

CITY OF SURREY

BY-LAW NO. 13969

A by-law to authorize the City of Surrey to enter into a housing agreement
.....

WHEREAS the City of Surrey has received an application to enter into a housing agreement;

AND WHEREAS Section 905 of the Municipal Act, R.S.B.C. 1996 c. 323, as amended (the "*Municipal Act*"), empowers the Council or the City of Surrey to enter into a housing agreement;

NOW, THEREFORE, the Council of the City of Surrey, in open meeting assembled, ENACTS AS FOLLOWS:

1. The City of Surrey is hereby authorized and empowered to enter into a housing agreement in the form attached hereto as Schedule A and forming part of this By-law (the "Housing Agreement") with the following parties:

ADLER INTERNATIONAL INVESTMENTS LIMITED
Suite 524, Unit 22, 2475 Dobbin Road
Westbank, British Columbia
V4T 2E9

and with respect to the following real property:

ALL AND SINGULAR that certain parcel of tract of lands and premises, situate lying and being in the City of Surrey, in the Province of British Columbia and being more particularly known and described as:

Parcel Identifier No. 018-288-232
Lot 2, Section 21, Township 2, New Westminster District, Plan LMP 10698

(13751 - 74 Avenue)

(the "Lands")

2. The Mayor and Clerk are hereby empowered to execute the Housing Agreement on behalf of the City of Surrey.

3. The City of Surrey shall file in the Land Title Office a notice against the Lands in accordance with Section 905 of the *Municipal Act*, that the Lands are subject to the Housing Agreement.

4. This By-law shall be cited for all purposes as "Adler Housing Agreement, Authorization By-law, 2000, No. 13969."

PASSED THREE READINGS ON THE 20th day of March, 2000.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 3rd day of April, 2000.

_____ MAYOR

_____ CLERK

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SCHEDULE A

THIS AGREEMENT made this ___ day of March, 2000.

BETWEEN:

CITY OF SURREY, having its municipal office at 14245 - 56th Avenue, Surrey, British Columbia, V3X 3A2

(hereinafter called the "City")

OF THE FIRST PART

AND:

ADLER INTERNATIONAL INVESTMENTS LTD. a company incorporated under the laws of the Province of British Columbia (Incorporation No. 511266) and having a business address at Suite 524, Unit 22, 2475 Dobbins Road, Westbank, British Columbia, V4T 2E9

(hereinafter called "Adler")

OF THE SECOND PART

WHEREAS:

- A. Adler has entered into an agreement to acquire those certain lands and premises located at 13751 74th Avenue, in the City of Surrey, in the Province of British Columbia, and legally described as:
- Parcel Identifier: 018-288-332
Lot 2 Section 21 Township 2
New Westminster District
Plan LMP 10698.
- B. Adler proposes to develop the Lands with buildings having 92 residential strata lots for qualified occupants;
- C. Adler has requested the City to enact Surrey Zoning By-law, 1993, No. 12000, Amendment By-law, 1999, No. 13816 (the "CD By-law") changing the zoning of the Lands to a comprehensive development zone and it is a condition of the CD By-law that the parties enter into this agreement in order to restrict the occupancy of the dwelling units to be constructed on the Lands as provided in this agreement; and

- D. Section 905 of the *Municipal Act* R.S.B.C. 1996, Chapter 323, as amended, (the "*Municipal Act*") authorizes the City, by by-law, to enter into a housing agreement.

WITNESSETH THAT in consideration of the premises and their respective covenants and agreements hereinafter set out, the parties hereto covenant and agree each with the other as follows:

