (f) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (g) reference to any enactment includes any regulations, orders, permits or directives made or issued under the authority of that enactment;
- (h) unless otherwise expressly provided, referenced to any enactment is a reference to that enactment as consolidated, revised, amended, re enacted or replaced;
- (i) time is of the essence;
- (j) all provisions are to be interpreted as always speaking;



- (k) reference to a “party” is a reference to a party to this Agreement and the their respective heirs, executors, successors (including successors in title), trustees, administrators and receivers;
- (l) reference to the District is a reference also to is elected and appointed official, officer, employees and agents;
- (m) reference to a “day”, “month”, “quarter”, or “year” is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (n) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”; and
- (o) any act, decision, determination, consideration, opinion, consent or exercise of discretion by a party or person as provided in this Agreement must be preformed, made, formed or exercised acting reasonably, except that any act, decision, determination, consideration, consent, opinion or exercise of discretion that is said to be within the “sole discretion” of a party or person may be preformed, made, formed or exercised by that party or person in the sole, unfettered and absolute discretion of that party or person.

26. **Notice** – All notices and other communications required or permitted to be given under this Agreement must be in writing and must be sent by registered mail or delivered as follows:

- (a) if to the Owner, as follows:

Attention: \_\_\_\_\_

Fax: \_\_\_\_\_

- (b) if to the District, as follows:

The Corporation of the District of North Vancouver  
 355 West Queens Road  
 North Vancouver, BC V7N 4N5

Attention: Director, Planning Permits and Bylaws  
 Facsimile: (604) 984-8664

Any notice or other communication that is delivered is considered to have been given on the next business day after it is dispatched for delivery. Any notice or other communication that is sent by registered mail is considered to have been given five days after the day on which it is mailed at a Canada Post office. If there is an existing or threatened strike or labour disruption that has caused, or may cause, an interruption in the

mail, any notice or other communication must be delivered until ordinary mail services is restored or assured. If a party changes its address it must immediately give notice of its new address to the other party as provided in this section.

27. **No Waiver** – No provision or breach of this Agreement, or any default, is to be considered to have been waived or acquiesced in by a party unless the waiver is express and is in writing by the party. The waiver by a party of any breach by the other party of any provision, or default, is not to be construed as or constituted a waiver of any further or other breach or the same or any other provision or default.
28. **Rights are Cumulative** – All rights and remedies of a party under or in respect of this Agreement (including its breach) are cumulative and are in addition to, and do not exclude or limit any other right or remedy. All rights and remedies may be exercised concurrently.
29. **Third Party Beneficiaries** – Except as may be expressly provided in this Agreement, this Agreement is not to be interpreted to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty or obligation created by this Agreement.
30. **No Effect on Laws or Powers** – This Agreement and the Owner's contributions, obligations and agreements set out in this Agreement do not:
  - (a) affect or limit the discretion, rights or powers of the District or the approving officer under any enactment or at common law, including in relation to the use, development, servicing or subdivision of the Land;
  - (b) impose on the District or the approving Officer 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, development or subdivision of the Land; or
  - (d) relieve the Owner from complying with any enactment, including in relation to the use, development, servicing or subdivision of the Land.
31. **Binding Effect** – This Agreement enures to the benefit of and is binding upon the parties and their respective heirs, executors, administrators, trustees, receivers and successors (including successors in title).
32. **Covenant Runs With the Land** - Every provision of this Agreement and every obligation and covenant of the Owner in this Agreement, constitutes a deed and a contractual obligation, and also a covenant granted by the Owner to the District in accordance with section 219 of the *Land Title Act*, and this Agreement burdens the Land to the extent provided in this Agreement, and runs with it and binds the Owner's successors in title. This Agreement also burdens and runs with every parcel into which

the Land is or they are consolidated (including by the removal of interior parcel boundaries) by any means.

