

CITY OF NANAIMO

BYLAW NO. 7141

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

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WHEREAS Section 905 of the *Local Government Act* provides that Council may enter into a Housing Agreement with an owner which 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 2012 NO. 7141".
2. The Council of the City of Nanaimo hereby authorizes the Mayor and Manager of Legislative Services 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 1, SECTION 5, WELLINGTON DISTRICT, PLAN VIP89398".
3. Upon execution of the Agreement by the Mayor and Manager of Legislative Services 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 2012-MAY-14  
PASSED SECOND READING 2012-MAY-14  
PASSED THIRD READING 2012-MAY-14  
ADOPTED 2012-MAY-28

\_\_\_\_\_  
J. R. RUTTAN  
MAYOR

\_\_\_\_\_  
J. E. HARRISON  
CORPORATE OFFICER

File: DP000736  
Address: 3701 Country Club Drive

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

**THIS AGREEMENT** is made the \_\_\_\_ day of \_\_\_\_\_, 2012.

BETWEEN:

**CITY OF NANAIMO**

455 Wallace Street  
Nanaimo, B.C. V9R 5J6

(the "City")

OF THE FIRST PART

AND:

**SOPHIE INVESTMENTS INC.**

(Inc. #A0074078)

3 – 772 Bay Street  
Victoria, B.C. V8T 5E4

(the "Owner")

OF THE SECOND 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 the Land as defined in this Agreement;
- C. The Owner intends to construct a multi-unit residential development on the Land, and wishes to secure higher density for the development by providing rental housing pursuant to Schedule "D" of the Zoning Bylaw;
- 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 certain dwelling units to be constructed on the Land shall not be stratified or sold independently for a period of ten (10) years.

**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 parties agree each with the other as follows:

**1.0 Definitions**

1.1 In this Agreement:

"**Agreement**" means this housing agreement under section 905 of the *Local Government Act*, including its recitals;

"**Dwelling Unit**" has the same meaning as provided in the Zoning Bylaw;

"**Final Occupancy Date**" means the date upon which the entirety of the New Building has been approved for occupancy by the building inspector for the City of Nanaimo;

"**Land**" means that parcel of land legally described as Lot 1, Section 5, Wellington District, Plan VIP89398;

"**New Building**" means the 33-unit residential building to be constructed on the Land;

"**Owner**" includes a person who acquires an interest in the Land, or any part of it and is thereby bound by this Agreement, as referred to in section 4.1;

"**Subdivision**" means the division of land into two (2) or more parcels whether by plan, apt descriptive words or otherwise, and includes subdivision under the *Strata Property Act*, and "**Subdivide**" has the corresponding meaning;

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

**2.0 Dwelling Units Not To Be Subdivided Or Independently Sold**

2.1 The Owner covenants and agrees that for a period of not less than ten (10) years following the Final Occupancy Date, at least fifty percent (50%) of the Dwelling Units in the New Building must not be subdivided, and must not be sold or otherwise transferred separately from one another, the New Building or the Land.

**3.0 Reporting**

3.1 The Owner covenants and agrees to provide to the City's General Manager, Community Safety and Development, on February 1 of each year following the execution of this Agreement, a report in writing confirming compliance with the provisions of this Agreement including without limitation section 2.1.

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

4.1 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 905(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 Land after registration of the Notice.

**5.0 General Provisions**

Notice

5.1 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 Nanaimo  
455 Wallace Street  
Nanaimo, BC V9R 5J6  
Attention: General Manager, Community Safety and Development  
Fax: 250-755-4440

to the Owner:

Sophie Investments Inc.  
3 – 772 Bay Street  
Victoria, BC V8T 5E4

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 slow-down, force majeure, or other cause,

- (a) notice sent by the impaired service is considered to be received on the date of actual receipt, 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

5.2 Time is of the essence of this Agreement.

#### Binding Effect

5.3 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.

#### Waiver

5.4 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

5.5 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

5.6 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.

Cumulative Remedies

5.7 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

5.8 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

Further Assurances

5.9 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

5.10 This Agreement may be amended from time to time upon terms and conditions acceptable to the parties.

Law Applicable

5.11 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

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

**CITY OF NANAIMO**, by its authorized signatories: )  
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Name: )  
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\_\_\_\_\_)  
Name: )

**SOPHIE INVESTMENTS INC.**, by its authorized signatories: )  
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Name: )  
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Name: )