



City of Port Moody

Bylaw No. 3371

A Bylaw to authorize Council to enter into a Housing Agreement pursuant to section 483 of the *Local Government Act*.

The Council of the City of Port Moody enacts as follows:

1. Citation

- 1.1 This Bylaw may be cited as “City of Port Moody Housing Agreement Bylaw, 2022, No. 3371 (148 and 154 James Road) (Rental Available)”.

2. Authorization

- 2.1 Council hereby authorizes the agreement, substantially in the form attached hereto as Schedule “A” between the City of Port Moody and Dulex Laidler Sitka House Ltd. (Inc. No. BC1252194) with respect to the following lands:

Lot 57 District Lot 190 Group 1 New Westminster District Plan 32978
PID: 000-852-996

Lot 58 District Lot 190 Group 1 New Westminster District Plan 32978
PID: 006-760-104

3. Execution of Documents

- 3.1 The Mayor and Corporate Officer are authorized to execute any documents required to give effect to the Housing Agreement.

4. Attachments and Schedules

- 4.1 The following schedule is attached to and forms part of this Bylaw:
 - Schedule A – Section 219 Covenant – Housing Agreement – Rental Available Housing.

5. Severability

- 5.1 If a portion of this Bylaw is found invalid by a court, it will be severed and the remainder of the Bylaw will remain in effect.

Read a first time this ___ day of _____, 2022.

Read a second time this ___ day of _____, 2022.

Read a third time this ___ day of _____, 2022.

Adopted this ___ day of _____, 2022.

R. Vagramov
Mayor

T. Takahashi
Acting Corporate Officer

I hereby certify that the above is a true copy of Bylaw No. 3371 of the City of Port Moody.

T. Takahashi
Acting Corporate Officer

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**SECTION 219 COVENANT –
HOUSING AGREEMENT – RENTAL AVAILABLE HOUSING**

THIS AGREEMENT is dated for reference the ____ day of June, 2022

BETWEEN:

DULEX LAIDLER SITKA HOUSE LTD. (Inc. No. BC1252194), a company incorporated under the laws of the Province of British Columbia having an office at #251 - 255 Newport Drive, Port Moody, BC V3H 5H1

(the "**Owner**")

AND:

CITY OF PORT MOODY
100 Newport Drive
Port Moody, British Columbia, V3H 5C3

(the "**City**")

WHEREAS:

- A. Section 483 of the *Local Government Act* permits the City to enter into and note on title to the lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units, and rent which may be charged for housing units;
- B. Section 219 of the *Land Title Act* (as hereinafter defined) permits the registration of a covenant of a negative or positive nature in favour of the City (as hereinafter defined) in respect of the use of land or construction on land;
- C. The Owner (as hereinafter defined) is the registered owner of the Lands (as hereinafter defined);
- D. The City adopted Housing Agreement Bylaw, 2022, No. 3371 (148 and 154 James Road) (Rental Available) authorizing the City to enter into this Agreement on the terms and conditions contained herein;
- E. The Owner and the City wish to enter into this Agreement to ensure that all Dwelling Units restrict the use of and construction on the Lands on the terms and conditions of this agreement, to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*.

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In consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

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

- a) "**Agreement**" means this rental available housing agreement together with the General Instrument and all schedules attached hereto;
- b) "**Buildings**" means the six-storey building to be built on the Lands, as contemplated by the Development Authorization, and includes any portion of any such Building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Authorization;
- c) "**City**" and "**City of Port Moody**", being the Transferee described in Item 6 of the General Instrument, means the City of Port Moody and is called the "City" when referring to the corporate entity and "City of Port Moody" when referring to the geographic location;
- d) "**Development Authorization**" means the development authorization form issued by the City authorizing development of the Lands, or any portion thereof;
- e) "**Dwelling Unit**" means each of the two hundred and eighty-eight (88) residential dwelling units on, or to be located on the Lands;
- f) "**General Instrument**" means the Form C under the Land Title (Transfer Forms) Regulation, as amended, and all schedules and addenda to the Form C charging the Lands;
- g) "**Interpretation Act**" means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;
- h) "**Land Title Act**" means the *Land Title Act*, R.S.B.C. 1996, Chapter 250, together with all amendments thereto and replacements thereof;
- i) "**Lands**" means the land described in Item 2 of the General Instrument and any part, including the Building or a portion of the Building, into which said land is Subdivided;

