

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 2954

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 (638 Constance Avenue, 640 Constance Avenue, 637 Nelson Street) BYLAW, 2019, NO. 2954"*.
2. The Mayor and the City's Corporate Officer are authorized to execute the Housing Agreement:

(a) set out in Schedule A,

(b) between the Township and CONSTANCE APARTMENTS INC., Inc. No. BC1128254, and

(c) that applies to the land known as 638 Constance Avenue, 640 Constance Avenue and 637 Nelson Street legally described as:

PID: 000-380-911, Amended Lot 88 (DD208442I), Of Suburban Lot 44, Esquimalt District, Plan 2854

PID: 006-386-466, Lot D (DD 367731-I), Suburban Lot 44, Esquimalt District, Plan 2854

PID: 000-546-437, Lot B (DD 237133I), Of Lots 79 and 83, Suburban Lot 44, Esquimalt District, Plan 2854

READ a first time by the Municipal Council on the 4th day of February, 2019.

READ a second time by the Municipal Council on the 4th day of March, 2019.

READ a third time by the Municipal Council on the 4th day of March, 2019.

RESCIND third reading by the Municipal Council on the 15th day of April, 2019.

AMEND AND READ ANEW at second reading by the Municipal Council on the 15th day of April, 2019.

READ a third time by the Municipal Council on the 15th day of April, 2019.

RESCIND third reading by the Municipal Council on the 10th day of June, 2019.

AMEND AND READ ANEW at second reading by the Municipal Council on the 10th day of June, 2019.

READ a third time by the Municipal Council on the 10th day of June, 2019.

ADOPTED by the Municipal Council on the ____ day of _____, 2019.

BARBARA DESJARDINS
MAYOR

ANJA NURVO
CORPORATE OFFICER

**SCHEDULE A to Bylaw No. 2954
HOUSING AGREEMENT**

HOUSING AGREEMENT

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

THIS AGREEMENT is made the 3 day of June, 2019.

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Esquimalt, BC V9A 3P1

(the "TOWNSHIP")

AND

CONSTANCE APARTMENTS INC., Inc. No. BC1128254

1091 San Marino Crescent
Victoria, BC V8X 3B3

(the "OWNER")

RECITALS:

- A. Under section 483 of the *Local Government Act*, R.S.B.C. 2015 c.1 ("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 *Local Government Act*;
- B. The Owner is the registered owner in fee-simple of those lands with a current civic address of 638-640 Constance Avenue and 637 Nelson Street in the Township of Esquimalt in Province of British Columbia, and legally described as:

PID: 000-380-911

Amended Lot 88 (DD 208442I), Of Suburban Lot 44, Esquimalt District,
Plan 2854

PID: 006-386-466

Lot D (DD 367731-I), Suburban Lot 44, Esquimalt District, Plan 2854

PID: 000-546-437

Lot B (DD 237133I), Of Lots 79 and 89, Suburban Lot 44, Esquimalt
District, Plan 2854

(collectively the "Lands").

- C. The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 110 (638 Constance Avenue) CD No. 110 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 2927, (the "**Amendment Bylaw**") to authorize the development of 71 rental apartment residences, including seven (7) affordable dwelling units (secured by Housing Agreement for 20 years), to be constructed in one 6-storey buildings on the Lands, with a 61 space underground parking garage and an accessory play area structure (the "**Development**"), and acknowledging that the restrictions and requirements contained herein are in the public interest, the Owner has offered and voluntarily provided this agreement to the Township, and the Township has accepted this agreement as a condition of the Amendment Bylaw.
- D. 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 "**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 LGA s.483(6).

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act*, and in consideration of the premises and covenants contained in this 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 ("**Zoning Bylaw**"), apply to this Agreement, as amended and replaced from time to time.
- 1.2. The following words and terms have the following meanings:
- (a) "**Affordable Rent**" means a rent that is no more than 30% of the gross annual income for households at or below the BC Housing Income Limits for the Victoria region, as determined by size of unit;
 - (b) "**Affordable Units**" means those dwelling units occupied by households with a gross annual income at or below BC Housing Income Limits for the Victoria region;
 - (c) "**Caretaker Unit**" means a Dwelling Unit on the Lands that may be occupied by an owner, operator, manager, or caretaker providing on-site services;
 - (d) "**Housing Income Limits**" or "**HIL**" means the income required to pay the average market rent for an appropriately sized unit in the private market, as determined by BC Housing.
- (1) If HIL is not determined or published in any given year, the parties agree the most recent year of publication shall be used,

subject to such reasonable adjustments as agreed between the parties, with or without modification to this Agreement;

