

DATE OF MEETING | August 30, 2021 |

AUTHORED BY | CALEB HORN, PLANNER, CURRENT PLANNING |

**SUBJECT | DEVELOPMENT PERMIT APPLICATION NO. DP1236 AND
HOUSING AGREEMENT APPLICATION NO. HA5 –
6010 HAMMOND BAY ROAD |**

OVERVIEW

Purpose of Report

To present for Council's consideration, a development permit application and a Housing Agreement for an affordable housing project at 6010 Hammond Bay Road. |

Recommendation

That:

1. Council issue Development Permit No. DP1236 at 6010 Hammond Bay Road with a variance to increase the maximum permitted front yard setback from 6.00m to 13.75m on the north property line and from 6.00m to 7.69m on the south property line;
2. "Housing Agreement Bylaw 2021 No. 7326" (To authorize a Housing Agreement to secure affordable housing at 6010 Hammond Bay Road) pass first reading;
3. "Housing Agreement Bylaw 2021 No. 7326" pass second reading;
4. "Housing Agreement Bylaw 2021 No. 7326" pass third reading; and
5. Council direct Staff to register a covenant to reinforce the terms of the Housing Agreement. |

BACKGROUND

A development permit renewal application, DP1236, was received from Westmark Construction Ltd., on behalf of the Nanaimo Affordable Housing Society (NAHS), to permit a 53-unit multi-family residential rental building with underground parking. A previous development permit, DP1118, was approved by Council in 2019 and expired in June 2021. A new development permit is required to allow the project to proceed to a building permit.

Since the time of approval for DP1118, the property has been acquired by NAHS with the intent of developing an affordable housing project using the same general building design as previously approved. As part of the current application, the applicant is also proposing a Housing Agreement to secure affordable housing in order to be eligible for a 50% Development Cost Charge (DCC) reduction as per the City of Nanaimo "Development Cost Charge Bylaw 2017 No. 7252" (the "DCC Bylaw").

Subject Property and Site Context

<i>Zoning</i>	COR1 - Residential Corridor
<i>Location</i>	The subject property is a through-lot located on the north side of Hammond Bay Road and the south side of Clayburn Place, west of Brickyard Road.
<i>Total Area</i>	4,082m ²
<i>Official Community Plan (OCP)</i>	Map 1 – Future Land Use Designation – Corridor Map 3 –Development Permit Area No. 9 – Commercial, Industrial, Institutional, Multi-Family and Mixed Commercial/Residential Development
<i>Relevant Design Guidelines</i>	General Development Permit Area Design Guidelines

The subject property is located in the Dover community in North Nanaimo. The property currently contains a single residential dwelling and an accessory building. The lot slopes downhill slightly from south to north, towards Clayburn Place. A number of mature Douglas fir trees surround the perimeter of the property.

The surrounding neighbourhood largely consists of low-density residential development, including single residential dwellings and duplexes, as well as a three-dwelling townhouse development. Adjacent properties to the west are also zoned COR1 and have potential to redevelop in the future.

DISCUSSION

Proposed Development

The proposed development is a four-storey, 53-unit multi-family residential rental building with underground parking. The proposed unit composition will consist of 16 one-bedroom units ranging in size from 66m² to 71m² and 37 two-bedroom units ranging in size from 76m² to 81m².

The proposed building will have a gross floor area of 4,736m², and the Floor Area Ratio (FAR) will equal 1.16, below the maximum permitted FAR of 1.24 in the COR1 zone for this development where 95% of the parking is provided underground.

Site Design

The proposed building footprint is oriented north-south, and vehicle access to the underground parking level is from Clayburn Place. Four visitor parking spaces are proposed at grade at the parking level entry. The additional 86 parking spaces are provided underground, for a total of 90 spaces, which meets the minimum required amount of parking for the proposed development. A refuse receptacle room is proposed in the underground parking level.

Clayburn Place is currently only constructed to a half-road standard, and the street will be widened as part of the proposed development with a voluntary 8.25m-wide road dedication taken from the north property line. Additionally, a 2.44m-wide road dedication will be taken from Hammond Bay Road frontage. Pedestrian connectivity between Hammond Bay Road and Clayburn Place will be accommodated on site through a private walkway along the west side of the building.

Building Design

Some minor design changes have been made from approved DP1118, including the relocation of the proposed main entry from the west side of the building to the southwest corner of the building, closer to Hammond Bay Road for improved access. The proposed building will present a four-storey elevation and is configured in a 'C' shape with a central courtyard on the east elevation.

The building is well articulated with a strong street presence, and the upper floor of the building is stepped back in the northeast and southeast corners to provide a three-storey interface with existing adjacent properties. The central courtyard on the east elevation provides additional separation from adjacent residences. Rooftop decks and green roof areas cover the majority of the building footprint.

Cementitious panel board and cedar batten siding, metal fascia, and glulam timber posts and beams are proposed for the building façade materials. Basalt stone will clad the exterior of the underground parking level on the north elevation. The proposed development meets the intent of the General Development Permit Area Design Guidelines.

Landscape Design

The proposed landscape plan features a perimeter of trees around the building, a walkway with partial trellis cover around the outside of the building, planters at both frontages, retaining walls with basalt stone cladding facing Clayburn Place, and two common seating areas on rooftop terraces. The planting scheme includes a mix of native and non-native shrubs, perennials, and grasses.

Proposed Variances

Maximum Front Yard Setback

The maximum permitted front yard setback in the COR1 zone is 6.00m. The applicant has proposed a front yard setback of 13.75m on the north property line and 7.69m on the south property line; requested variances of 7.75m and 1.69m respectively.

The maximum front yard setback in the COR1 zone is intended to enhance street presence. As the subject property is a through-lot abutting two parallel streets, both Hammond Bay Road and Clayburn Place are considered front lot lines. The proposed building and landscape design features include elements such as street-level patios, stepped architectural form, and pedestrian-scale landscape features, each of which contribute to the building's street presence.

On the Hammond Bay Road frontage, the additional setback will also provide adequate space for existing and proposed utilities. On the Clayburn Place frontage, the additional setback will accommodate terraced landscape retaining walls, walkway access stairs, and the parking level entry. The stepped building form provides a better transition to the adjacent lower-density residential neighbourhood than if the building was sited closer to the street.

Staff support the proposed variances.

Housing Agreement

The NAHS is a not-for-profit society providing affordable rental housing to a range of Nanaimo residents and has proposed to enter into a Housing Agreement with the City of Nanaimo to secure the property for affordable housing with a 50% reduction in DCCs. The NAHS is an eligible owner as per the DCC Bylaw. The proposed Housing Agreement will ensure that the development will be occupied by individuals whose collective annual before-tax income does not exceed the Housing Income Limit for Nanaimo (as determined by BC Housing) and that 12 months' rent for the dwelling unit does not exceed 30% of the occupants' collective before-tax annual income.

The attached "Housing Agreement Bylaw 2021 No. 7326" would authorize the City of Nanaimo to enter into a Housing Agreement with NAHS in order to be eligible for the DCC reduction, and the terms would be secured by a Section 219 Covenant registered on property title.

