

NO. 20-107

HOUSING AGREEMENT (736 PRINCESS AVENUE) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for supportive transitional affordable rental housing for the lands known as 736 Princess Avenue, 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 (736 PRINCESS AVENUE) 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) among the City, The John Howard Society of Victoria and 1224037 B.C. Ltd., Inc. No. BC1224037. or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 736 Princess Avenue, Victoria, BC, legally described as:
PID: 000-249-718 Lot 12, Block B, Section 3, Victoria District, Plan 8.

READ A FIRST TIME the **8th** day of **October** 2020

READ A SECOND TIME the **8th** day of **October** 2020

READ A THIRD TIME the **8th** day of **October** 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**")

AND:

1224037 B.C. LTD. (inc. no. BC1224047)
711 Princess Avenue
Victoria, B.C. V8T 1K5
(the "**Owner**")

AND:

THE JOHN HOWARD SOCIETY OF VICTORIA
2675 Bridge Street
Victoria, B.C. V8T 4Y4
(the "**Society**")

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 a civic address of 736 Princess Avenue, Victoria, B.C. and legally described as:

PID: 000-249-718
Lot 12 Block B Section 3 Victoria District Plan 8
(the "**Lands**").
- D. The Owner and the Society have entered into an agreement for the purchase of the Lands by the Society from the Owner, which will occur after this Agreement is entered into;
- E. The Society has applied to the City to rezone the Lands to permit construction of twenty-eight (28) supportive transitional rental and affordable (for people at very low income levels) housing units within the Development to be owned by a non-profit or government agency, in accordance with this Agreement.
- F. The City, the Owner and the Society wish to enter into this Agreement, as a housing agreement pursuant to section 483 of the *Local Government Act*, to secure the agreement

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of the Society, after it has become the registered owner of the Lands, to provide very low income rental housing, and that all Dwelling Units within the Development on the Lands 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 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:

"Building Permit" means any building permit that may be issued with respect to the Lands after enactment of the Rezoning Bylaw and issuance of the Development Permit, if the Rezoning Bylaw is enacted and the Development Permit is issued;

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

"Development" means the new twenty-eight (28) unit building consisting of residential housing and related facilities on the Lands contemplated by the Rezoning Bylaw and the Development Permit;

"Development Permit" means the development permit with variance issued pursuant to development permit with variance application no. 00065;

"Director of Planning" means the person employed by the City as the Director of the Sustainable Planning and Community Development Department and their successors in function and anyone acting under their respective authority;

"Dwelling Units" means any or all, as the context may require, of the twenty-eight (28) 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;

"Government Agency" means the British Columbia Housing Management Commission, the Canada Mortgage and Housing Corporation, the Capital Region Housing Corporation, a non-profit municipal housing corporation and any other organization of a similar nature approved by the Director of Planning in writing;

"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;

"Market Rent" means the rent (as determined by a professional appraiser acceptable to the City in the City's sole and absolute discretion) that a willing tenant would pay to a willing landlord to rent the Dwelling Unit in question pursuant to a Tenancy Agreement, on the open market in Victoria, British Columbia, having regard to any utility or other services or amenities available to the tenant or provided by the registered and beneficial owner of the Lands as landlord;

"Non-owner" means a person other than a Related Person or the registered and beneficial owner of the Lands;

"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, and the term Owner will refer to the Society after the Society becomes the registered and beneficial owner of the Lands, as and where applicable;

"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;

"Rent" means the amount of rent payable monthly in advance by the occupants of a Very Low Income Unit, as the same may be amended from time to time by the City; provided, however, that such Rent will never go below the applicable figures for 2020. For 2020 that Rent is: three hundred and seventy-five dollars (\$375) for a bachelor; four hundred and twenty-five dollars (\$425) for a 1 bedroom; five hundred and seventy-five dollars (\$575) for a 2 bedroom; and seven hundred dollars (\$700) for a 3 bedroom;

