

CITY OF NANAIMO

BYLAW NO. 7387

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

WHEREAS Section 483 of the *Local Government Act* provides that Council may enter into a Housing Agreement, which may include terms and conditions agreed to regarding the occupancy of the housing units identified in the Agreement;

AND WHEREAS, Council wishes to enter into such an Agreement with respect to certain housing units located in the City of Nanaimo;

THEREFORE BE IT RESOLVED, that Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. This Bylaw may be cited for all purposes as the City of Nanaimo "Housing Agreement Bylaw 2024 No. 7387".
2. The Council of the City of Nanaimo hereby authorizes the Mayor and Corporate Officer to enter into an Agreement, on behalf of the City of Nanaimo, in substantially the form attached hereto as Schedule "A", which sets out the terms and conditions of the occupancy of the housing units identified in the Agreement. The land identified in this Agreement is legally described as PID: 006-037-674, Lot A, Section 1, Nanaimo District, Plan 5108; and PID: 006-037-682, Lot B, Section 1, Nanaimo District, Plan 5108; and PID: 006-037-712, Lot I, Section 1, Nanaimo District, Plan 5108; and PID: 008-779-392, The Southerly 66 Feet of Lot 1, Block 28, Section 1, Nanaimo District, Plan 584, with Civic Addresses of 350 & 398 Franklyn Street, Nanaimo, BC (the "Land").
3. Upon execution of the Agreement by the Mayor and Corporate Officer and application of the seal of the City of Nanaimo, this Agreement shall be validly entered into as authorized by this Bylaw.

PASSED FIRST READING: 2024-SEP-09
PASSED SECOND READING: 2024-SEP-09
PASSED THIRD READING: 2024-SEP-09
ADOPTED: _____

MAYOR

CORPORATE OFFICER

SCHEDULE A
TERMS OF INSTRUMENT - PART 2
HOUSING AGREEMENT AND SECTION 219 COVENANT

THIS AGREEMENT is made the _____ day of _____ 2024

BETWEEN:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, BC V9R 5J6

(the "**Transferee**")

OF THE FIRST PART

AND:

CAMARGUE PROPERTIES INC.
(Inc. No. A0122787)
101 – 1950 Watkiss Way
Victoria, BC V9B 0V6

(the "**Transferor**")

OF THE SECOND PART

WHEREAS:

- A. Under section 483 of the *Local Government Act*, the Transferee may, by bylaw, enter into a Housing Agreement with an owner regarding the use and occupancy of 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. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Transferee in respect of the use of land or construction on land;
- C. The Transferor is the registered owner in fee simple of the Land as defined in this Agreement;
- D. The Transferor intends to construct a 53-unit (dwelling units) building on the Land, and has received a Development Permit (DP1340);

E. The Transferee and the Transferor wish to enter into this Agreement to restrict the use of, and construction on, the Land on the terms and conditions of this Agreement, to have effect as both a covenant under section 219 of the Land Title Act and a housing agreement under section 483 of the Local Government Act.

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act*, and in consideration of the premises and covenants contained in this Agreement, the parties agree each with the other as follows:

1.0 Definitions

1.1 In this Agreement

"Affordable Units" means 10% of the Dwelling Units located on the Land; and the Affordable Units will only be occupied by one or more Eligible Tenants

"Agreement" means this agreement, including its recitals;

"Dwelling Unit" means a habitable room consisting of a self-contained unit with a separate entrance for the residential accommodation of only one family and which contains a cooking facility but excludes all accommodation for the travelling public;

"Eligible Tenant" means a tenant or tenants of an Affordable Unit whose collective annual before-tax income does not exceed the most current *Housing Income Limits*, as amended from time to time, published by British Columbia Housing Management Commission or its successors in function that is in effect at the time the Eligible Tenant takes occupancy of the Affordable Unit;

"Final Occupancy Date" means the date upon which the entirety of the New Building has been approved for occupancy by the building inspector for the City of Nanaimo;

"Land" means those parcels of land having civic addresses of 350 & 398 Franklyn Street, Nanaimo, BC and legally described as PID: 006-037-674, Lot A, Section 1, Nanaimo District, Plan 5108; and PID: 006-037-682, Lot B, Section 1, Nanaimo District, Plan 5108; and PID: 006-037-712, Lot I, Section 1, Nanaimo District, Plan 5108; and PID: 008-779-392, The Southerly 66 Feet of Lot 1, Block 28, Section 1, Nanaimo District, Plan 584;

"New Building" means the residential building, containing up to 53-Dwelling Units, to be constructed on the Land;

“Permitted Rent” means the monthly rent that the Transferor may charge an Eligible Tenant for an Affordable Unit, which monthly rent shall not exceed 1/12 of 30% of the Eligible Tenant(s) collective before-tax annual income;

“Rent Charge” means the rent charge referred to in Section 5.6;

“Term” is ten (10) years from Final Occupancy Date;

“Transferor” includes a person which acquires an interest in the Land, or any part of it and is thereby bound by this Agreement; and

“Subdivision” means the division of land into two (2) or more parcels whether by plan, apt descriptive words or otherwise, and includes subdivision under the *Strata Property Act* and the creation, conversion, organization or development of "cooperative units" or "shared interests in land" as defined in the *Real Estate Development Marketing Act*; and **“Subdivide”** has the corresponding meaning.

2.0 Occupancy and Use of Affordable Units

2.1 The Transferor covenants and agrees with the Transferee that from and after the Final Occupancy Date and for the Term, all Affordable Units within the Development are and shall remain Affordable Units for the Term and shall only be occupied by an Eligible Tenant.

