

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:

QUADRA/JOHNSON PROJECT LTD. (Inc. No. BC1097776)
400 - 931 Fort Street
Victoria, B.C., V8V 3K3
(as more particularly defined in Section 1.1, the "Owner")

OF THE SECOND PART

WHEREAS:

- A. Capitalized terms used in this Agreement, unless otherwise or elsewhere defined or the context otherwise clearly requires, will have the respective meanings ascribed to them in Section 1.1;
- B. Under Section 483 of the *Local Government Act* the City may, by bylaw, enter into a Housing Agreement with an owner of land 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 and beneficial owner in fee simple of lands in the City of Victoria, British Columbia, with a civic address of 1400 Quadra Street, and legally known and described as:

PID: 030-496-021
Lot A Lots 396, 397 And 398 Victoria City Plan EPP67310
(as more particularly defined in Section 1.1, the "Lands");
- D. The Owner has applied to the City to rezone the Lands to permit it to build a 14 storey mixed-use building containing commercial uses at grade, residential accommodation on all of the floors above and related amenities and common spaces and facilities (the "Development"), all of which residential accommodation the Owner has agreed shall be used only as rental housing in perpetuity; and
- 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 that all Housing Units within the Development on the Lands will be used and held only as rental housing, subject to the terms and conditions set forth herein.



NOW THEREFORE THIS AGREEMENT WITNESSES that pursuant to Section 483 of the *Local Government Act*, and in consideration of one dollar (\$1.00) now paid by the City to each of the Existing Chargeholder and the Owner, and the premises and covenants contained in this Agreement, the parties agree each with the other as follows:

1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions. In this Agreement:

"**Agreement**" means this Housing Agreement, including the foregoing Recitals and all Schedules, if any, hereto;

"**Business Corporations Act**" means the Business Corporations Act, S.B.C. 2002, c. 57;

"**City Solicitor**" means the person employed by the City as the City Solicitor and includes any other City lawyer acting under the authority of the City Solicitor;

"**Development**" has the meaning ascribed to that term in Recital D;

"**Director**" means the City's Director of Sustainable Planning and Development or his authorized nominee;

"**Effective Date**" means the date as of which all parties to this Agreement have executed it;

"**Housing Units**" means the self-contained housing units within the Development, and "**Housing Unit**" means any of such Housing Units;

"**Land Title Act**" means the Land Title Act, R.S.B.C. 1996, c.250;

"**Lands**" means that certain parcel of land described in Recital C, and includes any parcel into which some or all of such Lands are consolidated or subdivided;

"**Local Government Act**" means the Local Government Act, R.S.B.C. 2015, c. 1;

"**Non-owner**" means a person other than a Related Person and "**Non-owners**" means more than one of such Persons;

"**Notice**" has the meaning ascribed to that term in Section 5.1;

"**Occupancy Permit**" means the first occupancy permit issued by the City for the Development;

"**Owner**" means Quadra/Johnson Project Ltd. (Incorporation No. BC 1097776) and all of its assigns, successors and successors in title to the Lands or any part thereof and, if the Lands are subdivided pursuant to the *Strata Property Act*, then "Owner" includes any strata corporation(s) thereby created;

"**Related Persons**" means, where the registered or beneficial owner of the Housing Units is:

- (a) a corporation (as that term is defined in the *Business Corporations Act*) then Related Persons are:
 - (i) an officer, director or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - (ii) the spouse, parent, child, sibling, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece or nephew of any such officer, director or shareholder; and
- (b) an individual, then a Related Person is the spouse, parent, child, sibling, mother-in-law, father-in-law, grandparent, brother-in-law, sister-in-law, niece or nephew of such individual; and

"Related Person" means any one of such Related Persons;

"*Residential Tenancy Act*" means the Residential Tenancy Act, S.B.C. 2002, c. 78;

"*Rezoning Bylaw*" means the enacted rezoning bylaw applicable to the Lands resulting from the rezoning application of the Owner described in Recital D;

"*Strata Plan*" means a strata plan filed in respect of the Lands or any subdivided portion thereof pursuant to the *Strata Property Act*;

"*Strata Property Act*" means the Strata Property Act, S.B.C. 1998, c. 43; and

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

1.2 Interpretation

In this Agreement:

Captions and Headings. The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.

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.

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

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.

Party. Any reference to a party hereto will be deemed to include the heirs, executors, administrators, successors, permitted assigns, employees, servants, agents, officers,

contractors, licensees and invitees of such party wherever the context so permits or requires.

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

Time. Time is of the essence of this Agreement.