33. **Voluntary Agreement** - The Owner acknowledges that the Owner has entered into this Agreement voluntarily and has taken legal advice with regard to the entry of this Agreement and the development of the Land.
34. **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 Buildings or any portion thereof, including any Affordable Rental Unit or Market Rental 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.
35. **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 Land.
36. **Further Acts** - The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
37. **Joint Obligations of Owner** - If two or more persons execute this Agreement as Owner, the liability of each such person to observe and perform all of the Owner's obligations pursuant to this Agreement will be deemed to be joint and several.
38. **Severance** - 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 and unaffected by that holding or by the severance of that part.
39. **No Joint Ventureship** - Nothing in this Agreement shall constitute the Owner as the agent, joint venturer or partner of the District or give the Owner any authority or power to bind the District in any way.
40. **Amendment** - This Agreement may be amended from time to time by agreement between the Owner and the District. 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 District.
41. **Deed and Contract** - By executing and delivering this Agreement each of the parties intends to create both a new contract and a deed of covenant executed and delivered under seal.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

**SCHEDULE "A"**  
**THE AFFORDABLE RENTAL UNITS**

**SCHEDULE "B"**  
**THE AFFORDABLE RENTAL UNITS – RENTAL RATES**

	<b>Studio</b>	<b>1 bed</b>	<b>2 bed</b>	<b>3 bed</b>
Discounted Rental Rate	\$1,348.00	\$1,650.000	\$2,104.00	\$2,125.00

**SCHEDULE “C”**  
**Statutory Declaration**



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# **The Corporation of the District of North Vancouver**

## **Bylaw 8606**

### **A bylaw to authorize a Phased Development Agreement**

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The Council for The Corporation of the District of North Vancouver enacts as follows:

#### **1. Citation**

This bylaw may be cited as “Phased Development Agreement Bylaw 8606, 2022 (1310 Monashee Drive)”.

#### **2. Authorization to Enter into Agreement**

The Council hereby authorizes a phased development agreement between The Corporation of the District of North Vancouver and 1310 Monashee Project Nominee Ltd. substantially in the form attached to this Bylaw as Schedule “A” with respect to lands in the District of North Vancouver legally described as PID: 007-955-316, Lot B Block 13 District Lot 620 Plan 14068.

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

The Mayor and Municipal Clerk are authorized to execute any documents required to give effect to the Phased Development Agreement.

**READ** a first time December 5<sup>th</sup>, 2022

**PUBLIC HEARING** held January 31<sup>st</sup>, 2023

**READ** a second time February 27<sup>th</sup>, 2023

**READ** a third time February 27<sup>th</sup>, 2023

**ADOPTED**

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Mayor

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Municipal Clerk

Certified a true copy

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Municipal Clerk

**Schedule A to Bylaw 8606**

**PHASED DEVELOPMENT AGREEMENT**

THIS AGREEMENT dated for reference the \_\_ day of \_\_\_\_\_, 2022

BETWEEN:

**1310 MONASHEE PROJECT NOMINEE LTD.**, a company  
incorporated under the federal laws of Canada having an office at  
404 – 197 Forester Street, North Vancouver, BC V7H 0A6

(the “**Developer**”)

AND:

**THE CORPORATION OF THE DISTRICT OF NORTH  
VANCOUVER**, 355 West Queens Road, North Vancouver, BC  
V7N 4N5

(the “**District**”)

WHEREAS:

- A. The Developer is the registered owner in fee simple of lands in the District of North Vancouver, British Columbia legally described in Item 2 of the Form C General Instrument Part 1 to which this Agreement is attached and which forms part of this Agreement (the “**Land**”);
- B. The Developer has applied to the District for an amendment to the District’s land use bylaw by way of Zoning Amendment Bylaw, defined herein, to permit the development on the Land of a multi family residential development with commercial uses at the ground level;
- C. The Developer wishes to provide certain amenities and features in the development of the Land, and the parties wish to ensure that the provisions of the District’s zoning bylaw as amended by the Zoning Amendment Bylaw continue to apply to the Land for the period more particularly set out in this Agreement; and
- D. The Council of the District has given notice and held a public hearing and has, by bylaw, authorized the execution of this Agreement,

