

HOUSING AGREEMENT (1201 FORT STREET & 1050 PENTRELEW PLACE AFFORDABLE HOUSING) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize a housing agreement for the lands known as 1201 Fort Street and 1050 Pentrelew Place, 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 (1201 FORT STREET & 1050 PENTRELEW PLACE AFFORDABLE HOUSING) BYLAW (2018)".**

Agreement authorized

- 2 The Mayor and the City’s Corporate Administrator are authorized to execute the Housing Agreement:

- (a) substantially in the form attached to this Bylaw as Schedule A;
- (b) between the City and Abstract Enterprises Inc., Incorporation No. BC1051764 or other registered owners from time to time of the lands described in subsection (c); and
- (c) that applies to the lands known as 1201 Fort Street and 1050 Pentrelew Place, Victoria, BC, legally described as:

PID: 000-188-611 LOT A FAIRFIELD FARM ESTATE AND SPRING RIDGE
VICTORIA CITY PLAN 40449

-and-

PID: 006-165-818 AMENDED LOT 32 (DD E20888) FAIRFIELD FARM ESTATE
VICTORIA CITY PLAN 3866 EXCEPT PART IN PLAN VIP67309

READ A FIRST TIME the	day of	2018
READ A SECOND TIME the	day of	2018
READ A THIRD TIME the	day of	2018
ADOPTED on the	day of	2018

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, B.C. V8W 1P6

(the "City")

OF THE FIRST PART

AND:

ABSTRACT ENTERPRISES INC., INCORPORATION NO. BC1051764

#301 – 1106 Cook Street
Victoria, BC V8V 3Z9

(the "Owner")

OF THE SECOND PART

AND:

ADDENDA CAPITAL INC.
1920 College Avenue Main East
Regina, Saskatchewan S4P 1C4

-and-

**COOPER PACIFIC II MORTGAGE
INVESTMENT CORPORATION**

821 Broughton Street
Victoria, BC, V8W 1E5

(collectively, the "Existing Chargeholder")

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 1201 Fort Street and 1050 Pentrelew Place, Victoria, B.C. and legally described as:

PID: 000-188-611

LOT A FAIRFIELD FARM ESTATE AND SPRING RIDGE VICTORIA CITY

PLAN 40449

-and-

PID: 006-165-818

AMENDED LOT 32 (DD E20888) FAIRFIELD FARM ESTATE VICTORIA CITY
PLAN 3866 EXCEPT PART IN PLAN VIP67309

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

- C. The Owner has applied to the City to rezone the Lands to permit the Development in accordance with this Agreement.
- D. 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 low income and moderate income rental housing, and that 10 of the units within the Development on the Lands will be used and held only as rental housing, unless alternate lands within the City have been identified and an alternate housing agreement entered or payment in lieu of this commitment to provide low income and moderate income rental housing has been made in accordance with the terms of this 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 "**Agreement**"), the parties agree each with the other as follows:

1.0 DEFINITIONS

1.1 In this Agreement:

"**BC Housing**" means the British Columbia Housing Management Commission;

"**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 proposed development on the Lands to include a six storey building consisting of 51 condominium style residential strata lots, a four storey building consisting of 23 condominium style residential strata lots and three buildings consisting of a total of 9 townhouse style residential strata lots.

"**Dwelling Units**" means 10 of the 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 10 of such residential dwelling units located on the Lands;

"**HILs**" means the annual Housing Income Limits that are determined from time to time by BC Housing and that apply to a particular Low Income Unit depending on whether the Low Income Unit is a bachelor, 1 bedroom, 2 bedroom or 3 bedroom Dwelling Unit;

"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;

"Low Income Unit" means a Dwelling Unit that is designated as a Low Income Unit in accordance with section 3.0 of this Agreement, and for certainty, does not include a Moderate Income Unit;

"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 Owner as landlord;

"Moderate Household Income" means the annual median household income for the City of Victoria, BC census subdivision, as published periodically by Statistics Canada, or its successor in function, which amount shall for the purposes of this Agreement be increased on January 1 each year, between the years in which Statistics Canada reports median household income statistics, by an amount equal to the increase in the CPI over the preceding 12 months. In the event that Statistics Canada or its successor in function no longer publishes median household income statistics for the City of Victoria, BC census subdivision, Median Household Income shall be the amount determined by the City from time to time, acting reasonably, and based upon the most reliable statistical and census data then available;

"Moderate Income Unit" means a Dwelling Unit that is designated as a Moderate Income Unit in accordance with section 3.0 of this Agreement, and for certainty, does not include a Low Income Unit;

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

"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 6.1; and

"Replacement Housing Agreement" means a housing agreement registered against another appropriate property undergoing redevelopment that:

- (a) secures 10 dwelling units (the "**10 Units**") as rental units available only for occupancy by Non-Owners in perpetuity,
- (b) provides that the 10 Units shall be subject to the same terms and conditions as those contained in Sections 3 and 4 of this Agreement, and
- (c) is in a form satisfactory to the Director of Sustainable Planning and Community Development and the City Solicitor; and

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

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 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 in perpetuity, 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 MODERATE INCOME AND LOW INCOME HOUSING

3.1 The Owner covenants and agrees that a total of 5 Dwelling Units shall be designated as Low Income Units and shall only be occupied and used as Low Income Units.

