

NO. 17-035

**HOUSING AGREEMENT (701 BELLEVILLE STREET) BYLAW
A BYLAW OF THE CITY OF VICTORIA**

The purpose of this Bylaw is to authorize an agreement for rental housing for seniors for the lands known as 701 Belleville Street, 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 (701 BELLEVILLE STREET) BYLAW (2017)".

Agreement authorized

- 2 The Mayor and the City Clerk are authorized to execute the Housing Agreement
- (a) substantially in the form attached to this Bylaw as Schedule A;
 - (b) between the City and Concert Real Estate Corporation or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 701 Belleville Street, Victoria, BC, legally described as:

PID: 008-661-855	Lot 30, District Lot 1269, Victoria City, Plan 760
PID: 008-661-863	Lot 31, District Lot 1269, Victoria City, Plan 760
PID: 008-661-880	Lot 32, District Lots 576 and 1269, Victoria City, Plan 760
PID: 008-661-898	Lot 33, District Lots 576 and 1269, Victoria City, Plan 760
PID: 008-661-901	Lot 34, District Lot 1269, Victoria City, Plan 760
PID: 008-661-910	Lot 35, District Lot 1269, Victoria City, Plan 760

READ A FIRST TIME the	27th	day of	April	2017
READ A SECOND TIME the	27th	day of	April	2017
READ A THIRD TIME the	27th	day of	April	2017
ADOPTED on the		day of		2017

CITY CLERK

MAYOR

Schedule A

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:

CONCERT REAL ESTATE CORPORATION (INC. NO. C0424436)
9th Floor, 1190 Hornby Street
Vancouver, BC V6Z 2K5

(the "Owner")

OF THE SECOND 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 701 Belleville Street, Victoria, B.C. and legally described as:
- | | |
|------------------|---|
| PID: 008-661-855 | Lot 30, District Lot 1269, Victoria City, Plan 760 |
| PID: 008-661-863 | Lot 31, District Lot 1269, Victoria City, Plan 760 |
| PID: 008-661-880 | Lot 32, District Lots 576 And 1269, Victoria City, Plan 760 |
| PID: 008-661-898 | Lot 33, District Lots 576 And 1269, Victoria City, Plan 760 |
| PID: 008-661-901 | Lot 34, District Lot 1269, Victoria City, Plan 760 |
| PID: 008-661-910 | Lot 35, District Lot 1269, Victoria City, Plan 760 |
- (collectively, the "Lands");
- C. The Owner has applied to the City to rezone the Lands to permit 131 housing units for seniors within the Development, which will include assisted living and independent living housing, as well as associated accessory facilities in accordance with this Agreement.
- D. For clarity, the development of the Lands may also include the construction of 42 other housing units for seniors within an airspace parcel, which may be stratified under the *Strata Property Act*, but the intent of this Housing Agreement is to ensure the perpetual availability of rental units for seniors on the Lands.

- E. 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 secure the agreement of the Owner to provide rental housing for seniors, and that all Dwelling Units within the Development on the Lands will be used and held only as rental housing for seniors.

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 "Agreement") and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree each with the other as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

"Accessory Facilities" means, collectively, all of the following: commercial grade kitchen, commercial dining area, entertainment room, recreation and hobby rooms, lounges, administrative office space and landscaped outdoor gathering area, for the exclusive use of Seniors who occupy Dwelling Units and their permitted guests but does not mean or include any other commercial space, as permitted within the Zoning Regulation Bylaw No. 80-159, to be constructed by the Owner within the Development;

"Assisted Living Unit" means a dwelling unit within a building where regular care or supervision is given to the occupant of that dwelling unit by a health care professional, as well as assistance with the performance of the personal functions and activities necessary for daily living;

"Development" means the new 131 unit building consisting of residential housing and related facilities on the Lands;

"Dwelling Units" means any or all, as the context may require, of the 131 self-contained residential dwelling units within the Development and includes any Assisted Living Unit, any Independent Unit and any dwelling unit that is developed on the Lands (excluding the Airspace Parcel, as defined below, once created) in future, whether as part of the Development or otherwise;

"Dwelling Unit" means any of such residential dwelling units located on the Lands (excluding the Airspace Parcel, as defined below, once created);

"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;

"Independent Living Unit" means a dwelling unit within a building that includes ancillary common areas and accessory personal service and convenience uses, for the exclusive use of residents and tenants of the building and their permitted guests;

"Non-owner" means a person other than the Owner and other than a member of the Owner's Immediate Family, who occupies a Dwelling Unit for residential purposes;

"Owner" includes a person who acquires an interest in the Lands or any part of the Lands and is thereby bound by this Agreement, as referred to in section 7.3;

"Senior" means a person of the age of at least 65 years;

"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*;

"Subdivide" has the corresponding meaning; and

"Tenancy Agreement" means a written tenancy agreement.