NOW THEREFORE in consideration of the mutual promises set out in this Agreement, the parties agree pursuant to section 516 of the *Local Government Act* as follows:

## Interpretation of Agreement

1. In this Agreement:

- (a) “*Affordable Rental Units*” has the meaning given to it in the Student Staff and Faculty Housing Agreement;
- (b) “*Buildings*” has the meaning given to it in the Student Staff and Faculty Housing Agreement;
- (c) “*Development Covenant*” has the meaning given to it in the Student Staff and Faculty Housing Agreement;
- (d) “*Event of Force Majeure*” means an event or circumstance which is beyond the control and without the fault or negligence of the Developer and which by the exercise of reasonable diligence the Developer was unable to prevent provided that event or circumstance is limited to the following:
  - (i) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
  - (ii) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity; and
  - (iii) strikes at Provincial level or industrial disputes at a Provincial level, or strike or industrial disputes by labour not employed by the Developer, its subcontractors or its suppliers and which affect an essential portion of the Work but excluding any industrial dispute which is specific to the performance of the Work or this Agreement;
- (e) “*Land*” has the *meaning* given to it in Recital A;
- (f) “*Market Rental Units*” has the meaning given to it in the Student Staff and Faculty Housing Agreement;
- (g) “*Society*” has the meaning given to it in the Student Staff and Faculty Housing Agreement;
- (h) “*Specified Zoning Bylaw Provisions*” means sections 4B141-2 to 4B141-9 in the CD141 zone of the Zoning Bylaw;
- (i) “*Student Staff and Faculty Housing Agreement*” means the housing agreement authorized by the Council of the District by Housing Agreement Bylaw 8563, 2022 (1310 Monashee Drive – Market and Non-Market Rental Housing);

- (j) “*Zoning Amendment Bylaw*” means District of North Vancouver Rezoning Bylaw 1416 (No. 8562); and
- (k) “*Zoning Bylaw*” means the District of North Vancouver Zoning Bylaw No. 3210, 1965 as modified by the Zoning Amendment Bylaw and as further amended, consolidated, re-enacted or replaced from time to time.

### **Application of Agreement**

- 2. This Agreement applies to the Land, including any parcels into which the Land may be subdivided. This Agreement applies to the Land and to no other land.

### **Term of Agreement**

- 3. The term of this Agreement is ten (10) years, commencing on the date of execution of this Agreement by both parties (the “**Commencement Date**”). When this Agreement refers to the “term”, it means the duration of this Agreement until expiry or earlier termination.

### **Bylaw Amendments Not to Apply**

- 4. For the term of this Agreement, any amendment or repeal of the Specified Zoning Bylaw Provisions will not apply to the Land, except:
  - (a) as provided in section 516(6) of the *Local Government Act* as amended, consolidated, re-enacted or replaced from time to time; or
  - (b) to the extent that the Developer agrees in writing that the amendment or repeal will apply.

### **Termination by Agreement**

- 5. The parties may terminate this Agreement at any time by mutual agreement in writing.

### **Termination for Default**

- 6. If the Developer does not comply with this Agreement, the District may at its option terminate this Agreement by providing notice of termination in writing to the Developer, provided that the District has, at least six (6) months prior to giving such notice, advised the Developer in writing of any alleged failure to comply (the “**Default Notice**”) and the Developer has not corrected the default to the reasonable satisfaction of the District, or if such default reasonably requires longer than two months to remedy, the Developer has failed to substantially commence remedying such default within six (6) months after receipt of the Default Notice to the reasonable satisfaction of the District or has failed to substantially complete remedying the default within six (6) months after receipt of the Default Notice to the reasonable satisfaction of the District.

