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**TO:** CHIEF ADMINISTRATIVE OFFICER **DATE:** 2021 November 17

**FROM:** DIRECTOR PLANNING AND BUILDING **FILE:** 49500 20

**SUBJECT:** **PHASED DEVELOPMENT AGREEMENT BYLAW  
BELFORD PROPERTIES  
Rezoning References #17-34, 17-39, 18-21 and 18-23  
Metrotown Downtown Plan Area**

**PURPOSE:** To seek Council authorization to bring forward a Phased Development Agreement Bylaw for Rezoning References #17-34, 17-39, 18-21 and 18-23.

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**RECOMMENDATIONS:**

1. **THAT** Council authorize the City Solicitor to bring forward a bylaw to authorize the Phased Development Agreement in respect to Rezoning References #17-34, 17-39, 18-21, and 18-23 (Metrotown Downtown Plan Area), substantially in the form attached to this report, for First Reading on 2021 November 22 and Public Hearing on 2021 December 14.
2. **THAT** a copy of this report be sent to Mr. Jay Lin, Vice President Development, Belford Properties Ltd.

**REPORT**

**1.0 OVERVIEW**

In 2017 and 2018, Belford Properties submitted rezoning applications for four sites in the Maywood neighbourhood of the Metrotown Downtown Plan area (see *Attachment #1*):

Site	Rezoning Reference	Address
A	#18-23	6630 Telford Avenue
B	#17-34	6366 Cassie Avenue 6433 McKay Avenue
C	#17-39	6444 Silver Avenue
D	#18-21	4355 Maywood Street

In line with the adopted plan, each application proposed the development of a single high-rise strata residential apartment building with street fronting townhouses. As a result of emerging

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housing policy for replacement and non-market inclusionary rental housing, the applications were held at varying stages of the rezoning process.

In Fall 2018, the City initiated efforts to develop policies on rental tenure zoning and tenant assistance. The Finalized Rental Use Zoning Policy and updated Tenant Assistance Policy were adopted by Council on 2020 March 09, enabling the four applications to continue advancing.

On 2020 December 07, Council adopted a report by the Planning and Development Committee authorizing staff to pursue density transfer and a Phased Development Agreement (PDA) in connection with the four rezoning applications (see *Attachment #2*). As detailed in that report, concurrent advancement of all four rezoning bylaws alongside a PDA Bylaw to Public Hearing and Final Adoption is necessary.

Suitable plans of development for each of the four sites have been achieved. Appearing elsewhere on Council's agenda are four separate reports for Rezoning References #18-23, 17-34, 17-39, and 18-21 specifically describing the proposed development on each site, and seeking advancement of the associated rezoning amendment bylaws to First Reading and Public Hearing.

This report recaps the overall development and density transfer approach for the four sites, summarizes the key terms of the PDA, and seeks Council authorization to bring forward a bylaw to authorize a Phased Development Agreement for the four sites, substantially in the form attached to this report (see *Attachment #3*), to be advanced to First Reading and Public Hearing together with the four subject rezoning applications.

## **2.0 POLICY FRAMEWORK**

The proposed Phased Development Agreement Bylaw aligns with the following City policies: Corporate Strategic Plan (2017), Regional Context Statement (2013), Official Community Plan (1998), Metrotown Downtown Plan (2017), Economic Development Strategy (2007), Social Sustainability Strategy (2011), Environmental Sustainability Strategy (2016), Mayor's Task Force on Community Housing Final Report (2019), Rental Use Zoning Policy (2020); Tenant Assistance Policy (2020); and Density Transfer Policy (2021).

## **3.0 NEIGHBOURHOOD CONTEXT AND PROPERTY INFORMATION**

The subject development sites are located within the Maywood neighbourhood of the Metrotown Downtown Plan area. The sites are all currently zoned RM3 Multiple Family Residential District, improved with older low-rise apartment buildings, and designated for high-density multiple family residential development under the CD Comprehensive Development District, utilizing the RM4s and RM4r Multiple Family Residential Districts as guidelines.

The four sites currently support a total of 220 rental units, distributed as follows:

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Site	Address	Unit Count
A	6630 Telford Avenue	41
B	6366 Cassie Avenue	59
	6433 McKay Avenue	36
C	6444 Silver Avenue	45
D	4355 Maywood Street	39
	<b>TOTAL:</b>	<b>220</b>

Detailed neighbourhood and property information for the sites is provided in each of the Public Hearing reports that appear elsewhere on Council's agenda.

#### 4.0 PHASED DEVELOPMENT AND DENSITY TRANSFER APPROACH

As noted in the 2020 December 07 report, the applicant wishes to advance the four subject sites concurrently, incorporating the rental use zoning and tenant assistance policy measures adopted by Council. However, recognizing the challenges of concurrently advancing four mixed-tenure sites, the applicant requested that in order to advance the rental provision earlier in the development process, the development density and policy-required replacement (affordable) rental units be transferred amongst the four properties as described below, and that development proceed in a phased manner. Site A (Telford) and Site B (Cassie/McKay) are proposed to be developed immediately and concurrently as part of Phase 1. Site C (Silver) and Site D (Maywood) are permitted to be developed at a later date, either concurrently or separately, based on market conditions.

Suitable plans of development, which have been refined to best meet current market conditions, have been achieved, and Public Hearing reports specifically describing the proposed development on each site appear elsewhere on Council's agenda. The development and density transfer approach for the four sites is briefly summarized below:

- **Site A (Telford)** (Rezoning Reference #18-23) is proposed to be a rental-only site and support the RM4r density generated from all four sites and all the policy-required replacement (affordable) units generated from all four sites. The resultant site density is 8.11 FAR. This density is proposed to be distributed in two towers. The northerly tower is proposed to accommodate 220 replacement rental units<sup>1</sup>. As these replacement units will not fully consume all available RM4r density, remaining RM4r density is proposed to be used for an additional 168 rental units<sup>2</sup> on site, 50% (84 units) would be rented at CMHC median rental rates, and

<sup>1</sup> The Rental Use Zoning Policy requires new RM3-RM5 developments provide the greater of a 1:1 replacement of existing rental units, or the equivalent of 20% of proposed market units be provided as non-market rental units. The total number of existing rental units on the four sites (220) exceeds 20% of the total proposed number of strata units generated by the RM4s District (173).

<sup>2</sup> Rental rates for these units under RMr zoning are to be balanced at a 1:1 ratio of market rents and CMHC median market rents.

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50% (84 units) would be rented at market rates, in accordance with the Council adopted Rental Use Zoning Policy. Of these, 64 are proposed to be in the northerly tower, with the remaining 104 in the second, southerly tower.

- **Site B (Cassie/McKay)** (Rezoning Reference #17-34) is proposed to be a market strata site, utilizing all RM4s base, bonus, supplemental base, supplemental bonus, and offset density generated by the site, for a total site density of 4.45 FAR. The proposed development form is a single tower with street fronting townhomes. The RM4r rental density associated with the site is proposed to be transferred to Site A (Telford).
- **Site C (Silver)** (Rezoning Reference #17-39) is proposed to be a market strata site, utilizing all RM4s base, bonus, supplemental base, supplemental bonus, and offset density generated by the site, as well as a portion of the supplemental base and bonus density generated by Sites A (Telford) and D (Maywood). The total site density is 5.97 FAR, expressed as a single tower with street fronting townhomes. RM4r rental density generated by the site is proposed to be transferred to Site A (Telford).
- **Site D (Maywood)** (Rezoning Reference #18-21) is proposed to be market strata site, using all RM4s base, bonus, and offset density and a portion of the supplemental base and bonus density generated by both Sites D (Maywood) and A (Telford). The resultant residential density on Site D (Maywood) is 7.82 FAR, expressed as a tower with low-rise podium. RM4r rental density generated by the site is proposed to be transferred to Site A (Telford). Additional neighbourhood commercial uses at grade are also proposed through the CD rezoning of the site.

Detailed residential density and gross floor area figures for each site are shown in Schedule A of the proposed PDA attached to this report.

## 5.0 PHASED DEVELOPMENT AGREEMENT (PDA)

To establish the conditions under which development on the subject sites can occur as described in Section 4.0, it is recommended that the City enter into a PDA with Belford Properties. This necessitates Council approval through a PDA Bylaw, which is noted as a prerequisite condition of each of the four above-referenced rezoning applications.

The effect of a PDA, as outlined in Sections 516 to 520 of the *Local Government Act*, is to entrench development rights and requirements against changes to specified zoning provisions and/or specified subdivision servicing provisions while the PDA is in effect, in exchange for the developer's delivery of amenities and other considerations deemed beneficial to a municipality. For the purposes of the PDA for the above-referenced rezoning applications, the specified zoning provisions would be all the CD Comprehensive Development District zoning provisions contained in the Rezoning Bylaw for each application. The term of the PDA is proposed to be 10 years, with a potential for extension for up to five years with the approval of Council and the provincial Inspector of Municipalities. During this period, Council would not be able to make any changes to

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the adopted CD Comprehensive Development District zoning provisions (except a minor amendment as part of the Preliminary Plan Approval process) for each of the above-referenced development sites, unless Belford Properties (or future owner of the properties) agrees to such changes.

Key terms of the PDA include the following:

- The PDA does not come into effect unless the Rezoning Bylaws for the four development sites have been adopted by Council and the statutory requirements for the bylaw to authorize the PDA (i.e. Public Hearing) have been satisfied.
- The term of the PDA is ten years, subject to an extension for up to five years with the approval of Council and the provincial Inspector of Municipalities. The CD Comprehensive Development District zoning provisions for the four development sites will remain in place and cannot be changed except with the agreement of the developer during this time. Belford Properties will seek to achieve Preliminary Plan Approval (PPA) and Building Permit (BP) issuance in respect of all four properties within this timeframe. If any of the properties do not achieve PPA and BP issuance within this timeframe, the property(ies) will be subject to the then current zoning and subdivision servicing provisions in effect at the time of the PPA or BP applications are made, as applicable, and Council may make changes to the zoning for the property(ies) to meet community plan, Zoning Bylaw, and policy requirements in effect at that time.
- The four development sites are to be completed and occupied in a maximum of three phases, with the Site A (Telford) being in the first phase together with or in advance of development of the other three sites.
- Site A (Telford) must be developed with rental housing only, including the policy-required 220 replacement (affordable) rental units generated by all four properties subject to the PDA, as well as 168 additional rental units. The 220 replacement rental units are required to be rented in accordance with the Rental Use Zoning Policy, i.e. right of first refusal to tenants displaced by the four rezoning applications, with subsequent tenancies being at 20% below CMHC median rates. Fifty percent (50%) of the additional rental units must be rented at CMHC median rental rates and the remaining 50% can be rented at market rental rates. These requirements will be secured by a Housing Agreement and Section 219 Covenant registered on title prior to occupancy of this development site.
- Site A (Telford) must achieve building occupancy prior to, or concurrently with, the issuance of occupancy permits for any of the other development sites. This requirement will be secured by Section 219 Covenants registered on title to the three market strata development sites prohibiting occupancy until Site A (Telford) achieves occupancy.
- For Site C (Silver) and Site D (Maywood), submission of certain technical designs, plans, studies, bonding, and registration of certain legal documents will be required as conditions

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of PPA issuance (rather than Rezoning Bylaw adoption) in order to more closely align with actual construction dates, once known. This requirement will be secured by a Section 219 Covenant registered against these two development to prohibit issuance of a PPA or BP until such designs, plans, studies, bonding, legal agreements, etc. are in place to the satisfaction of the City.

More detailed development requirements for each of the sites are shown in Schedule B of the proposed PDA attached to this report.

## 6.0 CONCLUSION AND RECOMMENDATIONS

The proposed PDA with Belford Properties supports immediate advancement of two of the subject rezoning applications, and transfer of the RM4r rental density (~221,000 sq.ft. of rental gross floor area) associated with Site B (Cassie/McKay), Site C (Silver), and Site D (Maywood) to Site A (Telford). It achieves early delivery of 388 rental units, including 220 non-market replacement/inclusionary rental units, 84 CMHC median rent units, and 84 market rent units on Site A (Telford) as part of the first phase. Early delivery of these affordable rental units would mean that fewer tenants are displaced, as existing tenants at Site C (Silver) and Site D (Maywood) would be offered the right of first refusal for a new replacement rental unit in Site A (Telford) without displacement. Furthermore, a single rental site in a concrete form and with mixed rental rates enhances the viability of long term building maintenance and operation.

It is therefore recommended that Council authorize bringing forward a bylaw to authorize the Phased Development Agreement in respect to Rezoning References #17-34, 17-39, 18-21 and 18-23 (Metrotown Downtown Plan Area), substantially in the form attached to this report. It is proposed that this PDA Bylaw be brought forward for First Reading on 2021 November 22 and Public Hearing on 2021 December 14, together with the Rezoning Bylaws for the four development sites.

It is further recommended that a copy of this report be sent to Belford Properties for their information.

  
for: E.W. Kozak, Director  
PLANNING AND BUILDING

KH:tn  
*Attachments*

cc: Deputy Chief Administrative Officer and CFO  
Director Corporate Services  
Director Public Safety and Community Services  
City Solicitor



### *Sites Subject to Phased Development Agreement*

SITE A - 6630 Telford Avenue (REZ #18-23)

SITE B - 6433 McKay Avenue and 6366 Cassie Avenue (REZ #17-34)

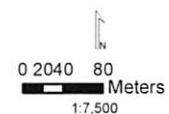
SITE C - 6444 Silver Avenue (REZ #17-39)

SITE D - 4355 Maywood Street (REZ #18-21)



Planning and Building Dept

Printed on May 25, 2021



Sketch #1





Meeting 2020 November 24

## COMMITTEE REPORT

**TO:** CHAIR AND MEMBERS  
PLANNING AND DEVELOPMENT COMMITTEE

**DATE:** 2020 November 18

**FROM:** DIRECTOR PLANNING AND BUILDING

**FILE:** 49500 20

**SUBJECT:** **REZONING REFERENCES #17-34, 17-39, 18-21 and 18-23**  
**Proposed Density Transfer and Phased Development Agreement**  
**Metrotown Downtown Plan Area**

**PURPOSE:** To seek Council authorization for staff to pursue a density transfer and a Phased Development Agreement in connection with four rezoning applications in the Metrotown Downtown Plan area.

**RECOMMENDATIONS:**

1. **THAT** the Committee recommend that Council authorize staff to pursue a density transfer and a Phased Development Agreement in connection with four rezoning applications in the Metrotown Downtown Plan area, as generally outlined in this report.
2. **THAT** a copy of this report be sent to Mr. Jay Lin, Vice President Development, Belford Properties Ltd.

**REPORT****1.0 INTRODUCTION**

In 2017 and 2018, Belford Properties submitted rezoning applications for four sites in the Maywood neighbourhood of the Metrotown Downtown Plan area (see *attached* Sketches #1-5):

Site	Rezoning Reference	Address
1	#17-34	6366 Cassie Avenue 6433 McKay Avenue
2	#17-39	6444 Silver Avenue
3	#18-21	4355 Maywood Street
4	#18-23	6630 Telford Avenue

In line with the adopted plan, each application proposed the development of a single high-rise strata residential apartment building with street fronting townhouses. As a result of concerns arising from the loss of on-site rental housing due to redevelopment, the applications were held at varying stages of the rezoning process, with Rezoning Reference #17-34 having advanced to Second Reading, Rezoning Reference #17-39 being advanced to initial report, and Rezoning References # 18-21 and #18-23 pending introduction to Council.



*To: Planning and Development Committee*  
*From: Director Planning and Building*  
*Re: REZONING REFERENCES ##17-34, 17-39, 18-21, 18-23*  
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In Fall 2018, the Planning Department initiated efforts to develop policies on rental tenure zoning and tenant assistance. The Finalized Rental Use Zoning Policy and updated Tenant Assistance Policy were adopted by Council on 2020 March 09. As such, these applications are now in a position to advance, with the required replacement rental to be provided up front, and development of the four sites determined through a Phased Development Agreement, subject to Council approval.

## **2.0 POLICY FRAMEWORK**

The proposed developments align with the following goals and sub-goals of the Corporate Strategic Plan:

### **A Connected Community**

- Social Connection – Enhance social connections throughout Burnaby.

### **A Dynamic Community**

- Economic Opportunity – Foster an environment that attracts new and supports existing jobs, businesses and industries.
- Community Development – Manage change by balancing economic development with environmental protection and maintaining a sense of belonging.

### **An Inclusive Community**

- Serve a diverse community – Ensure City services fully meet the needs of our dynamic community.
- Create a sense of community – Provide opportunities that encourage and welcome all community members and create a sense of belonging.

## **3.0 NEIGHBOURHOOD CONTEXT AND PROPERTY INFORMATION**

The subject development sites are located within the Maywood neighbourhood of the Metrotown Downtown Plan area (see *attached* Sketch #1). The adopted Plan identifies the Maywood neighbourhood as the heart of Metrotown, with opportunities for people to live, gather, socialize and celebrate. Specifically, high density multiple-family mixed-use residential developments along Beresford Street are intended to terrace downward toward Imperial Street. The introduction of smaller neighbourhood commercial opportunities, with a focus on Maywood Park, are to be considered within Maywood to create a local serving hub and gathering places for residents and visitors. With respect to building form, such developments are intended for high-rise apartment buildings with low-rise apartments, townhousing or row-housing podiums fronting bounding streets. The neighbourhood is supported by Maywood Park, Maywood Community School, and an emerging network of pedestrian and cycling linkages.

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The four sites are all currently zoned RM3 Multiple Family Residential District, improved with low-rise apartment buildings constructed between 1966 and 1969, and designated for high-density multiple family residential development under the CD Comprehensive Development District, utilizing the RM4s and RM4r Multiple Family Residential Districts as guidelines. The four sites currently support a total of 220 rental units, distributed as follows:

Site	Address	Unit Count
1	6366 Cassie Avenue	59
	6433 McKay Avenue	36
2	6444 Silver Avenue	45
3	4355 Maywood Street	39
4	6630 Telford Avenue	41
	<b>TOTAL:</b>	<b>220</b>

#### **4.0 DEVELOPMENT PROPOSAL**

As previously noted, the applicant wishes to advance the four sites, incorporating the rental use zoning and tenant assistance policy measures adopted by Council. However, recognizing the challenges of concurrently advancing four mixed-tenure sites, and a significant number of strata units in a challenging market, the applicant has requested that in order to advance the rental provision earlier in the development process, the development density and policy-required replacement (affordable) rental units be transferred amongst the four properties as described below, and that development proceed in a phased manner. Site 1 (Cassie/McKay) and Site 4 (Telford) are proposed to be developed immediately and concurrently as part of Phase 1. Site 2 (Silver) and Site 3 (Maywood) are to be developed at a later date, either concurrently or separately, based on market conditions.

