

**HOUSING AGREEMENT (750 PEMBERTON ROAD) BYLAW**  
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for rental housing for the lands known as 750 Pemberton Road, Victoria, BC.

Under its statutory powers, including section 483 of the *Local Government Act*, the Council of The Corporation of the City of Victoria in an open meeting enacts the following provisions:

**Title**

- 1      This Bylaw may be cited as the "HOUSING AGREEMENT (750 PEMBERTON ROAD) BYLAW (2017)".**

**Agreement authorized**

- 2      The Mayor and the City's Corporate Administrator are authorized to execute the Housing Agreement**
- (a)      substantially in the form attached to this Bylaw as Schedule A;
- (b)      between the City and 750 Pemberton Developments Ltd., INC.NO.BC1043469 or other registered owners from time to time of the lands described in subsection (c); and
- (c)      that applies to the lands known as 750 Pemberton Road, Victoria, BC, legally described as:
- Lot 1, Section 68, Victoria District, Plan 38875

READ A FIRST TIME the                      **26<sup>th</sup>**      day of                      **October**                      2017

READ A SECOND TIME the                      **26<sup>th</sup>**      day of                      **October**                      2017

READ A THIRD TIME the                      **26<sup>th</sup>**      day of                      **October**                      2017

ADOPTED on the                                      day of                                      2017

CITY CLERK

MAYOR

**HOUSING AGREEMENT**

**(Pursuant to Section 483 of the *Local Government Act*)**

BETWEEN:

**THE CORPORATION OF THE CITY OF VICTORIA**  
#1 Centennial Square

Victoria, B.C.  
V8W 1P6

(the "**City**")

OF THE FIRST PART

AND:

**750 PEMBERTON DEVELOPMENTS LTD.**

(Incorp. No. BC1043469)  
2808 Dunlevy Street  
Victoria, B.C.  
V8R 5Z5

(the "**Owner**")

OF THE SECOND PART

AND:

**THE TORONTO-DOMINION BANK**

700 West Georgia Street, 2<sup>nd</sup> Floor  
Vancouver, B.C.  
V7Y 1A2

(the "**Existing Chargeholder**")

OF THE THIRD PART

**WHEREAS**

- A. Under section 483 of the *Local Government Act* 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. The Owner is the registered owner in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 750 Pemberton Road and legally described as:

PID: 000-001-741  
LOT 1 SECTION 68 VICTORIA DISTRICT PLAN 38875

(the "**Lands**").

- C. The Owner intends to subdivide the Lands into 3 proposed lots (Lots 1, 2 and 3) as follows:
- (i) Proposed Lot 1, which is intended for future residential development;
  - (ii) Proposed Lot 2 which contains an existing house that has eight (8) units and an existing carriage house that will have two (2) units ("Proposed Lot 2");
  - (iii) Proposed Lot 3, which is intended to be stratified into 2 bare land Strata Lots, A and B for future residential development ("Proposed Strata Lots A and B").
- D. The approximate layout of the aforesaid Proposed Lot 1, Proposed Lot 2 and Proposed Strata Lots A and B are shown on the proposed Site plan attached hereto as Schedule "A".
- E. The intent of this Housing Agreement is to ensure the perpetual availability of rental units with respect to those units which are/will be located on Proposed Lot 2;
- F. The City and the Owner wish to enter into this Agreement, as a Housing Agreement pursuant to section 483 of the *Local Government Act*, to establish the terms and conditions regarding the occupancy of the residential units identified in this Housing Agreement.

**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 parties agree each with the other as follows:

#### **1.0 Definitions**

##### **1.1 In this Agreement:**

**"Development"** means the Proposed Lot 2 development as set out in recital C (ii) above on the Lands to include a total of 10 Dwelling Units.

**"Dwelling Unit"** means a self-contained residential dwelling unit within the buildings that is or will be located on Proposed Lot 2, and includes any dwelling unit that is developed on Proposed Lot 2 in future, whether as part of the Development or otherwise, and "Dwelling Units" means collectively all of such residential dwelling units located on Proposed Lot 2.

**"Immediate family"** includes a person's husband, wife, child, mother, father, brother, sister, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece and nephew.

**"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 a person who acquires an interest the title to Proposed Lot 2 and is thereby bound by this Agreement, as referred to in section 7.3.

**"Tenancy Agreement"** means a tenancy agreement pursuant to the *Residential Tenancy Act* that is regulated by that Act.

**"Strata Corporation"** means, for Proposed Lot 2 or any building on Proposed Lot 2 that is subdivided under the *Strata Property Act*, a strata corporation as defined in that Act, including the Owner while in control of the strata corporation and subsequently the individual strata lot owners collectively acting as the strata corporation.

