

# CORPORATION OF THE TOWNSHIP OF ESQUIMALT

## BYLAW NO. 2949

A Bylaw to amend Bylaw No. 2799, being a Seniors Housing Agreement pursuant to Section 483 of the *Local Government Act*

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WHEREAS the Township of Esquimalt has received an application to amend a housing agreement;

AND WHEREAS Section 483 of the *Local Government Act*, RSBC 2015 c. 1 as amended, empowers the Council to enter into a housing agreement.

NOW, THEREFORE, the Municipal Council of the Township of Esquimalt, in open meeting assembled, enacts as follows:

1. The Township of Esquimalt is hereby authorized and empowered to amend the housing agreement authorized by *Housing Agreement (622 Admirals Road) Bylaw, 2013, No. 2799* in the form attached hereto as Schedule A and forming part of this Bylaw with the following party:

1105384 B. C. Ltd., Inc. No. BC1105384  
622 Admirals Road  
Esquimalt, B.C.  
V9A 2N7

(the "Owner")

And with respect to that certain parcel or tract of lands and premises, situate, lying and being in the Township of Esquimalt, in the Province of British Columbia and being more particularly known and described as:

PID 030-615-992  
Lot A, Suburban Lot 43, Esquimalt District, Plan EPP82555

(the "Lands")

2. The Mayor and Corporate Officer are hereby authorized to execute the Housing Amendment Agreement on behalf of the Township of Esquimalt.
3. This Bylaw may be cited as the "Housing Agreement (622 Admirals Road) Bylaw, 2013, No. 2799, Amendment Bylaw, 2018, No. 2949."

READ A FIRST TIME this 17<sup>th</sup> day of December, 2018.

READ A SECOND TIME this 17<sup>th</sup> day of December, 2018.

READ A THIRD TIME this 17<sup>th</sup> day of December, 2018.

ADOPTED this        day of        , 2019.

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BARBARA DESJARDINS  
MAYOR

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ANJA NURVO  
CORPORATE OFFICER

## HOUSING AGREEMENT AMENDMENT

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

THIS AMENDMENT AGREEMENT is made the \_\_\_\_ day of \_\_\_\_\_, 2019.

### **BETWEEN:**

**THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT**

1229 Esquimalt Road  
Esquimalt, BC V9A 3P1

(the "TOWNSHIP")

**AND**

**1105384 B.C. LTD., INC. NO. BC1105384**

622 Admirals Road  
Esquimalt, B.C. V9A 2N7

(the "OWNER")

### **RECITALS:**

- A. Under section 483 of the *Local Government Act* the City may, by bylaw, enter into or amend 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 622 Admirals Road in the Township of Esquimalt in Province of British Columbia, and legally described as:  
  
PID: 030-615-992  
Lot A, Suburban Lot 43, Esquimalt District, Plan EPP82555  
(the "Lands").
- C. In 2013, a Housing Agreement was entered into with the former owner of the Lands, ROYAL CANADIAN LEGION, BRANCH NO. 172 in conjunction with a rezoning of the Lands to facilitate the development proposed at the time, in particular given the intent to provide congregate care housing for seniors, Notice on Title under CA5357505 (the "Original Housing Agreement"). The Owner has requested amendments to both the S.219 Covenant registered under CA3608095 ("2014 Covenant") and that Housing Agreement to reflect a revised proposal, which is intended to be consistent with the zoning. The Transferor has requested

this Amendment, acknowledging that it was and remains in the public interest that the use and development of the Lands be limited, and the Transferee has accepted this Amendment Agreement and required its registration (the "**Amendment Agreement**").

