

CITY OF NANAIMO

BYLAW NO. 7226

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

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WHEREAS Section 483 (formerly 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 2016 NO. 7226".
2. 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 1, SECTION 1, NANAIMO DISTRICT, PLAN EPP58523".
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 2016-MAY-02  
PASSED SECOND READING 2016-MAY-02  
PASSED THIRD READING 2016-MAY-02  
ADOPTED 2016-MAY-16

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MAYOR

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CORPORATE OFFICER

File: RA000358  
Address: 416 Wakesiah Avenue

## SCHEDULE A

### STUDENT HOUSING AGREEMENT

THIS AGREEMENT made this 12<sup>th</sup> day of February, 2016

BETWEEN:

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

(the "City")

OF THE FIRST PART

AND:

**DAYOO INVESTMENTS INC.**  
205-5740 Cambie Street  
Vancouver, BC V5Z 3Z6

(the "Owner")

OF THE SECOND PART

WHEREAS:

- A. Capitalized terms used in these recitals have the meanings given in section 1.1 below;
- B. The City may, by agreement under section 483 (formerly section 905) 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*;
- C. The Owner is the registered and beneficial owner in fee-simple of the Lands;
- D. The Owner wishes to develop a mixed use development on the Lands with a building that includes (1) commercial use and (2) residential use comprised of 34 dwelling units with a total of 44 beds (collectively the "Housing Units") intended as Student Housing for occupancy only by Student tenants; and;
- E. The City and the Owner wish to enter into this Agreement to establish terms and conditions regarding the occupancy of the Housing Units identified in the Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to section 483 (formerly section 905) 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:

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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:

- (a) **“Agreement”** means this agreement and includes all recitals and schedules to this agreement and all instruments comprising this agreement;
- (b) **“Lands”** means, collectively:
  - PID: 000-540-005, Lot 7 Block 2 Section 1 Nanaimo District Plan 1325;
  - PID: 007-589-158, Lot 8 Block 2 Section 1 Nanaimo District Plan 1325;
  - and
  - PID: 007-589-182, Lot 9 Block 2 Section 1 Nanaimo District Plan 1325,
- (c) **“Management Plan”** has the meaning given in Section 2.6 below;
- (d) **“Student”** means a person who is enrolled on a full-time or part-time basis as a post-secondary student at a college, university or institution located within the City of Nanaimo and authorized as a post-secondary institution by the Ministry of Advanced Education;
- (e) **“Zoning Bylaw”** means the City’s Zoning Bylaw 2011 No. 4500, as amended from time to time, and any enactment that may replace it.

1.2 In this Agreement:

- (a) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided; and
- (b) the word **“including”** when following any general term or statement will not be construed as limiting the general term or statement to the specific matter immediately following the word “including” or to similar matters, and the general term or statement will be construed as referring to all matters that reasonably could fall within the broadest possible scope of the general term or statement

2.0 OCCUPANCY OF HOUSING UNITS

2.1 The Owner covenants and agrees that the Housing Units to be constructed on the Lands may be occupied only by Students and that the Housing Units will not be converted to any other form of lodging or accommodation.

2.2 The Owner covenants and agrees that it will own and operate the Housing Units as Student rental accommodation only.

- 2.3 The Owner covenants and agrees that it will, at its cost, provide a resident or live-in manager or caretaker to manage the residents and Housing Units, and maintain the Lands, the Housing Units and the onsite parking spaces and onsite bicycle storage which are provided for the use of the residents.
- 2.4 The Owner covenants and agrees that it will, at its cost, provide nine (9) residential parking spaces on the Lands for the use of residents only.
- 2.5 As an exception to section 2.1 and 2.2, one (1) Housing Unit on the Lands may be occupied by a resident or live-in manager or caretaker.
- 2.6 The Owner covenants and agrees that it will, prior to the issuance of an occupancy permit for the Housing Units and at its cost, submit to the City for the City's approval a management plan for the operation and management of the Housing Units (the "**Management Plan**"). A sample management plan is attached for reference purposes only as Schedule "A".
- 2.7 Once the Management Plan required under section 2.6 has been approved by the City, the Owner must operate and manage the Housing Units in accordance with the Management Plan, and must not amend or modify the Management Plan without the prior written consent of the City.
- 3.0 PARKING EVALUATION
- 3.1 The Owner further covenants and agrees that it will, commencing on the first anniversary of the date an occupancy permit is issued for the residential use building containing the Housing Units and on that anniversary date for two consecutive years, provide to the City a report in writing confirming:
  - (a) The total number of residents occupying the Housing Units versus the total number of residents who own or possess a vehicle, for the entire year.
  - (b) The total number of parking spaces that were utilized each semester (Sep-Dec; Jan-Apr; May-Aug).
  - (c) The total number of residents on a wait list for parking spaces each semester (Sep-Dec; Jan-Apr; May-Aug).
- 4.0 COMPLIANCE WITH AGREEMENT
- 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.
- 4.2 The Owner covenants and agrees that it will, on request from time to time, provide to the City a report in writing, to the satisfaction of the City, confirming such matters as may be required by the City, including:
  - (a) The total number of residents occupying the Housing Units; and

