

CITY OF NANAIMO

BYLAW NO. 7233

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

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

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

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

1. This Bylaw may be cited as the "HOUSING AGREEMENT BYLAW 2016 NO. 7233".
2. The Council of the City of Nanaimo hereby authorizes the Mayor and Corporate Officer to enter into an Agreement, on behalf of the City of Nanaimo, in substantially the form attached hereto as Schedule A, which sets out the terms and conditions of the occupancy of the housing units identified in the Agreement. The land identified in the Agreement is legally described as "LOT 51, DISTRICT LOT 18, WELLINGTON DISTRICT, PLAN 13120".
3. Upon execution of the Agreement by the Mayor and Corporate Officer and application of the seal of the City of Nanaimo, this Agreement shall be validly entered into as authorized by this Bylaw.

PASSED FIRST READING 2016-NOV-07  
PASSED SECOND READING 2016-NOV-07  
PASSED THIRD READING 2016-NOV-07  
ADOPTED 2016-NOV-21

\_\_\_\_\_  
W. B. MCKAY

MAYOR

\_\_\_\_\_  
J. ARMSTRONG

CORPORATE OFFICER

File: RA000349  
Address: 3425 Uplands Drive

## SCHEDULE A

### HOUSING AGREEMENT

THIS AGREEMENT made this 16th day of February, 2016,

BETWEEN:

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

(the "**City**")

OF THE FIRST PART

AND:

**NANAIMO ASSOCIATION FOR COMMUNITY LIVING**  
#201-96 Cavan Street  
Nanaimo, BC V9R 2V1

(the "**Owner**")

OF THE SECOND PART

**WHEREAS:**

- A. Capitalized terms used in the recitals, have the meaning given in section 1.1 below.
- B. The City may, by agreement under section 483 of the *Local Government Act*, enter into and, by legal notation on title, note on title to lands, a housing agreement with an owner regarding the occupancy of the housing units identified in the agreement, including the terms and conditions referred to in section 483(2) of the *Local Government Act*;
- C. The Owner is the registered and beneficial owner in fee-simple of the lands described as:  
PID: 000-107-221  
LOT 51, DISTRICT LOT 18, WELLINGTON DISTRICT, PLAN 13120  
Civic Address: 3425 Uplands Drive, Nanaimo, BC V9T 2T4  
(the "**Lands**");
- D. The Owner wishes to develop a housing project on the Lands with thirty (30) dwelling units intended for occupancy by tenants (the "**Housing Units**").
- E. The City and the Owner wish to enter into this agreement (the "**Agreement**") to provide for occupancy of the Housing Units on the terms and conditions set out 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:

## 1.0 INTERPRETATION

- 1.1 In this Agreement, unless otherwise defined, words have the same meanings as in the Zoning Bylaw, and the following words have the following meanings:
- (a) **"Agreement"** means this agreement and includes all recitals and schedules to this agreement and all instruments comprising this agreement;
  - (b) **"Eligible Occupants"** means individuals who are eligible to receive services from the non-profit organization established in British Columbia under the name *Inclusion BC*, and "Eligible Occupant" means any one such occupant;
  - (c) **"Reserved Housing Units"** has the meaning given in section 2.1(b);
  - (d) **"Tenancy Agreement"** means a tenancy agreement, lease, license or other agreement granting rights to occupy a Housing Unit; and
  - (e) **"Zoning Bylaw"** means the City's Zoning Bylaw 2011 No. 4500, as amended from time to time, and any enactment that may replace it.

## 2.0 OCCUPANCY OF HOUSING UNITS

- 2.1 The Owner covenants and agrees with the City that:
- (a) no more than thirty (30) Dwelling Units shall be permitted on the Lands;
  - (b) a minimum of ten (10) of the Housing Units shall be reserved exclusively for occupation by Eligible Occupants (the **"Reserved Housing Units"**); and
  - (c) each Reserved Housing Unit may only be used as a permanent residence occupied by an Eligible Occupant.
- 2.2 The Owner covenants and agrees that it will, at its cost:
- (a) rent or lease the Housing Units only by way of a Tenancy Agreement;
  - (b) include in every Tenancy Agreement a prohibition on subletting and assignment of any Reserved Housing Unit to any person who is not an Eligible Occupant, and a provision entitling the Owner, acting in accordance with the *Residential Tenancy Act*, to terminate such Tenancy Agreement in the event of any breach of such prohibition;
  - (c) upon request by the City, deliver to the City a true copy of every Tenancy Agreement entered into in respect of any Housing Unit within 10 days of such request; and
  - (d) specify in every Tenancy Agreement the existence of this Agreement and the occupancy restrictions applicable to the Reserved Housing Units, and provide to each tenant, upon their request, a copy of this agreement.