SUMMARY POINTS

- Development Permit Application No. DP1236 is for a 53-unit multi-family residential rental building with underground parking.
- Variances are requested to increase the maximum front yard setbacks on the north and south frontages.
- The proposed development meets the intent of the General Development Permit Area Design Guidelines, and Staff support the proposed variances.
- "Housing Agreement Bylaw 2021 No. 7326" will secure affordable housing units in order for the development to be eligible for a Development Cost Charge reduction.

ATTACHMENTS

ATTACHMENT A: Permit Terms and Conditions
ATTACHMENT B: Context Map
ATTACHMENT C: Location Plan
ATTACHMENT D: Site and Parking Plans
ATTACHMENT E: Building Elevations and Details
ATTACHMENT F: Massing Model Views
ATTACHMENT G: Streetscape Elevations
ATTACHMENT H: Landscape Plan
ATTACHMENT I: Aerial Photo
"Housing Agreement Bylaw 2021 No. 7326"

Submitted by:

Lainya Rowett
Manager, Current Planning

Concurrence by:

Jeremy Holm
Director, Development Approvals

Dale Lindsay
General Manager, Development Services

ATTACHMENT A

PERMIT TERMS AND CONDITIONS

TERMS OF PERMIT

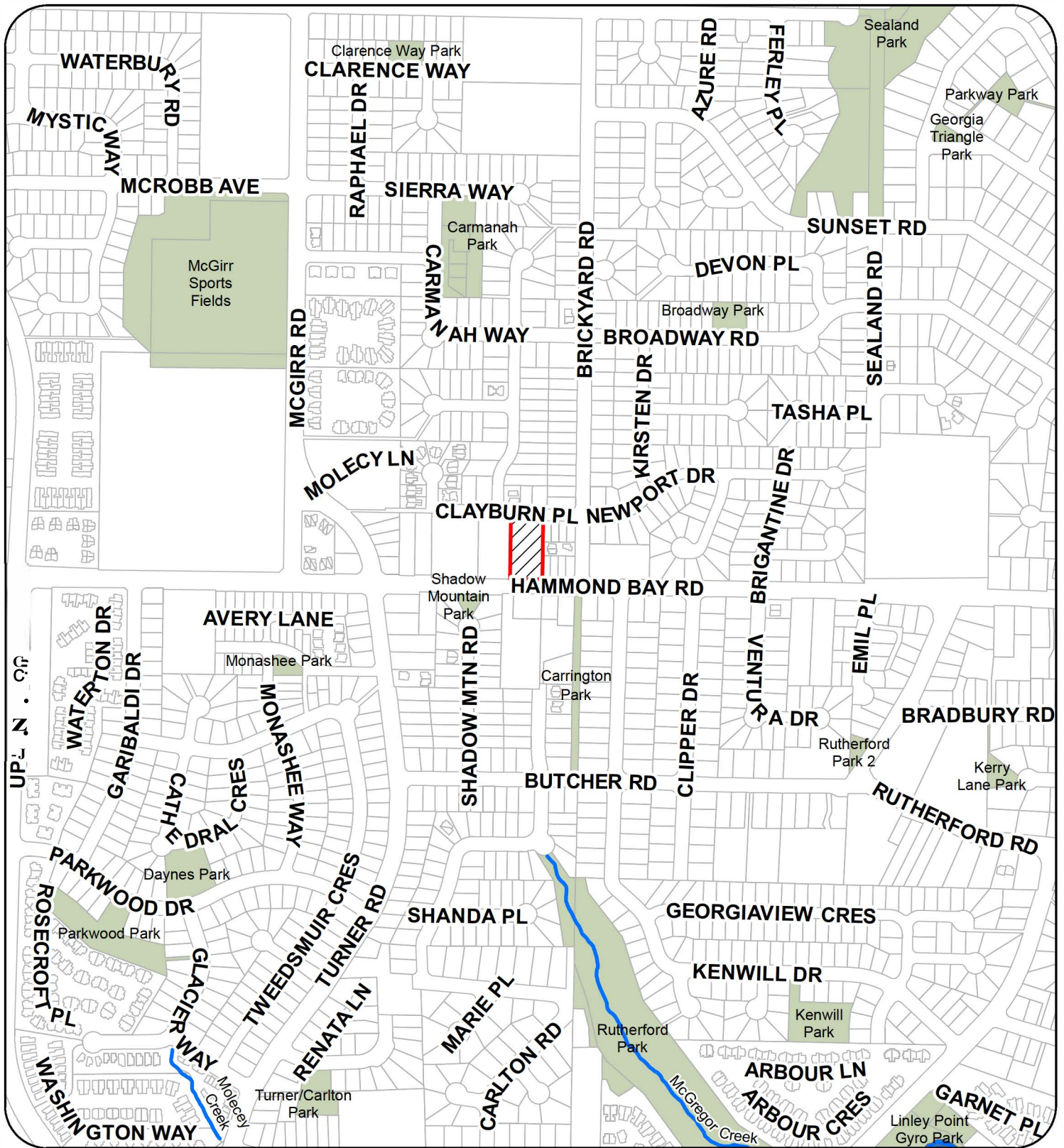
The “City of Nanaimo Zoning Bylaw 2011 No. 4500” is varied as follows:

1. *Section 9.5.1 Siting of Buildings* – to increase the maximum permitted front yard setback from 6.00m to 13.75m on the north property line and from 6.00m to 7.69m on the south property line.

CONDITIONS OF PERMIT

1. The subject property is developed in accordance with the Site and Parking Plans prepared by Murdoch + Company Architecture + Planning Ltd., dated 2021-MAY-25, as shown on Attachment D.
2. The development is in substantial compliance with the Building Elevations and Details prepared by Murdoch + Company Architecture + Planning Ltd., dated 2021-MAY-25, as shown on Attachment E.
3. The subject property is developed in substantial compliance with the Landscape Plan and Details prepared by Murdoch + Company Architecture + Planning Ltd., dated 2021-MAY-25, as shown on Attachment H.
4. A plan of road dedication is registered prior to building permit issuance, with approximately 2.44m to be dedicated from the Hammond Bay Road frontage and 8.25m to be dedicated from the Clayburn Place frontage (generally as shown on Attachment D).

