

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:

1 This Bylaw may be cited as the "HOUSING AGREEMENT (1025-1031 JOHNSON STREET AND 1050 YATES STREET) BYLAW (2019)".

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 1133863 B.C. Ltd. and Nadar Holdings Ltd., or other registered owners from time to time of the lands described in subsection (c); and
- (c) that applies to the lands known as 1025-1031 Johnson Street and 1050 Yates Street, Victoria, BC, legally described as:

PID: 005-201-306, Lot 969, Victoria City, Except that Part in Plan 18802;

PID: 003-190-099, Lot 961, Victoria City, Except the Westerly (40') Thereof;

PID: 003-786-561, Lot A (DD B68208) of Lots 956, 957, 966, 967, 968 and 969,
Victoria City, Plan 18802;

PID: 003-190-030, The Westerly (19'3") Of Lot 960, Victoria City;

PID: 005-201-250, Lot 959, Victoria City;

PID: 003-189-881, The Easterly 40 Feet 9 Inches of Lot 960, Victoria City;

PID: 009-387-684, Lot 958, Victoria City;

PID: 003-190-145, The Westerly (40') of Lot 961, Victoria City;

PID: 005-201-276, The East 1/2 of Lot 970, Victoria City.

READ A FIRST TIME the day of 2019

READ A SECOND TIME the _____ day of _____ 2019

2

READ A THIRD TIME the

day of

2019

ADOPTED on the

day of

2019

CITY CLERK

MAYOR

TERMS OF INSTRUMENT - PART 2

AFFORDABLE RENTAL HOUSING AGREEMENT AND SECTION 219 COVENANT

THIS AGREEMENT dated for reference _____, 2019 is

BETWEEN:

1133863 B.C. LTD. (Inc. No. BC1133863)
3375 Tennyson Avenue, Victoria, British Columbia V8Z 3P3
(the "Owner")

AND:

THE CORPORATION OF THE CITY OF VICTORIA
1 Centennial Square, Victoria, British Columbia V8W 1P6
(the "City")

WITNESSES THAT WHEREAS:

- A. The Owner is the registered owner of the lands identified in the *Land Title Act* Form C attached to and forming part of this Agreement (the "Lands");
- B. Section 483 of the *Local Government Act* permits the City to enter into housing agreements for the provision of affordable and special needs housing, which may include conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units and rent which may be charged for housing units;
- C. The Owner and the City wish to enter into this Agreement to provide for affordable rental dwellings on the Lands, which Agreement is to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*; and
- D. The City adopted _____ Bylaw, 2019, No. _____, authorizing the City to enter into this Agreement.

NOW THEREFORE, in consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree, pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act*, as follows:

ARTICLE 1 DEFINITIONS

1.1 **Definitions** - In this Agreement, in addition to words defined above or elsewhere in this Agreement, the following terms have the following meanings:

- (a) **"Affordable Housing Unit"** means a Dwelling Unit or Dwelling Units designated as a Deep Subsidy, Low Income or Moderate Income Housing Unit in accordance with this Agreement.
- (b) **"BC Housing"** means the British Columbia Housing Management Commission, or its successor in function.
- (c) **"CPI"** means the All-Items Consumer Price Index for the City of Victoria published from time to time by Statistics Canada, or its successor in function.
- (d) **"Cumulative Gross Annual Household Income"** means the cumulative, gross annual income of each member of a Family that occupies an Affordable Housing Unit that is over 19 years of age.
- (e) **"Deep Subsidy Housing Unit"** means a Dwelling Unit or Dwelling Units designated as a deep subsidy unit for which rent is calculated based on the Income Assistance Allowance.
- (f) **"Deep Subsidy Permitted Rent"** means a monthly rent no greater than the Income Assistance Allowance applicable to the Affordable Housing Unit.
- (g) **"Dwelling Unit"** means a self-contained set of rooms used or intended to be used as a single residence occupied by one Family and containing both cooking and sanitary facilities.
- (h) **"Eligible Tenant"** means a Family that is eligible for housing in a Deep Subsidy, Low Income or Moderate Income Housing Unit, as applicable, pursuant to the terms of the Operating Agreement, provided that if and for so long as there is no Operating Agreement or the Operating Agreement ceases to apply to all of the Affordable Housing Units on the Lands, it means:
 - (i) for a Deep Subsidy Housing Unit: a Family that receives an Income Assistance Allowance;
 - (ii) for a Low Income Housing Unit: a Family having a Cumulative Gross Annual Household Income that does not exceed the Low Income Limit applicable to the Affordable Housing Unit; or

