

NO. 19-107

HOUSING AGREEMENT (1025-1031 JOHNSON STREET AND 1050 YATES STREET) BYLAW
A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to authorize an agreement to ensure that future strata bylaws cannot prohibit the rental of units for the lands known as 1025-1031 Johnson Street and 1050 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 (1025-1031 JOHNSON STREET AND 1050 YATES STREET) BYLAW (2019)".

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 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

READ A THIRD TIME the

day of

2019

ADOPTED on the

day of

2019

CITY CLERK

MAYOR

TERMS OF INSTRUMENT – PART 2

HOUSING AGREEMENT & SECTION 219 COVENANT – RENTAL AVAILABILITY

THIS AGREEMENT dated for reference the _____, is

BETWEEN:

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

NADAR HOLDINGS LTD. (Inc. No. BC0556685)
3375 Tennyson Avenue, Victoria, British Columbia V8Z 3P3

(together, “the “Owner”)

AND:

THE CORPORATION OF THE CITY OF VICTORIA
1 Centennial Square, Victoria, British Columbia V8W 1P6

(the “City”)

GIVEN THAT:

- 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 with respect to the form of tenure of housing units, availability of housing units to classes of persons and the administration of housing units;
- C. The Owner and the City wish to enter into this Agreement to ensure that all residential dwellings from time to time constructed on the Lands are available for rent if not occupied by the owner of the dwelling or the owner’s family members, 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.

THIS AGREEMENT is evidence that in consideration of the payment of \$10.00 from the City to the Owner and other good and valuable consideration (the receipt and sufficiency of which the

Owner acknowledges), the Owner covenants and agrees with the City under section 219 of the *Land Title Act* as follows:

1. **Tenure of Residential Dwellings** – Every residential dwelling from time to time on the Lands or within any building on the Lands shall be available for occupancy by way of a tenancy agreement, lease or other rental arrangement of any kind and, without limiting the foregoing:
 - (a) no strata corporation shall pass any bylaws or rules preventing, restricting or limiting such occupancy or the ability of a residential dwelling on the Lands to be occupied in such a manner and any strata corporation bylaw or rule that purports to do so will have no force and effect; and
 - (b) no strata corporation shall pass any bylaw, make any rules or approve or impose any levy, fee or charge that would limit the ability of a tenant to use or enjoy any common property or common facilities in a manner that differs from strata lot owners, or would result in a tenant paying a greater amount than strata lot owners with respect to any common property or common facility or the use thereof
2. **Owner and Family Members may Occupy** – For clarity, intention of this Agreement is to ensure that residential dwellings on the Lands may be occupied by way of rental, but not to prevent an owner and his or her family members from occupying such a residential dwelling and nothing in this Agreement shall prevent an owner and their family members from occupying a residential dwelling on the Lands.
3. **Strata Subdivision Restriction** – The Lands (including any building or part thereof containing any residential dwellings) shall not be subdivided by deposit of a strata plan of any kind under the *Strata Property Act*, unless the strata bylaws are consistent and in accordance with the restrictions under section 1 and do not in any way prevent or restrict a strata lot owner from renting their strata lot and this is confirmed in writing by the City's Director of Sustainable Planning and Community Development, Development Services from time to time, or his or her designate.
4. **Municipal Permits** – The Owner agrees that the City may withhold building permits and occupancy permits with respect to any building or other structure from time to time constructed or proposed to be constructed on the Lands, as the City may, in its sole discretion, consider necessary to ensure compliance with this Agreement.
5. **Indemnity** – As an integral part of this Agreement, pursuant to section 219(6)(a) of the *Land Title Act*, the Owner hereby indemnifies the City from and against any and all liability, actions, causes of action, claims, suits, proceedings, judgements, damages, expenses, demands and losses at any time suffered or incurred by, or brought against, the City, or any of its elected or appointed officials, officers, employees or agents, arising from or in connection with the granting or existence of this Agreement, the performance of any of the Owner's obligations under this Agreement, any breach of any

provision under this Agreement or the enforcement by the City of this Agreement of any provision of this Agreement.

