

DATE OF MEETING | October 18, 2021 |

AUTHORED BY | CALEB HORN, PLANNER, CURRENT PLANNING |

**SUBJECT | COVENANT AMENDMENT APPLICATION NO. CA15  
– 416 WAKESIAH AVENUE |**

## **OVERVIEW**

### **Purpose of Report**

To present Council with an application to discharge and replace a Section 219 covenant and Housing Agreement registered on the property title of 416 Wakesiah Avenue in order to increase the allowable number of beds in a proposed student housing development. |

### **Recommendation**

That:

1. "Housing Agreement Bylaw 2021 No. 7334" (To authorize a housing agreement for a student housing development at 416 Wakesiah Avenue) pass first reading;
2. "Housing Agreement Bylaw 2021 No. 7334" pass second reading;
3. "Housing Agreement Bylaw 2021 No. 7334" pass third reading; and
4. Council direct Staff to proceed with a Public Hearing to consider the proposed covenant amendment.

## **BACKGROUND**

A covenant amendment application, CA15, was received from Island West Coast Developments, on behalf of 1249818 BC Ltd., to discharge and replace a Section 219 covenant and Housing Agreement registered on the property title of 416 Wakesiah Avenue in order to allow an increase to the number of beds in a proposed student housing development.

The subject property was rezoned from Single Dwelling Residential (R1) to Mixed Use Corridor (COR2) with student housing permitted as a site-specific use in 2016 (RA358). A Section 219 covenant (CA5052723) was registered on the property title as a condition of rezoning to secure several items including the terms of a Housing Agreement.

### **Subject Property and Site Context**

|  |   |
|--|---|
| <i>Location</i>  | The subject property is located on the east side of Wakesiah Avenue between Fourth Street and Queen Street. |
| <i>Lot Area</i>  | 1,800m <sup>2</sup>   |
| <i>Zoning</i>  | COR2 – Mixed Use Corridor   |
| <i>Official Community Plan (OCP)<br/>Future Land Use Designation</i> | Corridor  |
| <i>Neighbourhood Plan<br/>Land Use Designation</i>                   | Harewood Neighbourhood Plan – Mixed Use Corridor  |

The subject property is located in the Harewood Neighbourhood directly across Wakesiah Avenue from Vancouver Island University (VIU). The lot is relatively flat and is currently vacant. There were previously two single residential dwellings located on the lot that were demolished in 2017.

Surrounding land uses include single residential dwellings to the north and across a lane to the east, an existing 37-bed student housing development to the south at 438 Wakesiah Avenue, and the VIU Trades Discovery Centre across Wakesiah Avenue to the west. Other nearby amenities include the Nanaimo Ice and Aquatic Centres, approximately 600m to the north, and the University Village and Village Centre Shopping Centres, approximately 800m to the east.

## **DISCUSSION**

### **Proposed Development**

The applicant is proposing to increase the maximum permitted number of student housing beds from 44 beds to 117 beds. The conceptual site plans are for a mixed-use four-storey building with 117 beds within 44 units, plus 3 commercial retail units, with a total gross floor area of 3,781m<sup>2</sup>. The existing Mixed Use Corridor zone (COR2) with site-specific use allows for the intended use. No variances are anticipated and the applicant has demonstrated that all required student housing and commercial parking can be accommodated on site in an underground parking level. The applicant has proposed the increase in beds in order to develop a feasible student housing project in response to current student housing demand.

To facilitate the proposed development, the following steps are required:

1. Consideration of first, second, and third readings of “Housing Agreement Bylaw 2021 No. 7334” (the “HA Bylaw”) to authorize a new Housing Agreement.
2. A public hearing to consider the discharge and replacement of the covenant from title in accordance with the City of Nanaimo Covenant Amendment Process Council Policy.
3. Consideration of final adoption of the HA Bylaw.
4. Discharge of the existing Housing Agreement and associated Section 219 covenant (CA5052723) and discharge of the existing notice on title (CA5214792).
5. Registration of a new Section 219 covenant and notice on title to secure the terms of the proposed Housing Agreement.

