NO. 20-031

HOUSING AGREEMENT (3020 DOUGLAS STREET AND 584 BURNSIDE ROAD EAST) BYLAW

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for affordable rental housing for the lands known as 3020 Douglas Street and 584 Burnside Road East, 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 (3020 DOUGLAS STREET AND 584 BURNSIDE ROAD EAST) 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 The Victoria Cool Aid Society, Inc. No. S0012684 or other registered owners from time to time of the lands described in subsection (c); and

(c) that applies to the lands known as 3020 Douglas Street and 584 Burnside Road East, Victoria, BC, legally described as:

PID: 004-427-262, Lot A, Section 4, Victoria District, Plan 14497

PID: 009-306-625, Lot 4, Section 4, Victoria District, Plan 110 Except that Part in Plans 6903 and 14497.

READ A FIRST TIME the	day of	2020
READ A SECOND TIME the	day of	2020
READ A THIRD TIME the	day of	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
#1 Centennial Square
Victoria, B.C. V8W 1P6
(the "**City**")

OF THE FIRST PART

AND:

THE VICTORIA COOL AID SOCIETY (Inc. No. S-0012684)
102-749 Pandora Avenue
Victoria, B.C. V8W 1N9
(the "**Owner**")

OF THE SECOND PART

AND:

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION
Suite #1701 – 4555 Kingsway,
Burnaby, B.C. V5H 4V8
("**BC Housing**")

OF THE THIRD 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 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, B.C. with the following civic addresses and legal descriptions:

584 Burnside Road East, Victoria B.C.

PID: 009-306-625
LOT 4, SECTION 4, VICTORIA DISTRICT, PLAN 110 EXCEPT THAT PART IN PLANS 6903 AND 14497

3020 Douglas Street, Victoria, B.C.

PID: 004-427-262
LOT A, SECTION 4, VICTORIA DISTRICT, PLAN 14497

D. The Owner has applied to the City to rezone the Lands to permit the Development in accordance with this Agreement;

E. Subject to the adoption of a rezoning bylaw, the Owner intends to subdivide the Development through an air space parcel subdivision and/or by way of stratification whereby the Dwelling Units will be transferred to PRHC and the Non-Profit Units will be retained and operated by the Owner;

F. In anticipation of the air space parcel subdivision and/or stratification, this Housing Agreement applies to the Dwelling Units to be transferred to PRHC and a separate Housing Agreement applies to the Non-Profit Units to be retained and operated by the Owner; and

G. 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 on the Lands will be used and held only as affordable 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 the sum of One Dollar ($1.00) paid by the City to the Owner (the receipt whereof is hereby acknowledged) 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;

"**Development**" means a seven storey mixed use building to be constructed on the Lands and containing 154 residential dwelling units, commercial units on the ground floor, a daycare on the second floor 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 their authorized nominee;

"**Dwelling Units**" means any or all, as the context may require, self-contained residential dwelling units within the Development, except the Non-Profit Units, and 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 except the Non-Profit Units;

"HILs" means the annual Housing Income Limits for the City of Victoria that are determined from time to time by BC Housing and that apply to a particular Low Income Unit, for example depending on whether the Low Income Unit is a Bachelor, 1 Bedroom or 2 Bedroom Dwelling Unit. The parties agree that for 2019 the HILs are: 1 bedroom or less = $42,500, 2 bedroom = $56,000, 3 bedroom = $75,500, and 4+ bedroom = $84,500;

"Immediate Family" includes a person's husband, wife, partner, child, mother, father, brother, sister, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece and nephew;

"***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 Unit**" means a Dwelling Unit that is designated as a low income unit in accordance with Article 4.0 of this Agreement;

"Non-Profit Units" means the 100 self-contained residential dwelling units in the Development to be retained and operated by the Owner;

"**Non-owner**" means a person other than the Owner or a member of the Owner's Immediate Family, who occupies a Dwelling Unit for residential purposes;

"**Notice**" has the meaning ascribed to that term in section 7.1;

"**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 11.2;

"**PRHC**" means Provincial Rental Housing Corporation;

"**Public Housing Body**" means a public housing body as prescribed in the *Residential Tenancy Act* S.B.C. 2002, c. 78;

"**Residency Agreement**" means an agreement, lease, licence, or other right of a Non-owner to occupy a residential unit;

"**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; and

"**Subdivided Parcel**" has the meaning ascribed to that term in section 5.3.

2.0 DWELLING UNITS TO BE RENTED AND USED ONLY AS AFFORDABLE 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 rented by a Non-owner under the terms of a Residency Agreement between the Owner and the Non-owner who occupies the Dwelling Unit.

2.2 The Owner covenants and agrees, in perpetuity, that the Dwelling Units shall only be

rented at affordable rent levels in accordance with this Agreement.

