

CITY OF NANAIMO

BYLAW NO. 7306

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 2019 No. 7306".
2. Subject to Section 3 of this Bylaw, the Council of the City of Nanaimo hereby authorizes the Mayor and Director, Legislative Services 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 A, SECTION 1, WELLINGTON DISTRICT, PLAN EPP97267".
3. The authorization in Section 2 is conditional upon Strata Plan VIS1313 being cancelled and not replaced with another strata plan, and this agreement shall not be entered into or executed until Strata Plan VIS1313 has been cancelled and the plan describing the Lands has been deposited in the Land Title Registry.
4. Upon execution of the Agreement by the Mayor and Director, Legislative Services 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: 2019-NOV-04  
PASSED SECOND READING: 2019-NOV-04  
PASSED THIRD READING: 2019-NOV-04  
ADOPTED: 2019-NOV-18

\_\_\_\_\_  
L. E. KROG

MAYOR

\_\_\_\_\_  
S. GURRIE

CORPORATE OFFICER

File: HA1  
Address: 1400 Wingrove Street

**SCHEDULE A**

**HOUSING AGREEMENT AND SECTION 219 COVENANT**

**THIS AGREEMENT** is made the \_\_\_\_ day of \_\_\_\_\_, 2019.

BETWEEN:

**CITY OF NANAIMO**

455 Wallace Street  
Nanaimo, BC V9R 5J6

(the "**Transferee**")

OF THE FIRST PART

AND:

**AMRIKKO'S INDIAN GRILL LTD.**

(Inc. No. BC0668953)

78 A Ave  
Delta BC V4C 1P5

(the "**Transferor**")

OF THE SECOND PART

**WHEREAS**

- A. Under section 483 of the *Local Government Act*, the Transferee 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. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Transferee in respect of the use of land or construction on land;
- C. The Transferor is the registered owner in fee simple of the Land as defined in this Agreement;
- D. The Transferor intends to construct a mixed use development on the Land, and wishes to secure higher density for the development by providing rental housing pursuant to Schedule "D" of the Zoning Bylaw;
- E. The Transferee and the Transferor wish to enter into this Agreement as a housing agreement pursuant to section 483 of the *Local Government Act*, and a covenant under Section 219 of the *Land Title Act* to secure the agreement of the Transferor that certain dwelling units to be constructed on the Land shall not be sold independently for a period of ten (10) years.

**NOW THIS AGREEMENT WITNESSES** that pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act*, and in consideration of the premises and covenants contained in this Agreement, the parties agree each with the other as follows:

## **1.0 Definitions**

### **1.1** In this Agreement

**"Agreement"** means this agreement, including its recitals;

**"Dwelling Unit"** has the same meaning as provided in the Zoning Bylaw;

**"Final Occupancy Date"** means the date upon which the entirety of the New Building has been approved for occupancy by the building inspector for the City of Nanaimo;

**"Land"** means that parcel of land legally described as Lot A, Section 2, Wellington District, Plan EPP97267;

**"New Building"** means the 12-unit residential and 4-unit commercial building to be constructed on the Land.

**"Transferor"** includes a person which acquires an interest in the Land, or any part of it and is thereby bound by this Agreement;

**"Subdivision"** means the division of land into two (2) or more parcels whether by plan, apt descriptive words or otherwise, and includes subdivision under the *Strata Property Act* and the creation, conversion, organization or development of "cooperative units" or "shared interests in land" as defined in the *Real Estate Development Marketing Act*; and **"Subdivide"** has the corresponding meaning;

**"Zoning Bylaw"** means City of Nanaimo Zoning Bylaw 2011 No. 4500, as amended from time to time, and any enactment that may replace it.

## **2.0 Dwelling Units Not to Be Independently Sold**

**2.1** The Transferor covenants and agrees with the Transferee that it shall not use or permit the use of the Lands or any building on the Lands for any purpose, construct any building on the Lands or subdivide the Lands except in strict accordance with this Agreement.

