

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 (210 GORGE ROAD) 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 The Victoria Cool Aid Society 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 East, Victoria, BC, legally described as PID: 000-947-130, Lot 5, Section 10, Victoria District, Plan 389.

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, B.C. V8W 1P6
(the "City")

OF THE FIRST PART

AND:

THE VICTORIA COOL AID SOCIETY (Inc. No. S-0012694)
102-749 Pandora Avenue
Victoria, B.C. V8W 1N9
(as more particularly defined in section 1.1, the "Owner")

OF THE SECOND PART

AND:

MCAP FINANCIAL CORPORATION ("MCAP")
(Inc. No. A0062340)

OF THE THIRD PART

AND:

PROVINCIAL RENTAL HOUSING CORPORATION ("PRHC")
(Inc. No. BC0052129)

OF THE FOURTH PART

AND:

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION
(**"BCHMC"**)

OF THE FIFTH PART

(BCHMC, MCAP and PRHC together referred to as the "Existing Chargeholders")

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 210 Gorge Road East, and legally known and described as:

PID: 000-947-130
 Lot 5, Section 10, Victoria District, Plan 389
 (as more particularly defined in section 1.1, the "Lands");

- D. The Owner has applied to the City to rezone the Lands to permit 72 housing units within the Development in accordance with this Agreement;
- E. The Owner has agreed that 8 of those units will be Low Income Housing Units, 34 will be Moderate Income Housing Units and the remaining 30 will be Shelter Rate Housing Units;
- 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 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;

"**BC Housing**" means the British Columbia Housing and Management Commission;

"**CMHC**" means the Canada Mortgage and Housing Corporation;

"**Development**" means the new building on the Lands containing 72 Housing Units and related facilities 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;

"**HILs**" means the annual Housing Income Limits that are determined from time to time by BC Housing and that apply to a particular Low Income Housing Unit, for example whether the Low Income Housing Unit is a bachelor, a 1 bedroom or a 2 bedroom Housing Unit. For Victoria for 2018 the HILs rates are \$34,500 for a bachelor unit, \$39,800 for a 1 bedroom unit, and \$51,700 for a 2 bedroom unit;

"**Housing Units**" means any or all, as the context may require, of the 72 self-contained rental housing units within the Development and includes any housing unit that is developed on the Lands in future, whether as part of the Development or otherwise, and "**Housing Unit**" means any of such rental housing units;

"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;

"Income Assistance" means financial assistance provided for a person in financial need who has no other resources and/or meets other specified criteria, which Assistance is administered and paid by the Government of British Columbia, the Capital Regional District or another similar governmental organization;

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

"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., c. 1;

"Low Income Housing Units" means Housing Units in the Development that are occupied by tenants whose gross annual household income is no more than the HILs rate applicable to the type of unit occupied;

"Moderate Income" means gross collective annual household income that does not exceed the top of the second quintile of household incomes (for 2 persons or more) for Victoria Census Metropolitan Area (CMA) households, based on Statistics Canada "Survey of Labour and Income Dynamics" reports, as determined by BC Housing from time to time. For 2016, this figure was \$70,283. If BC Housing ceases to determine this amount annually, the amount may be increased January 1 of each year according to increases in the Consumer Price Index for all items for Victoria, British Columbia (or, where no such index is published for Victoria, Canada) as published by Statistics Canada and measured from October 1 of the year preceding the last year BC Housing provided the amount to October 1 of each subsequent year. For example, if the last year BC Housing provided the amount was for 2016, then for 2018, the amount would be based on the amount for 2016, multiplied by one plus the change in the Consumer Price Index from October 1, 2015 to October 1, 2017;

"Moderate Income Housing Units" means Housing Units in the Development that are occupied by tenants whose collective gross annual household income is no more than the Moderate Income rate applicable at the time;

"Non-owner" means a person other than the Owner or a member of the Owner's Immediate Family, who occupies a Housing 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;

"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;

"Shelter Rate Housing Units" means Housing Units in the Development that are occupied by persons on Income Assistance;

"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;

"Support Services" means all such on-site support services as the Owner and the Director may agree, including 24/7 staffing; and

"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.

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.

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 Rental Only. The Owner covenants and agrees that the Housing Units shall only be used as

rental housing, and for that purpose the Housing Units 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 Housing Unit.