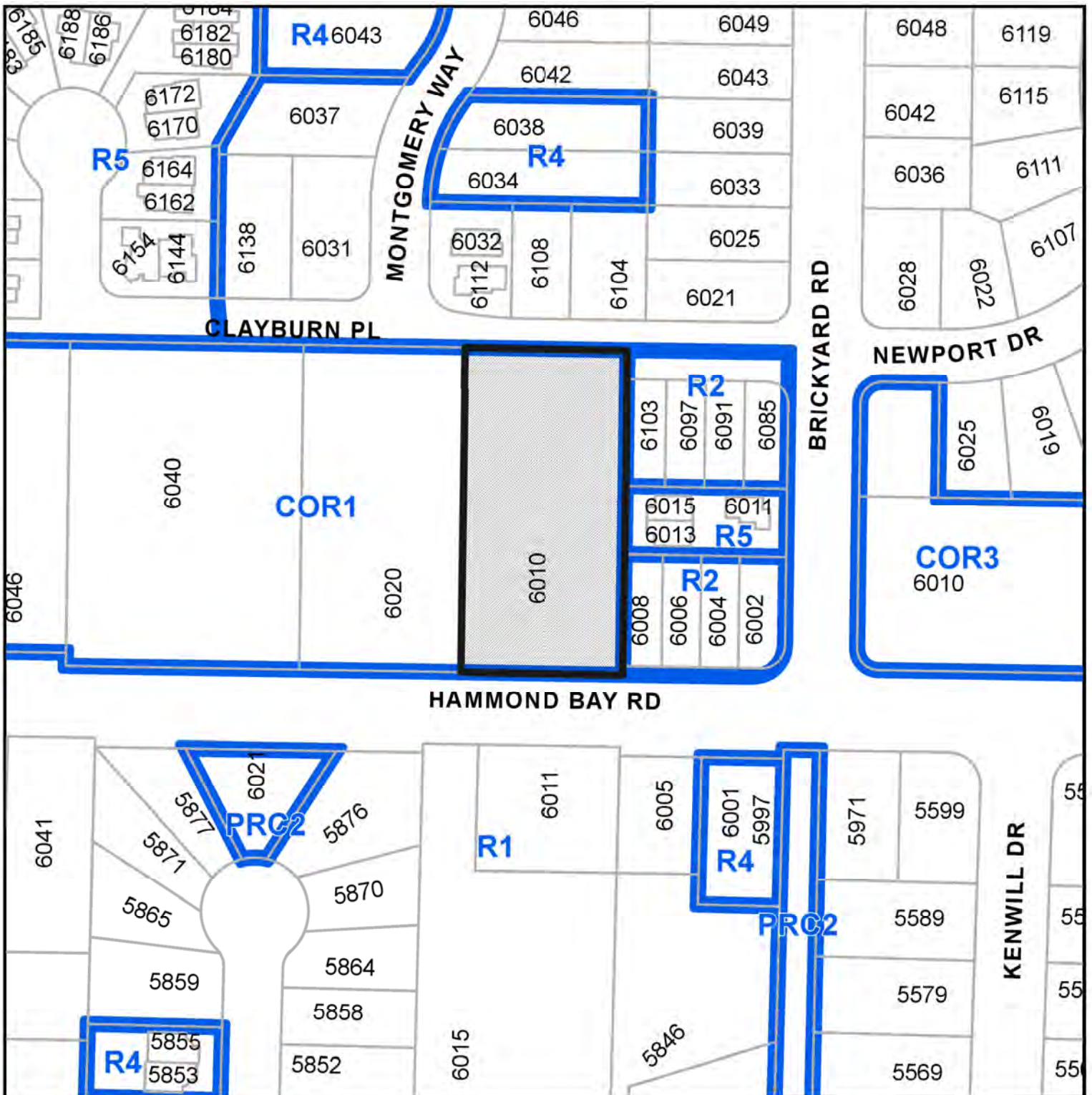
ATTACHMENT B CONTEXT MAP



DEVELOPMENT PERMIT APPLICATION NO. DP001236



ATTACHMENT C LOCATION PLAN



Subject Property

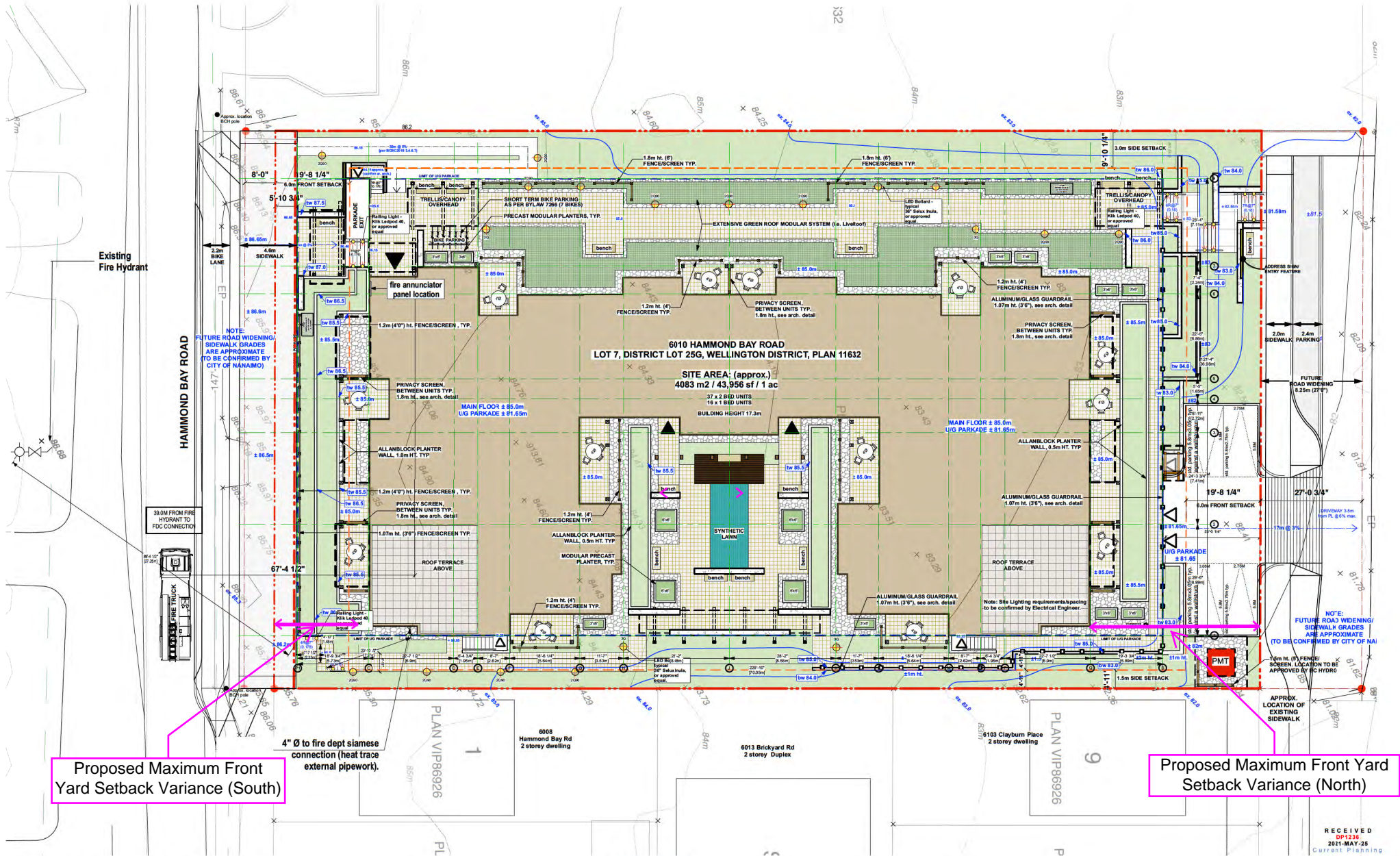
DEVELOPMENT PERMIT APPLICATION NO. DP001236