3.2 The Owner covenants and agrees that a total of 5 Dwelling Units shall be designated as Moderate Income Units and shall only be occupied and used as Moderate Income Units.

3.3 Each of the Low Income Units shall 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 HILs that apply to the particular Low Income Unit being occupied by such Non-owner or Non-owners. In the event that BC Housing ceases to determine HILs and such determination is not replaced by a similar publication, then the income limit with respect to a Low Income Unit shall be determined by reference to the last published HILs which shall be increased annually by an amount equal to the increase in the CPI commencing January 1 following the year BC Housing ceased determining HILs.

3.4 Each of the Moderate Income Units shall only be occupied by a Non-owner or Non-owners with a combined annual income that is equal to or less than Moderate Household Income.

3.5 Monthly rent for each of the Moderate Income Units shall not exceed the lesser of:

- (a) Market Rent; and
- (b) thirty percent (30%) of Moderate Household Income divided by 12.

3.6 Monthly rent for each Low Income Unit shall not exceed:

- (a) thirty percent (30%) of the HILs that apply to a particular Low Income Unit; or
- (b) in the event that BC Housing ceases to determine HILs, eighty percent (80%) of the Market Rent for a particular Low Income Unit.

3.7 For the purpose of section 3.6(a) where rent is payable on a monthly basis and HILs are 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.

4.0 REPORTING

4.1 The Owner covenants and agrees to provide to the City's Director of Sustainable Planning and Development, on the 1st day of February in each calendar year, a report in writing confirming the following:

- (a) all Dwelling Units are being rented to Non-owners;
- (b) 5 Low Income Units are being rented in accordance with section 3.0; and
- (c) 5 Moderate Income Units are being rented in accordance with section 3.0,

along with such other information as may be requested by the Director from time to time.

4.2 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.

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 REPLACEMENT HOUSING AGREEMENT

5.1 Subject to section 9.13, the restrictions contained in sections 2.0 and 3.0 shall apply until such time as:

- (a) a Replacement Housing Agreement has been registered and an occupancy permit has been issued by the City for the 10 Units;

or,

- (b) If paragraph (a) is not satisfied by December 31, 2020, the Owner has paid to the City \$25,000 for each of the 10 Units that does not satisfy the requirements of paragraph (a) as a contribution to the City's Housing Reserve Fund.

5.2 The Owner agrees that it will not apply for a development permit for the Development on the Lands until the Owner has delivered the sum of \$250,000 to its solicitor, to be held in trust, and that such sum shall be held by the Owner's solicitor until the Owner satisfies either section 5.1(a) or 5.1(b).

5.3 The City and the Owner agree that upon satisfaction of either section 5.1(a) or 5.1(b), this Agreement will not bind the Lands. Section 483(5) of the *Local Government Act* requires that notice of a housing agreement be filed in the Land Title Office, and the City agrees, if so requested by the Owner in writing, to cancel the notice of this housing agreement from title to the Lands, at the Owner's expense.

6.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

6.1 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.

7.0 PRIORITY AGREEMENT

7.1 Addenda Capital Inc., as the registered holder of charges by way of Mortgages against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under number CA5795292 and CA5682922, 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.

7.2 Cooper Pacific II Mortgage Investment Corporation, as the registered holder of charges 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 CA5837184 and CA5837185, 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.

8.0 LIABILITY

8.1 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.

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.

9.0 GENERAL PROVISIONS

9.1 NOTICE. 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 Sustainable Planning and
Community Development
Fax: 250-361-0386

to the Owner:

Abstract Enterprises Inc.
#301 – 1106 Cook Street
Victoria, BC V8V 3Z9

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,

- (b) notice sent by the impaired service is considered to be received on the date of delivery, and
- (c) 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 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.

9.6 LANGUAGE. 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.

9.7 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

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

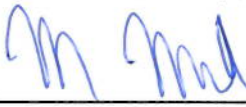
THE CORPORATION OF THE CITY OF)
VICTORIA by its authorized signatories:)

_____)
MAYOR _____)

_____)
CITY CLERK _____)

Date signed: _____)

ABSTRACT ENTERPRISES INC.)
by its authorized signatory(ies):)


_____)

Print Name: Mike Miller)
)

Date signed: January 25, 2018

ADDENDA CAPITAL INC.

by its authorized signatory(ies):



ADAM KOT

Print Name: Commercial Mortgages
Senior Manager



Print Name: **Savvas Pallaris,**
Vice President, Life Investments

Date signed: Jan 24/2018

**COOPER PACIFIC II MORTGAGE
INVESTMENT CORPORATION**

by its authorized signatory(ies):



Print Name: Cam Cooper

Print Name: _____

Date signed: JAN. 25, 2018