

NO. 16-033

HOUSING AGREEMENT (755-795 MARKET STREET AND 766-770 HILLSIDE AVENUE) BYLAW A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize a housing agreement for the lands known as 755-795 Market Street and 766-770 Hillside Avenue, 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 (755-795 MARKET STREET AND 766-770 HILLSIDE AVENUE) BYLAW".

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 Blenheim Ventures Ltd. or other registered owners from time to time of the lands described in subsection (c);
- (c) that applies to the lands known as 755-795 Market Street and 766-770 Hillside Avenue, Victoria, BC, legally described as:

PID: 001-287-672

Lot 1, Section 4, Victoria District, Plan 30215.

READ A FIRST TIME the **24th** day of **March** 2016.

READ A SECOND TIME the **24th** day of **March** 2016.

READ A THIRD TIME the **24th** day of **March** 2016.

ADOPTED on the _____ day of _____ 2016.

CORPORATE ADMINISTRATOR

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:

BLLENHEIM VENTURES LTD. (Inc. # 183,053)

c/o 401 707 Fort Street
Victoria, B.C. V8W 3G3T

(the "**Owner**")

OF THE SECOND PART

AND:

BANK OF MONTREAL

1225 Douglas St.
Victoria, B.C.
V8W 2E3

(as to priority)

ON 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 75-795 Market Street and 766-770 Hillside Avenue, Victoria, B.C. and legally described as:

Parcel Identifier: 001-287-672

LOT 1, SECTION 4, VICTORIA DISTRICT, PLAN 30215

(the "**Lands**");

- C. The Owner has applied to the City to rezone the Lands to permit existing 87 apartment units, ground floor commercial space and 162 underground parking stalls and to cancel the Land Use Contract F12252 as amended by EC61019.
- 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:

"Development" means the development and use of the Lands as 87 apartment units, ground floor commercial space and 162 underground parking stalls building.

"Dwelling Units" means the 87 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 other than the Owner 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 5.3.

"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, 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, provided the Development remains on the Lands and is not condemned or demolished, each Dwelling Units located within the Development shall, when not used for transient accommodation, only be used as rental housing 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 while the rental uses set out in section 2.1 apply.

3.0 Reporting

3.1 The Owner covenants and agrees that upon the written request of the City, to provide to the City's Director of Sustainable Planning and 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 Priority Agreements

- 4.1 Bank of Montreal, the registered holder of a charge by way of a Mortgage and Assignment of Rents of Land against the within described property which said charge is registered in the Land Title Office at Victoria, British Columbia, under numbers EN56135, EN56136, CA1598346, CA1598347, CA1598348, CA1598349 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* (the "Notice"), this Agreement shall be an encumbrance upon the Lands in priority to the said charge in the same manner and to the same effect as if Notice had been filed prior to the said charge.

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 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 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.
- 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:

c/o 402 – 707 Fort Street
Victoria, B.C. V8W 3G3

Attention: Danilo Danzo
Fax- 250-360-2979

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) 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.

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.
- 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:

On the ___ day of _____, 20__

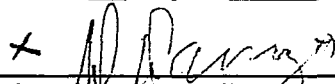
Mayor Lisa Helps

City Clerk

Blenheim Ventures Ltd.

by its authorized signatories:

On the 3 day of March, 2016

x 

Print Name: Danilo Danzo

Print Name:

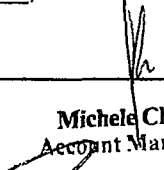
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Bank of Montreal

by its authorized signatories:

On the 10th day of March, 2016.

Print Name:


Michela Chen
Account Manager

Print Name:


MARK TOWER
ACCOUNT MANAGER