

THE CORPORATION OF THE DISTRICT OF OAK BAY

BYLAW NO. 4909

A Bylaw to authorize a Housing Agreement for 1558 Beach Drive

The Municipal Council of The Corporation of the District of Oak Bay, in an open meeting assembled, enacts as follows:

AGREEMENT

1. The Corporation of the District of Oak Bay is authorized to enter into a Housing Agreement with the owner of the lands known as: Lot B, Section 69, Victoria Plan, VIP7961; PID No. 001-964-844, substantially in the form attached to this Bylaw as Schedule A.
2. The Mayor and the Director of Corporate Services are authorized to do all things and acts necessary to execute the said Housing Agreement and to affix the seal of the District of Oak Bay thereto, and the Director of Community Building and Planning is authorized to sign and file in the Land Title Office a notice of the Housing Agreement, as required by the Local Government Act.

CITATION

This Bylaw may be known and cited for all purposes as *“1558 Beach Drive Housing Agreement Bylaw No. 4909, 2025”*.

READ A FIRST TIME the 9th day of June , 2025

READ A SECOND TIME the 9th day of June , 2025

READ A THIRD TIME the 9th day of June , 2025

ADOPTED the 27th day of October , 2025

Mayor

Corporate Officer

SCHEDULE 'A' – Bylaw 4909

To 1558 Beach Drive Housing Agreement Authorization Bylaw No. _____

**SECTION 219 COVENANT AND HOUSING AGREEMENT
(Pursuant to section 483 of the *Local Government Act*)
1558 Beach Drive**

THIS AGREEMENT made the _____ day of _____, 2025.

BETWEEN: R & M MILLER ASSETS LTD.
301-1106 Cook St.
Victoria, BC V8V 3Z9

(the "**Owner**")

OF THE FIRST PART

AND: The Corporation of the District of Oak Bay
2167 Oak Bay Avenue
Victoria, BC V8R 1G2

(the "**District**")

OF THE SECOND PART

WHEREAS:

A. the Owner is the registered owner of that parcel of land, lying and being in the District of Oak Bay, in the Province of British Columbia, and more particularly known and described as:

Legal Description: LOT "B", SECTION 69, VICTORIA DISTRICT, PLAN 7961
Parcel Identifier: 001-964-844
Civic Address: 1558 Beach Drive, Victoria, BC, V8R 6H8

(the "**Lands**");

B. situated on the Lands is a single-family home constructed in or about 1912, known as the J.W. Morris House (the "**Heritage Building**");

C. the Owner wishes to subdivide the Lands into four parcels, labelled as Lot A ("**Lot A**"), Lot B ("**Lot B**"), Lot C ("**Lot C**"), and Lot D ("**Lot D**") on a plan of proposed subdivision prepared by V.I. Powell & Associates, a reduced copy of which is attached as Schedule 1 hereto (the "**Subdivision Plan**");

D. the Heritage Building will be situated on Lot B;

E. the Owner wishes to make certain alterations to the Heritage Building and convert the Heritage Building into a 10-unit apartment building;

- F. the Owner and the District wish to restrict the use of the Heritage Building to rental housing;
- G. Section 483 of the *Local Government Act* permits the District to enter into and note on title to the lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units
- H. Section 219 of the *Land Title Act* provides, *inter alia*, that a covenant, whether of a negative or positive nature, may be registered as a charge against the title to land in favour of a municipality or the Crown;
- I. the Owner and the District intend that the terms and conditions of this Agreement will operate as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*; and
- J. the Owner has voluntarily agreed to enter into this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the mutual promises exchanged in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which both parties acknowledge), the Owner and the District each covenant with the other and agree as follows:

