

**CORPORATION OF THE TOWNSHIP OF ESQUIMALT**

**BYLAW NO. 3143**

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 (1034 Dunsmuir Road) BYLAW, 2024, NO. 3143*".
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 **Jose Gerardo Martino Lopez**.
  - (c) that applies to the land known as **1034 Dunsmuir Road** legally described as:

**PID: 000-165-646      Lot 21, Block B, Section 11, Esquimalt District, Plan 292**

READ a first time by the Municipal Council on the 22<sup>nd</sup> day of July, 2024.

READ a second time by the Municipal Council on the 22<sup>nd</sup> day of July, 2024.

READ a third time by the Municipal Council on the 22<sup>nd</sup> day of July, 2024.

ADOPTED by the Municipal Council on the 9<sup>th</sup> day of September, 2024.

  
\_\_\_\_\_  
BARBARA DESJARDINS  
MAYOR

  
\_\_\_\_\_  
DEBRA HOPKINS  
CORPORATE OFFICER

**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**

Jose Gerardo Martino Lopez  
1034 Dunsmuir Road  
Esquimalt BC V9A5C5

(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 a current civic address of 1034 Dunsmuir Road in the Township of Esquimalt in the Province of British Columbia (“BC”), and legally described as:

000-165-646    Lot 21, Block B, Section 11, Esquimalt District, Plan 292

(the “Lands”).

- C. The Owner seeks to develop a Detached Accessory Dwelling Unit (“DADU”), a secondary dwelling to a principal Single Family Dwelling, in accordance with the density-bonusing provisions of the Township’s Zoning Bylaw, and the conditions of

such additional density include a Housing Agreement with the Township, under Section 483 of the *Local Government Act* to ensure that:

- i. the DADU is not restricted in its availability for use as affordable rental accommodation; and
- ii. the registered owner of the lot must occupy either the principal dwelling located on the Lands or the DADU as the Owner's Permanent Residence.

D. Under section 483 of the *Local Government Act*, 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*.

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*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 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 Rental Accommodation" means a dwelling unit for residential use rented under the terms of a residential tenancy agreement that complies with the provisions of the *Residential Tenancy Act*;
  - (b) "Dwelling Unit" 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;

- (c) "Immediate Family" means one or more of the parents, spouse or children of the Owner, or where the Owner is a corporate or non-for-profit entity, means one or more of the parents, spouse or children of a registered director or officer of the entity;
- (d) "Non-Owner" means a person who occupies a Dwelling Unit other than the Owner of the Lands.

## 2. RENTAL UNIT AND RESIDENTIAL USE BY OWNER ONLY

### 2.1. The Owner covenants and agrees that the DADU must be occupied:

- (a) By the Owner, with or without one or more members of the Owner's Immediate Family, as the Owner's Permanent Residence; or
- (b) By a Non-Owner as Affordable Rental Accommodation.

### 2.2. The Owner further covenants and agrees that the registered Owner of the Lands must occupy either the principal Single Family Dwelling or the DADU as the Owner's Permanent Residence.

### 2.3. The Owner and the Township agree that the DADU is not, and must not be, restricted in its availability for use as Affordable Rental Accommodation, unless the Single Family Dwelling is being rented and the Owner is occupying the DADU as their permanent residence.

### 2.4. For greater certainty, this Agreement does not prevent the rental of the Affordable Rental Accommodation unit (either the Single Family Dwelling or the DADU) to Immediate Family.

### 2.5. The Owner acknowledges that the Lands 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 DADU, or undertake any other ownership structure that would restrict or compromise the rental of the residential units.

## 3. ADMINISTRATION & MANAGEMENT - REPORTING

### 3.1. The Owner covenants and agrees to provide to the Township, within five (5) days upon written request from the Township, or the Township's Director of Development Services, a report in writing confirming:

- (a) the number and location of Dwelling Units on the Lands; and
- (b) who is occupying the Dwelling Units, including identifying which of the occupants are Owners, Immediate Family, or Non-Owners.

- 3.2. The Owner irrevocably authorizes the Township to make such enquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.
- 3.3. The Township acknowledges that the Dwelling Unit that is not occupied as the Owner's Permanent Residence may be vacant for a period not exceeding two months between tenants, without breach of this Agreement.

#### 4. NOTICE IN LAND TITLE OFFICE

- 4.1. 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.

