NO. 19-028

HOUSING AGREEMENT (409/411 GOVERNMENT 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 409/411 Government 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 (409/411 GOVERNMENT 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 Craig Darwin Harvey-McKean, Elizabeth L'lyn Richards and Elizabeth Linda Richards, or other registered owners from time to time of the lands described in subsection (c); and

(c) that applies to the lands known as 409/411 Government Street, Victoria, BC, legally described as:

017-803-519, Lot A of Lots 1801 and 1802, Victoria City, Plan VIP54367

READ A FIRST TIME the	day of	2019
READ A SECOND TIME the	day of	2019
READ A THIRD TIME the	day of	2019
ADOPTED on the	day of	2019

CITY CLERK MAYOR

Schedule "A"

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

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA
#1 Centennial Square
Victoria, British Columbia V8W 1P6

(the "**City**")

OF THE FIRST PART

AND:

CRAIG DARWIN HARVEY-MCKEAN
ELIZABETH L`LYN RICHARDS
411 Government Street
Victoria, British Columbia V8V 2L4
As to an undivided ½ interest as Joint Tenants

and

ELIZABETH LINDA RICHARDS
409 Government Street
Victoria, British Columbia V8V 2L4
As to an undivided ½ interest

(collectively, the "**Owner**")

OF THE SECOND PART

AND:

SCOTIA MORTGAGE CORPORATION
100 Aldersmith Place
Victoria, British Columbia V9A 7M8

(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 409/411 Government Street, Victoria, British Columbia and legally described as:

Parcel Identifier: 017-803-519
Lot A, of Lots 1801 and 1802, Victoria City, Plan VIP54367

(the "**Lands**").

C. The Owner has applied to the City to convert the existing building to two (2) strata units as permitted under the current zoning designation of the Lands to permit two (2) 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 one (1) of the Dwelling Units within the Development on the Lands will be used and held only as rental housing for a period of five (5) years.

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act*, and in consideration of One Dollar ($1.00) and the premises and covenants contained in this agreement (the "**Agreement**"), the parties agree each with the other as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

"**Development**" means the conversion of a two (2) unit existing residential building into two strata units located on the Lands;

"**Dwelling Units**" means any or all, as the context may require, of the two (2) 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;

"**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;

"**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;

"**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; and

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

"**Restricted Period**" means the period of five (5) years commencing on the date of this Agreement;

"**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 DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS RENTAL UNITS

2.1 The Owner covenants and agrees that for and during the Restricted Period, one (1) of the Dwelling Units shall only be used as rental housing, 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 during the Restricted Period.

3.0 NO RESTRICTIONS ON RENTALS

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

(a) one (1) of the Dwelling Units are being rented to Non-owners or are vacant;

(b) all other requirements of this Agreement are being compiled with by the Owner and the Development,

together 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.

5.2 Upon the expiration of the Restricted Period, the City will grant a full release and discharge of the Notice registrable in the Kamloops Land Title Office, at the request and expense of the Owner.

6.0 LIABILITY

6.1 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.

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 a Mortgage against the Lands, which said charge is registered in the Land Title Office at Victoria, British Columbia, under number FB364086, 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, and

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

to the City:

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

Attention: Director of Sustainable Planning and
Community Development
Fax: 250-361-0386

to the Owner:

Craig Darwin Harvey-Mckean
Elizabeth L`Lyn Richards
411 Government Street
Victoria, British Columbia V8V 2L4

and

Elizabeth Linda Richards
409 Government Street
Victoria, British Columbia V8V 2L4

Attention: Craig Harvey-McKean
Email: cpo2hm@gmail.com

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 slowdown, force majeure, or other cause,

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

(c) 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:

SIGNED, SEALED & DELIVERED in the presence of:

Signature

Print Name

Address

Occupation

Witness only
No legal advice sought or given

Date signed: May 8, 2019

Elizabeth Linda Richards

Ryszard W. Wilinski
Barrister Solicitor Notary Public
Province of British Columbia Canada
318 Cook St. Victoria, BC V8V 3X6
(250) 385-4544

SIGNED, SEALED & DELIVERED
in the presence of:

Signature

DAVID Yeldon-Thomson
Print Name

17 Manchester st Stittsville On
Address

Admin Servant
Occupation

Date signed: 03 May 2019

Craig Darwin Harvey-McKean

Elizabeth L'Lyn Richards

Scotia Mortgage Corporation,
by its authorized signatory(ies):

Print Name: _____

Print Name: _____

Date signed: _____

SIGNED, SEALED & DELIVERED
In the presence of:

Signature

Print Name

Address

Occupation

Date signed: 02 May 2019

Craig Darwin Harvey-McKean

Elizabeth Lyn Richards

Scotia Mortgage Corporation,
by its authorized signatory(ies):

Print Name: Linda Winter
Mortgage Servicing Officer
Central Mortgage Unit

Print Name:

Date signed:

Rhonda Gascho
Mortgage Servicing Officer
Central Mortgage Unit

Denyse Andrea Griffin, Notary Public
10 Wright Blvd.,
Stratford, Ontario N4Z 1H3
519-271-9583 ext 83806
(As to Both Signatures)