

CITY OF LANGFORD BYLAW NO. 2081

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

WHEREAS 1206949 B.C. Ltd is the owner of the land legally described as: Lot A, Section 5, Esquimalt District, Plan EPP118666, PID 031-671-659 (the "Property");

WHEREAS the City and 1206949 B.C. Ltd have agreed to enter into a housing agreement under s. 483 of the *Local Government Act* to establish restrictions on the occupancy of the dwelling units to be constructed on the Property as set out in Appendix 'A' to this Bylaw;

NOW THEREFORE the Council of the City of Langford, in open meeting assembled, enacts as a bylaw under s. 483 of the *Local Government Act* as follows:

1. Council hereby authorizes the City to enter into a housing agreement, attached as Appendix "A", with respect to the Property to be registered as a covenant against the Property.
2. The Mayor and Corporate Officer of the City are authorized to execute the Form C – Housing Agreement;
3. The Corporate Officer is authorized to sign and file in the Land Title Office a notice of the housing agreement, as required by the *Local Government Act*.
4. The appendix attached to this Bylaw is incorporated into and forms a part of this Bylaw.
5. This Bylaw may be cited as "City of Langford Housing Agreement (2745 Scafe Road and 2750 Peatt Road) Bylaw No. 2081, 2022".

READ A FIRST TIME this 6th day of June, 2022.

READ A SECOND TIME this 6th day of June, 2022.

READ A THIRD TIME this 6th day of June, 2022.

ADOPTED this day of, 2022.

PRESIDING COUNCIL MEMBER

CORPORATE OFFICER

Appendix "A" – Housing Agreement

TERMS OF INSTRUMENT – PART 2

CITY OF LANGFORD – ATTAINABLE HOUSING DOWN PAYMENT ASSISTANCE PROGRAM

HOUSING AGREEMENT AND SECTION 219 COVENANT

THIS AGREEMENT dated for reference _____, 2022 is

BETWEEN:

1206949 B.C. Ltd, 16117 30th Ave, Surrey, V3Z 0Z8

(the "Owner")

AND:

CITY OF LANGFORD, 2nd floor, 877 Goldstream Avenue, Victoria, B.C. V9B
2X8

(the "City")

WHEREAS:

- A. The Owner is the registered owner of the land legally described in the *Land Title Act* Form C attached to and forming part of this Agreement (the "Land"),
- B. The Owner intends to construct on the Land one or more buildings, including residential dwelling units to be provided as "Attainable Housing Units" under this Agreement,
- C. Pursuant to section 483 of the *Local Government Act*, the City may, by bylaw, enter into an affordable housing agreement with an owner of land that includes terms and conditions regarding the occupancy of housing units identified in the agreement, including terms and conditions respecting form of tenure, availability of housing units to classes of persons, the administration and management of the housing units and sale prices of housing units, including the manner in which the housing units will be made available to persons within such a class,
- D. The City has established an "Attainable Housing Down Payment Assistance Program" for Qualified Buyers, pursuant to which the City will provide a grant to a Qualified Buyer who has been approved by the City as meeting the Qualified Buyer criteria as described in this Agreement and applicable City policy, to assist with the purchase of housing units under housing agreements entered into in connection with this Program, including this Agreement, as follows:
 - (a) Household Income of less than \$99,999 will receive a grant in the amount of 75% of the 5% down payment;
 - (b) Household Income of between \$100,000 and \$114,999 will receive a grant in the amount of 50% of the 5% down payment; and

- (c) Household Income of between \$115,000 to \$135,000 will receive a grant in the amount of 25% of the 5% down payment,
- E. The Owner and the City wish to enter into this Agreement respecting the occupancy, tenure, availability and sale price of the affordable housing units to be constructed on the Land,
- F. Council of the City has adopted a bylaw authorizing the City to enter into this Agreement as a housing agreement under section 483 of the Local Government Act.

