

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 3127

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 (604 Nelson Street) BYLAW, 2024, NO. 3127"*.
2. The Mayor and the Corporate Officer are authorized to execute the Housing Agreement:

(a) set out in Schedule A,

(b) between the Township and NELSON ESQUIMALT DEVELOPMENTS LTD.,
Inc. No. BC1308317, and

(c) that applies to the land known as 604 Nelson Street, which is the consolidation
of 602 Nelson Street, 608 Nelson Street, 612 Nelson Street, 618 Nelson Street,
1319 Sussex Street, 1331 Sussex Street, and 1347 Sussex Street legally
described as:

PID: 004-930-941 Lot B, Suburban Lot 37, Esquimalt District, Plan 11993

PID: 005-398-860 Lot 1, Suburban Lot 45, Esquimalt District, Plan 9871

PID: 005-398-991 Lot 2, Suburban Lots 37 and 45, Esquimalt District, Plan
9871 Except Part in Plan 16394

PID: 027-555-356 Lot A, Suburban Lot 45, Esquimalt District, Plan VIP85251

PID: 006-375-057 Lot 43, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 006-375-031 Lot 42, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 000-774-987 Lot 45, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 000-774-961 Lot 44, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 000-122-521 Lot 49, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 000-122-513 Lot 48, Suburban Lot 45, Esquimalt District, Plan 2854

READ a first time by the Municipal Council on the 18th day of March, 2024.

READ a second time by the Municipal Council on the 18th day of March, 2024.

READ a third time by the Municipal Council on the 18th day of March, 2024.

ADOPTED by the Municipal Council on the ____ day of _____, 2024.

BARBARA DESJARDINS
MAYOR

DEBRA HOPKINS
CORPORATE OFFICER

**SCHEDULE A to Bylaw No. 3127
HOUSING AGREEMENT**

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

**THIS AGREEMENT is made upon execution by all parties following
Township Council's adoption of the associated Housing Agreement Bylaw.**

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road,
Esquimalt, BC V9A 3P1

("the "Township")

AND

NELSON ESQUIMALT DEVELOPMENTS LTD., INC. NO. BC1308317

PO Box 75065 Westhills
Calgary, AB T3H 3M1

(the "Owner")

RECITALS:

- A. Under Section 483 of the *Local Government Act*, R.S.B.C. 2015 c.1 (the "*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 *LGA*;
- B. The Owner is the registered owner in fee-simple of those lands with current civic addresses of 602, 608, 612 and 618 Nelson Street and 1319, 1331, 1347 Sussex Street in the Township of Esquimalt in the Province of British Columbia ("**BC**"), and legally described as:

004-930-941	Lot B, Suburban Lot 37, Esquimalt District, Plan 11993
005-398-860	Lot 1, Suburban Lot 45, Esquimalt District, Plan 9871
005-398-991	Lot 2, Suburban Lots 37 and 45, Esquimalt District, Plan 9871, Except Part in Plan 16394
027-555-356	Lot A, Suburban Lot 45, Esquimalt District, Plan VIP85251
006-375-057	Lot 43, Suburban Lot 45, Esquimalt District, Plan 2854
006-375-031	Lot 42, Suburban Lot 45, Esquimalt District, Plan 2854
000-774-987	Lot 45, Suburban Lot 45, Esquimalt District, Plan 2854

000-774-961	Lot 44, Suburban Lot 45, Esquimalt District, Plan 2854
000-122-521	Lot 49, Suburban Lot 45, Esquimalt District, Plan 2854
000-122-513	Lot 48, Suburban Lot 45, Esquimalt District, Plan 2854

(collectively, the “**Lands**”).

- C. The parties acknowledge that the Owner intends to consolidate the parcels that comprise the Lands and this Agreement shall apply to the consolidated Lands.
- D. The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 164 (604 Nelson Street) CD No. 164 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 3126 (the “**Amendment Bylaw**”) to authorize the development a 12-storey, commercial mixed-use, purpose-built rental building with two (2) commercial units on the ground floor and a maximum of three hundred and fourteen (314) residential dwelling units (the “**Dwelling Units**”), including that at least eight point three per cent (8.3%) of the Dwelling Units must be affordable residential rental housing units and at least five per cent (5%) of the Dwelling Units must be accessible residential rental housing units (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.
- E. 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 the “**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 *Local Government Act* section 483(6).