I DEFINED TERMS AND SCHEDULES

- 1.1 In and for the purposes of this Agreement, the following terms shall have the following respective meanings:
- (a) "Care-giver" means a person, other than a Spouse of a Qualified Occupant, who resides in a Housing Unit primarily for the purpose of providing ongoing living assistance and care to a Qualified Occupant and "Care-givers" means all persons who qualify as a Care-giver;
 - (b) "Housing Unit" means any single dwelling unit constructed by Adler upon the Lands but does not include a Resident Manager's Housing Unit;
 - (c) "Qualified Occupant" means any person sixty-five (65) years of age or older and "Qualified Occupants" means all persons who qualify as a Qualified Occupant;
 - (d) "Registered Owner of the Lands" means, at any given time, the then registered owner, or if more than one registered owner, the then registered owners of the Lands;
 - (e) "Resident Manager" means a person employed by the Registered Owner of the Lands, or Adler, to manage the Housing Units, who resides in a Resident Manager's Housing Unit and his or her spouse and children;
 - (f) "Resident Manager's Housing Unit" means a Housing Unit occupied by a person employed by the Registered Owner of the Lands, or Adler, to manage the Housing Units and his or her spouse and children;
 - (g) "Spouse of a Qualified Occupant" means a person living in a spousal relationship with a Qualified Occupant and includes a person who was the spouse of a Qualified Occupant who resided in a Housing Unit at the time of the Qualified Occupant's death and "Spouses of a Qualified Occupants" means all persons who qualify as a Spouse of a Qualified Occupant;
 - (h) "Term" shall mean the period commencing on the date of this agreement and continuing in full force and effect in perpetuity; and
 - (i) "this Agreement" means this housing agreement and any amendments or modifications of same.

- 1.2 The captions, section numbers and article numbers appearing in this Agreement are inserted for convenience of reference and shall in no way define, limit, construe or describe the scope or intent of this Agreement or in any way affect this Agreement.
- 1.3 Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and words importing persons shall include firms and corporations and vice versa.
- 1.4 Unless otherwise stated, a reference in this Agreement to a numbered or lettered article, section, paragraph or clause refers to the article, section, paragraph or clause bearing that number or letter in this Agreement.
- 1.5 The words "hereof", "herein", "hereunder", and similar expressions used in any section, paragraph or clause of this Agreement shall relate to the whole of this Agreement and not to that section, paragraph or clause only unless otherwise expressly provided.

II OCCUPANCY OF UNITS RESTRICTED TO QUALIFIED OCCUPANTS

2. During the Term no Housing Unit other than a Resident Manager's Housing Unit may be occupied by any person who is not a Qualified Occupant, a Spouse of a Qualified Occupant or a Care-giver. The City may from time to time request the Registered Owner of the Lands, or Adler, to provide written proof of compliance with this paragraph and the Registered Owner of the lands, and Adler, agree to provide the City with such proof in a form reasonably satisfactory to the City.
- 2.2 If the Registered Owner of the Lands, or Adler, fail to enforce compliance with the terms and conditions of paragraph 2.1, then it is specifically understood and agreed that the City shall be entitled, but shall not be obliged, to enforce the terms and conditions of Section 2.1. For the purposes of this Agreement, the Registered Owner of the Lands, or Adler, without the need of further authorization, writings or documents, hereby irrevocably appoints the City as its or their agent with respect to the enforcement of this Agreement and with respect to exercising all remedies set out in this Agreement and all other remedies available at law to the Registered Owner of the Lands, or Adler.
- 2.3 Without in any way limiting the provisions of paragraph 2.2 above, the City shall be entitled to charge, and the registered Owner of the Lands and Adler jointly and severally, agree to pay, for each Housing Unit, a monthly penalty equal to the average monthly fair market rental rate for dwelling units of similar size in the City of Surrey as determined from time to time by the British Columbia Housing Corporation, for each month or portion thereof during which a Housing Unit is occupied by a person other than a person or persons qualified to occupy a Housing Unit under the terms of this Agreement, in addition to all other remedies available at law to the City.

III LIABILITY

- 3.1 The Registered Owner of the Lands, Adler, Qualified Occupants, Spouses of Qualified Occupants, Care-givers and Resident Managers will indemnify and save harmless the City and each of its elected officials, board members, officers, directors, employees and agents and their respective administrators, successors and assigns, of and from all claims, demands, actions, loans, 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 any person to comply with the terms and conditions of this Agreement.
- 3.2 Provided the City is in compliance with the terms and conditions of this Agreement, the Registered Owner of the Lands, Adler, Qualified Occupants, Spouses of Qualified Occupants, Care-givers and Resident Managers hereby release and forever discharge the City and each of its elected officials, board members, officers, directors, employees and agents and their respective administrators, successors and assigns, of and from any and all claims, demands, loans, damages, economic loss, costs and liabilities which any of them 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.

