

NO. 19-051

HOUSING AGREEMENT (825 FORT 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 819-823, 825 and 827 Fort 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 (825 FORT 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 825 Fort Holdings Ltd., Incorporation No. BC1086111 or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 819-823, 825 and 827 Fort Street, Victoria, BC, legally described as:
PID: 002-425-718 LOT A OF LOTS 276 AND 277, VICTORIA CITY, PLAN 26769

-and-

PID: 009-395-652 PARCEL D (DD 263514I) OF LOTS 277 AND 278, VICTORIA CITY

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:

825 FORT HOLDINGS LTD. (Inc. No. BC1086111)
#225 – 209 Carrall Street
Vancouver, B.C., V6B 2J2
(as more particularly defined in Section 1.1, the "Owner")

OF THE SECOND PART

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 of land regarding the occupancy of the dwelling 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 owner in fee simple of lands in the City of Victoria, British Columbia, with a civic addresses of 819 and 827 Fort Street, and legally known and described, respectively, as:

PID: 009-395-652; Parcel D (DD 263514I) of Lots 277 and 278, Victoria City; and
PID: 002-425-718; Lot A of Lots 276 and 277, Victoria City, Plan 26769
(as more particularly defined in Section 1.1, collectively the "**Lands**");
- D. The Owner has applied to the City to rezone the Lands to permit it to build a ten (10) storey mixed-use building containing commercial uses at grade and residential accommodation on floors above the first floor, along with related amenities and common spaces and facilities (the "**Development**"), all of which residential accommodation the Owner has agreed shall be used only as rental housing in perpetuity; and
- 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 secure the agreement of the Owner that all Dwelling 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.

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NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 483 of the *Local Government Act*, and in consideration of one dollar (\$1.00) now paid by the City to 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, if any, hereto;

"Development" has the meaning ascribed to that term in Recital D;

"Director" means the City's Director of Sustainable Planning and Development or his authorized nominee;

"Effective Date" means the date as of which all parties to this Agreement have executed it;

"Dwelling Units" means the self-contained dwelling units within the Development;

"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 Lands are consolidated or subdivided;

"Local Government Act" means the Local Government Act, R.S.B.C. 2015, c. 1;

"Notice" has the meaning ascribed to that term in Section 5.1;

"Owner" means 825 Fort Holdings Ltd. (Incorporation No. BC 1086111) and all of its assigns, successors and successors in title to the Lands or any part thereof and, if the Lands are subdivided pursuant to the *Strata Property Act* (subject always to section 3.1), then **"Owner"** includes any strata corporation(s) thereby created;

"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;

"Strata Property Act" means the Strata Property Act, S.B.C. 1998, c. 43; 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.

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.

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

Time. Time is of the essence of this Agreement.

2.0 DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS RENTAL UNITS

- 2.1** The Owner covenants and agrees that all of the Dwelling Units shall only be used as rental housing, and for that purpose the Dwelling Units shall only be occupied by persons under the terms of a Tenancy Agreement between the Owner and the person(s) who occupy(ies) the Dwelling Unit.

3.0 SUBDIVISION

- 3.1 Subdivision.** The Owner covenants and agrees that it will not cause or permit the Lands or the Building or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director, which consent may be arbitrarily withheld. Any subdivision of the Lands or the Building or any part thereof, in contravention of the foregoing covenant will be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending subdivision at the Owner's expense.

4.0 REPORTING

- 4.1** 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) all Dwelling Units are being rented, or are vacant; and
 - (b) that all other requirements of this Agreement are being complied with by the Owner and the Development,

together 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 Indemnity.** 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.

- 6.2 Release.** 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 GENERAL PROVISIONS

- 7.1 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),
- (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:

825 Fort Holdings Ltd.
 #225 – 209 Carrall Street
 Vancouver, B.C. V6B 2J2

Attention: Robert Fung
 Fax: 604-669-5574
 Email: rfung@thesalientgroup.com

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.

- 7.2 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.
- 7.3 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.
- 7.4 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.
- 7.5 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.
- 7.6 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.
- 7.7 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.

7.8 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.

7.9 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.

7.10 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.

7.11 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
- (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
- (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and
- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

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:)

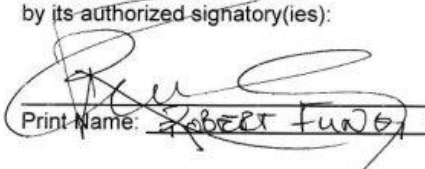
MAYOR: Lisa Helps)

CITY CLERK: Chris Coates)

Date signed: _____)

825 FORT HOLDINGS LTD.)

by its authorized signatory(ies):)


Print Name: ROBERT FUNG)

Print Name: _____)

Date signed: APRIL 4, 2019)