NOW THIS AGREEMENT WITNESSES that pursuant to Section 483 of the *Local Government Act*, and in consideration of the promises and covenants contained in this Housing 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 (the “**Zoning Bylaw**”) apply to this Agreement, as amended and replaced from time to time.
- 1.2. The following words and terms in this Housing Agreement have the following meanings:
 - (a) “**Accessible Units**” means the minimum five per cent (5%) of the total number of rental Dwelling Units within the Development that are designed, constructed and equipped with the amenities necessary to house an

Individual with Special Needs, and which together must have minimum total floor area of at least 750 m²;

- (b) **"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 Greater Victoria region, as determined by size of unit from time to time;
- (c) **"Affordable Units"** means the minimum eight point three per cent (8.3%) of the total number of rental Dwelling Units within the Development which are each rented for Affordable Rent and occupied by a household with a gross annual income at or below BC Housing Income Limits for the Greater Victoria region as contemplated by this Agreement, and which together must have minimum total floor area of at least 1500 m²;
- (d) **"Housing Income Limits"** of **"HIL"** means the income required to pay the average market rent for a comparably sized unit in the private market, as determined by BC Housing.
 - (i) 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;
 - (ii) For information purposes, the 2023 Housing Income Limits for the Victoria region, by size of unit, were as follows:
 - Bachelor: \$50,000
 - 1 Bedroom: \$50,000
 - 2 Bedrooms: \$65,000
 - 3 Bedrooms: \$82,000;
- (e) **"Individual with Special Needs"** means an individual who requires additional or specialized services or accommodations by reason of one or more difficulties such as physical, emotional, behavioural, developmental, or otherwise, as evidenced in writing by the appropriate Federal or Provincial ministry or agency.

2. RENTAL UNITS ONLY – MARKET WORKFORCE HOUSING

2.1. The Owner covenants and agrees that the building it constructs upon the Lands will contain residential Dwelling Units which:

- (a) must only be used and occupied for residential purposes in accordance with the Township's Zoning Bylaw;
- (b) must not be used for short term rentals of less than 30 days, short term licenses, tourist accommodations and similar short-term occupations; and
- (c) subject to section 2.1(b), must not be restricted as to their availability for rent by non-owners;

- (d) must be used for the purpose of providing rental housing, rented under the terms of a residential tenancy agreement that complies with the provisions of the *Residential Tenancy Act*; and
 - (e) must not be occupied by any registered owner.
 - 2.2. The Owner covenants and agrees that the Development will not restrict rental of the Dwelling Units by non-owners, other than restricting tourist accommodation/ short-term rentals of less than 30 days.
 - 2.3. The Owner presented the 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.
 - 2.4. The Owner acknowledges that a Township goal includes providing market workforce housing and therefore the Owner further covenants and agrees that the Dwelling Units (except for the Affordable 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 must not be institutional in nature and not restricted to a specific class of persons. However, the parties acknowledge and agree that this provision does not:
 - (a) prohibit allocation to, or management, operation or use of any number of the Dwelling Units by the Department of National Defence;
 - (b) prohibit allocation to, or management, operation or use of any number of the Dwelling Units by Seaspan ULC; or
 - (c) prohibit one allocation of up to ten (10) units in the Development to a single individual, governmental agency or corporation, other than the Department of National Defence or Seaspan ULC, for management, operation or use by that individual, governmental agency or corporation, and for clarity, not more than a total 10 units in the Development may be so allocated at any given time;
- provided all other provisions of this Agreement and Township Bylaws are satisfied.

3. AFFORDABLE UNITS (At Least 8.3% of Total Number of Dwelling Units)

- 3.1. The Owner covenants and agrees that:
 - (a) a minimum of eight point three per cent (8.3%) of the Dwelling Units on the Lands must be Affordable Units rented for Affordable Rents;
 - (b) collectively, the Affordable Units must have a minimum total floor area of 1500 m²,
 - (c) the Affordable Units must be used for the purpose of providing rental housing to households for Affordable Rent, with each Affordable Unit rented

under the terms of a residential tenancy agreement that complies with the provisions of the *Residential Tenancy Act*;

- (d) must not be occupied by any registered owner; and
- (e) 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 Affordable Units may be scattered throughout the Development; and
- (b) The Affordable Rents may change on an annual basis, subject to compliance with BC Housing Income Limits and Provincial residential tenancy legislation.