THIS AGREEMENT is evidence that in consideration of \$1.00 paid by the City to the Owner, and other good and valuable consideration, the receipt of which the Owner hereby acknowledges, the City and the Owner agree, as a covenant granted by the Owner to the City under section 219 of the *Land Title Act* and as a housing agreement under section 483 of the *Local Government Act*, as follows:

1. **Definitions** – In this Agreement:

- (a) “Arm’s Length” has the same meaning under the *Income Tax Act* (Canada).
- (b) “Construction Requirements” means the Housing Unit construction requirements specified in **Schedule A**.
- (c) “Family” means one or more persons related by blood, marriage, common law, adoption, or foster parenthood.
- (d) “Gross Floor Area” has the same meaning as defined by the City’s Zoning Bylaw No. 300, as amended from time to time.
- (e) “Household Income” means the aggregate annual income (gross) from all sources of the applicable individual and their spouse or partner, by marriage, common law or otherwise, if any, based on the tax returns filed by such individuals with Canada Revenue Agency for the most recent taxation year.
- (f) “Housing Units” means the residential dwelling units identified and designated pursuant to this Agreement as “Attainable Units”, once constructed on the Land and, following deposit of a strata plan under the *Strata Property Act* that creates each such “Attainable Unit” as a separate strata lot, “Housing Units” shall refer to those strata lots.
- (g) “LTO” means the Victoria Land Title Office.
- (h) “Maximum Price First Sale” means the following amount, as applicable to each Unit Type:
 - (i) One-Bedroom Unit: \$399,000 (including GST);
 - (ii) One-Bedroom (with Den) Unit: \$425,000 (including GST);
 - (iii) Two-Bedroom Unit: \$450,000 (including GST); and.
 - (iv) Two-Bedroom (with Den) Unit: \$475,000 (including GST); and.

- (v) Three-Bedroom Unit: \$499,000 (including GST).
- (i) "One-Bedroom Units" means the Housing Units identified as one-bedroom units under and in accordance with section 2.
- (j) "One-Bedroom (with den) Units" means the Housing Units identified as one-bedroom (with den) units under and in accordance with section 2.
- (k) "Qualified Buyer" means an individual who:
 - (i) has a Household Income of no more than the applicable amount as follows, having regard to the Unit Type:
 - (A) One-Bedroom Unit: \$115,000;
 - (B) One-Bedroom (with den) Unit: \$115,000;
 - (C) Two-Bedroom Unit: \$125,000;
 - (D) Two-Bedroom (with den) Unit: \$135,000
 - (E) Three-Bedroom Unit \$135,000;
 - (ii) has been a resident, as determined in accordance with section 67 of the *Local Government Act*, of the City of Langford for at least 2 years immediately before the date that such person applies to the City to become a Qualified Buyer or are members of the Canadian Armed Forces posted in Victoria or are members of the RCMP posted in the Westshore; and
 - (iii) does not own, and whose spouse or partner, by marriage, common law or otherwise, if any, does not own, either directly or indirectly through a trust, business asset or otherwise:
 - (A) any interest in real property anywhere in the world, from the time that such person applies to the City to be a Qualified Buyer until such individual completes the purchase of a Housing Unit; and
 - (B) assets and other property of any kind (including investments and cash) having a total value greater than \$50,000.
- (l) "Two-Bedroom Units" means the Housing Units identified as two-bedroom units under and in accordance with section 2.
- (m) "Two-Bedroom (with den) Units" means the Housing Units identified as two-bedroom (with den) units under and in accordance with section 2.
- (n) "Three-Bedroom Units" means the Housing Units identified as three-bedroom units under and in accordance with section 2.

- (o) “Unit Type” means the types of Housing Units specified in this Agreement, being One-Bedroom Units, One-Bedroom (with den) Units, Two-Bedroom Units, Two-Bedroom (with den) Units and Three-Bedroom Units.

2. **Development Restriction and Strata Subdivision Requirement –**

Every building on the Land (or to be constructed on the Land) shall meet all of the following requirements and be subject to the following restrictions:

- (a) The building shall be constructed in accordance with the Construction Requirements and, specifically, so as to include the construction of the Housing Units, and the applicable Unit Types designated on the building permit plans in accordance with this section, in accordance with the Construction Requirements.
- (b) At least ten (10) of the residential dwelling units contained in the building shall be Housing Units.
- (c) Construction of the building shall not commence until the Owner has identified the Housing Units within the building, including the designation of Unit Type for each Housing Unit, on the plans submitted to the City with the Owner’s application to the City for a building permit for the building.
- (d) The building, once constructed on the Land, shall not be occupied or used for any purpose until the Land has been subdivided by deposit of a strata plan under the *Strata Property Act* that creates each Housing Unit as a separate strata lot with strata bylaws that do not prohibit occupants from having pets. Following registration of that strata plan, the City shall execute a release of this Agreement from title to all strata lots within the building other than the Housing Unit strata lots. The Owner shall be responsible for preparing and registering the release in the LTO. For clarity, this Agreement shall remain registered against title to the Land and any resulting common property and shall continue to apply to the Land and any other buildings from time to time located on the Land, under construction on the Land or to be constructed on the Land.

