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Barristers & Solicitors

Date: November 2, 2017

Mayor and Council
City of Victoria
#1 Centennial Square
Victoria, BC V8W 1P6

David Adams, Q.C.
Les Jamieson**

Claire Shulver

Dear Mesdames and Sirs:

*Associate Counsel:
Jack Angus
Craig Beveridge**

***Re: Early Termination of Land Use Contract
910 Government Street/955 Wharf Street ("910")***

*John D. Patterson
(2004)*

*402 - 707 Fort St.
Victoria, BC
Canada*

I am the lawyer for 910 and write to you in connection with Bylaw No. 17-063 providing for the early termination of the Land Use Contract for 910 Government Street and 955 Wharf Street (the "Termination Bylaw"). The two properties are part of the same Strata Lot in Strata Plan 612.

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The opportunity to carry out the early termination of the Land Use Contract arises out of legislation passed by the Provincial Government in 2014 (the "Legislation"). The Legislation provided that all Land Use Contracts must be terminated no later than June 30, 2024. When terminating the Land Use Contract a local government may adopt a new zoning bylaw to replace the land use contract or, alternatively, rely on valid underlying zoning that already exists when the Land Use Contract is terminated.

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The Legislation also grants to the local government the ability to terminate a land use contract earlier than the dates set out above. This early termination right comes with certain specific statutory obligations it must comply with. These include requirements that:

- (a) The bylaw must not be adopted after June 30, 2022;
- (b) The bylaw must only come into force at least one year after the date the bylaw is adopted, and
- (c) The Termination Bylaw must not be adopted unless the local government has adopted a zoning bylaw that will apply to the land on the date that the Termination Bylaw comes into force.

Related to point (c), I understand that City Council is considering, or will soon be considering, Zoning Bylaw 2017 relating to the Old Town District-1 Zone (OTD-1) where the property is located.

We request that Council delay consideration of early termination of the Land Use Contract until the OTD-1 replacement zoning has been put into place. We assume Council will in future want the building to be part of the OTD-1 district. Given the Zoning Bylaw 2017 process is already occurring, dealing with both bylaws at the same time is the logical and fair approach for the City and the owners.

By way of background, the LUC affecting 910 was registered in 1974 and is set to expire in 2024. It represents a significant agreement made between my client and the City. The 910 building is a major building on Government Street and occupies the entire block abutting on Wharf Street between Broughton and Courtney Streets. It has an area of more than 165,000 square feet and is occupied by a diverse tenant group including the offices of the Attorney General and ICBC as well as retail and other service providers.

The building at 910 does not comply with the underlying zoning now in place in several significant respects. Zone CA-3 prohibits buildings that are higher than 10 metres. I am uncertain as to the actual height of our building but it is much higher than 10 metres. Minimum setbacks under CA-4 require at least 4.5 metres. The 910 building is set right to the property lines along Courtney Street, Wharf Street and Broughton Street. The use provisions do not allow for our parkade. These differences are significant but are provided for in our LUC and can be provided for in the proposed OTD-1 zoning using the building specific attributes in columns B and C of the proposed 2017 Bylaw.

The Land Use Contract must logically remain in place until a new zoning bylaw is adopted that takes into account the provisions of the existing development. Since the Zoning Bylaw 2017 process is already underway it is fair and appropriate for City Council to deal with both the Land Use Contract termination and the new OTD-1 zoning for the property at the same time. To do otherwise makes little planning sense given the OTD-1 process is already occurring.

Further, I would advise that reducing the status of my client's investment to a legal non-conforming use is potentially crippling on a financial and operational basis. In my opinion, the value of the building would be negatively affected given the uncertainty surrounding the lack of compliance with existing zoning. This would also hamper the ability to refinance the property as there are lenders who are reluctant to finance non-conforming properties. The ability to insure property is also compromised to a large extent. Problems could also arise in the event that a building permit for a new or existing tenant to renovate the premises is denied because of the property's non-compliance with the underlying zoning for the property. In fact my client could have difficulty attracting new tenants on that basis.

Again, I formally request that the Termination Bylaw in question be removed from the hearing agenda so that the zoning issues may be attended to in a more open and collaborative manner, consistent with the approach Council is already using for OTD-1 zone.

Yours very truly,

PATTERSON ADAMS LLP

Craig Beveridge