

NO. 20-027

HOUSING AGREEMENT (514 AND 518 SUMAS STREET) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize a housing agreement that prohibits restrictions on renting residential units in the development on the lands known as 514 and 518 Sumas 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 (514 AND 518 SUMAS STREET) BYLAW (2020)".**

Agreement authorized

- 2 The Director of Sustainable Planning and Community Development is authorized to execute the Housing Agreement:
- (a) substantially in the form attached to this Bylaw as Schedule A;
 - (b) between the City and Harry John White, Jessica Robin Schaap, and 1137836 B.C. LTD., Inc.No. BC1137836, or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 514 and 518 Sumas Street, Victoria, BC, legally described as:
PID: 007-867-379
Lot 17, Block 1, Section 4, Victoria District, Plan 1134
PID: 005-156-246
Lot 18, Block 1, Section 4, Victoria District, Plan 1134.

READ A FIRST TIME the **13th** day of **February** 2020

READ A SECOND TIME the **13th** day of **February** 2020

READ A THIRD TIME the **13th** day of **February** 2020

ADOPTED on the day of 2020

CITY CLERK

MAYOR

HOUSING AGREEMENT

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

AMONG:

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

AND:

HARRY JOHN WHITE and **JESSICA ROBIN SCHAAP**
both of 2842 Windsor Street, Vancouver, BC V5T 4A3

AND:

1137836 B.C. LTD. (Inc. No. BC1137836), of
2842 Windsor Street, Vancouver, BC V5T 4A3

(Harry John White, Jessica Robin Schaap and 1137836 B.C.
Ltd. collectively, the "**Owners**", and as that term is more particularly
defined in section 1.1)

AND:

COAST CAPITAL SAVINGS CREDIT UNION, (Inc. No. FI 146) of
#800 – 9900 King George Boulevard, Surrey, BC V3T 0K7
(the "**Coast Capital**")

AND:

COASTAL COMMUNITY CREDIT UNION (Inc. No. FI 114), of
752A Goldstream Avenue, Victoria, British Columbia V9B 2X5
(the "**Coastal**")

WHEREAS

- A. Capitalized terms used herein will have the respective meanings ascribed to them in section 1.1 of this Agreement, unless the context otherwise clearly requires or they are elsewhere defined herein.
- 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. Harry John White and Jessica Robin Schaap are the registered owners in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 514 Sumas Street, Victoria, BC V8T 4S3, and legally described as:

PID: 007-867-379
 Lot 17, Block 1, Section 4, Victoria District, Plan 1134
 ("Lot 17")

- D. 1137836 B.C. Ltd. is the registered owner in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 518 Sumas Street, Victoria, BC V8T 4S3, and legally described as:

PID: 005-156-246
 Lot 18, Block 1, Section 4, Victoria District, Plan 1134
 ("Lot 18")

(Lot 17 and Lot 18, collectively and including any parcels into which the same may be consolidated or subdivided, the "**Lands**").

- E. The Owners applied to the City, pursuant to rezoning application no. 00691, to rezone the Lands to increase the density and enable them to construct an attached dwelling containing Dwelling Units, and have agreed to ensure that those Dwelling Units can be occupied as rented accommodation in the future;
- F. 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 rental units (in addition to owner-occupied units); and
- G. The City and the Owners 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 "**Agreement**"), the parties agree each with the other as follows:

1.0 Definitions

1.1 In this Agreement:

"**Business Day**" means Monday to Friday, other than any such day which is a statutory holiday in Victoria, British Columbia;

"**Development**" means the development on the Lands proposed by the Owners and approved by the City, which will include Dwelling Units;

"**Dwelling Units**" means any or all, as the context may require, of the 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, and "**Dwelling Unit**" means any of such residential dwelling units located on the Lands;

"**Immediate Family**" includes a person's spouse, child, grandchild, parent, grandparent,

sibling, niece and nephew, and includes the Immediate Family of the person's spouse;

"Non-owner" means a person other than a Related Person or the Owners;

"Owners" 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;

"Related Person" includes, where the registered or beneficial owner of any part of the Lands or Dwelling Unit, as applicable, is:

- (a) a corporation or society:
 - (i) an officer, director, shareholder, or member of such corporation or society, or of another entity which is a shareholder or member of such corporation or society; or
 - (ii) an Immediate Family of a person to whom paragraph (i) applies, or
- (b) an individual, an Immediate Family of the registered or beneficial owner;

"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 Owners while in control of the strata corporation and subsequently the individual strata lot owners collectively acting as the strata corporation; and

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

2.0 No Restrictions on Rentals

- 2.1 Each of the Owners covenants and agrees that it 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, each of the Owners 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 Each of the Owners covenants and agrees to provide to the City's Director of Sustainable Planning and Development, within thirty (30) days of the Director's written request, 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 Each of 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 Each of the Owners 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 (the "**Notice**") will be registered in the Land Title Office by the City at the cost of the Owners 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.