2.0 OWNERS OBLIGATIONS APPLICABLE TO THE DEVELOPMENT

2.1 The Owner covenants and agrees:

- (a) **Construction of Development.** that if it carries out any development on the Lands after the Effective Date, it will construct, fit and finish, at its sole cost and expense, the Building to contain in accordance with this Agreement, the conditions of the Rezoning Bylaw, any development permit and building permit issued by the City and all applicable City by-laws and policies, all to the satisfaction of the City;
- (b) **Rental Only to Non-owners.** that all of the Housing Units shall only be used as rental housing, and for that purpose the Housing Units shall only be occupied by persons who are Non-owners under the terms of a Tenancy Agreement between the Owner and the Non-owner(s) who occupy(ies) the Housing Unit;
- (c) **Term of Rental Agreements.** that it will not rent, licence to use or sublet, nor will it allow to be rented, licenced to use or sublet, any Housing Unit for a term of less than one month at a time, without the prior written consent of the Director, which consent may be arbitrarily withheld;
- (d) **Insurance.** that it will insure the Building and all parts thereof to the full replacement cost against perils normally insured against in Victoria by reasonable and prudent owners of similar buildings and lands; and
- (e) **Repair and Maintenance.** that it will keep and maintain the Building and all parts thereof in good repair and in a safe, clean, neat and tidy condition, reasonable wear and tear excepted. If the Building or any part of any thereof are/is damaged, the Owner will promptly restore and repair the same whenever and as often as damage occurs, to at least as good a state and condition as existed before such damage occurred.

3.0 SUBDIVISION

- 3.1 **Subdivision.** The Owner covenants and agrees that it will not suffer, cause or permit the Lands or the Building or any part thereof, to be subdivided, whether by subdivision plan, strata plan or otherwise, without the prior written consent of the Director, which consent may be arbitrarily withheld. Any subdivision of the Lands or the Building or any part thereof, in contravention of the foregoing covenant will be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending subdivision at the Owner's expense;

4.0 REPORTING

4.1 The Owner covenants and agrees to provide to the Director, within thirty (30) days of the Director's written request, a report in writing confirming that:

- (a) all Housing Units are being rented to Non-owners, or are vacant; and
- (b) that all other requirements of this Agreement are being complied with by the Owner and the Development,

together with such other information as may be requested by the Director.

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.

5.0 NOTICE TO BE REGISTERED IN LAND TITLE OFFICE

5.1 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.

6.0 LIABILITY

6.1 **Indemnity.** 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.

6.2 **Release.** 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.

7.0 GENERAL PROVISIONS

7.1 **Notice.** If sent as follows, notice under this Agreement is considered to be received:

- (a) thirty-six (36) hours after the time of its mailing (by registered mail),
- (b) on the date of dispatch if delivered by email or fax before 5:00 pm on a regular business day, and otherwise on the next regular business day thereafter, and
- (c) on the date of delivery if hand-delivered,

if to the City, addressed as follows:
City of Victoria
 #1 Centennial Square

Victoria, B.C. V8W 1P6

Attention: City Clerk
 Fax: 250-361-0348
 Email: ccoates@victoria.ca

if to the Owner, addressed as follows:
Quadra/Johnson Project Ltd.
 400 - 931 Fort Street
 Victoria, B.C., V8V 3K3

Attention: Bijan Neyestani
 Fax: 250- 381-4680
 Email: bneyestani@alphadevelopments.com

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

If normal mail service 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.

- 7.2 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.
- 7.3 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.
- 7.4 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
- 7.5 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.
- 7.6 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.
- 7.7 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; provided; however, that the Owner acknowledges and agrees 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.

7.8 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.

7.9 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.

7.10 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.

7.11 Transfer of Title. The Owner covenants and agrees that except by way of a tenancy agreement to which the *Residential Tenancy Act* applies, it will not suffer, cause or permit, the beneficial or registered title to any Housing Unit to be sold or otherwise transferred unless title to the entire Development is sold or otherwise transferred together and as a block to the same owner, and after it has entered into an assignment and assumption agreement in form and contents satisfactory to the City Solicitor. Any sale or transfer of title to a Housing Unit in contravention of the foregoing covenant will be of no force or effect, and the City will be entitled to the cancellation of the registration of any offending transfer of title at the Owner's expense;

7.12 Owner's Representations and Warranties. The Owner represents and warrants to and covenants and agrees with the City that:

- (a) it has the full and complete power, authority and capacity to enter into, execute and deliver this Agreement and to bind all legal and beneficial interests in the title to the Lands with the interests in land created hereby;
- (b) upon execution and delivery of this Agreement and registration thereof, the interests in land created hereby will encumber all legal and beneficial interests in the title to the Lands;
- (c) this Agreement will be fully and completely binding upon the Owner in accordance with its terms and the Owner will perform all of its obligations under this Agreement in accordance with its terms; and

- (d) the foregoing representations, warranties, covenants and agreement will have force and effect notwithstanding any knowledge on the part of the City whether actual or constructive concerning the status of the Owner with regard to the Lands or any other matter whatsoever.

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: Lisa Helps)

CITY CLERK: Chris Coates)

Date signed: _____)

QUADRA/JOHNSON PROJECT LTD.)
by its authorized signatory(ies):)

BIJAN NEYESTANI)

Print Name:)

Print Name:)

Date signed: 25 October 2018)