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 DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS SENIORS HOUSING

- 2.1 The Owner covenants and agrees that all Dwelling Units shall be used only as Assisted Living Units or Independent Living Units.
- 2.2 The Owner further covenants and agrees that all Dwelling Units shall only be occupied by an individual who is a Senior.
- 2.3 Notwithstanding section 2.2, one additional person is permitted to live in a Dwelling Unit with a Senior.
- 2.4 If the permanent occupant of an Independent Living Unit who is a Senior dies or is institutionalized, then the individual who regularly cohabited with the Senior immediately prior to the death or institutionalization of the Senior may continue to occupy the Independent Living Unit until that person's death or until such person ceases to occupy the Independent Living Unit as his or her principal residence for thirty (30) days, whichever occurs first. When that individual ceases to occupy the Independent Living Unit as a permanent residence the restrictions in sections 2.1 and 2.2 will continue to apply to any subsequent occupancy.
- 2.5 The Owner shall construct the Accessory Facilities within the Development, which Accessory Facilities (excluding the landscaped outdoor gathering area) shall occupy not less than ten percent (10%) of the gross building area of all buildings constructed upon the Lands (excluding the Airspace Parcel, as defined below, once created), and shall otherwise be constructed to the satisfaction of the City's Director of Sustainable Planning and Development.
- 2.6 To the extent applicable, the Owner will obtain and maintain all registration required under the *Community Care and Assisted Living Act* as it may be amended from time to time, or any replacement Act thereto, with respect to the occupancy of a Dwelling Unit.

3.0 DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS RENTAL UNITS

- 3.1 The Owner covenants and agrees that all Dwelling Units shall only be used as rental housing in perpetuity, and for that purpose shall only be occupied by a Non-owner under the terms of a Tenancy Agreement between the Owner and the Non-owner who

occupies the Dwelling Unit.

- 3.2 The City acknowledges that the Owner intends to Subdivide the Lands to create an airspace parcel (the "**Airspace Parcel**"), in which for-sale market condominiums will be constructed, and a remainder parcel (the "**Remainder Parcel**"), which will comprise the Development, and the parties agree as follows:
- (a) Upon such Subdivision being completed, the City will execute and deliver to the Owner a registrable release of the covenant included in this Agreement from title to the Airspace Parcel, with full authority to proceed with registration of same.
 - (b) From and after such Subdivision, the covenant granted in this Agreement shall remain in full force and effect with respect to the Remainder Parcel and all references in this Agreement to the "Lands" will be deemed to refer to the Remainder Parcel only.
 - (c) Any Subdivision of the Lands is subject to all applicable bylaws and regulations, and the provisions of this section 3.2 do not constitute permission or approval in any way for such Subdivision, nor does this section limit, impair, fetter or derogate from the statutory powers of the Approving Officer or the City with respect to any proposed Subdivision.

4.0 REPORTING

- 4.1 The Owner covenants and agrees to provide to the City, upon written request from the City's Director of Sustainable Planning and Development, a report in writing confirming:
- (a) that all Dwelling Units that are rented are being used and occupied by a Senior, or by an individual who regularly cohabited with a Senior in accordance with section 2.4, and in compliance with this Agreement; and
 - (b) that all Dwelling Units that are rented are being rented to Non-owners.
- 4.2 The Owner hereby authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.
- 4.3 The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications of this Agreement and that such consent may be withheld for any reason.

5.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- 5.1 Notice of this Agreement (the "**Notice**") will 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 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.

6.0 LIABILITY

- 6.1 The Owner agrees to indemnify and save 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.

- 6.2 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.

7.0 GENERAL PROVISIONS

- 7.1 **NOTICE.** 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 Sustainable Planning and
Community Development
Fax: 250-361-0386

to the Owner:

Concert Real Estate Corporation
9th Floor, 1190 Hornby Street
Vancouver, BC V6Z 2K5

Attention: President
Fax: 604-688-6882

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 slowdown, force majeure, or other cause,

- (b) notice sent by the impaired service is considered to be received on the date of delivery, and
- (c) 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.

- 7.2 **TIME.** Time is of the essence of this Agreement.

- 7.3 **BINDING EFFECT.** 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.
- 7.4 **WAIVER.** 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.
- 7.5 **HEADINGS.** 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.
- 7.6 **LANGUAGE.** 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.
- 7.7 **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.
- 7.8 **CUMULATIVE REMEDIES.** 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.
- 7.9 **ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 7.10 **FURTHER ASSURANCES.** 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.
- 7.11 **AMENDMENT.** 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.
- 7.12 **LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 7.13 **NO DEROGATION FROM STATUTORY AUTHORITY.** 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) relieves 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.

7.14 **JOINT AND SEVERAL.** 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.

7.15 **COUNTERPARTS.** 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.

7.16 **EFFECTIVE DATE.** This Agreement is effective as of the date of the signature of the last party to sign.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year last below written.

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

MAYOR)

CITY CLERK)

Date signed:)

CONCERT REAL ESTATE CORPORATION)
by its authorized signatory(ies):)



Print Name: David Rodmore)



Print Name: Andrew Tong)

Date signed: March 29, 2017)