

# CORPORATION OF THE TOWNSHIP OF ESQUIMALT

## BYLAW NO. 3066

A Bylaw to authorize a Housing Agreement  
under section 483 of the *Local Government Act*

THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF ESQUIMALT, in  
open meeting assembled, enacts as follows:

1. This bylaw may be cited as the "*HOUSING AGREEMENT (1189 Highrock Place) BYLAW, 2022, NO. 3066*".
2. The Mayor and the Corporate Officer are authorized to execute the Housing Agreement:
  - (a) set out in Schedule A,
  - (b) between the Township and **Joseph Norman George Devlin and Catherine Irene Devlin.**
  - (c) that applies to the land known as **1189 Highrock Place** legally described as:

**PID: 008-762-589      Lot E, Section 10, Esquimalt District, Plan 45667**

READ a first time by the Municipal Council on the 29<sup>th</sup> day of August, 2022.

READ a second time by the Municipal Council on the 29<sup>th</sup> day of August, 2022.

READ a third time by the Municipal Council on the 29<sup>th</sup> day of August, 2022.

ADOPTED by the Municipal Council on the 21<sup>st</sup> day of November, 2022

  
BARBARA DESJARDINS  
MAYOR

  
DEBRA HOPKINS  
CORPORATE OFFICER

**SCHEDULE A to Bylaw No. 3066  
HOUSING AGREEMENT**

Schedule A

**HOUSING AGREEMENT**

(Pursuant to Section 483 of the *Local Government Act*)

**THIS AGREEMENT is made upon execution by all parties following  
Township Council's adoption of the associated Housing Agreement Bylaw.**

**BETWEEN:**

**THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT**

1229 Esquimalt Road,  
Esquimalt, BC V9A 3P1

("the **Township**")

**AND**

**Joseph Norman George Devlin and Catherine Irene Devlin**

1189 Highrock Place  
Esquimalt, B.C. V9A4W1

(the **"Owner"**)

**RECITALS:**

- A. Under Section 483 of the *Local Government Act*, R.S.B.C. 2015 c.1 (the **"LGA"**), the Township 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 *LGA*;
- B. The Owner is the registered owner in fee-simple of those lands with a current civic address of [1189 Highrock Place] in the Township of Esquimalt in the Province of British Columbia (**"BC"**), and legally described as:

008-762-589     Lot E, Section 10, Esquimalt District, Plan 45667

(the **"Lands"**).

- C. The Owner seeks to develop a Detached Accessory Dwelling Unit (**"DADU"**), a secondary dwelling to a principal Single Family Dwelling, in accordance with the

density-bonusing provisions of the Township's Zoning Bylaw, and the conditions of such additional density include a Housing Agreement with the Township, under Section 483 of the *Local Government Act* to ensure that:

- i. the DADU is not restricted in its availability for use as affordable rental accommodation; and
  - ii. the registered owner of the lot must occupy either the principal dwelling located on the Lands or the DADU as the Owner's Permanent Residence.
- D. Under section 483 of the *Local Government Act*, the Township 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*.
- E. The Owner and the Township 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 with respect to the matters noted herein (the "**Agreement**" or the "**Housing Agreement**"), the parties acknowledging that Notice of this Housing Agreement shall be placed on title to the Lands and shall be binding on future owners in accordance with *Local Government Act* s.483(6).

**NOW THIS AGREEMENT WITNESSES** that pursuant to Section 483 of the *Local Government Act*, and in consideration of the promises and covenants contained in this Housing Agreement, the parties agree each with the other as follows:

## **1. DEFINITIONS**

- 1.1. Unless otherwise stated, the definitions of the Township's ZONING BYLAW, 1992 NO. 2050 (the "**Zoning Bylaw**") apply to this Agreement, as amended and replaced from time to time.
- 1.2. The following words and terms in this Housing Agreement have the following meanings:
  - (a) "**Affordable Rental Accommodation**" means a dwelling unit for residential use rented under the terms of a residential tenancy agreement that complies with the provisions of the *Residential Tenancy Act*;
  - (b) "**Dwelling Unit**" means one or more habitable rooms used for the residential accommodation of one Family when such rooms contain or provide for the installation of only one (1) set of cooking facilities and one or more sets of sanitary facilities;
  - (c) "**Immediate Family**" means one or more of the parents, spouse or children of the Owner, or where the Owner is a corporate or non-for-profit entity, means one or more of the parents, spouse or children of a registered director or officer of the entity;
  - (d) "**Non-Owner**" means a person who occupies a Dwelling Unit other than the Owner of the Lands.

