

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 3028

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 (819, 821, and 823 Esquimalt Road) BYLAW, 2021, NO. 3028*”.
2. The Mayor and the Township’s Corporate Officer are authorized to execute the Housing Agreement:

- (a) set out in Schedule A;
- (b) between the Township and 1326732 B.C. LTD., INC. NO. BC1326732; and
- (c) that applies to the lands and premises known as 819 Esquimalt Road, 821 Esquimalt Road, and 823 Esquimalt Road; legally described as

PID: 009-205-292, Lot 20, SECTION 11, ESQUIMALT DISTRICT, PLAN 265

PID: 009-205-276, LOT 19, SECTION 11, ESQUIMALT DISTRICT, PLAN 265

PID: 006-854-940, LOT 18, SECTION 11, ESQUIMALT DISTRICT, PLAN 265

READ a first time by the Municipal Council on the ____ day of _____, 2022.

READ a second time by the Municipal Council on the ____ day of _____, 2022.

READ a third time by the Municipal Council on the ____ day of _____, 2022.

ADOPTED by the Municipal Council on the ____ day of _____, 2022.

BARBARA DESJARDINS
MAYOR

DEBRA HOPKINS
CORPORATE OFFICER

SCHEDULE A to Bylaw No. 3028

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

1326732 B.C. LTD., INC.NO. BC1326732

7150-D West Saanich Road
Victoria, BC V8M 1P7

(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 respectively 823 Esquimalt Road, 821 Esquimalt Road, and 819 Esquimalt Road in the Township of Esquimalt in the Province of British Columbia, and legally described as:

PID: 006-854-940 - Lot 18, Section 11, Esquimalt District, Plan 265;

PID: 009-205-276 - Lot 19, Section 11, Esquimalt District, Plan 265; and

PID: 009-205-292 - Lot 20, Section 11, Esquimalt District, Plan 265

(collectively, the "**Lands**").

- C. The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 136 (819 Esquimalt Road - CD No. 136) further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 3027, (the "**Amendment Bylaw**") to authorize the development of a commercial mixed-use building on the Lands, which is planned to include retail commercial space, residential amenity and service spaces and two (2) seniors dwelling units on the first storey and ninety (90) seniors rental dwelling units on the second to eighth storeys, for a total of ninety-two (92) residential rental dwelling units (all secured by Housing Agreement for 20 years) to be constructed in one eight (8) storey building, plus roof top patio with a pergola, weather protection and small lobby, on the Lands, with a 62 space underground parking garage (the "**Development**"). 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 for a term of twenty (20) years 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 promises 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) "**Dwelling Units**" means one or more habitable rooms used for the residential accommodation of one Family when such rooms contain or provide for the installation of only one (1) set of cooking facilities and one or more sets of sanitary facilities, that are located in the Development on the Lands, and includes any accessory home occupation uses;

- (b) **"Owner's Volunteer Program"** means the volunteer program offered by the Owner to tenants of the Development with positions offered in at least six different departments and twenty-three different positions including floor monitors, exercise and games hosts, food services, transportation, leasing tour guides, and grounds and building maintenance;
- (c) **"Senior Person"** means a person of the age of fifty-five (55) years or older.

2. USE AND OCCUPATION

2.1. For a term of twenty (20) years from the date the Township signs this Agreement, subject to this Agreement, the Owner covenants and agrees that:

- (a) The Owner must only use or permit the use and occupancy of the Dwelling Units on the Lands as rental apartment units for Senior Persons, or accessory uses to such residential use and occupation;
- (b) Use and occupancy of a Dwelling Unit by a Senior Person may include residential occupancy by a Senior Person together with their spouse or partner who may be less than fifty-five (55) years of age;
- (c) Unless approved in writing and in advance by the Director of Development Services, the Owner will only rent Dwelling Units to Senior Persons occupying the Dwelling Unit as their principal residence;
- (d) Unless approved in writing and in advance by the Director of Development Services, the Owner will not permit any Dwelling Unit to be rented to any corporate entity;
- (e) Unless otherwise approved in writing and in advance by the Director of Development Services, the Owner will not permit any Senior Person to rent more than one Dwelling Unit;
- (f) No rental unit will be occupied for any purpose except for a rental residence;
- (g) The Owner will not permit a Dwelling Unit to be used for short-term rental purposes (being rentals for periods shorter than 30 consecutive days);
- (h) Tenants of the Dwelling Units who participate in the Owner's Volunteer Program for ten (10) or more hours (the **"Minimum Hours"**) per month will be entitled to, and receive from the Owner, a two hundred dollar (\$200.00) reduction to their monthly rental fees, to be applied to each month the tenant volunteers the Minimum Hours;

- (i) In the case of the death of a Senior Person occupying a Dwelling Unit, any spouse or partner less than fifty-five (55) years of age occupying the same Dwelling Unit may continue to occupy the Dwelling Unit for up to six (6) months;