Site 4 (Telford) is proposed to be a rental-only site and support the RM4r density generated from all four sites and all the policy-required replacement and inclusionary (non-market) units generated from all four sites. The resultant density would be 8.18 FAR. This density is proposed to be distributed in two towers. One tower is expected to accommodate 220 replacement rental units<sup>1</sup>. As these replacement units will not fully consume all available RM4r density, remaining RM4r density is proposed to be used for approximately 200 additional rental units<sup>2</sup> in a second tower.

Site 1 (Cassie/McKay) and Site 2 (Silver) are proposed to be strata-only sites, with each supporting the RM4s density and density offset associated with each site itself. Supplemental base and bonus density would not be fully consumed on either site. The total density proposed for each site is 3.6 FAR. Each site would support a single tower with street fronting townhomes.

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<sup>1</sup> The Rental Use Zoning Policy requires new RM3-RM5 developments provide the greater of a 1:1 replacement of existing rental units, or the equivalent of 20% of proposed market units be provided as non-market rental units. The total number of existing rental units on the four sites (220) exceeds 20% of the total anticipated number of strata units generated by the RM4s District (162).

<sup>2</sup> Rental rates for these units under RMr zoning are to be balanced at a 1:1 ratio of market rents and CMHC median market rents.

To: *Planning and Development Committee*  
From: *Director Planning and Building*  
Re: *REZONING REFERENCES ##17-34, 17-39, 18-21, 18-23*  
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Site 3 (Maywood) is proposed to be a strata-only site and support the RM4s density and density offset associated with the site itself, as well as the RM4s density and density offset generated from Site 4 (Telford). Supplemental base and bonus density associated with both sites would not be fully consumed. The resultant density on Site 3 would be 7.82 FAR, expressed as a tower with low rise podium.

In order to establish the zoning, density allocation, and housing tenure conditions that will enable development as described above, the four applications require concurrent advancement of rezoning bylaws to Public Hearing and Final Adoption.

## **5.0 PHASED DEVELOPMENT AGREEMENT**

The proposed transfer of density and rental obligation is considered supportable, as the replacement rental is provided within the same neighbourhood, it is advanced much earlier and with less disruption to tenants than if the four sites developed independently, and it allows for the early provision of an additional +/- 200 inclusionary market rental units. To facilitate this approach, it is recommended that the City enter into a Phased Development Agreement (PDA) with Belford Properties to establish the conditions under which development on the subject sites can occur as described in Section 4.0. The effect of the PDA provisions, as outlined in Sections 516 to 520 of the *Local Government Act*, are to entrench phased development conditions against changes to specified zoning provisions and/or specified subdivision servicing provisions while the PDA is in effect, in exchange for amenities and other considerations deemed beneficial to the municipality. For the purposes of the proposed PDA, the specified zoning provisions would be all the provisions of the CD Comprehensive Development District added to the Burnaby Zoning Bylaw, in respect of the properties by the applicable Zoning Amendment Bylaw. If any of the specified zoning provisions are amended or repealed during the term of the PDA, those changes would not apply unless agreed to in writing by the City and the applicant.

The proposed PDA requires Council approval through a Phased Development Agreement Bylaw, which would be established as a condition of approval of each of the four subject rezoning applications. Key terms of the PDA are proposed to include the following:

- The term of the PDA would be ten years. Belford Properties will seek to achieve Preliminary Plan Approval (PPA) and Building Permit (BP) issuance in respect of all four properties within this timeframe. If any of the properties do not achieve PPA and BP issuance within this timeframe, the property(ies) will be subject to the then current zoning and subdivision servicing provisions in effect at the time of the PPA or BP applications are made, as applicable, and as such, the property(ies) may require a new rezoning application meeting community plan, Zoning Bylaw, and policy requirements in effect at that time.
- Site 4 (Telford) must be developed with rental housing only, including all the policy-required replacement (affordable) rental units generated by all four properties subject to the PDA.

To: *Planning and Development Committee*  
From: *Director Planning and Building*  
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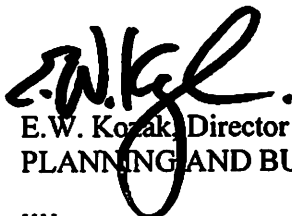
- Site 4 (Telford) must be granted building occupancy prior to, or concurrently with, the issuance of occupancy permits for any of the other sites.
- For Site 2 (Silver) and Site 3 (Maywood), submission of certain technical designs, plans, studies, bonding, and registration of certain legal documents will be established as conditions of PPA (rather than rezoning) approval in order to more closely align with actual construction dates, once known.

Draft detailed development requirements of the PDA are presented in *Appendix A*.

The proposed PDA supports immediate advancement of two of the applications, and transfer of the RM4r rental density (+/- 110,000 sq.ft. of rental gross floor area) associated with Site 1 (Cassie/McKay), Site 2 (Silver), and Site 3 (Maywood) to Site 4 (Telford). Upwards of 420 rental units, including 220 affordable units, would be constructed on Site 4 (Telford) as part of Phase 1. Early delivery of these units would mean that fewer tenants are displaced; existing tenants at Site 2 (Silver) and Site 3 (Maywood) would be offered the right of first refusal for a new replacement rental unit in Site 4 (Telford) without displacement. Furthermore, a single rental site, in a concrete form, and with mixed rental rates enhances the viability of long term building maintenance and operation.

## 6.0 CONCLUSION AND NEXT STEPS

The applicant's request to transfer density and rental obligation amongst its four sites in Metrotown through a phased development approach has merit and enables the concurrent advancement of all four rezoning bylaws to Public Hearing and Final Adoption. Staff recommend that the City enter into a Phased Development Agreement (PDA) with Belford Properties to establish the conditions under which the phased development can occur. With Committee and Council approval of this approach, as generally outlined in this report, staff would proceed to advance Rezoning Reports for each of the subject rezoning applications, recommending the authority to continue to work with the applicant toward suitable plans of development for presentation to future public hearings. The proposed prerequisite conditions of each rezoning, including the introduction of a Phased Development Agreement Bylaw, will be included in future reports to Council. It is further recommended that a copy of this report be sent to Belford Properties for their information.



E.W. Kozak, Director  
PLANNING AND BUILDING

KH:tn

### Attachments

cc: City Manager  
Director Finance  
Director Corporate Services  
City Solicitor

Director Engineering  
Director Parks, Recreation and Cultural Services  
Director Public Safety and Community Services  
City Clerk

### **Appendix A: Development Requirements**

<b>Rezoning Requirement</b>	<b>REZ #18-23 – Telford (Site 4)</b>	<b>REZ #17-34 - Cassie/McKay (Site 1)</b>	<b>REZ #17-39 – Silver (Site 2)</b>	<b>REZ #18-21 – Maywood (Site 3)</b>
<b>Zoning district</b>	CD(RM4s, RM4r)	CD(RM4s, RM4r)	CD(RM4s, RM4r)	CD(RM4s, RM4r)
<b>General building form</b>	Two high rise buildings with ground-oriented residential component and underground parking.	Single high rise building with ground-oriented residential component and underground parking.	Single high rise building with ground-oriented residential component and underground parking.	Single high rise building atop six-storey low rise residential component and underground parking.
<b>CD drawings – general</b>	Fully detailed drawings prior to rezoning Final Adoption.	Fully detailed drawings prior to rezoning Final Adoption.	General guideline drawings prior to rezoning Final Adoption, with fully detailed drawings provided as part of PPA.	General guideline drawings prior to rezoning Final Adoption, with fully detailed drawings provided as part of PPA.
<b>CD drawings – technical plans</b>	Fully detailed statistics sheet, Solid Waste and Recycling Plans, Residential Loading Management Plan, Fire Truck Access Plan, adaptable units plan, parking plan (including accessible parking) prior to rezoning Final Adoption.	Fully detailed statistics sheet, Solid Waste and Recycling Plans, Residential Loading Management Plan, Fire Truck Access Plan, adaptable units plan, parking plan (including accessible parking) prior to rezoning Final Adoption.	Statistics sheet must specify density/GFA, unit count, building height prior to rezoning Final Adoption.  Preliminary Solid Waste and Recycling Plans, Residential Loading Management Plan, Fire Truck Access Plan, adaptable units plan, parking plan (including accessible parking) prior to rezoning Final Adoption, with fully detailed drawings prior to PPA issuance.	Statistics sheet must specify density/GFA, unit count, building height prior to rezoning Final Adoption.  Preliminary Solid Waste and Recycling Plans, Residential Loading Management Plan, Fire Truck Access Plan, adaptable units plan, parking plan (including accessible parking) prior to rezoning Final Adoption, with fully detailed drawings prior to PPA issuance.
<b>Subdivision: road dedication and creation of net development site(s)</b>	Registration prior to rezoning Final Adoption	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption. CD drawings to acknowledge interim non-conforming building siting.	Registration prior to rezoning Final Adoption. CD drawings to acknowledge interim non-conforming building siting.
<b>Building demolition</b>	Aligned with Building Permit issuance.	Aligned with Building Permit issuance.	Aligned with Building Permit issuance.	Aligned with Building Permit issuance.
<b>Off-site servicing</b>	Civil design, servicing agreements, and letter of credit prior to rezoning Final Adoption.	Civil design, servicing agreements, and letter of credit prior to rezoning Final Adoption.	Civil design, servicing agreements, and letter of credit prior to PPA issuance.	Civil design, servicing agreements, and letter of credit prior to PPA issuance.

<b>Rezoning Requirement</b>	<b>REZ #18-23 – Telford (Site 4)</b>	<b>REZ #17-34 - Cassie/McKay (Site 1)</b>	<b>REZ #17-39 – Silver (Site 2)</b>	<b>REZ #18-21 – Maywood (Site 3)</b>
Neighbourhood linkage	To be fully accommodated on development site to the north.	n/a	n/a	n/a
Hydro, Telus, and other third party utilities	Design, bonding, and registration of SROWs prior to rezoning Final Adoption.  Registration of additional/ replacement SROWs as required.	Design, bonding, and registration of SROWs prior to rezoning Final Adoption.  Registration of additional/ replacement SROWs as required.	Design, bonding, and registration of SROWs prior to PPA issuance.  Registration of additional/ replacement SROWs as required.	Design, bonding, and registration of SROWs prior to PPA issuance.  Registration of additional/ replacement SROWs as required.
Stormwater Management Plan and Groundwater Management Plan	Plan, covenant, and bonding prior to rezoning Final Adoption.	Plan, covenant, and bonding prior to rezoning Final Adoption.	Plan, covenant, and bonding prior to rezoning Final Adoption.	Plan, covenant, and bonding prior to rezoning Final Adoption.
Sediment Control Plan	Plan submission prior to rezoning Final Adoption.	Plan submission prior to rezoning Final Adoption.	Plan submission prior to PPA issuance.	Plan submission prior to PPA issuance.
Amenity density bonus payment	n/a	Negotiation and payment prior to rezoning Final Adoption.	Negotiation and payment prior to PPA issuance.	Negotiation and payment prior to PPA issuance.
Section 219 Covenants – standard (no gates on driveways, no balcony enclosure, SWMP, groundwater, public art, green building)	Registration prior to Final Adoption.	Registration prior to Final Adoption.	Registration prior to PPA issuance.	Registration prior to PPA issuance.
Section 219 Covenant – no build/no PPA	n/a	n/a	Registration prior to rezoning Final Adoption; development permitted upon completion of all prior-to PPA conditions and occupancy of Telford.	Registration prior to rezoning Final Adoption; development permitted upon completion of all prior-to PPA conditions and occupancy of Telford.
Section 219 Covenant – no occupancy	n/a	Registration prior to rezoning Final Adoption; occupancy permitted concurrent with or following occupancy of Telford.	n/a	n/a
Section 219 Covenant – density allocation	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.

<b>Section 219 Housing Covenant – no stratification, and Housing Agreement Bylaw</b>	Covenant registration prior to rezoning Final Adoption. Housing Agreement Bylaw adoption prior to building occupancy.	n/a	n/a	n/a
<b>Section 219 Covenant – Separate sale of lands and assignment of phased development agreement</b>	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.
<b>Communications Strategy</b>	Submission prior to rezoning Final Adoption.	Submission prior to rezoning Final Adoption.	Submission prior to PPA issuance.	Submission prior to PPA issuance.
<b>Green Building Strategy</b>	Registration of green building covenant including green building report, energy modeling report, and provisions for energy benchmarking prior to rezoning Final Adoption.	Registration of green building covenant including green building report, energy modeling report, and provisions for energy benchmarking prior to rezoning Final Adoption.	Submission of green building report; commitment to undertake air tightness testing; energy benchmarking; energy modelling report; and energy checklist prior to rezoning Final Adoption.  Registration of green building covenant including green building report, energy modeling report, and provisions for energy benchmarking prior to PPA issuance.	Submission of green building report; commitment to undertake air tightness testing; energy benchmarking; energy modelling report; and energy checklist prior to rezoning Final Adoption.  Registration of green building covenant including green building report, energy modeling report, and provisions for energy benchmarking prior to PPA issuance.
<b>Tenant Assistance Plan</b>	Submission prior to rezoning Final Adoption.	Submission prior to rezoning Final Adoption.	Submission prior to rezoning Final Adoption.	Submission prior to rezoning Final Adoption.
<b>Public art – location, report, bonding</b>	100% rental project – public art not required.	Public art plan, artist selection, bonding, and covenant all required as condition of rezoning Final Adoption.	Location identified in CD drawings, and draft public art plan required as condition of Final Adoption.  Final public art plan, artist selection, bonding, and covenant required as condition of PPA issuance.	Location identified in CD drawings, and draft public art plan required as condition of Final Adoption.  Final public art plan, artist selection, bonding, and covenant required as condition of PPA issuance.



Alternative Transportation Requirements	TDM study, cost estimate, letter of credit, Section 219 Covenant all prior to rezoning Final Adoption.	TDM study, cost estimate, letter of credit, Section 219 Covenant all prior to rezoning Final Adoption.	TDM study, cost estimate, letter of credit, Section 219 Covenant all prior to PPA issuance.	TDM study, cost estimate, letter of credit, Section 219 Covenant all prior to PPA issuance.
Development Cost Charges	Payment at the time of rezoning/subdivision approval.	Payment at the time of rezoning/subdivision approval, or if no subdivision required, payment at the time of building permit issuance.	Payment at the time of building permit issuance.	Payment at the time of building permit issuance.

KH:  
2020 October 19



- 9 Medium Density Residential (RM3s)
- 15 High Density Residential (RM5)
- 16 High Density Residential (RM4s)
- 17 High Density Residential (RM5s)
- 18 High Density Mixed Use (RM4s/C2)
- 19 High Density Mixed Use (RM4s/C3)

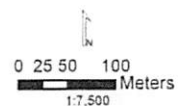
- 20 High Density Mixed Use (RM5s/C2)
- 21 High Density Mixed Use (RM5s/C3)
- 28 Institutional
- 30 Public School (P3)
- 34 Park and Public Use (P3)



