

# CORPORATION OF THE TOWNSHIP OF ESQUIMALT

## BYLAW NO. 3020

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 (505 Park Place) BYLAW, 2021, NO. 3020”*.
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 ARAGON ESQUIMALT TC PROPERTIES LTD., INC.NO. BC1068481; and
  - (c) that applies to the lands and premises known as 505 Park Place; legally described as PID: 031-174-515, LOT C SECTION 11 SUBURBAN LOT 40 ESQUIMALT DISTRICT PLAN EPP95431

READ a first time by the Municipal Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

READ a second time by the Municipal Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

READ a third time by the Municipal Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

ADOPTED by the Municipal Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

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BARBARA DESJARDINS  
MAYOR

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RACHEL DUMAS  
CORPORATE OFFICER

SCHEDULE A to Bylaw No. 3020

HOUSING AGREEMENT

## HOUSING AGREEMENT

THIS AGREEMENT dated for reference the 23 day of FEBRUARY, 2021.

BETWEEN:

**ARAGON ESQUIMALT TC PROPERTIES LTD., INC.** NO.  
BC1068481, a corporation having an address at #201, 1628  
West 1<sup>st</sup> Avenue, Vancouver, British Columbia V6J 1G1

(the "Owner")

AND:

**THE CORPORATION OF THE TOWNSHIP OF  
ESQUIMALT**, a municipal corporation pursuant to the *Local  
Government Act* and having its offices at 1229 Esquimalt  
Road, Esquimalt, British Columbia, V9A 3P1

(the "Township")

**WHEREAS:**

- A. The Owner is the registered owner of the Lands.
- B. The Township is a municipal corporation incorporated pursuant to the Act.
- C. The Owner and the Township entered into a Phased Development Agreement dated October 16, 2017 in which the Owner agreed to reserve, to the reasonable satisfaction of the Township, 34 Dwelling Units as Rental Units in the Building;
- D. Section 483 of the Act authorizes the Township, by bylaw, to enter into a housing agreement in respect of the form of tenure of housing units, availability of such units to classes of identified person, administration and management of such units and the rent that may be charged for such units.

**NOW THEREFORE** in consideration of the sum of Ten Dollars (\$10.00) now paid by the Township to the Owner and for other good and valuable consideration (the receipt and sufficiency of which the Owner hereby acknowledges), the Owner and the Township covenant each with the other as follows:

### 1. DEFINITIONS

- (a) "**Act**" means the *Local Government Act*, RSBC. 2015 c.1 as amended from time to time;
- (b) "**Agreement**" means this agreement as amended from time to time;



- (c) **"Building"** means the six storey Building to be constructed on the Lands to be used for commercial and residential purposes with 34 Dwelling Units, of which 34 Dwelling Units will be Reserved Rental Units;
- (d) **"Commencement Date"** has the meaning set out in section 2.1 herein;
- (e) **"Council"** means the municipal council for the Corporation of the Township of Esquimalt;
- (f) **"Director of Development Services"** means the chief administrator of the Department of Planning and Development of the Township and their successors in function and their respective nominees;
- (g) **"DND"** means the department of national defence of Canada, or any agent thereof;
- (h) **"Dwelling Unit"** means a dwelling unit as defined in the Township of Esquimalt's Zoning Bylaw 1992, No. 2050, as amended from time to time;
- (i) **"Lands"** means those lands and premises legally described as

Parcel Identifier: 031-174-515

Legal Description: LOT C SECTION 11 SUBURBAN LOT 40  
ESQUIMALT DISTRICT PLAN EPP95431;

- (j) **"Rental Purposes"** means an occupancy or intended occupancy which is or would be governed by a tenancy agreement as defined in section 1 of the *Residential Tenancy Act*, SBC 2002 c. 78 as amended from time to time between the Owner and the tenant;
- (k) **"Rental Units"** means Dwelling Units that are used for Rental Purposes;
- (l) **"Reserved Rental Units"** means the Dwelling Units reserved by subsection 3.1(b) of this Agreement;
- (m) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, SBC 2002 c. 78, as amended or re-enacted from time to time;
- (n) **"Seaspan"** means Victoria Shipyards Co. Ltd. or any affiliate thereof; and
- (o) **"Term"** has the meaning set out in section 2.1 herein.

