

CITY OF NANAIMO

BYLAW NO. 7270

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

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

AND WHEREAS the Council wishes to enter into a Housing Agreement with respect to certain housing units to be developed on certain lands in the City of Nanaimo;

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

1. This Bylaw may be cited for all purposes as the City of Nanaimo "Housing Agreement Bylaw 2018 No. 7270".
2. The Council of the City of Nanaimo hereby authorizes the Mayor and Corporate Officer to enter into and to execute, on behalf of the City of Nanaimo, a Housing Agreement in substantially the form attached hereto as Schedule 'A' (the "Housing Agreement"), which sets out the terms and conditions of the occupancy of the housing units identified in the Housing Agreement, and which applies to the land with civic address 2020 Estevan Road, Nanaimo, British Columbia, legally described as:

PID: 028-418-194
LOT A SECTION 1 NANAIMO DISTRICT PLAN EPP35387 (the "Lands").
3. Upon subdivision of the Lands into the Housing Parcel and Church Parcel, as referred to in Recital E of the Housing Agreement, the Mayor and Corporate Officer are authorized to execute a release of the Housing Agreement from the Church Parcel, provided that all affordable rental units have been constructed on the Housing Parcel in accordance with the requirements of the Housing Agreement.
4. Following the execution of the release authorized under Section 3, the Housing Agreement shall continue in force in relation to the Housing Parcel and, in accordance with Section 483(6) of the *Local Government Act*, shall be binding on all persons who acquire an interest in the Housing Parcel.

PASSED FIRST READING: 2018-OCT-01
PASSED SECOND READING: 2018-OCT-01
PASSED THIRD READING: 2018-OCT-01
ADOPTED: _____

MAYOR

CORPORATE OFFICER

SCHEDULE A
HOUSING AGREEMENT

THIS AGREEMENT made this ____ day of ____, 2018

BETWEEN:

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

(the "City")

OF THE FIRST PART

AND:

BRITISH COLUMBIA CONFERENCE PROPERTY DEVELOPMENT
COUNCIL OF THE UNITED CHURCH OF CANADA
(Inc. No. S06928)
4383 Rumble Street
Burnaby, BC
V5J 2A2

(the "Owner")

OF THE SECOND PART

W H E R E A S:

A. The City may, by agreement under section 483 of the *Local Government Act*, 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. The Owner is the registered owner of fee-simple of the lands described as:

Legal Description: PID: 028-418-194
LOT A SECTION 1 NANAIMO DISTRICT PLAN EPP35387

Civic Address: 2020 Estevan Road, Nanaimo BC

(the "Lands")

C. The Lands are currently used as a Church by a local congregation of The United Church of Canada.

D. The Owner wishes to redevelop the Lands into:

- a. a mixed-use residential building that will consist of 74 units of rental housing (the "Housing Project"); plus
- b. a new purpose built church.

E. The Owner intends to subdivide the Lands to create two separate legal parcels, where one parcel will be for the Housing Project (the "Housing Parcel") and the second title will be for the new purpose built church (the "Church Parcel").

F. The City and the Owner wish to enter into this Agreement, as a housing agreement under section 483 of the Local Government Act, to establish terms and conditions regarding the occupancy of the housing units identified in this Agreement.

NOW THEREFORE 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 parties hereto covenant and agree with the other as follows:

1. DEFINITIONS

1.1 In this Agreement the following words and terms have the following meanings:

- (a) "Affordable Rent" means rent which is not greater than the 80th percentile of rent percentiles, also known as Level 1 Rents, of the average rents set out by Canada Mortgage and Housing Corporation ("CMHC") in their quarterly Rental Reports for the City of Nanaimo, as applicable to the type of Affordable Rental Unit (for example, whether a Bachelor/Studio, or a 1, 2 or 3+ bedroom unit).
- (b) "Affordable Rental Units" means the 38 dwelling units in the Housing Project that are to be used and occupied as rental housing in accordance with sections 2.1 to 2.2 of this Agreement;
- (c) "Dwelling Unit" means a habitable room consisting of a self-contained unit with a separate entrance for the residential accommodation of only one family and which contains a cooking facility but excludes all accommodation for the travelling public other than a bed and breakfast;
- (d) "Final Occupancy Date" means the date upon which the entirety of the Housing Project has been approved for occupancy by the building inspector for the City of Nanaimo;
- (e) "Housing Project" refers to the totality of all Dwelling Units and ancillary spaces constructed on that part of the Lands that will be subdivided into the Housing Parcel;
- (f) "Owner" includes a person who acquires and interest in the Lands and is thereby bound by this Agreement, as referred to in section 12;
- (g) "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*, and "Subdivide" has the corresponding meaning.