**2.2** The Transferor covenants and agrees that for a period of not less than ten (10) years following the Final Occupancy Date, at least fifty percent (50%) of the Dwelling Units in the New Building must not be sold or otherwise transferred separately from one another.

## **3.0 Reporting**

**3.1** The Transferor covenants and agrees to provide to the Transferee's General Manager, Development Services, on February 1 of each year following the execution of this Agreement and on February 1 of each following year up to and including ten (10) years following the Final Occupancy Date, a report in writing confirming compliance with the provisions of this Agreement including without limitation section 2.2.

- 3.2** The Transferor hereby irrevocably authorizes the Transferee to make such inquiries as it considers necessary in order to confirm that the Transferor is complying with this Agreement.

#### **4.0 Notice to be Registered in Land Title Office**

- 4.1** Notice of this Agreement (the "Notice") will be registered in the Land Title Office by the Transferee at the cost of the Transferor in accordance with section 483(5) 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 Land after registration of the Notice.
- 4.2** Further, the restrictions and covenants herein contained shall be covenants running with the Land and shall be perpetual, and shall continue to bind all of the Land when subdivided, and shall be registered in the Victoria Land Title Office pursuant to section 219 of the *Land Title Act* as covenants in favour of the Transferee as a first charge against the Land.
- 4.3** On the expiry of the ten-year period following the Final Occupancy Date, the Transferor may require the Transferee to execute and deliver to the Transferor a release in registrable form of this Agreement.

#### **5.0 General Provisions**

##### Notice

- 5.1** 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) or faxing, and
  - (b) on the date of delivery if hand-delivered, to the Transferee:

City of Nanaimo  
455 Wallace Street  
Nanaimo, BC V9R 5J6  
Attention: General Manager, Development Services

to the Transferor:

Amrikko's Indian Grill Ltd.  
78 A Ave  
Delta, BC V4C 1P5

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 or facsimile service is interrupted by strike, work slow-down, force majeure, or other cause,

- (a) notice sent by the impaired service is considered to be received on the date of actual receipt, 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.

### Indemnity and Release

- 5.2** The Transferor agrees to indemnify and save harmless the Transferee and each of its elected and appointed officials, employees and agents, of and from all claims, demands, actions, damages, costs and liabilities that all or any of them are, will, or may be liable for, suffer, incur, or be put to by reason of, or arising out of the failure of the Transferor to comply with the terms of this Agreement.
- 5.3** The Transferor hereby releases and forever discharges the Transferee and each of its elected and appointed officials, employees and agents, of and from any and all claims, demands, actions, damages, economic loss, costs, and liabilities that the Transferor now has or may have with respect to, or by reason of, or arising out of the fact that the Lands are encumbered by this Agreement.

### Time

- 5.4** Time is of the essence of this Agreement.

### Binding Effect

- 5.5** 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.

### Equitable Remedies

- 5.6** The Transferor acknowledges and agrees that damages would be an inadequate remedy for the Transferee 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.

### Waiver

- 5.7** 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.
- 5.8** The enforcement of this Agreement shall be entirely within the discretion of the Transferee and the execution and registration of the Agreement against title to the Land shall not be interpreted as creating any duty on the part of the Transferee to the Transferor or to any other person to enforce any provision of the breach of any provision of this Agreement.

### Headings

- 5.9** 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

**5.10** 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.

### Cumulative Remedies

**5.11** 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

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

### No Derogation from Statutory Authority

**5.13** Nothing in this Agreement shall:

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

### Further Assurances

**5.14** 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

**5.15** This Agreement may be amended from time to time upon terms and conditions acceptable to the parties.

### Law Applicable

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

### Priority

**5.17** At the Transferor's expense, the Transferor must do everything necessary to secure

priority of registration and interest for this Agreement and the Section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Lands.

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

**ARMIKKO'S INDIAN GRILL INC.**, by its authorized signatory(ies):

Name: \_\_\_\_\_

Name: \_\_\_\_\_