

# CORPORATION OF THE TOWNSHIP OF ESQUIMALT

## BYLAW NO. 3033

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 (1300 Saunders Street) BYLAW, 2021, NO. 3033"*.
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 1313109 B.C. LTD., Inc. No. BC1313109, and

(c) that applies to the land known as 1338 Saunders Street, 1340 Saunders Street, 1344 Saunders Street, and 1350 Saunders Street legally described as:

PID: 005-479-240 Lot 20, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 005-479-258 Lot 21, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 006-374-662 Lot 22, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 006-374-719 Lot 23, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 006-374-786 Lot 24, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 006-374-816 Lot 25, Suburban Lot 45, Esquimalt District, Plan 2854

PID: 004-543-483 Lot A, Suburban Lot 45, Esquimalt District, Plan 13158

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.

---

BARBARA DESJARDINS  
MAYOR

---

DEBRA HOPKINS  
CORPORATE OFFICER

**SCHEDULE A to Bylaw No. 3033  
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**

1313109 B.C. LTD., INC. NO. BC1313109  
111-2036 Island Hwy S  
Campbell River, BC V9W 0E8  
  
(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 1338, 1340, 1344, and 1350 Saunders Street in the Township of Esquimalt in the Province of British Columbia ("BC"), and legally described as:

005-479-240	Lot 20, Suburban Lot 45, Esquimalt District, Plan 2854 ("Lot 20")
005-479-258	Lot 21, Suburban Lot 45, Esquimalt District, Plan 2854 ("Lot 21")
006-374-662	Lot 22, Suburban Lot 45, Esquimalt District, Plan 2854 ("Lot 22")
006-374-719	Lot 23, Suburban Lot 45, Esquimalt District, Plan 2854 ("Lot 23")
006-374-786	Lot 24, Suburban Lot 45, Esquimalt District, Plan 2854 ("Lot 24")
006-374-816	Lot 25, Suburban Lot 45, Esquimalt District, Plan 2854 ("Lot 25")

004-543-483 Lot A, Suburban Lot 45, Esquimalt District, Plan 13158 ("Lot A")  
(collectively, the "Lands").

- C. The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 139 (1300 Saunders Street) CD No. 139 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW NO. 3034 (the "Amendment Bylaws") to authorize the development of a 6 storey residential purpose-built rental building on the Lands, which building is planned to include seventy-two (72) residential rental units, including six (6) affordable housing units, and a minimum of 72 underground parking stalls (including 4 permanent visitor parking stalls) and bicycle parking facilities (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.
- D. The Owner and the Township wish to enter into this Agreement, as a Housing Agreement pursuant to Section 483 of the *LGA*, 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 *LGA* s.483(6).

NOW THIS AGREEMENT WITNESSES that pursuant to Section 483 of the *LGA*, 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) "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;
  - (b) "Affordable Units" means those six (6) Dwelling Units occupied by households with a gross annual income at or below BC Housing Income Limits for the Greater Victoria region as contemplated by this Agreement;
  - (c) "Dwelling Units" means the units dedicated to or used for residential uses;
  - (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 2021 Housing Income Limits for the Victoria region, by size of unit, are as follows:
  - Bachelor: \$47,500
  - 1 Bedroom: \$47,500
  - 2 Bedrooms: \$61,000
  - 3 Bedrooms: \$79,000

## 2. RENTAL UNITS ONLY – MARKET WORKFORCE HOUSING

- 2.1. The Owner covenants and agrees that the building it constructs upon the Lands will contain rental residential Dwelling Units which:
  - (a) must only be used and occupied for residential purposes in accordance with Township's Zoning Bylaw;
  - (b) must not be restricted as to their availability for rent by non-owners. For greater clarity, short term rentals, short term licenses, tourist accommodations and similar short term occupations may be restricted, as they are not permitted uses under the Zoning Bylaw;
  - (c) 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
  - (d) 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 of one or more of the Affordable Units to a single individual, governmental agency, or corporation;
- (b) prohibit allocation of multiple units to the Department of National Defence for use by the Department of National Defence;
- (c) prohibit allocation of multiple units to Seaspan ULC for use by Seaspan ULC; or
- (d) 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 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 HOUSING UNITS (6)**

#### **3.1. The Owner covenants and agrees that:**

- (a) a minimum of six (6) of the Dwelling Units on the Lands must be Affordable Units rented for Affordable Rents;
- (b) 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*;
- (c) the Affordable Units must not be occupied by any registered owner; and
- (d) the Affordable Units must be of the following sizes:
  - (i) three (3) One-bedroom Units, and
  - (ii) three (3) Two-bedroom Units.

#### **3.2. For greater certainty, the parties acknowledge and agree:**

- (a) The six (6) Affordable Units may be scattered throughout the Development;
- (b) The parties may agree, in writing but with or without modification of this Agreement, to adjust the unit size allocation if Three-Bedroom Units are to be made Affordable Units; and
- (c) The Affordable Rents may change on an annual basis, subject to compliance with BC Housing Income Limits and Provincial residential tenancy legislation.



#### 4. ADMINISTRATION & MANAGEMENT - REPORTING

4.1. 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 that are being rented to individuals (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) The name of property management company(ies) or non-profit organization(s) managing the Dwelling Units;
- (c) A 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);
- (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 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
  - (h) Such further information identified at the request of the Township, provided such is relevant to the interpretation, administration or enforcement of this Housing Agreement.
- 4.2. 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.
- 4.3. 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.

## **5. NOTICE IN LAND TITLE OFFICE**

- 5.1. 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 *LGA*, 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.

## **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 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.
- 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 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. PRIORITY AGREEMENTS**

- 7.1. ATRIUM MORTGAGE INVESTMENT CORPORATION, Inc. No. A0087781, as the registered holder of a charge by way of Mortgage and Assignment of Rents against the Lands, which said charges are registered in the Land Title Office at Victoria, British Columbia, under numbers CA9267656 and CA9267657 respectively, for and in consideration of the sum of One Dollar (\$1.00) paid by the Township (the receipt whereof is hereby 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*, this Agreement shall be an encumbrance upon the Lands in priority to the said charges in the same manner and to the same effect as if Notice had been filed prior to the said charges.

## **8. GENERAL PROVISIONS**

- 8.1. **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.
- 8.2. **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*.
- 8.3. **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*.
- 8.4. **TIME:** Time is of the essence of this Housing Agreement.
- 8.5. **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.
- 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 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.
- 8.9. **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.
- 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 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.
  - (b) No representations, warranties or conditions, express or implied, oral or otherwise, have been made other than those expressed in this Housing Agreement.
- 8.12. **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.
- 8.13. **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.
- 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 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*.
- 8.15. **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.
- 8.16. **APPLICABLE LAW:** This Housing Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.
- 8.17. **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

Mayor

Date signed: \_\_\_\_\_, 2021 )

**Chief Administrative Officer**

Date signed: \_\_\_\_\_, 2021 )

**1313109 B.C. LTD., INC.NO. BC1313109**

by its authorized signatories

_____	Date signed: _____, 2021	)
Name:		)
_____	Date signed: _____, 2021	)
Name:		)

AS TO PRIORITIES (See section 7 of Agreement):

**ATRIUM MORTGAGE INVESTMENT CORPORATION Inc. No A0087781**

by its authorized signatories

_____	Date signed: _____, 2021	)
Name:		)
_____	Date signed: _____, 2021	)
Name:		)