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 Rental Use/No Restrictions on Rentals**

2.1 The Owner covenants and agrees that the Dwelling Units:

- (a) shall be used solely for residential rental housing in perpetuity; and
- (b) shall only be occupied by Non-owners under the terms of a Tenancy Agreement between the Owner and Non-owner who occupies the Dwelling Unit.

2.2 Notwithstanding section 2.1(b), not more than two (2) Dwelling Units may be occupied by Immediate Family.

2.3 The Owner shall not take any steps, or enter into any agreements, or impose any rules or regulations whatsoever, the effect of which would be to prevent or restrict the Owner of a Dwelling Unit from renting that Dwelling Unit for residential purposes to a Non-owner under the terms of a Tenancy Agreement.

2.4 Without limiting the generality of section 2.1, the Owner covenants and agrees that it will not stratify Proposed Lot 2 unless strata bylaws are filed which are consistent with the rental use requirement as set forth in sections 2.1 and 2.3 above.

**3.0 Covenants**

3.1 The Owner covenants and agrees to provide to the City, upon written request from the City's Director of Sustainability Planning and Community Development, a report in writing confirming the number, type and location by suite number, of Dwelling Units that are being rented to Non-owners and Immediate Family.

3.2 The City and the Owner covenant and agree that, as it is the intention of this Housing Agreement to ensure the perpetual availability of rental units to those units which are or will be located within the existing house and the existing coach home (collectively, the **"Buildings"**) intended to be within Proposed Lot 2, upon registration of the subdivision plan to create the proposed lots as set out in Recital C herein, this Agreement applies only to the existing property or properties on which any of the Buildings are located, and this Agreement will not bind any new lot into which the Lands are subdivided that does not contain any of the Buildings. section 483(5) of the *Local Government Act* requires that notice of a housing agreement be filed in the Land Title Office, and the City agrees, if so

requested by the Owner in writing, to take the necessary steps to cancel the notice of this Housing Agreement from title to any lots created from the Lands on which none of the Buildings are located, at the Owner's expense.

- 3.3 The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications to this Agreement and that such consent may be withheld for any reason.

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

- 4.1 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(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 Lands after registration of the Notice.

#### **5.0 Liability**

- 5.1 The Owner agrees to indemnify and saves 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.
- 5.2 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 the fact that the Lands are encumbered by and affected by this Agreement.

#### **6.0 Priority Agreement**

- 6.1 The Existing Chargeholder, as the registered holder of a charge by way of Mortgage and Assignment of Rents against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA4648262 and CA4648263, for and in consideration of the sum of One Dollar (\$1.00) paid by the City (the receipt whereof is hereby acknowledged), agrees with the City that upon filing of a Notice with the Land Title Office that the Lands are subject to this Agreement, pursuant to section 483(5) of the *Local Government Act*, this Agreement shall be an encumbrance upon the Lands in priority to the said charges in the same manner and to the same effect as if Notice had been filed prior to the said charges.

#### **7.0 General Provisions**

##### Notice

- 7.1 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 City:

City of Victoria

#1 Centennial Square

Victoria, BC V8W 1P6

Attention: Director of Sustainability Planning and  
Community Development

Fax: 250-361-0386

to the Owner:

750 Pemberton Developments Ltd.

2808 Dunlevy Street,

Victoria, B.C. V8R 5Z5

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 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

- 7.2 Time is to be the essence of this Agreement.

#### Binding Effect

- 7.3 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 and all obligations hereunder 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.

#### Waiver

- 7.4 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.

#### Headings

- 7.5 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

- 7.6 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

- 7.7 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

- 7.8 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

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

#### Further Assurances

- 7.10 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

- 7.11 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

- 7.12 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

- 7.13 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) relieve 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.

Joint and Several

- 7.14 The Owner, if more than one, are jointly and severally obligated to perform and observe each and every of the covenants, warranties and agreements herein contained by the Owner to be observed and performed.

Counterpart

- 7.15 This Agreement may be executed in counterparts and delivered by facsimile or emailed PDF file, 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.

Effective Date

- 7.16 This Agreement is effective as of the date of the signature of the last party to sign.

