

NO. 21-045

HOUSING AGREEMENT (415 AND 435 MICHIGAN STREET) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for Rental and Below Market housing for the lands known as 415 and 435 Michigan 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 (415 AND 435 MICHIGAN STREET) BYLAW 2021".

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 IMH 415 & 435 Michigan Apartments Ltd. or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 415 and 435 Michigan Street, Victoria, BC, legally described as:
PID: 030-409-519
Lot A of Lots 1817, 1818, 1819, 1820, 1821, 1822 and 1823 Victoria City Plan EPP76927.

READ A FIRST TIME the **27th** day of **May** 2021

READ A SECOND TIME the **27th** day of **May** 2021

READ A THIRD TIME the **27th** day of **May** 2021

ADOPTED on the day of 2021

CITY CLERK

MAYOR

HOUSING AGREEMENT
(Pursuant to section 483 of the *Local Government Act*)

This Housing Agreement (this "**Agreement**") is entered into by and

AMONG:

THE CORPORATION OF THE CITY OF VICTORIA
#1 Centennial Square
Victoria, BC V8W 1P6
(the "**City**")

AND:

IMH 415 & 435 MICHIGAN APARTMENTS LTD.
Suite 200 – 2171
Avenue Road
Toronto, ON M5M 4B4
(the "**Owner**")

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 415 and 435 Michigan Street, Victoria, B.C. and legally described as:

PID: 030-409-519
Lot A of Lots 1817, 1818, 1819, 1820, 1821, 1822 and 1823 Victoria City Plan
EPP76927

(the "**Lands**");

- D. The Owner has applied to the City, pursuant to rezoning application no. 00637, to rezone the Lands to permit construction of a new four-storey multiple dwelling containing approximately 24 dwelling units (the "**New Building**") and to retain the two existing 13-storey multiple dwelling rental buildings already on the Lands; 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 to provide two Below Market Units, and that all Dwelling Units on the Lands will be used and held only as rental housing, in each case in perpetuity.

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 parties agree each with the other as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

"**Below Market Unit**" means a Dwelling Unit that is designated and occupied only as a Below Market Unit in accordance with Article 3.0 of this Agreement;

"**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;

"**Director**" means the City's Director of Sustainable Planning and Development, and includes any person duly acting in his/her place and stead for the purposes of this Agreement;

"**Dwelling Unit**" or "**Dwelling Units**" means any or all, as the context may require, of the self-contained dwelling units on the Lands, and includes every Dwelling Unit that is on the Lands already as of the Effective Date and every Dwelling Unit that is developed on the Lands thereafter;

"**Effective Date**" means the effective date of this Agreement which is the date of the signature of the last party to sign;

"**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;

"**Maximum Annual Income**" means gross annual income of \$55,200 from all sources before deductions, as of the Effective Date, and thereafter as adjusted as of January 1 each year beginning in 2021, by the percentage change in CPI in the immediately preceding twelve months;

"**Maximum Monthly Rent**" means the maximum monthly amount chargeable by the Owner to the occupant(s) of a Below Market Unit, which amount shall include utilities (other than electricity, television, telephone and internet) and those other services or amenities included in the monthly rent payable by tenants occupying Dwelling Units in the New Building which are not Below Market Units, and shall be no more than \$1,380, as of the Effective Date, and thereafter as adjusted as of January 1 each year beginning in 2021, in accordance with the provisions of the *Residential Tenancy Act*;

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

"**Owner**" includes a person who acquires a registered or beneficial interest in the Lands or any part of the Lands and is thereby bound by this Agreement, as referred to in section 5.1;

"**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 (other than a shareholder or member of a public corporation, pension fund, or real estate investment trust); 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.

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

- 2.1** The Owner covenants and agrees that in perpetuity all of the Dwelling Units (for greater certainty, including the Below Market Units), shall only be used as rental housing, and for that purpose each such Dwelling Unit shall only be occupied by one or more Non-owners under the terms of a Tenancy Agreement between the Owner and the Non-owner(s) who occupies the Dwelling Unit.

3.0 BELOW MARKET HOUSING

- 3.1** The Owner covenants and agrees that in perpetuity not less than two one-bedroom Dwelling Units in the New Building shall be designated as Below Market Units and shall only be occupied and used by one or more Non-owner(s) as Below Market Units.
- 3.2** Each Below Market Unit shall only be occupied by one or more person(s) whose combined annual household income is no more than the Maximum Annual Income calculated as of the start of such occupant(s)' tenancy.
- 3.3** The monthly amount payable by the occupant(s) of each Below Market Unit shall be no more than the Maximum Monthly Rent.

4.0 REPORTING

- 4.1** The Owner covenants and agrees to provide to the Director, within 30 days of receipt of the Director's written request, a report in writing confirming the following:
- (a) all Dwelling Units are being rented to Non-owners, and
 - (b) not less than two Dwelling Units are being rented in accordance with Article 3.0 as Below Market Units,

along with such other relevant information as may be requested by the Director from time to time, subject to any restrictions or limitations imposed according to applicable privacy legislation.

- 4.2** The Owner hereby authorizes the City to make such lawful inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.
- 4.3** 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.

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** 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.
- 6.2** 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.

7.0 GENERAL PROVISIONS

- 7.1 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, and
- (b) on the date of delivery if hand-delivered, and

in the case of the City, addressed to:

City of Victoria
#1 Centennial Square
Victoria, B.C. V8W 1P6

Attention: City Clerk

and in the case of the Owner, addressed to:

IMH 415 & 435 Michigan Apartments Ltd.
Suite 200 – 2171 Avenue Road
Toronto, ON M5M 4B4

Attention: Daniel Drimmer

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,

- (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.

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

7.3 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.

7.4 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.

7.5 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.

7.6 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.

7.7 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.

7.8 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.

7.9 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.

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

- 7.11 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.
- 7.12 AMENDMENT.** This Agreement may not be amended from time to time, except 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.
- 7.13 LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 7.14 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.
- 7.15 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.
- 7.16 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.

7.17 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.

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 _____

City Clerk _____

Date Signed: _____

**IMH 415 & 435 MICHIGAN APARTMENTS
LTD.**, by its authorized signatory:

Print Name: Daniel Drimmer

Date Signed: !!!! December 2020