In addition to securing the terms of the Housing Agreement, the existing covenant (CA5052723) requires bicycle parking, a community amenity contribution, and road dedication. These additional items no longer need to be secured as the bicycle parking is now required by the City’s “Off-Street Parking Regulations Bylaw 2018 No. 7266”, and the payment of the amenity contribution and registration of road dedication have occurred. Therefore, the new covenant is proposed to include the Housing Agreement as presented in the HA Bylaw. An additional covenant to secure a new amenity contribution will be required should Council support the proposed covenant amendment following Public Hearing (see Community Amenity Contribution section following).

## Policy Context

### *Official Community Plan*

The Official Community Plan (OCP) identifies the subject property as within the Corridor future land use designation. Development in Corridors is characterized by a mix of residential, commercial, professional, and service uses, with residential developed at medium- to high-level densities. The proposed covenant amendment meets the intent of the OCP future land use designation.

### *Harewood Neighbourhood Plan*

The Harewood Neighbourhood Plan identifies the subject property as within the Mixed Use Corridor land use designation. This land use designation supports the same types of development as the OCP's Corridor designation, with building heights between two- to six-stories. Commercial services within mixed-use developments are supported along Wakesiah Avenue, particularly between Fourth Street and Fifth Street. The proposed covenant amendment will allow for a mixed-use development that meets the objectives of the Harewood Neighbourhood Plan.

### *Affordable Housing Strategy*

The City of Nanaimo Affordable Housing Strategy, adopted in 2018, contains a number of objectives related to diversifying housing. Specifically, Objective 5.3 supports rental housing and related programs for university students. The proposed covenant amendment will support this objective by allowing for more purpose-built rental student housing in close proximity to VIU.

### *Transportation Master Plan*

The subject property is located within the core of the VIU mobility hub, as identified by the Nanaimo Transportation Master Plan (NTMP). The VIU mobility hub is recognized as a city-wide and regional centre for educational services. The area's unique demographics, access to transit, and neighbourhood layout support levels of alternative forms of transportation, with the neighbourhood already achieving the second highest proportion of sustainable transportation trips in the city. A future land use vision includes higher density housing within the mobility hub that supports a mix of demographic needs and income levels. Overall, the NTMP recognizes the importance of strengthening Urban Nodes and Corridors and creating opportunities for residents to meet their daily needs with travel over shorter distances and reducing private vehicle dependency.

The subject property is in close proximity to commercial services, recreational amenities, educational facilities, transit stops, and multi-use trails, providing a range of opportunities and options within a short distance to support the proposed higher density.

## Community Amenity Contribution

In exchange for the increase in permitted density (number of beds), the applicant is encouraged to provide a Community Amenity Contribution (CAC). The previous rezoning application secured a CAC at a rate of \$300 per student housing bed and \$34 per m<sup>2</sup> of commercial floor

area to be used towards local trail and lane improvements, and was collected in 2016 through rezoning application RA358.

As part of this covenant amendment application, the applicant is offering an additional CAC at the same rate. With a proposed increase of 73 student housing beds, a CAC with a value of at least \$21,900 would be expected. The applicant has proposed the following CAC:

- A monetary contribution of \$22,000 towards parks, recreation, and culture improvements in the Vancouver Island University / Harewood neighbourhood.

Staff support the proposed CAC.

### **SUMMARY POINTS**

- Covenant Amendment application No. CA000015 proposes to discharge and replace a Section 219 covenant and Housing Agreement registered on the property title of 416 Wakesiah Avenue in order to increase the allowable number of beds in a proposed student housing development from 44 beds to 117 beds.
- To facilitate the development, “Housing Agreement Bylaw 2021 No. 7334” is proposed to authorize the new Housing Agreement.
- The proposed covenant amendment meets the objectives of the Official Community Plan, Harewood Neighbourhood Plan, Affordable Housing Strategy, and Transportation Master Plan.
- A monetary contribution of \$22,000 towards parks, recreation, and culture improvements in the Vancouver Island University / Harewood neighbourhood is proposed for the Community Amenity Contribution.