7. Despite the preceding section, if the default is one that cannot be remedied by the Developer, the District may give notice of termination at the same time as the Default Notice.
8. For certainty, the following are defaults that cannot be remedied by the Developer:
  - (a) if the Developer makes a general assignment for the benefit of creditors; or
  - (b) if the Developer institutes proceedings to be adjudicated bankrupt or insolvent or consents to the institution of bankruptcy or insolvency proceedings against the Developer or files an application or petition or answer or consent seeking re-organization or re-adjustment of the indebtedness of the Developer under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province of Canada relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver or receiver-manager; or
  - (c) if a receiver, interim receiver, receiver manager, trustee, liquidator, or custodian of all or substantially all of the property of the Developer or of the Developer's interest in the Land is appointed or applied for by the Developer or appointed pursuant to an instrument or by order of a court and such appointment or order is not in good faith contested by the Developer; or
  - (d) if a judgment, decree, or order is entered by a court of competent jurisdiction adjudging the Developer a bankrupt or insolvent or subject to the provisions of the *Bankruptcy and Insolvency Act* or determining that proceedings for re organization, arrangement, adjustment, composition, liquidation, or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province of Canada relating to bankruptcy or insolvency have been properly instituted otherwise than by the Developer, provided that such judgment, decree or order is not in good faith contested by the Developer; or
  - (e) if any application or petition or certificate or order is made or granted for the winding-up or dissolution of the Developer, voluntary or otherwise and such appointment or order is not in good faith contested by the Developer.

#### **Other Remedies**

9. The parties covenant and agree each with the other that the District's remedies in the event of a default by the Developer under this Agreement include but are not limited to:
  - (a) termination of this Agreement in accordance with section 5;
  - (b) seeking an order for any and all damages suffered by the District as a result of the default;
  - (c) enforcement of any covenants in the Development Covenant and the Student Staff and Faculty Housing Agreement; and

- (d) enforcement of any covenants granted by the Developer pursuant to section 219 of the *Land Title Act*.
- 10. The District may in its sole discretion pursue any of the above remedies singularly or in combination with other remedies.
- 11. The remedy in subsection 9(a) may be combined by the District with its remedies under subsections 9(b), 9(c) and 9(d), and for greater certainty these three remedies are cumulative and not exclusive, and the District may from time to time have recourse to one or more or all of the available remedies specified in this Agreement or at law or equity.
- 12. The Developer will make no claim for compensation, in damages or otherwise, upon the lawful termination of this Agreement under section 5. The Developer acknowledges and agrees that termination of this Agreement will not in any way affect the validity of the Development Covenant of the Student Staff and Faculty Housing Agreement or any of the land use restrictions contained therein all of which continue in full force and effect notwithstanding the expiry or earlier termination of this Agreement.

#### **Amenities of the Development**

- 13. The Developer will construct and install the Buildings, and the Market Rental Units and the Affordable Rental Units to be contained therein, in the time and manner set out in the Development Covenant and in strict compliance with the Zoning Bylaw and with all requirements set out in the Development Covenant and in Development Permit No. \_\_\_\_\_, and shall complete said construction and installation, as evidenced by issuance of an occupancy permit for all dwelling units in the Buildings, by no later than June 30, 2027.
- 14. The Developer (on its own or via an operator) will operate the Buildings and the Market Rental Units (but not including the Affordable Rental Units), once constructed, in accordance with the Student Staff and Faculty Housing Agreement, and the Developer (on its own or via an operator) will cause the Society to operate and the Affordable Rental Units, once constructed, in accordance with the Student Staff and Faculty Housing Agreement.

#### **Assignment of Agreement**

- 15. The Developer may assign this Agreement if and only if the District, acting reasonably, consents in writing to the assignment. For greater certainty, the District will provide its consent in writing to an assignment provided that:
  - (a) the fee simple title to all of the Land (or to the air space parcel or remainder parcel referred to in subsection 2(a) of the Student Staff and Faculty Housing Agreement) is transferred to the assignee;
  - (b) the assignee is licensed to do business in the District; and



- (c) the assignee has executed and delivered to the District an assumption agreement, in form and content satisfactory to the District, assuming the Developer's obligations under this Agreement.
- 16. An assumption agreement entered into between the District and an Assignee pursuant to section 14 will not operate to release the Developer of its liability to the District for the fulfillment of all of the Developer's obligations under this Agreement.