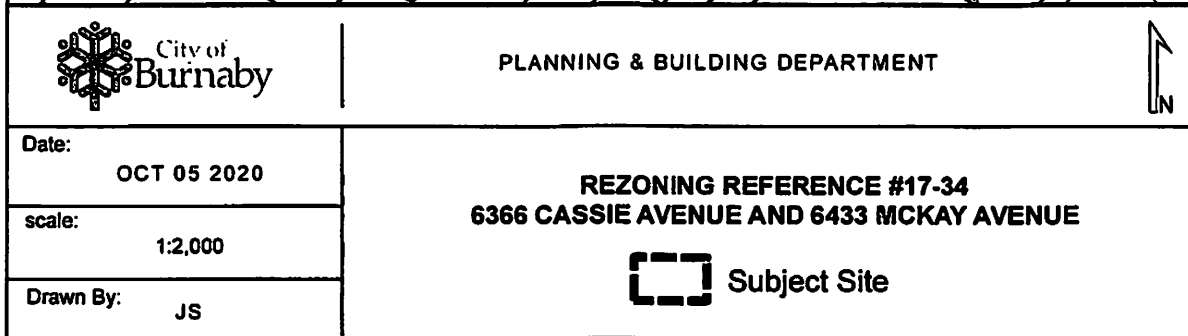
Planning and Building Dept

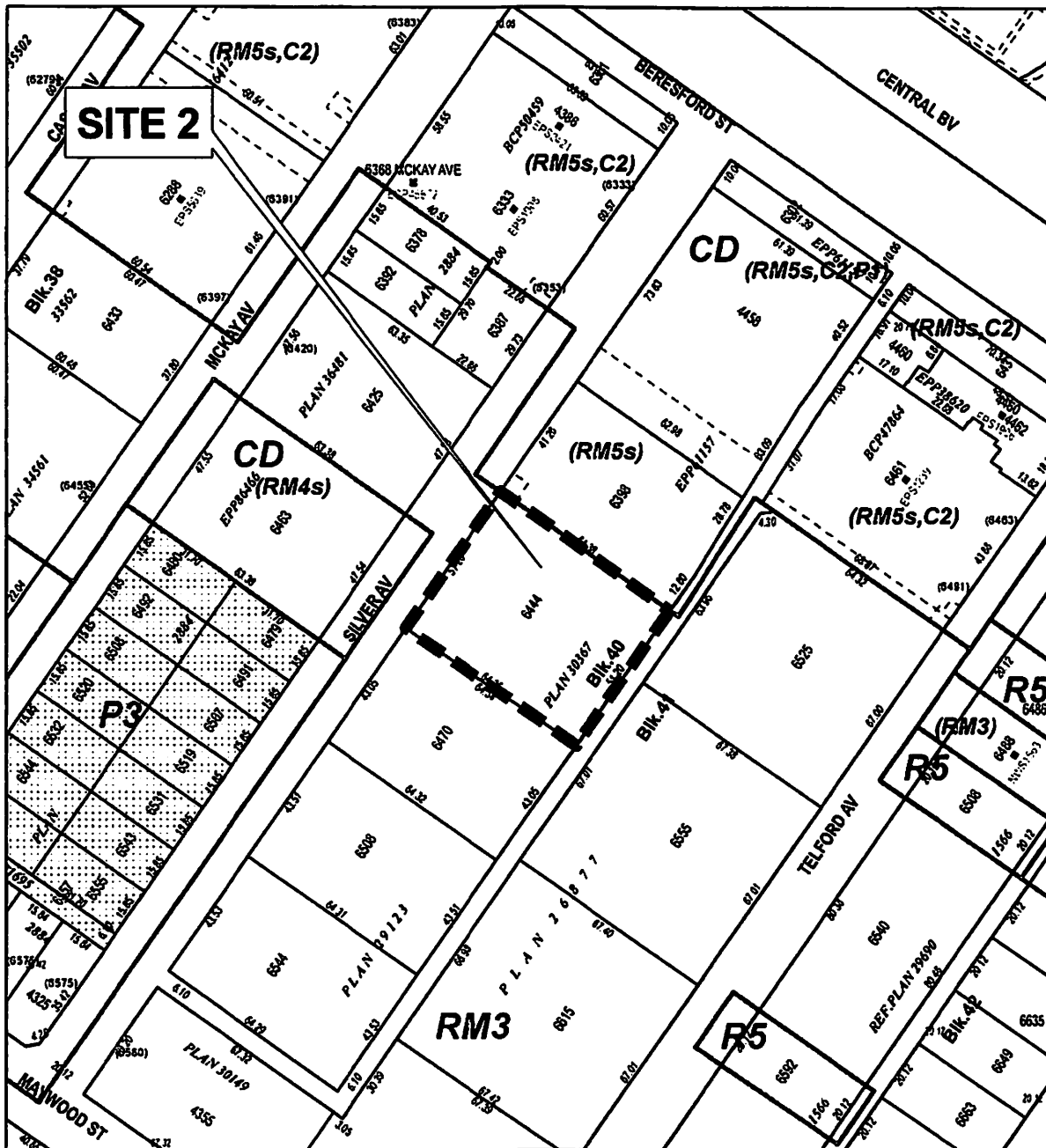
Printed on October 5, 2020

## Metrotown Plan



Sketch #1





PLANNING & BUILDING DEPARTMENT



Date: OCT 05 2020

scale: 1:2,000

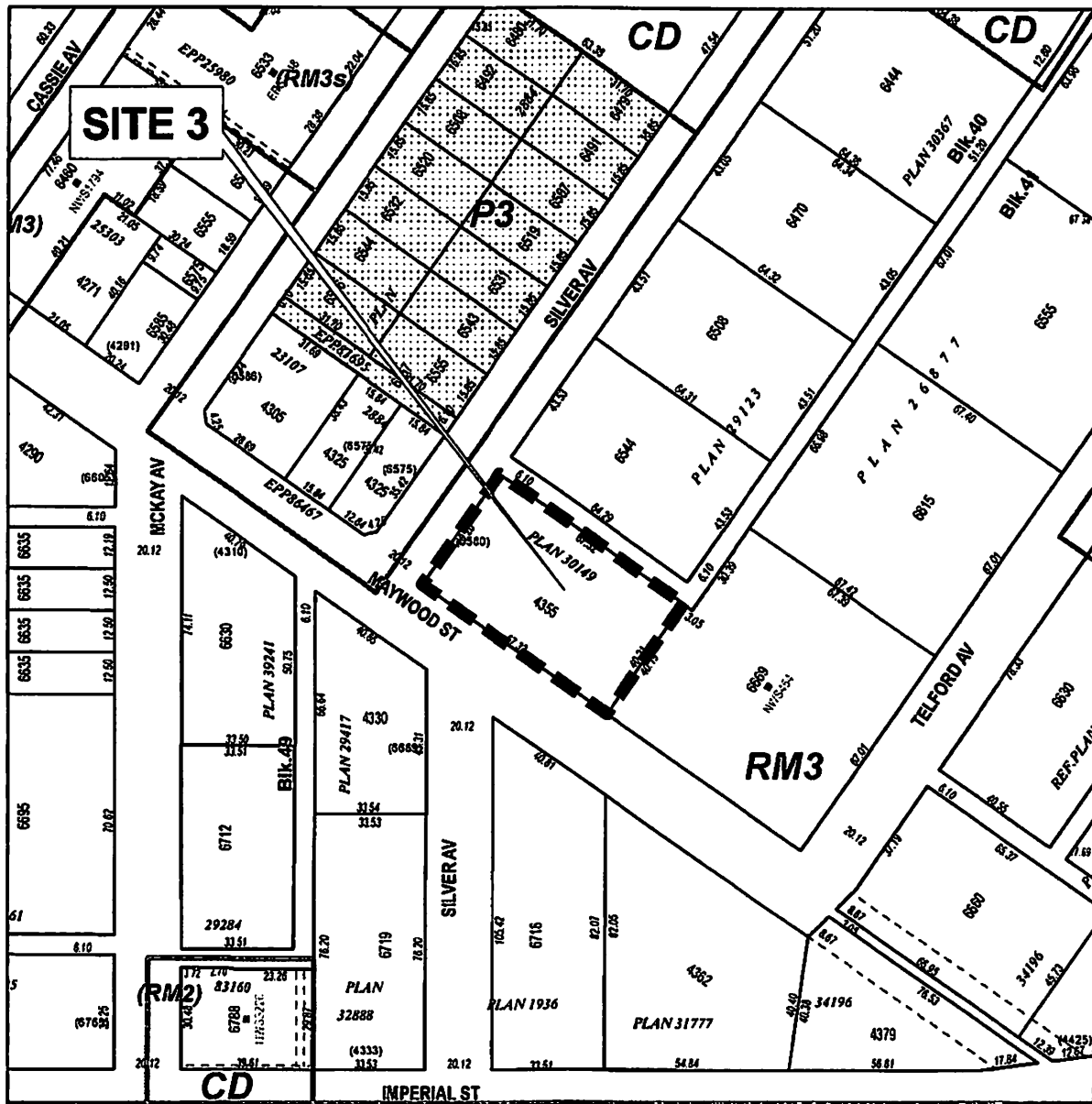
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

REZONING REFERENCE #17-39  
6444 SILVER AVENUE

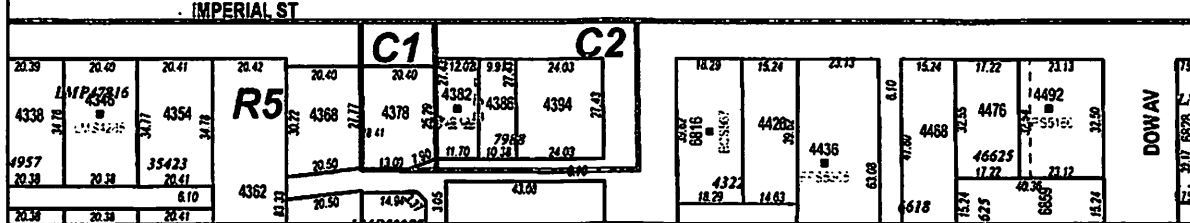
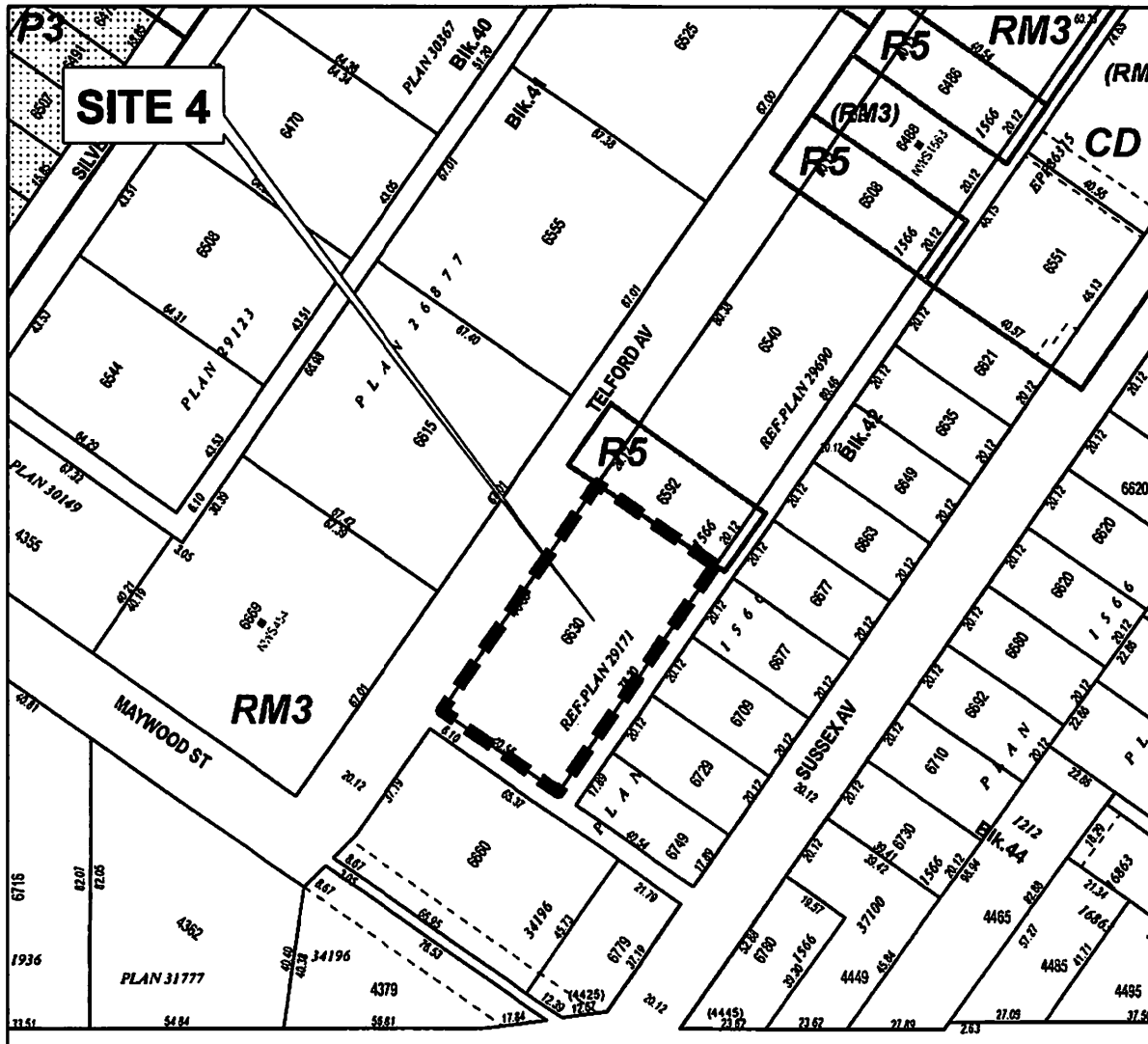





Subject Site

Sketch #3



		PLANNING & BUILDING DEPARTMENT		
Date: OCT 05 2020		<b>REZONING REFERENCE #18-21</b> <b>4355 MAYWOOD STREET</b>  Subject Site		
scale: 1:2,000				
Drawn By: JS				



 <b>City of Burnaby</b>		<b>PLANNING &amp; BUILDING DEPARTMENT</b>		
<b>Date:</b> OCT 05 2020		<b>REZONING REFERENCE #18-23</b> <b>6630 TELFORD AVENUE</b>		
<b>scale:</b> 1:2,000		 <b>Subject Site</b>		
<b>Drawn By:</b> JS				

**Sketch #5**

**PHASED DEVELOPMENT AGREEMENT**

This Agreement dated for reference the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

AMONG:

**CITY OF BURNABY**  
4949 Canada Way  
Burnaby, BC V5G 1M2

(the "City")

AND

**BELFORD (MCKAY) NOMINEE LTD.**  
Incorporation No. BC1103572  
540 - 1199 West Pender Street  
Vancouver, BC V6E 2R1

("McKay Nominee")

AND

**BELFORD (MCKAY) PROPERTIES LIMITED PARTNERSHIP**  
540 - 1199 West Pender Street  
Vancouver, BC V6E 2R1

("McKay LP", together with McKay Nominee, "Belford (McKay)")

AND

**BELFORD (MAYWOOD) NOMINEE LTD.**  
Incorporation No. BC0674725  
540 - 1199 West Pender Street  
Vancouver, BC V6E 2R1

("Maywood Nominee")

AND

**BELFORD (MAYWOOD) PROPERTIES LIMITED PARTNERSHIP**  
540 - 1199 West Pender Street  
Vancouver, BC V6E 2R1

("Maywood LP", together with Maywood Nominee, "Belford (Maywood)")



AND

**BELFORD (SILVER 3) NOMINEE LTD.**

Incorporation No. BC1125044  
540 - 1199 West Pender Street  
Vancouver, BC V6E 2R1

("Silver Nominee")

AND

**BELFORD (SILVER 3) PROPERTIES LIMITED PARTNERSHIP**

540 - 1199 West Pender Street  
Vancouver, BC V6E 2R1

("Silver LP", together with Silver Nominee, "Belford (Silver)")

AND

**BELFORD (TELFORD) NOMINEE LTD.**

Incorporation No. BC1157241  
540 - 1199 West Pender Street  
Vancouver, BC V6E 2R1

AND

**BELFORD (TELFORD) PROPERTIES LIMITED PARTNERSHIP**

540 - 1199 West Pender Street  
Vancouver, BC V6E 2R1

("Telford LP", together with Telford Nominee, "Belford (Telford)")

**WHEREAS:**

- A. Telford Nominee is the registered owner and Telford LP is the beneficial owner of lands and premises legally described as:

Parcel Identifier: 002-544-521  
Lot "A" (Reference Plan 29171) District Lot 153 Group 1 New Westminster  
District Plan 1566

(the "Telford Site");

- B. McKay Nominee is the registered owner and McKay LP is the beneficial owner of lands and premises legally described as:

Parcel Identifier: 000-824-488  
Lot 100 District Lots 151 and 153 Group 1 New Westminster District Plan  
34561, and

Parcel Identifier: 003-385-752  
Lot "B" District Lot 153 Group 1 New Westminster District Plan 8356,

(together, the “**Cassie/McKay Site**”);

- C. Silver Nominee is the registered owner and Silver LP is the beneficial owner of lands and premises legally described as:

Parcel Identifier: 002-993-406  
Lot 80 District Lot 153 Group 1 New Westminster District Plan 30367

(the “**Silver Site**”)

- D. Maywood Nominee is the registered owner and Maywood LP is the beneficial owner of lands and premises legally described as:

Parcel Identifier: 010-658-866  
Lot “B” District Lot 153 Group 1 New Westminster District Plan 2666

(the “**Maywood Site**”);

- E. Belford has submitted rezoning applications for the Cassie/McKay Site, Maywood Site, Silver Site and Telford Site, all located within the Maywood neighbourhood of the Metrotown Downtown Plan Area;
- F. As a condition of advancing the applicable rezoning applications to the City’s Council for Public Hearing, Belford has undertaken to provide the Replacement Rental Units (as hereinafter defined), together with the Market-Rate Rental Housing Units (as hereinafter defined), as set out in this Agreement, in conjunction with the development of the Lands (as hereinafter defined) and accordingly, the parties wish to ensure that the specified provisions of the applicable CD District Bylaws (as hereinafter defined) continue to apply to the Cassie/McKay Site, the Maywood Site, the Silver Site and the Telford Site, as applicable, for the Term (as hereinafter defined) and that such sites are developed in accordance with the terms and conditions set out in this Agreement; and
- G. The Council has adopted the “Burnaby Phased Development Agreement (Belford Properties) Bylaw 2021” to authorize the execution of this Agreement.

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

## **1.0 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions.** In this Agreement:

- (a) “**Additional Rental Housing Units**” means, collectively, 168 rental housing units, exclusive of the Replacement Rental Housing Units, that are to be constructed by or on behalf of Belford on the Telford Site and 50% of which (84) will be provided at market rental rates and 50% of which (84) will be provided at CMHC Median Rental Rates, as specified in the applicable Housing Agreement.
- (b) “**Affiliate**” means, in relation to any person, any other person or group of persons that, directly or indirectly, controls, is controlled by or under common control with the first mentioned person, and for the purposes of this

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definition and references in this Agreement to “Affiliate”, “control” means the possession, directly or indirectly, by a person or group of persons with the power to direct or cause the direction of the management and policies of another person, whether through the ownership of voting securities, units or other ownership interests of such person, contract or otherwise. Without limiting the generality of the foregoing, “Affiliate” of any person will also include a limited partnership in which such person, or an Affiliate of such person, is a limited partner or the general partner.

- (c) **“Agreement”** means this agreement and includes all recitals and schedules to this agreement and all instruments comprising this agreement.
- (d) **“Approving Officer”** means the subdivision approval official for the City appointed for that purpose under the provisions of the *Land Title Act*.
- (e) **“Belford”** means, collectively, Belford (McKay), Belford (Maywood), Belford (Silver) and Belford (Telford).
- (f) **“Below Market-Rate Rental Housing Units”** means, collectively,
  - (i) the Replacement Rental Units on the Lands to be provided at the Replacement Rental Units Rental Rates; and
  - (ii) 50% of the Additional Rental Housing Units on the Lands to be provided at the CMHC Median Rental Rates,and that are subject to the Housing Agreement (Below Market-Rate Rental), as contemplated under Section 483 of the *Local Government Act*.
- (g) **“Building”** means any building or buildings to be constructed on the Lands, or any portion thereof, pursuant to a Building Permit.
- (h) **“Building Permit”** means a building permit authorizing construction of any Building, or any portion(s) thereof after the date of this Agreement.
- (i) **“Cassie/McKay CD District Bylaw”** means all those provisions in the Comprehensive Development District added to the Zoning Bylaw in respect of the Cassie/McKay Site pursuant to the Cassie/McKay Rezoning.
- (j) **“Cassie/McKay Development”** means the development of the Cassie/McKay Site for a single high-rise residential strata condominium building, with street-oriented townhouse development and underground parking, all in accordance with the Cassie/McKay CD District Bylaw, the Permitted Density and Uses Schedule, the applicable Development Requirements and the terms and conditions set out in this Agreement.
- (k) **“Cassie/McKay Site”** has the meaning given in Recital B.
- (l) **“Cassie/McKay Rezoning”** means Belford’s application to the City to rezone the Cassie/McKay Site pursuant to the City’s Rezoning Reference #17-34 to permit the Cassie/McKay Development.
- (m) **“Cassie/McKay Specified Zoning Bylaw Provisions”** means all those

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provisions in the Cassie/McKay CD District Bylaw as of the date of this Agreement.