### **ATTACHMENTS**

ATTACHMENT A: Context Map  
ATTACHMENT B: Location Plan  
ATTACHMENT C: Conceptual Site Plan  
ATTACHMENT D: Conceptual Perspective Views  
ATTACHMENT E: Aerial Photo  
“Housing Agreement Bylaw 2021 No. 7334”

#### **Submitted by:**

Lainya Rowett  
Manager, Current Planning

#### **Concurrence by:**

Jeremy Holm  
Director, Development Approvals

Dale Lindsay  
General Manager, Development Services

# ATTACHMENT A CONTEXT MAP



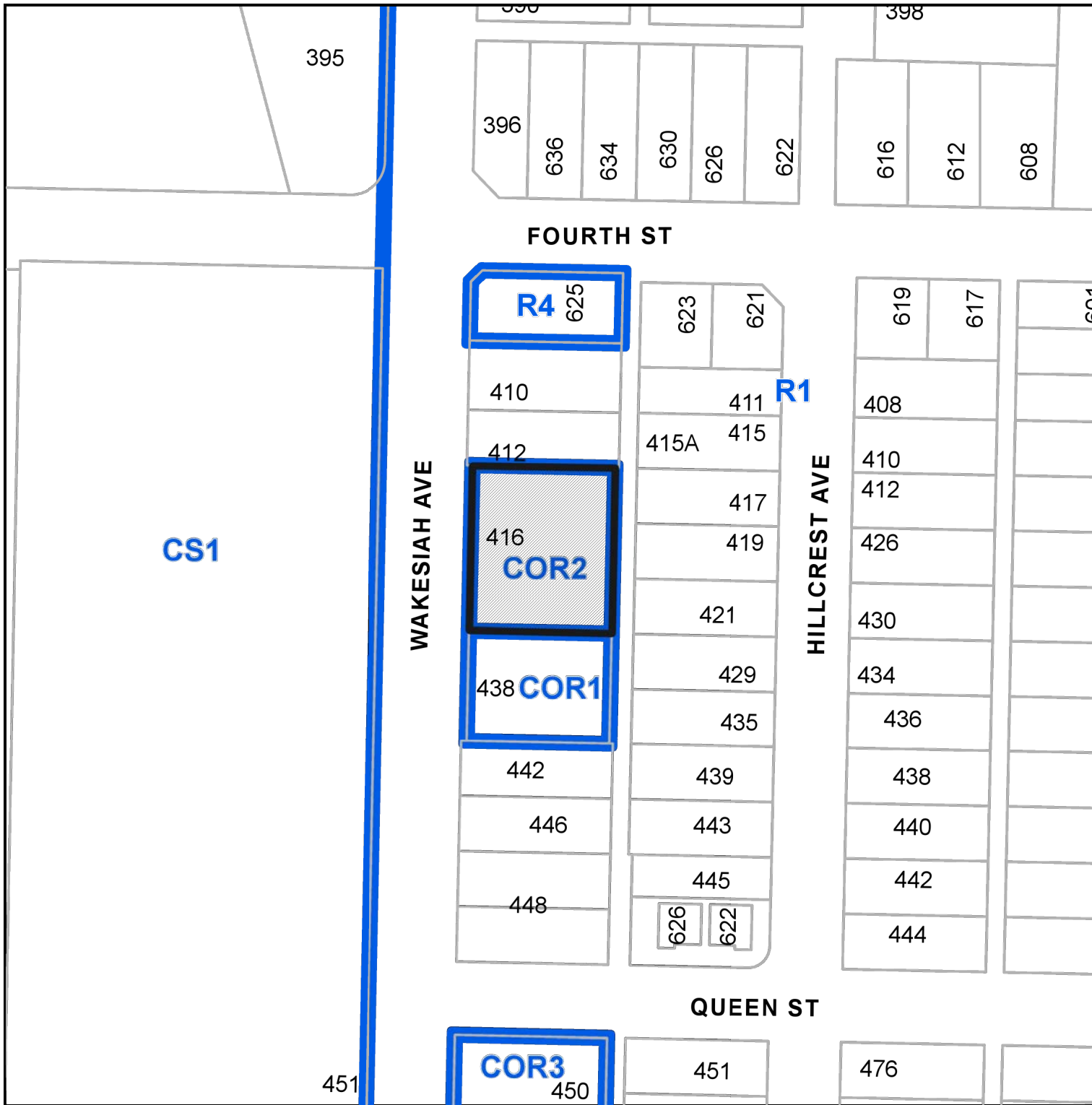
## COVENANT AMENDMENT APPLICATION NO. CA000015

