

NO. 17-074

HOUSING AGREEMENT (1250 DALLAS ROAD) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for rental housing for the lands known as 1250 Dallas 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 enacts the following provisions:

Title

- 1 This Bylaw may be cited as the "HOUSING AGREEMENT (1250 DALLAS ROAD) BYLAW (2017)".

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 Pacific Diamond Holdings Ltd. (Inc. No. BC1031555) or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 1250 Dallas Road, Victoria, BC, legally described as:
Common Property Strata Plan VIS1628

PID: 009-840-885, Strata Lot 1, Fairfield Farm estate, Victoria City, Strata Plan 1628

PID: 009-840-923, Strata Lot 2, Fairfield Farm Estate, Victoria City, Strata Plan 1628

PID: 009-840-931, Strata Lot 3, Fairfield Farm Estate, Victoria City, Strata Plan 1628

PID: 009-840-974, Strata Lot 4, Fairfield Farm Estate, Victoria City, Strata Plan 1628.

READ A FIRST TIME the	day of	2017
READ A SECOND TIME the	day of	2017
READ A THIRD TIME the	day of	2017
ADOPTED on the	day of	2017

CITY CLERK

MAYOR

HOUSING AGREEMENT
S.219 Covenant and 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")

OF THE FIRST
PART

AND:

PACIFIC DIAMOND HOLDINGS LTD.,
INC. NO. BC1031555
3880 Synod Road
Victoria, BC
V8P 3X6

(the "Owner")

OF THE SECOND
PART

AND:

COAST CAPITAL SAVINGS CREDIT UNION
INC. NO. F1 146
RETAIL LENDING OPERATIONS
#800-9900 King George Blvd.
Surrey, BC
V3T 0K7

(the "Chargeholder" as to priority)

OF THE THIRD
PART

WHEREAS

- A. 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*;
- B. The Owner is the registered owner in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 1250 Dallas Road, Victoria, BC, and legally described as:

PID 009-840-885, STRATA LOT 1, FAIRFIELD FARM ESTATE, VICTORIA CITY, STRATA PLAN 1628

PID 009-840-923, STRATA LOT 2, FAIRFIELD FARM ESTATE, VICTORIA CITY, STRATA PLAN 1628

PID 009-840-931, STRATA LOT 3, FAIRFIELD FARM ESTATE, VICTORIA CITY, STRATA PLAN 1628

PID 009-840-974, STRATA LOT 4, FAIRFIELD FARM ESTATE, VICTORIA CITY, STRATA PLAN 1628

(the "Lands").

- C. The Owner has applied to the City for an amendment to the City's Zoning Regulations Bylaw No. 80-159 in relation to the Lands to permit the addition of one (1) dwelling unit to the existing four (4) dwelling unit stratified building.
- D. The Dwelling Units within the building have been stratified and therefore will be/are subject to the *Strata Property Act* (British Columbia) and the bylaws of the Strata Corporation, but the intent of this Housing Agreement is to ensure the perpetual availability of rental units (in addition to owner-occupied units);
- 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 establish the terms and conditions regarding the occupancy of the residential units identified in this Housing Agreement.

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:

"**Development**" means the building on the Lands to include five (5) Dwelling Units .

"**Dwelling Unit**" means a self-contained residential dwelling unit within the building that *is/will be* located on the Lands, and includes any dwelling unit that is developed on the Lands in future, whether as part of the Development or otherwise, and "Dwelling Units" means collectively all of such residential dwelling units located on the Lands.

"**Immediate family**" includes a person's husband, wife, child, mother, father, brother, sister, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece and nephew.

"**Non-owner**" means a person who occupies a Dwelling Unit for residential purposes, other than the Owner of that Dwelling Unit, and other than a member of the Owner's Immediate family.

"**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 5.1.

"**Tenancy Agreement**" has the same meaning as under the *Residential Tenancy Act*.

"**Strata Corporation**" means, for the portions of the Lands or any building on the Lands that is subdivided under the *Strata Property Act*, a strata corporation as defined in that Act, including the Owner while in control of the strata corporation and subsequently the individual strata lot owners collectively acting as the strata corporation.

1.2 In this Agreement:

- (a) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment; and
- (b) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided.

2.0 No Restrictions on Rentals

- 2.1 The Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose 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.

- 2.2 Without limiting the generality of section 2.1, 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.
- 2.3 For certainty, if the Lands or the Development on the Lands are subdivided under the *Strata Property Act*, the Dwelling Units within the Development may be occupied by the Owners of the strata lots.