- D. The Owner proposes to develop the Lands as follows:
- a. Proposed Strata Lot 1 – Commercial Uses (the "**Commercial Strata Lot**");
  - b. Proposed Strata Lot 2 – Legion Facility (club house) (the "**Legion**")
  - c. Proposed Strata Lot 3 – Congregate Care rental units, including:
    - i. lobby and amenities to support the congregate care (1st and 11th Floors),
    - ii. 48 memory care units (24 per floor – 2nd and 3rd floors); and
    - iii. 95 rental Congregate Care units (19 per floor – 4th, 5th, 6th, 7th and 8th floors)(collectively the "**Rental Units**"); and
  - d. Proposed Strata Lots 4-41 – Congregate Care owner units (the "**Owner Units**");
- (collectively, the "**Proposed Development**");
- E. The Owner and the Township wish to enter into this Amendment Agreement, as a Housing Agreement pursuant to section 483 of the *Local Government Act*, to secure the agreement of the Owner that all the proposed units on Proposed Strata Lots 3-41 of the Lands may only be used for congregate care housing for seniors, the parties acknowledging that the Notice of this Housing Amendment Agreement shall be placed on title to the Lands until stratification and Housing Agreement shall then be released from the Commercial Strata Lot and the Legion and remain on the Rental Units and Owner Units (*or as such lots may be respectively named at time of subdivision*).

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

## **1. AMENDMENTS TO ORIGINAL HOUSING AGREEMENT**

- 1.1. Section 1.2(a) of the Original Housing Agreement is hereby amended by replacing the definition of Non-Commercial Units with the following:
- 1.2 (a) "**Non-Commercial Units**" means all those parts of the Proposed Development other than other than the Commercial Strata Lot and the Legion;
- 1.2. Section 2.2 of the Original Housing Agreement is hereby amended by revising the references to Proposed Strata Lot C and D such that the provision now reads:

2.2. *Within the Rental Units and Owner Units only, use and occupancy of a Non-Commercial Unit by a Senior Person may include residential occupancy by a Senior Person together with his or her spouse or partner who may be less than 55 years of age.*

1.3. Section 3 of the Original Housing Agreement is hereby amended to:

- (a) Delete the word “only” from the Heading.
- (b) In Section 3.1, replace the word “Non-Commercial Units” with “Rental Units”, such that the provision now reads:

*3.1 The Owner covenants and agrees that the Owner shall not take any steps, or enter into any agreements, or impose any rules or regulations whatsoever the effect of which would be to sell or transfer the Rental Units on the Lands other than for rental purposes.*

- (c) In Section 3.2, replace the words “Non-Commercial Units” with “Rental Units” and delete “A, B, C and D respectively”, such that the provision now reads:

*3.2. Without limiting the generality of Section 3.1,*

*(a) the Owner covenants and agrees that it will not make application to deposit a strata plan to stratify the individual Rental Units, the parties acknowledging this Agreement does not restrict the creation of the Proposed Strata Lots respectively;*

*(b) the tenancy agreements or leases for the Rental Units must not be of a term inconsistent with rental tenure and must not permit assignment, sub-tenancy or sub-leasing.*

1.4. Immediately before Section 4, the Original Housing Agreement is hereby amended to insert a new provision Section 3A as follows:

### **3A. OWNER UNITS**

*3A.1 The Owner covenants and agrees that the Owner Units shall be for congregate care senior citizens apartment use only, in accordance with Township zoning, and, without limiting the generality of that use, the Owner shall require that each and every owner of any Owner Units enter into a service agreement with the Owner which shall provide the following:*

- (a) meals on a daily basis and served 3 times per day;*
- (b) dining hall available to all residents;*
- (c) every resident of every unit will receive at least one meal per day that will be provided and served at a communal dining hall in the building;*
- (d) use of the amenities located within the building (1st and 11th floors).*

*3A.1 For greater certainty, the parties acknowledge that a housing agreement cannot alter use or density which are matters determined under the Township zoning authority, and therefore the provisions of this part are intended solely to represent minimum requirements regarding the occupancy, administration and management of the Owner Units in the context of the Proposed Development.*

- 1.5. Section 4.1 of the Original Housing Agreement is hereby amended to add the following reporting requirement as (d.1):

*(d.1) Copy of the standard form(s) of service agreement required under Section 3A, including term of that agreement (but without the personal information of each individual agreement);*

- 1.6. Except as expressly hereby modified, all terms, covenants, conditions and provisos of the Original Housing Agreement shall continue in full force and effect.

