

NO. 22-085

HOUSING AGREEMENT (1045 YATES) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement for affordable housing for the lands known as 1033, 1043, 1045 and 1061 Yates 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 (1045 YATES) 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 1045 Yates Holdings Ltd. (Inc. No. BC1202224), or other registered owners from time to time of the lands described in subsection (c); and
- (c) that applies to the lands known as 1033, 1043, 1045 and 1061 Yates Street, Victoria, BC, legally described as:

PID: 009-387-994, LOT 980, VICTORIA CITY

PID: 003-697-983, LOT A, (DD 60683W) OF LOTS 979 AND 989, VICTORIA CITY, PLAN 20163

PID: 009-387-943, LOT 978, VICTORIA CITY

PID: 009-387-927, LOT 977, VICTORIA CITY

PID: 009-387-901, LOT 976, VICTORIA CITY

PID: 002-428-679, LOT 1 OF LOTS 986 AND 987, VICTORIA CITY, PLAN 26779

PID: 009-388-036, LOT 988, VICTORIA CITY

READ A FIRST TIME the _____ day of _____ 202X

READ A SECOND TIME the _____ day of _____ 202X

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READ A THIRD TIME the

day of

202X

ADOPTED on the

day of

202X

CITY CLERK

MAYOR

SCHEDULE A**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:

1045 YATES HOLDINGS LTD. (Inc. No. BC1202224)
3280 Bloor Street West, Centre Tower, Suite 1400
Toronto, Ontario, M8X 2X3

(the "Owner")

AND:

CANADIAN IMPERIAL BANK OF COMMERCE

(the "Existing Chargeholder")

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 of the following lands and premises located in the City of Victoria, Province of British Columbia, with the civic addresses 1033, 1043, 1045 and 1061 Yates Street:
 - (a) PID: 009-387-994, LOT 980, VICTORIA CITY
 - (b) PID: 003-697-983, LOT A, (DD 60683W) OF LOTS 979 AND 989, VICTORIA CITY, PLAN 20163
 - (c) PID: 009-387-943, LOT 978, VICTORIA CITY
 - (d) PID: 009-387-927, LOT 977, VICTORIA CITY

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- (e) PID: 009-387-901, LOT 976, VICTORIA CITY
- (f) PID: 002-428-679, LOT 1 OF LOTS 986 AND 987, VICTORIA CITY, PLAN 26779
- (g) PID: 009-388-036, LOT 988, VICTORIA CITY

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

- D. The Owner has applied to the City to rezone the Lands and to amend the provisions of the Official Community Plan's Development Permit Area 3 (HC), Core Mixed-Use Residential to permit the construction of multiple housing units within the Development in accordance with this Agreement.
- 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, and that all Dwelling Units within the Development on the Lands will be used and held only as rental housing.

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 Rent**" for a Median Income Unit rented under a Tenancy Agreement means a monthly rent calculated as follows, rounded to the nearest \$10.00:

- (i) for a bachelor Dwelling Unit, Median Household Income x 0.020,
- (ii) for a 1-bedroom Dwelling Unit, Median Household Income x 0.024, and
- (iii) for a 3-bedroom Dwelling Unit, Median Household Income x 0.040;

"**Business Day**" means Monday to Friday, other than any such day which is a statutory holiday in Victoria, British Columbia;

"**CHMC**" means the Canada Mortgage and Housing Corporation or, if the Canada Mortgage and Housing Corporation permanently ceases to publish median total household incomes for renter households in the City of Victoria, another *bona fide* third party organization appointed by the City of Victoria that publishes median total household incomes for renter households in the City of Victoria;

"**Development**" means the new building including eighty (80) units of residential housing and other related facilities on the Lands;

"**Dwelling Units**" means any or all, as the context may require, of the eighty (80) 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;

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"**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**" means the median total annual household income for renters in the City of Victoria, as published in the Victoria Housing Strategy or, for a year in which the Median Household Income in the Victoria Housing Strategy has not been updated in the previous twelve months, then the real median total household income for renters (before taxes) as reported most recently by CHMC. The parties agree that for 2021, the Median Household Income was \$44,165;

"**Median Income Unit**" means a Dwelling Unit that is designated as a median income unit in accordance with Article 3.0 of this Agreement;

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

"**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 10.3;

"**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 (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;

"**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:

- (a) the Dwelling Units shall only be used as rental housing in perpetuity;
- (b) Median Income Units 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 MEDIAN INCOME HOUSING

3.1 The Owner covenants and agrees to the following:

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- (a) Median Income Units will be no less than 290 square feet (27 square metres) in gross floor area.
- (b) Subject to any limitations set out in the Residential Tenancy Act, each Dwelling Unit designated as a Median Income Unit shall only be occupied and used as a Median Income Unit.
- (c) The combined annual household Income for the occupants of each Median Income Unit shall be no greater than the Median Household Income.
- (d) Subject to Article 4.0, monthly rent for each Median Income Unit shall not exceed the Affordable Rent for that unit type.
- (e) The Median Income Units shall consist of:
 - (i) Eight (8) three-bedroom Dwelling Units;
 - (ii) Eight (8) one-bedroom Dwelling Units; and
 - (iii) Sixty-four (64) bachelor Dwelling Units.

4.0 RENT ADJUSTMENTS

- 4.1** During the term of a Tenancy Agreement, 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.

5.0 SUBDIVISION

- 5.1** 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.

6.0 REPORTING

- 6.1** The Owner covenants and agrees to provide to the City's Director of Sustainable Planning and Community Development, within sixty (60) 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) Median Income Units are rented or available to rent in accordance with Article 3.0,
 - (c) the date of formation of the Tenancy Agreement for each Dwelling Unit, and the Median Household Income applicable at that time,

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and, subject to any limitations set out in the British Columbia *Personal Information Protection Act*, such other information as may be reasonably requested by the Director from time to time.

6.2 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.

6.3 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.

7.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

7.1 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.

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, or otherwise that would not have arisen "but for" 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, or otherwise that would not have arisen "but for" this Agreement.

9.0 PRIORITY AGREEMENT

9.1 The Existing Chargeholder, as the registered holder of a charge by way of a Mortgage and Assignment of Rents against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA7425024 and CA7425025, respectively, 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.

10.0 GENERAL PROVISIONS

10.1 NOTICE. If sent as follows, notice under this Agreement is considered to be received:

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- (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:

1045 YATES HOLDINGS LTD.
 c/o Starlight Investments
 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,

- (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.

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- 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

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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:

1045 YATES HOLDINGS LTD.,
by its authorized signatory:

Print Name: Darjeel Drimmer

Date Signed:

CANADIAN IMPERIAL BANK OF COMMERCE,
by its attorney, Gowling WLG (Canada) Inc. (Reg.
No. A0109095) see CA8557658, by its authorized
signatories:

Print Name: **SANG JUN (TONY) PARK**

Print Name:

Date Signed: 2022 Aug - 08