CIVIC: 6010 HAMMOND BAY ROAD

LEGAL: LOT 7, DISTRICT LOT 25G, WELLINGTON DISTRICT, PLAN 11632

ATTACHMENT D SITE AND PARKING PLANS

1 of 2



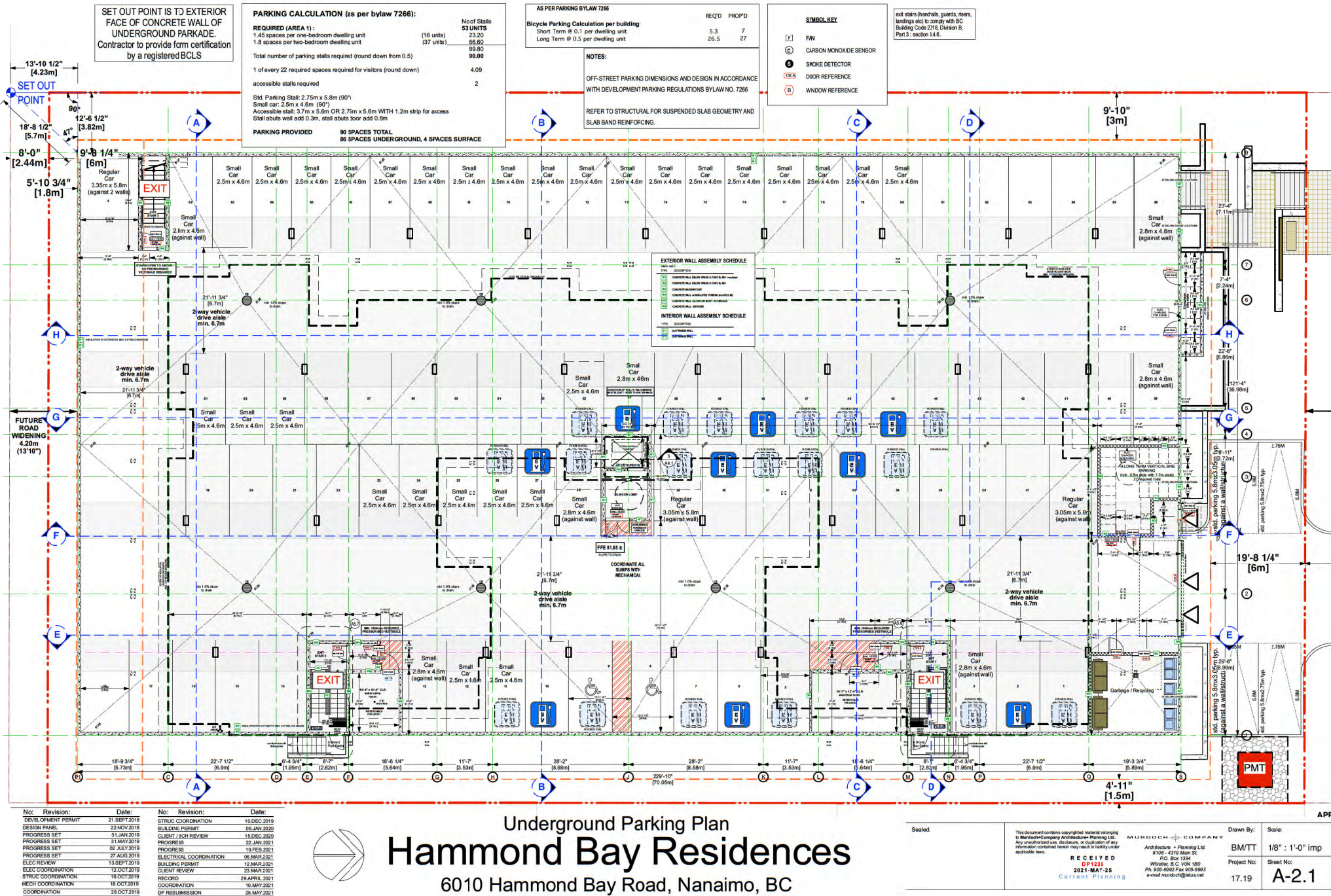
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1	DEVELOPMENT PERMIT	21 SEPT 2018	1	CLIENT / IGH REVIEW	15 DEC 2020
2	DESIGN PANEL	22 NOV 2018	2	PROGRESS	22 JAN 2021
3	PROGRESS SET	31 JAN 2019	3	PROGRESS	19 FEB 2021
4	PROGRESS SET	31 MAY 2019	4	BUILDING PERMIT	12 MAR 2021
5	PROGRESS SET	02 JUL 2019	5	CLIENT REVIEW	20 MAR 2021
6	PROGRESS SET	27 AUG 2019	6	RECORD	29 APR 2021
7	COORDINATION	11 NOV 2019	7	DP RESUBMISSION	25 MAY 2021
8	BUILDING PERMIT	06 JAN 2020			



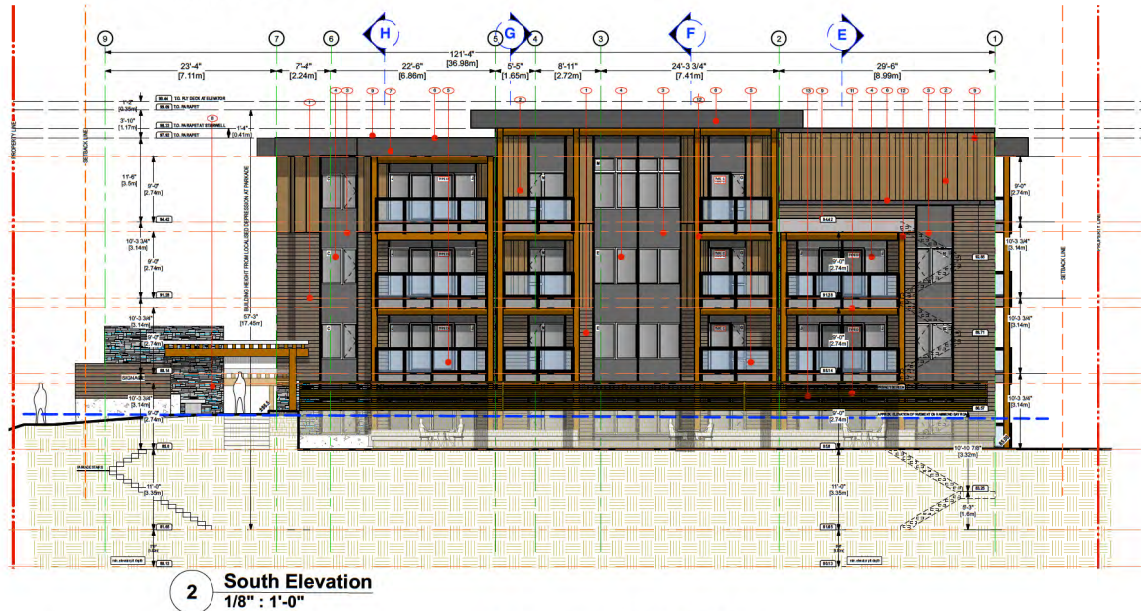
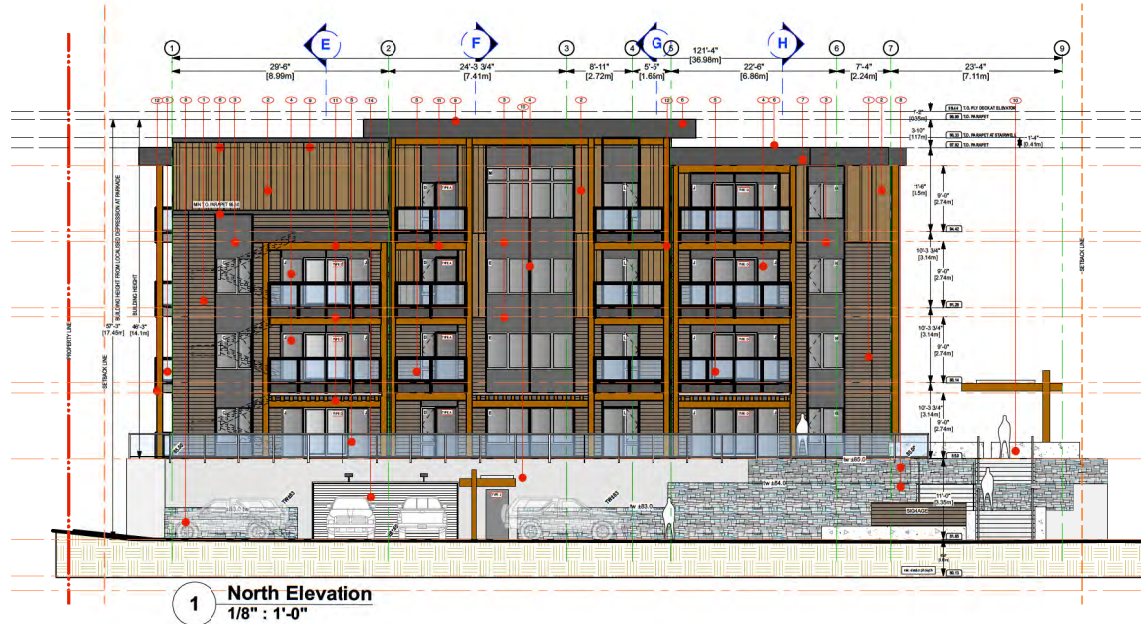
Site Plan Hammond Bay Residences 6010 Hammond Bay Road, Nanaimo, BC