5.0 Liability

- 5.1 The Owners jointly and severally agree 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 any of the Owners to comply with the terms and conditions of this Agreement, or otherwise that would not have arisen "but for" this Agreement.
- 5.2 The Owners hereby jointly and severally release and forever discharge 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 any of the Owners 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, or otherwise that would not have arisen "but for" this Agreement.

6.0 Priority Agreement

- 6.1 Coast Capital, as the registered holder of a mortgage and assignment of rents which are registered against title to Lot 17 in the Land Title Office at Victoria, British Columbia, under numbers CA5392151 and CA5392152, respectively (the "**Existing Coast Capital 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 Lot 17 is subject to this Agreement pursuant to section

483(5) of the *Local Government Act*, and that this Agreement shall be an encumbrance upon Lot 17 in priority to the Existing Coast Capital Charges in the same manner and to the same effect as if Notice had been filed prior to the Existing Coast Capital Charges.

- 6.2 Coastal, as the registered holder of a mortgage and assignment of rents which are registered against title to Lot 18 in the Land Title Office at Victoria, British Columbia, under numbers CA7020084 and CA7020085 respectively (the "**Existing Coastal 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 Lot 18 is subject to this Agreement pursuant to section 483(5) of the *Local Government Act*, and that this Agreement shall be an encumbrance upon Lot 18 in priority to the Existing Coastal Charges in the same manner and to the same effect as if Notice had been filed prior to the Existing Coastal Charges.

7.0 General Provisions

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

- (a) upon confirmation of delivery by Canada Post if sent by registered mail,
- (b) on the next Business Day if sent by facsimile or email with no notice of failure to deliver being received back by the sender, and
- (c) on the date of delivery if hand-delivered, and

in the case of the City, addressed to:

City of Victoria
 #1 Centennial Square
 Victoria, BC V8W 1P6
Attention: Director of Sustainable Planning and Community Development
 Fax: 250-361-0386
 Email: ahudson@victoria.ca

and in the case of the Owners, addressed to:

2842 Windsor Street
 Vancouver, BC V5T 4A3
 Canada
Attention: Trent Praski
 Email: tpraski@urbanedgeinvestments.com

with a copy to:

Harry John White
 Email: harry.white@capsome.com

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, email 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.

7.2 **Time.** Time is of the essence of this Agreement.

7.3 **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 Owners only during the respective Owner's ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the respective Owner has an interest.

7.4 **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.

7.5 **Headings.** The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and will not affect the construction or interpretation of this Agreement.

7.6 **Language.** Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa, and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

7.7 **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.

7.8 **Equitable Remedies.** Each of the Owners 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.

7.9 **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.

- 7.10 **Entire Agreement.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 7.11 **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.
- 7.12 **Amendment.** This Agreement may be amended from time to time, by consent of each of the Owners and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and each of the Owners.
- 7.13 **Law Applicable.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 7.14 **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 any of the Owners from complying with any enactment, including the City's bylaws, or any obligation of any of the Owners under any other agreement with the City.
- 7.15 **Severability.** If any section, term or provision of this Agreement is found to be partially or wholly illegal or unenforceable, then such sections or parts will be considered to be separate and severable from this Agreement and the remaining sections or parts of this Agreement, as the case may be, will be unaffected thereby and will remain and be enforceable to the fullest extent permitted by law as though the illegal or unenforceable parts or sections had never been included in this Agreement.
- 7.16 **Joint and Several.** The Owners, 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 Owners to be observed and performed.
- 7.17 **Counterparts.** This Agreement may be executed in counterparts and delivered by 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.
- 7.18 **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.


HARRY JOHN WHITE


JESSICA ROBIN SCHAAP

1137836 B.C. LTD.

by its authorized signatory:


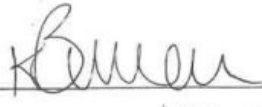

Name: TRENT PRASKI

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

Name:

Name:

COAST CAPITAL SAVINGS CREDIT UNION
by its authorized signatories:

	
Name: _____	_____
Mary Hannesson A Commissioner for Taking Affidavits for British Columbia 2800 - 9900 King George Blvd Surrey, BC V3T 0K7	Kristen Bollman Supervisor Retail Lending Operations 2800 - 9900 King George Blvd. Surrey, BC V3T 0K7
Name: _____	_____

Oct. 31/21

COASTAL COMMUNITY CREDIT UNION
by its authorized signatory:

Derek Lewis, ABL
Regional Manager,
Commercial Services

Name: _____

Dana Nichols, BBA
Business Relationship Manager
Nanaimo Business Centre

Name: _____