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- j) "**Local Government Act**" means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;
- k) "**LTO**" means the New Westminster Land Title Office or its successor;
- l) "**Owner**" means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or of any part into which the Lands are Subdivided, and includes any person who is a registered owner of a Dwelling Units from time to time;
- m) "**Real Estate Development Marketing Act**" means the *Real Estate Development Marketing Act*, S.B.C. 2004, Chapter 41, together with all amendments thereto and replacements thereof;
- n) "**Rental Housing**" means a Dwelling Unit that is, at the sole discretion of the person or entity who owns such Dwelling Unit, made available for rent to a Tenant for residential use;
- o) "**Residential Tenancy Act**" means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
- p) "**Strata Property Act**" means *Strata Property Act* S.B.C. 1998, Chapter 43 together with all amendments thereto and replacements thereof;
- q) "**Subdivide**" means to divide, apportion, consolidate, or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions, or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization, or development of "cooperative interests" or "shared interest in land" as defined in the *Real Estate Development Marketing Act*;
- r) "**Tenancy Agreement**" means a tenancy agreement, lease, licence, or other agreement granting rights to occupy a Dwelling Unit;
- s) "**Tenant**" means an occupant of a Dwelling Unit by way of a Tenancy Agreement; and
- t) "**Term**" commences on the deposit of this Agreement in the Land Title Office and shall remain in effect in perpetuity.

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1.2. In this Agreement:

- a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- d) reference to any enactment includes any regulations, orders, or directives made under the authority of that enactment;
- e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted, or replaced, unless otherwise expressly provided;
- f) the provisions of section 25 of the Interpretation Act with respect to the calculation of time apply;
- g) time is of the essence;
- h) all provisions are to be interpreted as always speaking;
- i) reference to a “party” is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators, and receivers;
- j) reference to a “day”, “month”, “quarter”, or “year” is a reference to a calendar day, calendar month, calendar quarter, or calendar year, as the case may be, unless otherwise expressly provided; and
- k) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

ARTICLE 2 USE OF LANDS AND CONSTRUCTION OF DWELLING UNITS

2.1 The Owner covenants and agrees with the City in respect of the use of the Lands and any Dwelling Unit on, or to be constructed on, the Lands that:

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- a) the Lands will not be used in any way that is inconsistent with the terms of this Agreement;
 - b) all Dwelling Units on, or to be constructed on, the Lands may, at the sole discretion of the Owner of such Dwelling Unit, be available for Rental Housing.
- 2.2 If an Owner elects to rent out that Owner's Dwelling Unit, that Owner must not rent, lease, license, or otherwise permit occupancy of any Dwelling Unit except to a Tenant and except in accordance with the following additional conditions:
- a) if rented, the Dwelling Unit will be occupied pursuant to a Tenancy Agreement; and
 - b) no Dwelling Unit shall be rented on less than a thirty (30) days rental period, whatsoever.

ARTICLE 3 STRATA CORPORATION BYLAWS

- 3.1 This Agreement will be binding upon all strata corporations (the "**Strata Corporations**" and each a "**Strata Corporation**") created upon the strata title Subdivision of the Lands or any Subdivided parcel of the Lands.
- 3.2 Any Strata Corporation bylaw which prevents, restricts, or abridges the right to use the Dwelling Units as Rental Housing will have no force and effect.
- 3.3 No Strata Corporation shall pass any bylaws preventing, restricting, or abridging the use of any Dwelling Unit as Rental Housing.
- 3.4 No Strata Corporation shall pass any bylaw or approve any levies which would result in only a Tenant of a Dwelling Unit paying any extra charges or fees for the use of any common property, limited common property, or other common areas, facilities, or indoor or outdoor amenities of the strata corporation.
- 3.5 No Strata Corporation shall pass any bylaw which purports to restrict access to Tenants to all non-commercial common property, or other non-commercial common areas, facilities, and indoor and outdoor amenities, including the at grade play area/open space and the indoor and outdoor roof top amenity space, regardless of whether the Lands are Subdivided or stratified.
- 3.6 The Owner covenants and agrees with the City that despite any Strata Corporation bylaw or bylaws to the contrary, each and every Dwelling Unit on, or to be constructed the Lands, may, at the sole discretion of the owner of that

