

HOUSING AGREEMENT (1400 VANCOUVER STREET AND 952 JOHNSON STREET)
BYLAW
 A BYLAW OF THE CITY OF VICTORIA

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:

1011359 B.C. LTD., (INC. NO. BC1011359)301 – 1025 Meares Street
Victoria, B.C. V8V 3J7
(the "**Owner**")

OF THE SECOND PART

AND:

CENTURION MORTGAGE CAPITAL CORPORATION**INC. NO. A0093121**(the "**Existing Chargeholder**")

OF THE THIRD PART

WHEREAS:

- A. Capitalized terms not otherwise or elsewhere defined will have the respective meanings ascribed to them in section 1.1 of this Agreement;
- 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 1400 Vancouver Street and 952 Johnson Street, Victoria, B.C. and legally described as:

PID: 004-612-264
Lot A, District Lots 832 833 834 and 835, Victoria City Plan 13740
(the "**Lands**");
- D. The Owner has applied to the City to rezone the Lands to permit the Development, and has agreed that all of the Dwelling Units will be used only as rental housing in perpetuity; and
- E. The City and the Owner therefore 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 will be used and held only as rental housing.

NOW 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 other good and valuable consideration 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;

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

"Development" means the new mixed-use building to be built on the Lands and the restoration, retention and heritage designation of the chapel now located there;

"Director": means the person employed as the City's Director of Sustainable Planning and Community Development (or successor in name or function), and includes any person acting in that capacity and any person acting under his/her authority;

"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;

"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 Owner;

"Notice" has the meaning ascribed to that term in section 6.1;

"Owner" includes a person who acquires an interest in the Lands or any part of the Lands or the Development and is thereby bound by this Agreement, as referred to in section 9.3;

"Related Person" includes, where the registered or beneficial owner 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; 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:

- (a) **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;
- (b) **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.
- (c) **Number.** 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.
- (d) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
- (e) **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.

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

- 2.1** The Owner covenants and agrees that the Dwelling Units shall only be used as rental housing in perpetuity, 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.

3.0 NO SUBDIVISION

- 3.1** The Owner covenants and agrees that the Owner shall not cause or permit the Lands or any part of the Development to be subdivided, whether by strata plan, air space plan or otherwise, without the prior written consent of the City, which consent may be withheld arbitrarily and for any reason.

4.0 AFFORDABLE HOUSING

- 4.1** The Owner covenants and agrees that if Canadian Mortgage and Housing Corporation funding is received for the Development, any cost savings obtained by the Owner as a result shall be used to make a portion of the Dwelling Units more affordable. For greater certainty, this refers to rental housing construction and development cost assistance programs, and does not refer to standard Canadian Mortgage and Housing Corporation

insured loans from private institutions.

- 4.2** The Developer represents and warrants that it will timely and diligently apply for funding support for the Development from the Canadian Mortgage and Housing Corporation rental housing construction and development cost assistance programs available for developments such as the Development.

5.0 REPORTING

- 5.1** The Owner covenants and agrees to provide to the Director, prior to issuance of a building permit for the Development, a report in writing advising if any funding from Canadian Mortgage and Housing Corporation rental housing construction and development cost assistance programs was received for the Development, and if so how any cost savings obtained by the Owner as a result will be used by the Owner to make a portion of the Dwelling Units more affordable. The City agrees that a building permit for the Development will not be withheld if the Developer is unable to obtain any such funding support notwithstanding it having complied with its obligations in Section 4.2, provided that all other preconditions to the issuance of such building permit have been met.

- 5.2** 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 to Non-owners or are vacant;
- (b) all other requirements of this Agreement are being complied with by the Owner and the Development;
- (c) what steps have been, are then being and will thereafter be, taken to make a portion of the Dwelling Units more affordable,

together with such other information as may be requested by the Director from time to time.

- 5.3** 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.
- 5.4** 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.

6.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- 6.1** 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.

7.0 LIABILITY

- 7.1** 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.

- 7.2** 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.

8.0 PRIORITY AGREEMENT

- 8.1** The Existing Chargeholder, as the registered holder of charges by way of a mortgage and assignment of rents (the "**Existing Charges**") which are registered against title to the Lands in the Land Title Office at Victoria, British Columbia, under numbers CA6615077 and CA6615078, respectively, 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, pursuant to Section 483(5) of the *Local Government Act*, the Lands are subject to this Agreement and this Agreement shall be an encumbrance upon the Lands in priority to the Existing Charges in the same manner and to the same effect as if Notice had been filed prior to the Existing Charges.

9.0 GENERAL PROVISIONS

- 9.1 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 and no notice of failure to deliver is received back by the sender; 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 Sustainable Planning and Community Development
Fax: 250-361-0386
Email: AHudson@victoria.ca

to the Owner:

1011359 B.C. Ltd.-
301 – 1025 Meares Street
Victoria, B.C. V8V 3J7

Attention: Daniel Cox
Fax: N/A
Email: danielalexandercox@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, email or facsimile service is interrupted by strike, work slowdown, force majeure, or other cause,

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

9.2 TIME. Time is of the essence of this Agreement.

9.3 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.

9.4 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.

9.5 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

9.6 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.

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

9.8 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.

9.9 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.

9.10 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.

9.11 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.

9.12 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.

9.13 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: _____

1011359 B.C. LTD.
by its authorized signatory(ies):



Daniel A. Cox

Date signed: June 21, 2019

**CENTURION MORTGAGE CAPITAL
CORPORATION**

by its authorized signatory(ies):

Print Name: Stephen Stewart

Print Name: _____

Date signed: July 2 2019