

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 3073

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 (1221 Carlisle Avenue) BYLAW, 2022, NO. 3073*".
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 CARLISLE AVE DEVELOPMENT B.C. LTD.,
Inc. No. BC1263134; and

(c) that applies to the land known as 1207 Carlisle Avenue, 1211 Carlisle Avenue, 1215 Carlisle Avenue, 1217 Carlisle Avenue, 1219 Carlisle Avenue, 1221 Carlisle Avenue, 512 Fraser Street, 522 Fraser Street, 1212 Lyall Street, 1216 Lyall Street, 1220 Lyall Street, 1222 Lyall Street, 1224 Lyall Street, 1226 Lyall Street legally described as:

PID: 002-179-105 Lot 11, Section 11, Esquimalt District, Plan 946

PID: 008-183-309 Lot 14, Section 11, Esquimalt District, Plan 946

PID: 008-183-376 Lot 15, Section 11, Esquimalt District, Plan 946

PID: 000-248-134 Lot 16, Section 11, Esquimalt District, Plan 946

PID: 008-183-422 Lot 17, Section 11, Esquimalt District, Plan 946

PID: 008-183-481 Lot 18, Section 11, Esquimalt District, Plan 946

PID: 008-183-546 Lot 19, Section 11, Esquimalt District, Plan 946

PID: 005-587-638 Lot 20, Section 11, Esquimalt District, Plan 946

PID: 008-183-597 That Part of Lot 21, Section 11, Esquimalt District, Plan 946, Lying to the East of a straight boundary joining the points of bisection of the North Easterly and South Westerly boundaries of said Lot

PID: 008-183-601 Lot 21, Section 11, Esquimalt District, Plan 946, Except that Part lying to the East of a straight boundary joining the points of bisection of the North Easterly and South Westerly boundaries of said Lot.

PID: 008-183-619 Lot 22, Section 11, Esquimalt District, Plan 946

PID: 008-183-635 Lot 23, Section 11, Esquimalt District, Plan 946

PID: 006-111-092 Lot A, Section 11, Esquimalt District, Plan 3829

PID: 006-111-131 Lot B, Section 11, Esquimalt District, Plan 3829

READ a first time by the Municipal Council on the 13th day of June, 2022.

READ a second time by the Municipal Council on the 13th day of June, 2022.

READ a third time by the Municipal Council on the 13th day of June, 2022.

ADOPTED by the Municipal Council on the 29th day of August, 2022.


BARBARA DESJARDINS
MAYOR


DEBRA HOPKINS
CORPORATE OFFICER

SCHEDULE A to Bylaw No. 3073

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

**CARLISLE AVE DEVELOPMENT B.C. LTD., Inc. No. BC1263134
200, 1501 1st Street SW
Calgary, AB T2R 0W1
(the "Owner")**

RECITALS:

- A. Under section 483 of the *Local Government Act*, R.S.B.C. 2015 c.1 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 1207 - 1221 Carlisle Avenue, 512 - 522 Fraser Street and 1212 - 1226 Lyall Street in the Township of Esquimalt in Province of British Columbia, and legally described as (or as may be updated following consolidation of the Lands):

PID: 002-179-105
Lot 11, Section 11, Esquimalt District Plan 946

PID: 006-183-309
Lot 14, Section 11, Esquimalt District Plan 946

PID: 008-183-376
Lot 15, Section 11, Esquimalt District Plan 946

PID: 000-248-134
Lot 16, Section 11, Esquimalt District Plan 946

PID: 008-183-422
Lot 17, Section 11, Esquimalt District Plan 946

PID: 008-183-481
Lot 18, Section 11, Esquimalt District Plan 946

PID: 008-183-546
Lot 19, Section 11, Esquimalt District Plan 946

PID: 005-587-638
Lot 20, Section 11, Esquimalt District Plan 946

PID: 008-183-619
Lot 22, Section 11, Esquimalt District Plan 946

PID: 008-183-635
Lot 23, Section 11, Esquimalt District Plan 946

PID: 006-111-092
Lot A, Section 11, Esquimalt District Plan 3829

PID: 006-111-131
Lot B, Section 11, Esquimalt District Plan 3829

PID: 008-183-597
THAT PART OF LOT 21, SECTION 11, ESQUIMALT DISTRICT PLAN 946,
Lying to the east of a straight boundary joining the points of bisection of the
north easterly and south westerly boundaries of said lot.

PID: 008-183-601
LOT 21, SECTION 11, ESQUIMALT DISTRICT PLAN 946, EXCEPT THAT
PART Lying to the east of a straight boundary joining the points of bisection of
the north easterly and south westerly boundaries of said lot.

(collectively, the "Lands").

- C. The Owner has submitted an application to the Township to rezone the Lands to Comprehensive Development District No. 152 (1221 Carlisle Avenue) CD-152 further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW, 2022, NO. 3065 (the "Amendment Bylaw") to authorize the development of up to 213 apartment residences (the "Dwelling Units"), to be constructed in two 5-storey buildings on the Lands with an underground parking garage (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 *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.

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2. RESIDENTIAL 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 must only be used and occupied for residential purposes in accordance with Township's Zoning Bylaw.
- 2.2. The Owner acknowledges that a Township goal includes providing market workforce housing and therefore the Owner further covenants and agrees that the Dwelling Units within the Development 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 the tenancies and occupancies for all the Dwelling Units must not be institutional in nature. 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 additional allocation of up to ten (10) Dwelling Units 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. 3-BEDROOM DWELLING UNITS

- 3.1. A minimum of Twenty (20) of the Dwelling Units within the Development must be, and remain, three-bedroom dwelling units.

4. ADMINISTRATION & MANAGEMENT - REPORTING

- 4.1. 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 Proposed Development, or portions thereof, respectively:
 - (a) The number, type (e.g. one bedroom, two bedroom, three bedroom), and location by suite number, of Dwelling Units on the Lands, including identifying those that are vacant;
 - (b) The name of the property management company(ies) managing the Dwelling Units;
 - (c) A copy of the standard form(s) of tenancy or occupancy agreement for the Dwelling Units, including the 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 and contact information of all individuals, governmental agencies or corporations that use, occupy, manage or operate more than one dwelling unit (and the respective unit numbers);
- (f) 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
- (g) 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 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 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).
- 4.4. 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.

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 Agreement, the granting of any

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

7. GENERAL PROVISIONS

- 7.1. **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.
- 7.2. **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*.
- 7.3. **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.
- 7.4. **TIME:** Time is to be the essence of this Agreement.
- 7.5. **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.
- 7.6. **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.
- 7.7. **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.
- 7.8. **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.

7.9. 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.

7.10. 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.

7.11. 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.

7.12. 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 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.

7.13. 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.

7.14. 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*.

7.15. **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.

7.16. **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.

7.17. **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

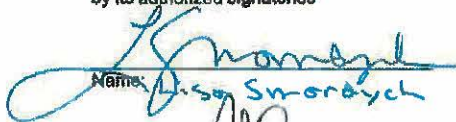
Mayor

Date signed: _____, 2022

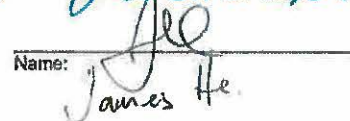
Chief Administrative Officer

Date signed: _____, 2022

CARLISLE AVE DEVELOPMENT B.C. LTD., Inc. No. BC1263134
by its authorized signatories


Name: L. Smoraych

Date signed: August 2, 2022


Name: James He

Date signed: August 2, 2022