- 1.2 The definitions in the City of Nanaimo's Zoning Bylaw No. 4500, as amended or replaced from time to time, apply to the interpretation of the terms used in this Agreement.

2. OCCUPANCY OF HOUSING UNITS

- 2.1 The Owner covenants and agrees that from and after the Final Occupancy Date, a total of 38 Dwelling Units within the Housing Project shall only be used and occupied as Affordable Rental Units.
- 2.2 The Owner shall not charge rent for an Affordable Rental Unit that is more than Affordable Rent.

3. ADMINISTRATION, MANAGEMENT AND NUISANCE

- 3.1 The Owner shall ensure that the Housing Project is managed according to the following rules:
- (a) The Owner will operate the Housing Project as a good neighbour ensuring that the operation of the Housing Project does not substantially and unreasonably interfere with the right of surrounding residents to peaceful enjoyment of their homes.
 - (b) The Owner will give due consideration to complaints or feedback received from the surrounding residents as to the operation and impact of the Housing Project.
 - (c) The Owner shall, upon request by the City, meet with City representatives and neighbourhood representatives to discuss any concerns about the operation of the Housing Project.
 - (d) The Owner will comply with all laws and regulations that apply to the operation of the Housing Project.

4. TERM

- 4.1 This Agreement shall be for a term of forty (40) years commencing on the date first written above and ending on the 1st day of _____, 2058 (the "Term").
- 4.2 This Agreement is terminated in accordance with its terms.

5. OWNER'S DEFAULT

- 5.1 The parties acknowledge and agree that:
- (a) If the Owner is in default of its obligations under Section 1 or 2 of this Agreement then the City may, by written notice to the Owner require such default to be corrected within thirty (30) days after receipt of such notice.
 - (b) If within the thirty (30) days after receipt of such notice the default has not been corrected or reasonable steps to correct the default have not been taken, the City may without further notice to the Owner commence legal proceedings to enforce this Agreement.

6. INDEMNITY AND RELEASE

6.1 The Owner covenants and agrees to indemnify and save harmless the City, its elected officials and appointed officers, employees, contractors, agents, successors and assigns from and against any claim, demand, suit, action, cause of action, liability, damage, loss (including personal injury and death), expense and cost (including all legal fees) arising out of or related to:

(a) the Owner's breach of this Agreement; and

(b) the Owner's operation of the Housing Project.

6.2 The Owner shall waive, release and discharge the City, its elected officials, appointed officers, employees, contractors, agents, successors and assigns from and against any claim, suit, action, liability, damage, loss, expense and payment whatsoever whether known or unknown which the Owner, may now or in the future have against the City arising from or related to this Agreement and the operation of the Housing Project.

7. NO SUBDIVISION OR SALE OF AFFORDABLE RENTAL UNITS

The Owner covenants and agrees that for a period of not less than forty (40) years following the Final Occupancy Date, the Affordable Rental Units shall not be subdivided from the Lands, and shall not be sold or otherwise transferred separately from one another, the Housing Project or the Housing Parcel. Subdivision of the Church as referred to in Recital E of the Housing Agreement is permitted under the terms defined in the Housing Agreement and respective Side Letter Agreement.

8. REPORTING

The Owner may be requested to provide information regarding the occupancy and average rents of the affordable units to the City's Director of Community Development, in a form and with such supporting documentation that the Director may from time to time require, acting reasonably, confirming the Owner's compliance with the requirements of this Agreement.

9. AMENDMENT

This Agreement may not be amended except by authority of a bylaw adopted by the Council of the City of Nanaimo with the consent of the Owner, and thereafter by written agreement signed by the City and the Owner.

10. NOTICE

If sent as follows, notice under this Agreement is deemed 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:

455 Wallace Street
Nanaimo, BC
V9R 5J6
Attention: City Clerk

to the Owner:

4383 Rumble Street
Burnaby, BC
V5J 2A2

Or,

To such other mailing address for the Owner as from time to time is recorded in the records of the Land Title Office.

If a party identifies alternate contact information in writing to the other 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.

11. 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.

12. BINDING EFFECT

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

13. NO WAIVER

The waiver by a party or any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

14. NO DEROGATION FROM STATUTORY AUTHORITY

Nothing in this Agreement shall:

- ## 15. TIME

Time is of the essence of this Agreement.

Notice of this Agreement shall 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 shall be binding on all persons who acquire an interest in the Lands after registration of this notice.

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

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

CITY OF NANAIMO by its authorized signatories:)

Mayor, Bill MacKay

Corporate Officer

BRITISH COLUMBIA CONFERENCE PROPERTY)
DEVELOPMENT COUNCIL OF THE UNITED)
CHURCH OF CANADA by its authorized)
signatories:)
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