

NO. 16-091

HOUSING AGREEMENT (1041 OLIPHANT AVENUE, 212 COOK STREET, 214 COOK STREET, 216 COOK STREET AND 220 COOK STREET) 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 1041 Oliphant Avenue, 212 Cook Street, 214 Cook Street, 216 Cook Street and 220 Cook 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 (1041 OLIPHANT AVENUE, 212 COOK STREET, 214 COOK STREET, 216 COOK STREET AND 220 COOK STREET) BYLAW (2016)".**

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 Vancouver Island Investment Corp. or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 1014 Oliphant Street, 212 Cook Street, 214 Cook Street, 216 Cook Street and 220 Cook Street, Victoria, BC, legally described as:

PID 002-602-709
Lot 1, Fairfield Farm Estate, Victoria City, Plan 8570

PID 003-743-250
Lot 2, Fairfield Farm Estate, Victoria City, Plan 8570

PID 008-186-928
Lot 10, Block 1, Fairfield Farm Estate, Victoria City, Plan 917

PID 008-186-979
Lot 11, Block 1, Fairfield Farm Estate, Victoria City, Plan 917, Except Part in Plan 8570

PID 008-186-995
Lot 12, Block 1, Fairfield Farm Estate, Victoria City, Plan 917, Except Part in Plan 8570

READ A FIRST TIME the	day of	2016
READ A SECOND TIME the	day of	2016
READ A THIRD TIME the	day of	2016
ADOPTED on the	day of	2016

CITY CLERK

MAYOR

Nov 18

TERMS OF INSTRUMENT- PART 2

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

THIS AGREEMENT dated for reference is November 18, 2016



BETWEEN:

VANCOUVER ISLAND INVESTMENT CORP. (INC. NO. BC0895712)
 12 – 747 Princess Avenue,
 Victoria, BC
 V8T 1K5
 (the "Owner")

AND:

THE CORPORATION OF THE CITY OF VICTORIA
 #1 Centennial Square
 Victoria, B.C.
 V8W 1P6
 (the "City")

AND:

COASTAL COMMUNITY CREDIT UNION (INC. NO. FI 114)
 725A Goldstream Avenue
 Victoria, B.C.
 V9B 2X3
 (the "Existing Chargeholder")

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 described in Item 2 of the attached General Instrument – Part 1 (the "Lands").
- C. The Owner has made application to the City to rezone the Lands as set out in City of Victoria Zoning Regulation Bylaw, Amendment Bylaw (No. 1077) – No. 16-090, as the Owner is desirous of developing a mixed use residential building with the first floor containing retail or commercial use.

- D. The Dwelling Units are intended to be stratified and therefore will be 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:

"**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 mixed use building on the Lands, which is to include at least forty-nine (49) residential 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;

"**BMR Unit**" means a Dwelling Unit that is rented out at ten percent (10%) below Market Rent (as hereinafter defined) in accordance with Article 3.0 of this Agreement;

"**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;

"**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;

"**MR Unit**" means a Dwelling Unit that is rented out at Market Rent in accordance with Article 4.0 of this Agreement;

"**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 6.1;

"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, which includes 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 for residential purposes to a Non-owner.
- 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 the Dwelling Units to Non-owners.
- 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 BMR Units

- 3.1 The Owner covenants and agrees that, for a period of twenty (20) years from the effective date of this agreement, a total of nine (9) Dwelling Units shall be designated as BMR Units and shall only be occupied and used as BMR Units.
- 3.2 Each of the BMR Units shall only be occupied by a Non-owner or Non-owners under the terms of a Tenancy Agreement.
- 3.3 Monthly rent for each BMR Unit shall not exceed ninety percent (90%) of the Market Rent for a particular BMR Unit.

4.0 MR Units

- 4.1 The Owner covenants and agrees that, for a period of ten (10) years from the effective date of this agreement, a total of eight (8) Dwelling units shall be designated as MR Units

and shall only be occupied and used as MR Units.

4.2 Each of the MR Units shall only be occupied by a Non-owner or Non-owners under the terms of a Tenancy Agreement.

4.3 Monthly rent for each MR Unit shall not exceed Market Rent for a particular MR Unit.

5.0 Reporting

5.1 The Owner covenants and agrees to provide to the City, upon written request from the City's Director of Sustainability Planning and Community Development (the "Director"), 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;
- (b) that nine (9) BMR Units are being rented in accordance with Article 3.0;
- (c) that eight (8) MR Units are being rented in accordance with Article 4.0; and
- (d) any changes or proposed changes to the Strata Corporation's bylaws that may affect the terms of this Agreement;

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

5.2 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 unless this Agreement is amended; and
- (b) to notify the City of any proposed amendments to its strata bylaws.

5.3 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.

5.4 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.

6.0 Notice to be Registered in Land Title Office

6.1 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.

7.0 Liability

7.1 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.

- 7.2 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.

8.0 General Provisions

8.1 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 Sustainability Planning and
 Community Development
 Fax: 250-361-0386

to the Owner:

12 – 747 Princess Avenue, Victoria, BC V8T 1K5

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.

8.2 Time

Time is to be the essence of this Agreement.

8.3 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.

8.4 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.

8.5 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.

8.6 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.

8.7 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.

8.8 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.

8.9 Entire Agreement

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

8.10 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.

8.11 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.

8.12 Law Applicable

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

8.14 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.

8.15 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.

8.16 Counterpart

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.

8.17 Effective Date

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

8.18 Consent and Priority Agreement

In this Consent and Priority Agreement:

- (a) "Existing Charges" means CA5481736 and CA5481737 in favour of the Existing Chargeholder;

(b) "New Charge" means the Section 219 Covenant being registered, or to be registered, in the Victoria Land Title Office on title to and charging the Lands in favour of the City and described in Item 3 of the attached General Instrument - Part 1;

(c) 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.

8.19 For \$1.00 and other good and valuable consideration, paid to the Existing Chargeholder, the receipt and sufficiency of which is hereby acknowledged, the Existing Chargeholder agrees with the Owner, its successors and assigns, that the Existing Chargeholder:

(a) consents to the Owner granting the New Charge in favour of the City; and

(b) agrees with the City that the New Charge charges the Lands in priority to the Existing Charges in the same manner and to the same effect as if the Owner had granted the New Charge, and it had been registered against title to the Lands, prior to the grant or registration of the Existing Charges or the advance of any money under the Existing Charges.

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

IN WITNESS WHEREOF the parties have hereunto set their hands as of the dates inscribed at a place within British Columbia:

Vancouver Island Investment Corp.)

by its authorized signatories:)

On the 18 day of November 2016)

)

Print Name: Leonard Cole President)

Print Name:)

Coastal Community Credit Union)

by its authorized signatories:)

On the ___ day of _____, 2016)

Print Name:)

Print Name:)

THE CORPORATION OF THE CITY OF)
VICTORIA by its authorized signatories:)
On the __ day of _____, 20__)

_____)
Mayor Lisa Helps)

_____)
City Clerk)