

NO. 19-011

**HOUSING AGREEMENT (224 SUPERIOR STREET) 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 224 Superior Street, Victoria, BC.

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:

**Title**

- 1      This Bylaw may be cited as the "HOUSING AGREEMENT (224 SUPERIOR STREET) BYLAW (2019)".**

**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 Albion House Ltd. (Inc. No. BC0724479), Donald James Halton and Fernando Alejandro Garcia Vasquez or other registered owners from time to time of the lands described in subsection (c); and
  - (c)      that applies to the lands known as 224 Superior Street, Victoria, BC, legally described as:  
  
PID: 003-642-305  
Legal Description: Lot 1937, Victoria City  
  
PID: 003-642-313  
Legal Description: Lot 1938, Victoria City

READ A FIRST TIME the                      **25<sup>th</sup>**      day of                      **April**                      2019

READ A SECOND TIME the                      **25<sup>th</sup>**      day of                      **April**                      2019

READ A THIRD TIME the                      **25<sup>th</sup>**      day of                      **April**                      2019

ADOPTED on the                                      day of                                      2019

CITY CLERK

MAYOR

## HOUSING AGREEMENT

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

BETWEEN:

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

OF THE FIRST PART

AND:

DONALD JAMES HALTON,  
FERNANDO ALEJANDRO GARCÍA VAZQUEZ  
and ALBION HOUSE LTD.  
224 Superior Street  
Victoria, B.C.  
V8V 1T3  
(collectively the "Owner")

OF THE SECOND PART

AND:

FIRST ACCREDIT MORTGAGE CORP.  
(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 owner in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 224 Superior Street, Victoria, BC, V8V 1T3 and legally described as:  
  
LOT 1937, VICTORIA CITY (PID: 003-642-305)  
LOT 1938, VICTORIA CITY (PID: 003-642-313)  
(collectively, the "Lands");
- C. The Owner applied to rezone the Lands and the City conditionally approved such application subject to a number of conditions, including that the Owner and the Existing Chargeholder enter into this Agreement with the City;
- D. Some of the Dwelling Units (hereinafter defined) are intended to be stratified and therefore will be subject to the *Strata Property Act* (British Columbia) and the bylaws of the Strata

Corporation, but the intent of this Housing Agreement is to ensure the perpetual availability of rental units (in addition to owner-occupied units);

- E. 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 establish the terms and conditions regarding the occupancy of the residential units identified in this Housing Agreement.

**NOW 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 agree each with the other as follows:

## 1.0 Definitions

### 1.1 In this Agreement:

**"Development"** means the proposed conversion of the Existing Building to include four Dwelling Units which will be subdivided by strata plan; the construction of the New Building; and the subsequent subdivision of the Lands into two separate legal lots on each of which one of those two buildings will be located.

**"Dwelling Unit"** means a self-contained residential dwelling unit within a building located on the Lands, and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise.

**"Dwelling Units"** means collectively all of such residential dwelling units located on the Lands.

**"Existing Building"** means the building existing on the Lands as of the date of execution of this Agreement by all parties, which building is known as the Albion House Bed and Breakfast.

**"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.

**"New Building"** means the new residential building intended to be built on the Lands adjacent to the Existing Building as part of the Development.

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

**"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 7.3.

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

**"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.

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 No Restrictions on Rentals**

- 2.1 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.
- 2.2 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 Dwelling Unit to a Non-owner under the terms of a Tenancy Agreement.
- 2.3 For certainty, if the Lands or the Development on the Lands are subdivided under the *Strata Property Act*, the Dwelling Units within the Development may be occupied by the Owners of the strata lots.

**3.0 Reporting**

- 3.1 The Owner covenants and agrees to provide to the City, upon written request from the City's Director of Sustainability Planning and Community Development, a report in writing confirming:
  - (a) the number, type and location by suite or strata lot number, of Dwelling Units that are being rented to Non-owners; and
  - (b) any changes or proposed changes to the Strata Corporation's bylaws that may affect the terms of this Agreement.
- 3.2 The Owner covenants and agrees:
  - (a) to exercise its voting rights in the Strata Corporation against the passage of any bylaws that would restrict the availability for rental of any Dwelling Unit under the terms of a Tenancy Agreement unless this Agreement is amended; and
  - (b) to notify the City of any proposed amendments to its strata bylaws.
- 3.3 The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications to this Agreement and that such consent may be withheld for any reason.



#### 4.0 Notice to be Registered in Land Title Office

- 4.1 Notice of this Agreement ("**Notice**") will be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 483(5) 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.
- 4.2 It is agreed and understood that if the Lands are subdivided at any time after this Agreement is entered into, such that the New Building is located on a separate legal lot (hereinafter referred to as "**Lot 1**") from the lot on which the Existing Building is located, the City will file a release of the Notice from Lot 1 within a reasonable time after such subdivision.

#### 5.0 Liability

- 5.1 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.
- 5.2 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.

#### 6.0 Priority Agreement

- 6.1 The Existing Chargeholder, as the registered holder of charges by way of mortgages registered under number CA7395064 and assignment of rents registered number CA7395065 (collectively, the "**Existing Charges**") against title to the Lands in the Land Title Office at Victoria, British Columbia, 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 Existing Charges in the same manner and to the same effect as if Notice had been filed prior to the Existing Charges.

#### 7.0 General Provisions

##### Notice

- 7.1 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), and
  - (b) on the date of delivery if hand-delivered,

to the City:

City of Victoria  
#1 Centennial Square  
Victoria, BC V8W 1P6

Attention: Director of Sustainability Planning and Community  
Development

to the Owner:

Donald James Halton, Fernando Alejandro García Vazquez and Albion  
House Ltd.  
224 Superior Street  
Victoria, BC V8V 1T3

or upon registration of a strata plan for the Lands, to the Strata Corporation, and  
to the Owner of any Dwelling Unit that is subject to the restrictions under section  
2.1.

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

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

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

#### Time

- 7.2 Time is to be the essence of this Agreement.

#### Binding Effect

- 7.3 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.

#### Waiver

- 7.4 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.

#### Headings

- 7.5 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.

#### Language

- 7.6 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.

#### Equitable Remedies

- 7.7 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.

#### Cumulative Remedies

- 7.8 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.

#### Entire Agreement

- 7.9 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

#### Further Assurances

- 7.10 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.

#### Amendment

- 7.11 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.

#### Law Applicable

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

#### No Derogation from Statutory Authority

- 7.13 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.

Joint and Several

- 7.14 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.

Counterpart

- 7.15 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.

Effective Date

- 7.16 This Agreement is effective as of the date of the signature of the last party to sign.

**IN WITNESS WHEREOF** the parties have hereunto set their hands as of the dates inscribed at a place within British Columbia:

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

\_\_\_\_\_)  
 MAYOR \_\_\_\_\_ )

\_\_\_\_\_)  
 CITY CLERK \_\_\_\_\_ )

Date signed: \_\_\_\_\_ )



**ALBION HOUSE LTD.**

by its authorized signatory(ies):

Print Name: Don Halton

Print Name: Fernando A. Garcia

Date signed: March 26, 2019

**DONALD JAMES HALTON**

Date signed: MAR 26, 2019

Donna Smith  
Witness

**FERNANDO ALEJANDRO  
GARCIA VAZQUEZ**

Date signed: Mar 26, 2019

[Signature]  
Witness

**FIRST ACCREDIT MORTGAGE CORP.**  
by its authorized signatory(ies):

Print Name: Chris Pahl

Print Name: \_\_\_\_\_

Date signed: March 26, 2019