3.0 NO RESTRICTIONS ON RENTALS

3.1 The Owner covenants and agrees, in perpetuity, to refrain from taking any steps, entering into any agreements, or imposing 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 Residency Agreement between the Owner and the Non-owner.

3.2 Without limiting the generality of section 3.1, 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 Residency Agreement between the Owner and the Non-owner.

4.0 LOW INCOME HOUSING

4.1 The Owner covenants and agrees that:

(a) 100% of the Dwelling Units, consisting of at least 54 Dwelling Units, shall be designated as Low Income Units;

(b) the Low Income Units shall be operated by the Owner or a Public Housing Body; and

(c) each of the Low Income Units shall only be rented to a Non-owner or Non-owners under the terms of a Residency Agreement with a combined annual household income that is equal to or less than the HILs that apply to the particular Low Income Unit being rented by such Non-owner or Non-owners. In the event that BC Housing ceases to determine HILs and such determination is not replaced by a similar publication, then the income limit with respect to a Low Income Unit shall be determined by reference to the last published HILs which shall be increased annually by an amount equal to the increase in the CPI commencing January 1 following the year BC Housing ceased determining HILs.

5.0 SUBDIVISION

5.1 **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 5.2:

(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.

5.2 **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 Owner will cause the strata corporation or the strata corporations created by the deposit of a Strata Plan to be obliged to perform and observe the Owner's applicable 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 each strata lot owner and/or the strata corporation, responsible to perform and observe the Owner's covenants in this Agreement.

5.3 **Release of Notice.** For certainty, if the portion of the Lands containing the Development is subdivided and any of the parcels created as a result of such subdivision do not contain any of the Dwelling Units (the "**Subdivided Parcel**"), the owner of such Subdivided Parcel may apply to the City to release the Notice (as defined in section 7.1) from title to the Subdivided Parcel. The City agrees to execute and deliver a release of this Housing Agreement from title to the Subdivided Parcel, provided however that: (a) the City will have no obligation to execute any such release until a written request therefor from the owner of the Subdivided Parcel has been received by the City, which request will include the form of release in registerable form; (b) the cost of preparation of such release 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 release and return the same to the Owner for registration.

6.0 REPORTING

6.1 The Owner covenants and agrees to provide to the Director, within 30 days of the Director's request, a report in writing confirming:

(a) all Dwelling Units are being rented to Non-owners;

(b) each Low Income Unit is being rented in accordance with Article 4.0; and

(c) all other requirements of this Agreement are being complied with by the Owner,

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

6.2 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.

7.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

7.1 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*.

8.0 SUBLEASING AND ASSIGNMENT

8.1 The Owner will not consent to the assignment of an agreement relating to Dwelling Unit or the subletting of a Dwelling Unit without the prior written consent of BC Housing if there is an operator agreement in force with respect to the Dwelling Unit to be assigned or subleased.

9.0 LIABILITY

9.1 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, or otherwise that would not have arisen "but for" this Agreement.

9.2 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, or otherwise that would not have arisen "but for" this Agreement.

10.0 PRIORITY AGREEMENT

10.1 BC Housing, as the registered holder of charges by way of mortgages and assignment of rents registered against the Lands, which said charges are registered in the Land Title Office at Victoria, B.C. under numbers CA5896147, as modified under CA6468339, CA7233346, CA7554362, and CA7554363, respectively, for and in consideration of the sum of One Dollar ($1.00) paid by the City to BC Housing (the receipt whereof is hereby acknowledged), BC Housing 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*, and that this Agreement shall be an encumbrance upon the Lands in priority to the said charge in the same manner and to the same effect as if Notice had been filed prior to the said charge.

11.0 GENERAL PROVISIONS

11.1 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:

The Victoria Cool Aid Society
#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,

(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.

11.2 BINDING EFFECT. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective 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 is binding on 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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.

11.7 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

11.8 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.

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

11.10 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.

11.11 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.

11.12 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.

11.13 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.

11.14 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.

11.15 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.

11.16 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:_____

THE VICTORIA COOL AID SOCIETY
by its authorized signatory(ies):

_____
Print Name: Kathy Stinson CEO

_____
Print Name: W. Eric Pedersen

Date signed: March 4, 2020

11.14 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.

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11.16 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:_____

THE VICTORIA COOL AID SOCIETY
by its authorized signatory(ies):

_____
Print Name: _____

_____
Print Name: _____

Date signed:_____

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION)
by its authorized signatory(ies):)
)
)
_____)
Print Name: Michael G. Flanigan)
)
_____)
Print Name: Stephanie Allen)
Associate Vice President
Strategic Business Operations & Performance
Date signed: February 26, 2020