## 3.0 MANAGEMENT OF HOUSING UNITS

- 3.1 The Owner covenants and agrees that it will, at its cost, furnish good and efficient management of the Housing Units and provide a competent individual to manage the Housing Units who shall

be a full-time resident on the Lands during his/her tenure as the resident manager of the Housing Units; and

- 3.2 The Owner hereby represents and acknowledges that the resident manager shall be a competent, qualified and experienced individual who will exhibit the degree of care, skill and judgement displayed by experienced individuals undertaking management duties for residential rental property of a similar nature to the Housing Units.
- 3.3 The Owner shall permit representatives of the City to inspect the Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*.
- 3.4 The Owner further covenants and agrees that it will maintain the Housing Units in a good state of repair and fit for habitation and will comply with all applicable laws, including health and safety standards.

#### **4.0 ANNUAL REPORT**

- 4.1 The Owner further covenants and agrees that during the term of this Agreement, it will at its cost, commencing on the first anniversary of the date an occupancy permit is issued for the building on the Lands, and on that anniversary date annually thereafter, provide to the City's Director of Social and Protective Services a report in writing, to the satisfaction of the City, confirming:
  - (a) that the Housing Units were occupied only by Eligible Occupants during the previous year;
  - (b) that the Housing Units continue to be occupied only by Eligible Occupants as required under this Agreement;
  - (c) the identification by suite number of the Housing Units that are being rented to Eligible Occupants;
  - (d) the total number of tenants occupying the Housing Units and the total number of Eligible Occupants occupying the Housing Unit; and
  - (e) confirmation that each resident has entered into a Tenancy Agreement.
- 4.2 The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

#### **5.0 INDEMNITY AND RELEASE**

- 5.1 The Owner hereby releases and indemnifies and saves harmless the City 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 may suffer, incur or be put to arising directly or indirectly out of or in connection with, or that would not or could not have occurred "but for" this Agreement, including without limitation:
  - (a) any breach, violation or non-performance of any covenant or agreement under this Agreement;

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- (b) any personal injury, death or damage occurring in or on the Lands;
- (c) the exercise of discretion by any City employee or official for any matter relating to this Agreement;
- (d) the maintenance, repair, ownership, lease, rental, license, operation, management or financing of the Lands or any Housing Unit or the enforcement of any Tenancy Agreement; and/or
- (e) the exercise by the City of any of its rights under this Agreement or an enactment.

**6.0 BINDING EFFECT**

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

**7.0 ENFORCEMENT AND WAIVER**

- 7.1 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 shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 7.2 The parties agree that the City is not obligated to inspect the Lands or to otherwise ensure compliance with this Agreement, nor is the City obligated to remedy any default of this Agreement. A failure by the City to enforce this Agreement shall not constitute a waiver of any of the City's rights hereunder.
- 7.3 No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available at law or in equity.
- 7.4 The Owner covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the City is entitled to all equitable remedies, including specific performance, injunction and declarative relief to enforce its rights under this Agreement. The 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.

**8.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE**

- 8.1 Notice of this Agreement shall be registered in the *Land Title Act* 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, and unless discharged in accordance with this Agreement, run with and bind the Lands in perpetuity.

**9.0 NO FETTERING AND NO DEROGATION**

- 9.1 Nothing contained or implied in this Agreement shall fetter in any way the discretion of the City or the Council of the City. Further, nothing contained or implied in this Agreement shall 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 and the Owner as if this Agreement had not been executed and delivered by the Owner and the City.

**10.0 NO COMPENSATION**

10.1 The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the City, for any decrease in the market value of the Lands and for any obligations on the part of the Owner and its successors in title which at any time may result directly or indirectly from the operation of this Agreement.

**11.0 TERMINOLOGY**

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

**12.0 BC LAWS GOVERN**

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

**13.0 SEVERABILITY**

13.1 If any part of this Agreement is found to be illegal or unenforceable by a court of competent jurisdiction, that part shall be considered separate and severable and the remaining parts shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

**EXECUTED BY THE CITY** at Nanaimo, British Columbia, this \_\_\_ day of \_\_\_\_\_ 2016  
**CITY OF NANAIMO** by its authorized )  
signatories )

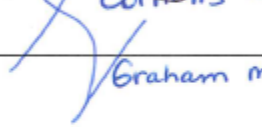
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ )

EXECUTED BY THE OWNER at Nanaimo, British Columbia, this 13 day of May 2016  
Nanaimo Association for Community Living )

by its authorized signatories )

  
\_\_\_\_\_ )

Cornelis van Oosten )

  
\_\_\_\_\_ )

Graham Morry )