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ATTACHMENT E BUILDING ELEVATIONS AND DETAILS



EXTERIOR FINISHES LEGEND TO BE READ IN CONJUNCTION WITH DETAILS

- ① HORIZONTAL HARDIE LAP SIDING, COLOUR: RICH ESPRESSO
- ② VERTICAL HARDBOARD & CEDAR BATTEN SIDING, COLOUR: TUSCAN GOLD
- ③ HARDIE PANEL, COLOUR: NIGHT GREY
- ④ VINYL NAIL ON FLANGE, DOUBLE GLAZED WINDOWS INSULATED FIBREGLASS & METAL EXTERIOR DOORS
- ⑤ CLEAR GLASS GUARD RAIL
- ⑥ 2x GAUGE PRE-FINISHED METAL FASCIA, CASCADE CHARCOAL SMP
- ⑦ HARDIE SOFFITING, WOODGRAIN CEDAR TONE
- ⑧ BASALT STONE, ROUGH EDGE, w/ CONCRETE CAP
- ⑨ SBS TORCH-ON ROOFING MEMBRANE
- ⑩ EXPOSED CONCRETE
- ⑪ GLULAM BEAMS STAINED, BRODA: SEMI-TRANSPARENT, BUTTERNUT #251
- ⑫ PGTS - STAINED TO MATCH GLULAMS
- ⑬ PRE-STAINED & PRE-DRILLED 2"x VERTICAL CEDAR SCREEN AT STAIRWELLS WITH 2.2" GAP, STAINED TO MATCH GLULAMS
- ⑭ METAL GARAGE ROLLER DOOR - ANODIZED ALUMINIUM
- ⑮ STUCCO FINISH - COOL GREY COLOUR (CONCRETE-LIKE)

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MAXIMUM ALLOWABLE HEIGHT FOR COR1 ZONING 18.0M
(14m + 4m (at least 75% of the required parking area))

Building Elevations Hammond Bay Residences 6010 Hammond Bay Road, Nanaimo, BC

No.	Revision:	Date:	No.	Revision:	Date:
1	DEVELOPMENT PERMIT	21 SEPT 2018	1	CLIENT / BCH REVIEW	15 DEC 2020
2	DESIGN PANEL	22 NOV 2018	2	PROGRESS	22 JAN 2021
3	PROGRESS SET	31 JAN 2019	3	BUILDING PERMIT	12 MAR 2021
4	PROGRESS SET	31 MAY 2019	4	CLIENT REVIEW	23 MAR 2021
5	PROGRESS SET	02 JULY 2019	5	SIDING TENDER	14 MAY 2021
6	PROGRESS SET	27 AUG 2019	6	DP RESUBMISSION	25 MAY 2021
7	COORDINATION	28 OCT 2019			
8	BUILDING PERMIT	06 JAN 2020			

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Building Elevations
Hammond Bay Residences
6010 Hammond Bay Road, Nanaimo, BC

No.	Revision:	Date:	No.	Revision:	Date:
1	DEVELOPMENT PERMIT	21 SEP 2018	15	CLIENT / BCH REVIEW	15 DEC 2021
2	DESIGN PANEL	22 NOV 2018	16	PROGRESS	22 JAN 2021
3	PROGRESS SET	31 JAN 2019	17	BUILDING PERMIT	12 MAR 2021
4	PROGRESS SET	31 MAY 2019	18	CLIENT REVIEW	23 MAR 2021
5	PROGRESS SET	02 JULY 2019	19	SIDING TENDER	14 MAY 2021
6	PROGRESS SET	27 AUG 2019	20	DP RESUBMISSION	25 MAY 2021
7	COORDINATION	28 OCT 2019			
8	BUILDING PERMIT	06 JAN 2020			

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MAXIMUM ALLOWABLE HEIGHT FOR COR1 ZONING 18.0M
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1 South Courtyard Elevation
1/8" : 1'-0"



2 East Courtyard Elevation
1/8" : 1'-0"



3 North Courtyard Elevation
1/8" : 1'-0"

EXTERIOR FINISHES LEGEND
TO BE READ IN CONJUNCTION WITH DETAILS

- 1 HORIZONTAL HARDIE L.P. SIDING, COLOUR: RICH ESPRESSO
- 2 VERTICAL HARDIEBOARD & CEDAR BATTEN SIDING, COLOUR: TUSCAN GOLD
- 3 HARDIE PANEL, COLOUR: NIGHT GREY
- 4 VINYL NAIL ON FLANGE DOUBLE GLAZED WINDOWS INSULATED FRIGELAS & METAL EXTERIOR DOORS
- 5 CLEAR GLASS GUARD RAIL
- 6 24 GAUGE PRE-FINISHED METAL FASCIA CASCADIA CHARCOAL SMP
- 7 HARDIE SOFFITING, WOODGRAIN CEDAR TONE
- 8 BASALT STONE, ROUGH EDGE, c/w CONCRETE CAP
- 9 SBS TORCH-ON ROOFING MEMBRANE
- 10 EXPOSED CONCRETE
- 11 GULIAM BEAMS STAINED BROWN, SEMI-TRANSPARENT, BUTTERNUT #251
- 12 POSTS - STAINED TO MATCH GULIAM
- 13 PRESTAINED & PRE-DRILLED 2"x VERTICAL CEDAR SCREEN AT STAIRWELLS WITH 2.5" GAP STAINED TO MATCH GULIAM
- 14 METAL GARAGE ROLLER DOOR - ANODIZED ALUMINIUM
- 15 STUCCO FINISH - COOL GREY COLOUR (CONCRETE-LIKE)