- (2) For information purposes, the 2018 Housing Income Limits for the Victoria region, by size of unit, are as follows:
- Bachelors: \$34,500
 - 1 Bedroom: \$39,800
 - 2 Bedrooms: \$51,700
 - 3 Bedrooms: \$74,300

2. RENTAL UNITS ONLY – MARKET WORKFORCE HOUSING

- 2.1. The Owner covenants and agrees that the building it constructs upon the Lands will contain rental residential dwelling units which:
- (a) must only be used and occupied for residential purposes in accordance with Township zoning;
 - (b) must not be restricted as to their availability for rent by non-owners; and
 - (c) must include a parking space in the rent of one, two and three bedroom units, except in relation to affordable units which are not allocated a parking space.
- 2.2. The Owner presented the Proposed Development as a purpose-built rental apartment-style building where all units are owned by a single entity, and acknowledges that the Lands and building 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.
- 2.3. The Owner acknowledges that a Township goal includes providing market workforce housing and therefore the Owner further covenants and agrees that the dwelling units must be at all times available to all classes of persons, and the tenancies and occupancies for all the dwelling units must be residential and the tenancies and occupancies for all the dwelling units must not be institutional in nature. However, the parties acknowledge and agree that this provision does not prohibit:
- (a) management, operation or use of any number of the dwelling units by Department of National Defense and/or Seaspan for workforce housing,
 - (b) one additional allocation of up to ten (10) dwelling units to a single individual, governmental agency or corporation for management, operation or use by that individual, governmental agency or corporation, and for clarity, not more than a total 10 units in the proposed Development may be so allocated at any given time,

provided all other provisions of this Agreement and Township Bylaws are satisfied.

3. AFFORDABLE HOUSING UNITS (7) FOR 20 YEARS

3.1. The Owner covenants and agrees that:

- (a) a minimum of seven (7) of the dwelling units on the Lands must be Affordable Units rented for Affordable Rents;
- (b) the Affordable Units must be of the following sizes:
 - (1) 3 Bachelor (Studio) Units,
 - (2) 2 One-bedroom Units, and
 - (3) 2 Two-bedroom Units;
- (c) each of the Affordable Units must have an occupancy standard of at least one (1) person per bedroom, and at least one (1) person per Bachelor Unit.

3.2. For greater certainty, the parties acknowledge and agree:

- (a) The 7 Affordable Units may be scattered throughout the Proposed Development;
- (b) The parties may agree, in writing but with or without modification of this Agreement, to adjust the unit size allocation if Three-Bedroom Units are to be made Affordable Units;
- (c) The Affordable Rents may change on an annual basis, subject to compliance with BC Housing Income Limits and provincial residential tenancy legislation.

3.3. The parties acknowledge and agree the provisions of this Part 3 are only intended to be operative for twenty (20) years from the date that the Affordable Units, or the building in which they are located, are granted an Occupancy Certificate, and the Affordable Units are first occupied.

4. ADMINISTRATION & MANAGEMENT - REPORTING

4.1. Within thirty (30) days of receipt of request from the Township, the Owner must provide a report in writing that identifies the following for the Proposed Development, or portions thereof, respectively:

- (a) The number, type (e.g. one bedroom, two bedroom), and location by suite number, of units that are being rented to individuals (i.e. not owner-occupied) or are available for rent to individuals, including identifying those that are vacant and the reason for vacancy;
- (b) allocation of parking spaces by unit number;
- (c) The name of the property management company(ies) managing the dwelling units;