1.0 DEFINITIONS

1.1 In this Agreement, the following words have the following meanings:

- a) **“Agreement”** means this housing agreement including any schedules attached hereto and any amendments hereof;
- b) **“District”** has the meaning set out on page 1;
- c) **“Dwelling Units”** means the units located in the Heritage Building, where each unit is used or intended to be used as a domicile by one or more persons functioning as a household with common access to and use of the facilities in the unit, which customarily includes facilities for cooking, eating, living, sleeping and sanitation and within which all persons residing in the unit share household activities and responsibilities such as meals, chores, expenses and housekeeping of the unit, including work-live units and the Rental Housing Units, and a reference to a **“Dwelling Unit”** means one or more of such units;
- d) **“enactment”** has the same meaning as in the *Interpretation Act* (British Columbia);
- e) **“Heritage Building”** has the meaning set out in Recital B;
- f) **“Lands”** means the parcel of land described in Recital A and includes any other parcels of lands into which the Lands or such other parcels may be subdivided into, including Lot A, Lot B, Lot C, and Lot D;

- g) "**Lot A**", "**Lot B**", "**Lot C**", and "**Lot D**" have the respective meanings set out in Recital C;
- h) "**Owner**" means the person(s) described on page 1 as the "Owner" and includes any person who acquires an interest in the Lands;
- i) "**Related Person**" means, where the registered or beneficial Owner of the Rental Housing Units, is:
 - i) a corporation (as such term is defined in the *Business Corporations Act* (British Columbia)), then a Related Person is:
 - A. an officer, director, or shareholder of such Owner or of another entity which is a shareholder of such Owner; or
 - B. the spouse, parent, child, sibling, niece, or nephew of any such officer, director or shareholder; or
 - ii) an individual, then a Related Person is the spouse, parent, child, sibling, niece, or nephew of such individual;
- j) "**Rental Housing**" means a residential Dwelling Unit, except one Dwelling Unit that notwithstanding any other provision herein can be occupied by the Owner or a Related Person, which is not occupied by the Owner or by a Related Person, but which is made available by such Owner to the general public, at arm's length, for use as rental housing on a not less than month-to-month or longer basis in accordance with this Agreement, and in accordance with reasonably prudent landlord-tenant practices for rental residential accommodation, and any and all laws applicable thereto, including, without limitation, the *Residential Tenancy Act* and human rights legislation in British Columbia;
- k) "**Rental Housing Units**" means the Dwelling Units to be located in the Heritage Building and used solely for the purpose of Rental Housing in accordance with this Agreement and a reference to a "**Rental Housing Unit**" means one or more of such Dwelling Units;
- l) "**Tenancy Agreement**" means a tenancy agreement, lease, licence, or other agreement granting rights to occupy a Rental Housing Unit;
- m) "**Tenant**" means an occupant of a Rental Housing Unit by way of a Tenancy Agreement who is not the Owner or a Related Person;
- n) "**Subdivide**" means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of the Lands into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative

interests" or "shared interests in land" as defined in the *Real Estate Development Marketing Act*; and

- o) "Subdivision Plan" has the meaning set out in Recital C.

2.0 SECTION 219 COVENANT

2.1 The Owner covenants and agrees with the District that the Owner:

- a) shall not build on, use, or occupy the Lands or permit the Lands to be built on, used, or occupied except in strict accordance with this Agreement;
- b) shall not use or allow the Heritage Building or any Dwelling Units to be used, throughout the Term, except as Rental Housing pursuant to a Tenancy Agreement;
- c) shall take all reasonable measures to operate the Heritage Building in compliance with the terms, conditions, requirements and restrictions of this Agreement;
- d) hereby authorizes the District to make such inquiries at such frequency as it considers necessary in order to confirm that the Owner is complying with this Agreement;
- e) shall keep and maintain or cause to be kept and maintained, the Heritage Building and the Rental Housing Units, and all parts thereof, in good repair and in a safe, clean, neat, and tidy condition, reasonable wear and tear, excepted, and will insure, or cause to be insured, the Rental Housing Units to the full replacement cost, or such lower threshold as is permitted under the *Strata Property Act*, against perils normally insured against by strata corporations and owners of similar property in the District by reasonable and prudent owners of similar residential units, buildings, and lands;
- f) shall ensure that each and every Rental Housing Unit is continuously available as Rental Housing, subject to unavailability due to repairs and renovation, in which case the Rental Housing Unit shall remain vacant until the repair or renovation is completed and thereafter shall be used as Rental Housing in accordance with this Agreement;
- g) shall not permit occupancy of the Heritage Building, or request final building permit inspection granting occupancy from the District for any Rental Housing Unit, unless and until all of the following conditions are satisfied:
 - i) all of the Rental Housing Units and related amenities and amenity areas have been constructed to the satisfaction of the District; and
 - ii) the Owner is not otherwise in breach of any of its obligations under this Agreement or any other agreement between the District and the Owner in connection with the development of the Lands;