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416 WAKESIAH AVENUE

**ATTACHMENT B  
LOCATION PLAN**



**COVENANT AMENDMENT APPLICATION NO. CA000015**



 **Subject Property**

CIVIC: 416 WAKESIAH AVENUE  
LEGAL: LOT 1, SECTION 1, NANAIMO DISTRICT, PLAN EPP58523



# ATTACHMENT C CONCEPTUAL SITE PLAN



RECEIVED  
CA 15  
2020-NOV-06  
Current Planning



416 WAKESIAH STUDENT HOUSING  
20024

GROUND FLOOR PLAN

NOV 04 2020  
1/16"=1'-0"

ATTACHMENT D  
CONCEPTUAL PERSPECTIVE VIEWS



416 WAKESIAH STUDENT HOUSING  
20024

RECEIVED  
CA 15  
2020-NOV-06  
Current Planning

SOUTH-WEST VIEW

NOV 04 2020  
N.T.S.





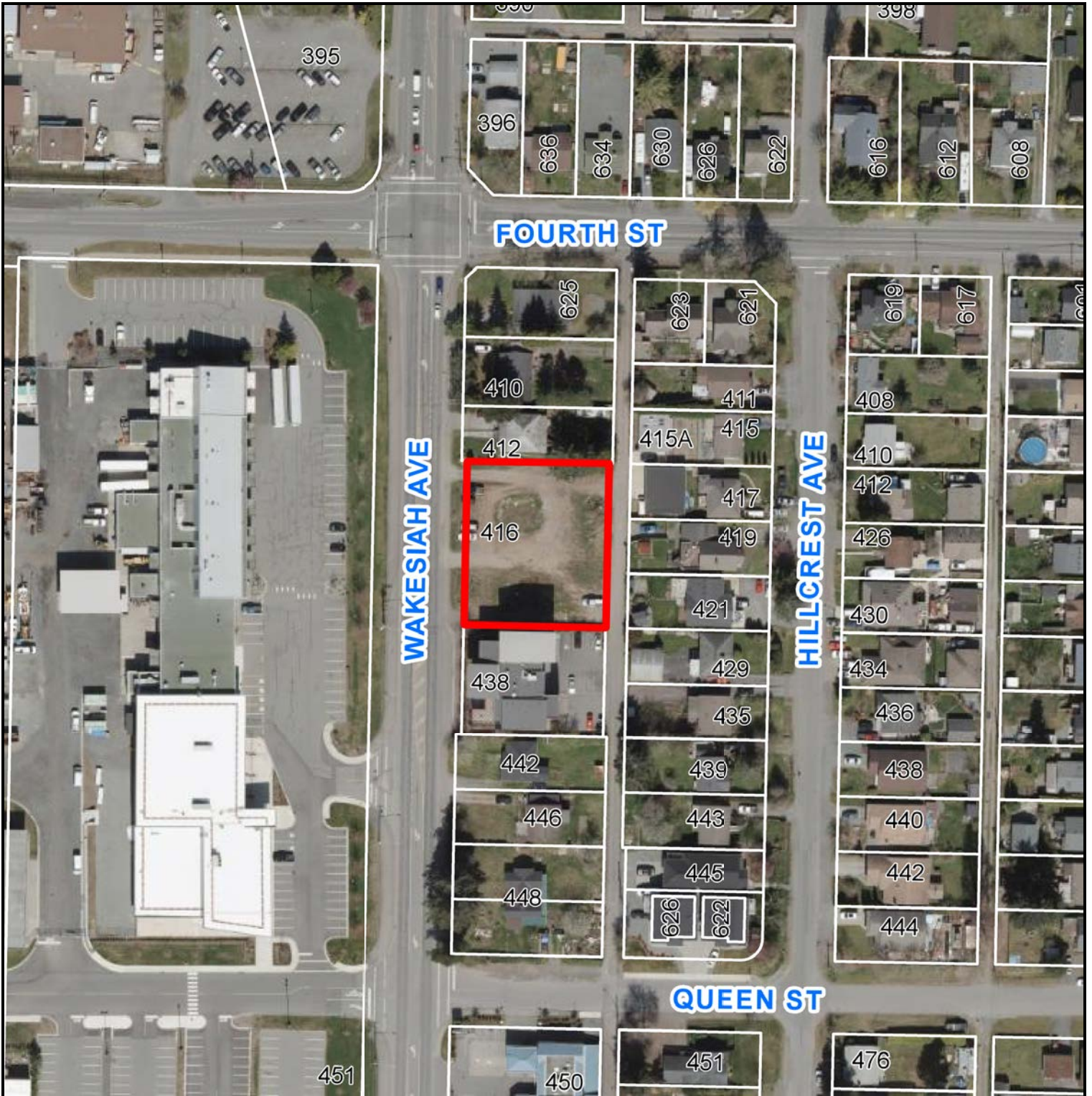


RECEIVED  
CA 15  
2020-NOV-06  
Current Planning





**ATTACHMENT E  
AERIAL PHOTO**



**COVENANT AMENDMENT APPLICATION NO. CA000015**

 416 WAKESIAH AVENUE

CITY OF NANAIMO

BYLAW NO. 7334

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, which may include terms and conditions agreed to regarding the occupancy of the housing units identified in the Agreement;

AND WHEREAS, 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 Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as the City of Nanaimo "Housing Agreement Bylaw 2021 No. 7334".
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" (416 Wakesiah Avenue).
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: \_\_\_\_\_

PASSED SECOND READING: \_\_\_\_\_

PASSED THIRD READING: \_\_\_\_\_

ADOPTED: \_\_\_\_\_

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MAYOR

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CORPORATE OFFICER



## SCHEDULE A

### STUDENT HOUSING AGREEMENT

**THIS AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

BETWEEN:

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