2.2 Low Income Housing Units. The Owner covenants and agrees that:

- (a) the Development will contain 8 Low Income Housing Units;
- (b) each of the Low Income Housing Units will only be occupied by one or more tenants collectively earning no more than the HILs rate applicable to the type of unit occupied by such tenant(s); and
- (c) the rent payable for each Low Income Housing Unit will be no more than 30% of the HILs rate referred to in section 2.2(b).

2.3 Moderate Income Housing Units. The Owner covenants and agrees that:

- (a) the Development will contain 34 Moderate Income Housing Units;
- (b) each of the Moderate Income Housing Units will only be rented to one or more tenants collectively earning no more than the Moderate Income level applicable at the time; and
- (c) the rent payable for each Moderate Income Housing Unit will be no more than 30% of the Moderate Income level referred to in section 2.3(b).

2.4 Shelter Rate Housing Units. The Owner covenants and agrees that:

- (a) the Development will contain 30 Shelter Rate Units;
- (b) each of the Shelter Rate Housing Units will only be rented to one or more tenants who is/are receiving Income Assistance, and/or such other forms of income assistance as the Owner and the Director may agree;
- (c) the rent charge for each Shelter Rate Housing Unit will be for no more than the applicable monthly Income Assistance shelter allowance, which is \$375 as of the effective date of this Agreement, and as the same may change from time to time; and
- (d) the Owner will ensure that the Development includes and provides on-site Support Services.

3.0 SUBDIVISION

3.1 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 3.2:

- (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.

3.2 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;
- (b) the strata corporation or the strata corporations created by the deposit of a Strata Plan will perform and observe the Owner's covenants in this Agreement, solely at the expense of the strata lot owners; and
- (c) the liability of each strata lot owner for the performance and observance of the Owner's covenants herein will be in proportion to the unit entitlement of his, her or its strata lot as established by the Strata Plan;

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.

4.0 REPORTING

4.1 The Owner covenants and agrees to provide to the Director, on the 1st day of February in each calendar year, a report in writing confirming that:

- (a) all Housing Units are being rented to Non-owners, or are vacant;
- (b) all Low Income Housing Units are being rented to one or more tenant(s) whose collective annual household income does not exceed the HILs rate applicable to the type of unit occupied, or are vacant;
- (c) all Moderate Income Housing Units are being rented to one or more tenant(s) whose collective annual household income does not exceed the Moderate Income level then applicable, or are vacant;
- (d) each Shelter Rate Housing Unit is being rented to one or more tenant(s) that is/are on Income Assistance, or is vacant;
- (e) all agreed Support Services are continuing to be provided; and
- (f) that all other requirements of this Agreement are being complied with by the Owner and the Development,

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

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.

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 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 EXISTING CHARGEHOLDERS PRIORITY AGREEMENTS

- 7.1** MCAP, as the registered holder of charges by way of a Mortgage and Assignment of Rents registered against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA1043620 and CA1043621, 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.
- 7.2** PRHC, as the registered holder of charges by way of a Covenant and Option to Purchase registered against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA1043618 and CA1043619, 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.
- 7.3** BCHMC, as the registered holder of charges by way of a Mortgage and Assignment of Rents registered against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA7393978 and CA7393979, 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) 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
- (c) on the date of delivery if hand-delivered,

if to the City, addressed as follows:

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

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

if to the Owner, addressed as follows:

Kathy Stinson
 #101 – 749 Pandora Avenue
 Victoria, B.C. V8W 1N9

Attention: CEO
 Fax: 250-383-1639
 Email: kstinson@coolaid.org

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,

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

- 8.3 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.
- 8.4 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
- 8.5 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.
- 8.6 ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 8.7 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.
- 8.8 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.
- 8.9 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.
- 8.10 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.
- 8.11 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.

PROVINCIAL RENTAL HOUSING CORPORATION

by its authorized signatory(ies):




 Print Name: Michael G. Flanigan
Provincial Rental Housing Corporation

 Dan Maxwell
 Chief Financial Officer

Print Name: _____

Date signed: May 30, 2019

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

by its authorized signatory(ies):




 Print Name: Michael G. Flanigan
British Columbia Housing Management Commission

 Dan Maxwell
 Chief Financial Officer

Print Name: _____

Date signed: May 30, 2019