Courtyard Building Elevations
Hammond Bay Residences
6010 Hammond Bay Road, Nanaimo, BC

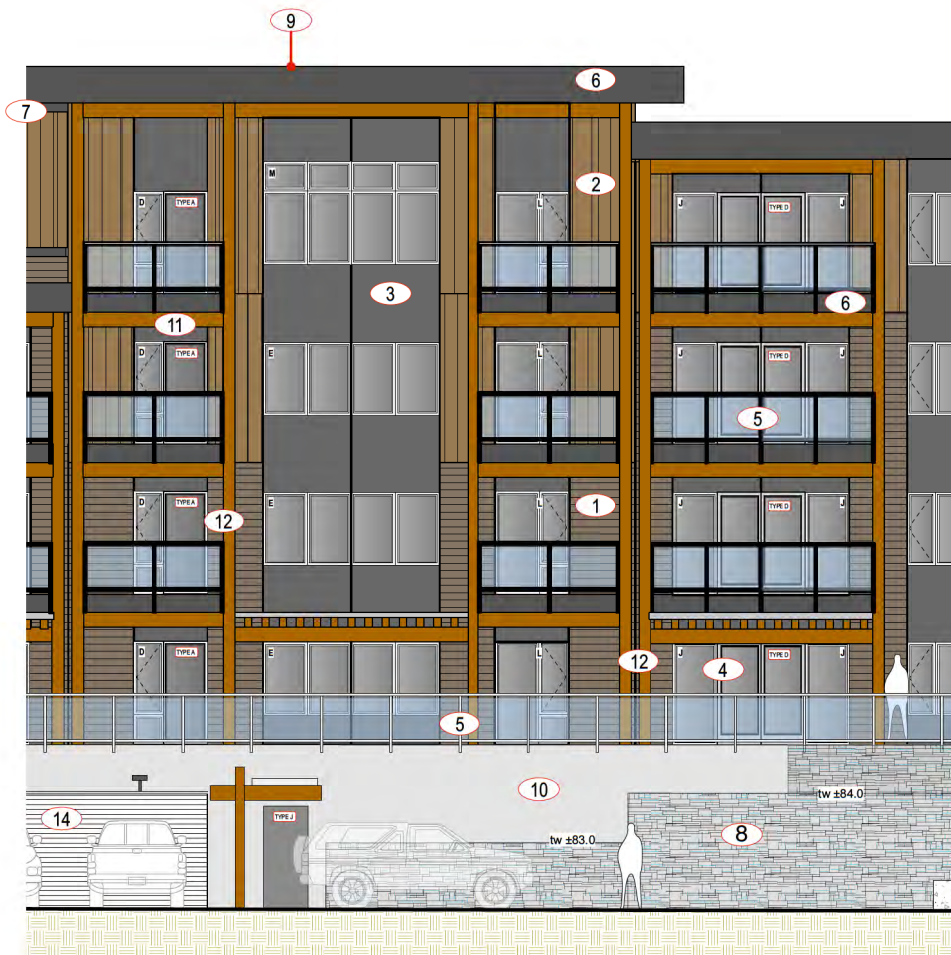
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2	PROGRESS SET	31.MAY.2019	13	CLIENT REVIEW	23.MAR.2021
3	PROGRESS SET	02.JULY.2019	14	SIDING TENDER	14.MAY.2021
4	PROGRESS SET	27.AUG.2019	15	DP RESUBMISSION	25.MAY.2021
5	COORDINATION	28.OCT.2019			
6	BUILDING PERMIT	08.JAN.2020			
7	CLIENT RCH REVIEW	15.FEB.2020			
8	PROGRESS	22.JAN.2021			

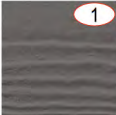

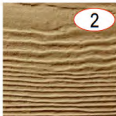











MAXIMUM ALLOWABLE HEIGHT FOR COR1 ZONING 18.0M
(14m + 4m (at least 75% of the required parking area))

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|---|--|---|---|
|  | 1 HORIZONTAL HARDIE LAP SIDING
RICH ESPRESSO |  | 9 SBS TORCH-ON ROOFING
MEMBRANE |
|  | 2 VERTICAL, RANDOM-SPACED
HARDIEBOARD & CEDAR BATTEN
TUSCAN GOLD |  | 10 EXPOSED CONCRETE |
|  | 3 HARDIE PANEL WITH REVEALS
NIGHT GRAY |  | 11 GLULAM BEAMS & POSTS
STAINED. BRODA,
SEMI TRANSPARENT
BUTTERNUT #251 |
|  | 4 VINYL WINDOWS & VINYL +
ALUM STOREFRONT
EXTERIOR DOORS |  | 12 PRE-STAINED & PRE-DRILLED
2"x VERTICAL CEDAR SCREEN
AT STAIRWELLS. STAINED TO
MATCH GLULAMS |
|  | 5 PRE-PAINTED ALUM
GUARDRAIL w/ GLASS INFILL |  | 13 ANODIZED ALUM GARAGE
ROLLER DOOR |
|  | 6 24GA PRE-FINISHED METAL
FASCIA AND FLASHINGS
CASCADIA CHARCOAL SMP |  | 14 STUCCO FINISH AT ELEVATOR
COOLY GRAY - CONCRETE LOOK |
|  | 7 HARDIE VENTED CEDARMILL
SOFFIT
SQUASH COLOUR | | |
|  | 8 BASALT STONE, ROUGH EDGE
w/ CONCRETE CAP | | |
- EXTERIOR FINISHES LEGEND**
TO BE READ IN CONJUNCTION WITH DETAILS
- 1 HORIZONTAL HARDIE LAP SIDING, COLOUR: RICH ESPRESSO
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 - 14 METAL GARAGE ROLLER DOOR - ANODIZED ALUMINIUM
 - 15 STUCCO FINISH - COOL GREY COLOUR (CONCRETE-LIKE)

Exterior Finishes - Material Board
Hammond Bay Residences
 6010 Hammond Bay Road, Nanaimo, BC

No.	Revision:	Date:	No.	Revision:	Date:
DP		21 SEPT 2018			
DESIGN PANEL		22 NOV 2018			
DP RESUBMISSION		25 MAY 2021			

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ATTACHMENT F MASSING MODEL VIEWS



• VIEW NORTH ACROSS HAMMOND BAY ROAD



• VIEW NORTH-WEST ALONG HAMMOND BAY ROAD



MASSING CONTEXT LOOKING EAST



MASSING CONTEXT LOOKING WEST



MASSING CONTEXT HAMMOND BAY RD.

