

NO. 17-009

A BYLAW OF THE CITY OF VICTORIA

## HOUSING AGREEMENT (727 JOHNSON STREET) BYLAW

The purpose of this Bylaw is to authorize an agreement for rental housing for the lands known as 727 Johnson 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 enacts the following provisions:

- 1 This Bylaw may be cited as the "HOUSING AGREEMENT (727 JOHNSON STREET)  
BYLAW".

**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 Alston Properties Ltd. or other registered owners from time to time of the lands described in subsection (c); and
  - (c) that applies to the lands known as 727 Johnson Street legally described as:  
Lot 33 Victoria City.

READ A FIRST TIME the day of 2017

READ A SECOND TIME the \_\_\_\_\_ day of \_\_\_\_\_ 2017

READ A THIRD TIME the \_\_\_\_\_ day of \_\_\_\_\_ 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:

**ALSTON PROPERTIES LTD. (INC.NO. BC0815589)**

Unit 5, 602 Barbon Street  
Victoria, B.C.  
V8Z 1C5

(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 727 Johnston Street, Victoria, B.C. and legally described as:

PID: 005-137-993  
Legal Description: Lot 33, Victoria City

(the "Lands");

- C. The Owner has applied to the City to rezone the Lands to permit the conversion of an existing office building to a mixed-use building with retail use on the ground floor and residential units above; and
- D. 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, and that all Dwelling Units within the Development on the Lands will be used and held only as rental housing.

**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**"), the parties agree each with the other as follows:

#### **1.0 Definitions**

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

**"Commercial Component"** means that part of the Development which is used for retail or other commercial uses and which, in any event, does not contain Dwelling Units.

**"Development"** means the development and use of the Lands for a five (5) storey mixed-use building, including retail or other commercial uses on the ground floor and approximately thirty (30) Dwelling Units on the upper four (4) floors of the building.

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

**"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 in the Lands or any part of the Lands and is thereby bound by this Agreement, as referred to in section 5.1.

**"Subdivision"** means the division of land into two (2) or more parcels, whether by plan, strata plan, or otherwise, and includes (without limitation) subdivision under the *Strata Property Act*, and **"Subdivide"** has the corresponding meaning.

**"Tenancy Agreement"** has the same meaning as under the *Residential Tenancy Act*.

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 Rental Units**

2.1 The Owner covenants and agrees that the 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.

2.2 Without limiting the generality of section 2.1, the Owner covenants and agrees that it will not Subdivide nor make application for the Subdivision of the Lands or the Development, except only in accordance with section 5.2.

**3.0 Reporting**

3.1 The Owner covenants and agrees to provide to the City, upon written request from the City's Director of Sustainable Planning and Community Development, a report in writing confirming that all Dwelling Units are being rented to Non-owners.

3.2 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.

**4.0 [INTENTIONALLY DELETED]**

**5.0 Notice to be Registered in Land Title Office**

5.1 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.

5.2 Notwithstanding anything to the contrary, the Owner may apply to Subdivide the Lands in order for the Commercial Component to be located within a separate legal parcel of land from any of the Dwelling Units and, upon the submission for

registration of any such plan or plans of Subdivision, the City agrees to execute and deliver to the Owner, at the Owner's cost, a release and discharge (in registrable form) of this Agreement from the Commercial Component.

#### **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**

##### 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, B.C. V8W 1P6

Attention: Director of Sustainable Planning and  
Community Development  
Fax: 250-361-0386

to the Owner:

Alston Properties Ltd  
Unit 5, 602 Barbon Street  
Victoria, BC



V8Z 1C5

Attention: Michael Alston

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,

- (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 of 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 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, 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.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE(S) TO FOLLOW]



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 hereto have 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: )  
On this \_\_\_\_ day of \_\_\_\_\_, 2016 )

\_\_\_\_\_) )  
Mayor Lisa Helps )

\_\_\_\_\_) )  
City Clerk Chris Coates )

**ALSTON PROPERTIES LTD.** by its )  
authorized signatory(ies): )  
On this 9<sup>TH</sup> day of AUGUST, 2016 )

 )  
\_\_\_\_\_) )  
Print Name: MICHAEL ALSTON )

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