- (n) **"CD District Bylaws"** means, collectively, the Cassie/McKay CD District Bylaw, the Maywood CD District Bylaw, the Silver CD District Bylaw and the Telford CD District Bylaw.
- (o) **"Certificate of Occupancy"** means a certificate authorizing the use or occupation of any Building, or any portion(s) thereof.
- (p) **"Change in Control"** has the meaning given in Section 11.2.
- (q) **"City Requirements"** means, collectively:
  - (i) any legal agreements, documents, plans required by the City in connection with the Cassie/McKay Rezoning, Maywood Rezoning, Silver Rezoning or Telford Rezoning;
  - (ii) the issuance of any Preliminary Plan Approvals or Building Permits and registered against title to the Lands, or any portions thereof;
  - (iii) any fees or bonding required by the City in connection with rezoning, subdivision, development or redevelopment of all or any of the Lands; and
  - (iv) the PDA Agreements.
- (r) **"CMHC"** means the Canada Mortgage and Housing Corporation or its successor in function.
- (s) **"CMHC Median Rental Rates"** means the CMHC market median rent for the applicable CMHC market rental survey zone and number of bedrooms, based on the rates available at the time a tenant enters into a tenancy agreement.
- (t) **"Community Charter"** means the *Community Charter*, SBC 2003, C. 26.
- (u) **"Council"** means council for the City of Burnaby.
- (v) **"Default Notice"** has the meaning given in Section 5.2.
- (w) **"Development Requirements"** means those requirements for the development of the Cassie/McKay Site, the Maywood Site, the Silver Site and the Telford Site, as set out in Schedule "B" attached hereto, together with other requirements established prior to final adoption of the CD District Bylaws.
- (x) **"Director of Planning and Building"** means the individual appointed to be the Director of Planning and Building of the Planning and Building Department of the City, or his or her designate.
- (y) **"First Phase"** means the first phase of a maximum of three phases of completion and occupancy of the Lands, which First Phase will include the

completion and occupancy of the Buildings on the Telford Site and the Cassie/McKay Site in accordance with the terms and conditions in this Agreement.

- (z) **"Future Phases"** means the second and/or third phase of a maximum of three phases of completion and occupancy of the Lands, which Future Phases may be completed after or concurrently with the First Phase and will include the completion and occupancy of the Buildings on the Maywood Site and the Silver Site in accordance with the terms and conditions in this Agreement.
- (aa) **"Housing Agreement (Below Market-Rate Rental)"** means the agreements, covenants, options and charges granted by Belford to the City pursuant to Section 483 of the *Local Government Act* and noted, or to be noted on title to the Telford Site for the purposes of securing the Belford's provision of Below Market-Rate Rental Housing Units on the Telford Site.
- (bb) **"Housing Agreement (Market-Rate Rental)"** means the agreements, covenants, options and charges granted by Belford to the City pursuant to Section 483 of the *Local Government Act* and noted, or to be noted on title to the Telford Site for the purposes of securing Belford's provision of Market-Rate Rental Housing Units on the Telford Site.
- (cc) **"Housing Agreements"** means collectively, the Housing Agreement (Below Market-Rate Rental), the Housing Agreement (Market-Rate Rental), the Housing Covenant (Below Market-Rate Rental) and the Housing Covenant (Market-Rate Rental);
- (dd) **"Housing Covenant (Below Market-Rate Rental)"** means, collectively, a Section 219 Covenant and rent charge to be granted by Belford to the City and registered against title to the Telford Site for the purposes of securing Belford's construction of the Below Market-Rate Rental Housing Units thereon.
- (ee) **"Housing Covenant (Market-Rate Rental)"** means, collectively, a Section 219 Covenant and rent charge to be granted by Belford to the City and registered against title to the Telford Site for the purposes of securing Belford's construction of the Market-Rate Rental Housing Units thereon.
- (ff) **"Lands"** means, collectively, the Cassie/McKay Site, the Maywood Site, the Silver Site and the Telford Site.
- (gg) **"Land Title Act"** means the *Land Title Act*, RSBC 1996, C. 250.
- (hh) **"Local Government Act"** means the *Local Government Act*, RSBC 2015.
- (ii) **"Market-Rate Rental Housing Units"** means 50% of the Additional Rental Housing Units (84) on the Lands to be provided at market rental rates and that are subject to the Housing Agreement (Market Rental), as contemplated under Section 483 of the *Local Government Act*.
- (jj) **"Maywood CD District Bylaw"** means all those provisions in the Comprehensive Development District added to the Zoning Bylaw in respect

of the Maywood Site pursuant to the Maywood Rezoning.

- (kk) **"Maywood Development"** means the development of the Maywood Site for a single high-rise residential strata condominium building, with a low-rise podium and underground parking, all in accordance with the Maywood CD District Bylaw, the Permitted Density and Uses Schedule, the applicable Development Requirements and the terms and conditions set out in this Agreement.
- (ll) **"Maywood Rezoning"** means Belford's application to the City to rezone the Maywood Site pursuant to the City's Rezoning Reference #18-21 to permit the Maywood Development.
- (mm) **"Maywood Site"** has the meaning given in Recital D.
- (nn) **"Maywood Specified Zoning Bylaw Provisions"** means all those provisions in the Maywood CD District Bylaw as of the date of this Agreement.
- (oo) **"No Build/No PPA Covenant"** has the meaning given in Section 6.6.
- (pp) **"No Occupancy Covenant"** has the meaning given in Section 6.5.
- (qq) **"PDA Agreements"** has the meaning given in Section 7.1.
- (rr) **"Permitted Densities and Uses Schedule"** means Schedule "A" attached hereto;
- (ss) **"Preliminary Plan Approval (PPA)"** or **"Preliminary Plan Approval"** means the approval of the Director of Building and Planning pursuant to Section 7.3 of the Zoning Bylaw, as this approval may be amended or replaced by the City from time to time.
- (tt) **"Rental Use Zoning Policy"** means the policy adopted by Council entitled "Rental Use Zoning Policy" and dated March 9, 2020, as amended or replaced from time to time.
- (uu) **"Replacement Rental Units"** means, collectively, the required 220 Below Market-Rate Rental Housing Units that are to be constructed by or on behalf of Belford on the Telford Site and provided at below-market rental rates, as specified in the Housing Agreement (Below Market-Rate Rental).
- (vv) **"Replacement Rental Units Rental Rates"** means rates equal to the eligible tenant rates at the time of move out of a tenant's prior unit, plus annual increases allowed under the *Residential Tenancy Act* between the time of move-out of such tenant's prior unit and occupancy by such tenant of the Replacement Rental Unit.
- (ww) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, Ch. 78, as may be amended or replaced from time to time.
- (xx) **"Silver CD District Bylaw"** means all those provisions in the Comprehensive Development District added to the Zoning Bylaw in respect

of the Silver Site pursuant to the Silver Rezoning.

- (yy) **"Silver Development"** means the development of the Silver Site for a single high-rise residential strata condominium building, with street-oriented townhouse development and underground parking, all in accordance with the Silver CD District Bylaw, the Permitted Density and Uses Schedule, the applicable Development Requirements and the terms and conditions set out in this Agreement.
- (zz) **"Silver Rezoning"** means Belford's application to the City to rezone the Silver Site pursuant to the City's Rezoning Reference #17-39 to permit the Silver Development.
- (aaa) **"Silver Site"** has the meaning given in Recital C.
- (bbb) **"Silver Specified Zoning Bylaw Provisions"** means all those provisions in the Silver CD District Bylaw as of the date of this Agreement.
- (ccc) **"Specified Zoning Bylaw Provisions"** means, collectively, the Cassie/McKay Specified Zoning Bylaw Provisions, the Maywood Specified Zoning Bylaw Provisions, the Silver Specified Zoning Bylaw Provisions and the Telford Specified Zoning Bylaw Provisions.
- (ddd) **"Subdivision Control Bylaw"** means the Burnaby Subdivision Control Bylaw, 1971, as amended, replaced or re-enacted from time to time.
- (eee) **"Telford CD District Bylaw"** means all those provisions in the Comprehensive Development District added to the Zoning Bylaw in respect of the Telford Site pursuant to the Telford Rezoning.
- (fff) **"Telford Development"** means the development of the Telford Site for two high-rise residential rental apartment buildings, together with underground parking, all in accordance with the Telford CD District Bylaw, the Permitted Density and Uses Schedule, the applicable Development Requirements and the terms and conditions set out in this Agreement.
- (ggg) **"Telford No Occupancy Covenant"** has the meaning given in Section 6.10.
- (hhh) **"Telford Rezoning"** means Belford's application to the City to rezone the Telford Site pursuant to the City's Rezoning Reference #18-23 to permit the Telford Development.
- (iii) **"Telford Specified Zoning Bylaw Provisions"** means all those provisions in the Telford CD District Bylaw as of the date of this Agreement.
- (jjj) **"Term"** means the term of this Agreement set out in Section 4.1, as may be renewed in accordance with Section 4.2, as applicable.
- (kkk) **"Zoning Bylaw"** means the Burnaby Zoning Bylaw, 1965, as amended, replaced or re-enacted from time to time.

1.2 **Headings.** The headings and captions are for convenience only and do not form a part of this Agreement and will not be used to interpret, define or limit the scope,

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extent or intent of this Agreement or any of its provisions.

- 1.3 **Use of the word Including.** The word “including” when following any general term or statement is not to be construed as limiting the general term or statement to the specific items or matters set forth or to similar terms or matters but rather as permitting it to refer to other items or matters that could reasonably fall within its scope.
- 1.4 **Currency.** A reference to currency means Canadian currency.
- 1.5 **Legislation.** A reference to a statute includes every regulation made pursuant thereto, all amendments to the statute or to any such regulation in force from time to time, and any statute or regulation that amends, supplements, re-enacts or supersedes such statute or any such regulation.
- 1.6 **Governing Law.** This Agreement shall be governed by and construed in accordance with and governed by laws applicable in the Province of British Columbia.
- 1.7 **Time.** A reference to time or date is to the local time or date in Burnaby, British Columbia.
- 1.8 **Interpretation.** A word importing the masculine gender includes the feminine or neuter, and a word importing the singular includes the plural and vice versa.
- 1.9 **Approvals.** A reference to approval, authorization, consent, designation, waiver or notice means written approval, authorization, consent, designation, waiver or notice.
- 1.10 **Section References.** A reference to a section means a section of this Agreement, unless a specific reference is provided to a statute.

## **SCHEDULES**

- 1.11 The following Schedules are attached to and form part of this Agreement:

- “A” Permitted Density and Use Schedule
- “B” Development Requirements
- “C” No Occupancy Covenant
- “D” No Build/No PPA Covenant

## **1.0 APPLICATION OF AGREEMENT**

- 1.1 This Agreement applies to the Lands and to no other land.

## **2.0 CONDITIONS PRECEDENT**

- 2.1 The obligations of the parties under this Agreement are subject to the fulfillment of the following conditions precedent:

- (a) enactment by Council of the Cassie/McKay CD District Bylaw, the Maywood CD District Bylaw, the Silver CD District Bylaw and the Telford CD District Bylaw; and
- (b) the City having otherwise complied with all statutory requirements in respect of the City entering into this Agreement and enacting the Phased Development Agreement Authorization Bylaw to which this Agreement is attached.

### **3.0 SPECIFIED ZONING BYLAW PROVISIONS**

- 3.1 For the Term of this Agreement, any amendment or repeal of the Cassie/McKay Specified Zoning Bylaw Provisions shall not apply to the Cassie/McKay site, subject to Sections 3.5 and 3.6 below.
- 3.2 For the Term of this Agreement, any amendment or repeal of the Maywood Specified Zoning Bylaw Provisions shall not apply to the Maywood Site, subject to Sections 3.5 and 3.6 below.
- 3.3 For the Term of this Agreement, any amendment or repeal of the Silver Specified Zoning Bylaw Provisions shall not apply to the Silver Site, subject Sections 3.5 and 3.6 below.
- 3.4 For the Term of this Agreement, any amendment or repeal of the Telford Specified Zoning Bylaw Provisions shall not apply to the Telford Site, subject to Sections 3.5 and 3.6 below.
- 3.5 For the Term of this Agreement, any amendment or repeal of the Specified Zoning Bylaw Provisions referred to in Sections 3.1, 3.2, 3.3 or 3.4 shall not apply to the lands referred to in those sections, subject to:
  - (a) the express limits set out in Section 516(6) of the *Local Government Act*;
  - (b) the termination of this Agreement under Section 5.0; or
  - (c) changes that Belford agrees to in writing shall apply.
- 3.6 Belford acknowledges and agrees that:
  - (a) the Specified Zoning Bylaw Provisions do not include any provisions in the Subdivision Control Bylaw or any other City enactments or policies, except as expressly set out herein;
  - (b) notwithstanding Sections 3.1, 3.2, 3.3 and 3.4, the City may, in connection with the processing and approval of any Preliminary Plan Approval (PPA) for the Telford Site, Cassie/McKay Site, Maywood Site and/or Silver Site, permit or require amendments to the CD drawings for such sites; and
  - (c) with respect to the Maywood Site and Silver Site, future technical designs, plans, and studies will be required and such technical designs, plans, and studies may necessitate changes to, among other things, the conceptual design plans, site plans, architectural plans, and landscape plans for the Maywood Site and Silver Site, as applicable, to ensure compliance with City

design standards, bylaws, policies and building code requirements and the Owner will comply with such requirements and agrees that the Owner's rights under Sections 3.3 and 3.4 are subject to the Owner's compliance with such requirements.

#### 4.0 TERM OF AGREEMENT

- 4.1 The Term of this Agreement is ten (10) years from the reference date of this Agreement, as first written above.
- 4.2 Subject to the approval of the Council, at its sole and absolute discretion, the completion of all statutory requirements and public hearing processes under the *Local Government Act* and the approval of Inspector of Municipalities being obtained pursuant to Section 517(2) and (3) of the *Local Government Act*, this Agreement may be extended by written mutual consent of the City and Belford for an additional renewal term of not more than five (5) years provided that:
- (a) Belford is not in default of any of its obligations under this Agreement at the time of such extension;
  - (b) the City and Belford agree in writing to an extension of this Agreement not less than 90 days prior to the expiration of the Term; and
  - (c) in no event shall the Term of this Agreement including all renewal terms be for a period of more than twenty (20) years.
- 4.3 Belford acknowledges and agrees that if, at the expiration of the Term, Building Permits and Preliminary Plan Approval have not been issued in respect of the Lands, or any portions thereof, those portions of the Lands for which a Building Permit and Preliminary Plan Approval have not been issued will be subject to the zoning in effect as at the time that an application for a Building Permit or Preliminary Plan Approval, as applicable, has been made to the City in respect of those portions of the Lands.

#### 5.0 TERMINATION

- 5.1 The parties may terminate this Agreement at any time by written mutual agreement, subject to the Council adopting a bylaw to terminate this Agreement in accordance with the same procedures, terms and conditions required to adopt the bylaw to enter into this Agreement.
- 5.2 If Belford does not comply with any of the provisions of this Agreement, other than as a result of or due to an act or omission of the City, the City may at its option terminate the Agreement before the expiration of the Term, provided however that the City will give Belford written notice within thirty (30) days after it becomes aware that any default has occurred with a description of such default (the "**Default Notice**") and Belford will have an additional ninety (90) days after receipt of the Default Notice to correct the default to the reasonable satisfaction of the City.
- 5.3 If a failure or deficiency requires longer than ninety (90) days to remedy, Belford has failed to substantially commence remedying such failure or deficiency within ninety (90) days after receipt of the Default Notice to the reasonable satisfaction of the City and further has failed to diligently pursue remedying the failure or deficiency thereafter.

## 6.0 DEVELOPMENT REQUIREMENTS

### *General Requirements*

- 6.1 Except as expressly provided in this Agreement, nothing in this Agreement shall relieve Belford from any obligation or requirement arising under any applicable statute, bylaw or regulation in respect of the subdivision and development of the Lands, or any portion thereof, and without limiting the generality of the foregoing, Belford shall remain fully responsible to ensure that the development of the Lands, or any portion thereof, is in full compliance with all requirements of the bylaws of the City, including without limitation those respecting land development, zoning, subdivision and building construction. Nothing in this Agreement shall relieve the City of the authority to utilize any contractual, statutory or common law remedy it may have to enforce this Agreement.
- 6.2 Without limiting the generality of Section 6.1, in connection with any application for approval of subdivision or development of the Lands, or any portion thereof, Belford must obtain all permits required under the City's bylaws, as amended from time to time, and in respect of any subdivision must obtain the approval of the Approving Officer, and must comply with all applicable enactments and bylaws in connection with that subdivision.
- 6.3 The parties acknowledge that the Approving Officer is an independent statutory officer, and that nothing in this Agreement shall be interpreted as prejudicing or affecting the duties and powers of the Approving Officer in respect of any application to subdivide the Lands.

### *Phasing Requirements*

- 6.4 Development on the Lands, or portions thereof, may be completed and occupied on a phased basis as follows:
- (a) there shall be a maximum of three phases of development of the Lands, which phases will be comprised of the First Phase and the Future Phases;
  - (b) the First Phase will be completed in advance of or concurrently with the Future Phases;
  - (c) subject to Section 6.5, the Telford Site will be completed and occupied in advance of or concurrently with the Cassie/McKay Site; and
  - (d) subject to Section 6.5, the development of the Maywood Site and the Silver Site as part of the Future Phases may proceed sequentially (with either the Maywood Site or the Silver Site proceeding one before the other, or vice versa) or concurrently, at Belford's discretion, and may, at Belford's discretion, proceed concurrently with the First Phase.
- 6.5 Belford acknowledges and agrees that it will not apply for, and the City will not be required to issue, a Certificate of Occupancy in respect of any Building on the Cassie/McKay Site, the Maywood Site or the Silver Site, or any portion thereof, until at least 220 Replacement Rental Housing Units and at least 168 Additional Rental Housing Units have been constructed on the Telford Site and have received a

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Certificate of Occupancy. To secure this requirement, Belford will, in accordance with Section 7.0, grant to the City a Section 219 Covenant substantially in the form attached hereto as Schedule "C" (the "**No Occupancy Covenant**"), which No Occupancy Covenant will be registered against title to the Cassie/McKay Site, the Maywood Site and the Silver Site in connection with the enactment of the CD District Bylaws.