No:	Revision:	Date:	No:	Revision:	Date:
DEVELOPMENT PERMIT		21 SEPT 2018			
DESIGN PANEL		22 NOV 2018			
DP RESUBMISSION		25 MAY 2021			



3D MASSING
Hammond Bay Residences
6010 Hammond Bay Road, Nanaimo, BC

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• SIDEWALK VIEW EAST ALONG HAMMOND BAY ROAD



• VIEW EAST ALONG HAMMOND BAY ROAD



• SIDEWALK VIEW WEST ALONG HAMMOND BAY ROAD



• VIEW WEST ALONG HAMMOND BAY ROAD



3D MASSING
Hammond Bay Residences
 6010 Hammond Bay Road, Nanaimo, BC

No.	Revision:	Date:	No.	Revision:	Date:
	DEVELOPMENT PERMIT	21 SEPT 2018			
	DESIGN PANEL	22 NOV 2018			
	DP RESUBMISSION	25 MAY 2021			

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• **VIEW SOUTH-EAST FROM CLAYBURN PLACE**



• **VIEW SOUTH ACROSS CLAYBURN PLACE**



• **TRANSITION TO CLAYBURN PLACE**



• **VIEW SOUTH-WEST FROM CLAYBURN PLACE**

No:	Revision:	Date:	No:	Revision:	Date:
DEVELOPMENT PERMIT		21 SEPT 2018			
DESIGN PANEL		22 NOV 2018			
DP RESUBMISSION		25 MAY 2021			



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Project No:

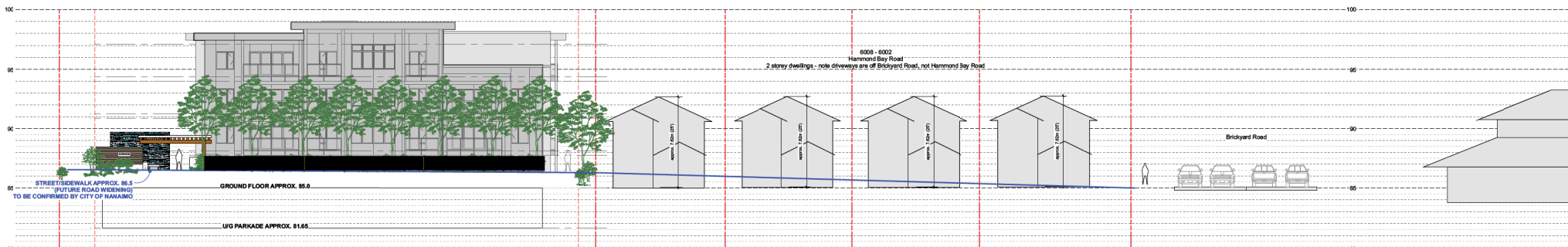
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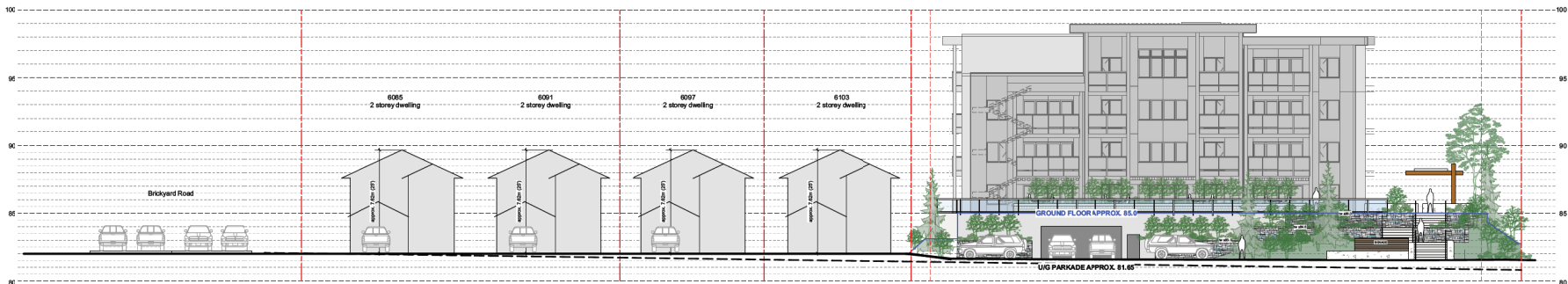
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RECEIVED
DP1234
2021-MAY-25
Current Planning

ATTACHMENT G STREETSCAPE ELEVATIONS



Hammond Bay Road Streetscape Elevation



Clayburn Place Streetscape Elevation

Streetscape Elevations Hammond Bay Residences 6010 Hammond Bay Road, Nanaimo, BC

No.	Revision:	Date:	No.	Revision:	Date:
1	DEVELOPMENT PERMIT	21 SEP 2018	1	ISSUED FOR BUILDING PERMIT	12 MAR. 2021
2	DESIGN PANEL	22 NOV. 2018	2	DP RESUBMISSION	25 MAY 2021
3	REVISED CON COMMENTS	26 APR. 2019			
4	CLIENT / BCH REVIEW	15 DEC 2020			
5	PROGRESS	22 JAN. 2021			
6	PROGRESS	19 FEB. 2021			

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DP1238
2021 MAY-25
Current Planning

NOTE: ELEVATIONS ARE IN METRES

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		BM/TT	1:150 METRIC
		Project No:	Sheet No:
		17.19	L-1.2

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e-mail: murdoch@mls.com

Landscape Plan
Hammond Bay Residences
601 O Hammond Bay Road, Nanaimo, BC



ATTACHMENT I
AERIAL PHOTO



DEVELOPMENT PERMIT APPLICATION NO. DP001236



6010 HAMMOND BAY ROAD

CITY OF NANAIMO

BYLAW NO. 7326

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

WHEREAS Section 483 of the *Local Government Act* provides that Council may enter into a Housing Agreement with an owner which may include terms and conditions agreed to regarding the occupancy of the housing units identified in the Agreement; and

WHEREAS the Council wishes to enter into such an Agreement with respect to certain housing units located in the City of Nanaimo;

THEREFORE BE IT RESOLVED that the Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. This Bylaw may be cited as the "Housing Agreement Bylaw 2021 No. 7326".
2. Subject to section 3 of this Bylaw, the Council of the City of Nanaimo hereby authorizes the Mayor and Director, Legislative Services to enter into an Agreement, on behalf of the City of Nanaimo, in substantially the form attached hereto as Schedule A, which sets out the terms and conditions of the occupancy of the housing units identified in the Agreement. The land identified in the Agreement is legally described as "Lot 7, District Lot 25G, Wellington District, Plan 11632" (6010 Hammond Bay Road).
3. Upon execution of the Agreement by the Mayor and Director, Legislative Services and application of the seal of the City of Nanaimo, this Agreement shall be validly entered into as authorized by this Bylaw.

