

CITY OF NANAIMO

BYLAW NO. 7314

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

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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. 7314".
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 5106 EXCEPT THAT PART IN PLAN VIP82971" and "LOT B, SECTION 1, NANAIMO DISTRICT, PLAN 5106".
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: 2020-SEP-14

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CORPORATE OFFICER

File: HA000003  
Address: 20 Barsby Avenue

**Schedule A**  
**HOUSING AGREEMENT**

BETWEEN:

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

(the "**City**")

OF THE FIRST PART

AND:

**RIVERSTONE PLACE INC. (Inc. No. BC1119162)**  
707-777 West Broadway  
Vancouver, BC V5Z 4J7

(the "**Owner**")

OF THE SECOND PART

AND:

**CANADIAN WESTERN BANK**  
300, 750 Cambie Street  
Vancouver, BC V6B 0A2

("**Canadian Western Bank**")

OF THE THIRD PART

AND:

**WESTMOUNT WEST SERVICES INC. (Inc. No. BC1195001)**  
1600 - 925 West Georgia Street  
Vancouver, BC V6C 3L2

("**Westmount**")

OF THE FOURTH 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: 006-036-635  
LOT B SECTION 1 NANAIMO DISTRICT PLAN 5106

and

PID: 006-036-619  
LOT A SECTION 1 NANAIMO DISTRICT PLAN 5106 EXCEPT THAT PART IN PLAN  
VIP82971

(collectively, the "**Lands**");

- C. The Owner wishes to construct a multi-family condominium development on the Lands (the "**Development**"); and
- D. The City and the Owner wish to enter into this agreement (the "**Agreement**") to establish terms and conditions regarding the form of tenure of the Development.

**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;

"**Development**" has the meaning given to it in Recital C;

"**Dwelling Unit**" means a self-contained residential dwelling unit within the building located on the Lands, and includes any dwelling unit that is developed on the Lands in the future, whether as part of the Development or otherwise, and "Dwelling Units" means collectively all of such residential dwelling units located on the Lands;

"**Existing Chargeholders**" means Canadian Western Bank and Westmount West Services Inc;

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

"**Non-owner**" means a person who occupies a Dwelling Unit for residential purposes, other than the Owner of that Dwelling Unit;

"**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;

"**Strata Corporation**" means for the portions of the Lands or any building on the Lands that is subdivided under the *Strata Property Act*, a strata corporation as defined in that *Act*, including the Owner while in control of the strata corporation and subsequently the individual strata lot owners collectively acting as the strata corporation; 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 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 rental of a Dwelling Unit for residential purposes.
- 2.2 Without limiting the generality of section 2.1, the Owner covenants and agrees that it will not make an application to deposit a strata plan for or in respect of the Lands or a building on the Lands unless the strata bylaws in no way restrict rental for residential purposes of any Dwelling Unit.
- 2.3 The Owner covenants and agrees that if the Lands or buildings on the Lands are subdivided under the *Strata Property Act*:
- (a) unless this Agreement is amended, to exercise its voting rights in the Strata Corporation against the passage of any bylaws that would restrict the availability for rental of any Dwelling Unit to a Non-owner for residential purposes; and
  - (b) to notify the City of any proposed amendments to its strata bylaws.
- 2.4 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 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 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE**

- 4.1 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* ("**Notice**"), and this Agreement shall be binding on all persons who acquire an interest in the Lands after registration of this Notice.

## **5.0 BINDING EFFECT**

- 5.1 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. In accordance with section 483(6) of the *Local Government Act*, this Agreement and all other obligations hereunder are 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.

## **6.0 LIABILITY**

- 6.1 The Owner agrees to indemnify and save 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 ENTIRE AGREEMENT**

- 8.1 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 8.2 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.

## **9.0 PRIORITY AGREEMENT**

- 9.1 The Existing Chargeholders, as the registered holders of charges by way of Mortgages and Assignments of Rents against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers: CA7923256, CA7923257, CA7979269 and CA7979270, 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*, 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.

## **10.0 NOTICE**

- 10.1 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

to the Owner:

Riverstone Place Inc.  
707-777 West Broadway  
Vancouver, BC V5Z 4J7

or upon registration of a strata plan for the Lands, to the Strata Corporation, and to the Owner of any Dwelling Unit that is subject to the restrictions under Article 2.0 of this Agreement.

- 10.2 If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address.
- 10.3 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 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.

## **11.0 TERMINOLOGY**

- 11.1 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.

## **12.0 LAW**

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

## **13.0 SEVERABILITY**

- 13.1 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.

## **14.0 COUNTERPART**

- 14.1 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.

**15.0 EFFECTIVE DATE**

15.1 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: )  
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\_\_\_\_\_) )  
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\_\_\_\_\_) )

**EXECUTED BY THE OWNER** at \_\_\_\_\_, British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2020.

**RIVERSTONE PLACE INC.** )  
**(Inc. No. BC1119162)**, by its )  
authorized signatories: )  
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\_\_\_\_\_) )  
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\_\_\_\_\_) )

**EXECUTED BY THE CHARGEHOLDER WESTMOUNT** at \_\_\_\_\_, British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2020.

**WESTMOUNT WEST SERVICES INC.** )  
**(Inc. No. BC1195001)**, by its authorized )  
signatories: )  
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\_\_\_\_\_) )  
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\_\_\_\_\_) )

**EXECUTED BY THE CHARGEHOLDER CANADIAN WESTERN BANK** at \_\_\_\_\_,  
British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2020.

**CANADIAN WESTERN BANK** by its )  
authorized signatories: )  
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\_\_\_\_\_ )  
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