IV NOTICES

- 4.1 Any notices or other documents to be given or delivered pursuant to this Agreement will be addressed to the proper party as follows:

- (a) as to the City:

14245 - 56th Avenue
Surrey, British Columbia V3X 3A2

Attention: General Manager of Planning and Development Department

- (b) as to Adler:

Adler International Investments Ltd.
Suite 524, Unit 22, 2475 Dobbin Road
Westbank, British Columbia V4T 2E9

Attention: Wolfgang Lambrecht

or such other address in the Greater Vancouver area as the such party may direct by five (5) business days notice in writing to the other parties. Any notice or other document to be given or delivered pursuant to this Agreement will be sufficiently given or delivered if delivered to the particular party at its address set out or determined in accordance with this paragraph and shall be deemed complete two (2) days after the day of delivery.

It is specifically agreed that for any notice or document to be validly given or delivered pursuant to this Agreement such document or notice shall be delivered and not mailed.

V GENERAL

5.1 Nothing in this Agreement:

- (a) affects or limits any discretion, rights, powers, duties or obligations of the City under any enactment or at common law, including in relation to the use or subdivision of land; or
- (b) relieves the Registered Owner of the Lands, Adler, Qualified Occupants, Spouses of Qualified Occupants, Care-givers and Resident Managers from complying with any enactment, including the City's by-laws, in relation to the use or subdivision of the Lands.

5.2 An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.

5.3 Time is of the essence in this Agreement. If any party waives this requirement, that party may reinstate it by delivering notice to another party.

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

5.5 If a court of competent jurisdiction finds that any part of this Agreement is invalid, illegal or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

5.6 Upon request by the City, the Registered Owner of the Lands, Adler, Qualified Occupants, Spouses of Qualified Occupants, Care-givers or Resident Managers (as the case may be) will promptly do such acts and execute such documents as the City may reasonably require, in the opinion of the City, to give effect to this Agreement.

5.7 This is the entire Agreement between and among the parties concerning the subject matter of this Agreement and there are no warranties, representations, conditions or collateral agreements relating to this Agreement, except as included in this Agreement.

5.8 This Agreement may be enforced by prohibitory and mandatory court order of the Court. In any action to enforce this Agreement, the City shall be entitled to Court costs on a solicitor and own client basis.

5.9 This Agreement shall enure to the benefit of and be binding upon the Owner and its successors and trustees and all parties claiming through them and this Agreement shall enure to the benefit of and be binding upon the City and its successors and assigns. This Agreement

shall charge and run with the Lands and enure to the benefit of and be binding upon the Owners from time to time of the Lands and all parties claiming through such owners and their respective heirs, executors, administrators, trustees and successors. Upon and after subdivision of the Lands by way of strata plan, this Agreement shall charge and run from time to time and all parties claiming through such owners and their respective heirs, executors, administrators, trustees and successors. Upon and after subdivision of the Lands by way of strata plan, this Agreement shall charge and run with the common property and shall enure to the benefit of and be binding upon the Strata Corporation and all parties claiming through the Strata Corporation. Neither the Owner nor the owners from time to time of the Lands and the strata lots shall be liable for any default in the performance or observance of this Agreement occurring after such party ceases to hold an ownership in the Lands or the strata lots.

IN WITNESS WHEREOF Adler International Investments Ltd. and City of Surrey have executed this Agreement under seal by their duly authorized officers as of the reference date of this Agreement.

THE COMMON SEAL OF ADLER)
INTERNATIONAL INVESTMENTS)
LTD. was hereunto affixed in the presence)
of:)
_____)
Authorized Signatory)
_____)
Authorized Signatory)

C/S

THE COMMON SEAL OF CITY OF)
SURREY was hereunto affixed in the)
presence of:)
_____)
Authorized Signatory)
_____)
Authorized Signatory)

C/S

END OF DOCUMENT