6. **Specific Relief** – The Owner agrees that the public interest in ensuring that all of the provisions of this Agreement are complied with strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the instance of the City, in the event of an actual or threatened breach of this Agreement.
7. **No Effect on Powers** – Nothing in this Agreement shall:
 - (a) affect or limit the discretion, rights or powers of the City or the City’s Approving Officer under any enactment or at common law, including in relation to the use, development or subdivision of the Land;
 - (b) affect or limit any enactment relating to the use, development or subdivision of the Lands; or
 - (c) relieve the Owner from complying with any enactment, including in relation to the use, development or subdivision of the Lands.
8. **City Discretion** – Where the City or a representative of the City is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent:
 - (a) the relevant provision shall not be considered fulfilled unless the approval, opinion, determination, consent or expression of satisfaction is in writing signed by the City or the representative, as the case may be;
 - (b) the approval, opinion, determination, consent or satisfaction is in the sole discretion of the City or the representative, as the case may be; and
 - (c) the City or the representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the City or the representative may do any of those things in the same manner as if it were a private person and not a public body or employee or officer thereof.
9. **No Obligation to Enforce** – The rights given to the City under this Agreement are permissive only and nothing in this Agreement shall give rise to any legal duty of any kind on the City to anyone or obligate the City to enforce this Agreement or to perform any act or incur any expense.
10. **Agreement Runs with Lands** – This Agreement shall burden and run with, and bind the successors in title to, the Lands and each and every part 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* (British Columbia)).

11. **Waiver** – No waiver by the City of any requirement or breach of this Agreement shall be effective unless it is an express waiver in writing that specifically references the requirement or breach and no such waiver shall operate as a waiver of any other requirement or breach or any continuing breach of this Agreement.
12. **Remedies** - No reference to or exercise of any specific right or remedy by the City shall prejudice or preclude the City from exercising any other right or remedy, whether allowed at law or in equity or expressly provided for in this Agreement, and no such right or remedy is exclusive or dependent upon any other such remedy and the City may from time to time exercise any one or more of such remedies independently or in combination.
13. **Priority** – The Owner shall cause this Agreement to be registered in the applicable land title office against title to the Lands with priority over all financial liens, charges and encumbrances, and any leases and options to purchase, registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge, encumbrance, lease or option to purchase to execute an instrument in a form required by the City under which such holder postpones all of the holder's rights to those of the City under this Agreement in the same manner and to the same extent as if such lien, charge, encumbrance, lease or option to purchase had been registered immediately after the registration of this Agreement.
14. **Modification** – This Agreement may not be modified except by an agreement or instrument in writing signed by the Owner or its successor in title and the City or a successor or assignee.
15. **Further Assurances** – The Owner shall do and cause to be done all things, including by executing further documents, as may be necessary to give effect to the intent of this Agreement.
16. **Owner's Expense** – The Owner shall perform and comply with its obligations under this Agreement at its own expense and without compensation from the City.
17. **Severance** – If any part of this Agreement is for any reason held to be invalid by a decision of a court with the jurisdiction to do so, the invalid portion is to be considered severed from the rest of this Agreement and the decision that it is invalid shall not affect the validity or enforceability of the remainder of this Agreement.
18. **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”.
19. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.
20. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns, as the case may be.
21. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject.
22. **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.

As evidence of their agreement to be bound by this Agreement, the parties have executed the General Instrument – Part 1 (*Land Title Act* Form C) attached to and forming part of this Agreement.

PRIORITY AGREEMENT

This Priority Agreement is between the Royal Bank of Canada (the "**Prior Chargeholder**"), being the registered owner and holder of Mortgage CA6474249, Mortgage CA6862762, and Assignment of Rents CA6862763 (the "**Prior Charges**"), 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 Charges to the rights of the City under the Subsequent Charge in the same manner and to the same extent as if the Prior Charges 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.