3.0 Reporting

- 3.1 The Owner covenants and agrees to provide to the City, upon written request from the City's Director of Sustainability Planning and Community Development, a report in writing confirming:

- (a) the number, type and location by suite or strata lot number, of Dwelling Units that are being rented to Non-owners; and
- (b) any changes or proposed changes to the Strata Corporation's bylaws that may affect the terms of this Agreement.

- 3.2 The Owner covenants and agrees:

- (a) to exercise its voting rights in the Strata Corporation against the passage of any bylaws that would restrict the availability for rental of any Dwelling Unit under the terms of a Tenancy Agreement unless this Agreement is amended; and
- (b) to notify the City of any proposed amendments to its strata bylaws.

- 3.3 The Owner acknowledges that it is within the City's sole discretion to consent or not to consent to modifications to this Agreement and that such consent may be withheld for any reason.

4.0 Notice to be Registered in Land Title Office

- 4.1 Notice of this Agreement ("**Notice**") will be registered in the Land Title Office by the City at the cost of the Owner in accordance with section 483(5) 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.

5.0 Liability

- 5.1 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.
- 5.2 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.

6.0 Priority Agreement

- 6.1 The Existing Chargeholder, as the registered holder of a charge by way of Mortgage and Assignment of Rents against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA4428498 and CA4428499, for and in consideration of the sum of One Dollar (\$1.00) paid by the City (the receipt whereof is hereby acknowledged), 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*, 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.

7.0 General Provisions

Notice

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

to the City:

City of Victoria
 #1 Centennial Square
 Victoria, BC V8W 1P6
 Attention: Director of Sustainability Planning and
 Community Development
 Fax: 250-361-0386

to the Owner:

Pacific Diamond Holdings Ltd.
 3880 Synod Road
 Victoria, BC
 V8P 3X6

or upon registration of a strata plan for the Lands, to the Strata Corporation, and to the Owner of any Dwelling Unit that is subject to the restrictions under section 2.1.

If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address.

If normal mail service or facsimile service is interrupted by strike, work slow-down, 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.

Time

- 7.2 Time is to be the essence of this Agreement.

Binding Effect

- 7.3 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.

Waiver

- 7.4 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.

Headings

- 7.5 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

Language

- 7.6 Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

Equitable Remedies

- 7.7 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.

Cumulative Remedies

- 7.8 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.

Entire Agreement

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

Further Assurances

- 7.10 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.

Amendment

- 7.11 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.

Law Applicable

- 7.12 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

No Derogation from Statutory Authority

- 7.13 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.

Joint and Several

- 7.14 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.

7.15 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.

7.16 This Agreement is effective as of the date of the signature of the last party to sign.

PACIFIC DIAMOND HOLDINGS LTD.
by its authorized signatory(ies):
Jane Leece
Print Name: Jane Leece
James Coleburn
Print Name: James Coleburn
Date signed: _____

COAST CAPITAL SAVINGS CREDIT UNION

by its authorized signatory(ies):

Lisa Whyte LISA WHYTE)
 Print Name: Supervisor, Retail Lending Operations)
 #800 - 9900 King George Blvd.)
 Surrey, B.C. V3T 0K7)

Christa Huntley Christa Huntley
 Print Name: A Commissioner for Taking Affidavits
 for British Columbia
 #800 - 9900 King George Blvd.
 Date signed: 05/23/2017 Surrey, B.C. V3T 0K7

oct 31/18

The Owner, City and Chargeholder acknowledge that this Agreement has been duly executed and delivered by the parties executing Forms C and D attached hereto.

CONSENT AND PRIORITY AGREEMENT

In this Consent and Priority Agreement:

- (a) "City" means the Corporation of the City of Victoria;
- (b) "Existing Charge" means the Mortgage registered under number CA4428498 and Assignment of Rents registered under number CA4428499;
- (c) "Existing Chargeholder" means Coast Capital Savings Credit Union;
- (d) "Land" means the land described in Item 2 of the attached General Instrument - Part 1;
- (e) "New Charge(s)" means the Covenant being registered, or to be registered, in the Victoria Land Title Office on title to and charging the Land in favour of the City and described in Item 3 of the attached General Instrument - Part 1;
- (f) "Owner" means the transferor(s) described in Item 5 of the attached General Instrument - Part 1;
- (g) words capitalized in this Consent and Priority Agreement, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For \$1.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charge(s) in favour of the City; and
- (ii) agrees with the City that the New Charge(s) charge the Land in priority to the Existing Charge in the same manner and to the same effect as if the Owner had granted the New Charge(s), and it had been registered against title to the Land, prior to the grant or registration of the Existing Charge or the advance of any money under the Existing Charge.

IN WITNESS WHEREOF, the Existing Chargeholder has caused its duly authorized signatory(ies) to execute the attached General Instrument - Part 1.