6.6 Belford acknowledges and agrees that it will not apply for, and the City will not be required to issue, Preliminary Plan Approval or Building Permit in respect of any Building on the Maywood Site or the Silver Site, or any portion thereof, until Belford has:

- (a) submitted to the City technical designs, plans, studies and bonding for the Maywood Site and/or Silver Site, as applicable, including, without limitation, technical designs, plans, studies and bonding for servicing, third party utilities, stormwater and ground water management, sediment control, communications strategy, green building design and energy modelling, public art, and alternative transportation;
- (b) entered into and registered against title to the Maywood Site and/or Silver Site, as applicable, one or more servicing agreements to secure Belford's provision of off-site services in respect of the Maywood Site and/or Silver Site, as applicable;
- (c) delivered to the City any required letters of credit to secure Belford's obligations under the service agreements referred to under subsection (b) above;
- (d) entered into and registered against title to the Maywood Site and/or Silver Site, as applicable, any other legal agreements to secure the applicable City Requirements in respect of the Maywood Site and/or Silver Site; and
- (e) paid all other fees and charges payable in respect of the Maywood Site and/or Silver Site,

all to the satisfaction of the Director of Planning and Building and in accordance with the Development Requirements. To secure these requirements, Belford will, in accordance with Section 7.0, grant to the City a Section 219 Covenant substantially in the form attached hereto as Schedule "D" (the "**No Build/No PPA Covenant**"), which No Build/No PPA Covenant will be registered against title to the Maywood Site and the Silver Site in connection with the enactment of the CD District Bylaws.

#### *Replacement Rental Units and Housing Tenure*

6.7 Belford will construct on the Telford Site two (2) high-rise residential rental apartment buildings, together with underground parking, all in accordance with the Telford CD District Bylaw, the Permitted Density and Uses Schedule, the applicable Development Requirements and the terms and conditions set out in this Agreement and the Housing Agreements.

6.8 One high-rise residential rental apartment building will contain the 220 Replacement Rental Housing Units that are subject to the Housing Agreement (Below Market-Rate Rental) and 64 of the Additional Rental Housing Units (comprised of at 32

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Additional Rental Housing Units that are to be provided at CMHC Median Rental Rates and are subject to the Housing Agreement (Below Market-Rate Rental) and 32 Additional Rental Housing Units that are to be provided at market rental rates and are subject to the Housing Agreement (Market-Rate Rental)). To secure the requirements with respect to the provision of these Below Market-Rate Rental Housing Units and Market-Rate Rental Housing Units, Belford will:

- (a) with respect to the 220 Replacement Rental Housing Units and the 32 Below Market-Rate Rental Housing Units out of the 64 Additional Rental Housing Units:
  - (i) enter into the Housing Agreement (Below Market-Rate Rental), in form and content satisfactory to the City, which Housing Agreement (Below Market-Rate Rental) will be noted against title to the Telford Site in connection with the enactment of the CD District Bylaws, subject to Section 6.10 below; and
  - (ii) grant to the City the Housing Covenant (Below Market-Rate Rental), in form and content satisfactory to the City, which Housing Covenant (Below Market-Rate Rental) will be registered against title to the Telford Site in connection with the enactment of the CD District Bylaws, subject to Section 6.10 below; and
- (b) with respect to the 32 Market-Rate Rental Housing Units out of the 64 Additional Rental Housing Units:
  - (i) enter into the Housing Agreement (Market-Rate Rental), in form and content satisfactory to the City, which Housing Agreement (Market-Rate Rental) will be noted against title to the Telford Site in connection with the enactment of the CD District Bylaws, subject to Section 6.10 below; and
  - (ii) grant to the City the Housing Covenant (Market-Rate Rental), in form and content satisfactory to the City, which Housing Covenant (Market-Rate Rental) will be registered against title to the Telford Site in connection with the enactment of the CD District Bylaws, subject to Section 6.10 below

6.9 The second high-rise residential rental apartment building on the Telford Site will contain not less than 104 Additional Rental Housing Units (comprised of at 52 Additional Rental Housing Units that are to be provided at CMHC Median Rental Rates and are subject to the Housing Agreement (Below Market-Rate Rental)) and 52 Additional Rental Housing Units that are to be provided at market rental rates and are subject to the Housing Agreement (Market-Rate Rental)). To secure the requirements with respect to the provision of the 104 Additional Rental Housing Units, Belford will:

- (a) with respect to the 52 Market-Rate Rental Housing Units out of the 104 Additional Rental Housing Units:
  - (i) enter into the Housing Agreement (Market-Rate Rental), in form and content satisfactory to the City, which Housing Agreement (Market-Rate Rental) will be noted against title to the Telford Site in connection with the enactment of the CD District Bylaws, subject to Section 6.10 below; and
  - (ii) grant to the City the Housing Covenant (Market-Rate Rental), in form and

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content satisfactory to the City, which Housing Covenant (Market-Rate Rental) will be registered against title to the Telford Site in connection with the enactment of the CD District Bylaws, subject to Section 6.10 below;

(b) with respect to the 52 Below Market-Rate Rental Housing Units out of the 104 Additional Rental Housing Units;

(i) enter into the Housing Agreement (Below Market-Rate Rental), in form and content satisfactory to the City, which Housing Agreement (Below Market-Rate Rental) will be noted against title to the Telford Site in connection with the enactment of the CD District Bylaws, subject to Section 6.10 below; and

(ii) grant to the City the Housing Covenant (Below Market-Rate Rental), in form and content satisfactory to the City, which Housing Covenant (Below Market-Rate Rental) will be registered against title to the Telford Site in connection with the enactment of the CD District Bylaws, subject to Section 6.10 below.

6.10 Notwithstanding Sections 6.8 and 6.9 above, the City may in its sole and absolute discretion, permit Belford to enter into the Housing Agreements and note or register, as applicable, the same against title to the Telford Site prior to the issuance of a Certificate of Occupancy for the first Building to be constructed on the Telford Site, provided that prior to the enactment of the CD District Bylaws, Belford has entered into and registered against title to the Telford Site a Section 219 Covenant (the "**Telford No Occupancy Covenant**") in form and content satisfactory to the City, which will, among other things prohibit Belford from applying for a Certificate of Occupancy for any Building on the Telford Site unless and until Belford has entered into the Housing Agreements and has noted or registered, as applicable, the same against title to the Lands.

6.11 Belford acknowledges and agrees that if the proposed number of strata units on the McKay Site, the Silver Site and the Maywood Site exceeds 1,100 strata units in total, Belford will provide additional inclusionary rental units on the Telford Site in accordance with the City's Rental Use Zoning Policy and the Zoning Bylaw.

## **7.0 PDA AGREEMENTS**

7.1 Belford shall execute, deliver and register in the Land Title Office, as applicable, the agreements referred to herein and substantially as set out in Schedules C and D hereto and, if applicable, the Telford No Occupancy Covenant referred to in Section 6.10, (collectively, the "**PDA Agreements**"), concurrently with and conditional upon the adoption of the CD District Bylaws, with the intention that these agreements shall be registered against title to the Lands, as applicable, in order to secure Belford's obligations to use and develop the Lands in accordance with the provisions of this Agreement.

## **8.0 DEVELOPMENT OF LAND FOLLOWING TERMINATION**

8.1 Belford acknowledges and agrees that the development of the Lands shall continue to be governed by the City Requirements, including without limitation the PDA Agreements and the Housing Agreements, during and after the Term of this Agreement, except to the extent performed by Belford to the City's satisfaction in



accordance with the applicable legal agreement and the City has confirmed in writing that the requirement is no longer applicable, or as evidenced by the discharge of such legal agreement.

## **9.0 INDEMNITY AND RELEASE**

- 9.1 Belford shall indemnify and keep indemnified the City from any and all claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever, whether based in law or equity, whether known or unknown, which anyone has or may have against the City or which the City incurs as a result of any loss, damage or injury, including economic loss or deprivation, arising out of or connected with or any breach by Belford of this Agreement.
- 9.2 Belford hereby releases, save harmless and forever discharges the City of and from any claims, causes of action, suits, demands, fines, penalties, costs, deprivation, expenses or legal fees whatsoever which Belford can or may have against the City, whether based in law or equity, whether known or unknown, for any loss, damage or injury, including economic loss or deprivation, that Belford may sustain or suffer arising out of or connected with this Agreement, including the restrictions and requirements of this Agreement, the provisions of the Amenities and the development of the Lands as contemplated under this Agreement, or any breach by Belford of any covenant in this Agreement, save and except as a result of any breach by the City of this Agreement.
- 9.3 The indemnity and release provisions of Sections 9.1 and 9.2 shall survive the expiry or termination of this Agreement.

## **10.0 NO RECOVERY**

- 10.1 Belford acknowledges, covenants and agrees that the expiry of this Agreement and any termination in accordance with Section 5.0 or otherwise, does not entitle Belford to seek restitution in relation to the provision of Replacement Rental Units or the Market-Rate Rental Housing Units pursuant to this Agreement and the Housing Agreements or in relation to any other obligation Belford has performed under this Agreement and the PDA Agreements (and Belford specifically agrees that the Specified Zoning Bylaw Provisions of this Agreement for the period prior to expiry or termination of this Agreement provides sufficient consideration in relation to Belford's obligations under this Agreement and the PDA Agreements) and the release and indemnity provisions under Sections 9.1 and 9.2 apply in this regard.
- 10.2 Belford covenants and agrees it will not commence or advance a legal proceeding of any kind to seek to quash, set aside, hold invalid this Agreement, the CD District Bylaws, the PDA Agreements or the Housing Agreements or to seek restitution in relation to any of the Replacement Rental Units or the Market-Rate Rental Housing Units provided in connection with the enactment of the CD District Bylaws, this Agreement and the Housing Agreements and if Belford does any of the foregoing, the City may provide this Agreement to the Court as a full and complete answer.
- 10.3 Without any limitation, Section 10.1 applies whether or not Belford proceeds with or without any development on the Lands.

## **11.0 ASSIGNMENT OF AGREEMENT**

11.1 Except as provided in this Section 11.1 and 11.2, Belford shall not be entitled to assign this Agreement or to effect or allow a Change of Control without the prior written consent of the City, such consent to be in the sole and absolute discretion of the City provided that Belford shall be entitled to assign this Agreement without the consent of, but with notice to the City to an Affiliate of Belford, as that term is defined in the *Business Corporations Act* (British Columbia); each being an “Assignee”, and no further assignment shall be permitted by an Assignee except with the consent of the City as described above. In the event of any assignment:

- (a) Belford will notify the City of the proposed assignment; and
- (b) Belford will require the assignee, as a condition precedent to the assignment, to enter into an assumption agreement with Belford and the City, in form and content satisfactory to the City, acting reasonably, pursuant to the assignee will unconditionally assume all of Belford's obligations hereunder and upon delivery of an executed copy of such assumption agreement to the City Belford shall be released from their obligations under this Agreement which occur or accrue after the date of such assignment and the Assignee shall be bound by the terms of this Agreement after the date of such assignment.

Notwithstanding the foregoing, Belford remains liable for their obligations under this Agreement which occur or accrue prior to the date of such assignment.

11.2 In Section 11.1, “**Change of Control**” means a transfer by sale, assignment or otherwise of any shares, voting rights or interests in Belford which results in a change of the party or parties who, as of the date hereof, exercise voting control of Belford, but does not include any financing or borrowing from any third party lenders, the transfer of limited partnership units by any limited partner of any limited partnership which is part of Belford, the entering into of purchase and sale agreements for pre-sale strata lots or leases with respect to any of the Below Market-Rate Rental Housing Units or Market-Rate Rental Housing Units.

11.3 For the purpose of this Section 11.0, the City acknowledges and agrees that any of Belford (McKay), Belford (Maywood), Belford (Silver) and Belford (Telford) may re-organize at a corporate level separately and independently from each other.

## **12.0 AMENDMENT OF AGREEMENT**

12.1 Belford and the Director of Planning and Building may in writing agree to minor amendments to this Agreement, and for that purpose a “minor amendment” means those amendments contemplated in Section 3.6(b).

## **13.0 DISCHARGE**

13.1 To the extent that this Agreement is registered on title to the Lands, the City will execute and deliver to Belford a discharge, in registrable form, of this Agreement from title to the Lands at the expense of Belford:

- (a) If the CD District Bylaws are not adopted by the City on or before September 30, 2022; or

- (b) If the CD District Bylaws are appealed after its adoption, and after the exhaustion of all appeals, the CD District Bylaws are quashed in its entirety.

#### **14.0 DISPUTE RESOLUTION**

14.1 If a dispute arises between the parties in connection with this Agreement, the parties agree to use the following procedure as a condition precedent to any party pursuing other available remedies:

- (a) either party may notify the other by written notice (a **"Notice of Dispute"**) of the existence of a dispute and a desire to resolve the dispute by mediation;
- (b) a meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute;
- (c) if, within forty-eight (48) hours after such a meeting or such further period as is agreeable to the parties (the **"Negotiation Period"**), the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation and to bear equally the costs of mediation;
- (d) the parties will jointly appoint a mutually acceptable mediator (who must be an expert in the subject matter of the dispute), within forty- eight (48) hours of the conclusion of the Negotiation Period;
- (e) the parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days following appointment of the mediator or for such longer period as the parties may agree. If the parties are not successful in resolving the dispute through mediation or if the mediation has not commenced within fourteen (14) days following the appointment of the mediator or if the parties cannot agree upon the mediator appointment, then the parties agree that each parties obligations to under this subsection (e) will be at an end and thereafter, either party may seek to have such dispute heard in a court of law or the parties may mutually agree to have the dispute resolved through arbitration under the *Arbitration Act*, S.B.C. 2020, Ch. 2, as may be amended, replaced or re-enacted from time to time; and
- (f) the costs of mediation will be awarded by the mediator in his or her absolute discretion.

14.2 In no event shall the foregoing be construed as impeding or affecting the City's authority to enforce its zoning and other regulatory bylaws.

#### **15.0 NOTICE**

15.1 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 provided in writing.

#### **16.0 POWERS PRESERVED**

16.1 Except as expressly set out in this Agreement, nothing in this Agreement shall prejudice or affect the rights and powers of the City in the exercise of its powers,

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duties or functions under the *Community Charter* or the *Local Government Act* or any of its bylaws, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement has not been execute and deliver to Belford, subject only to Section 516 of the *Local Government Act*.

#### **17.0 CITY'S REPRESENTATIVE**

- 17.1 Any option, decision, act or expression of satisfaction or acceptance of the City provided for in this Agreement may be taken or made by the Director of Planning and Building or his or her designate, unless expressly provided to be taken or made by another official of the City.

#### **18.0 TIME**

- 18.1 Time is to be the essence of this Agreement.

#### **19.0 BINDING EFFECT**

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

#### **20.0 WAIVER**

- 20.1 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 is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

#### **21.0 CUMULATIVE REMEDIES**

- 21.1 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

#### **22.0 RELATIONSHIP OF PARTIES**

- 22.1 No provision of this Agreement shall be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.

#### **23.0 SURVIVAL**

- 23.1 All representations and warranties set forth in this Agreement and all provisions of this Agreement, the full performance of which is not required prior to a termination of this Agreement, shall survive any such termination and be fully enforceable thereafter.

#### **24.0 NOTICE OF VIOLATIONS**

- 24.1 Each party shall promptly notify the other party of any matter which is likely to continue to give rise to a violation of its obligations under this Agreement.

## 25.0 LEGAL FEES

- 25.1 Belford shall promptly on receipt of an invoice from the City reimburse the City for its reasonable legal and appraisal fees incurred in relation to the development of the Lands.

## 26.0 ENTIRE AGREEMENT

- 26.1 The whole agreement between the parties is set forth in this document and no representations, warranties or conditions, express or implied, have been made other than those expressed.

## 27.0 SEVERABILITY

- 27.1 Each article of this Agreement shall be severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity shall not affect the validity of the remainder of this Agreement.

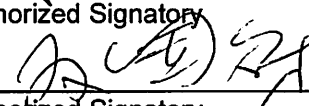
## 28.0 COUNTERPARTS

- 28.1 This Agreement may be executed in counterparts with the same effect as if both parties had signed the same document. Each counterpart shall be deemed to be an original. All counterparts shall be construed together and shall constitute one and the same Agreement.

