

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

1 This Bylaw may be cited as the "HOUSING AGREEMENT (926 AND 932 PANDORA AVENUE) BYLAW (2019)".

2 The Mayor and the City's 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 Kang & Gill Construction Ltd., or other registered owners from time to time of the lands described in subsection (c); and

(c) that applies to the lands known as 210 Gorge Road, Victoria, BC, legally described as:

PID: 004-501-071, Lot A, Suburban Lot 10, Victoria City, Plan 11092

PID: 000-764-281, Lot 1, Suburban Lot 10, Victoria City, Plan 16474

ADOPTED on the _____ day of _____ 2019

MAYOR

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

AMONG:

THE CORPORATION OF THE CITY OF VICTORIA
#1 Centennial Square
Victoria, British Columbia, V8W 1P6
(the "City")

AND:

KANG & GILL CONSTRUCTION LTD.
#4 – 3318 Oak Street
Victoria, British Columbia, V8X 1R1
(as more particularly defined in section 1.1, the "Owner")

AND:

VANCOUVER CITY SAVINGS CREDIT UNION
(Inc. No. F1 97)
(the "Prior Chargeholder")

WHEREAS:

- A. Capitalized terms used in this Agreement, unless otherwise or elsewhere defined or the context otherwise clearly requires, will have the respective meanings ascribed to them in section 1.1;
- B. 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*;
- C. 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 926 and 932 Pandora Avenue, legally known and described as:

Parcel Identifier: 004-501-071
Lot A, Suburban Lot 10, Victoria City, Plan 11092, and

Parcel Identifier: 000-764-281
Lot 1, Suburban Lot 10, Victoria City, Plan 16474

(as more particularly defined in section 1.1, the "Lands");

- D. The Owner has applied to the City to rezone the Lands to permit it to build an eleven (11) storey building containing residential and commercial uses;

- E. The Owner has agreed that not less than ten percent (10%) of the residential units, being fifteen (15) in total, will be secured as Below Market Housing Units, not less than five (5) of which will have two (2) bedrooms and not less than two (2) of which will have three (3) bedrooms; and
- F. 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 Below Market Housing 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.

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, the parties agree each with the other as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions. In this Agreement:

"Agreement" means this Housing Agreement, including the foregoing Recitals and all Schedules hereto;

"Appraised Market Rent" means the Rent payable by the occupant(s) of a market Rental Housing unit as calculated by a licensed real estate appraiser, independent of the Owner and approved by the City;

"Below Market Housing Unit" means those units expressly identified, to the satisfaction of the Director, on the construction drawings for the Development prior to the issuance of a building permit by the City;

"Development" means the new mixed-use eleven (11) storey building on the Lands authorized and contemplated by the Rezoning Bylaw and all permits issued by the City in respect thereof;

"Director" means the City's Director of Sustainable Planning and Development or his authorized nominee;

"Land Title Act" means the Land Title Act, R.S.B.C. 1996, c.250;

"Land Title Office" means the Land Title Office in Victoria, British Columbia;

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

"Local Government Act" means the Local Government Act, R.S.B.C 2015., c. 1;

"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 8.2;

"Related Person" means, where the registered or beneficial owner of the applicable Below Market Housing Unit is:

- (a) a corporation (as that term is defined in the *Business Corporations Act* (British Columbia)), then a Related Person is
 - (i) an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - (ii) the spouse, child, mother, father, brother, sister, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece and nephew of any such officer, director or shareholder; and
- (b) an individual, then a Related Person is the spouse, child, mother, father, brother, sister, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece and nephew of such individual;

"Rent" means the monthly amount payable by the occupant(s) of a Rental Housing unit to the owner of that unit as a condition of occupancy;

"Rental Housing" means a residential unit which is not occupied by the registered or beneficial owner of the same or by a Related Person, but which is made available by such owner for use as rental accommodation in accordance with this Agreement, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto, including, without limitation, residential tenancy and human rights legislation in British Columbia;

"Residential Tenancy Act" means the Residential Tenancy Act, S.B.C. 2002, c. 78;

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

"Strata Plan" means a strata plan filed in respect of the Lands or any subdivided portion thereof pursuant to the *Strata Property Act*;

"Strata Property Act" means the Strata Property Act, S.B.C. 1998, c. 43;

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

1.2 Interpretation

In this Agreement:

Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.

Legislation. Reference to any enactment includes any regulations, orders or directives

made under the authority of that enactment, and is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.

Law Applicable. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

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.

Party. Any reference to a party hereto will be deemed to include the heirs, executors, administrators, successors, permitted assigns, employees, servants, agents, officers, contractors, licensees and invitees of such party wherever the context so permits or requires.

Time. Time is of the essence of this Agreement.

2.0 RENTAL RESTRICTIONS APPLICABLE TO THE DEVELOPMENT

2.1 No Rental Restrictions. The Owner covenants and agrees that it will 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 any of the residential units in the Development from being used and occupied as Rental Housing.

2.2 Strata Bylaws. Without limiting the generality of section 2.1, 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 residential unit in the Development from being used and occupied as Rental Housing.

2.3 Appraised Market Rent. The Owner will determine, and inform the City of, the Appraised Market Rent for each Below Market Housing Unit:

- (a) prior to renting any Below Market Housing Unit for the first time;
- (b) thereafter, as of each one year anniversary of the first appraisal; and/or
- (c) as of any other time that the City may request.