PASSED FIRST READING _____
PASSED SECOND READING _____
PASSED THIRD READING _____
ADOPTED _____

MAYOR

CORPORATE OFFICER

File: HA000005
Address: 6010 Hammond Bay Road

SCHEDULE A

SECTION 219 COVENANT AND AFFORDABLE HOUSING AGREEMENT

THIS AGREEMENT made this ____th day of _____ 2021

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC
V9R 5J6

(the “**City**”)

OF THE FIRST PART

AND:

NANAIMO AFFORDABLE HOUSING SOCIETY
INC.NO. S0026246
350 PRIDEAUX STREET
NANAIMO, BC
V9R 6Z1

(the “**Grantor**”)

OF THE SECOND PART

WHEREAS:

- A. The City may, by agreement under Section 483 of the *Local Government Act*, enter into a housing agreement with an Owner regarding the use and occupancy of the dwelling units identified in the agreement, including but not limited to terms and conditions referred to in Section 483(2) of the *Local Government Act*;
- B. The Grantor is the registered owner in fee-simple of the lands described as:

PID 004-965-264; Lot 7, District Lot 25G, Wellington District, Plan 11632 (the “**Land**”);
- C. The Grantor wishes to develop 53 units [dwelling units, sleeping units or combination (the “**Development**”)] and has applied for a Building Permit (BP127294);
- D. Section 483 of the *Local Government Act* (British Columbia) authorizes the City, by bylaw, to enter into a Housing Agreement;

- E. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the City in respect of the subdivision of land, use of land or construction on the Land;
- F. The City and the Grantor wish to enter into this agreement (“**Agreement**”) to restrict the 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 THIS AGREEMENT WITNESSES that pursuant to Section 483 of the *Local Government Act* and section 219 of the *Land Title Act* and in consideration of the premises and covenants contained in this Agreement, the parties hereto covenant and agree with the other as follows:

1.0 INTERPRETATION

- 1.1 The City and the Grantor agree that the definitions in the City of Nanaimo’s Zoning Bylaw 2011 No. 4500, as amended or replaced from time to time, (“**Zoning Bylaw**”) apply to the interpretation of the terms in this Agreement.
- 1.2 In addition to the definitions of the Zoning Bylaw, the following words and terms have the following meanings:
 - a) "Affordable Units" means 100% of the Dwelling Units located on the land described as PID 004-965-264; Lot 7, District Lot 25G, Wellington District, Plan 11632, which will only be occupied by one or more Eligible Tenants;
 - b) "Development" refers to the totality of all Dwelling Units and ancillary spaces constructed on that part of the Land;
 - c) "Dwelling Unit" means a habitable room consisting of a self-contained unit with a separate entrance for the residential accommodation of only one family and which contains a cooking facility but excludes all accommodation for the travelling public; and
 - d) "Eligible Tenant" means a tenant or tenants of an Affordable Unit whose collective annual before-tax income does not exceed the most current Housing Income Levels, as amended from time to time, published by British Columbia Housing Management Commission or its successors in function that is in effect at the time the Eligible Tenant take occupancy of the Affordable Unit;
 - e) "Final Occupancy Date" means the date upon which the entirety of the Development has been approved for occupancy by the building inspector for the City of Nanaimo;
 - f) "Grantor" means the current owner of the Land or any person who acquires an interest in the Land;
 - g) "Permitted Rent" means the monthly rent that the Grantor may charge an Eligible Tenant for an Affordable Unit, which monthly rent shall not exceed 1/12 of 30% of the Eligible Tenant(s) collective before-tax annual income;

- h) “Rent Charge” means the rent charge referred to in Section 6.6;
- i) “Sleeping Unit” shall have the meaning set out in the Zoning Bylaw;
- j) “Term” means in perpetuity from the Final Occupancy Date .

2.0 OCCUPANCY and USE OF AFFORDABLE UNITS

- 2.1 The Grantor covenants and agrees with the City that from and after the Final Occupancy Date and for the Term, all Affordable Units within the Development are and shall remain Affordable Units for the Term and shall only be occupied by an Eligible Tenant.
- 2.2 The Grantor covenants and agrees with the City that the Land shall not be subdivided by any means whatsoever.

3.0 DEVELOPMENT COST CHARGES

- 3.1 If the number of Affordable Units in the Development is at least 30% of the total number of Dwelling Units, the City agrees to reduce development cost charges for the Development in accordance with Section 6 of CITY OF NANAIMO DEVELOPMENT COST CHARGE BYLAW 2017 NO. 7252.

4.0 ANNUAL REPORT

- 4.1 The Grantor further covenants and agrees that during the term of this Agreement, it will, commencing on the first anniversary of the Final Occupancy Date is issued for the Development on the Land, and on that anniversary date annually thereafter, provide to the City’s General Manager of Development Services a report in writing and in a form acceptable to the City’s General Manager of Development Services confirming that the Affordable Units continue to be used and occupied as required under this Agreement.

5.0 BINDING EFFECT

- 5.1 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, administrators and permitted assignees.

6.0 ENFORCEMENT AND WAIVER

- 6.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Land as if this Agreement had not been executed and delivered by the Grantor. The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 6.2 The parties agree that the City is not obligated to inspect the Land or to otherwise ensure compliance with this Agreement, nor is the City obligated to remedy any default of this

Agreement. A failure by the City to enforce this Agreement shall not constitute a waiver of any of the City's rights hereunder.

- 6.3 No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available at law or in equity.
- 6.4 The Grantor covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the City is entitled to all equitable remedies, including specific performance, injunction and declarative relief to enforce its rights under this Agreement. The Grantor acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Grantor under this Agreement.
- 6.5 The Grantor acknowledges that the City requires the Affordable Units for the benefit of the community. The Grantor therefore agrees that for each day the Land is occupied in breach of this Agreement, the Grantor must pay the City \$100.00 (the "**Daily Amount**") as liquidated damages and not as a penalty, due and payable at the offices of the City on the last day of the calendar month in which the breach occurred. The Daily Amount is increased on January 1 of each year by the amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase between that previous January 1 and the immediately preceding December 31 in the Consumer Price Index. The Grantor agrees that payment may be enforced by the City in a court of competent jurisdiction as a contract debt.
- 6.6 By this section, the Grantor grants to the City a rent charge under section 219 of the *Land Title Act*, and at common law, securing payment by the Grantor to the City of the Daily Amount as described in section 6.5. The City agrees that enforcement of the rent charge granted by this section is suspended until the date that is thirty (30) days after the date on which any amount due under section 6.5 is due and payable to the City in accordance with section 6.5. The City 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.

7.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- 7.1 Notice of this Agreement shall be registered in the Land Title Office by the City at the cost of the Grantor in accordance with Section 483 of the *Local Government Act*, and as a covenant in accordance with Section 219 of the *Land Title Act*.

8.0 TERMINOLOGY

- 8.1 Wherever the singular, masculine or neuter are used throughout this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic as the context requires.

9.0 BC LAWS GOVERN

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

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year first above written.

CITY OF NANAIMO by its authorized signatories

_____)
_____)
Mayor, _____)
_____)
_____)
Corporate Officer

NAME of Grantor on title by its authorized signatories:

_____)
_____)
_____)
_____)
_____)
_____)