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

**BELFORD (MCKAY) NOMINEE LTD.,**  
by its authorized signatory(ies):

  
\_\_\_\_\_  
Authorized Signatory


  
\_\_\_\_\_  
Authorized Signatory


**BELFORD (MAYWOOD) NOMINEE LTD.,**  
by its authorized signatory(ies):

  
\_\_\_\_\_  
Authorized Signatory

  
\_\_\_\_\_  
Authorized Signatory

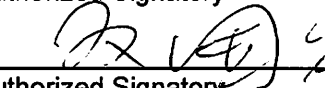
**BELFORD (MCKAY) PROPERTIES LIMITED PARTNERSHIP,** by its General Partner, **BELFORD (MCKAY) GP LTD.,** by its authorized signatory(ies):

  
\_\_\_\_\_  
Authorized Signatory

  
\_\_\_\_\_  
Authorized Signatory

**BELFORD (MAYWOOD) PROPERTIES LIMITED PARTNERSHIP,** by its General Partner, **BELFORD (MAYWOOD) GP LTD.,** by its authorized signatory(ies):

  
\_\_\_\_\_  
Authorized Signatory


  
\_\_\_\_\_  
Authorized Signatory

**BELFORD (SILVER 3) NOMINEE LTD.,** by its authorized signatory(ies):

  
\_\_\_\_\_  
Authorized Signatory

  
\_\_\_\_\_  
Authorized Signatory

**BELFORD (TELFORD) NOMINEE LTD.,** by its authorized signatory(ies):

  
\_\_\_\_\_  
Authorized Signatory


  
\_\_\_\_\_  
Authorized Signatory

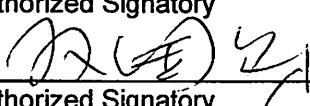
**CITY OF BURNABY,** by its authorized signatory(ies):

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory

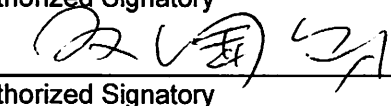
**BELFORD (SILVER 3) PROPERTIES LIMITED PARTNERSHIP,** by its General Partner, **BELFORD (SILVER 3) GP LTD.,** by its authorized signatory(ies):

  
\_\_\_\_\_  
Authorized Signatory

  
\_\_\_\_\_  
Authorized Signatory

**BELFORD (TELFORD) PROPERTIES LIMITED PARTNERSHIP,** by its General Partner, **BELFORD (TELFORD) GP LTD.,** by its authorized signatory(ies):

  
\_\_\_\_\_  
Authorized Signatory

  
\_\_\_\_\_  
Authorized Signatory

**SCHEDULE "A"**  
**DENSITY AND PERMITTED USE SCHEDULE**

*[see attached]*

POTENTIAL MAXIMUM RESIDENTIAL DENSITY FOR EACH PROPERTY															
Address	Site Size	RM4s Base Density	GFA	RM4s Bonus Density	GFA	RM4s Suppl. Base Density	GFA	RM4s Suppl. Bonus Density	GFA	RM4r Density	GFA	RM4s Density Offset	GFA	Total FAR	Total GFA
6630 Telford Avenue	34,163	1.7	58,077	0.3	10,249	0.8	27330.4	0.8	27,330	1.7	58,077	0.85	29,039	6.15	210,102
4355 Maywood Street	29,149	1.7	49,553	0.3	8,745	0.8	23319.2	0.8	23,319	1.7	49,553	0.85	24,777	6.15	179,266
6433 McKay Avenue & 6366 Cassie Avenue	65,547	1.7	111,430	0.3	19,664	0.8	52437.6	0.8	52,438	1.7	111,430	0.85	55,715	6.15	403,114
6444 Silver Avenue	35,470	1.7	60,299	0.3	10,641	0.8	28376	0.8	28,376	1.7	60,299	0.85	30,150	6.15	218,141

6630 Telford Avenue: Use RM4r density generated from all four sites to provide replacement (affordable) housing required by all four sites and additional market rental housing in a two-tower development with 8.11 FAR. Transfer the site's RM4s base, bonus, and offset density to the Maywood site. Transfer the site's supplemental base and bonus density to the Silver and Maywood sites.

Address	Site Size	RM4s Base Density	GFA	RM4s Bonus Density	GFA	RM4s Suppl. Base Density	GFA	RM4s Suppl. Bonus Density	GFA	RM4r Density	GFA	RM4s Density Offset	GFA	Total FAR	Total GFA
6630 Telford Avenue	34,163	0	-	0	-	0	-	0	-	1.63	55,647	0	-	1.63	55,647
4355 Maywood Street	29,149	0	-	0	-	0	-	0	-	1.7	49,553	0	-	1.7	49,553
6433 McKay Avenue & 6366 Cassie Avenue	65,547	0	-	0	-	0	-	0	-	1.7	111,430	0	-	1.7	111,430
6444 Silver Avenue	35,521	0	-	0	-	0	-	0	-	1.7	60,386	0	-	1.7	60,386
													Permitted & Proposed GFA:		277,016
													Permitted & Proposed Density:		-

6433 McKay Avenue & 6366 Cassie Avenue: Use RM4s base and bonus density, supplemental base and bonus density, and density offset (for replacement units provided on the Telford site) generated from the site to achieve a market strata development with 4.45 FAR. Transfer RM4r density to Telford site.

Address	Site Size	RM4s Base Density	GFA	RM4s Bonus Density	GFA	RM4s Suppl. Base Density	GFA	RM4s Suppl. Bonus Density	GFA	RM4r Density	GFA	RM4s Density Offset	GFA	Total FAR	Total GFA
6433 McKay Avenue & 6366 Cassie Avenue	65,547	1.7	111,430	0.3	19,664	0.8	52,438	0.8	52,438	0	-	0.85	55,715	4.45	291,684
												Permitted & Proposed GFA:		-	291,684
												Permitted & Proposed Density:		4.45	-

6444 Silver Avenue: Use RM4s base, bonus, supplemental base, supplemental bonus, and offset density (for replacement units provided on the Telford site) generated from the site, plus a portion of the supplemental base and bonus density generated from the Telford and Maywood sites, to achieve a market strata development with 5.97 FAR. Transfer RM4r density to Telford site.

<b>Address</b>	<b>Site Size</b>	<b>RM4s Base Density</b>	<b>GFA</b>	<b>RM4s Bonus Density</b>	<b>GFA</b>	<b>RM4s Suppl. Base Density</b>	<b>GFA</b>	<b>RM4s Suppl. Bonus Density</b>	<b>GFA</b>	<b>RM4r Density</b>	<b>GFA</b>	<b>RM4s Density Offset</b>	<b>GFA</b>	<b>Total FAR</b>	<b>Total GFA</b>
6444 Silver Avenue	35,470	-	60,299	0.3	10,641	0.8	28,376	0.8	28,376	0	-	0.85	30,150	4.45	157,842
6680 Telford Avenue	34,163	0	-	0	-	0.425	14,519	0.425	14,519	0	-	0	-	0.85	29,039
4355 Maywood Street	29,149	0	-	0	-	0.425	12,388	0.425	12,388	0	-	0	-	0.85	24,777
<b>Permitted &amp; Proposed GFA:</b>													-	-	<b>211,657</b>
<b>Permitted &amp; Proposed Density:</b>													5.97	-	

4355 Maywood Street: Use RM4s base, bonus, and offset density (for replacement units provided at Telford site) and a portion of supplemental base and bonus density generated from both the Maywood and Telford sites to achieve a market strata development with 7.82 FAR. Transfer RM4r density to Telford site. Additional neighbourhood commercial density at grade to be permitted through the CD rezoning of the site.

Address	Site Size	RM4s Base Density	GFA	RM4s Bonus Density	GFA	RM4s Suppl. Base Density	GFA	RM4s Suppl. Bonus Density	GFA	RM4r Density	GFA	RM4s Density Offset	GFA	Total FAR	Total GFA		
4355 Maywood Street	29,149	1.7	49,553	0.3	8,745	0.375	10,931	0.375	10,931	0	-	0.85	24,777	3.6	104,936		
6630 Telford Avenue	34,163	1.7	58,077	0.3	10,249	0.375	12,811	0.375	12,811	0	-	0.85	29,039	3.6	122,987		
												Permitted & Proposed GFA:		-	227,923		
														Permitted & Proposed Density:		7.82	-



**SCHEDULE "B"**  
**DEVELOPMENT REQUIREMENTS**

*[see attached]*

<b>Rezoning Requirement</b>	<b>SITE A: Telford REZ #18-23</b>	<b>SITE B: Cassie/McKay REZ #17-34</b>	<b>SITE C: Silver REZ #17-39</b>	<b>SITE D: Maywood REZ #18-21</b>
Zoning district	CD(RM4s, RM4r)	CD(RM4s, RM4r)	CD(RM4s, RM4r)	CD(RM4s, RM4r)
General building form	Two high rise buildings with ground-oriented residential component and underground parking.	Single high rise building with ground-oriented residential component and underground parking.	Single high rise building with ground-oriented residential component and underground parking.	Single high rise building atop low rise residential component and underground parking.
CD drawings – general	Fully detailed drawings prior to rezoning Final Adoption.	Fully detailed drawings prior to rezoning Final Adoption.	General guideline drawings prior to rezoning Final Adoption, with fully detailed drawings provided as part of PPA.	General guideline drawings prior to rezoning Final Adoption, with fully detailed drawings provided as part of PPA.
CD drawings – technical plans	Fully detailed statistics sheet, Solid Waste and Recycling Plans, Residential Loading Management Plan, Fire Truck Access Plan, adaptable units plan, parking plan (including accessible parking) prior to rezoning Final Adoption.	Fully detailed statistics sheet, Solid Waste and Recycling Plans, Residential Loading Management Plan, Fire Truck Access Plan, adaptable units plan, parking plan (including accessible parking) prior to rezoning Final Adoption.	Statistics sheet must specify density/GFA, unit count, building height prior to rezoning Final Adoption.  Preliminary Solid Waste and Recycling Plans, Residential Loading Management Plan, Fire Truck Access Plan, adaptable units plan, parking plan (including accessible parking) prior to rezoning Final Adoption, with fully detailed drawings prior to PPA issuance.	Statistics sheet must specify density/GFA, unit count, building height prior to rezoning Final Adoption.  Preliminary Solid Waste and Recycling Plans, Residential Loading Management Plan, Fire Truck Access Plan, adaptable units plan, parking plan (including accessible parking) prior to rezoning Final Adoption, with fully detailed drawings prior to PPA issuance.
Subdivision: road dedication and creation of net development site(s)	Registration prior to rezoning Final Adoption	Registration prior to rezoning Final Adoption	n/a	Registration prior to rezoning Final Adoption.
Building demolition	Aligned with Building Permit issuance.	Aligned with Building Permit issuance.	Aligned with Building Permit issuance.	Aligned with Building Permit issuance.
Off-site servicing	Civil design, servicing agreements, and letter of credit prior to rezoning Final Adoption.	Civil design, servicing agreements, and letter of credit prior to rezoning Final Adoption.	Civil design, servicing agreements, and letter of credit prior to PPA issuance.	Civil design, servicing agreements, and letter of credit prior to PPA issuance.
Hydro, Telus, and other third party utilities	Design, bonding, and registration of SROWs prior to rezoning Final Adoption.	Design, bonding, and registration of SROWs prior to rezoning Final Adoption.	Design, bonding, and registration of SROWs prior to PPA issuance.	Design, bonding, and registration of SROWs prior to PPA issuance.

<b>Rezoning Requirement</b>	<b>SITE A: Telford REZ #18-23</b>	<b>SITE B: Cassie/McKay REZ #17-34</b>	<b>SITE C: Silver REZ #17-39</b>	<b>SITE D: Maywood REZ #18-21</b>
	Registration of additional/ replacement SROs as required.	Registration of additional/ replacement SROs as required.	Registration of additional/ replacement SROs as required.	Registration of additional/ replacement SROs as required.
Amenity density bonus payment	n/a	Negotiation and payment prior to rezoning Final Adoption.	Negotiation and payment prior to PPA issuance.	Negotiation and payment prior to PPA issuance.
Transportation Demand Management strategy	n/a	Strategy, covenant, and bonding prior to rezoning Final Adoption.	Strategy, covenant, and bonding prior to PPA issuance.	Strategy, covenant, and bonding prior to PPA issuance.
Tree Survey and arborist's report	Submission and acceptance prior to rezoning Final Adoption	Submission and acceptance prior to rezoning Final Adoption	Submission and acceptance prior to rezoning Final Adoption	Submission and acceptance prior to rezoning Final Adoption
Section 219 Covenant – cycling facilities	Covenant and bonding prior to rezoning Final Adoption.	n/a	n/a	n/a
Section 219 Covenant – no occupancy	n/a	Registration prior to rezoning Final Adoption; occupancy permitted concurrent with or following occupancy of Telford.	Registration prior to rezoning Final Adoption; occupancy permitted concurrent with or following occupancy of Telford.	Registration prior to rezoning Final Adoption; occupancy permitted concurrent with or following occupancy of Telford.
Section 219 Covenant – density allocation	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.
Section 219 Covenant – No Separate Sale of Lands and Assignment of PDA	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.	Registration prior to rezoning Final Adoption.
Section 219 Covenant – no build/no PPA	n/a	n/a	Registration prior to rezoning Final Adoption; development permitted upon completion of all prior-to PPA conditions.	Registration prior to rezoning Final Adoption; development permitted upon completion of all prior-to PPA conditions.
Section 219 Covenants – standard (no gates on driveways, no balcony enclosure, SWMP, groundwater, public art, green building, acoustic, accessible parking)	Registration prior to Final Adoption.	Registration prior to Final Adoption.	Registration prior to PPA issuance.	Registration prior to PPA issuance.
Housing Covenant and Housing Agreement	Registration prior to building occupancy.	n/a	n/a	n/a

<b>Rezoning Requirement</b>	<b>SITE A: Telford REZ #18-23</b>	<b>SITE B: Cassie/McKay REZ #17-34</b>	<b>SITE C: Silver REZ #17-39</b>	<b>SITE D: Maywood REZ #18-21</b>
Stormwater Management Plan and Groundwater Management Plan	Plan, covenant, and bonding prior to rezoning Final Adoption.	Plan, covenant, and bonding prior to rezoning Final Adoption.	Plan, covenant, and bonding prior to PPA issuance.	Plan, covenant, and bonding prior to PPA issuance.
Sediment Control Plan	Plan submission prior to rezoning Final Adoption.	Plan submission prior to rezoning Final Adoption.	Plan submission prior to PPA issuance.	Plan submission prior to PPA issuance.
Tenant Assistance Plan	Submission and acceptance prior to Final Adoption.	Submission and acceptance prior to Final Adoption.	Submission and acceptance prior to Final Adoption.	Submission and acceptance prior to Final Adoption.
Acoustical Study	Submission and acceptance prior to Final Adoption.	Submission and acceptance prior to Final Adoption.	Submission and acceptance prior to PPA issuance.	Submission and acceptance prior to PPA issuance.
Public Art Plan	n/a	Submission and acceptance prior to Final Adoption.	Submission and acceptance of draft plan prior to Final Adoption. Final plan, artist selection, bonding, and covenant prior to PPA issuance.	Submission and acceptance of draft plan prior to Final Adoption. Final plan, artist selection, bonding, and covenant prior to PPA issuance.
Green Building Strategy	Submission prior to Final Adoption.	Submission prior to Final Adoption.	Submission prior to PPA issuance.	Submission prior to PPA issuance.
Development Cost Charges	Submission prior to Final Adoption.	Payment prior to rezoning Final Adoption.	Payment prior to Building Permit Issuance	Payment prior to Building Permit Issuance

KH:

Updated to 2021 October 29

**SCHEDULE "C"**  
**NO OCCUPANCY COVENANT**

[see attached]

**PART 2 – TERMS OF INSTRUMENT**

**SECTION 219 COVENANT  
(NO OCCUPANCY)**

**BETWEEN:**

**[INSERT APPROPRIATE BELFORD ENTITY]**

[Incorporation No. BC \_\_\_\_\_]

540 - 1199 West Pender Street

Vancouver, B.C., V6E 2R1

(the "Owner")

**AND:**

**CITY OF BURNABY**

a municipal corporation pursuant to the *Local Government Act*  
and having its offices at 4949 Canada Way,  
Burnaby, British Columbia, V5G 1M2

(the "City")

**WHEREAS:**

- A. Capitalized terms used in these recitals and this Agreement have the meanings ascribed to them in section 1.1;
- B. The Owner is the registered owner of the Lands;
- C. The Owner proposes to construct the Development on the Lands;
- D. Pursuant to section 6.5 of the Phased Development Agreement, the Owner has agreed to enter into this Agreement to ensure that no occupancy of any Buildings on the Lands occurs until such time as the Owner complies with the terms and conditions set out in this Agreement; and
- E. Section 219 of the *Land Title Act* provides, *inter alia*, that there may be registered as a charge against the title to land a covenant in favour of a municipality, whether of a negative or positive nature, in respect of the use of the land, the use of a building on or to be erected on the land, the building on the land, and the subdivision of the land except in accordance with the covenant.

