

CITY OF SURREY

BY-LAW NO. 15287

A by-law to authorize the City of Surrey to enter into a housing agreement
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WHEREAS the City of Surrey has received an application to enter into a housing agreement;

AND WHEREAS Section 905 of the Local Government Act, R.S.B.C. 1996 c. 323, as amended (the "*Local Government 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:

FLEETWOOD VILLA HOLDINGS LTD. (Inc. No. 672611)
1755 Trimble Street
Vancouver, B.C.
V6R 4J8

and with respect to those certain parcels or tracts 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: 010-467-246
North Half of the North 168 Feet Lot 16 Section 25 Township 2 New Westminister
District Plan 2425

8292 - 160 Street

Parcel Identifier: 002-083-850
The South Half of the North 168 Feet of Lot 16 Section 25 Township 2 New Westminister
District Plan 2425

8282 - 160 Street

Parcel Identifier: 011-326-158
Lot "A" Section 25 Township 2 New Westminster District Plan 8562

8266 - 160 Street

Parcel Identifier: 011-326-174
Lot "B" Section 25 Township 2 New Westminster District Plan 8562

8252- 160 Street

(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 Local Government Act, that the Lands are subject to the Housing Agreement.
4. This By-law shall be cited for all purposes as "Fleetwood Villa Holdings Ltd. Housing Agreement, Authorization By-law, 2004, No. 15287".

PASSED THREE READINGS on the 9th day of February, 2004.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 23rd day of February, 2004.

_____ MAYOR

_____ CLERK

Housing Agreement

THIS AGREEMENT made the 26 day of February, 2004.

BETWEEN:

FLEETWOOD VILLA HOLDINGS LTD.,

(Incorporation No. 672611), a company incorporated under the laws of British Columbia and having an office at 1775 Trimble Street, Vancouver, British Columbia V6R 4J8

("Fleetwood")

OF THE FIRST PART

AND:

CITY OF SURREY,

a Municipal Corporation having its municipal offices at 14245 – 56th Avenue, Surrey, British Columbia, V3X 3A2

(the "City")

OF THE SECOND PART

WHEREAS:

- A. Fleetwood is the registered owner of those certain lands and premises located at 8252/8266/8282/8292 160th Street, in the City of Surrey, in the Province of British Columbia, legally described as:

No PID Number
Lot A
Section 25
Township 2
New Westminster District
Plan BCP _____
(the "Lands")

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- B. Fleetwood proposes to develop the Lands with buildings having 171 Housing Units for Qualified Occupants;
- C. Fleetwood has requested the City to enact Surrey Zoning Bylaw 1993, No. 12000, Amendment By-law 2003, No. 15076 (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 extended care rooms to be constructed on the Lands as provided in this Agreement;
- D. Section 905 of the *Local Government Act*, R.S.B.C. 1996, Chapter 323, as amended, (the "Local Government Act") authorizes the City by by-law to enter into a housing agreement.

NOW THEREFORE in consideration of the premises herein and of the mutual covenants and agreements hereinafter set forth and contained herein and \$1.00 now paid to Fleetwood by the City (the receipt of which is hereby acknowledged), the parties hereto covenant and agree each with the other as follows:

A. DEFINED TERMS

1. In and for the purposes of this Agreement, the following terms shall have the following meanings:

- (a) "Assisted Living Residence" means a multiple-unit residential building containing 45 dwelling units per acre or greater, which is registered as an "Assisted Living Residence" under the *Community Care and Assisted Living Act* S.B.C. 2002, c.75 (the "Community Care and Assisted Living Act").
- (b) "Housing Unit" means any single dwelling room registered as an Assisted Living Residence constructed by Fleetwood upon the Lands;
- (c) "Person with Disability" means a person who, in the written opinion of a medical doctor or registered psychologist, has a significant permanent disability that cannot be significantly permanently improved by medical treatment, and that produces a loss or impairment of physical or mental ability;
- (d) "Qualified Occupant" means:
 - (i) a person who is 70 years of age or older;
 - (ii) a Person with Disability;

- (iii) a person who is employed to manage the Assisted Living Residence, provided only one dwelling unit within the Assisted Living Residence is designated for this type of occupant; and
- (iv) a person who is a companion or spouse of a person in (i), (ii) or (iii) herein, and resides in the same dwelling unit.