## **2. RENTAL UNIT AND RESIDENTIAL USE BY OWNER ONLY**

- 2.1. The Owner covenants and agrees that the DADU must be occupied:
  - (a) By the Owner, with or without one or more members of the Owner's Immediate Family, as the Owner's Permanent Residence; or
  - (b) By a Non-Owner as Affordable Rental Accommodation.
- 2.2. The Owner further covenants and agrees that the registered Owner of the Lands must occupy either the principal Single Family Dwelling or the DADU as the Owner's Permanent Residence.
- 2.3. The Owner and the Township agree that the DADU is not, and must not be, restricted in its availability for use as Affordable Rental Accommodation, unless the Single Family Dwelling is being rented and the Owner is occupying the DADU as their permanent residence.
- 2.4. For greater certainty, this Agreement does not prevent the rental of the Affordable Rental Accommodation unit (either the Single Family Dwelling or the DADU) to Immediate Family.
- 2.5. The Owner acknowledges that the Lands cannot be subdivided or stratified, as further secured by Covenant under section 219 of the *Land Title Act*, and therefore the Owner cannot and will not make application to deposit a strata plan for the DADU, or undertake any other ownership structure that would restrict or compromise the rental of the residential units.

## **3. ADMINISTRATION & MANAGEMENT - REPORTING**

- 3.1. The Owner covenants and agrees to provide to the Township, within five (5) days upon written request from the Township, or the Township's Director of Development Services, a report in writing confirming:
  - (a) the number and location of Dwelling Units on the Lands; and
  - (b) who is occupying the Dwelling Units, including identifying which of the occupants are Owners, Immediate Family, or Non-Owners.
- 3.2. The Owner irrevocably authorizes the Township to make such enquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.
- 3.3. The Township acknowledges that the Dwelling Unit that is not occupied as the Owner's Permanent Residence may be vacant for a period not exceeding two months between tenants, without breach of this Agreement.

## **4. NOTICE IN LAND TITLE OFFICE**

- 4.1. Notice of this Housing Agreement will be filed in the Land Title Office by the Township at the sole cost of the Owner in accordance with Section 483 of the *LGA*, and this Housing Agreement is binding on the parties to this Housing Agreement as well as all persons who acquire an interest in the Lands after filing of the Notice.

## **5. RELEASE AND INDEMNITY**

- 5.1. The Owner covenants and agrees to indemnify and save harmless the Township from any and all claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which anyone has or may have against the Township or which the Township incurs as a result of any loss, damage, deprivation, enrichment or injury, including economic loss and death, arising out of or connected with the restrictions or requirements of this Housing Agreement, the breach of any covenant in this Housing Agreement, the granting of any approvals or the use, occupancy and tenure of the Lands contemplated under this Housing Agreement.
- 5.2. The Owner releases and forever discharges the Township of and from any claims, causes of action, suits, demands, fines, penalties, costs or expenses or legal fees (on a solicitor-client basis) whatsoever, in law or equity, which the Owner and anyone, including third parties, can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss and death, arising out of or connected with the restrictions or requirements of this Housing Agreement, the breach of any covenant in this Housing Agreement, the granting of any approvals or the use, occupancy, and tenure of the Lands contemplated under this Housing Agreement.

## **6. GENERAL PROVISIONS**

- 6.1. **NOTICE:** Any notice permitted or required by this Housing Agreement to be given to either party must be given to that party at the address set out above, or at any other address of which the party has given the other party notice in writing expressly for the purposes of this Housing Agreement.
- 6.2. **CONFLICT:** In the event of a conflict between the terms of this Housing Agreement and the provisions of Township bylaws in relation to land use or density, the bylaws will prevail in accordance with Section 483(3) of the *LGA*.
- 6.3. **BINDING EFFECT:** This Housing 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 *LGA*.
- 6.4. **TIME:** Time is of the essence of this Housing Agreement.
- 6.5. **WAIVER:**
  - (a) No provision of this Housing Agreement may be waived by a party unless the waiver is expressed in writing by the party.
  - (b) 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 Housing Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

6.6. **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.

6.7. **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.