- h) shall not rent, lease, license, or otherwise permit occupancy of any Rental Housing Unit except to a Tenant and except in accordance with the following additional conditions:
 - i) the Rental Housing Unit will be used or occupied only pursuant to a Tenancy Agreement; and
 - ii) no Rental Housing Unit shall be rented on less than a thirty (30) days rental period, whatsoever.
- i) shall not apply to or stratify or Subdivide the Lands, the Heritage Building, or the Rental Housing Units such that all the Rental Housing Units are not contained within a single legal parcel, or allow the Rental Housing Units to be sold independently of each other (for certainty, nothing herein shall restrict the subdivision of the Lands (including by way of air space plan) such that the Heritage Building and the Rental Housing Units are contained in one legal parcel);
- j) shall not sell or transfer, or agree to sell or transfer, any interest in the Rental Housing Units, other than a full interest in the Rental Housing Units to a purchaser that agrees to assume the terms and conditions of this Agreement; and
- k) shall report annually, or as otherwise required, to the District, to the District's satisfaction, to confirm that the Owner is complying with this Agreement.

3.0 INTEREST IN THE LANDS

3.1 The Owner further acknowledges and agrees that:

- a) this Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 483 of the *Local Government Act*;
- b) notice of this Agreement shall be registered in the Land Title Office by the District at the cost of the Owner in accordance with section 483 of the *Local Government Act*;
- c) the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement will be registered against title to the Lands in priority to all financial charges and encumbrances at the earliest possible opportunity after execution and delivery to the District; and
- d) pursuant to section 483(6) of the *Local Government Act*, this Agreement shall be binding on all persons who acquire an interest in the Lands from the Owner after registration of this notice, and unless discharged in accordance with this Agreement, shall run with and bind the Lands in perpetuity.

3.2 The parties that agree that upon final registration of the Subdivision Plan in the Land Title Office and subdivision of the Lands into Lot A, Lot B, Lot C, and Lot D:

- a) this Agreement will be partially discharged and cease to apply against Lot A, Lot C, and Lot D, but shall continue to apply to Lot B; and
- b) the Owner may provide to the District a discharge, in registerable form, and to the satisfaction of the District, of this Agreement from the titles to Lot A, Lot C, and Lot D.

4.0 STRATA CORPORATION BYLAWS

- 4.1 This Agreement will be binding upon all strata corporations created upon the strata title subdivision of the Lands or any subdivided parcel of the Lands that contain the Rental Housing Units.
- 4.2 Any strata corporation bylaw which prevents, restricts, or abridges the right to use the Rental Housing Units as rental accommodation will have no force and effect.
- 4.3 No strata corporation shall pass any bylaws preventing, restricting, or abridging the use of the Rental Housing Units as rental accommodation.
- 4.4 No strata corporation shall pass any bylaw or approve any levies which would result in only the Owner or the Tenant of a Rental Housing Unit paying any extra charges or fees for the use of any common property, limited common property, or other common areas, facilities, or indoor or outdoor amenities of the strata corporation.
- 4.5 No strata corporation shall pass any bylaw which purports to restrict access to Tenants to all common property, or other common areas, facilities, and indoor and outdoor amenities.