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- Dwelling Unit, subject to the terms of this Agreement, rent that Dwelling Unit to a Tenant.
- 3.7 The Owner further covenants and agrees with the City that any strata corporation bylaw which prevents, restricts or abridges or purports to prevent, restrict, or abridge the right to use any of the Strata Lots as rental accommodation shall have no force or effect.
- 3.8 No strata corporation formed in respect of the Lands, or portion thereof, shall pass any bylaw(s) preventing, restricting, or abridging the use of the and Dwelling Unit for Rental Housing.
- 3.9 No Strata Lot purchaser, nor any Tenant or mortgagee thereof, shall vote for any strata corporation bylaw purporting to prevent, restrict, or abridge the use of the Lands or any Strata Lot from time to time for Rental Housing.

ARTICLE 4 DEFAULT AND REMEDIES

- 4.1 **Notice of Default.** The City may give to the Owner written notice to cure a default under this Agreement within thirty (30) days of receipt of notice or such longer period as reasonably required if such default cannot be cured within thirty (30) days by the Owner acting diligently. The notice must specify the nature of the default. The Owner must act with diligence to correct the default within the time specified.
- 4.2 **Costs.** The Owner will pay to the City on demand by the City all the City's costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.
- 4.3 **Damages.** The Owner acknowledges that the City requires the Dwelling Units to be available, at the discretion of any strata lot Owner in accordance with this Agreement for the benefit of the community.
- 4.4 **Specific Performance.** The Owner agrees that, without affecting any other rights or remedies the City may have in respect of any breach of this Agreement, the City is entitled to obtain an order for specific performance of this agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner or Strata Corporation of this Agreement. The Owner agrees that this is reasonable given the public interest in ensuring the provision of Dwelling Units to be available for occupation, as determined that that Owner, by Tenants.

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- 4.5 **No Penalty or Forfeiture.** The Owner acknowledges and agrees that it is entering into this Agreement to benefit the public interest in providing access to Rental Housing and that the City's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out, and the City's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.
- 4.6 **Cumulative Remedies.** No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit, or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right to remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination. 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.

ARTICLE 5 MISCELLANEOUS

- 5.1 **Housing Covenant/Section 219 Covenant.** The Owner covenants and agrees with the City that this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*;
- 5.2 The Owner agrees, pursuant to section 219 of the *Land Title Act* and Section 483 of the *Local Government Act*, that:
- a) the terms and conditions of this Agreement constitute a covenant in respect of the use of the Lands and any Dwelling Units on, or to be constructed on, the Lands and annexed to and running with the Lands and that the Lands shall only be used in accordance with the terms of this Agreement; and
 - b) the City may register this Agreement in the LTO against title to the Lands as a covenant pursuant to section 219 of the *Land Title Act* and a Legal Notation pursuant to Section 483 of the *Local Government Act*.
- 5.3 **Commercial Parcels.** If the Lands are Subdivided to create separate parcels, one or more of which parcel(s) will contain commercial only uses and will not be part of any Strata Corporation the contains any Dwelling Unit, (each a "**Commercial Parcel**"), this Agreement shall be released as against such

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Commercial Parcel(s), at the written request and the sole expense of the Owner.

- 5.4 **Indemnity.** The Owner will indemnify and save harmless the City and each of its elected officials, officers, employees, directors, and agents, and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, actions, loss, damage, costs, and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:
- a) the use or occupancy of any Dwelling Unit;
 - b) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
 - c) the City refusing to issue a Development Authorization or building permit, or refusing to permit occupancy of any building, or any portion thereof, constructed on the Lands;
 - d) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Dwelling Unit or the enforcement of any Tenancy Agreement; and
 - e) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

This indemnity is an integral part of the *Land Title Act* section 219 covenant hereby granted by the Owner to the City.

