

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 3058

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 (1195 Munro Street) BYLAW, 2022, NO. 3058*".
2. The Mayor and the Township's Corporate Officer are authorized to execute the Housing Agreement:
  - (a) set out in Schedule A;
  - (b) between the Township and RODERICK GABRIEL BOURGEOIS AND KELLY MARIE BOURGEOIS; and
  - (c) that applies to the lands and premises known as 1195 Munro Street; legally described as PID: 005-970-059, LOT 3 SECTION 11 ESQUIMALT DISTRICT PLAN 5391

READ a first time by the Municipal Council on the 28<sup>th</sup> day of February, 2022.

READ a second time by the Municipal Council on the 28<sup>th</sup> day of February, 2022.

READ a third time by the Municipal Council on the 28<sup>th</sup> day of February, 2022.

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

  
BARBARA DESJARDINS  
MAYOR

  
DEBRA HOPKINS  
CORPORATE OFFICER

**SCHEDULE A to Bylaw No. 3058**

**HOUSING AGREEMENT**

**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**

**RODERICK GABRIEL BOURGEOIS**  
**KELLY MARIE BOURGEOIS**  
1195 Munro Street,  
Victoria, BC V9A 5P5  
  
("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 current civic address of 1195 Munro Street, Victoria, BC V9A 5P5 in the Township of Esquimalt in the Province of British Columbia ("**BC**"), and legally described as:  
  
005-970-059 Lot 3 Section 11 Esquimalt District Plan 5391  
  
("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 Detached Accessory Dwelling Unit 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 Detached Accessory Dwelling Unit 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) "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;
  - (b) "Immediate Family" means the parents, children, or spouse of the Owner;
  - (c) "Non-Owner" means a person who occupies a Dwelling Unit for residential purposes, other than the Owner of the Lands, and other than a member of the Owner's Immediate Family;

## **2. RENTAL UNITS OR RESIDENTIAL USE BY OWNER ONLY**

- 2.1. The Owner covenants and agrees that the Detached Accessory Dwelling Unit it constructs upon the Lands and the principal dwelling on the Lands will either be occupied by the Owner for residential use or contain a rental residential Dwelling Unit which:
  - (a) must only be used and occupied for residential purposes in accordance with the Township's Zoning Bylaw;

- (b) must not be restricted as to its availability for rent by non-owners. For greater clarity, short term rentals, short term licenses, tourist accommodations and similar short term occupations may be restricted, as they are not permitted uses under the Zoning Bylaw; and
  - (c) must be used for the purpose of providing rental housing, rented under the terms of a residential tenancy agreement that complies with the provisions of the *Residential Tenancy Act*.
- 2.2. The Owner further covenants and agrees that the registered Owner of the Lands must occupy either the principal dwelling or the Detached Accessory Dwelling Unit as the Owner's Permanent Residence.
- 2.3. The Owner and the Township agree that the Detached Accessory Dwelling Unit the Owner constructs upon the Lands is not restricted in its availability for use as affordable rental accommodation.
- 2.4. 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 building that is to be constructed on the Lands, or undertake 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 the number and location of Dwelling Units on the lands and who is occupying them, including identifying whether any of the occupants are 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.

### **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.



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.

- (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



**KELLY MARIE BOURGEOIS**

## 7. PRIORITY AGREEMENTS

- 7.1. Canadian Imperial Bank of Commerce (the "Chargeholder"), as the registered holder of a charge by way of Mortgage against the Lands, which said charge is registered in the Land Title Office at Victoria, British Columbia, under number CA8128377, for and in consideration of the sum of One Dollar (\$1.00) paid by the Township (the receipt whereof is hereby acknowledged), agrees with the Township 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 said charge in the same manner and to the same effect as if Notice had been filed prior to the said charge.

### CANADIAN IMPERIAL BANK OF COMMERCE

by its authorized signatories



Name: HARMANJIT S. MANWAT



Name: Grayson Noakes