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- (b) Confirmation that the Housing Units were occupied only by Students during the reporting period.

#### 5.0 INDEMNITY AND RELEASE

- 5.1 The Owner hereby releases and indemnifies and saves harmless the City from all loss, damage, costs (including without limitation, legal costs), expenses, actions, suits, debts, accounts, claims and demands, including without limitation, any and all claims of third parties (and including personal injury, death or damage occurring in or on the Lands), which the City may suffer, incur or be put to arising directly or indirectly out of or in connection with:

- (a) this Agreement;
- (b) any breach by the Owner of any covenant or agreement contained in this Agreement;
- (c) the exercise of discretion by any City employee or official for any matter relating to this Agreement;
- (d) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Housing Unit or the enforcement of any tenancy agreement respecting the Housing Units;
- (e) the exercise by the City of any of its rights under this Agreement or an enactment; and/or
- (f) the City withholding any demolition, building or occupancy agreement in accordance with the terms of this Agreement.

#### 6.0 BINDING EFFECT

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

#### 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

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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 Act by the City at the cost of the Owner in accordance with section 483 (formerly section 905) 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, and unless discharged in accordance with this Agreement, run with and bind the Lands in perpetuity.
- 9.0 NO COMPENSATION
- 9.1 The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the City, for any decrease in the market value of the Lands and for any obligations on the part of the Owner and its successors in title which at any time may result directly or indirectly from the operation of this Agreement.
- 10.0 TERMINOLOGY
- 10.1 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.
- 11.0 BC LAWS GOVERN
- 11.1 This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 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.

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**EXECUTED BY THE CITY** at Nanaimo, British Columbia, this \_\_\_\_ day of February, 2016.

CITY OF NANAIMO by its authorized )  
signatories: )  
)  
)  
\_\_\_\_\_)  
)  
\_\_\_\_\_)  
)

**EXECUTED BY THE OWNER** at \_\_\_\_\_, British Columbia, this \_\_\_\_ day of February, 2016.

DAYOO INVESTMENTS INC. by its )  
authorized signatories: )  
)  
)  
\_\_\_\_\_)  
)  
\_\_\_\_\_)  
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**SCHEDULE "A"**  
**Sample Outline for a Student Housing Management Plan**

The Student Housing Management Plan will provide a clear understanding of student and management rights and responsibilities in order for the student housing to operate fairly and successfully. The following outline includes examples of the type of information that could be contained within the student housing management plan.

**Philosophy and Guiding Principles**

- Student tenant rights
- Management will provide fair and consistent service and clear student housing standards
- Overall the housing environment is to be conducive to sleep and study

**Housing Standards (Rules)**

- Cleaning and Maintenance
- Guests
- Noise
- Laundry Room
- Communal Areas

**Enforcement of Housing Standards & Behaviour Management**

- Outline of behaviours considered inappropriate and which could result in sanctions
- Process for managing student behavior for example, verbal/written warning; on notice; probation; and termination of agreement

**Parking Allocation and Bicycle Parking**

- Allocation of parking spaces and a register that documents allocation of the spaces
- Allocation of bicycle parking spaces

**Safety and Emergency Procedures**

- Fire Safety
- Evacuation procedures
- Location of safety devices, i.e. fire extinguishers, first aid kits etc.

**Location of Management Plan**

- Permanent display of the House Rules in a common area

This schedule is not a student housing management plan.