- 5.5 **Release.** The Owner hereby releases and forever discharges the City and each of its elected officials, officers, employees, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:
- a) construction, maintenance, repair, ownership, lease, license, operation, or management of the Lands or any Dwelling Unit under this Agreement;
 - b) the City refusing to issue a Development Authorization or building permit, or refusing to permit occupancy of any building, or any portion thereof, constructed on the Lands; or

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- c) the exercise by the City of any of its rights under this Agreement or an enactment.
- 5.6 **Survival.** The obligations of the Owner set out in sections 4.3 and 4.4 of this Agreement will survive termination or discharge of this Agreement.
- 5.7 **Priority.** The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement, if required by the City, will be registered against title to the Lands in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Lands save and except those in favour of the City or specifically approved in advance in writing by the City's solicitor or senior planner, and that a notice under section 483(5) of the *Local Government Act* will be filed on title to the Lands.
- 5.8 **City's Powers Unaffected.** This Agreement does not:
- a) affect, fetter, or limit the discretion, rights, duties, or powers of the City or the council of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
 - b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - c) affect or limit any enactment relating to the use or subdivision of the Lands; or
 - d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.
- 5.9 **Agreement for Benefit of City Only.** The Owner and the City agree that:
- a) this Agreement is entered into only for the benefit of the City;
 - b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier, or user of the Lands or the building or any portion thereof, including any Dwelling Unit; and
 - c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
- 5.10 **No Public Law Duty.** Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination, or give its consent, the Owner agrees that the City is under no

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public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

- 5.11 **Notice.** Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out in the records at the LTO, and in the case of the City addressed:

To: The City of Port Moody
 100 Newport Drive
 Port Moody, BC V3H 5C3

or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

- 5.12 **Enuring Effect.** This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 5.13 **Severability.** If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.
- 5.14 **Waiver.** All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.
- 5.15 **Sole Agreement.** This Agreement, and any documents signed by the Owners contemplated by this Agreement, represents the whole agreement between the City and the Owner respecting the use and occupation of the Dwelling Units, and there are no warranties, representations, conditions, or collateral agreements made by the City, except as set forth in this Agreement.
- 5.16 **Further Assurance.** Upon request by the City, the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.
- 5.17 **Covenant Runs with the Lands.** This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided containing the Dwelling Units

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for the Term. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors, and assigns, and all persons who after the date of this Agreement, acquire an interest in the Lands.

- 5.18 **Limitation on Owner's Obligations.** The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands or the Building, as the case may be, provided however that notwithstanding that the Owner is no longer the registered owner of the Lands or the Building, as the case may be, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Lands.
- 5.19 **Equitable Remedies.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.
- 5.20 **No Joint Venture.** Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.
- 5.21 **Applicable Law.** Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. Without limiting the above, in the event of any conflict between any provision of this Agreement and the *Residential Tenancy Act*, this Agreement is without effect to the extent of the conflict.
- 5.22 **Deed and Contract.** By executing and delivering this Agreement, the Owner intends to create both a contract and a deed executed and delivered under seal.
- 5.23 **Joint and Several.** If the Owner is composed of more than one person, firm, or body corporate, then the covenants, agreements, and obligations of the Owner shall be joint and several.
- 5.24 **Legal Fees.** The Owner covenants and agrees with the City that it will, upon being invoiced by the City, reimburse the City for the City's legal costs incurred in the drafting and negotiating of the Agreement.

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

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PRIORITY AGREEMENT

_____ (the "**Chargeholder**") is the holder of Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the Lower Mainland LTO under numbers _____, and _____, respectively (the "**Bank Charges**").

The Chargeholder, being the holder of the Bank Charges, by signing the Form C General Instrument attached hereto as Part I, in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Section 483 Housing Agreement and Section 219 Covenant and hereby covenants that this Section 483 Housing Agreement and Section 219 Covenant shall bind the Bank Charges in the Lands and shall rank in priority upon the Lands over the Bank Charges as if the Section 483 Housing Agreement and Section 219 Covenant had been registered prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified, and without reservation or limitation.

END OF DOCUMENT