(e) "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;

(f) "Term" shall mean the period commencing on the date of this Agreement and continuing in full force and effect in perpetuity; and

(g) "the Agreement" means this Housing Agreement and any amendments or modifications of the same.

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 of intent of this Agreement or in any way affect this Agreement.

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 gender and vice versa, and words importing persons shall include firms and corporations and vice versa.

4. Unless otherwise stated, a reference in this Agreement to a numbered or lettered articles, section, paragraph or clause refers to the article, section, paragraph or clause bearing that number or letter in this Agreement.

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.

B. OCCUPANCY OF HOUSING UNITS RESTRICTED TO QUALIFIED OCCUPANTS

1. During the Term, no Housing Unit may be occupied by any person who is not a Qualified Occupant. The City may from time to time, request the Registered Owner of the Lands or Fleetwood, to provide written proof of compliance with this paragraph and the Registered Owner of the Lands and Fleetwood agree to provide the City with such proof in a form reasonably satisfactory to the City.

C. ASSISTED LIVING RESIDENCE

1. Each Housing Unit shall be continuously registered as an Assisted Living Residence under the Community Care and Assisted Living Act.

D. SUBDIVISION

1. The Lands shall not be further subdivided, including a subdivision by a strata plan.

E. ENFORCEMENT

1. If the Registered Owner of the Lands, or Fleetwood, fails to enforce compliance with the terms and conditions of paragraphs B, C and D, 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 paragraphs B, C and D. For the purpose of this Agreement, the Registered Owner of the Lands, or Fleetwood, without the need for further authorization, writings, or documents, hereby irrevocably appoints the City as its 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 Fleetwood.

2. Without in any way limited the provisions of paragraph E. 1. above, the City shall be entitled to charge, and the Registered Owner of the Lands and Fleetwood, 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.

F. LIABILITY

1. The Registered Owner of the Lands, Fleetwood, and Qualified Occupants 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.

2. Provided the City is in compliance with the terms and conditions of this Agreement, the Registered Owner of the Lands, Fleetwood and Qualified Occupants 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 reason of or arising out of the fact that the Lands are encumbered by and affected by this Agreement.

G. NOTICES

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 Planning and Development Department

(b) as to Fleetwood:

Building A – Unit 101
17802 – 66th Avenue
Surrey, British Columbia V3S 7X1

Attention: Kirk Fisher

Or such other address as 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.

H. GENERAL


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 uses or subdivision of land; or
 - (b) relieves the Registered Owner of the Lands, Fleetwood and Qualified Occupants from complying with any enactment, including the City's By-laws.
- 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.
- 3. Time is of the essence of this Agreement. If any party waives this requirement, that party may reinstate it by delivering notice to the other party.
- 4. This Agreement shall be construed in accordance with and governed by the laws of the Province of British Columbia.
- 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.
- 6. Upon request by the City, the Registered Owner of the Lands, Fleetwood or Qualified Occupants (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.
- 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.
- 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.
- 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. Neither the Registered Owner of the Lands nor Fleetwood 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.

IN WITNESS WHEREOF Fleetwood Villa Holdings Ltd. and the City of Surrey have executed this Agreement under seal of their duly authorized officers as of the reference date of this Agreement.


FLEETWOOD VILLA HOLDINGS LTD.




Authorized Signatory *Mr. Atkinson*

CITY OF SURREY

by its authorized signatories:



Murray Dinwoodie
General Manager
Planning and Development Department



Margaret Jones
City Clerk