#### 5. RELEASE AND INDEMNITY

- 5.1. 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 and death, 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.
- 5.2. 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 and anyone, including third parties, can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss and death, 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. GENERAL PROVISIONS

- 6.1. **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.

**6.2. 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*.

**6.3. 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*.

**6.4. TIME:** Time is of the essence of this Housing Agreement.

**6.5. 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.

**6.6. 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.

**6.7. 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.

**6.8. 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.

**6.9. 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.

**6.10. 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.

#### 6.11. BREACH

- (a) The Owner covenants and agrees that:
  - (i) if the Township advises of a breach of this Agreement, as determined in its reasonable discretion, the Owner must promptly remedy that breach at its sole cost;
  - (ii) if the Owner has not remedied the breach to the reasonable satisfaction of the Township within thirty (30) days of notice or other longer time period specified by the Township, the Township may, but is under no obligation to, remove or rectify the breach at the expense of the Owner without further notice; and
  - (iii) any costs to the Township of such removal or rectification is a debt due from the Owner to the Township together with interest at a rate of 1% per annum in excess of the Prime Lending Rate of the Royal Bank of Canada in effect from time to time, and:
    - (A) the Owner shall pay such costs and interest to the Township forthwith upon demand; and
    - (B) failing payment, the Township may add such costs to property taxes for the Lands.

**6.12. COMPLIANCE:** The Owner covenants and agrees that the Township may withhold development permits, building permits and other approvals related to the use, building, or subdivision of land as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a permit or approval does not act as a representation or warranty by the Township that the covenants of this Agreement have been satisfied.

**6.13. 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

DADU

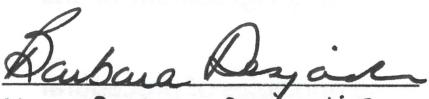
Housing Agreement

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6.19. 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.

TOWNSHIP OF ESQUIMALT  
by its authorized signatories

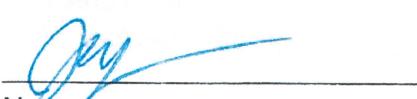
  
Name: Barbara Desjardins  
Title: Mayor

Date signed: Sept 13/2024

  
Name: Debra Hopkins  
Title: Corporate Officer

Date signed: Sept 13/2024

Jose Gerardo Martino Lopez  
by its authorized signatories

  
Name:

Date signed: 09.09.2024



Name:

Date signed: \_\_\_\_\_

mandatory injunction in order to compel performance of the obligations in this Housing Agreement.

**6.14. 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.

**6.15. 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.

**6.16. 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*.

**6.17. 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.

**6.18. APPLICABLE LAW:** This Housing Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

**DELETE THIS PAGE IF NO FINANCIAL ENCUMBRANCES ON TITLE  
REPEAT IT IF MORE THAN ONE**

## 7. PRIORITY AGREEMENTS

THE TORONTO-DOMINION BANK (the "Chargeholder"), 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 number CA8841129 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.

THE TORONTO-DOMINION BANK by its authorized signatories

Name: Elizabeth Akinto

Discharge Administrator

Name: Julian Fulker

Discharge Administrator

## TERMS OF INSTRUMENT – PART 2

### S.219 COVENANT

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#### RECITALS:

- A. The Transferor ("Owner") is the registered owner in fee-simple of the lands identified in item 2 on Form C associated with these Terms, in the Township of Esquimalt in the Province of British Columbia (the "Lands").
- B. The Transferee is the Township of Esquimalt ("Transferee" or "Township").
- C. The Owner seeks to develop a Detached Accessory Dwelling Unit ("DADU") in accordance with the density-bonusing provisions of the Township's Zoning Bylaw, and the conditions of such additional density include a Covenant under Section 219 of the *Land Title Act* with the Township, including for the purposes of ensuring the DADU is not subdivided under the provisions of either the *Land Title Act* or the *Strata Property Act*, including building strata, and for ensuring the DADU is a secondary use only within the singular control of the owner of the principal dwelling.
- D. The Owner acknowledges and agrees that the restrictions and requirements contained in this Agreement are in the public interest. The Owner has offered and voluntarily provided this Agreement to the Township, and the Township has accepted it and required its registration as a condition of the Owner obtaining the additional density available under the Zoning Bylaw.
- E. Section 219 of the *Land Title Act* gives authority for a covenant and indemnity, whether of a negative or positive nature, to be registered against the Lands and granted in favour of the Township with provisions:
  - in respect of the use of land or the use of a building on or to be erected on land;
  - that land is to be built on in accordance with the covenant;
  - that land is not to be built on or subdivided except in accordance with the covenant;
  - that land is not to be used, built on or subdivided;
  - that parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or otherwise transferred separately; and
  - that land or a specified amenity in relation to it be protected, preserved, conserved, maintained, enhanced, restored or kept in its natural or existing state in accordance with the covenant and to the extent provided in the covenant.