2.2 The Transferor covenants and agrees with the Transferee that during the Term the Transferor shall not Subdivide the Land.

3.0 Reporting

3.1 The Transferor covenants and agrees that during the Term, it will, commencing on the first anniversary of the Final Occupancy Date and on each anniversary date thereafter, provide to the Transferee’s Director of Planning and Development a report, in writing and in a form acceptable to the Director of Planning and Development, confirming compliance with the provisions of this Agreement including, without limitation, section 2.1.

3.2 The Transferor hereby irrevocably authorizes the Transferee to make such inquiries as it considers necessary in order to confirm that the Transferor is complying with this Agreement.

4.0 Notice to be Registered in Land Title Office

4.1 Notice of this Agreement (the **“Notice”**) will be registered in the Land Title Office by the Transferee at the cost of the Transferor 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 Land after registration of the Notice.

- 4.2** Further, the restrictions and covenants herein contained shall be covenants running with the Land and shall charge and bind the Land, and shall be registered in the Victoria Land Title Office pursuant to section 219 of the *Land Title Act* as covenants in favour of the Transferee as a first charge against the Land.
- 4.3** On the expiry of the ten-year period following the Final Occupancy Date, the Transferor may require the Transferee to execute and deliver to the Transferor a release, in registrable form, of this Agreement.

5.0 Enforcement and Waiver

- 5.1** Nothing contained or implied herein shall prejudice or affect the rights and powers of the Transferee 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 Land as if this Agreement had not been executed and delivered by the Transferor. 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 shall not be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 5.2** The parties agree that the Transferee is not obligated to inspect the Land or to otherwise ensure compliance with this Agreement, nor is the Transferee obligated to remedy any default of this Agreement. A failure by the Transferee to enforce this Agreement shall not constitute a waiver of any of the Transferee's rights hereunder.
- 5.3** No remedy under this Agreement is deemed to be exclusive but will, where possible, be cumulative with all other remedies available at law or in equity.
- 5.4** The Transferor covenants and agrees that, in addition to any remedies that are available under this Agreement or at law, the Transferee is entitled to all equitable remedies, including specific performance, injunction and declarative relief to enforce its rights under this Agreement. The Transferor acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Transferor under this Agreement.
- 5.5** The Transferor acknowledges that the Transferee requires the Affordable Units for the benefit of the community. The Transferor therefore agrees that for each day the Land is occupied in breach of this Agreement, the Transferor must pay the Transferee \$100.00 (the "**Daily Amount**") as liquidated damages and not as a penalty, due and payable at the offices of the Transferee on the last day of the calendar month in which the breach occurred. The Daily Amount is increased on January 1st of each year by the amount calculated by multiplying the Daily Amount

as of the previous January 1st by the percentage increase between that previous January 1st and the immediately preceding December 31st in the Consumer Price Index. The Transferor agrees that payment may be enforced by the Transferee in a court of competent jurisdiction as a contract debt.

- 5.6** By this section, the Transferor grants to the Transferee a rent charge under section 219 of the Land Title Act, and at common law, securing payment by the Transferor to the Transferee of the Daily Amount as described in section 5.5. The Transferee agrees that enforcement of the rent charge granted by this section is suspended until the date that is thirty (30) days after the date on which any amount due under section 5.5 is due and payable to the Transferee in accordance with section 5.5. The Transferee may enforce the rent charge granted by this section by an action for an order for sale or by proceedings for the appointment of a receiver.

6.0 General Provisions

Indemnity and Release

- 6.1** The Transferor agrees to indemnify and save harmless the Transferee and each of its elected and appointed officials, employees and agents, of and from all claims, demands, actions, damages, costs and liabilities that all or any of them are, will, or may be liable for, suffer, incur, or be put to by reason of, or arising out of the failure of the Transferor to comply with the terms of this Agreement.
- 6.2** The Transferor hereby releases and forever discharges the Transferee and each of its elected and appointed officials, employees and agents, of and from any and all claims, demands, actions, damages, economic loss, costs, and liabilities that the Transferor now has or may have with respect to, or by reason of, or arising out of the fact that the Lands are encumbered by this Agreement.

Time

- 6.3** Time is of the essence of this Agreement.

Binding Effect

- 6.4** This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

Headings

- 6.5** 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.

Language

6.6 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.

Cumulative Remedies

6.7 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.

Entire Agreement

6.8 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

No Derogation from Statutory Authority

6.9 Nothing in this Agreement shall:

- (a) Limit, impair, fetter or derogate from the statutory powers of the Transferee all of which powers may be exercised by the Transferee from time to time and at any time to the fullest extent that the Transferee is enabled and no permissive bylaw enacted by the Transferee, or permit, licence or approval granted, made or issued thereunder shall estop, limit, or impair the Transferee from relying upon and enforcing this Agreement; or
- (b) Relieve the Transferor from complying with any enactment, including the Transferee's bylaws, or any obligation of the Transferor under any other agreement with the Transferee.

Further Assurances

6.10 Each of the parties 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 Agreement.

Priority

6.11 At the Transferor's expense, the Transferor must do everything necessary to secure priority of registration and interest for this Agreement and the Section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Lands.

BC Laws Govern


6.12 This Agreement shall be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

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

CITY OF NANAIMO, by its authorized signatories:

_____)
_____)
Mayor, _____)
_____)
_____)
Corporate Officer

CAMARGUE PROPERTIES INC., by its authorized signatory:


_____)
Robin Kelley, President/Partner