- (iii) for a Moderate Income Housing Unit: a Family having a Cumulative Gross Annual Household Income that does not exceed the Moderate Income Limit applicable to the Affordable Housing Unit.
- (i) **"Family"** means:
 - (i) one individual;
 - (ii) two or more individuals related by blood, marriage or adoption; or
 - (iii) a group of not more than six individuals who are not related by blood, marriage or adoption.
- (j) **"Income Assistance Allowance"** means the monthly allowance provided to Family for shelter under the:
 - (i) *Employment and Assistance Act and Employment and Assistance Regulation, or*
 - (ii) *Employment and Assistance for Persons with Disabilities Act and Employment and Assistance for Persons with Disabilities Act Regulation,*
 or any replacements thereof.
- (k) **"Low Income Housing Unit"** means a Dwelling Unit or Dwelling Units designated for low income housing, in accordance with this Agreement.
- (l) **"Low Income Housing Unit Permitted Rent"** means, with respect to an Affordable Housing Unit, a monthly rent of no greater than 1/12th of 30% of the Low Income Limit applicable to the Affordable Housing Unit.
- (m) **"Low Income Limit"** means the Housing Income Limits for the City of Victoria ("**HILs**") published annually by BCH Housing, provided that:
 - (i) In the event that BC Housing ceases to publish HILs but replaces HILs with a similar income limits or standards, such replacement limit or standards shall replace HILs for the purposes of this Agreement; and
 - (ii) In the event that BC Housing ceases to determine HILs, and the HILs are not replaced by similar income limits or standards published by BC Housing or after such a replacement BC Housing ceases to determine such similar limit or standard, then the Low Income Housing Limit shall be determined by reference to the final HILs or to a similar limit or standard, as the case may be, published by BC Housing and thereafter increased annually by an amount equal to the increase, if any, in the CPI for the period of January 1 to December 31 of the previous calendar year,

and HILs for 2019 are as follows:

- (iii) in respect of a studio or one-bedroom unit: \$42,500.00;
 - (iv) in respect of a two-bedroom unit: \$56,000.00; and
 - (v) in respect of a three-bedroom unit: \$75,500.00.
- (n) **"Moderate Income Housing Unit"** means a Dwelling Unit or Dwelling Units designated for moderate income housing, in accordance with this Agreement.
- (o) **"Moderate Income Limit"** means the applicable amount below:
- (i) in respect of an Affordable Housing Unit with less than two bedrooms, the median income for Families without children, as determined and published by BC Housing from time to time. For 2019, this amount is \$71,810.00; or
 - (ii) in respect to an Affordable Housing Unit with two or more bedrooms, the median income for Families with dependants, as determined and published by BC Housing from time to time. For 2019, this amount is \$107,000.00 for 2019;

provided that:

- (iii) In the event that BC Housing ceases to determine and publish median incomes for Families, then the annual income limits of Eligible Tenants shall be determined by reference to the final median income for Families determined and published by BC Housing and thereafter increased annually by an amount equal to the increase, if any, in the CPI for the period of January 1 to December 31 of the previous calendar year.
- (p) **"Occupancy Standards"** mean the following requirements:
- (i) no more than 2 and no less than 1 person per bedroom;
 - (ii) spouses and couples share a bedroom;
 - (iii) parents do not share a bedroom with their children;
 - (iv) dependants aged 18 or over do not share a bedroom with any other person; and
 - (v) dependants of the opposite sex age 5 or over do not share a bedroom.
- (q) **"Operating Agreement"** means the Community Housing Fund Operating Agreement to be entered into between Pacifica Housing Advisory Association and

BC Housing in respect of the operation and rental of the Affordable Housing Units during the Term.

- (r) **"Public Housing Body"** has the same meaning as under section 49.1 of the RTA.
- (s) **"RTA"** means the *Residential Tenancy Act* (British Columbia).
- (t) **"Tenancy Agreement"** has the same meaning under the RTA.
- (u) **"Tenant"** means a Family that occupies an Affordable Housing Unit.
- (v) **"Term"** means sixty (60) years from the date of issuance by the City of an occupancy permit for all of the Affordable Housing Units to be constructed on the Lands pursuant to this Agreement.

