

NO. 19-021

HOUSING AGREEMENT (505 QUADRA 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 505, 517, 519/521 Quadra Street and 931 Convent 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 (505 QUADRA STREET) BYLAW (2019)".

Agreement authorized

- 2 The Mayor and the City's 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 Surfside Holdings Ltd., BC0891491 or other registered owners from time to time of the lands described in subsection (c); and
 - (c) that applies to the lands known as 505, 517, 519/521 Quadra Street and 931 Convent Place, Victoria, BC, legally described as:
PID: 000-057-070. LOT 1, OF LOT 1695, VICTORIA CITY, PLAN 18620;

PID: 009-397-531. THE SOUTHERLY 60 FEET OF THAT PART OF PARCEL A (DD 38048I) OF LOT 1695, VICTORIA CITY LYING NORTH OF A BOUNDARY PARALLEL TO THE NORTH BOUNDARY THEREOF AT A DISTANCE OF 120 FEET THEREFROM, EXCEPT THE EASTERLY 45 FEET THEREOF;

PID: 008-315-957. THAT PART OF PARCEL A (DD 48048I) OF LOT 1695, VICTORIA CITY, LYING NORTH OF BOUNDARY EXTENDING PARALLEL TO NORTH BOUNDARY OF SAID PARCEL AT A DISTANCE OF 120 FEET THEREFROM, EXCEPT THE EAST 45 FEET THEREOF AND EXCEPT THAT PART OF THE SOUTHERLY 60 FEET THEREOF NOT INCLUDED IN THE SAID EAST 45 FEET; and

PID: 009-425-675. THE EASTERLY 45 FEET OF THE NORTHERLY 120 FEET OF PARCEL A (DD 51711I) OF LOT 1695, VICTORIA CITY

READ A FIRST TIME the day of 2019

READ A SECOND TIME the day of 2019

READ A THIRD TIME the day of 2019

ADOPTED on the day of 2019

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:

SURFSIDE HOLDINGS LTD. (Inc. No. BC0891491)

204 - 655 TYEE ROAD
Victoria, B.C. V9A 6X5

(the "Owner")

OF THE SECOND PART

AND:

ROYAL BANK OF CANADA

2nd Floor, 707 Fort Street
Victoria, B.C. V8W 2B7

(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 the following lands in the City of Victoria, British Columbia:
 - (i) 505 Quadra Street:

PID: 000-057-070
LOT 1, OF LOT 1695, VICTORIA CITY, PLAN 18620
 - (ii) 517 Quadra Street:

PID: 009-397-531
THE SOUTHERLY 60 FEET OF THAT PART OF PARCEL A (DD 380481) OF LOT 1695, VICTORIA CITY LYING NORTH OF A BOUNDARY PARALLEL TO

THE NORTH BOUNDARY THEREOF AT A DISTANCE OF 120 FEET THEREFROM, EXCEPT THE EASTERLY 45 FEET THEREOF

(iii) 519/521 Quadra Street:

PID: 008-315-957

THAT PART OF PARCEL A (DD 380481) OF LOT 1695, VICTORIA CITY, LYING NORTH OF BOUNDARY EXTENDING PARALLEL TO NORTH BOUNDARY OF SAID PARCEL AT A DISTANCE OF 120 FEET THEREFROM, EXCEPT THE EAST 45 FEET THEREOF AND EXCEPT THAT PART OF THE SOUTHERLY 60 FEET THEREOF NOT INCLUDED IN THE SAID EAST 45 FEET

(iv) 931 Convent Place:

PID: 009-425-675

THE EASTERLY 45 FEET OF THE NORTHERLY 120 FEET OF PARCEL A (DD 517111) OF LOT 1695, VICTORIA CITY

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

- C. The Owner has applied to the City to rezone the Lands to permit the development and construction of an 83 unit, six-storey multi-family purpose-built rental apartment building and 4 three-storey purpose-built rental townhomes over a one-storey underground parking and storage facility (the "**Development**");
- D. The Owner has agreed to provide rental housing within the Development for a period of twenty (20) years in accordance with this Agreement; 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 to provide rental housing for a period of twenty (20) years, and that all Dwelling Units within the Development on the Lands will be used and held only as rental housing for a period of twenty (20) years, and to establish certain other terms and conditions regarding the occupancy of the Dwelling Units identified in 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:

"**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 development described in Recital C above;

"**Dwelling Units**" means any or all, as the context may require, of the 87 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;