5.0 INDEMNIFICATION AND RELEASE

- 5.1 The Owner hereby releases, absolves and forever discharges the District and its elected and appointed officials, employees, and agents from any and all claims, causes of action, actions, suits, proceedings, and demands of any nature whatsoever which the Owner has or may have for any loss, damage, death, injury, cost, or debt whatsoever sustained by the Owner, arising directly or indirectly out of this Agreement.
- 5.2 The Owner shall indemnify and save harmless the District and its elected and appointed officials, employees, and agents from and against any and all claims, causes of action, actions, suits, proceedings, demands, losses, damages, costs, or debts, for loss, damage, death, injury, or otherwise, of any nature whatsoever, and by whomever made, brought, prosecuted, or threatened, directly or indirectly arising out of or related to, occasioned by or attributed to: this Agreement; the Owner's default under this Agreement; the Owner's failure to perform any term or provision of this Agreement; or any work or actions of the Owner or the Owner's employees, agents, or anyone for whom the Owner is in law responsible in furtherance of this Agreement.
- 5.3 The release and indemnity contained in this section 4.0 shall survive the expiration, termination, or discharge of this Agreement.

6.0 DEFAULT AND SPECIFIC PERFORMANCE

- 6.1 The Owner agrees that the District may provide written notice to the Owner of any matter involving a failure by the Owner to comply with this Agreement and upon receipt of such notice, the Owner shall take all necessary steps at its own expense to bring itself back into compliance with this Agreement. Any failure or inability by the Owner to comply with this Agreement within thirty (30) days of receiving notice from the District shall constitute a default of this Agreement and shall entitle the District to exercise any of its rights in respect such default under this Agreement.
- 6.2 The Owner acknowledges and agrees that damages would be an inadequate remedy for the District for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

7.0 DISTRICT'S POWERS UNAFFECTED

- 7.1 This Agreement does not:
 - a) affect or limit the discretion, rights, duties, or powers of the District under any enactment or at common law, including in relation to the use or subdivision of the Lands;
 - b) impose on the District any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - c) affect or limit any enactment relating to the use or subdivision of the Lands; or
 - d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

8.0 AGREEMENT FOR BENEFIT OF DISTRICT ONLY

- 8.1 The Owner and the District agree that:
 - a) this Agreement is entered into only for the benefit of the District;
 - b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier, or user of the Lands or the building or any portion thereof, including any Rental Housing Unit; and
 - c) the District may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

9.0 GENERAL

- 9.1 The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the District, for any decrease in

the market value of the Lands or for any obligations on the part of the Owner and its successors in title which at any time may result directly or indirectly from the operation of this Agreement.

- 9.2 Where the District is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination, or give its consent, the Owner agrees that the District is under no public law duty of fairness or natural justice in that regard and agrees that the District may do any of those things in the same manner as if it were a private party and not a public body.
- 9.3 Except as specifically agreed in writing, no action or failure to act by the District shall constitute a waiver of any right or duty afforded it under this Agreement, nor shall any such action or failure to act constitute an approval, waiver or acquiescence in or of any breach or default hereunder.
- 9.4 Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, in the case of the Owner, to the postal address of the Owner set out in the records at the LTSA, and, in the case of the District, to the postal address set out on the first page of the terms of this Agreement or such other address to which the District's primary administrative offices may be relocated during the term of this Agreement, and in any event, to the attention of the Director of Community Building and Planning. Any notice or communication will be deemed to have been given when delivered, if delivered by hand, or two business days after it is dispatched for delivery if sent by prepaid mail or by courier service.
- 9.5 The parties agree that nothing contained herein creates a relation between the parties of partnership, joint venture or agency.
- 9.6 Time shall be of the essence of this Agreement.
- 9.7 The Owner shall execute and deliver or cause to be executed and delivered all such further agreements, documents and instruments and to do and perform or cause to be done and performed all such acts and things as may be required in the opinion of the District, acting reasonably, to give full effect to the intent of this Agreement.
- 9.8 This Agreement shall enure to the benefit of and be binding upon the District and its successors, trustees and assigns, and this Agreement shall enure to the benefit of and be binding upon the Owner and successors, trustees and permitted assigns and all parties claiming through them, and this Agreement shall enure to the benefit of and be binding upon all persons who acquire an interest in the Lands and their respective heirs, executors, administrators, trustees and successors and all parties claiming through them.
- 9.9 It is mutually understood and agreed between the parties that neither the Owner nor the District has made any representations, covenants, warranties, promises or agreements expressed or implied, other than those expressly contained in this Agreement.