3. **Application of Sections 4 to 9 –** Sections 4 to 9 apply separately to each Housing Unit.

4. **General Occupancy, Tenure, Availability and Price Restrictions –** Except as otherwise provided under this Agreement, the Housing Unit:

- (a) may only be occupied as a permanent residence;
- (b) may only be occupied by a Qualified Buyer, together with one or more members of their Family;
- (c) may not be rented or leased, or occupied by way of a tenancy, rental, lease, license or other occupancy agreement of any kind, except with the prior written approval of the City, which may be provided in circumstances of hardship such as the death or divorce of the Qualified Buyer who owns the Housing unit;

- (d) shall only be available for purchase by, and may only be sold to, a Qualified Buyer who has applied to the City for approval as a Qualified Buyer and has been approved, in writing, by the City as meeting the Qualified Buyer criteria under this Agreement and any applicable City policy from time to time;
- (e) may only be sold under a contract of purchase and sale providing for a deposit of no more than \$5,000, with no more than \$1,000 of that deposit payable on contract signing and the balance on removal of all conditions precedent under the contract;
- (f) may not be sold for a sale price, including GST, that exceeds the Maximum Price First Sale applicable to the Housing Unit; and
- (g) the sale price shall include payment for the Housing Unit and all fixtures, furnishings, appliances and other things in the Housing Unit.

5. **First Sale –**

- (a) The Housing Unit may not be occupied or used for any purpose until:
 - (i) the Housing Unit is transferred to a Qualified Buyer (the Qualified Buyer who first purchases or otherwise acquires the Housing Unit is referred to herein as the “**First Buyer**”);
 - (ii) fee simple title to the Housing Unit is registered in the name of the First Buyer in the LTO (the date of such land title office registration is referred to herein as the “**First Sale Date**”); and
 - (iii) documentation and other written evidence satisfactory to the City has been provided to the City confirming that the Housing Unit has been transferred to a City approved Qualified Buyer for a sale price (including GST) that does not exceed the Maximum Price First Sale, pursuant to a contract and purchase and sale providing for a deposit below the applicable limit specified under this Agreement, and the City has provided written confirmation that it is satisfied with such written evidence.
- (b) Following the transfer of the Housing Unit to the First Buyer, the Housing Unit may only be used as a permanent residence and may only be occupied by the First Buyer, provided that the First Buyer may permit members of the First Buyer’s Family to reside in the Housing Unit with the First Buyer.

6. **Subsequent Sale –** Following the sale or transfer to the First Buyer, the Housing Unit:

- (a) may only be sold or transferred to a buyer who is at Arm’s Length to First Buyer;
- (b) may be sold to a buyer who is not a Qualified Buyer (for clarity, the restriction under section 4(d) shall not apply to a sale or transfer under this section); and
- (c) shall not be sold or otherwise transferred for a sale price, including GST if applicable, that exceeds the applicable amount below:

- (i) 105% of (the Maximum Price First Sale paid by the First Buyer), if registration in the LTO of the transfer to the buyer occurs within 3 years following the First Sale Date; or
- (ii) 110% of (the Maximum Price First Sale paid by the First Buyer), if registration in the LTO of the transfer to the buyer occurs more than 3 years after the First Sale Date.

7. **Release of Housing Agreement** – Provided that the requirements of section 5(a)(iii) have been satisfied, the City shall execute a release of this Agreement from title to the Housing Unit in the LTO following the earlier of:

- (a) the 5th anniversary of the First Sale Date; and
- (b) completion of a sale or transfer pursuant to section 6 that complies with the requirements of section 6, if (i) documentation and other written evidence satisfactory to the City has been provided to the City confirming compliance with paragraphs (a) and (b) of section 6, and (ii) the City has provided written confirmation that it is satisfied with such written evidence of compliance.

The Owner shall be responsible for preparing and registering the release in the LTO.

8. **Priority to First Buyer Mortgage** – The City shall grant priority over this Agreement to a mortgage registered against title to the Housing unit that is granted by the First Buyer to a chartered bank or credit union that finances the First Buyer's purchase of the Housing Unit. The First Buyer shall be responsible for preparing and registering the priority agreement in the LTO against title to the Housing Unit.