NOW THEREFORE in consideration of the payment of the sum of \$10.00 by the Township to the

Owner (receipt and sufficiency acknowledged), the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the parties covenant and agree as to the following, including under Section 219 of the *Land Title Act*:

1. The Owner and Township agree that this Agreement shall be interpreted in accordance with the definitions in the Township's Zoning Bylaw, as amended from time to time.

### **Restrictions and Requirements**

2. Notwithstanding broader or greater uses, density or other regulations in the Township's Zoning Bylaw, as amended from time to time, the Owner covenants and agrees that the Lands must not be:
  - (a) subdivided, including under the *Land Title Act*, the *Strata Property Act*, including building strata subdivision, or otherwise;
  - (b) built upon, contain or be used except for:
    - (i) a maximum of one (1) principal single family residential dwelling unit,
    - (ii) a maximum of one (1) detached accessory dwelling unit, and
    - (iii) accessory uses permitted by Township zoning; and
  - (c) built upon, contain or be used for secondary suite use.

3. The Owner further covenants and agrees that the detached accessory dwelling unit must not be used except as a secondary use only within the singular control of the owner of the principal dwelling on the Lands.

### **Indemnity and Release**

4. 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 and death, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, the granting of any approvals or the use of the Lands contemplated under this Agreement.
5. 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 and anyone, including third parties, can or may have against the Township for any loss, damage, deprivation, enrichment or injury, including economic loss and death, arising out of or connected with the restrictions or requirements of this Agreement, the breach of any covenant in this Agreement, the granting of any approvals or the use of the Lands contemplated under this Agreement.

6. The releases and indemnities of this Agreement shall survive its termination.

#### Registration

7. The restrictions and requirements in this Agreement are covenants running with the Lands in favour of the Township and intended to be perpetual, and shall continue to bind all of the Lands when subdivided.
8. At the Owner's sole cost, the Owner must do everything necessary to secure priority of registration and interest for this Agreement over all encumbrances of a financial nature on the Lands.
9. The Owner agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.
10. The Owner agrees to pay the reasonable legal fees and land title office costs of the Township in connection with the preparation and registration of this Agreement.

#### General

11. The Owner covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement.
12. It is mutually understood, acknowledged and agreed by the parties that the Township has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Owner other than those contained in this Agreement.
13. 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.

14. The Owner covenants and agrees that the Township may withhold development permits, building permits and other approvals related to the use, building or subdivision of land as necessary to ensure compliance with the covenants in this Agreement, and that the issuance of a permit or approval does not act as a representation or warranty by the Township that the covenants of this Agreement have been satisfied.

15. The Owner covenants and agrees that:

(a) if the Township advises of a breach of this Agreement, as determined in its reasonable discretion, the Owner must promptly remedy that breach at its sole cost;

(b) if the Owner has not remedied the breach to the reasonable satisfaction of the Township within thirty (30) days of notice or other longer time period specified by the Township, the Township may, but is under no obligation to, remove or rectify the breach at the expense of the Owner without further notice; and

(c) any costs to the Township of such removal or rectification is a debt due from the Owner to the Township together with interest at a rate of 1% per annum in excess of the Prime Lending Rate of the Royal Bank of Canada in effect from time to time, and:

(i) the Owner shall pay such costs and interest to the Township forthwith upon demand; and

(ii) failing payment, the Township may add such costs to property taxes for the Lands.

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. The Owner agrees that the Township is entitled to obtain an order for specific performance or a prohibitory or mandatory injunction in respect of any breach of this Agreement by the Owner.

17. The waiver by a party of any breach of this Agreement or 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, and no waiver is effective unless it is written and signed by both parties.

18. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
19. 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.
20. This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

The Owner and Township acknowledge that this Agreement has been duly executed and delivered by the parties executing Form C attached.