IN WITNESS WHEREOF the parties have hereunto set their hands as of the dates inscribed at a place within British Columbia:

THE CORPORATION OF THE CITY OF )  
VICTORIA by its authorized signatories: )

\_\_\_\_\_  
MAYOR )

\_\_\_\_\_  
CITY CLERK )

\_\_\_\_\_  
Date signed: )

750 PEMBERTON DEVELOPMENTS LTD. )  
by its authorized signatory(ies): )

  
Print Name: CORY SPANGHER )

\_\_\_\_\_  
Print Name: )

\_\_\_\_\_  
Date signed: )



THE TORONTO – DOMINION BANK )  
by its authorized signatory(ies): )

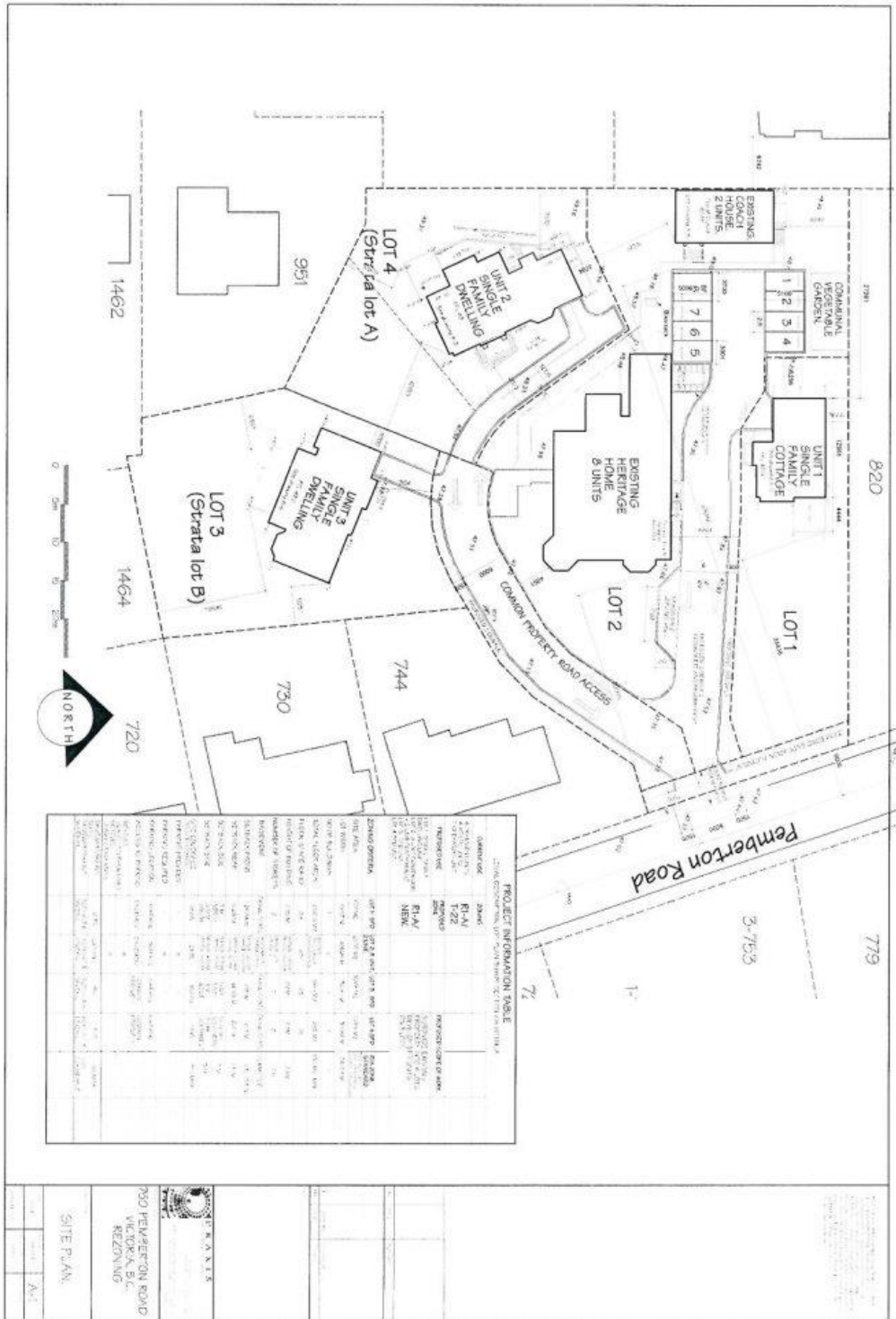
  
Print Name: \_\_\_\_\_ )

\_\_\_\_\_  
Print Name: \_\_\_\_\_ )

Date signed: Sept. 1/17 \_\_\_\_\_ )

**JEFF VICKERS**  
Account Manager  
Pacific Real Estate Group

SCHEDULE "A"



END OF DOCUMENT