

**CORPORATION OF THE TOWNSHIP OF ESQUIMALT**

**BYLAW NO. 2378**

**A Bylaw to Authorize a Housing Agreement**

THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT, in open meeting assembled, enacts as follows:

1. The Mayor and Clerk are authorized to execute an agreement pursuant to Section 905 of the *Municipal Act* with the Anglican Synod of the Diocese British Columbia in the form attached to this Bylaw as Schedule A.
2. This bylaw may be cited for all purposes as the "HOUSING AGREEMENT BYLAW (ST. PAUL'S HOUSING SOCIETY) "1999, NO. 2378

Read a first time by the Municipal Council on May 31, 1999.

Read a second time by the Municipal Council on May 31, 1999.

Read a third time by the Municipal Council on June 28, 1999.

ADOPTED by the Municipal Council on July 12, 1999.



RAYMOND T. RICE  
MAYOR



R. SERIGHT  
MUNICIPAL CLERK

**SCHEDULE "A "OF BYLAW NO. 2378**

THIS AGREEMENT is made on the       day of       ,1999

**BETWEEN:**

THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLUMBIA  
900 Vancouver Street  
Victoria, British Columbia  
V8V 3V7

(The "Owner")

OF THE FIRST PART

**AND:**

CORPORATION OF THE TOWNSHIP OF ESQUIMALT  
1229 Esquimalt Road  
Esquimalt, British Columbia  
V9A 3P1

(The "Township")

OF THE SECOND PART

**WHEREAS:**

- A. The Owner has applied to the Municipality to amend the Municipality's Zoning Bylaw to permit the construction of a 39 unit residential apartment building plus one guest suite on certain lands, more particularly described in this Agreement; and
- B. The Municipality may, pursuant to Section 905 of the *Municipal Act*, enter into an agreement with the Owner of land that includes terms and conditions regarding the occupancy of dwelling units located on the lands of the Owner; and
- C. The Owner and the Municipality wish to enter into such an agreement with respect to dwelling units located on the lands; and
- D. The Council of the Municipality has, by bylaw, authorized the execution of this Agreement and the Municipality entering into this Agreement and the directors of the Owner have, by resolution, authorized the execution of this Agreement.

**THIS AGREEMENT WITNESSES THAT**, in consideration of the premises and covenants set out in the Agreement and the sum of ONE DOLLAR (\$1.00) now paid by the Municipality to the Owner, the receipt and sufficiency of which are hereby acknowledged by the Owner, the parties covenant and agreed with each other as follows:

## Definitions

1. The following expressions where used in this Agreement shall have the following meanings:

"Dwelling Unit" means a suite of rooms comprising a self-contained residential dwelling located on the Land.

"Family member" means an individual who is related to a Resident by blood, marriage, adoption, common-law marriage or foster parenthood and who lives with that Resident in a Dwelling Unit.

"Land" means:

Lot 1, Suburban Lot 27, Section 339MA, Esquimalt District, Plan 5092

Lots 2 & 3, Suburban Lot 27, Section 339MA, Esquimalt District, Plan 5092

Lot 4, Suburban Lot 27, Section 339MA, Esquimalt District, Plan 5092

Lot 5, Suburban Lot 27, Section 339MA, Esquimalt District, Plan 5092

"Resident" means an individual having an age of at least 55 years or more.

2. Occupancy Restriction

The Owner shall not permit a Dwelling Unit to be occupied as a residence by any person other than:

- a) a Resident; or
- b) a Family Member; or
- c) an individual described in subsection (b) who continues to live in a Dwelling Unit following the death of the Resident with whom the individual has been living in that Dwelling Unit, or the permanent relocation to a hospital, community care facility, rest home, or other place of permanent residence at which personal or medical care is provided.

3. Relief from Occupancy Restriction

If the Owner is in default of the performance or observance of paragraph 2 of this Agreement, the Owner may, no later than 30 days after having been given notice by the Municipality of the default, request to be relieved from its obligations under that paragraph with respect to a particular Dwelling Unit for reasons of hardship. Any such request shall be delivered in writing to the Clerk of the Municipality, setting out the circumstances of the default and the particular hardship involved. The Owner acknowledges and agrees that the Municipality shall be under no obligation to grant any relief, and may proceed with its remedies under this Agreement, at law and in equity, despite the Owner's request and that the relief, if any, to be afforded shall be determined by the Municipality in its sole discretion.

4. Term

This Agreement shall have effect and bind the Owner and the Municipality until December 31, 2015.

5. Notice on Title

The Owner acknowledges that, pursuant to Section 963.2(5) of the *Municipal Act*, the Municipality must file in the Land Title Office a notice that the Lands are subject to this Agreement, and that, once the notice is filed, this Agreement is binding on all persons who acquire an interest in the Lands.

6. Tenancy Agreements

The Owner shall not rent or lease the Lands or any Dwelling Unit on the Lands except by agreement in writing, and

- a) In the event that the Lands or any Dwelling Unit on the Lands is sublet, the requirements of paragraph 2 apply to any rental sub-agreements or sublease.

7. No Public Law Duty

Wherever in this Agreement an act, determination, consent, approval or agreement of the Municipality is provided for, such act, determination, consent, approval or agreement may be done or made in accordance with the terms of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, shall have any application.

8. No Waiver

No condoning, excusing or overlooking by the Municipality of any default under this Agreement, or any consent, approval or agreement whether written or otherwise shall be taken to operate as a waiver by the Municipality of any subsequent default or of the necessity for further consent, approval or agreement in respect of a subsequent matter requiring it under this Agreement, or in any way to defeat or affect the rights or remedies of the Municipality.

9. Arbitration

Any matter in dispute between the parties under this Agreement, including any dispute as to whether a particular individual is eligible to occupy a Dwelling Unit under paragraph 2, shall be referred to a singular arbitrator if the parties can agree on one, and otherwise to three arbitrators, one to be appointed by each of the parties and the third by those two so appointed, and the matter shall be resolved in accordance with the provisions of the *Commercial Arbitration Act* of British Columbia.

10. Amendment

This Agreement may not be modified or amended except by bylaw of the Municipality, upon an agreement in writing between the Municipality and the Owner or the Owner's successor in title.

11. Notices

Any notice required to be given pursuant to this Agreement shall be in writing and shall be given to the Owner or the Municipality, as the case may be, at the address first above written, or to any other address of which either the Owner or the Municipality may advise the other in writing in accordance with this paragraph. If given in person, such notice will be deemed to be received when delivered and, if mailed, such notice will be deemed to be received on the fifth business day after the date of mailing except in the event of an interruption of mail service, when such notice may be deemed to be received only when actually received by the party to whom it is addressed.

12. This Agreement shall enure to the benefit of and be binding on the Owner and the Municipality and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have on the day and in the year first above written caused their respective corporate seals to be affixed hereto in the presence of their proper officers first duly authorized in that behalf.

The Corporate Seal of the Corporation  
of the Township of Esquimalt was  
affixed in the presence of:

\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
Mayor\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
Clerk\_\_\_\_\_)

The Corporate Seal of The Anglican  
Synod of the Diocese of British Columbia

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Authorized Signatory