

NO. 18-087

HOUSING AGREEMENT (2732 DONCASTER DRIVE) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for rental housing for the lands known as 2732 Doncaster Drive, Victoria, BC.

Under its statutory powers, including section 483 of the *Local Government Act*, the Council of The Corporation of the City of Victoria enacts the following provisions:

Title

- 1** This Bylaw may be cited as the "HOUSING AGREEMENT (2732 DONCASTER DRIVE) BYLAW".

Agreement authorized

- 2** The Mayor and the City Clerk are authorized to execute the Housing Agreement
- (a) substantially in the form attached to this Bylaw as Schedule A;
 - (b) between the City and 1134549 BC Ltd., Inc. No. BC1134549 or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 2732 Doncaster Drive legally described as:
PID 005-577-519
Lot 18, Section 29-30, Victoria District, Plan 7820

READ A FIRST TIME the	20th	day of	September	2018
READ A SECOND TIME the	20th	day of	September	2018
READ A THIRD TIME the	20th	day of	September	2018
ADOPTED on the		day of		2018

CITY CLERK

MAYOR

HOUSING AGREEMENT
(Pursuant to Section 483 of the *Local Government Act*)

AMONG:

THE CORPORATION OF THE CITY OF VICTORIA
#1 Centennial Square
Victoria, B.C. V8W 1P6
(the "City")

OF THE FIRST PART

AND:

1134549 B.C. Ltd.
1626 Garnet Road
Victoria, B.C. V8P 3C8
(as more particularly defined in Article 1.0 below, the "Owner")

OF THE SECOND PART

AND:

First West Credit Union
(Inc. No. FI-156)
(the "Existing Chargeholder")

OF THE THIRD PART

WHEREAS:

- A. Under section 483 of the *Local Government Act* the City may, by bylaw, 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 and beneficial owner in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 2732 Doncaster Drive, and legally known and described as:

PID: 005-577-519
Lot 18, Section 29-30, Victoria District, Plan 7820
(as more particularly defined in Article 1.0 below, the "Lands");
- C. The Owner has applied to the City to rezone the Lands to permit 11 housing units within the Development in accordance with this Agreement.
- D. The City and the Owner wish to enter into this Agreement, as a Housing Agreement pursuant to section 483 of the *Local Government Act*, to secure the agreement of the Owner that all Dwelling Units within the Development on the Lands will be used and held only as rental housing, subject to the terms and conditions set forth herein.

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NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act*, and in consideration of one dollar now paid by the City to each of the Existing Chargeholder and the Owner, and the premises and covenants contained in this agreement (this "**Agreement**"), the parties agree each with the other as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"**Development**" means the new 11 unit building consisting of residential housing and related facilities on the Lands contemplated by the Rezoning Bylaw and all permits issued by the City in respect thereof;

"**Dwelling Units**" means any or all, as the context may require, of the 11 self-contained residential dwelling units within the Development and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise, and "**Dwelling Unit**" means any of such residential dwelling units located on the Lands;

"**Immediate Family**" includes a person's husband, wife, child, mother, father, brother, sister, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece and nephew;

"**Lands**" means that certain parcel of land described in Recital B, and includes any parcel into which some or all of such land is consolidated or subdivided;

"**Non-owner**" means a person other than the Owner and other than a member of the Owner's Immediate Family, who occupies a Dwelling Unit for residential purposes;

"**Occupancy Permit**" means the first occupancy permit issued by the City for the Development;

"**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 8.3;

"**Rezoning Bylaw**" means the rezoning bylaw applicable to the Lands resulting from the rezoning application of the Owner described in Recital C;

"**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;

"**Tenancy Agreement**" means a tenancy agreement pursuant to the *Residential Tenancy Act* that is regulated by that Act; and

"**Term**" means the term of this Agreement, which commences on the date as of which it has been executed by all parties to it, and will terminate on the 25th anniversary of the date on which the Occupancy Permit is issued.

1.2 In this Agreement:

- (a) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment; and
- (b) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.

2.0 DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS RENTAL UNITS

2.1 The Owner covenants and agrees that the Dwelling Units shall only be used as rental housing throughout the Term, and for that purpose shall only be occupied by a Non-owner under the terms of a Tenancy Agreement between the Owner and the Non-owner who occupies the Dwelling Unit.

3.0 NO RESTRICTIONS ON RENTALS

3.1 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 Owner of a Dwelling Unit from renting that Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.

3.2 Without limiting the generality of section 3.1, the Owner covenants and agrees that it will not make 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 of any Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.

