

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:

1 This Bylaw may be cited as the "HOUSING AGREEMENT (913-929 BURDETT & 914-924 MCCLURE) BYLAW (2020)".

2 The Director of Sustainable Planning and Community Development is authorized to execute the Housing Agreement:

- ## Repeal

- 3 Bylaw No. 07-062, the Housing Agreement (923 & 929 Burdett Avenue and 924 McClure Street) Bylaw is repealed and the agreement authorized by that bylaw is terminated.

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*)

BETWEEN:

THE CORPORATION OF THE CITY OF VICTORIA
#1 Centennial Square
Victoria, British Columbia V8W 1P6

(the "City")

AND:

ST. ANGELA HOLDINGS NO. 2 LTD. (Inc. No. BC0825443)
15 – 1594 Fairfield Road
Victoria, B.C. V8S 5L8

- and -

M.I. VENTURES INC. (Inc. No. BC0858024)
185 – 911 Yates Street, #317
Victoria, B.C. V8V 4Y9

(collectively, the "Owner")

AND:

TERRAPIN MORTGAGE INVESTMENT CORP.
Suite 2200, Four Bentall Centre
1055 Dunsmuir Street, Post Office Box 49214
Vancouver, British Columbia V7X 1K8

(the "Existing Chargeholder")

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. The Owner is the registered owner in fee simple of lands in the City of Victoria, British Columbia, with civic addresses of 913 Burdett Avenue, 929 Burdett Avenue, and 914 McClure Street, and legally described as:

Parcel Identifier 027-551-989
Lot 1, Christ Church Trust Estate, Victoria City, Plan VIP85236

Parcel Identifier 027-552-004
Lot 2, Christ Church Trust Estate, Victoria City, Plan VIP85236

Parcel Identifier 009-332-049
Lot 22, Block 6, Christ Church Trust Estate, Victoria City, Plan 35

(collectively, the "**Lands**").

- D. The Owner has applied to the City to rezone the Lands to permit the development and construction of one hundred and thirty-two (132) residential housing units and related facilities on the Lands in accordance with this Agreement (the "**Development**").
- 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 to provide for sixty (60) years: that sixty-six (66) of the Dwelling Units within the Development on the Lands will be used and held only as rental housing, with twenty-six (26) of those units to be used as assisted living rental units; and that five (5) additional units be affordable rental units.

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:

"Assisted Living Units" means Dwelling Units for Seniors in which regular care or supervision is given by a health care professional as well as assistance with the performance of the personal functions and activities necessary for daily living such as the provision of housekeeping and prepared meals as needed;

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

"CPI" means the All-items Consumer Price Index for Victoria, B.C. published from time to time by Statistics Canada, or its successor in function;

"CPI Increase" means the CPI for January in the calendar year of the proposed rent increase divided by the CPI for January of the immediately preceding calendar year;

"Dwelling Units" means any or all, as the context may require, of the 132 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;

"Median Gross Annual Household Income" means the median gross annual household income for renters in the City of Victoria, as reported in Statistics Canada's most recent Census data, and in the event that Statistics Canada no longer reports median gross annual household income for renters in the City, the median total income of households in the City of Victoria as reported in Statistics Canada's most recent Census data will be used instead;

"Median Household Income Limit" means the maximum annual collective household income for the Dwelling Unit, as determined by making the following calculations and rounding the result to the nearest ten:

- (a) for studio Dwelling Units, Median Gross Annual Household Income x 0.7925, which, for reference purposes only, equated to \$35,000 in 2015,
- (b) for one-bedroom Dwelling Units, Median Gross Annual Household Income x 0.9510, which, for reference purposes only, equated to \$42,000 in 2015, and
- (c) for two-bedroom Dwelling Units, Median Gross Annual Household Income x 1.1774, which, for reference purposes only, equated to \$52,000 in 2015;

"Median Income Unit" means a Dwelling Unit that is designated as a Median Income Unit in accordance with Article 5.0 of this Agreement;

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

"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 12.3;

"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;

"RTA" means the *Residential Tenancy Act*, S.B.C. 2002, c.78, as amended or replaced, from time to time;

"Senior" means a person of the age of fifty-five (55) years or more;

"Tenancy Agreement" means a tenancy agreement pursuant to the RTA that is regulated by that Act; and

"Term" means the period commencing of the date when this Agreement has been duly executed by all parties to it and ending on the sixty (60) year anniversary of the date as of which the final occupancy permit for the Development is issued by the City.

2.0 DWELLING UNITS TO BE OCCUPIED BY SENIORS

2.1 The Owner covenants and agrees that during the Term:

- (a) No Dwelling Unit will be occupied by:
 - (i) a single occupant, unless that occupant is a Senior;
 - (ii) multiple occupants, unless at least one occupant is a Senior, and all other occupants are over the age of majority and either members of the Senior's Immediate Family, or a licensed caregiver; or
 - (iii) any other person.
- (b) If, as of the result of the death of an occupant, there is no Senior permanently residing in a Dwelling Unit, each remaining occupant that is also Immediate Family (a **"Remaining Occupant"**) may continue to occupy that Dwelling Unit until the earlier of the date on which:
 - (i) the Remaining Occupant dies; or
 - (ii) the Remaining Occupant ceases to occupy the Dwelling Unit as his or her permanent residence for a period exceeding sixty (60) days,

and the restrictions described in paragraph 2.1(a) and (b) above will apply to any occupant subsequently occupying the Dwelling Unit.

