



City of Port Moody

Bylaw No. 3414

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

WHEREAS, pursuant to City of Port Moody Housing Agreement Bylaw, 2018, No. 3147 (2318 St. Johns Street), the City of Port Moody entered into a Housing Agreement (the “Original Housing Agreement”) with British Columbia Conference Property Development Council of the United Church of Canada, Inc.; Catalyst Community Developments Society; and St. Andrew’s Housing Society, in relation to:

PID: 030-471-532

LOT 1 DISTRICT LOT 202 GROUP 1 NWD PLAN EPP82859
 (“Lot 1”)

AND WHEREAS the Original Housing Agreement was registered against Lot 1 January 14, 2019, under number CA7294711;

AND WHEREAS Lot 1 has been subdivided such that the proposed Affordable Rental Units that were the subject of the Original Housing Agreement are located only in some of the resulting lots;

AND WHEREAS Council deems it appropriate to replace the Original Housing Agreement with a new Housing Agreement that applies only to the lands containing the proposed Affordable Rental Units and, upon registration of the new Housing Agreement in the Land Title Office, to discharge the Original Housing Agreement from Lot 1,

NOW THEREFORE, 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, 2023, No. 3414 (2312 St. Johns Street)”.

2. Authorization

- 2.1. Council hereby authorizes the agreement, substantially in the form attached to this Bylaw as Schedule “A”, between the City of Port Moody, Catalyst Community Developments Society, and St. Andrew’s Port Moody Housing Society, with respect to the following lands:

PID: 031-950-957
AIR SPACE PARCEL 3 DISTRICT LOT 202 GROUP 1 NEW WESTMINSTER
DISTRICT AIR SPACE PLAN EPP116858; and

PID: 031-950-965
AIR SPACE PARCEL 4 DISTRICT LOT 202 GROUP 1 NEW WESTMINSTER
DISTRICT AIR SPACE PLAN EPP116858.

2.2. Upon registration of the new Housing Agreement in the Land Title Office, the Original Housing Agreement be cancelled and discharged from Lot 1.

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 and discharge the Original 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.

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 11th day of July, 2023.

Read a second time this 11th day of July, 2023.

Read a third time this 11th day of July, 2023.

Adopted this ___ day of _____, 2023.

M. Lahti
Mayor

S. Lam
City Clerk

I hereby certify that the above is a true copy of Bylaw No. 3414 of the City of Port Moody.

S. Lam
Corporate Officer

Schedule A to Bylaw No. 3414

HOUSING AGREEMENT
(Pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act*)

THIS AGREEMENT is made the _____ day of June, 2023,

BETWEEN:

THE CITY OF PORT MOODY

100 Newport Drive
Port Moody, BC V3H 5C3

(the "**City**")

OF THE FIRST PART

AND:

CATALYST COMMUNITY DEVELOPMENTS SOCIETY

290 – 1275 Venables Street
Vancouver, BC V6A 2C9
(“**Catalyst**”)

OF THE SECOND PART

AND:

ST. ANDREW’S PORT MOODY HOUSING SOCIETY

2315 Spring Street
Port Moody, BC V3H 0L7

(“**St. Andrew’s**”)

OF THE THIRD PART

WHEREAS:

- A. Under section 483 of the *Local Government Act [RSBC 2015] c.1*, the City may, by bylaw, enter into a Housing Agreement with an owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions referred to in section 483(2) of the *Local Government Act*;
- B. By Housing Agreement made November 15, 2018 and registered in the New Westminster Land Title Office under number CA7294711 (the “**Original Housing Agreement**”), the City entered into a Housing Agreement with the British Columbia Conference Property Development Council of the United Church of Canada, who was the then owner of the Lands, and Catalyst and St. Andrew’s, who at that time were anticipated future owners of the Lands, with respect to the construction of a development on the Lands which included the Affordable Rental Units;

- C. Catalyst and St. Andrew's are the current registered owners of lands in the City of Port Moody, British Columbia, with a civic address of 2312 St. Johns Street, Port Moody, B.C. and legally described as:

As to St. Andrew's:

PID: 031-950-957
AIR SPACE PARCEL 3 DISTRICT LOT 202 GROUP 1 NEW WESTMINSTER
DISTRICT AIR SPACE PLAN EPP116858 ("**ASP 3**")

As to Catalyst:

PID: 031-950-965
AIR SPACE PARCEL 4 DISTRICT LOT 202 GROUP 1 NEW WESTMINSTER
DISTRICT AIR SPACE PLAN EPP116858 ("**ASP 4**")

(together, the "**Lands**");

- D. Since the Original Housing Agreement was registered, Catalyst and St. Andrew's have constructed a development on the Lands which includes the Affordable Rental Units;
- E. The City, Catalyst, and St. Andrew's wish to enter into this Agreement, as a Housing Agreement pursuant to section 483 of the *Local Government Act*, to secure the agreement that all the Affordable Rental Units within the Development will be used and held only as Affordable Rental Units. Once registered in the Land Title Office, this Housing Agreement will replace the Original Housing Agreement; and
- F. Section 219 of the *Land Title Act* provides that a covenant whether of a negative or positive nature, in respect of the use of land or the use of a building on or to be erected on land in favour of a municipality, may be registered as a charge on title to that land.