- (d) a copy of the standard form(s) of tenancy or occupancy agreement for the dwelling units, including the term of that agreement (but without the personal information of each individual agreement);
 - (e) Location and use of other buildings, units and rooms on the Lands;
 - (f) Subject to the provisions of relevant prevailing law in connection therewith, the name and contact information of all individuals, governmental agencies or corporations that use, occupy, manage or operate more than one dwelling unit (and the respective unit numbers);
 - (g) Additional requirements with respect to the Affordable Units:
 - (1) The number, type (e.g. 1-bedroom, 2-bedroom), and location, by suite number, of each of the Affordable Units;
 - (2) The date each Affordable Unit was first occupied in accordance with this Agreement, respectively;
 - (3) By each Affordable Unit, the number of individuals occupying such unit and the monthly rent charged;
 - (4) The BC Housing Income Limits used to determine eligibility for the Affordable Units and the Affordable Rent;
 - (h) Such further information identified in the request from the Township, provided such is relevant to the interpretation, administration or enforcement of this Housing Agreement.
- 4.2. The parties acknowledge that reporting requirements will not be imposed more than once per year, unless there are reasonable grounds to believe that there may be a breach, in fact or in spirit, of this Housing Agreement (as determined in the Township's sole discretion, for the purposes of reporting).
- 4.3. For greater certainty, there are no reporting requirements unless the Township so requests, but when the Township requests a report the Township may request the information for the year in which such report is requested and for previous years not previously reported.

5. NOTICE IN LAND TITLE OFFICE

- 5.1. Notice of this Agreement will be filed in the Land Title Office by the Township at the cost of the Owner in accordance with section 483 of the *Local Government Act*, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in the Lands after filing of the Notice.
- 5.2. The parties agree that the provisions of Part 3 are intended only for 20 years, as determined in accordance with that Part, and that this Agreement or the Notice on Title need not be amended or modified for such expiration to be effective for that part only. The remainder of the provisions are

intended to be effective for the life of the building constructed on the Lands in accordance with the Amendment Bylaw.

6. RELEASE AND INDEMNITY

- 6.1. 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, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use, occupancy and tenure of the Lands contemplated under this Agreement.
- 6.2. 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 can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, or the use, occupancy and tenure of the Lands contemplated under this Agreement.

7. GENERAL PROVISIONS

- 7.1. **NOTICE:** Any notice permitted or required by this Agreement to be given to either party must be given to that party at the address set out above, or to any other address of which the party has given the other party notice in writing expressly for the purposes of this Agreement.
- 7.2. **CONFLICT:** In the event of a conflict between the terms of this Agreement and the provisions of Township Bylaws in relation to use or density, the bylaws will prevail in accordance with section 483(3) of the *Local Government Act*.
- 7.3. **BINDING EFFECT:** This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees, and in accordance with section 483(6) of the *Local Government Act*, this Agreement is binding on all who acquire an interest in the Lands, and the Owner only during the Owner's ownership of any interest in the Lands, and with respect only to that portion of the Lands of which the Owner has an interest.
- 7.4. **TIME:** Time is to be the essence of this Agreement.

7.5. WAIVER:

- (a) No provision of this Housing Agreement is to 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 Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

7.6. 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.

7.7. 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.

7.8. CUMULATIVE REMEDIES: No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

7.9. RELATIONSHIP OF PARTIES:

- (a) No provision of this 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 Agreement, whether those costs and expenses are specifically referred to in this Agreement.

7.10. 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.

7.11. ENTIRE AGREEMENT:

- (a) This Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this

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 Agreement.

7.12. NO RESTRICTION ON TOWNSHIP AUTHORITY: Except as required by section 483 of the *Local Government Act*, nothing contained or implied in this 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 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 Agreement or the breach of any provision in this 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 Agreement or at law or in equity.

7.13. SEVERABILITY: Each article of this Agreement is severable. If any provision of this Agreement is held to be illegal or invalid by a Court of competent jurisdiction, the provision may be severed and the illegality or invalidity must not affect the validity of the remainder of this Agreement.

7.14. 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 Agreement. The Owner confirms that this 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*.

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

7.16. 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.

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

IN WITNESS WHEREOF the parties have set their hands and seals as of the day and year first above written.

TOWNSHIP OF ESQUIMALT

by its authorized signatories

Mayor

Chief Administrative Officer

CONSTANCE APARTMENTS INC., Inc. No. BC1128254,

by its authorized signatories



Name:



Name:

CONOR MULDOON
Barrister & Solicitor
1205 - 355 BURNARD STREET
VANCOUVER, B.C. V6C 2G8
604-974-9749