**NOW THEREFORE** in consideration of the matters referred to in the foregoing recitals, the covenants and agreements herein contained and the sum of Ten Dollars (\$10.00) now paid by the  
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City to the Owner and other good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties hereto hereby covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS**

### **1.1 Definitions**

Terms defined in this Section 1.1 for all purposes of this Agreement, unless specifically provided in this Agreement, have the meanings hereinafter specified. The terms herein defined are:

- (a) **"Additional Rental Housing Units"** means, collectively, 168 rental housing units, exclusive of the Replacement Rental Units, that are to be constructed by or on behalf of, *inter alia*, the Owner on the Telford Site and 50% of which (84) will be provided at market rental rates and 50% of which (84) will be provided at CMHC Median Rental Rates, as specified in the applicable Housing Agreement;
- (b) **"Agreement"** or **"this Agreement"** means this agreement and includes all recitals and schedules to this agreement and all instruments comprising this agreement;
- (c) **"Below Market-Rate Rental Housing Units"** means, collectively,
  - (i) the Replacement Rental Units on the Telford Site to be provided at Replacement Rental Units Rental Rates; and
  - (ii) 50% of the Additional Rental Housing Units on the Telford Site to be provided at the CMHC Median Rental Rates,and that are subject to the Housing Agreement (Below Market-Rate Rental), as contemplated under Section 483 of the *Local Government Act*.
- (d) **"Building"** means any building, improvement or structure constructed on the Lands at any time after the date this Agreement is fully executed by the parties hereto;
- (e) **"Building Permit"** means the building permit authorizing construction on the Telford Site or any portion(s) thereof;
- (f) **"Business Day"** means a day which is not a Saturday, Sunday or statutory holiday (as defined in the *Employment Standards Act* (British Columbia)) in British Columbia;
- (g) **"Certificate of Occupancy"** means a certificate authorizing the use or occupation of any Building, or any portion(s) thereof;

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- (h) **"City"** and **"City of Burnaby"**, being the Transferee described in item 6 of the *Land Title Act* Form C General Instrument constituting Part 1 of this Agreement, means the City of Burnaby and is called the "City" when referring to the corporate entity and "City of Burnaby" when referring to the geographic location;
- (i) **"City Personnel"** means the City's elected officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates;
- (j) **"City Solicitor"** means the individual appointed from time to time to be the City Solicitor of the Law Division of the City, or his or her designate;
- (k) **"CMHC"** means the Canada Mortgage and Housing Corporation or its successor in function;
- (l) **"CMHC Median Rental Rates"** means the CMHC market median rent for the applicable CMHC market rental survey zone and number of bedrooms, based on the rates available at the time a tenant enters into a tenancy agreement;
- (m) **"Community Charter"** means the *Community Charter*, S.B.C. 2003, c. 26, and all amendments thereto and re-enactments thereof;
- (n) **"Development"** means [insert definition for Cassie/McKay Development, Maywood Development, or Silver Development (as referenced in the Phased Development Agreement), as applicable];
- (o) **"Director of Planning and Building"** means the individual appointed to be the Director of Planning and Building of the Planning and Building Department of the City, or his or her designate;
- (p) **"Housing Agreement (Below Market-Rate Rental)"** means the agreements, covenants, options and charges granted by the Telford Owner to the City pursuant to Section 483 of the *Local Government Act* and noted, or to be noted, on title to the Telford Site for the purposes of securing the Telford Owner's provision of Below Market-Rate Rental Housing Units on the Telford Site;
- (q) **"Housing Agreement (Market-Rate Rental)"** means the agreements, covenants, options and charges granted by the Telford Owner to the City pursuant to Section 483 of the *Local Government Act* and noted, or to be noted, on title to the Telford Site for the purposes of securing the Telford Owner's provision of Market-Rate Rental Housing Units on the Telford Site;
- (r) **"Housing Covenant (Below Market-Rate Rental)"** means, collectively, a Section 219 Covenant and rent charge to be granted by the Telford Owner to the City and

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registered against title to the Telford Site for the purposes of securing the Telford Owner's construction of the Below Market-Rate Rental Housing Units thereon;

- (s) **"Housing Covenant (Market-Rate Rental)"** means, collectively, a Section 219 Covenant and rent charge to be granted by the Telford Owner to the City and registered against title to the Telford Site for the purposes of securing the Telford Owner's construction of the Market-Rate Rental Housing Units thereon;
- (t) **"Housing Agreements"** means, collectively, the Housing Agreement (Below Market-Rate Rental), the Housing Agreement (Market-Rate Rental), the Housing Covenant (Below Market-Rate Rental) and the Housing Covenant (Market-Rate Rental);
- (u) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (v) **"Land Title Office"** means the New Westminster Land Title Office or its successor;
- (w) **"Lands"** means the lands described in item 2 of the *Land Title Act* Form C General Instrument constituting Part 1 of this Agreement;
- (x) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 2015, c. 1, and all amendments thereto and re-enactments thereof;
- (y) **"Market-Rate Rental Housing Units"** means 50% of the Additional Rental Housing Units on the Telford Site to be provided at market rental rates and that are subject to the Housing Agreement (Market-Rate Rental), as contemplated under Section 483 of the *Local Government Act*;
- (z) **"Owner"** means the Transferor described in item 5 of the *Land Title Act* Form C Part 1 of this Agreement together with any successors in title to the Lands or a portion of the Lands;
- (aa) **"Phased Development Agreement"** means the phased development agreement entered into by the City and the Owner pursuant to Section 516 of the *Local Government Act* and dated for reference \_\_\_\_\_, 20\_\_;
- (bb) **"Purchaser"** has the meaning given in Section 4.1;
- (cc) **"Replacement Rental Units"** means, collectively, the required 220 Below Market-Rate Rental Housing Units that are to be constructed by or on behalf of, *inter alia*, the Owner on the Telford Site and provided at Replacement Rental Units Rental Rates, as specified in the Housing Agreement (Below Market-Rate Rental);

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- (dd) **"Replacement Rental Units Rental Rates"** means rates equal to the eligible tenant rates at the time of move out of a tenant's prior unit, plus annual increases allowed under the *Residential Tenancy Act* between the time of move-out of such tenant's prior unit and occupancy by such tenant of the Replacement Rental Unit;
- (ee) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, Ch. 78, as may be amended or replaced from time to time;
- (ff) **"Rezoning"** means the Owner's application to the City to rezone the Lands pursuant to the City's Rezoning Reference #[insert Cassie/McKay, Silver or Maywood Rezoning Application Number, as applicable] to permit the Development;
- (gg) **"Strata Property Act"** means the *Strata Property Act*, S.B.C. 1998, c. 43, and all amendments thereto and re-enactments thereof;
- (hh) **"Telford Owner"** means Belford (Telford) Nominee Ltd.; and
- (ii) **"Telford Site"** means the lands and premises legally described as:

Parcel Identifier: 002-544-521

Lot "A" (Reference Plan 29171) District Lot 153 Group 1 New Westminster District Plan 1566.

## 1.2 Interpretation

Any interest in land created hereby, including those noted in the *Land Title Act* Form C Part 1 of this Agreement, as being found in certain sections, paragraphs or parts of this Agreement, will be construed, interpreted and given force in the context of those portions of this Agreement:

- (a) which define the terms used herein;
- (b) which deal with the interpretation of this Agreement; and
- (c) which are otherwise of general application.

## 1.3 Headings

The division of this Agreement into Articles and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles are to Articles of this Agreement.

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#### 1.4 Number

Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, and vice versa.

#### 1.5 Governing Law

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

#### 1.6 Use of "including"

The word "including", when following any general statement, term or matter, will not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, but will be construed to refer to all other items or matters that could reasonably fall within the scope of such general statement, term or matter, whether or not non-limiting language (such as "without limitation", "but not limited to" or words of similar import) is used with reference thereto.

#### 1.7 City Approval and Exercise of Discretion

Any City approval or consent to be given pursuant to or in connection with this Agreement is not effective or valid unless provided by the City in writing. Any City approval or consent to be granted by the City in this Agreement may, unless stated expressly otherwise, be granted or withheld in the absolute discretion of the City.

## ARTICLE 2 SECTION 219 COVENANT

#### 2.1 Section 219 Covenant

The Owner hereby covenants and agrees with the City, as a covenant in favour of the City pursuant to section 219 of the *Land Title Act*, it being the intention and agreement of the Owner that the provisions hereof be annexed to, and run with and be a charge on title to the Lands, that:

- (a) the Lands will not be used except in accordance with the terms and conditions of this Agreement;
- (b) notwithstanding that the Owner may otherwise be entitled, the Owner will not request, permit to be requested or take direct or indirect action to complete the issuance of, and the City will be under no obligation to issue, a Certificate of

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Covenant – No Occupancy  
Belford Properties – [insert reference to applicable Development and RZ reference #]  
[version #]

Occupancy in respect of the Lands or any Building on the Lands, or any portion thereof unless and until the Owner has, at its expense:

- (i) designed and constructed or cause to be designed and constructed at least 220 Replacement Rental Units and at least 84 of the Additional Rental Housing Units on the Telford Site to the satisfaction of the City and in accordance with the Housing Covenant (Below Market-Rate Rental);
  - (ii) designed and constructed or cause to be designed and constructed at least 84 Additional Rental Housing Units on the Telford Site to the satisfaction of the City and in accordance with the Housing Covenant (Market-Rate Rental); and
  - (iii) obtained from the City or cause to be obtained from the City a Certificate of Occupancy permitting occupancy of the Below Market-Rate Rental Housing Units and the Market-Rate Rental Housing Units constructed on the Telford Site in accordance with Sections 2.1(b)(i) and (ii) above;
- (c) any Certificate of Occupancy for any Building on the Lands issued inadvertently or otherwise prior to the Owner's completion of its obligations under this Agreement may be revoked by the City at any time; and
  - (d) if the Owner commences or permits any occupancy of any Building, or any portion thereof, in contravention of this Agreement, the City may pursue all remedies including, without limitation, injunctive relief.

## 2.2 Release of Covenant

The City covenants to execute a discharge of the covenants and agreements constituting covenants pursuant to Section 219 of the *Land Title Act* contained herein upon fulfillment of the conditions set out in Section 2.1(b) to the satisfaction of the City, provided however that:

- (a) the City has no obligation to execute such discharges until a written request therefor from the Owner is received by the City, which request includes the registerable form of discharge;
- (b) the cost of preparation of the aforesaid discharge, and the cost of registration of the same in the Land Title Office is paid by the Owner;
- (c) the City has a reasonable time within which to execute the discharge and return the same to the Owner for registration; and
- (d) the Owner acknowledges that such discharge is without prejudice to the indemnity and release set forth in Section 3.1 below.

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2.3 Other Sections form Part of this Covenant

The Owner hereby covenants and agrees with the City that Article 3 will be deemed to be included in and form part of this covenant made pursuant to Section 219 of the *Land Title Act*.

**ARTICLE 3  
INDEMNITY AND RELEASE**

3.1 Indemnity and Release

The Owner hereby agrees:

- (a) to release, indemnify and save harmless the City and the City Personnel from all loss, damage, costs (including, without limitation, legal costs on a solicitor-and-client basis), expenses, actions, suits, debts, accounts, claims and demands, including, without limitation, any and all claims of third parties, which the City or City Personnel may suffer, incur or be put to arising out of or in connection with, directly or indirectly, or that would not or could not have occurred "but for" this Agreement, including without limitation:
  - (i) any breach by the Owner of any covenant or agreement contained in this Agreement;
  - (ii) the exercise of discretion by any City Personnel for any matter relating to this Agreement;
  - (iii) the City withholding any Certificate of Occupancy or permission to occupy any Building in accordance with the terms of this Agreement;
  - (iv) the rights granted to the City hereunder and the exercise thereof; and
- (b) that the indemnity and release granted in this Section 3.1 will survive the termination, release or discharge of this Agreement and will be an integral part of the Section 219 covenant granted herein.

**ARTICLE 4  
MISCELLANEOUS**

4.1 Sale of Lands

The Owner agrees that it will not sell, transfer or otherwise dispose of the whole or any part of the Lands to any person, trust, corporation, partnership or other entity (a "**Purchaser**") (other than the transfer of an interest (i) to a purchaser of a residential strata lot, or (ii) by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority over its

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mortgage) unless the Owner includes in any agreements relating to such sale, transfer or disposition a covenant binding upon the Purchaser in favour of the City whereby the Purchaser:

- (a) acknowledges that the Purchaser is aware of the terms of this Agreement; and
- (b) assumes and agrees to observe and perform the terms of this Agreement.

#### 4.2 Exercise of Authority

A power or discretion exercisable hereunder by the City may be exercised by their respective designates and any approval or other communication from any such designate will be deemed to have been given by the City official who will have appointed such designate.

#### 4.3 Runs with the Lands

The covenants contained in this Agreement will run with and bind the Lands until discharged in accordance with this Agreement.

#### 4.4 No Liability

The parties agree that neither the Owner, nor any successor in title to the Lands, or portions thereof, will be liable for breaches of or non-observance or non-performance of covenants contained in this Agreement occurring after the date that the Owner or its successor in title, as the case may be, ceases to be the registered or beneficial owner of the Lands; provided, however, the Owner or its successors in title, as the case may be, will remain liable after ceasing to be the registered or beneficial owner of the Lands for all breaches of and non-observance and non-performance of covenants in this Agreement if the breach, non-observance or non-performance occurred prior to the Owner or any successor in title, as the case may be, ceased to be the registered or beneficial owner of the Lands.

#### 4.5 Assignment of Rights

The City, upon prior written notice to the Owner, may assign or license all or any part of this Agreement or any or all of the City's rights under this Agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing such public facilities, services or utilities.

#### 4.6 Severability

If any article, section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a Court of competent jurisdiction, the remainder of this Agreement will continue in full force and effect and, in such case, the parties hereto will agree upon an amendment to be made to the section, subsection, sentence, clause or phrase previously

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found to be invalid and will do or cause to be done all acts reasonably necessary in order to amend this Agreement so as to reflect its original spirit and intent.

#### 4.7 Priority

The Owner agrees to cause the registrable interests in land granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered in favour of the City; or
- (c) which the City has determined may rank in priority to the registrable interests in land granted pursuant to this Agreement.

#### 4.8 No Fettering and No Derogation

Nothing contained or implied in this Agreement will fetter in any way the discretion of the City or the Council of the City. Further, nothing contained or implied in this Agreement will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligation in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the City's discretion, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

#### 4.9 Equitable Relief

The Owner covenants and agrees that in addition to any remedies which are available under this Agreement or at law, the City will be entitled to all equitable remedies, including, without limitation, specific performance, injunction and declaratory relief, or any combination thereof, to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement. The Owner acknowledges and agrees that no failure or delay on the part of the City to exercise any right under this Agreement will operate as a waiver by the City of such right.

#### 4.10 No Waiver and Remedies

The Owner and the City acknowledge and agree that no failure on the part of either party hereto to exercise and no delay in exercising any right under this Agreement will operate as a waiver

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thereof nor will any single or partial exercise by either party of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies provided in this Agreement will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for either party in this Agreement will be deemed to be in addition to and not, except as expressly stated in this Agreement, restrictive of the remedies of either party hereto at law or in equity.

#### 4.11 Notice

Any notice or communication required or permitted to be given pursuant to this Agreement will be in writing and delivered by hand or sent by prepaid mail or facsimile to the party to which it is to be given as follows:

- (a) to the City:

City of Burnaby  
4949 Canada Way  
Burnaby, BC V5G 1M2

Attention: City Clerk  
Fax: 604.294.7290

with a copy to the Director, Planning and Building and the City Solicitor; and

- (b) to the Owner, to the address as set out on the title for the Lands,

or to such other address or fax number as any party may in writing advise. Any notice or communication will be deemed to have been given when delivered if delivered by hand, two Business days following mailing if sent by prepaid mail, and on the following Business day after transmission if sent by facsimile.

#### 4.12 Further Acts

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

#### 4.13 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors, administrators and assigns.

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**4.14 Joint and Several**

If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner will be joint and several.

**4.15 Time of Essence**

Time, where mentioned herein, will be of the essence of this Agreement.

**4.16 Counterparts**

This Agreement may be signed by the parties hereto in counterparts and by facsimile or pdf email transmission, each such counterpart, facsimile or pdf email transmission copy will constitute an original document and such counterparts, taken together, will constitute one and the same instrument and may be compiled for registration as a single document.

**IN WITNESS WHEREOF** the parties have executed this Agreement on the General Instrument – Part 1 which is part hereof.

*{251968-503887-01812193;4}*

Covenant – No Occupancy  
Belford Properties – [insert reference to applicable Development and RZ reference #]  
[version #]

**CONSENT AND PRIORITY AGREEMENT**

WHEREAS [insert registered owner of charge] (the “**Chargeholder**”) is the holder of a [insert nature of interests] encumbering the lands legally described as:

[insert legal description of Cassie/McKay Development, Maywood Development, or Silver Development, as applicable]

(the “**Lands**”),

which [insert nature of interests] are registered in the New Westminster Land Title Office under instrument numbers [CA\_\_\_\_\_] and [CA\_\_\_\_\_], respectively, together with any related extensions thereof (collectively, the “**Charges**”).

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT WITNESSES THAT in consideration of the sum of Ten Dollars (\$10.00) and other consideration (the receipt and sufficiency of which are hereby acknowledged and agreed to by the Chargeholder):

1. The Chargeholder hereby consents to the granting and registration of the attached Section 219 Covenant (the “**Covenant**”) burdening the Lands and the Chargeholder hereby agrees that all of the covenants therein granted will be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee of the Covenant priority over the Chargeholder's right, title and interest in and to the Lands and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charges and prior to the advance of any money pursuant to the Charges.
3. The Chargeholder acknowledges and agrees that the grant of priority is irrevocable, unqualified and without reservation or limitation.

IN WITNESS WHEREOF the Chargeholder has executed this Consent and Priority on Form C above which form is part hereof.

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Covenant – No Occupancy  
Belford Properties – [insert reference to applicable Development and RZ reference #]  
[version #]

**SCHEDULE "D"**  
**NO BUILD/NO PPA COVENANT**

*[see attached]*

**PART 2 – TERMS OF INSTRUMENT**

**SECTION 219 COVENANT  
(NO PRELIMINARY PLAN APPROVAL/NO BUILD)**

**BETWEEN:**

**[INSERT APPROPRIATE BELFORD ENTITY]**

[Incorporation No. BC \_\_\_\_\_]

540 – 1199 West Pender Street

Vancouver, BC, V6E 2R1

(the "Owner")

**AND:**

**CITY OF BURNABY,**

a municipal corporation pursuant to the *Local Government Act*  
and having its offices at 4949 Canada Way,  
Burnaby, British Columbia, V5G 1M2

(the "City")

**WHEREAS:**

- A. Capitalized terms used in these recitals and this Agreement have the meanings ascribed to them in section 1.1;
- B. The Owner is the registered owner in fee simple of the Lands;
- C. The Owner proposes to construct the Development on the Lands;
- D. Pursuant to section 6.6 of the Phased Development Agreement, the Owner has agreed to enter into this Agreement to ensure that no construction of the Lands occurs until such time as the Owner complies with the terms and conditions set out in this Agreement; and
- E. Section 219 of the *Land Title Act* provides, *inter alia*, that there may be registered as a charge against title to land a covenant in favour of a municipality, whether of a negative or positive nature, in respect of the use of the land, the use of a building on or to be erected on the land, the building on the land and the subdivision of the land except in accordance with the covenant.

