

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 2935

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 (1379 Esquimalt Road/ 520 Foster Street) BYLAW, 2018, NO. 2935"*.
2. The Mayor and the City's Corporate Officer are authorized to execute the Housing Agreement:
 - (a) set out in Schedule A,
 - (b) between the Township and The Anglican Synod Of The Diocese Of British Columbia, and
 - (c) that applies to the land known as 1379 Esquimalt Road/ 520 Foster Street, legally described as:

PID: 024-848-905
LOT A (DD EP75276) SUBURBAN LOT 27 ESQUIMALT DISTRICT PLAN
5092

READ a first time by the Municipal Council on the ---- day of -----, 2018.

READ a second time by the Municipal Council on the ---- day of -----, 2018.

READ a third time by the Municipal Council on the ---- day of -----, 2018.

ADOPTED by the Municipal Council on the ---- day of -----, 2018.

BARBARA DESJARDINS
MAYOR

ANJA NURVO
CORPORATE OFFICER

**SCHEDULE A to Bylaw No. 2935
HOUSING AGREEMENT**

HOUSING AGREEMENT
(Pursuant to Section 483 of the Local Government Act)

THIS AGREEMENT is made the _____ day of _____, 2018.

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT
1229 Esquimalt Road
Victoria, BC V9A 3P1

(the "**Township**")
OF THE FIRST PART

AND:

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

(the "**Owner**")
OF THE SECOND PART

WHEREAS

- A.** Under Section 483 of the *Local Government Act* the Township may, by bylaw, enter into a housing agreement with an owner of land 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 lands in the Corporation of the Township of Esquimalt, British Columbia, having a civic address of 1379 Esquimalt Road /520 Foster Street and legally described as:

PID 024-848-905
Lot A (DD EP75276) Suburban Lot 27 Esquimalt District Plan 5092

(the "**Lands**")

- C.** The Owner has made application to the Township for a heritage alteration permit, zoning bylaw amendment and a development permit to permit the construction of an apartment building (the "**Apartment Building**") containing 24 Dwelling Units;
- D.** The Township and the Owner wish to enter into this Agreement, as a Housing Agreement pursuant to Section 483 of the *Local Government Act*, to ensure that all Dwelling Units remain available for affordable and special needs housing in accordance with the terms and conditions of this Agreement. For greater certainty, it is the intent of the parties that this Agreement not be applicable to the existing dwelling units located in the building known as "The Hermitage" or to the existing church building;

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:

1.0 Definitions

1.1 In this Agreement:

"Affordable Rent" means a rent that is no more than 85% of the market rent for a comparable sized Dwelling Unit in Victoria, British Columbia, as determined by the Canada Mortgage Housing Corporation or any successor organization.

"Caretaker Unit" means a Dwelling Unit on the Lands that may be occupied by an owner, operator, manager, or caretaker providing on-site services.

"Dwelling Unit" means the units dedicated to or used for residential uses in the Apartment Building, as defined or interpreted in accordance with the Township's Zoning Bylaw, as may be amended from time to time, and specifically excludes short-term rentals/tourist accommodation.

"Low to Moderate Income Household" means a household with an annual income at or below the housing income limit for a comparable sized Dwelling Unit in Esquimalt, or, where such data is not available for Esquimalt, a comparable sized Dwelling Unit in Victoria, British Columbia, established annually by the British Columbia Housing Management Commission or any successor organization.

"Owner" includes:

- (a) a person who acquires an interest in the Lands or a Dwelling Unit and is thereby bound by this Agreement; and
- (b) where the Owner is a Corporation, then its Directors and Officers for determining the relations identified in Section 2.1.

"Persons with Disabilities" means any individual who requires additional or specialized services or accommodations by reason of one or more difficulties such as physical, emotional, behavioral, developmental, or otherwise, as evidenced in writing by the appropriate Federal or Provincial ministry or agency.

"Senior" means any person aged 55 years or older.

"Strata Corporation" means for the portions of the Lands, or a building on the Lands, that are subdivided under the *Strata Property Act*, a strata corporation as defined in that Act including the Owner while in control of the strata corporation and subsequently the individual strata lot owners collectively acting as the strata corporation.

2.0 Rental Housing

2.1 The Owner covenants and agrees that:

- (a) No restrictions shall be placed on the availability of Dwelling Units for rentals by non-owners for residential purposes;

- (b) Each of the Dwelling Units may be occupied only by a tenant, or a relative, caregiver or guest of the tenant and no Dwelling Unit shall be occupied by the Owner of the Dwelling Unit, nor by a parent, spouse, child, sibling, aunt, uncle, niece, nephew, cousin or guest of such Owner (the "Non-Occupant"). On request, the Township may provide its written authorization to permit occupancy by a Non-Occupant if occupancy satisfies the intent and purpose of this Agreement as determined by the Township.
- (c) No application shall be made to deposit a strata plan for buildings on the lands containing Dwelling Units unless the strata bylaws accompanying the strata plan contain no restrictions on the rental of strata lots for residential purposes;
- (d) The Strata Corporation shall not pass any bylaws that would restrict the availability of Dwelling Units for rentals, including without limiting the foregoing:
 - (i) bylaws prohibiting the rental of strata lots for residential purposes; or
 - (ii) bylaws limiting the number or percentage of strata lots that may be rented for residential purposes;
- (e) The Strata Corporation shall notify the Township of any proposed amendments to its strata bylaws that relate to this Agreement.