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act*, and in consideration of the premises and covenants contained in this agreement (the "**Agreement**"), the parties agree each with the other as follows:

1.0 Definitions

1.1 In this Agreement:

"Affordable Housing" means the provision of the Affordable Rental Units within the Lands.

"Affordable Rental Units" means the 55 self-contained Dwelling Units within the Lands that are only to be used and occupied in accordance with Part 2.0 of this Agreement and "Affordable Rental Unit" shall mean each of the Affordable Rental Units.

"Bedroom" means a room within a Dwelling Unit that has a minimum size of 3.5 square meters and has an operable window that opens to the outdoors.

"CPI" means the All-items Consumer Price Index for Port Moody, B.C. published from time to time by Statistics Canada, or its successor in function.

"Development" means the project at 2312 St. Johns Street containing the Affordable Rental Units, a new church, space for community services, and associated servicing and landscaping which have been constructed on the Lands.

“**Dwelling Unit**” means a self-contained residential dwelling unit that has been constructed within the building on the Lands, and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise, and “Dwelling Units” means collectively all of such residential dwelling units on, or to be constructed on the Lands.

“**Immediate Family**” includes a person’s spouse, parents and grandparents, children and grandchildren, brothers and sisters, mother-in-law and father-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law. Adopted, half and step members are also included in immediate family.

“**Non-owner**” means a person who occupies a Dwelling Unit for residential purposes, other than the Owner of that Dwelling Unit, and other than a member of the Owner’s Immediate Family.

“**Owner**” includes the current owners of the Lands and any person who acquires an interest in the Lands, or any part of the Lands, and is thereby bound by this Agreement, as referred to in section 9.3.

“**Subdivision**” means the division of land into two (2) or more parcels, whether by plan, strata plan, or otherwise, and includes subdivision under the *Strata Property Act* or the *Land Title Act*, and “**Subdivide**” has the corresponding meaning.

“**Tenancy Agreement**” has the same meaning as under the *Residential Tenancy Act*.

1.2 In this Agreement:

- (a) reference to any enactment includes any regulations, orders, or directives made under the authority of that enactment; and
- (b) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted, or replaced, unless otherwise expressly provided.

2.0 Affordable Housing Obligations

2.1 The Owner covenants and agrees that from and after issuance of an occupancy permit for the Development, the Dwelling Units shall only be occupied and used as Affordable Rental Units in accordance with Part 2.0 of this Agreement.

2.2 The Dwelling Units shall have the unit mix as shown in the following table:

Unit Type	Number of Units
Studio	11
1-Bedroom	31
2-Bedroom	10
3-Bedroom	3

2.3 Each Affordable Rental Unit shall only be occupied by one or more Non-owners:

- (a) under the terms of a Tenancy Agreement with the Owner; and
- (b) whose combined annual household income at the commencement of their Tenancy Agreement is equal to or less than the HILs (as hereinafter defined) that applies to the particular Affordable Rental Unit pursuant to section 2.4(a).

- 2.4 The Owner covenants and agrees that the rent for each particular Affordable Rental Unit shall not exceed:
- (a) 30% of the Housing Income Limits (“**HILs**”) that are determined from time to time by the British Columbia Housing Management Commission (“**BC Housing**”), and that apply to each particular Affordable Rental Unit, for example, whether the Affordable Rental Unit is a Bachelor, 1-Bedroom, or 2-Bedroom, or 3-Bedroom Dwelling Unit; or
 - (b) In the event that BC Housing ceases to determine HILs and such determination is not replaced by a similar publication, then the combined household income with respect to each particular Affordable Rental Unit shall be determined by reference to the last published HILs which shall be increased annually by an amount equal to the increase in the CPI commencing January 1 following the year BC Housing ceased determining HILs. For the purposes of this section, “CPI” means the All-items Consumer Price Index for Port Moody, B.C. published from time to time by Statistics Canada, or its successor in function.
- 2.5 For the purpose of section 2.3 and 2.4 where rent is payable on a monthly basis and HILs are reported or determined as an annual amount, either the rent or the income figures shall be adjusted to a monthly or annual amount so that an appropriate comparison can be made.
- 2.6 The owner of ASP 4 may only subdivide or make application to the City for the Subdivision of ASP 4 to create not more than eleven (11) strata lots, 10 of which will be transferred to the Provincial Rental Housing Corporation. For greater certainty, other than the strata Subdivision of ASP 4 to create not more than eleven (11) strata lots, ASP 3, ASP 4, and the lots created by this proposed strata Subdivision of ASP 4 may not be further subdivided for any reason.
- 2.7 The Owner will advertise in Port Moody when there are vacancies for Affordable Rental Units.
- 2.8 Each Owner will not sell or transfer, directly or indirectly, any legal or beneficial interest in their interest in the Lands unless, as a condition thereof and prior thereto, the Owner causes the purchase or transferee to enter into an assumption agreement, in a form acceptable to the parties to this Agreement pursuant to which the purchaser or transferee agrees to assume, be bound by, and observe all of the obligations, positive or negative, of that Owner hereunder from and after the effective date of the sale or transfer.