**NOW THEREFORE** in consideration of the matters referred to in the foregoing recitals, the covenants and agreements herein contained and the sum of Ten Dollars (\$10.00) now paid by the City to the Owner and other good and valuable consideration, (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties), the parties hereto hereby covenant and agree as follows:

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## ARTICLE 1 DEFINITIONS

### 1.1 Definitions

Terms defined in this Section 1.1 for all purposes of this Agreement, unless specifically provided in this Agreement, have the meanings hereinafter specified. The terms herein defined are:

- (a) **"Additional Rental Housing Units"** means, collectively, 168 rental housing units, exclusive of the Replacement Rental Units, that are to be constructed by or on behalf of, *inter alia*, the Owner on the Telford Site and 50% of which (84) will be provided at market rental rates and 50% of which (84) will be provided at CMHC Median Rental Rates, as specified in the applicable Housing Agreement;
- (b) **"Agreement"** or **"this Agreement"** means this agreement and includes all recitals and schedules to this agreement and all instruments comprising this agreement;
- (c) **"Below Market-Rate Rental Housing Units"** means, collectively,
  - (i) the Replacement Rental Units on the Telford Site to be provided at Replacement Rental Units Rental Rates; and
  - (ii) 50% of the Additional Rental Housing Units on the Telford Site to be provided at the CMHC Median Rental Rates,and that are subject to the Housing Agreement (Below Market-Rate Rental), as contemplated under Section 483 of the *Local Government Act*.
- (d) **"Building"** means any building, improvement or structure constructed on the Lands at any time after the date this Agreement is fully executed by the parties hereto;
- (e) **"Building Permit"** means the building permit authorizing construction of any Building, or any portion(s) thereof after the date of this Agreement;
- (f) **"Business Day"** means a day which is not a Saturday, Sunday or statutory holiday (as defined in the *Employment Standards Act* (British Columbia)) in British Columbia;
- (g) **"City"** and **"City of Burnaby"**, being the Transferee described in item 6 of the *Land Title Act* Form C General Instrument constituting Part 1 of this Agreement, means the City of Burnaby and is called the "City" when referring to the corporate entity and "City of Burnaby" when referring to the geographic location;
- (h) **"City Personnel"** means the City's officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates;
- (i) **"City Requirements"** means, collectively:

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- (i) any legal agreements, documents, plans required by the City in connection with the Rezoning;
- (ii) the issuance of any Preliminary Plan Approvals or Building Permits and registered against title to the Lands, or any portions thereof;
- (iii) any fees or bonding required by the City in connection with Rezoning, subdivision, development or redevelopment of all or any of the Lands; and
- (iv) the No Occupancy Covenant;
- (j) **"City Solicitor"** means the individual appointed from time to time to be the City Solicitor of the Law Division of the City, or his or her designate;
- (k) **"CMHC"** means the Canada Mortgage and Housing Corporation or its successor in function;
- (l) **"CMHC Median Rental Rates"** means the CMHC market median rent for the applicable CMHC market rental survey zone and number of bedrooms, based on the rates available at the time a tenant enters into a tenancy agreement;
- (m) **"Community Charter"** means the *Community Charter*, S.B.C. 2003, c. 26, and all amendments thereto and re-enactments thereof;
- (n) **"Development"** means [insert definition for Maywood Development or Silver Development (as referenced in the Phased Development Agreement), as applicable];
- (o) **"Development Requirements"** means those requirements for the development of the Lands, as set out in Schedule "A" attached hereto;
- (p) **"Director of Planning and Building"** means the individual appointed to be the Director of Planning and Building of the Planning and Building Department of the City, or his or her designate;
- (q) **"Housing Agreement (Below Market-Rate Rental)"** means the agreements, covenants, options and charges granted by the Telford Owner to the City pursuant to Section 483 of the *Local Government Act* and noted, or to be noted, on title to the Telford Site for the purposes of securing the Telford Owner's provision of Below Market-Rate Rental Housing Units on the Telford Site;
- (r) **"Housing Agreement (Market-Rate Rental)"** means the agreements, covenants, options and charges granted by the Telford Owner to the City pursuant to Section 483 of the *Local Government Act* and noted, or to be noted, on title to the Telford Site for the purposes of securing the Telford Owner's provision of Market-Rate Rental Housing Units on the Telford Site;

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- (s) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c. 250, and all amendments thereto and re-enactments thereof;
- (t) **"Land Title Office"** means the New Westminster Land Title Office or its successor;
- (u) **"Lands"** means the lands described in item 2 of the *Land Title Act* Form C General Instrument constituting Part 1 of this Agreement;
- (v) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 2015, c. 1, and all amendments thereto and re-enactments thereof;
- (w) **"Market-Rate Rental Housing Units"** means 50% of the Additional Rental Housing Units on the Telford Site to be provided at market rental rates and that are subject to the Housing Agreement (Market-Rate Rental), as contemplated under Section 483 of the *Local Government Act*;
- (x) **"No Occupancy Covenant"** means the Section 219 Covenant granted by the Owner to the City and registered against title to the Lands concurrently with this Agreement for the purpose of securing the Telford Owner's provision and construction of the Below Market-Rate Rental Housing Units and the Market-Rate Rental Housing Units on the Telford Site;
- (y) **"Owner"** means the Transferor(s) described in item 5 of the *Land Title Act* Form C Part 1 of this Agreement together with any successors in title to the Lands or a portion of the Lands;
- (z) **"Phased Development Agreement"** means the phased development agreement entered into by the City and the Owner pursuant to Section 516 of the *Local Government Act* and dated for reference \_\_\_\_\_, 20\_\_;
- (aa) **"Preliminary Plan Approval"** means the approval of the Director of Planning and Building pursuant to Section 7.3 of the City of Burnaby Zoning Bylaw 4742, as amended or replaced from time to time, as this approval may be amended or replaced by the City from time to time;
- (bb) **"Purchaser"** has the meaning given in Section 4.1;
- (cc) **"Replacement Rental Units"** means, collectively, the required 220 Below Market-Rate Rental Housing Units that are to be constructed by or on behalf of, *inter alia*, the Owner on the Telford Site and provided at Replacement Rental Units Rental Rates, as specified in the Housing Agreement (Below Market-Rate Rental);
- (dd) **"Replacement Rental Units Rental Rates"** means rates equal to the eligible tenant rates at the time of move out of a tenant's prior unit, plus annual increases allowed under the *Residential Tenancy Act* between the time of move-out of such tenant's prior unit and occupancy by such tenant of the Replacement Rental Unit;

- (ee) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, Ch. 78, as may be amended or replaced from time to time;
- (ff) **"Rezoning"** means the Owner's application to the City to rezone the Lands pursuant to the City's Rezoning Reference # [insert Silver or Maywood Rezoning Application Number, as applicable] to permit the Development on the Lands;
- (gg) **"Telford Owner"** means Belford (Telford) Nominee Ltd.; and
- (hh) **"Telford Site"** means the lands and premises legally described as:

Parcel Identifier: 002-544-521  
 Lot "A" (Reference Plan 29171) District Lot 153 Group 1 New Westminster  
 District Plan 1566.

## 1.2 Schedules

The following Schedule is attached hereto and forms part of this Agreement:

<u>Schedule</u>	<u>Description</u>
"A"	Development Requirements

## 1.3 Interpretation

Any interest in land created hereby, including those noted in the *Land Title Act* Form C Part 1 of this Agreement, as being found in certain sections, paragraphs or parts of this Agreement, will be construed, interpreted and given force in the context of those portions of this Agreement:

- (a) which define the terms used herein;
- (b) which deal with the interpretation of this Agreement; and
- (c) which are otherwise of general application.

## 1.4 Headings

The division of this Agreement into Articles and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles are to Articles of this Agreement.

## 1.5 Number

Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words  
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importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations, and vice versa.

#### 1.6 Governing Law

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

#### 1.7 Use of "including"

The word "including", when following any general statement, term or matter, will not be construed to limit such general statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, but will be construed to refer to all other items or matters that could reasonably fall within the scope of such general statement, term or matter, whether or not non-limiting language (such as "without limitation", "but not limited to" or words of similar import) is used with reference thereto.

#### 1.8 City Approval and Exercise of Discretion

Any City approval or consent to be given pursuant to or in connection with this Agreement is not effective or valid unless provided by the City in writing. Any City approval or consent to be granted by the City in this Agreement may, unless stated expressly otherwise, be granted or withheld in the absolute discretion of the City.

### ARTICLE 2 SECTION 219 COVENANT

#### 2.1 Section 219 Covenant

The Owner hereby covenants and agrees with the City, as a covenant in favour of the City pursuant to section 219 of the *Land Title Act*, it being the intention and agreement of the Owner that the provisions hereof be annexed to, and run with and be a charge on title to the Lands, that:

- (a) the Lands will not be used except in accordance with the terms and conditions of this Agreement;
- (b) notwithstanding that the Owner may otherwise be entitled, the Owner will not request, permit to be requested or take any direct or indirect action to compel the issuance of, and the City will be under no obligation to issue, a Building Permit or Preliminary Plan Approval in respect of the Lands or any portion thereof unless and until the Owner, at its expense:
  - (i) submits to the City technical designs, plans, studies and bonding for the Lands including, without limitation technical designs, plans, studies and bonding for servicing, third party utilities, stormwater and ground water management, sediment control, communications strategy, green building design and energy modelling, public art, and alternative transportation to the satisfaction of the City;

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- (ii) enters into and registers against title to the Lands one or more servicing agreements to secure the Owner's provision of off-site services in respect of the Lands;
- (iii) delivers to the City any required letters of credit to secure the Owner's obligations under the servicing agreements under 2.1(a)(b)(ii) above;
- (iv) enters into and registers against title to the Lands any other legal agreements (including without limitation the No Occupancy Covenant) to secure the applicable City Requirements in respect of the Lands; and
- (v) pays all other fees and charges payable in respect of the Lands,

all to the satisfaction of the Director of Planning and Building and in accordance with the Development Requirements;

- (c) notwithstanding that the Owner may otherwise be entitled, the Owner will not request, permit to be requested, or take any direct or indirect action to compel the issuance of, and the City will be under no obligation to issue, a Building Permit, or occupy or permit occupancy of any Building on the Lands, or any portion thereof, unless and until the Owner has complied with each of its obligations in section 2.1(b) above;
- (d) any Building Permit issued inadvertently or otherwise prior to the Owner's completion of its obligations under this Agreement may be revoked by the City at any time; and
- (e) if the Owner commences or permits any development on the Lands, or any portion thereof, or construction or occupancy of any Building, or any portion thereof, in contravention of this Agreement, the City may pursue all remedies including, without limitation, injunctive relief.

## 2.2 Release of Covenant

The City covenants to execute a discharge of the covenants and agreements constituting covenants pursuant to Section 219 of the *Land Title Act* contained herein upon fulfillment of the conditions set out in Section 2.1(b) to the satisfaction of the City, provided however that:

- (a) the City has no obligation to execute such discharges until a written request therefor from the Owner is received by the City, which request includes the registerable form of discharge;
- (b) the cost of preparation of the aforesaid discharge, and the cost of registration of the same in the Land Title Office is paid by the Owner;
- (c) the City has a reasonable time within which to execute the discharge and return the same to the Owner for registration; and

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- (d) the Owner acknowledges that such discharge is without prejudice to the indemnity and release set forth in Section 3.1 below.

### 2.3 Other Sections form Part of this Covenant

The Owner hereby covenants and agrees with the City that Article 4 will be deemed to be included in and form part of this covenant made pursuant to Section 219 of the *Land Title Act*.

## ARTICLE 3 INDEMNITY AND RELEASE

### 3.1 Indemnity and Release

The Owner hereby agrees:

- (a) to release, indemnify and save harmless the City and the City Personnel from all loss, damage, costs (including, without limitation, legal costs), expenses, actions, suits, debts, accounts, claims and demands, including, without limitation, any and all claims of third parties, which the City or City Personnel may suffer, incur or be put to arising out of or in connection with, directly or indirectly, or that would not or could not have occurred "but for" this Agreement, including without limitation:
  - (i) any breach by the Owner of any covenant or agreement contained in this Agreement;
  - (ii) the exercise of discretion by any City Personnel for any matter relating to this Agreement;
  - (iii) the City withholding any Building Permit or permission to occupy any Building in accordance with the terms of this Agreement;
  - (iv) the rights granted to the City hereunder and the exercise thereof; and
- (b) that the indemnity and release granted in this Section 3.1 will survive the termination, release or discharge of this Agreement and will be an integral part of the Section 219 covenant granted herein.

## ARTICLE 4 MISCELLANEOUS

### 4.1 Sale of Lands

The Owner agrees that it will not sell, transfer or otherwise dispose of the whole or any part of the Lands to any person, trust, corporation, partnership or other entity (a "Purchaser") (other than the transfer of an interest (i) to a purchaser of a residential strata lot, or (ii) by way of mortgage, where the mortgagee has first granted the Section 219 Covenant contained herein priority over its mortgage) unless the Owner includes in any agreements relating to such sale, transfer or disposition a covenant binding upon the Purchaser in favour of the City whereby the Purchaser:

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- (a) acknowledges that the Purchaser is aware of the terms of this Agreement; and
- (b) assumes and agrees to observe and perform the terms of this Agreement.

#### 4.2 Exercise of Authority

A power or discretion exercisable hereunder by the City may be exercised by their respective designates and any approval or other communication from any such designate will be deemed to have been given by the City official who will have appointed such designate.

#### 4.3 Runs with the Lands

The covenants contained in this Agreement will run with and bind the Lands until discharged in accordance with this Agreement.

#### 4.4 No Liability

The parties agree that neither the Owner, nor any successor in title to the Lands, or portions thereof, will be liable for breaches of or non-observance or non-performance of covenants contained in this Agreement occurring after the date that the Owner or its successor in title, as the case may be, ceases to be the registered or beneficial owner of the Lands; provided, however, the Owner or its successors in title, as the case may be, will remain liable after ceasing to be the registered or beneficial owner of the Lands for all breaches of and non-observance and non-performance of covenants in this Agreement if the breach, non-observance or non-performance occurred prior to the Owner or any successor in title, as the case may be, ceased to be the registered or beneficial owner of the Lands.

#### 4.5 Assignment of Rights

The City, upon prior written notice to the Owner, may assign or license all or any part of this Agreement or any or all of the City's rights under this Agreement to any governmental agency or to any corporation or entity charged with the responsibility for providing such public facilities, services or utilities.

#### 4.6 Severability

If any article, section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a Court of competent jurisdiction, the remainder of this Agreement will continue in full force and effect and, in such case, the parties hereto will agree upon an amendment to be made to the section, subsection, sentence, clause or phrase previously found to be invalid and will do or cause to be done all acts reasonably necessary in order to amend this Agreement so as to reflect its original spirit and intent.

#### 4.7 Priority

The Owner agrees to cause the registrable interests in land granted pursuant to this Agreement to be registered as first registered charges against the Lands, save only for any reservations, liens, charges or encumbrances:

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- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting the Lands;
- (b) registered in favour of the City; or
- (c) which the City has determined may rank in priority to the registrable interests in land granted pursuant to this Agreement.

#### 4.8 No Fettering and No Derogation

Nothing contained or implied in this Agreement will fetter in any way the discretion of the City or the Council of the City. Further, nothing contained or implied in this Agreement will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligation in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the City's discretion, and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

#### 4.9 Equitable Relief

The Owner covenants and agrees that in addition to any remedies which are available under this Agreement or at law, the City will be entitled to all equitable remedies, including, without limitation, specific performance, injunction and declaratory relief, or any combination thereof, to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement. The Owner acknowledges and agrees that no failure or delay on the part of the City to exercise any right under this Agreement will operate as a waiver by the City of such right.

#### 4.10 No Waiver and Remedies

The Owner and the City acknowledge and agree that no failure on the part of either party hereto to exercise and no delay in exercising any right under this Agreement will operate as a waiver thereof nor will any single or partial exercise by either party of any right under this Agreement preclude any other or future exercise thereof or the exercise of any other right. The remedies provided in this Agreement will be cumulative and not exclusive of any other remedies provided by law and all remedies stipulated for either party in this Agreement will be deemed to be in addition to and not, except as expressly stated in this Agreement, restrictive of the remedies of either party hereto at law or in equity.

#### 4.11 Notice

Any notice or communication required or permitted to be given pursuant to this Agreement will be in writing and delivered by hand or sent by prepaid mail or facsimile to the party to which it is to be given as follows:

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(a) to the City:

City of Burnaby  
4949 Canada Way  
Burnaby, BC V5G 1M2

Attention: City Clerk  
Fax: 604.294.7290

with a copy to the Director of Planning and Building and the City Solicitor; and

(b) to the Owner, to the address as set out on the title for the Lands,

or to such other address or fax number as any party may in writing advise. Any notice or communication will be deemed to have been given when delivered if delivered by hand, two Business days following mailing if sent by prepaid mail, and on the following Business Day after transmission if sent by facsimile.

#### 4.12 Further Acts

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

#### 4.13 Enurement

This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors, administrators and assigns.

#### 4.14 Joint and Several

If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner will be joint and several.

#### 4.15 Time of Essence

Time, where mentioned herein, will be of the essence of this Agreement.

#### 4.16 Counterparts

This Agreement may be signed by the parties hereto in counterparts and by facsimile or pdf email transmission, each such counterpart, facsimile or pdf email transmission copy will constitute an original document and such counterparts, taken together, will constitute one and the same instrument and may be compiled for registration as a single document.

**IN WITNESS WHEREOF** the parties have executed this Agreement on the General Instrument – Part 1 which is part hereof.

{251968-503887-01812196;4}

{251968-503887-01812196;4}

Covenant – No PPA/No Build  
Belford Properties - [insert reference to applicable Development and RZ reference #]  
[version #]

**SCHEDULE "A"**  
**DEVELOPMENT REQUIREMENTS**

*[see attached]*

{251968-503887-01812196;4}

Covenant – No PPA/No Build  
Belford Properties - [insert reference to applicable Development and RZ reference #]  
[version #]



**CONSENT AND PRIORITY AGREEMENT**

WHEREAS [insert registered owner of charge] (the "Chargeholder") is the holder of a [insert nature of interests] encumbering the lands legally described as:

[insert legal description of Maywood Development or Silver Development, as applicable]  
(the "Lands"),

which [insert nature of interests] are registered in the New Westminster Land Title Office under instrument numbers [CA \_\_\_\_\_] and [CA \_\_\_\_\_], respectively, together with any related extensions thereof (collectively, the "Charges").

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT WITNESSES THAT in consideration of the sum of Ten Dollars (\$10.00) and other consideration (the receipt and sufficiency of which are hereby acknowledged and agreed to by the Chargeholder):

1. The Chargeholder hereby consents to the granting and registration of the attached Section 219 Covenant (the "Covenant") burdening the Lands and the Chargeholder hereby agrees that all of the covenants therein granted will be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee of the Covenant priority over the Chargeholder's right, title and interest in and to the Lands and the Chargeholder does hereby postpone the Charges and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charges and prior to the advance of any money pursuant to the Charges.
3. The Chargeholder acknowledges and agrees that the grant of priority is irrevocable, unqualified and without reservation or limitation.

IN WITNESS WHEREOF the Chargeholder has executed this Consent and Priority on Form C above which form is part hereof.