4. ACCESSIBLE UNITS (At Least 5% of Total Number of Dwelling Units)

4.1. The Owner covenants and agrees that:

- (a) Separate and in addition to the Affordable Units, a minimum of five per cent (5%) of the Dwelling Units on the Lands must be Accessible Units; and
- (b) collectively, the Accessible Units must have a minimum total floor area of 750 m².

4.2. For greater certainty, the parties acknowledge and agree that the Accessible Units may be scattered throughout the Development.

4.3. The Owner will construct the Accessible Units such that they will accommodate, or are capable of accommodating an Individual with Special Needs, all to the satisfaction of the Director of Development Services.

5. ADMINISTRATION & MANAGEMENT – REPORTING

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

- (a) The number, type (e.g., one-bedroom, two-bedroom, three -bedroom), and location, by suite number, of all Dwelling Units, including identifying those that are vacant and the reason for vacancy;
- (b) The name of property management company(ies) and non-profit organizations(s) (if any) managing the Dwelling Units;
- (c) A copy of the standard form(s) of tenancy or occupancy agreement for each type of Dwelling Unit, including term of that agreement (but without the personal information of each individual agreement);
- (d) Location and use of other buildings, units and rooms on the Lands;
- (e) Subject to the provisions of relevant prevailing law in connection therewith, the name(s) and contact information of all individuals, governmental agencies, non-profit organizations, or corporations that use, occupy, manage

or operate more than one (1) Dwelling Unit in the Development (and the respective unit numbers);

- (f) Additional requirements with respect to the Affordable Units:
 - (i) The number, type (e.g., one-bedroom, two-bedroom, three-bedroom), and location, by suite number, of each of the Affordable Units;
 - (ii) The date each Affordable Unit was first occupied in accordance with this Agreement, respectively;
 - (iii) By each Affordable Unit, the number of individuals occupying such unit and the monthly rent or lease payment charged; and
 - (iv) The BC Housing Income Limits used to determine eligibility for Affordable Units and the Affordable Rent;
- (g) Additional requirements with respect to the Accessible Units:
 - (i) The number, type (e.g., one-bedroom, two-bedroom, three-bedroom), and location, by suite number, of each of the Accessible Units, including identification of any modified Dwelling Units;
 - (ii) The date each Accessible Unit was first occupied in accordance with this Agreement, respectively; and
 - (iii) By each Accessible Unit, the number of individuals occupying such unit and the monthly rent or lease payment charged.
- (h) Additional requirements with respect to any Dwelling Units allocated to a single individual, governmental agency, or corporation for management, operation or use:
 - (i) The number, type (e.g., one-bedroom, two-bedroom, three-bedroom), and location, by suite number, of each of the allocated Dwelling Units;
 - (ii) The date each of the allocated Dwelling Units was first occupied in accordance with this Agreement, respectively;
 - (iii) By each allocated Dwelling Unit, the number of individuals occupying such unit; and
 - (iv) If rented, the monthly rent or lease payment paid by the single individual, governmental agency, or corporation for each of the allocated Dwelling Units; and
- (i) Such further information identified at the request of the Township, provided such is relevant to the interpretation, administration or enforcement of this Housing Agreement.

5.2. The Owner will keep accurate records pertaining to the use and occupancy of the Dwelling Units. At the written request of the Township, within forty-five (45) days of receiving such request, the Owner will make such records available for inspection by the Township.

5.3. The parties acknowledge and agree that

- (a) the 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); and
- (b) 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.

6. NOTICE IN LAND TITLE OFFICE

- 6.1. Notice of this Housing Agreement will be filed in the Land Title Office by the Township at the sole cost of the Owner in accordance with Section 483 of the *Local Government Act*, and this Housing Agreement is binding on the parties to this Housing Agreement as well as all persons who acquire an interest in the Lands after filing of the Notice.

7. RELEASE AND INDEMNITY

- 7.1. 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 Housing Agreement, the breach of any covenant in this Housing Agreement, the granting of any approvals or the use, occupancy and tenure of the Lands contemplated under this Housing Agreement.
- 7.2. 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 Housing Agreement, the breach of any covenant in this Housing Agreement, the granting of any approvals or the use, occupancy, and tenure of the Lands contemplated under this Housing Agreement.

8. PRIORITY AGREEMENTS

- 8.1. NATIONAL BANK OF CANADA (the "National Bank"), the registered holder of charges by way of MORTGAGES and ASSIGNMENT OF RENTS against the Lands, respectively registered under No. CA9335107 (as modified by CB560275), No. CB847775 and No. CA9335108 (the "NB Charges"), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to National Bank (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the NB Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the NB Charges.