- 9.10 If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remainder, provided the invalid portion is not found by the court to be an integral part thereof, shall continue in full force and effect and be construed as if the Agreement had been executed without the invalid portion.
- 9.11 Wherever the expressions "Owner" and "District", and the masculine gender, are used herein, the same shall be construed to mean the plural, feminine or body corporate or politic where the context or the parties so require, and the rest of the sentence shall be construed as if the grammatical and terminological changes thereby rendered necessary had been made.
- 9.12 If the Owner is composed of more than one person, firm, or body corporate, then the covenants, agreements, and obligations of the Owner shall be joint and several.
- 9.13 Any bylaw or statute referred to herein is a reference to a bylaw or statute of the District or the Province of British Columbia, respectively, as amended, revised, consolidated or replaced from time to time.
- 9.14 The paragraph or section headings contained in this Agreement are for convenience only and do not purport to define, limit, or extend the scope or intent of the language of the paragraphs to which they pertain.
- 9.15 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.
- 9.16 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.
- 9.17 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.
- 9.18 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 9.19 This Agreement may be amended from time to time upon terms and conditions mutually acceptable to the District and the Owner only if the amendments are in writing and executed by the parties hereto, and only if the amendments are authorized by bylaw of the District.
- 9.20 Despite any provision of this Agreement, the Owner shall comply with all laws, including bylaws of the District and all regulations and orders of any authority having jurisdiction.
- 9.21 Without limiting the District's power of inspection conferred by statute and in addition thereto, the District shall be entitled at all reasonable times and from time to time to enter onto the Lands for the purpose of ensuring that the Owner is fully observing and performing all of the restrictions and requirements in this Agreement to be observed and performed by the Owner.

9.22 In the event the Subdivision is not approved by the District then the parties agree that this Agreement will be terminated and released from title to the Lands.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C (Part 1) which is attached hereto and forms part of this Agreement.

PRIORITY AGREEMENT

WHEREAS:

- A. _____ (the "**Chargeholder**") is the holder of a Mortgage and an Assignment of Rents registered with Land Title and Survey Authority of British Columbia as instrument number _____ (the "**Prior Charges**") against title to the land and premises that are legally described in Item 2 of the General Instrument - Part 1 of this Land Title Act Form C which forms part of this Agreement (the "**Lands**"); and
- B. a covenant is being granted pursuant to Part 2 of the Form C General Instrument to which this Priority Agreement is attached which is or will become registered against title to the Lands in favour of The Corporation of the District of Oak Bay (the "**Section 219 Covenant**").

NOW THEREFORE, the Chargeholder, being the holder of the Prior Charges, by signing the Form C General Instrument attached hereto as Part 1, in consideration of payment of One Dollar (\$1.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of the Section 219 Covenant and hereby covenants that the Section 219 Covenant shall bind the Prior Charges in the Lands and shall rank in priority upon the Lands over the Prior Charges as if the Section 219 Covenant had been registered prior to the Prior Charges and prior to the advance of any monies pursuant to the Prior Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

As evidence of their agreement to be bound by the terms of this instrument, the parties hereto have executed the Land Title Office Form C (Part 1) which is attached hereto and forms part of this Agreement

END OF DOCUMENT