9. **Lack of Qualified Buyers** – If, in relation to a building:

- (a) the Land has been subdivided in the manner contemplated by section 2(d);
- (b) at least 6 months have passed following the issuance by the City of an occupancy permit for the building;
- (c) the Owner has completed the sale of at least 90% of the strata lots in the Building that are not Housing Units;

the Owner may apply, in writing, to the City for release of this Agreement in relation to a Housing Unit in that building that has never been occupied by any person and has never been sold to a Qualified Buyer, if the Owner has been unable to sell that Housing Unit to a Qualified Buyer because there has been an insufficient number of Qualified Buyers approved by the City.

If the Owner makes such an application to the City and:

- (d) the Owner establishes, to the written satisfaction of the City, that the Owner has been unable to sell that Housing Unit to a Qualified Buyer because there has been an insufficient number of Qualified Buyers approved by the City;

- (e) the Owner continues to be unable to sell the Housing Unit to a Qualified Buyer for the foregoing reason for a period of 120 days following the making of such application to the City and the City confirms its satisfaction, in writing that this is the case; and
- (f) the City is satisfied that the Owner is not in breach of any of its obligations under this Agreement;

then the City shall execute a release of this Agreement from title to that Housing Unit in the LTO, which release shall be prepared and registered by and at the expense of the Owner.

10. **City Approval of Qualified Buyer & City Relaxation of Qualified Buyer Criteria** – If the City approves, in writing, of an individual as having qualified as a Qualified Buyer, that individual shall be considered to be a Qualified Buyer for the purposes of this Agreement, subject to any qualifications and limitations imposed by the City in such written approval. The City may at any time and from time to time relax any or all of the Qualified Buyer criteria specified in this Agreement.
11. **Notice on Title** – The Owner acknowledges and agrees that this Agreement constitutes both a covenant under section 219 of the *Local Government Act* and a housing agreement under section 483 of the *Local Government Act*, and that the City will file in the LTO a notice that the Lands are subject to this Agreement as required by section 483 of the *Local Government Act*.
12. **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 Land, as the City may, in its sole discretion, consider necessary to ensure compliance with this Agreement.
13. **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.
14. **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 Land; or
 - (c) relieve the Owner from complying with any enactment, including in relation to the use, development or subdivision of the Land.
15. **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.
16. **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.
17. **Agreement Runs with Land** – This Agreement shall burden and run with, and bind the successors in title to, the Land and each and every part into which the Land may be subdivided by any means (including by deposit of a strata plan of any kind under the *Strata Property Act* (British Columbia)).
18. **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.
19. **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.
20. **Priority** – The Owner shall cause this Agreement to be registered in the LTO against title to the Land 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.
21. **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.
22. **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.
23. **Owner’s Expense** – The Owner shall perform its obligations under this Agreement at its own expense and without compensation from the City.

24. **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.
25. **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".
26. **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.
27. **Enurement** – This Agreement hereof shall enure to the benefit of the parties and their respective successors and assigns, as the case may be.
28. **Entire Agreement** – This Agreement is the entire agreement between the parties regarding its subject.
29. **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 *Land Title Act* Form C attached to and forming part of this Agreement.

Attach Schedules:

Schedule A – Construction Requirements (for each Unit Type)

PRIORITY AGREEMENT

This Priority Agreement is between _____ (the "**Prior Chargeholder**"), being the registered owner and holder of _____ (the "**Prior Charges**"), and _____ being the registered owner and holder of the section 219 covenant and housing agreement 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 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 *Land Title Act* - Form C attached to and forming part of this Priority Agreement.

Schedule A: Construction Requirements

1. Housing Unit Size (Gross Floor Area excluding decks) must not be less than:

One-Bedroom Units: 525 square feet;

One-Bedroom (with Den) Units: 575 square feet;

Two-Bedroom Units: 750 square feet;

Two-Bedroom (with Den) Units: 800 square feet; and

Three-Bedroom Units: 900 square feet.
2. Minimum bedroom size for all Housing Unit bedrooms: 10 ft by 10 ft (excluding closets).
3. Each Housing Unit shall be constructed as a self contained dwelling unit designed and constructed for residential use by a single household, and contain, each in a separate room, a separate kitchen, washroom (including a sink, toilet and shower/bathtub), eating area, living room and bedroom(s).
4. Each Two-Bedroom Unit, Two-Bedroom (with den) Unit and Three-Bedroom Unit must include two washrooms.
5. Each Housing Unit shall be fully equipped with appliances, including fridge, stove, dishwasher, micro-wave and washer dryer.
6. Each Housing Unit will be completely finished to the same standards as, and equipped with appliances of the same type and quality, as the other residential units contained in the building.