## 2. TERM

- 2.1 This Agreement will commence upon adoption by Council of this Housing Agreement Bylaw, 2021, No. 3020, (the **"Commencement Date"**) and will continue until terminated in accordance with section 2.2 or subsection 8.3(c) (the **"Term"**).



2.2 This Agreement will terminate on the earlier of the twentieth anniversary of the Commencement Date, or immediately upon the removal or destruction of the Building provided the Building is not repaired or rebuilt following the destruction thereof.

2.3 Subject to section 7.3, upon termination of this Agreement, this Agreement will be at an end and of no further force and effect.

### **3. USE OF LANDS**

3.1 The Owner covenants and agrees with the Township that during the Term, the Lands will be used and built on only in strict compliance with the terms and conditions of this Agreement and that:

- (a) the Building will contain not less than 34 Dwelling Units; and
- (b) the Dwelling Units in the Building shall include 34 Dwelling Units that are reserved exclusively as Rental Units.

3.2 The Owner further covenants and agrees with the Township that the Lands and any buildings or structures constructed thereon including the Building will be developed, built and maintained in accordance with all Township bylaws, regulations and guidelines as amended from time to time.

### **4. TENANCY RESTRICTIONS**

4.1 The Reserved Rental Units in the Building shall be subject to the following tenancy restrictions:

- (a) unless otherwise approved in writing by the Director of Development Services, no Reserved Rental Unit shall be rented to any corporate entity other than the DND or Seaspan;
- (b) unless otherwise approved in writing by the Director of Development Services, no tenant, other than the DND or Seaspan may rent more than one Reserved Rental Unit;
- (c) no Reserved Rental Unit will be occupied for any purpose except for Rental Purposes;
- (d) except for Reserved Rental Units that are rented to the DND, Seaspan or another corporate entity approved in writing by the Director of Development Services, Reserved Rental Units will only be used as a principal residence of a tenant; and
- (e) the Owner will not permit a Reserved Rental Unit to be used for short-term rental purposes (being rentals for periods shorter than 30 consecutive days).



4.2 Unless otherwise approved in writing by the Director of Development Services, Reserved Rental Units will be comprised of the following:

- (a) 4 studio Dwelling Units;
- (b) 8 one-bedroom Dwelling Units;
- (c) 21 two-bedroom Dwelling Units; and
- (d) 1 three-bedroom Dwelling Units.

The Owner may only change the composition of Reserved Rental Units with the approval in writing by the Director of Development Services with such approval to be granted in their discretion. The Owner will be entitled to determine the locations of the Reserved Rental Units within the Building.

## 5. OWNER'S OBLIGATIONS

5.1 Without limiting section 3.1 of this Agreement:

- (a) **Management and administration:** The management, administration, and associated costs with the management and administration of the Reserved Rental Units will be borne by the Owner or its designated rental agent, unless otherwise approved by the Township in writing;
- (b) **Advertisement:** The Owner will feature the tenure restrictions set out in this Agreement prominently in all advertising of Reserved Rental Units;
- (c) **Common Amenities:** All tenants and occupants of the Building, including tenants and occupants of Reserved Rental Units, will have equal access, at equal rates, to all indoor and outdoor amenities on the Lands from time to time, including visitor parking stalls, storage units, recreation facilities and the like;
- (d) **Parking:** All tenants and occupants of the Building, including tenants and occupants of Reserved Rental Units, will have equal access, at equal rates, to parking stalls assignable for exclusive use in the Building, acknowledging that due to the ratio of parking stalls per Dwelling Unit in the Building, there may be instances when no parking stalls are available for exclusive use of a Dwelling Unit.
- (e) **Compliance with applicable laws:** Without restricting the foregoing, the Owner will comply with all applicable provisions of the *Residential Tenancy Act* and any other provincial or municipal enactments imposing obligations on landlords in relation to residential tenancies;
- (f) **Performance:** The Owner will perform its obligations under this Agreement diligently and in good faith; and

