

NO. 22-036

HOUSING AGREEMENT (1025 KINGS ROAD) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for rental and affordable housing for the lands known as 1025 Kings Road, 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 assembled enacts the following provisions:

Title

- 1 This Bylaw may be cited as the "HOUSING AGREEMENT (1025 KINGS ROAD) BYLAW (2022)".

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 Fifth Kings 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 1025 Kings Road, Victoria, BC, legally described as:
PID: 001-227-751, Lot 1, Section 4, Victoria District, Plan 30761.

READ A FIRST TIME the **14th** day of **April** 2022

READ A SECOND TIME the **14th** day of **April** 2022

READ A THIRD TIME the **14th** day of **April** 2022

ADOPTED on the day of 2022

CITY CLERK

MAYOR

Schedule A

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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")

AND:

FIFTH KINGS APARTMENTS LTD. (INC. NO. BC0168348)

7th Floor, 1175 Douglas Street
Victoria, B.C. V8W 2E1

(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 1025 Kings Road, Victoria, B.C. and legally described as:

PID: 001-227-751
LOT 1, SECTION 4, VICTORIA DISTRICT, PLAN 30761

(the "Lands").
- D. The Owner has applied to the City to rezone the Lands to permit the development of a six-storey residential rental building consisting of 56 dwelling units (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 median income rental housing for a period of 10 years, and that all Dwelling Units within the Development on the Lands will be used and held only as rental housing with rental rates not to exceed 30% of household income.

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:

"Affordable" means housing that falls within the financial means of a household in either market or non-market dwellings. Total costs for rent or mortgage plus taxes (including a 10% down payment), insurance and utilities must equal 30% or less of a household's annual income;

"Affordable Unit" means a Dwelling Unit that meets the definition of Affordable herein and is designated as an Affordable Unit in accordance with Article 3.0;

"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;

"Development" means the new six storey, 56-unit building consisting of residential rental housing and related facilities on the Lands;

"Dwelling Units" means any or all, as the context may require, of the 56 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;

"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;

"Income" means the total income before tax from all sources for each Non-owner;

"Median Household Income Limit" means the annual maximum Income threshold for median income affordability targets that are determined from time to time by the City and published in the Victoria Housing Reserve Fund Guidelines. The parties agree that for 2021, the Median Household Income Limit is \$54,999;

"Median Income Term" has the meaning ascribed in section 4.1(a);

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

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

"Notice" has the meaning ascribed in section 8.1;

"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 8.3;

"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

"Subdivided Parcel" has the meaning ascribed in section 6.2;

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

"Term" means 60 years or the life of the Development (whichever is greater), beginning from the date the City issues an occupancy permit for the Development;

"Victoria Housing Reserve Fund" means the fund established by the City to fund housing projects;

"Victoria Housing Reserve Fund Guidelines" means the income and rental guidelines for affordable housing projects published by the City, as amended from time to time; and

"Victoria Housing Strategy" means the Victoria Housing Strategy 2016-2025 published by the City, as amended and replaced from time to time.

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 for 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.

3.0 DWELLING UNITS TO BE AFFORDABLE

- 3.1** The Owner covenants and agrees with the following:
 - (a) subject to section 3.2, all of the Dwelling Units shall be designated as Affordable Units and shall only be occupied and used as Affordable Units for the Term;
 - (b) each of the Affordable Units shall only be occupied by a Non-owner or Non-owners.
- 3.2** Section 3.1 applies during the Term to all of the Dwelling Units except the Median Income

Units. After the Median Income Term expires, section 3.1 applies to all of the Dwelling Units.

4.0 MEDIAN INCOME HOUSING

4.1 The Owner covenants and agrees with the following:

- (a) a total of three x 1 bedroom, one x 2 bedroom and two x 3 bedroom Dwelling Units shall be designated as Median Income Units and shall only be occupied and used as Median Income Units for a period of ten years beginning from the date the City issues an occupancy permit for the Development (the "**Median Income Term**");
- (b) the combined annual household Income for the occupants of each Median Income Unit shall be no greater than the Median Household Income Limit. In the event that the City ceases to determine a maximum Income threshold for median income affordability targets in the Victoria Housing Reserve Fund Guidelines, and such determination is not replaced by a similar publication, then the Income limit with respect to a Median Income Unit shall be determined by reference to the last published maximum income threshold for median income affordability targets which shall be increased annually by an amount equal to the increase in the CPI commencing January 1 following the year the City ceased determining such target;
- (c) each of the Median Income Units shall only be occupied by a Non-owner or Non-owners;
- (d) subject to Article 5.0, monthly rent for each Median Income Unit shall not exceed:
 - (i) \$1,050 for one-bedroom units,
 - (ii) \$1,300 for two-bedroom units, or
 - (iii) \$1,750 for three-bedroom units.

5.0 RENT ADJUSTMENTS

5.1 During the term of the tenancy, the monthly rent payable by the Non-owner(s) of the Dwelling Units may be increased only by the amount permitted under the *Residential Tenancy Act* and any other applicable legislation.

6.0 SUBDIVISION

6.1 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:

- (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.

- 6.2 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**"), then the Owner of such Subdivided Parcel may apply to the City to release the Notice from title to the Subdivided Parcel and 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 requesting the release; and (c) the City will have a reasonable time within which to execute such release and return the same to the Owner or Owners for registration.

7.0 REPORTING

- 7.1** The Owner covenants and agrees to provide to the City's Director of Sustainable Planning and Community Development, within thirty (30) days of the Director's written request, a report in writing confirming the following:

- (a) all Dwelling Units are being rented to Non-owners;
- (b) all Dwelling Units are being rented in accordance with this Agreement; and
- (c) such other information as may be reasonably requested by the Director from time to time.

- 7.2** 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.

8.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

- 8.1** 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.

9.0 LIABILITY

- 9.1** 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.
- 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 GENERAL PROVISIONS

10.1 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:

Fifth Kings Apartments Ltd.
7th Floor, 1175 Douglas Street
Victoria, BC V8W 2E1

Attention: Christopher Travis
Email: ctravis@pacificcoast.net

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.

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

10.3 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.

- 10.4 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.
- 10.5 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.
- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 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.
- 10.10 ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 10.11 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.
- 10.12 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.
- 10.13 LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 10.14 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.

10.15 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.

10.16 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.

10.17 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.

10.18 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: _____)

FIFTH KINGS APARTMENTS LTD.)
by its authorized signatory:)

_____)
Christopher Travis)

Date signed: MARCH 2, 2022)