3.0 Affordable and Special Needs Housing

3.1 The Owner covenants and agrees that:

- (a) All Dwelling Units within the Apartment Building shall be occupied only by Seniors or Persons with Disabilities.
- (b) All Dwelling Units shall be rented to tenants for a rent that is equal to or less than the Affordable Rent.
- (c) The keeping of service dogs and other service and companion animals will be permitted in the Dwelling Units provided they are used by Seniors or Persons with Disabilities.

3.2 If the Apartment Building is stratified, Subsection 3.1(a) continues to apply but 3.1(b) does not apply if the Dwelling Unit is owner-occupied provided that the unit was purchased at 85% or less of the market value of a comparable sized Dwelling Unit in Victoria, British Columbia.

3.3 Despite sections 2.1 and 3.1, a maximum of one (1) Dwelling Unit on the Lands may be used and occupied as a Caretaker Unit and the restrictions in sections 2.1(b) and 3.1 shall not apply to the Caretaker Unit.

4.0 Administration and Management - Reporting

4.1 Within thirty (30) days of receipt of request from the Township, the Owner or Strata Corporation must provide a report in writing that identifies the following for the Apartment

Building:

I. Where British Columbia Housing Management Commission, or any other provincial agency is the owner or manager of the Dwelling Unit:

- (a) Total number of Dwelling Units;
- (b) For rentals, the total number of Dwelling Units occupied by Seniors, total number of Dwelling Units occupied by Persons with Disabilities and total number of Dwelling Units that are vacant;
- (c) For rentals, a copy of the current rent roll; and
- (d) For any Dwelling Units sold since the last report, the date of the sale and the purchase price.

II. Where any other person, corporation or entity is the Owner:

- (a) Total number of Dwelling Units;
- (b) For rentals, the total number of Dwelling Units occupied by Seniors, the total number of Dwelling Units occupied by Persons with Disabilities and the total number of Dwelling Units that are vacant;
- (c) For rentals, occupied by Persons with Disabilities, a statement identifying the evidence used to determine the occupant qualified as a Person with Disabilities;
- (d) For rentals, a copy of the standard form(s) of tenancy or occupancy agreement for the Dwelling Unit, including the term of that agreement (but without the personal information of each individual agreement);
- (e) The purchase price of each Dwelling Unit sold since the last report, and the market value evidence used to ensure that Section 3.2 of this Agreement have been considered and implemented; and
- (f) 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 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).

4.3. For greater certainty, there are no reporting requirements unless the Township so requests.

5.0 Notice to be Registered in Land Title Office

5.1 Notice of this Agreement will be registered 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 registration of the Notice.

- 5.2. If subdivided (or created by air space parcel) such that the portion of the Lands containing "The Hermitage" building becomes a separate lot with no Dwelling Units (the "Hermitage Newly Created Lot") or the existing church building becomes a separate lot with no Dwelling Units (the "Church Lot"), then the Township shall remove the Notice of the Housing Agreement from the Hermitage Newly Created Lot or the Church Lot, as the case may be, at the request of the Owner.

6.0 Expiration of Agreement

- 6.1 The Township will execute and deliver a registerable discharge of the Agreement on the earlier to occur of:
- (a) 25 years from the date this Agreement is registered in the Victoria Land Title Office; or
 - (b) the date upon which any mortgage to be registered in favour of British Columbia Housing Management Commission is discharged from the Lands.

7.0 RELEASE AND INDEMNITY

- 7.1 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 Agreement, the breach of any covenant in this Agreement or the use of the Lands contemplated under this Agreement, as the case may be, except in the case of gross negligence on the part of the Township.
- 7.2. 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 by the Owner, or the use of the Lands contemplated under this Agreement, as the case may be, except in the case of gross negligence on the part of the Township.

8.0 GENERAL PROVISIONS

8.1 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.

8.2 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 of the *Local Government Act*.

8.3 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 in accordance with Section 483(6) of the *Local Government Act*.

8.4 Time

Time is to be the essence of this Agreement.

8.5 Waiver

- (a) No provision of this Agreement is to be considered to have been 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.

8.6 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.

8.7 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.

8.8 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 Agreement.

8.9 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.

8.10 Modifications

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. The process for such consent shall be consistent with statutory requirement, and no Public Hearing shall be required.

[For information purposes only, section 483(5) of the Local Government Act currently states: "A housing agreement may be amended only by bylaw adopted with the consent of the owner."]

8.11 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, 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.

8.12 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.

8.13 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.

8.14 Counterparts

This Agreement may be executed in counterpart 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.

8.15 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 hereto have set their hands and seals as of the day and year first above written.

**THE CORPORATION OF THE TOWNSHIP
OF ESQUIMALT** by its Authorized signatory

Municipal Clerk

Chief Administrative Officer

**THE ANGLICAN SYNOD OF THE DIOCESE OF
BRITISH COLUMBIA**
by its Authorized signatory