- (g) **Evidence of compliance:** Provided that the same can be done without breaching the *Personal Information Protection Act* (British Columbia) (as amended or replaced from time to time) the Owner will, upon request by the Township (which request, without limitation, may be made at such other time as the Township deems necessary or expedient), supply to the Township copies of any documentation in possession of the Owner necessary to establish compliance with the Owner's obligations under this Agreement.

## 6. DEFAULT AND REMEDIES

- 6.1 The Township may, acting reasonably, give to the Owner a written notice (in this section 6.1, the "**Notice**") requiring the Owner to cure a default under this Agreement within 30 days of receipt of the Notice. The Notice must specify the nature of the default. The Owner must act with diligence to correct the default within the time specified.
- 6.2 If the Owner fails to correct a default as contemplated in section 6.1, the Owner will pay to the Township, within 30 days of receiving a written request by the Township:
- (a) \$2,000.00 for each default under this Agreement that has not been remedied as provided under section 6.1; and
  - (b) \$200.00 each day the default remains un-remedied beyond the date for correcting the default as provided under section 6.1;

This section is without prejudice to any other remedies available to the Township under this Agreement and at law or in equity.

- 6.3 The Owner will pay to the Township on demand by the Township all the Township's costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.
- 6.4 The Owner acknowledges and agrees that in case of a breach of this Agreement which is not fully remediable by the mere payment of money and promptly so remedied, the harm sustained by the Township and to the public interest will be irreparable and not susceptible of adequate monetary compensation.
- 6.5 Each party to this Agreement, in addition to its rights under this Agreement or at law, will be entitled to all equitable remedies including specific performance, injunction and declaratory relief, or any of them, to enforce its rights under this Agreement.
- 6.6 The Owner acknowledges and agrees that it is entering into this Agreement to benefit the public interest in providing housing for Rental Purposes, and that the Township's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out and that the Township's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.



- 6.7 No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right or remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy of a default by the Owner under this Agreement.

## **7. LIABILITY**

- 7.1 Except for the negligence of the Township or its employees, agents or contractors, the Owner will indemnify and save harmless each of the Township and its elected officials, board members, officers, directors, employees, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:
- (a) any act or omission by the Owner, or its officers, directors, employees, agents, contractors, or other persons for whom at law the Owner is responsible;
  - (b) the Owner's default under this Agreement; and
  - (c) the Owner's ownership, operation, management or financing of the Lands for the provision of housing for Rental Purposes.
- 7.2 Except to the extent such advice or direction is given negligently, the Owner hereby releases and forever discharges the Township, its elected officials, board members, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns from and against all claims, demands, damages, actions or causes of action by reason of or arising out of advice or direction respecting the ownership, operation or management of the Lands for the provision of housing for Rental Purposes which has been or hereafter may be given to the Owner by all or any of them.
- 7.3 The covenants of the Owner set out in sections 7.1 and 7.2 of this Agreement will survive the expiration or the earlier termination of this Agreement and will continue to apply to any breach of the Agreement and to any claims arising under this Agreement during the ownership by the Owner of the Lands.

## **8. GENERAL PROVISIONS**

- 8.1 The Owner agrees to reimburse the Township for all legal costs reasonably incurred by the Township for the preparation, execution and registration of this Agreement. The Owner will bear their own costs, legal or otherwise, connected with the preparation, execution or registration of this Agreement.



8.2 Nothing in this Agreement:

- (a) affects or limits any discretion, rights, powers, duties or obligations of the Township under any enactment or at common law, including in relation to the use or subdivision of land;
- (b) affects or limits any enactment relating to the use of the Lands or any condition contained in any approval including any development permit concerning the development of the Lands; or
- (c) relieves the Owner from complying with any enactment, including the Township's bylaws in relation to the use of the Lands.