"**Dwelling Unit**" means any 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;

"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, in the open market in Victoria, 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 Victoria, BC census metropolitan area, 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. The parties agree that for 2018, the median household income for the Victoria, BC census metropolitan area is \$85,000.00. In the event that Statistics Canada or its successor in function no longer publishes median household income statistics for the Victoria, BC census metropolitan area, 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 Article 3.0 of this Agreement;

"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 10.3;

"Restricted Period" means the period of twenty (20) years commencing on the date that the City issues an occupancy permit in respect of any portion of the Development;

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

"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 DWELLING UNITS TO BE USED AND OCCUPIED ONLY AS RENTAL UNITS DURING RESTRICTED PERIOD

- 2.1** The Owner covenants and agrees that, for and during the Restricted Period, the Dwelling Units shall only be used as rental housing, 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.
- 2.2** Subject to Article 3.0, nothing in this Agreement is intended to restrict the rents at which the Owner may rent any Dwelling Unit to any Non-Owner, it being acknowledged and agreed that the Owner may and intends to rent the Dwelling Units at the Market Rent for each such Dwelling Unit, with the exception of the Moderate Income Units.

3.0 MODERATE INCOME TOWNHOUSE DWELLING UNITS

- 3.1** The Owner covenants and agrees that, for and during the Restricted Period:
- (a) The 4 three-storey purpose-built rental townhome Dwelling Units within the Development shall be designated as Moderate Income Units and shall only be occupied and used as Moderate Income Units.
 - (b) 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.
 - (c) Monthly rent for each of the Moderate Income Units shall not exceed the lesser of:
 - (i) Market Rent; and
 - (ii) thirty percent (30%) of Moderate Household Income divided by 12.

4.0 NO RESTRICTIONS ON RENTALS

- 4.1** The Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose any bylaws, 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.
- 4.2** Without limiting the generality of section 4.1, 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, whether during or after the expiry of the Restricted Period.

5.0 NO RESTRICTIONS ON AGE

- 5.1** The Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose any bylaws, rules or regulations whatsoever, the effect of which would be to restrict the age of an Owner or a Non-Owner who may reside in any Dwelling Unit.
- 5.2** Without limiting the generality of section 5.1, 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 the age of an Owner or a Non-Owner who may reside in any Dwelling Unit, whether during or after the expiry of the Restricted Period.

6.0 REPORTING

6.1 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 for and during the Restricted Period;
- (b) four Moderate Income Units are being rented in accordance with Article 3.0; and
- (c) 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.

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.

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 PRIORITY AGREEMENT

- 9.1 The Existing Chargeholder, as the registered holder of a charge by way of a Mortgage and an Assignment of Rents against certain legal parcels comprising the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA3180630 and CA3180631, respectively (together, the "**Existing Charges**"), 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 Owner and 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 Existing Charges in the same manner and to the same effect as if it had been dated and registered prior to the Existing Charges.

10.0 GENERAL PROVISIONS

- 10.1 **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:
 - (i) to the City:

City of Victoria
#1 Centennial Square
Victoria, B.C. V8W 1P6

Attention: Director of Sustainable Planning and
Community Development
Fax: 250-361-0386
 - (ii) to the Owner:

Surfside Holdings Ltd.
204 - 655 Tyee Road
Victoria, B.C. V9A 6X5

Attention: Peter Kerr or Stuart Kerr
Fax: (250) 381-1181

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 slowdown, 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.

- 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.
- 10.5 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.
- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 ENTIRE AGREEMENT.** This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 10.10 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.
- 10.11 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.
- 10.12 LAW APPLICABLE.** This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 10.13 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.

10.14 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.

10.15 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.

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

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE(S) TO FOLLOW]

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

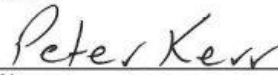
CITY CLERK Chris Coates

Date signed: _____

SURFSIDE HOLDINGS LTD.
by its authorized signatory(ies):



Print Name:



Print Name:

Date signed: NOVEMBER 21, 2018

ROYAL BANK OF CANADA
by its authorized signatory(ies):

Print Name:

Print Name:

Date signed: _____

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: _____

SURFSIDE HOLDINGS LTD.
by its authorized signatory(ies):

Print Name:

Print Name:

Date signed: _____

ROYAL BANK OF CANADA
by its authorized signatory(ies):



Print Name: JEFF COX



Print Name: ROBERT BRUMHAN

Date signed: DEC 10, 2018