2.4 Below Market Housing Units. The Owner covenants and agrees that:

- (a) the Rent charged by the Owner for each Below Market Housing Unit will at all times be at least fifteen percent (15%) below the Appraised Market Rent for a comparable unit in Victoria;
- (b) the Development will contain not less than fifteen (15) Below Market Housing Units, of which not less than five (5) will have two (2) bedrooms and not less than two (2) will have three (3) bedrooms;
- (c) no occupant of any Below Market Housing Unit will be a Related Person; and
- (d) the terms and conditions of occupancy of each Below Market Housing Unit will be subject to a Tenancy Agreement entered into between the Owner and the

tenant(s).

3.0 REPORTING

3.1 The Owner covenants and agrees to provide to the Director, within thirty (30) days of the Director's written request, a report in writing:

- (a) outlining the rental and occupancy status of each of the Below Market Housing Units during the time period stipulated by the Director;
- (b) specifying the amount of rent charged for each Below Market Housing Unit and the Appraised Market Rent for each such Unit during the same period of time; and
- (c) confirming that all requirements of this Agreement have been and are being complied with by the Owner and the Development,

together with such other information as may be requested by the Director.

3.2 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.

4.0 SUBDIVISION

4.1 **Subdivision Generally.** If the Lands are subdivided at any time hereafter either under the provisions of the *Land Title Act* or under the *Strata Property Act*, or under other similar legislation enacted from time to time, then upon the deposit of a plan of subdivision, a Strata Plan, or similar plan as the case may be, subject to section 4.2:

- (a) the rights and benefits of this Agreement herein granted will be annexed to and run with each of the new parcels, lots or other subdivided parcels and areas so created; and
- (b) the burdens, obligations, agreements and covenants contained in this Agreement will continue to be noted on each of the new parcels, lots or other subdivided parcels and areas so created.

4.2 **Subdivision by Strata Plan.** If the Lands, or any portion thereof, are subdivided by a Strata Plan:

- (a) the existence of this Agreement and the City bylaw authorizing and enacting it will be noted on the title of each individual strata lot and noted on the common property sheet; and
- (b) as contemplated by section 2.2, the strata corporation's bylaws will not contain any provision that restricts any residential unit in the Development from being used and occupied as Rental Housing.

provided that, if the Lands are first subdivided by air space plan and then one or more of these parcels are further subdivided by Strata Plan, the easements and covenants registered concurrently with the air space plan may designate the air space parcel or the remainder, and therefore the strata corporation, responsible to perform and observe the Owner's covenants in this Agreement.

5.0 RESTRICTIONS ON TRANSFER OF TITLE

- 5.1** Except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, or a mortgage charging title to one or more of the Below Marking Housing Units and ranking subsequent in priority to this Agreement, the Owner covenants and agrees that it will not suffer, cause or permit, beneficial or registered title to any Below Market Housing Unit to be sold or otherwise transferred unless title to every Below Market Housing Unit is sold or otherwise transferred together and as a block to the same owner.

6.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- 6.1** 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.
- 6.2** The Owner will, after execution hereof by it at the expense of the Owner, do or cause to be done all acts necessary to grant priority to the Notice over all charges and encumbrances which are registered, or pending registration, in the Land Title Office against the title to the Lands, save and except those as have been specifically approved in writing by the City or have been granted in favour of the City.

7.0 INDEMNITY AND RELEASE

- 7.1** **Indemnity.** 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.
- 7.2** **Release.** 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.

8.0 PRIOR CHARGEHOLDERS PRIORITY AGREEMENTS

- 8.1** The Prior Chargeholder, Vancouver City Savings Credit Union, as the registered holder of charges by way of a Mortgage and Assignment of Rents registered against title to the Lands in the Land Title Office under numbers CA5669295 and CA5669296 (the "Prior Charges"), 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 Prior Charges in the same manner and to the same effect as if Notice had been filed prior to the Prior Charges.

9.0 GENERAL PROVISIONS

9.1 Notice. If sent as follows, notice under this Agreement is considered to be received:

- (a) thirty-six (36) hours after the time of its mailing (by registered mail),
- (b) on the date of dispatch if delivered by email or fax 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,

if to the City, addressed as follows:

City of Victoria
 #1 Centennial Square
 Victoria, British Columbia
 V8W 1P6

Attention: City Clerk
 Fax: 250-361-0348
 Email: ccoates@victoria.ca

if to the Owner, addressed as follows:

Kang & Gill Construction Ltd.
 #4 – 3318 Oak Street
 Victoria, British Columbia
 V8X 1R1

Attention: President
 Fax: 250-590-8086
 Email: sales@kangandgill.com

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.

9.2 Enurement. 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.

- 9.3 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.
- 9.4 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
- 9.5 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.
- 9.6 Entire Agreement.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 9.7 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.

The Owner will, if requested by the City, after commencement of construction of improvements on the Lands execute an amendment to this Agreement to amend the definition of "Below Market Housing Unit" so that the definition specifically identifies the units by unit number or strata lot number.

- 9.8 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; provided; however, that the Owner acknowledges and agrees 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.
- 9.9 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) relieve 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.
- 9.10 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.
- 9.11 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.

9.12 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: _____

KANG & GILL CONSTRUCTION LTD.

by its authorized signatory(ies):

TS Kang
Print Name: _____

Tejbir S. Kang
Print Name: _____

Date signed: February 22, 2019

VANCOUVER CITY SAVINGS CREDIT UNION by its authorized signatory(ies):

[Signature]
Print Name: _____

Shelley Cabico
Loan Security Coordinator
Community Business Administration
Print Name: _____

Date signed: February 24, 2019

[Signature]
Katie M. McGowan
A Commissioner for Taking
Affidavits for British Columbia
Vancouver City Savings Credit Union
6th Floor, 183 Terminal Avenue
Vancouver, B.C. V6A 4G2
Phone: 604-877-6565
Expiry Date: June 30, 2019
As to ALL signatures