ARTICLE 2

CONSTRUCTION, USE AND MANAGEMENT OF AFFORDABLE HOUSING UNITS

- 2.1 **Construction and Designation** - The Lands shall not be built upon unless (i) the building or buildings to be constructed contain at least 130 Dwelling Units, of which, during the Term:
 - (a) 26 will be Deep Subsidy Housing Units;
 - (b) 65 will be Low Income Housing Units; and
 - (c) 39 will be Moderate Income Housing Units;

For clarity, during the Term all Dwelling Units shall be Affordable Housing Units and shall be designated, used and occupied as either Deep Subsidy Housing Units, Low Income Housing Units or Moderate Income Housing Units.
- 2.2 **Use and Occupancy** – Each Dwelling Unit on the Land may only be used as a permanent residence offered for rent, occupied by a Tenant under a Tenancy Agreement and, during the Term, may only be occupied by one Eligible Tenant and in accordance with the Occupancy Standards. Without limiting the foregoing and for clarity, an Affordable Housing Unit may not be occupied by the Owner or the Owner's family members, other than an Eligible Tenant. For the purposes of this section, "permanent residence" means that the place where the person lives and to which, whenever absent, the person intends to return.
- 2.3 **Occupancy Declaration** – Within 90 days following the issuance of an occupancy permit for the Affordable Housing Units, and thereafter within 30 days after the end of each calendar year during the Term, the Owner will provide to the City a statutory declaration in form and substance satisfactory to the City, acting reasonably, certified by the Owner, firstly, confirming compliance with the terms of this Agreement and, secondly, confirming

the number of Affordable Housing Units designated as Deep Subsidy, Low Income or Moderate Income Housing Units. The Owner authorizes the City to make such inquiries as it considers reasonably necessary in order to confirm that the Owner is complying with this Agreement.

- 2.4 **Subdivision Restriction** – The building containing the Affordable Housing Units shall not be subdivided by any means, including by deposit of a strata plan of any kind under the *Strata Property Act*, unless all of the Affordable Housing Units are included in a single parcel.
- 2.5 **Application** - This Agreement will apply to the Lands notwithstanding the demolition of any building containing Affordable Housing Units, and any subsequent improvements constructed on the Lands will remain subject to the requirements of this Agreement, including section 2.1.

ARTICLE 3

OCCUPANCY AND MANAGEMENT OF AFFORDABLE HOUSING UNITS

- 3.1 **Occupancy Terms and Conditions** - The occupancy of each Affordable Housing Unit shall comply at all times with all of the following terms and conditions:
 - (a) **Eligible Tenant** - The Affordable Housing Unit shall only be occupied by and rented to an Eligible Tenant, which, for clarity, shall depend on the type of the Affordable Housing Unit (Deep Subsidy, Low Income or Moderate Income Housing Units) and size of the Affordable Housing Unit (studio, 1 bedroom, 2 bedroom or 3 bedroom).
 - (b) **Tenancy Agreement** - The Affordable Housing Unit will be used or occupied only pursuant to a Tenancy Agreement.
 - (c) **Deep Subsidy Housing Unit Rent** - The monthly rent charged for a Deep Subsidy Housing Unit will not exceed the Deep Subsidy Permitted Rent applicable to that Affordable Housing Unit.
 - (d) **Low Income Housing Unit Rent** - The monthly rent charged for a Low Income Housing Unit will not exceed the Low Income Housing Unit Permitted Rent applicable to that Affordable Housing Unit.
 - (e) **Tenancy Agreement Requirements** – Every Tenancy Agreement respecting an Affordable Housing Unit shall comply with the requirements of the Operating Agreement. If, during the Term, there is no Operating Agreement in force in respect of any Affordable Housing Units, or if the Operating Agreement ceases to apply to any Affordable Housing Units, every Tenancy Agreement respecting an Affordable Housing Unit in respect of which there is no applicable Operating Agreement shall comply with the following requirements:
 - (i) a copy of this Agreement shall be attached to the Tenancy Agreement; and

- (ii) the Tenancy Agreement shall include a clause permitting the Owner to terminate the Tenancy Agreement, if the Affordable Housing Unit is not occupied in accordance with the requirements of this Agreement, if the Tenancy Agreement is assigned, or if the Affordable Housing Agreement is subleased in contravention of the requirements of this Agreement.