8.3 The Owner and the Township agree that:

- (a) this Agreement is entered into only for the benefit of the Township;
- (b) this Agreement is not intended to protect the interests of the Owner, occupier or user of the Lands or any portion of it including the Reserved Rental Units; and
- (c) without limiting section 2 of this Agreement, the Township may at any time execute a release and discharge of this Agreement in respect of the Lands, without liability to anyone for doing so.

8.4 This Agreement burdens and runs with the Lands and any part into which any of them may be subdivided or consolidated, by strata plan or otherwise. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its successors and assigns, and all persons who acquire an interest in the Lands after the date of this Agreement. Without limiting the generality of the foregoing, the Owner will not be liable for any breach of any covenant, promise or agreement herein in respect of any portion of the Lands sold, assigned, considered or otherwise disposed of, occurring after the Owner has ceased to be the owner of the Lands.

8.5 The covenants and agreements on the part of the Owner in this Agreement have been made by the Owner as contractual obligations as well as being made pursuant to section 483 of the Act and as such will be binding on the Owner.

8.6 The Owner will, at its expense, do or cause to be done all acts reasonably necessary to ensure this Agreement is registered against the title to the Lands, including any amendments to this Agreement as may be required by the Land Title Office or the Township to effect such registration.

8.7 The Township and the Owner each intend by execution and delivery of this Agreement to create both a contract and a deed under seal.



- 8.8 An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.
- 8.9 If a Court of competent jurisdiction finds that any part of this Agreement is invalid, illegal, or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 8.10 All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, or e-mail transmission, or by personal service, to the following address for each party:

Township: The Corporation of the Township of Esquimalt  
1229 Esquimalt Road, Esquimalt, British Columbia, V9A 3P1  
Attention: CAO  
Email: [Corporate.Services@esquimalt.ca](mailto:Corporate.Services@esquimalt.ca)

Owner: At the address set out on the registered title to the Lands, from time to time.

Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; if made by e-mail transmission, on the first business day after the date when the e-mail transmission was transmitted; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the other parties, may designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.

- 8.11 Upon request by the Township, the Owner will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the Township, to give effect to this Agreement.
- 8.112 This Agreement will ensure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.

## **9. INTERPRETATION**

- 9.1 Gender specific terms include both genders and include corporations. Words in the singular include the plural, and words in the plural include the singular.
- 9.2 The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this Agreement is to be

construed simply according to its fair meaning, and not strictly for or against either party.

- 9.3 The word "including" when following any general statement or term is not to be construed to limit the general statement or term to the specific items which immediately follow the general statement or term to similar items whether or not words such as "without limitation" or "but not limited to" are used, but rather the general statement or term is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of the general statement or term.
- 9.4 The words "must" and "will" are to be construed as imperative.
- 9.5 Any reference in this Agreement to any statute or bylaw includes any subsequent amendment, re-enactment, or replacement of that statute or bylaw.
- 9.6 This is the entire agreement between the Township and the Owner concerning its subject, and there are no warranties, representations, conditions or collateral agreements relating to the subject matter of this Agreement, except as included in this Agreement. This Agreement may be amended only by a document executed by the parties to this Agreement and by bylaw, such amendment to be effective only upon adoption by Township Council of an amending bylaw to Bylaw 3020.
- 9.7 This Agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia.
- 9.8 This Agreement can be signed in counterpart and delivered electronically.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a single letter 'J' or 'L' followed by a flourish.

**IN WITNESS WHEREOF** each of the Township and the Owner have executed this Agreement under seal by their duly authorized officers as of the reference date of this Agreement.

**THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT**, by its authorized signatories:

\_\_\_\_\_  
Mayor:

\_\_\_\_\_  
Corporate Officer:

**ARAGON ESQUIMALT TC PROPERTIES LTD.**, by its authorized signatories:

\_\_\_\_\_  
Name:

**Lenny Moy, President**

\_\_\_\_\_  
Name: