

CORPORATION OF THE TOWNSHIP OF ESQUIMALT

BYLAW NO. 2799

A Bylaw to authorize a Seniors Housing Agreement
under section 905 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 (622 Admirals Road) BYLAW, 2013, NO. 2799"*.
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 Royal Canadian Legion, Branch No. 172, and
 - (c) that applies to the land known as 622 Admirals Road, legally described as:
 - (i) Lot 155, Suburban Lot 43, Esquimalt District, Plan 2854;
 - (ii) Lot 156, Suburban Lot 43, Esquimalt District, Plan 2854;
 - (iii) Lot 157, Suburban Lot 43, Esquimalt District, Plan 2854; and
 - (iv) Lot 158, Suburban Lot 43, Esquimalt District, Plan 2854, Except Part in Red on Plan 312 BL

READ a first time by the Municipal Council on the 4th day of March, 2013.

READ a second time by the Municipal Council on the 24th day of June, 2013.

READ a third time by the Municipal Council on the 24th day of June, 2013.

ADOPTED by the Municipal Council on the 23rd day of June, 2014.


BARBARA DESJARDINS
MAYOR


CORPORATE OFFICER

SCHEDULE A to Bylaw No. 2799
HOUSING AGREEMENT

HOUSING AGREEMENT

(Pursuant to Section 905 of the *Local Government Act*)

THIS AGREEMENT is made the 21st day of March, 2014.

BETWEEN:

THE CORPORATION OF THE TOWNSHIP OF ESQUIMALT

1229 Esquimalt Road
Esquimalt, BC V9A 3P1

(the "TOWNSHIP")

AND

ROYAL CANADIAN LEGION, BRANCH NO. 172

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

(the "OWNER")

RECITALS:

- A. Under section 905 of the *Local Government Act* the City 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 905(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:
 - PIO: 006-390-897
Lot 155, Suburban Lot 43, Esquimalt District, Plan 2854;
 - PID: 006-386-865
Lot 156, Suburban Lot 43, Esquimalt District, Plan 2854;
 - PIO: 006-386-881
Lot 157, Suburban Lot 43, Esquimalt District, Plan 2854; and

PID: 006-387-098

Lot 158, Suburban Lot 43, Esquimalt District, Plan 2854, Except Part in Red on Plan 312 BL

(collectively, the "Lands").

- C. The Owner has submitted an application to the Township to rezone the Lands from C-3 [Core Commercial] to CD No. 82 [Comprehensive Development District No. 82] further to ZONING BYLAW, 1992, NO. 2050, AMENDMENT BYLAW [NO. 207], 2013, NO. 2798 ("Rezoning Bylaw"), and acknowledging that it is in the public interest that the use of the Lands be limited, in particular given the intent to provide congregate care housing for seniors.
- D. The Owner proposes to develop the Lands under four strata lots as follows:
 - a. Proposed Strata Lot A - Commercial Uses;
 - b. Proposed Strata Lot B - Legion Facility (club house)
 - c. Proposed Strata Lot C - 12 non-profit Legion Veteran Settlement Housing Units; and
 - d. Proposed Strata Lot D - 140 (1 and 2 bedroom) Senior Independent Living Units;
 (collectively, the "Proposed Development");
- E. The Owner and the Township wish to enter into this Agreement, as a Housing Agreement pursuant to section 905 of the *Local Government Act*, to secure the agreement of the Owner that all the proposed units on Proposed Strata Lot C and Proposed Strata Lot D of the Lands may only be used for congregate care housing for seniors (the "Agreement" or "Housing Agreement"), the parties acknowledging that the Notice of this Housing Agreement shall be placed on title to the Lands until satisfaction and then the Proposed Strata Lot C and Proposed Strata Lot D at which time it may be removed from Proposed Strata Lot A and Proposed Strata Lot B (or as sue/lots may be respectively in immediate time of subdivision).

