

NO. 15-058

**HOUSING AGREEMENT (816 GOVERNMENT STREET and 811-813 WHARF STREET)
BYLAW**

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize a housing agreement for the lands with civic address 816 Government Street and 811-813 Wharf Street, Victoria, BC.

Under its statutory powers, including section 905 of the *Local Government Act*, the Council of The Corporation of the City of Victoria enacts the following provisions:

Title

- 1** This Bylaw may be cited as the "HOUSING AGREEMENT (816 GOVERNMENT STREET) 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 Victoria Customs House Development Inc. or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands with civic address 816 Government Street and 811-813 Wharf Street, legally described as:

Lot 1, Block 71, Section 18, Victoria City, Plan 219
Lot 2, Block 71, Section 18, Victoria City, Plan 219
Lot 3, Block 71, Section 18, Victoria City, Plan 219
Lot 4, Block 71, Section 18, Victoria City, Plan 219
Lot 5, Block 71, Section 18, Victoria City, Plan 219
Lot 6, Block 71, Section 18, Victoria City, Plan 219
Lot 7, Block 71, Section 18, Victoria City, Plan 219
Lot 8, Block 71, Section 18, Victoria City, Plan 219

READ A FIRST TIME the	27th	day of	August,	2015.
READ A SECOND TIME the	27th	day of	August,	2015.
READ A THIRD TIME the	27th	day of	August,	2015.
ADOPTED on the		day of		2015.

CORPORATE ADMINISTRATOR

MAYOR

HOUSING AGREEMENT
(Pursuant to Section 905 of the *Local Government Act*)

THIS AGREEMENT is made the ____ day of _____, 2015.

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA

#1 Centennial Square
Victoria, BC
V8W 1P6

(the "City")

OF THE FIRST PART

AND:

VICTORIA CUSTOMS HOUSE DEVELOPMENT INC.
(Inc. No. BC1017958)

202 – 1007 Fort Street
Victoria, BC
V8V 3K5

(the "Owner")

OF THE SECOND PART

AND:

COMPUTERSHARE TRUST COMPANY OF CANADA
(Inc. No. A0052313)

(as to priority)

OF THE THIRD PART

WHEREAS:

- A. Under section 905 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 905(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 816 Government Street, Victoria, B.C. and legally described as:

PID 025-544-756

Lot 1, Block 71, Section 18, Victoria City, Plan 219

PID 028-408-951

Lot 2, Block 71, Section 18, Victoria City, Plan 219

PID 028-408-969

Lot 3, Block 71, Section 18, Victoria City, Plan 219

PID 028-408-977

Lot 4, Block 71, Section 18, Victoria City, Plan 219

PID 028-408-985

Lot 5, Block 71, Section 18, Victoria City, Plan 219

PID 028-408-993

Lot 6, Block 71, Section 18, Victoria City, Plan 219

PID 028-409-001

Lot 7, Block 71, Section 18, Victoria City, Plan 219

PID 028-409-019

Lot 8, Block 71, Section 18, Victoria City, Plan 219

(collectively, the "Lands");

- C. The Owner has applied to the City to rezone the Lands to permit the development of a mixed use residential and commercial building with an increase in the allowable floor space ratio, to increase the allowable building height, and to add as additional permitted uses a brewery, and distillery, and liquor retail sales as an accessory use to a brewery or distillery;
- D. The City and the Owner wish to enter into this Agreement, as a Housing Agreement pursuant to section 905 of the *Local Government Act*, to secure the agreement of the Owner that all Dwelling Units within the Development on the Lands will be available for use as rental housing.

NOW THIS AGREEMENT WITNESSES that pursuant to section 905 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 a mixed use commercial and residential development.

"Dwelling Units" means the 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.

"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 5.1.

"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.

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 No Restrictions on Rentals

2.1 The Owner covenants and agrees that 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.

2.2 Without limiting the generality of Section 2.1, the Owner covenants and agrees that it will not make application to deposit a strata plan for or in respect of the Lands, or the Development, or a building on the Lands unless the strata bylaws in no way restrict rental of the Dwelling Units to Non-Owners.

- 2.3 For certainty, if the Lands or the Development on the Lands are subdivided under the *Strata Property Act*, the Dwelling Units within the Development may be occupied by the Owners of the strata lots.

3.0 Reporting

- 3.1 The Owner covenants and agrees that upon the written request of the City, the Owner will provide to the City's Director of Sustainable Planning and Development a report in writing confirming that the Owner is in compliance with this Agreement.
- 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 Computershare Trust Company of Canada, the registered holder of a charge by way of a Mortgage, Assignment of Rents and Right of First Refusal to Mortgage of Land against the within described property which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA3993215, CA3993216 and CA3993217, respectively, 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 905(5) of the *Local Government Act* (the "Notice"), 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.

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 905 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 202 – 1007 Fort Street
Victoria, BC V8V 3K5

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 905(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.

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

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

Mayor Lisa Helps

Corporate Administrator Robert Woodland

**VICTORIA CUSTOMS HOUSE DEVELOPMENT
INC.**, by its authorized signatories:

Name: STAN SIPOS

Name: _____

(as to priority)

**COMPUTERSHARE TRUST COMPANY OF
CANADA**, by its authorized signatories:

Name: Nicole H. Clement
General Manager

Name: Alice Kollen

L/S