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

- 2.1. Notice of this Amendment 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 Amendment 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.

## **3. RELEASE AND INDEMNITY**

- 3.1. The Owner and Strata Corporation 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 Amendment Agreement, or the use, occupancy and tenure of the Lands contemplated under this Amendment Agreement.
- 3.2. The Owner and Strata Corporation 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 or Strata Corporation 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 Amendment Agreement, or the use, occupancy and tenure of the Lands contemplated under this Amendment Agreement.

## **4. GENERAL PROVISIONS**

- 4.1. **NOTICE:** Any notice permitted or required by this Amendment 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.

- 4.2. **CONFLICT:** In the event of a conflict between the terms of this Amendment 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*.
- 4.3. **BINDING EFFECT:** This Amendment 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 Amendment 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.
- 4.4. **TIME:** Time is to be the essence of this Amendment Agreement.
- 4.5. **WAIVER:**
  - (a) No provision of this Housing Amendment 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 Amendment Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.
- 4.6. **HEADINGS:** The headings in this Amendment 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.
- 4.7. **LANGUAGE:** Wherever the singular, masculine and neuter are used throughout this Amendment 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.
- 4.8. **CUMULATIVE REMEDIES:** No remedy under this Amendment Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
- 4.9. **RELATIONSHIP OF PARTIES:**
  - (a) No provision of this Amendment 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 Amendment Agreement, whether those costs and expenses are specifically referred to in this Agreement.
- 4.10. **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 Amendment Agreement.

**4.11. ENTIRE AGREEMENT:**

- (a) This Amendment Agreement, and the Original Housing Agreement, contains the entire agreement and understanding of the parties with respect to the matters contemplated therein 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 these Agreements.

**4.12. NO RESTRICTION ON TOWNSHIP AUTHORITY:** Except as required by section 483 of the *Local Government Act*, nothing contained or implied in this Amendment 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.

**4.13. SEVERABILITY:** Each article of this Amendment Agreement is severable. If any provision of this Amendment 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.

**4.14. 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 Amendment Agreement. The Owner confirms that this Amendment 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*.

**4.15. COUNTERPARTS:** This Amendment 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.

**4.16. 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.

4.17. **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

\_\_\_\_\_

\_\_\_\_\_

Chief Administrative Officer

**1105384 B.C. LTD., INC.NO. BC1105384**

by its authorized signatories

\_\_\_\_\_

Name:

\_\_\_\_\_

Name:



**PRIORITY:**

CANADIAN WEESTERN BANK (the “**Chargeholder**”) is the registered holder of a charge by way of MORTGAGE and ASSIGNMENT OF RENTS against the Lands, registered under No. CA66544254 AND CA66544255 respectively (the “**Charges**”), and agrees with the Transferee, in consideration of the sum of Ten Dollars (\$10.00) paid by the Transferee to the Chargeholder (receipt and sufficiency acknowledged), that the Amendment Agreement shall be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if the Amendment Agreement had been dated and registered prior to the Charges.

**CANADIAN WEESTERN BANK** by its authorized signatories

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\_\_\_\_\_  
Name: )  
\_\_\_\_\_  
Name: )

**PRIORITY:**

ROYAL CANADIAN LEGION, BRANCH NO.172 (the “**Chargeholder**”) is the registered holder of a charge by way of MORTGAGE against the Lands, registered under No. CA66544256 respectively (the “**Charge**”), and agrees with the Transferee, in consideration of the sum of Ten Dollars (\$10.00) paid by the Transferee to the Chargeholder (receipt and sufficiency acknowledged), that the Amendment Agreement shall be an encumbrance upon the Lands in priority to the Charge in the same manner and to the same effect as if the Amendment Agreement had been dated and registered prior to the Charge.

**ROYAL CANADIAN LEGION, BRANCH NO.172** by its authorized signatories

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\_\_\_\_\_  
Name: )  
\_\_\_\_\_  
Name: )