- 8.2. THE CAPITAL REGIONAL DISTRICT (the “**CRD**”), the registered holder of charges by way of RIGHT OF FIRST REFUSAL and OPTION TO PURCHASE against the Lands, respectively registered under No. CB133637 and No. CB133640 (the “**CRD Charges**”), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to the CRD (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the CRD Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the CRD Charges.
- 8.3. THE TORONTO-DOMINION BANK (“**TD**”), the registered holder of charges by way of MORTGAGES and ASSIGNMENTS OF RENTS against the Lands, respectively registered under No. EW162261, No. FB196559, No. EW162262 and No. FB196560 (the “**TD Charges**”), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to TD (receipt and sufficiency acknowledged), that the Agreement shall be an encumbrance upon the Lands in priority to the TD Charges in the same manner and to the same effect as if the Agreement had been dated and registered prior to the TD Charges.

9. GENERAL PROVISIONS

- 9.1. **NOTICE:** Any notice permitted or required by this Housing Agreement to be given to either party must be given to that party at the address set out above, or at any other address of which the party has given the other party notice in writing expressly for the purposes of this Housing Agreement.
- 9.2. **CONFLICT:** In the event of a conflict between the terms of this Housing Agreement and the provisions of Township bylaws in relation to land use or density, the bylaws will prevail in accordance with Section 483(3) of the *LGA*.
- 9.3. **BINDING EFFECT:** This Housing Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees, in accordance with Section 483(6) of the *LGA*.
- 9.4. **TIME:** Time is of the essence of this Housing Agreement.
- 9.5. **WAIVER:**
- (a) No provision of this Housing Agreement may 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 Housing Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 9.6. **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.

- 9.7. **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.
- 9.8. **CUMULATIVE REMEDIES:** No remedy under this Housing Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity. Damages will be an inadequate remedy for the Township, and the Township is entitled to an order for specific performance or a prohibitory or mandatory injunction in order to compel performance of the obligations in this Housing Agreement.
- 9.9. **RELATIONSHIP OF PARTIES:**
- (a) No provision of this Housing 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 Housing Agreement, whether those costs and expenses are, or are not, specifically referred to in this Housing Agreement.
- 9.10. **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.
- 9.11. **ENTIRE AGREEMENT:**
- (c) This Housing Agreement contains the entire agreement and understanding of the parties with respect to the matters contemplated by this Housing Agreement and supersedes all prior and contemporaneous agreements between them with respect to such matters.
 - (d) No representations, warranties or conditions, express or implied, oral or otherwise, have been made other than those expressed in this Housing Agreement.
- 9.12. **NO RESTRICTION ON TOWNSHIP AUTHORITY:** Except as required by Section 483 of the *LGA*, nothing contained or implied in this Housing 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 Housing 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 Housing Agreement or the breach of any provision in this Housing 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 Housing Agreement or at law or in equity.

- 9.13. **SEVERABILITY:** Each article of this Housing Agreement is severable. If any provision of this Housing Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision may be severed and the illegality or invalidity thereof will not affect the validity of the remainder of this Housing Agreement.
- 9.14. **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 Housing Agreement. The Owner confirms that this Housing 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*.
- 9.15. **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.
- 9.16. **APPLICABLE LAW:** This Housing Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 9.17. **COUNTERPARTS:** This Housing Agreement may be executed and delivered in counterparts with the same effect as if both parties had signed the same document. Each such counterpart is deemed to be an original. All counterparts are construed together and constitute one and the same Agreement.

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)
)
_____	Date signed: _____, 2024)
Mayor)
)
_____	Date signed: _____, 2024)
Chief Administrative Officer)

NELSON ESQUIMALT DEVELOPMENTS LTD., INC.NO. BC1308317
by its authorized signatories

_____	Date signed: _____, 2024)
Name:)
_____	Date signed: _____, 2024)
Name:)

AS TO PRIORITIES (See section 8 of Agreement):

NATIONAL BANK OF CANADA
by its authorized signatories

_____	Date signed: _____, 2024)
Name:)
_____	Date signed: _____, 2024)
Name:)

THE TORONTO-DOMINION BANK
by its authorized signatories

_____	Date signed: _____, 2024)
Name:)
_____	Date signed: _____, 2024)
Name:)

THE CAPITAL REGIONAL DISTRICT
by its authorized signatories

_____	Date signed: _____, 2024)
Name:)
_____	Date signed: _____, 2024)
Name:)