(the "**City**")

OF THE FIRST PART

AND:

**1249818 B.C. LTD. (INC. NO. BC1249818)**

3175 Dickinson Crescent  
West Vancouver, BC  
V7V 2L4

(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: 029-789-001, Lot 1, Section 1, Nanaimo District, Plan EPP58523 (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 devoted to student housing 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;

**"Dwelling Unit"** means:

- (i) habitable room or rooms constituting of a self-contained unit for residential purposes with a cooking facility; or
- (ii) a habitable room used for sleeping and living purposes but in which there are no kitchen or cooking facilities,

to be developed on the Lands;

**"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 forty-four (44) dwelling units with a collective total of not more than one hundred seventeen (117) beds, together with 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**

5.0 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**

6.0 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.

6.1 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.

**EXECUTED BY THE CITY** at \_\_\_\_\_, British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2021.

**CITY OF NANAIMO**, by its )  
authorized signatories: )  
 )  
\_\_\_\_\_)  
Mayor )  
 )  
\_\_\_\_\_)  
Corporate Officer )

**EXECUTED BY THE OWNER** at \_\_\_\_\_, British Columbia, this \_\_\_\_ day of \_\_\_\_\_, 2021.

**1249818 B.C. LTD. (INC. NO. BC1249818)**  
by its authorized signatories:: )  
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\_\_\_\_\_)  
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\_\_\_\_\_)  
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