"Rezoning Bylaw" means the rezoning bylaw enacted pursuant to rezoning application no. 00602;

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

"Term" means 60 years from the date when the final occupancy permit for the Building is issued by the City;

"Very Low Income" means "very low income" calculated in accordance with the City's definition of affordability in the *Victoria Housing Strategy 2016-2025* (Phase Two: 2019-2022), as the same may be amended or replaced from time to time; and

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

2.0 TRANSFER OF OWNERSHIP

- 2.1 The Owner and the Society covenant and agree with the City that prior to any Building Permit being issued by the City the registered and beneficial title to the Lands will have been transferred to and registered in the name of the Society solely.

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

- 3.1** The Owner covenants and agrees that all the Dwelling Units shall only be used as rental housing throughout the Term, 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 VERY LOW INCOME HOUSING

- 4.1** The Owner further covenants and agrees that, throughout the Term, all of the Dwelling Units shall be designated as Very Low Income Units and shall only be occupied and used as Very Low Income Units.
- 4.2** Each of the Very Low Income Units shall, throughout the Term, only be occupied by a Non-owner or Non-owners under the terms of a Tenancy Agreement with a combined annual household income that is equal to or less than the Very Low Income that applies to the particular Very Low Income Unit being occupied by such Non-owner or Non-owners.
- 4.3** Monthly rent for each Very Low Income Unit shall not exceed:
- (a) the Rent applicable to the type of Very Low Income Unit; or
 - (b) in the event that the City ceases to determine Rent or Very Low Income, the applicable income assistance shelter maximums as determined by the British Columbia Ministry of Social Development and Poverty Reduction or successor in function.
- 4.4** For the purpose of section 4.3(a) where rent is payable on a monthly basis and Very Low Income is reported or determined as an annual amount, either the rent or the income figures shall be adjusted to a monthly or annual amount so that an appropriate comparison can be made.

5.0 OWNERSHIP

- 5.1** The Owner covenants and agrees with the City that by not later than the date when the first Building Permit is issued and thereafter until the end of the Term the Lands will be owned only by a not-for-profit society registered and in good standing in the Province of British Columbia or by a Government Agency.

6.0 REPORTING

- 6.1** The Owner covenants and agrees to provide to the Director of Planning, within thirty (30) days of the Director of Planning's written request, a report in writing confirming the following:
- (a) all Dwelling Units are being rented to Non-owners, and
 - (b) all the Very Low Income Units are being rented in accordance with Article 4.0,
- along with such other information as may be requested by the Director of Planning from time to time.

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.

6.3 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.

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*, 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.

8.0 LIABILITY

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

8.2 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.

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 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: khoese@victoria.ca

and in the case of the Owner, addressed to:

1224037 B.C. Ltd.
711 Princess Avenue
Victoria, BC V8T 1K5

Attention: Gerald Hartwig
Fax: 250-475-3358
Email: gh@hartwigindustries.com

and in the case of the Society, addressed to:

The John Howard Society of Victoria
2675 Bridge Street
Victoria, B.C. V8T 1K5

Attention: Manj Toor
Email: manj.toor@jhsvic.ca

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.

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 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.

9.6 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.

- 9.7 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.
- 9.8 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.
- 9.9 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.
- 9.10 ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 9.11 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.
- 9.12 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.
- 9.13 LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 9.14 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.
- 9.15 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.
- 9.16 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.
- 9.17 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.

9.18 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: _____)
)

1224037 B.C. LTD.
by its authorized signatory(ies):)
)
)
)

Print Name: _____)
)
)

Print Name: DEREK HARTNIP)
)

Date signed: OCT 6 2020)

THE JOHN HOWARD SOCIETY OF VICTORIA
by its authorized signatory(ies):)
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Print Name: CHRIS BERTHOUD)
)
)

Print Name: HANK MATTHEWS / HENRY C)
)

Date signed: OCTOBER 06/20)