3.2 Subleasing and Assignment – The Owner will not consent to the assignment of a Tenancy Agreement relating to an Affordable Housing Unit or the subletting of an Affordable Housing Unit:

- (a) without the prior written consent of BC Housing, if there is an Operating Agreement in force with respect to the Affordable Housing Unit to be assigned or subleased, or
- (b) if there is no Operating Agreement in force with respect to the Affordable Housing Unit to be assigned or subleased, then unless the assignment or sublease is in favour of an Eligible Tenant and (i) in the case of an assignment, the assignee does not pay any amount to the assignor in consideration of such assignment; or (ii) in the case of a sublease, the subtenant does not pay monthly rent to the Tenant exceeding the rent charged by the Owner applicable to the Affordable Housing Unit to be subleased.

3.3 Management

- (a) The Owner will at all times cause a Public Housing Body to administer, manage and operate the Affordable Housing Units in accordance with all of the restrictions and requirements of this Agreement and the Owner's obligations under this Agreement. For clarity, if the Owner is not a Public Housing Body and engages a Public Housing Body pursuant to this Agreement such engagement will not relieve the Owner from any of the Owner's obligations under this Agreement or any of the restrictions or requirements of this Agreement.
- (b) The Owner will maintain the Affordable Housing Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Affordable Housing Units.

**ARTICLE 4
DEFAULT AND REMEDIES**

4.1 Notice of Default

If the Owner is in default of this Agreement, the City may give written notice to the Owner requiring that the Owner cures the default within thirty (30) days of receiving such notice, or such longer period as the Owner reasonably requires if the default cannot be cured within 30 days if the Owner is acting diligently. The notice must specify the nature of the

default. The Owner must act diligently to correct the default within the time specified in the notice.

4.2 **Specific Relief**

The Owner agrees that, without affecting any other rights or remedies the City may have in respect of any breach of this Agreement that continues beyond the cure period, the City is entitled to obtain an order for specific performance of this agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement that continues beyond the cure period. The Owner agrees that this is reasonable given the public interest in ensuring the provision of Affordable Housing Units to be occupied by Eligible Tenants and restricting occupancy of the Lands in accordance with this Agreement.

4.3 **Cumulative Remedies**

No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit, or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right to remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

ARTICLE 5 MISCELLANEOUS

5.1 **Paramountcy**

If there is a conflict between a provision in this Housing Agreement and a provision in the Operating Agreement, the Owner and the City agree that the term in the Operating Agreement will prevail during such period as the Operating Agreement remains in force in respect of all of the Affordable Housing Units.

5.2 **No Compensation**

The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the City, for any decrease in the market value of the Lands or for any obligations on the part of the Owner and its successors in title which at any time may result directly or indirectly from the operation of this Agreement.

5.3 **Modification**

This Agreement may only be modified, with the consent of the Owner and by way of a bylaw duly passed by the council of the City and thereafter if it is signed in writing by the City and the Owner.

5.4 **Indemnity**

Except to the extent caused by, resulting from, or contributed to by the negligence or willful misconduct of the City, or any one or more of its elected officials, officers, employees and agents, or its and their heirs, executors, administrators, personal representatives, successors and assigns (collectively, the "Indemnified Parties"), the Owner will indemnify and save harmless the Indemnified Parties, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- (a) the use or occupancy of any Affordable Housing Unit;
- (b) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible in connection with the observance or performance of the obligations of the Owner under this Agreement;
- (c) any negligent act or omission of the Managing Public Housing Body, or its officers, directors, agents, contractors or other persons for whom at law the Managing Public Housing Body is responsible in connection with the observance or performance of the obligations of the Owner under this Agreement;
- (d) the City refusing to issue a Development Permit, building permit, or refusing to permit occupancy of any building, or any portion thereof, constructed on the lands;
- (e) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Housing Unit or the enforcement of any Tenancy Agreement; and/or
- (f) any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

5.5 **Release**

Except to the extent caused by, resulting from, or contributed to by the negligence or willful misconduct of the City, or any one or more of its elected officials, officers, employees and agents, or its and their heirs, executors, administrators, personal representatives, successors and assigns (collectively, the "Released Persons"), the Owner hereby releases and forever discharges the Released Persons from and against all claims,

demands, damages, actions, or causes of action by reason of, arising out of, or which would or could not occur but for:

- (a) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Housing Unit;
- (b) the City refusing to issue a Development Permit, building permit, or refusing to permit occupancy of any building, or any portion thereof, constructed on the Lands; and/or
- (c) the exercise by the City of any of its rights under this Agreement.