**6.8. RELATIONSHIP OF PARTIES:**

- (a) No provision of this Housing Agreement may be construed to create a partnership or joint venture relationship, an employer-employee relationship, a landlord-tenant, or a principal-agent relationship.
- (b) The Owner is solely responsible for all costs and expenditures required to fulfill its obligations under this Housing Agreement, whether those costs and expenses are, or are not, specifically referred to in this Housing Agreement.

6.9. **FURTHER ASSURANCES:** The Owner 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 Housing Agreement.

**6.10. ENTIRE AGREEMENT:**

- (a) This Housing Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Housing Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.
- (b) No representations, warranties or conditions, express or implied, oral or otherwise, have been made other than those expressed in this Housing Agreement.

**6.11. BREACH**

- (a) The Owner covenants and agrees that:
  - (i) if the Township advises of a breach of this Agreement, as determined in its reasonable discretion, the Owner must promptly remedy that breach at its sole cost;
  - (ii) if the Owner has not remedied the breach to the reasonable satisfaction of the Township within thirty (30) days of notice or other longer time period specified by the Township, the Township may, but is under no obligation to, remove or rectify the breach at the expense of the Owner without further notice; and
  - (iii) any costs to the Township of such removal or rectification is a debt due from the Owner to the Township together with interest at a rate of 1% per annum in excess of the Prime Lending Rate of the Royal Bank of Canada in effect from time to time, and:

- (A) the Owner shall pay such costs and interest to the Township forthwith upon demand; and
- (B) failing payment, the Township may add such costs to property taxes for the Lands.

6.12. **COMPLIANCE:** The Owner covenants and agrees that the Township may withhold development permits, building permits and other approvals related to the use, building or subdivision of land as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a permit or approval does not act as a representation or warranty by the Township that the covenants of this Agreement have been satisfied.

6.13. **CUMULATIVE REMEDIES:** No remedy under this Housing Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity. Damages will be an inadequate remedy for the Township, and the Township is entitled to an order for specific performance or a prohibitory or mandatory injunction in order to compel performance of the obligations in this Housing Agreement.

6.14. **NO RESTRICTION ON TOWNSHIP AUTHORITY:** Except as required by Section 483 of the *LGA*, nothing contained or implied in this Housing Agreement:

- (a) prejudices or affects the rights, powers or discretion of the Township in the exercise of its functions under any public or private statutes, bylaws, orders and regulations, all of which may be fully and effectively exercised in relation to the Lands as if the Housing Agreement had not been executed and delivered by the Owner;
- (b) imposes any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Housing Agreement or the breach of any provision in this Housing Agreement; or
- (c) imposes any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Township with respect to its exercise of any right or remedy expressly provided in this Housing Agreement or at law or in equity.

6.15. **SEVERABILITY:** Each article of this Housing Agreement is severable. If any provision of this Housing Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision may be severed and the illegality or invalidity thereof will not affect the validity of the remainder of this Housing Agreement.

6.16. **ACKNOWLEDGEMENT:** The Owner acknowledges having been directed to obtain independent legal advice and having read and fully understood all the terms and conditions of this Housing Agreement. The Owner confirms that this Housing Agreement has been entered into voluntarily. The Owner acknowledges and agrees that any information submitted to the Township is subject to the *BC Freedom of Information and Protection of Privacy Act*.

6.17. **AMENDMENT:**

- (a) This Agreement may be amended from time to time upon terms and conditions acceptable to the parties.
- (b) The Owner acknowledges that it is within the Township's sole discretion to consent or not to consent to modifications of this Agreement and that such consent may be withheld for any reason.

6.18. **APPLICABLE LAW:** This Housing Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

6.19. **COUNTERPARTS:** This Housing Agreement may be executed and delivered in counterparts with the same effect as if both parties had signed the same document. Each such counterpart is deemed to be an original. All counterparts are construed together and constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the parties have set their hands and seals.

**TOWNSHIP OF ESQUIMALT**

by its authorized signatories

Name \_\_\_\_\_

Date signed: \_\_\_\_\_

Title \_\_\_\_\_

Name \_\_\_\_\_

Date signed: \_\_\_\_\_

Title \_\_\_\_\_

**Joseph Norman George Devlin**

**Catherine Irene Devlin**

by its authorized signatories

Name \_\_\_\_\_

Date signed: \_\_\_\_\_

Name \_\_\_\_\_

Date signed: \_\_\_\_\_