

CITY OF NANAIMO

BYLAW NO. 7313

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

WHEREAS Section 483 of the *Local Government Act* provides that Council may enter into a Housing Agreement with an owner that may include terms and conditions agreed to regarding the occupancy of the housing units identified in the Agreement; and

WHEREAS the Council wishes to enter into such an Agreement with respect to certain housing units located in the city of Nanaimo;

THEREFORE BE IT RESOLVED that the Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. This Bylaw may be cited as the "Housing Agreement Bylaw 2020 No. 7313".
2. Subject to Section 3 of this Bylaw, the Council of the City of Nanaimo hereby authorizes the Mayor and Corporate Officer to enter into an Agreement, on behalf of the City of Nanaimo, in substantially the form attached hereto as Schedule A, which sets out the terms and conditions of the occupancy of the housing units identified in the Agreement. The land identified in the Agreement is legally described as "LOT A, SECTION 1, NANAIMO DISTRICT, PLAN EPP94033".
3. Upon execution of the Agreement by the Mayor and Corporate Officer and application of the seal of the City of Nanaimo, this Agreement shall be validly entered into as authorized by this Bylaw.

PASSED FIRST READING: 2020-AUG-31
PASSED SECOND READING: 2020-AUG-31
PASSED THIRD READING: 2020-AUG-31
ADOPTED: _____

MAYOR

CORPORATE OFFICER

File: HA000002
Address: 326 Wakesiah Avenue

Schedule A
STUDENT HOUSING AGREEMENT

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC V9R 5J6

(the "**City**")

OF THE FIRST PART

AND:

S.H.Z.T. INVESTMENTS CANADA INC. (INC. NO. BC1066944)
900 - 4720 Kingsway
Metrotower II
Attn: Baily Mclean
Burnaby, BC V5H 4N2

(the "**Owner**")

OF THE SECOND PART

WHEREAS:

- A. The City may, by agreement under section 483 of the *Local Government Act*, 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 the lands described as:

PID: 031-085-911
LOT A SECTION 1 NANAIMO DISTRICT PLAN EPP94033

(the "**Lands**");
- C. The Owner wishes to construct a mixed-use development on the Lands. The mixed-use development will consist of one or more buildings containing student housing units (the "**Student Housing Complex**");
- D. The City and the Owner wish to enter into this agreement (the "**Agreement**") to establish terms and conditions regarding the occupancy of the Student Housing Complex.

NOW THEREFORE 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 parties hereto covenant and agree with the other as follows:

1.0 INTERPRETATION

- 1.1 In this Agreement, unless otherwise defined words have the same meanings as in the Zoning Bylaw, and the following words have the following meanings:

"Agreement" means this agreement and all Recitals thereto;

"Lands" has the meaning given to it in Recital B;

"Student" means a person who is enrolled on a full-time or part-time basis as a post-secondary student at a Ministry of Advanced Education accredited college, university or trade school located within the City of Nanaimo;

"Student Housing Complex" has the meaning given to it in Recital C; and

"Zoning Bylaw" means the City of Nanaimo Zoning Bylaw 2011 No. 4500 as amended from time to time, and any enactment that may replace it.

2.0 FORM OF STUDENT HOUSING COMPLEX

2.1 The Student Housing Complex must consist of one (1) or more buildings, which building or buildings must contain dwelling units, sleeping units, or both dwelling and sleeping units, and which building or buildings must not contain a collective total of more than one hundred and sixty-five (165) beds, have a communal space on each floor, and may include commercial retail units on the ground floor of the building(s) (the **"Commercial Units"**).

3.0 OCCUPANCY OF STUDENT HOUSING COMPLEX

3.1 The Owner covenants and agrees that the Student Housing Complex must only be occupied by Students.

3.2 All dwelling units and all sleeping units within the Student Housing Complex must be available for rent by Students.

3.3 The Owner must provide a resident manager to manage the occupancy and maintenance of the Student Housing Complex.

3.4 As an exception to sections 3.1 and 3.2, one (1) dwelling unit in the Student Housing Complex may be occupied by the resident manager.

3.5 For certainty, it is understood and agreed that if there are Commercial Units, they may be occupied for their intended use and do not need to be rented to and occupied by Students.

4.0 REPORTING

4.1 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.

5.0 BINDING EFFECT

5.1 This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors and permitted assignees.

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 ENFORCEMENT AND WAIVER

- 7.1 Nothing contained or implied herein shall prejudice or affect the rights and powers of the City in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner. 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 shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 7.2 The parties agree that the City is not obligated to inspect the Lands or to otherwise ensure compliance with this Agreement, nor is the City obligated to remedy any default of this Agreement. A failure by the City to enforce this Agreement shall not constitute a waiver of any of the City's rights hereunder.
- 7.3 No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available at law or in equity.
- 7.4 The Owner covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the City is entitled to all equitable remedies, including specific performance, injunction and declarative relief to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

8.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- 8.1 Notice of this Agreement shall 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 shall be binding on all persons who acquire an interest in the Land after registration of this notice.
- 8.2 The restrictions and covenants herein contained shall be perpetual and shall continue to bind all of the Lands and all persons who acquire an interest in the Land after registration of this notice.
- 8.3 The parties covenant and agree that if the Lands are subdivided, the legal notation shall be released and discharged from the title to the Commercial Units at the cost of the Owner.

9.0 TERMINOLOGY

- 9.1 Wherever the singular, masculine or neuter are used throughout this Agreement, the same shall be construed as meaning the plural or the feminine or the body corporate or politic as the context requires.

10.0 LAW

10.1 This Agreement shall be construed in accordance with, and governed by, the laws applicable in the Province of British Columbia.

11.0 WAIVER

11.1 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.

12.0 SEVERABILITY

12.1 If any part of this Agreement is found to be illegal or unenforceable by a court of competent jurisdiction, that part shall be considered separate and severable and the remaining parts shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

13.0 COUNTERPART

13.1 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.

14.0 EFFECTIVE DATE

14.1 This Agreement is effective as of the date of the signature of the last party to sign.

EXECUTED BY THE CITY at _____, British Columbia, this ____ day of _____, 2020.

CITY OF NANAIMO, by its)
authorized signatories:)
)
_____)
)
_____)
)

EXECUTED BY THE OWNER at _____, British Columbia, this ____ day of _____, 2020.

S.H.Z.T. INVESTMENTS CANADA INC.)
(INC. NO. BC1066944), by its)
authorized signatories:)
)
_____)
)
_____)
)