RENTAL UNITS (92) FOR 20 YEARS

- 3.1 The Owner presented the Development as a purpose-built rental apartment-style building (containing one (1) commercial unit located on the first storey) 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 structures that would restrict or compromise the rental of the residential units.
- 3.2 Without limiting the generality of Section 3.1, the Owner further covenants and agrees that for a term of twenty (20) years from the date the Township signs this Agreement:
 - (a) the tenancy agreements or leases for the Dwelling Units must not be of a term inconsistent with rental tenure and any assignments or subletting of those tenancy or lease agreements shall be approved by the Owner and not be in a manner that is inconsistent with this Agreement, registered encumbrances or bylaws of the Township existing as at the date of registration of this Agreement;
 - (b) the tenancies and occupancies for the Dwelling Units must be at all times available to all classes of persons who are Senior Persons, and must not be institutional in nature, however the parties acknowledge and agree that this provision does not:
 - (1) restrict units built as accessible units from being restricted to those persons with disabilities requiring such units, or
 - (2) restrict rental of individual units to individual person(s) with disabilities,provided all other provisions of this Agreement and Township Bylaws are satisfied.

4. ADMINISTRATION & MANAGEMENT – REPORTING

- 4.1 For a term of twenty (20) years from the date the Township signs this Agreement, and 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 Development or portions thereof, respectively:

- (a) The number, type (e.g., one-bedroom, one-bedroom + den, two-bedroom), and location, by suite number, of all Dwelling Units that are being rented to Senior Persons (i.e., not owner-occupied) or are available for rent or lease to individuals, including identifying those that are vacant and the reason for vacancy;
 - (b) Number of Occupants of each Dwelling Unit, and confirmation that at least one Occupant meets the criteria set out in section 2 of this Housing Agreement;
 - (c) Copy of the standard form(s) of tenancy or occupancy agreement for each rented Dwelling Unit, including term of that agreement (but without the personal information of each individual agreement); and
 - (d) 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 this Agreement are intended only for a term of twenty (20) years from the date the Township signs this Agreement, and that this Agreement or the Notice on Title need not be amended or modified for such expiration to be effective.

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, but the Owner is not responsible for claims arising from dishonesty, gross negligence or malicious or willful misconduct of Township officials.

- 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, but the Owner is not responsible for claims arising from dishonesty, gross negligence or malicious or willful misconduct of Township officials.
- 6.3 The release and indemnity provisions of this Agreement survive its termination.

7 PRIORITY AGREEMENTS

- 7.1 PENCOR OPPORTUNITY FUND I GP INC., Inc. No. BC1177867 ("**Pencor**"), as the registered holder of charges by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, which said charges are registered in the Land Title Office, under numbers CA9626192 and CA9626193, respectively, (the "**Pencor Charges**"), for and in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to Pencor (receipt and sufficiency of which is acknowledged), agrees with the Township that upon filing of a Notice with the Land Title Office that the Lands are subject to this Agreement, pursuant to Section 483(5) of the *Local Government Act*, and that this Agreement shall be an encumbrance upon the Lands in priority to the Pencor Charges in the same manner and to the same effect as if Notice had been filed prior to the Pencor Charges.

8 GENERAL PROVISIONS

- 8.1 **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.
- 8.2 **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*.

- 8.3 **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.
- 8.4 **TIME:** Time is to be the essence of this Agreement.
- 8.5 **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.
- 8.6 **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.
- 8.7 **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.
- 8.8 **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. 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.
- 8.9 **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.
- 8.10 **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.

8.11 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.

8.12 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.

8.13 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.**8.14 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*.**8.15 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.**8.16 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.

8.17 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

Date signed: _____, 2022)

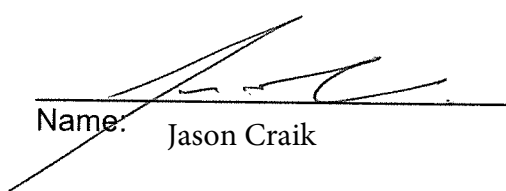
Chief Administrative Officer

Date signed: _____, 2022)

1326732 B.C. LTD.,

Inc. No. BC1326732

by its authorized signatories


Name: Jason Craik

Date signed: March 17, 2022)

Name:

Date signed: _____, 2022)

PENCOR OPPORTUNITY FUND I GP INC.,

Inc. No. BC1177867 (as to priority)

by its authorized signatories

Name:

Date signed: _____, 2022)

Name:

Date signed: _____, 2022)

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TOWNSHIP OF ESQUIMALT

by its authorized signatories

Mayor

Date signed: _____, 2022)

Chief Administrative Officer

Date signed: _____, 2022)

1326732 B.C. LTD.,

Inc. No. BC1326732

by its authorized signatories

Name:

Date signed: _____, 2022)

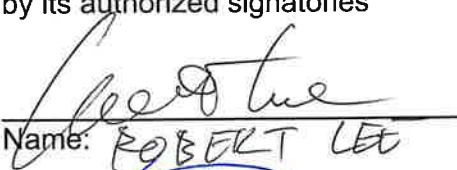
Name:

Date signed: _____, 2022)

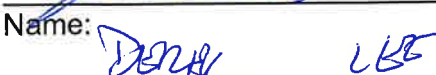
PENCOR OPPORTUNITY FUND I GP INC.,

Inc. No. BC1177867 (as to priority)

by its authorized signatories


Name: ROBERT LEE

Date signed: March 24, 2022)


Name: DEREK LEE

Date signed: March 24, 2022)