

HOUSING AGREEMENT (1712 & 1720 FAIRFIELD ROAD) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement to ensure that future strata bylaws cannot prohibit the rental of units (with the exception of two below market units) for the lands known as 1712 & 1720 Fairfield Road, 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 (1712 & 1720 FAIRFIELD ROAD) 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 1113934 B.C. Ltd., Inc. No. BC1113934 or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 1712 & 1720 Fairfield Road, Victoria, BC, legally described as:
PID: 009-221-832, Lot 4, Section 68, Victoria District, Plan 290, Except the South Easterly 10.84 Feet Thereof As Shown On Said Plan and Except Parcel A (DD 53931I) Thereof; and
PID: 009-221-875, Parcel A (DD 53931I) of Lot 4, Section 68, Victoria District, Plan 290; and
PID: 005-024-994, Lot 6, Section 68, Victoria District, Plan 1834

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

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:

1113934 B.C. LTD.
1839 Fairfield Road
Victoria, BC V8S 1G9

(the "Owner")

OF THE SECOND PART

AND:

COAST CAPITAL SAVINGS FEDERAL CREDIT UNION

formerly **Coast Capital Savings Credit Union**

800-9900 King George Blvd.
Surrey, BC V3T 0K7

(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 1712 Fairfield Road and 1720 Fairfield Road, and legally described as:

PID 009-221-875

Parcel A (DD 539311) of Lot 4 Section 68 Victoria District Plan 290 ("Parcel A")

PID 009-221-832

Lot 4 Section 68 Victoria District Plan 290 except the south easterly 10.84 feet thereof as shown on said plan and except Parcel A (DD 539311) thereof ("Lot 4")

PID 005-024-994

Lot 6 Section 68 Victoria District Plan 1834 ("Lot 6")

(Parcel A, Lot 4 and Lot 6 are collectively known as the "**Lands**");

- C. The Owner wishes to construct the Development on the Lands and as a condition of rezoning, the City has requested this Agreement;
- D. The Dwelling Units 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 certain 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 certain residential units identified in this Housing Agreement.
- F. The City acknowledges that the Capital Regional District and the Owner have or will be entering into the Affordable Housing Agreement pursuant to section 483 of the *Local Government Act*, in which two of the Dwelling Units will be designated as Affordable Units and will be excluded from the restrictions contained in this 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:

"Affordable Housing Agreement" means the covenant under section 219 of the *Land Title Act* and the housing agreement under section 483 of the *Local Government Act* entered or to be into between the Owner and the Capital Regional District setting out, among other things, the procedure to be followed in connection with any sale of an Affordable Unit as well as restrictions on the sale price, use and rental of such affordable housing unit.

"Affordable Unit" means the two (2) strata lots to be designated by the Owner as the strata lots to which the Affordable Housing Agreement applies and to which this Agreement will not apply.

"Development" means the proposed residential strata complex on the Lands to include 20 residential Dwelling Units.

"Dwelling Unit" means a self-contained residential dwelling unit within the building that will be 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, and "Dwelling Units" means collectively all 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 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 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 other than the Affordable Units

- 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.
- 2.4. Notwithstanding the foregoing or anything else contained in this Housing Agreement, the Owner and the City hereby agree that this Housing Agreement is subject to the Affordable Housing Agreement registered or to be registered against title to the Lands, and that the two (2) Affordable Units to be designated by the Owner under the Affordable Housing Agreement, are not subject to the rental restrictions set out in this Housing Agreement. Following registration of a strata plan over title to the Lands in the Victoria Land Title Office to create the Development, and the designation of the two Affordable Units by the Owner, the City covenants and agrees to execute and deliver a discharge of this Housing Agreement from title to the two Affordable Units, provided however that:
 - (a) the City will have no obligation to execute any such discharge until a written request therefor from the Owner has been received by the City, which request will include the form of discharge in registerable form;
 - (b) the cost of preparation of each such discharge and the cost of registration of same in the Land Title Office will be paid by the Owner; and
 - (c) the City will have a reasonable time within which to execute such discharge and return the same to the Owner for registration.

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.

5.0 Liability

- 5.1. 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.
- 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 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 CA5990879 and CA5990880 (as to

Parcel A and Lot 4) and CA7191010 and CA7191011 (as to Lot 6), 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.

7.0 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) or faxing, 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
 Fax: 250-361-0386

to the Owner:

1113934 B.C. Ltd.
 1839 Fairfield Road
 Victoria, BC V8S 1G9
 Attention:

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.

Discharge

7.15. The parties agree that the Owner shall be entitled to a discharge of this Agreement from title to the Lands if the Owner's application to rezone the Lands is not adopted by the City.

Counterpart

7.16. 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

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

[balance of page purposely left blank – signatures on following page]

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:

1113934 B.C. LTD., by its authorized signatory(ies):



Print Name: Ryan Goodman

Print Name:

Date signed: May 9, 2019

COAST CAPITAL SAVINGS FEDERAL CREDIT UNION, by its authorized signatory(ies):

Print Name:

Print Name:

Date signed:

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: _____)

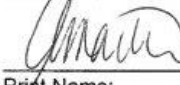
1113934 B.C. LTD., by its authorized)
signatory(ies):)

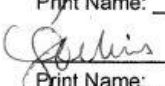
Print Name: _____)

Print Name: _____)

Date signed: _____)

COAST CAPITAL SAVINGS FEDERAL CREDIT)
UNION, by its authorized signatory(ies):)

 ANDREA MARTISCA)
Manager,)
Commercial Lending Operations)
Print Name: #800-9900 King George Blvd.)
Surrey, B.C. V3T 0K7)

 SUSIE COLLINS)
Assistant Manager,)
Commercial Lending Operations)
Print Name: #800-9900 King George Blvd.)
Surrey, B.C. V3T 0K7)

Date signed: May 8 / 2019