3.0 Reporting

- 3.1 The Owner covenants and agrees that, upon the written request of the City, the Owner will provide to the City a written report (the “**Report**”) and if requested a statutory declaration, confirming, to the City’s satisfaction, that the Owner continues to provide Affordable Housing, pursuant to and in accordance with Part 2.0 and the requirements of this Agreement, which Report shall include, inter alia:
- (a) the number, type, and location by suite number, of Dwelling Units being rented to Non-owners as Affordable Rental Units and the rents being charged under section 2.3; and
 - (b) such other information that the Director may reasonably require.

- 3.2 The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary, acting reasonably, in order to confirm that the Owner is complying with this Agreement.
- 3.3 Notice of Default: The City may give to the Owner written notice to cure a default under this Agreement within 30 days of receipt of notice. The notice must specify the nature of the default. The Owner must act with diligence to correct the default within the time specified.

4.0 Management and Long-Term Maintenance

- 4.1 The Owner covenants and agrees that, in order to ensure the long-term maintenance of the Affordable Rental Units, it will furnish good and efficient management of the Affordable Rental Units. The Owner further covenants and agrees that it will maintain the Affordable Rental Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands.

5.0 Notice to be Registered in Land Title Office

- 5.1 Notice of this Agreement (“**Notice**”) will be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 483 of the *Local Government Act*, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in the Lands after registration of the Notice.
- 5.2 Upon registration of this Agreement in the Land Title Office the City will, at the request and expense of the Owner, execute a Release to Discharge the Original Housing Agreement from all property it is registered against and deliver same to the Owner.

6.0 Liability

- 6.1 The Owner agrees to indemnify and save harmless the City and each of its elected and appointed officials, employees, and agents and their respective administrators, successors, and permitted assigns, of and from all claims, demands, actions, damages, costs, and liabilities, which all, or any of them, shall or may be liable for or suffer or incur or be put to by reason of or arising out of failure of the Owner to comply with the terms and conditions of this Agreement which occurred while the Owner is the owner of the Lands.
- 6.2 The Owner hereby releases and forever discharges the City and each of its elected and appointed officials, employees, and agents and their respective administrators, successors, and permitted assigns, of and from any and all claims, demands, actions, damages, economic loss, costs, and liabilities which the Owner now has or hereafter may have with respect to or by reason of or arising out of or in any connected with the existence of this Agreement or the fact that the Lands are encumbered by and affected by this Agreement.

7.0 Priority Agreement

- 7.1 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 General Manager of Community Development, and that a notice under section 463(5) of the *Local Government Act* will be filed on the title to the Lands.

8.0 Section 219 Covenant

8.1 Agreement Constitutes Section 219 Covenant – The Owner agrees, pursuant to section 219 of the Land Title Act, that:

- (a) the terms and conditions of this Agreement constitute a covenant in respect of the use of 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.

9.0 General Provisions

Notice

9.1 If sent as follows, notice under this Agreement is considered to be received:

- (a) seventy-two (72) hours after the time of its mailing (by registered mail); and
- (b) on the date of delivery if hand-delivered,

to the City:

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

Attention: Corporate Officer

to Catalyst:

Catalyst Community Developments Society
290 – 1275 Venables Street
Vancouver, BC V6A 2C9

Attention: VP Development

to St. Andrew's:

St. Andrew's Port Moody Housing Society
2315 St. Johns Street
Port Moody, BC V3H 0L7

Attention: President

If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address.

If normal mail service is interrupted by strike, work slowdown, force majeure, or other cause,

- (a) notice sent by the impaired service is considered to be received on the date of delivery; and

- (b) the sending party must use its best efforts to ensure prompt receipt of a notice by using other uninterrupted services, or by hand-delivering the notice.

Time

9.2 Time is of the essence of this Agreement.

Binding Effect

9.3 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. In accordance with section 483(6) of the *Local Government Act*, this Agreement is binding on all who acquire an interest in the Lands, and the Owner only during the Owner's ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the Owner has an interest.