4.0 REPORTING

4.1 The Owner covenants and agrees to provide to the City's Director of Sustainable Planning and Development (the "**Director**"), on the 1st day of February in each calendar year, a report in writing confirming the following:

- (a) that all Dwelling Units are being rented to Non-owners; and
- (b) that no changes or proposed changes to the Strata Corporation's bylaws have occurred or are planned, respectively, that may affect the terms of this Agreement,

along with such other information as may be requested by the Director from time to time.

4.2 The Owner hereby authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

4.3 The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications of this Agreement and that such consent may be withheld for any reason.

5.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

5.1 Notice of this Agreement (the "**Notice**") will 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 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.

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 PRIORITY AGREEMENT

- 7.1** The Existing Chargeholder, as the registered holder of a charge by way of Mortgage and Assignment of Rents against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA6372458 and CA6372459, 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.

8.0 GENERAL PROVISIONS

- 8.1 NOTICE.** 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,
- (b) on the date of dispatch if delivered by email before 5:00 pm on a regular business day, and otherwise on the next regular business day thereafter, and
- (b) on the date of delivery if hand-delivered,

to the City:

City of Victoria
#1 Centennial Square
Victoria, B.C. V8W 1P6

Attention: Director of Sustainable Planning and Community Development
Fax: 250-361-0386
Email: jtinney@victoria.ca

to the Owner:

1134549 B.C. Ltd.
1626 Garnet Road
Victoria, B.C. V8P 3C8

Attention: John Mullin; Email: jmullin@mdlawcorp.com; or
Cam Pringle; Email: cadillachomes@shaw.ca

If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address/person.

If normal mail service or facsimile service is interrupted by strike, work slowdown, force majeure, or other cause,

- (c) notice sent by the impaired service is considered to be received on the date of delivery, and
- (d) 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.

8.2 TIME. Time is of the essence of this Agreement.

8.3 BINDING EFFECT. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees. In accordance with section 483(6) of the *Local Government Act*, this Agreement and all obligations hereunder is 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.

8.4 WAIVER. 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.

8.5 HEADINGS. The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

8.6 LANGUAGE. Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

8.7 EQUITABLE REMEDIES. The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement

8.8 CUMULATIVE REMEDIES. No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

- 8.9 **ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 8.10 **FURTHER ASSURANCES.** Each of the parties will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.
- 8.11 **AMENDMENT.** 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.
- 8.12 **LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 8.13 **NO DEROGATION FROM STATUTORY AUTHORITY.** Nothing in this Agreement shall:
- (a) limit, impair, fetter or derogate from the statutory powers of the City all of which powers may be exercised by the City from time to time and at any time to the fullest extent that the City is enabled and no permissive bylaw enacted by the City, or permit, licence or approval, granted, made or issued thereunder, or pursuant to statute, by the City shall estop, limit or impair the City from relying upon and enforcing this Agreement; or
 - (b) relieves the Owner from complying with any enactment, including the City's bylaws, or any obligation of the Owner under any other agreement with the City.
- 8.14 **JOINT AND SEVERAL.** The Owner, if more than one, are jointly and severally obligated to perform and observe each and every of the covenants, warranties and agreements herein contained by the Owner to be observed and performed.
- 8.15 **COUNTERPARTS.** 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.
- 8.16 **EFFECTIVE DATE.** This Agreement is effective as of the date of the signature of the last party to sign.

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year last below written.

THE CORPORATION OF THE CITY OF VICTORIA by)
its authorized signatories:)

MAYOR Lisa Helps)

CITY CLERK Chris Coates)

Date signed: _____)

1134549 B.C. Ltd.)
by its authorized signatory(ies):)


Print Name: CAM PRINGLE)

Print Name: _____)

Date signed: June 25, 2018)

First West Credit Union)
by its authorized signatory(ies):)

Print Name: _____)

Print Name: _____)

Date signed: _____)

IN WITNESS WHEREOF the parties hereto have set their hands and seals as of the day and year last below written.

THE CORPORATION OF THE CITY OF VICTORIA by)
its authorized signatories:)

MAYOR Lisa Helps)

CITY CLERK Chris Coates)

Date signed: _____)


1134549 B.C. Ltd.)
by its authorized signatory(ies):)


Print Name: CAM PRINGLE)

Print Name: _____)

Date signed: June 25, 2018)

First West Credit Union)
by its authorized signatory(ies):)

 **Dean Killam**)
Credit Risk Manager, Commercial Credit)
Island Savings)

Print Name: _____)


Print Name: Barb Landygo)

Date signed: JUNE 28, 2018)