### **Amendment of Agreement**

- 17. The parties may in writing agree to minor amendments to this Agreement, and for that purpose a "minor amendment" includes an amendment to section 1 or an amendment to the Development Covenant, except the definitions of Commencement Date, Development Covenant, Land, Specified Zoning Bylaw Provisions, Zoning Amendment Bylaw and Zoning Bylaw.

### **Force Majeure**

- 18. If the Developer is delayed from completing its obligations under section 12 within the time stipulated in that section by reason of an Event of Force Majeure then the date for completing said obligations will be extended for a period equivalent to such period of delay. Where there is an Event of Force Majeure, the Developer must immediately notify the District giving full particulars of the Event of Force Majeure and the reasons for the Event of Force Majeure delaying the Developer in performing its obligations under section 13 and the Developer must use its reasonable efforts to mitigate the effect of the Event of Force Majeure upon its performance of this Agreement and to fulfil its or their obligations under this Agreement.

### **General Terms and Conditions**

- 19. Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address of which the party has given the other party notice in writing expressly for the purposes of this Agreement.
- 20. Except as expressly set out in this Agreement, nothing in this Agreement shall prejudice or affect the rights and powers of the District in the exercise of its functions under the Community Charter or the Local Government Act or any of its bylaws, or those of the District's approving officer under the Land Title Act, Strata Property Act or Bare Land Strata Regulations.
- 21. Any opinion, decision, act or expression of satisfaction or acceptance provided for in this Agreement may be taken or made by the District's Manager of Community Planning, unless expressly provided to be taken or made by another official of the District.
- 22. No provision of this Agreement is to be considered to have been waived by the District unless the waiver is expressed in writing by the District. The waiver by the District of any breach by any of the other parties of any provision is not to be construed as or constitute a waiver of any further or other breach.

23. Whenever in this Agreement the District is required or entitled to exercise any discretion in the granting of consent or approval, or is entitled to make any determination, take any action or exercise any contractual right or remedy, the District may do so in accordance with the contractual provisions of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice or otherwise, shall have any application in the interpretation or implementation of this Agreement except to the extent that such duty arises as a matter of public law.
24. The Developer shall indemnify and save harmless the District, its officers, employees, Council members, agents and others (the “**District Representatives**”) from and against any and all actions, causes of action, liabilities, demands, losses (but not loss of profits), damages, costs, expenses (including actual fees of professional advisors), remediation of contamination costs, fines, penalties and other harm of any kind whatsoever, whether related to death, bodily injury, property loss, property damage, property contamination or consequential loss or damage, suffered or incurred by the District or any of the District Representatives, directly or indirectly, arising from, resulting from, connected with or related to:
- (a) death, bodily injury, damage to or loss of any property or other incident or occurrence during the construction or provision of the amenities and other development contemplated by this Agreement;
  - (b) any default or breach of this Agreement by the Developer; and
  - (c) any wrongful act, omission or negligence of the Developer or its directors, officers, employees, agents, contractors, subcontractors, licensees, or others for whom they are responsible in law with respect to the covenants and obligations of the Developer pursuant to this Agreement.
25. This indemnity shall survive any conclusion or other termination of this Agreement, in relation to any matter arising prior to it.
26. Time is of the essence of this Agreement and will remain of the essence notwithstanding the extension of any dates.
27. The Developer acknowledges and agrees that the District, acting reasonably, may, despite any public law limitations on the withholding of building permits and occupancy permits, withhold building permits and occupancy permits for the purpose of ensuring compliance with and administering the terms of this Agreement.
28. This Agreement may be executed in counterparts.

Executed the \_\_\_\_ day of \_\_\_\_\_, 2022  
by **THE CORPORATION OF THE DISTRICT  
OF NORTH VANCOUVER**  
by its authorized signatories:

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Executed the \_\_\_\_ day of \_\_\_\_\_, 2022  
by **1310 MONASHEE PROJECT NOMINEE LTD.**  
by its authorized signatories:

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