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

3.1 The Owner covenants and agrees that during the Term, sixty-six (66) of the Dwelling Units shall be designated as rental units (the **"Rental Units"**), and that the Rental Units shall only be used as rental housing, 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.

4.0 ASSISTED LIVING UNITS

4.1 The Owner covenants and agrees that during the Term, twenty-six (26) Rental Units shall be designated as Assisted Living Units, and that each designated Assisted Living Unit shall only be occupied and used as an Assisted Living Unit.

5.0 MEDIAN INCOME HOUSING

5.1 The Owner covenants and agrees that during the Term, five (5) of the Dwelling Units shall be designated as Median Income Units, and that:

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- (a) each designated Median Income Unit shall only be occupied and used as a Median Income Unit;
- (b) none of the designated Median Income Units shall also be designated as a Rental Unit pursuant to Article 3.0;
- (c) each of the studio Median Income Units shall only be occupied by one or more tenants with a combined annual income that is equal to or less than the Median Household Income Limit for studio Dwelling Units, and the monthly rent payable shall be no more than 30% of the combined annual income of the tenant(s) divided by 12, subject to Article 7.0;
- (d) each of the one-bedroom Median Income Units shall only be occupied by one or more tenants with a combined annual income that is equal to or less than the Median Household Income Limit for one-bedroom Dwelling Units, and the monthly rent payable shall be no more than 30% of the combined annual income of the tenant(s) divided by 12, subject to Article 7.0; and
- (e) each of the two-bedroom Median Income Units shall only be occupied by one or more tenants with a combined annual income that is equal to or less than the Median Household Income Limit for two-bedroom Dwelling Units, and the monthly rent payable shall be no more than 30% of the combined annual income of the tenant(s) divided by 12, subject to Article 7.0.

6.0 NO RESTRICTIONS ON RENTALS

- 6.1** The Owner covenants and agrees, in perpetuity, that except as permitted in Articles 2.0-5.0, the Owner will 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 Tenancy Agreement.
- 6.2** Without limiting the generality of section 6.1, 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.

7.0 RENT ADJUSTMENTS

- 7.1** During the term of the tenancy, the rent payable by the tenant(s) of any Median Income Unit may be increased only by the amount permitted under the RTA and any other applicable legislation.
- 7.2** Notwithstanding the RTA, in no case shall the rent for a Median Income Unit in any calendar year exceed the rent for the preceding calendar year multiplied by the CPI Increase.

8.0 REPORTING

- 8.1** The Owner 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 the following:

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- (a) sixty-six (66) Rental Units are being rented to Non-owners;
- (b) twenty-six (26) Rental Units are being rented as Assisted Living Units;
- (c) five (5) Dwelling Units are being rented as Median Income Units; and
- (d) such other information as may be requested by the Director from time to time.

8.2 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.

8.3 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.

9.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

9.1 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.

10.0 LIABILITY

10.1 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.

10.2 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.

11.0 PRIORITY AGREEMENT

11.1 The Existing Chargeholder is the registered holder of charges by way of the following mortgages or charges against the Lands, which are registered in the Land Title Office at Victoria, British Columbia, under registration numbers CA6480313, and CA6480314 (collectively, the "**Existing Charges**"). In consideration of the sum of One (\$1.00) Dollar paid by the City (the receipt whereof is hereby acknowledged), the Existing Chargeholder agrees with the Owner and 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.

12.0 GENERAL PROVISIONS

12.1 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: CommunityPlanning@victoria.ca

and in the case of the Owner, addressed to:

15 – 1594 Fairfield Road
Victoria, BC V8S 5L8

Attention: Christopher Isherwood

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.

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

12.3 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.

- 12.4 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.
- 12.5 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.
- 12.6 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.
- 12.7 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.
- 12.8 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
- 12.9 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.
- 12.10 ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 12.11 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.
- 12.12 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.
- 12.13 LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 12.14 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 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.

12.15 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.

12.16 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.

12.17 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.

12.18 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.

THE CORPORATION OF THE CITY OF
VICTORIA by its authorized signatory:

Karen Hoese, Director of Sustainable Planning
and Community Development

Date signed: _____

ST. ANGELA HOLDINGS NO. 2 LTD.

by its authorized signatory(ies):


Print Name: W. O. Leonard

Michelle Isherwood

Date signed: Jan 30 / 20

M.I. VENTURES INC.

by its authorized signatory(ies):


Print Name: _____

Michelle Sherwood
Print Name: _____

Date signed: Jan 30/20

TERRAPIN MORTGAGE INVESTMENT CORP.


by its authorized signatory(ies):

Print Name: _____

Print Name: _____

Date signed: _____


M.I. VENTURES INC.
by its authorized signatory(ies):


Print Name: _____

Michelle Sherwood
Print Name: _____

Date signed: Jan 30/20

TERRAPIN MORTGAGE INVESTMENT CORP.
by its authorized signatory(ies):


Print Name: MARK DAVIES

Print Name: _____

Date signed: Feb. 5, 2020