9.4 The City agrees that the obligations of Catalyst and St. Andrew's as Owners hereunder apply severally and only with respect to the interest in the Lands owned by each of them, so that Catalyst is not responsible for the acts and omissions of St. Andrew's with respect to their obligations under this Agreement for their interest in the Lands and St. Andrew's is not liable for the acts and omissions of Catalyst for their obligations under this Agreement for their interest in the Lands.

Waiver

9.5 The waiver by a party of any failure on the part of some 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.

Headings

9.6 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit, or enlarge the scope or meaning of this Agreement or any provision of it.

Language

9.7 Wherever the singular, masculine, and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

Equitable Remedies

9.8 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.

Cumulative Remedies

9.9 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.

Entire Agreement

9.10 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

Further Assurances

9.11 Each of the parties will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.

Amendment

9.12 This Agreement may be amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

Law Applicable

9.13 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

No Derogation from Statutory Authority

9.14 Nothing in this Agreement shall:

- (a) limit, impair, fetter, or derogate from the statutory powers of the City all of which powers may be exercised by the City from time to time and at any time to the fullest extent that the City is enabled and no permissive bylaw enacted by the City, or permit, licence, or approval, granted, made, or issued thereunder, or pursuant to statute, by the City shall estop, limit, or impair the City from relying upon and enforcing this Agreement; or
- (b) relieves the Owner from complying with any enactment, including the City's bylaws, or any obligation of the Owner under any other agreement with the City.

Counterpart

9.15 This Agreement may be executed in counterparts, each of which will have the same effect as if all 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 executed this Agreement as of the date first above written on the first page of these Terms of Instrument – Part 2.

CONSENT AND PRIORITY AGREEMENT

WHEREAS:

- A. BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION (the “**Prior Chargeholder**”) is the owner of a mortgage and assignment of rents registered in the Land Title Office under numbers CA7613871 (as modified by CA9993190) and CA7613872 (as modified by CA9993191), respectively, (together, the “**Prior Charge**”) against title to the lands (the “**Land**”) legally described in Item 2 of the *Land Title Act* Form C to which this agreement is attached; and
- B. Section 207 of the *Land Title Act* permits the owner of a charge to grant priority over that charge to the owner of a subsequently registered charge.

THIS AGREEMENT is evidence that in consideration of \$1.00 and other good and valuable consideration (the receipt and sufficiency of which the Prior Chargeholder acknowledges):

1. the Prior Chargeholder consents to the granting and registration of the section 219 covenants granted and contained in the attached agreement (collectively, the “**Subsequent Charges**”) and the Prior Chargeholder agrees that the Subsequent Charges are binding upon its interest in and to the Land; and
2. the Prior Chargeholder grants priority for the Subsequent Charges over the Prior Chargeholder’s right, title, and interest in and to the Land, and the Prior Chargeholder postpones the Prior Charge and all of its right, title, and interest under the Prior Charge to the Subsequent Charges as if the Subsequent Charges had been executed, delivered, and registered prior to the execution, delivery, and registration of the Prior Charge.

As evidence of its agreement to be bound by the above terms and conditions, the Prior Chargeholder has executed the General Instrument – Part 1, which is a part hereof.

CONSENT AND PRIORITY AGREEMENT

WHEREAS:

- A. BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION (the “**Prior Chargeholder**”) is the owner of a mortgage registered in the Land Title Office under number CA7613873 (the “**Prior Charge**”) against title to the lands (the “**Land**”) legally described in Item 2 of the *Land Title Act* Form C to which this agreement is attached; and
- B. Section 207 of the *Land Title Act* permits the owner of a charge to grant priority over that charge to the owner of a subsequently registered charge.

THIS AGREEMENT is evidence that in consideration of \$1.00 and other good and valuable consideration (the receipt and sufficiency of which the Prior Chargeholder acknowledges):

- 1. the Prior Chargeholder consents to the granting and registration of the section 219 covenants granted and contained in the attached agreement (collectively, the “**Subsequent Charges**”) and the Prior Chargeholder agrees that the Subsequent Charges are binding upon its interest in and to the Land; and
- 2. the Prior Chargeholder grants priority for the Subsequent Charges over the Prior Chargeholder’s right, title, and interest in and to the Land, and the Prior Chargeholder postpones the Prior Charge and all of its right, title, and interest under the Prior Charge to the Subsequent Charges as if the Subsequent Charges had been executed, delivered, and registered prior to the execution, delivery, and registration of the Prior Charge.

As evidence of its agreement to be bound by the above terms and conditions, the Prior Chargeholder has executed the General Instrument – Part 1, which is a part hereof.