5.6 **Registration & Priority**

The Owner will cause this Agreement to be registered as a covenant and rent charge under section 219 of the *Land Title Act* against title to the Lands in priority to all charges and encumbrances registered or pending registration against title to the Lands save and except those in favour of the City or specifically approved in advance in writing by the City, and will cause a notice of this Agreement under section 483(5) of the *Local Government Act* to be filed in the Land Title Office and shown as a legal notation on title to the Lands.

5.7 **City's Powers Unaffected**

This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) affect or limit any enactment relating to the use or subdivision of the Lands; or
- (c) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

5.8 **No Public Law Duty**

Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

5.9 Enuring Effect

This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

5.10 Severability

If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

5.11 Waiver

All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

5.12 Further Assurance

Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.

5.13 Agreement Runs with the Lands

This Agreement shall burden and run with the Lands, and bind the successors in title to, and any persons who acquire any interest in, the Lands and any and every parcel into which the Lands may be subdivided by any means, including by deposit of a strata plan of any kind under the *Strata Property Act* provided that:

- (a) in accordance with section 219(8) of the *Land Title Act*, the Owner, a successor in title to the Owner and any person who acquires any interest in the Lands shall not be liable for any breach of this Agreement after the person has ceased to own any interest in the Lands; and
- (b) if the Lands are subdivided under the *Land Title Act*, the burdens and rights described in this Instrument will not run with those parcels derived from the Lands on which the Affordable Housing Units are not or will not be constructed, and at the Owner's request, the City will execute and deliver to the Owner a release of this instrument as against any and all such parcels that do not contain any of the Affordable Housing Units, which release shall be prepared and registered by and at the expense of the Owner.

5.14 No Joint Venture

Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

5.15 Applicable Law

The laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

5.16 Interpretation

In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this agreement;
- (c) the term "enactment" has the meaning given to it under the *Interpretation Act* (British Columbia) on the reference date of this Agreement;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time, unless otherwise expressly provided;
- (f) reference to a particular numbered section, or to a particular lettered schedule, is, unless otherwise expressly provided, a reference to the correspondingly numbered section or lettered schedule of this Agreement;
- (g) all Schedules to this Agreement form an integral part of this Agreement;
- (h) time is of the essence; and
- (i) where the word "including" is followed by a list, the contents of the list are not intended to limit or otherwise affect the generality of the expression preceding the word "including".

5.17 Execution in Counterparts & Electronic Delivery

This Agreement may be executed in any number of counterparts and delivered by e-mail, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument, provided that any party delivering

this Agreement by e-mail shall also deliver to the other party an originally executed copy of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the General Instrument – Part 1, which is a part hereof.

PRIORITY AGREEMENT

This Priority Agreement is between the Royal Bank of Canada (the "**Prior Chargeholder**"), being the registered owner and holder of Mortgage CA6474249 (the "**Prior Charge**"), and the City of Victoria, being the registered owner and holder of the covenant under section 219 of the *Land Title Act* (British Columbia) to which this Priority Agreement is attached (the "**Subsequent Charge**").

In consideration of the sum of ten dollars (\$10.00) now paid to the Prior Chargeholder and other good and valuable consideration, the receipt and sufficiency of which the Prior Chargeholder acknowledges, the Prior Chargeholder hereby approves of, joins in and consents to the granting of the Subsequent Charge and hereby postpones all of the Prior Chargeholder's rights under the Prior Charge to the rights of the City under the Subsequent Charge in the same manner and to the same extent as if the Prior Charge had been registered immediately after the Subsequent Charge.

As evidence of its agreement to be bound by this Priority Agreement, the Prior Chargeholder has executed the General Instrument – Part 1 (*Land Title Act* - Form C) attached to and forming part of this Priority Agreement.