NOW THIS AGREEMENT WITNESSES that pursuant to section 905 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. DEFINITIONS

- 1.1. Unless otherwise stated, the definitions of the Township's ZONING BYLAW, 1992, NO. 2050 ("Zoning Bylaw"), apply to this Agreement.
- 1.2. The following words and terms have the following meanings:
 - (a) "Non-Commercial Units" means all those parts of the Proposed Development other than on Proposed Strata Lot A and Proposed Strata Lot B;
 - (b) "Owner" includes "Strata Corporation" following stratification of the Lands.
 - (c) "Senior Person" means a person of the age of fifty five (55) years or older;
 - (d) "Strata Corporation" includes the entity in control of the respective Proposed Strata Lots should subdivision or other division proceed by means other than stratification;
 - (e) "Strata Lot" includes such other form of subdivision or property division would, for example, development proceed by way of air space parcel subdivision or other division;

2. USE AND OCCUPATION

- 2.1. Subject to this Agreement the Owner covenants and agrees that it must only use or permit the use and occupancy of the Non-Commercial Units on the Lands to affordable congregate care apartment units for Senior Persons, or accessory uses to such residential use and occupation.
- 2.2. Within Proposed Strata Lot C and Proposed Strata Lot D 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.
- 2.3. In accordance with the Proposed Development, one unit may be provided for the use of guests without age restriction, provided such guests are visiting a current resident.

3. RENTAL UNITS ONLY

- 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 Non-commercial Units on the Lands other than for rental purposes.
- 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 Non-Commercial Units,

the parties acknowledging this Agreement does not restrict the creation of the Proposed Shata Lots A, B, C and D respectively

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

3.3. The Strata Corporation further covenants and agrees:

- (a) that the Strata Corporation will not pass bylaw(s) that would restrict the availability for rental of any Non-Commercial Units unless this Agreement is amended accordingly, and
- (b) to notify the Township of any proposed amendments to its strata bylaws that pertain to use or occupancy.

3.4. The Owner and Strata Corporation acknowledge 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. ADMINISTRATION & 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 portions of the development or Strata Lot, respectively:

- (a) Total number of Non-Commercial Units on the Lands;
- (b) Number and Age of Occupants of each Non-commercial Unit;
- (c) Name and Contact information of all companies and/or societies that manage or operate the Non-Commercial Units;
- (d) Copy of the standard form(s) of tenancy or occupancy agreement for the Non-Commercial Unit, including term of that agreement (but without the personal information of each individual agreement);
- (e) If applicable, any changes or proposed changes to the Strata Corporation's bylaws that may affect the terms of this Housing Agreement; 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. 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 905 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.
- 5.2. Upon stratification in accordance with the Proposed Development, the Notice need not run with Proposed Strata Lot A and Proposed Shata Lot B, and the Township agrees to file a cancellation in that limited regard on request of the Owner.

6. RELEASE AND INDEMNITY

- 6.1. The Owner and Strata Corporation covenant and agree to indemnify and save harmless the Transferee 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.
- 6.2. The Owner and Strata Corporation release and forever discharge 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 Shata 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 Agreement, or the use 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 905(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 905(6) of the *Local Government Act*.

7.4. **TIME:** Time is to be the essence of this Agreement.

7.5. **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.

7.6. **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 inequity.

7.7. **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.

7.8. **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.

7.9. **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.

7.10. NO RESTRICTION ON TOWNSHIP AUTHORITY: Except as required by section 905 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.

7.11. 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.

7.12. 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.

7.13. 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 consh-ued together and constitute one and the same Agreement.

7.14. 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

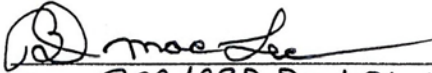
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WITNESSED

MARCH 21/14

ROYAL CANADIAN LEGION, BRANCH NO. 172

by its authorized signatories

Name: BERNARD DANIEL HAVELOCK MACLEAN
PRESIDENT
Name: DOUGLAS JAMES GRANT, MANAGERJAMES A.S. LEIGH
Barrister & Solicitor
300 - 736 Broughton Street
Victoria, British Columbia
V8W 1E1

PRIORITY: JOHN LECOMTE, Businessman, of 1171 - 20th Street, West Vancouver, BC V7V 3Z4 (the "Chargeholder") is the registered holder of a charge by way of MORTGAGE and ASSIGNMENT OF RENTS against each of parcels that comprise the Lands, registered under No. CA3591224 AND CA3591225 respectively (the "Charges"), agrees with the Township, in consideration of the sum of Ten Dollars (\$10.00) paid by the Township to the Chargeholder (receipt and sufficiency acknowledged), that the 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 Agreement had been dated and registered prior to the Charge.

SIGNED, SEALED AND DELIVERED)

by JOHN LECOMTE, in the presence of)

this 20th

Name: John Lecomte

Name:

Address:

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Occupation