

**MAYNE ISLAND LOCAL TRUST COMMITTEE**

**BYLAW No. 117**

**Schedule A**

**HOUSING AGREEMENT**

THIS AGREEMENT DATED FOR REFERENCE the 14<sup>th</sup> day of September 2002

BETWEEN:

MAYNE COMMUNITY ASSOCIATION, a society incorporated under the *Society Act* of British Columbia (incorporation number S24946) and having its registered office at 360B Georgina Point Road, Mayne Island, B.C. V0N 2J0

(the "Owner")

OF THE FIRST PART

AND:

THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, 912 Vancouver Street, Victoria, B.C., V8V 3V7

(the "Diocese")

OF THE SECOND PART

AND:

MAYNE ISLAND LOCAL TRUST COMMITTEE, a corporation under the *Islands Trust Act* of British Columbia, having an office at 2<sup>nd</sup> Floor, 1627 Fort Street, Victoria, B.C. V8R 1H8

(the "Trust Committee")

OF THE THIRD PART

WHEREAS:

A. The Owner has applied to the Trust Committee for certain approvals to permit the construction of a residential development on certain lands, more particularly described in this Agreement; and

- B. The Diocese holds a possibility of reverter in respect of the lands; and
- C. The Trust Committee may, pursuant to s. 905 of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy of dwelling units located on the lands of the owner; and
- D. The Owner, the Diocese and the Trust Committee wish to enter into such a housing agreement with respect to dwelling units located on the lands; and
- E. The Trust Committee has, by bylaw, authorized the execution of this Agreement and the Trust Committee 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 promises and covenants set out in the Agreement and the sum of ONE DOLLAR (\$1.00) now paid by the Trust Committee to each of the Owner and the Diocese, the receipt and sufficiency of which are hereby acknowledged by the Owner and the Diocese, the parties covenant and agree with each other as follows:

#### Definitions

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

“Dwelling Unit” means one or more habitable rooms used or intended for use as a residence by one or more persons living as a single family unit with self-contained sleeping, living, cooking, and sanitary facilities and direct access to the open air;

“Health Care Practitioner” means a person licensed pursuant to the *Health Professions Act* to provide health care to another person;

“Lands” means Lot B, Section 12, Mayne Island, Cowichan District, Plan VIP61452;

“Owner” means the registered owner of the Lands;

“Senior Citizen” means a person aged 55 years or older.

#### Occupancy

2. (a) The Owner shall not permit a Dwelling Unit on the Lands to be

occupied as a residence by any person other than

- (i) up to two Senior Citizens; or
  - (ii) one Senior Citizen and a housekeeper or Health Care Practitioner employed by the Senior Citizen occupying the same Dwelling Unit.
- (b) Upon the death of the Senior Citizen or the vacating of the Dwelling Unit by the Senior Citizen due to illness, the Health Care Practitioner described in subsection 2(a)(ii) of this Agreement may continue to occupy the Dwelling Unit under the authority of that subsection for no more than 30 days following the death or the vacating as the case may be.

#### Statutory Declaration

3. Upon the written request of the Trust Committee, the Owner shall deliver to the Trust Committee within five days of receiving the request a statutory declaration substantially in the form attached as Appendix "A" to this Agreement, sworn by a director or officer of the Owner, containing all of the information required to complete the declaration. The Trust Committee may request such a declaration in respect of any particular Dwelling Unit up to two times any calendar year.

#### Order to Comply

4. If the Owner is in default of the performance or observance of paragraph 2 of this Agreement, the Trust Committee may give the Owner a notice of default and if that default is also a breach of the Trust Committee's Land Use Bylaw, the notice of default may contain an order by the Trust Committee, delivered under the signature of the Trust Committee, for the Owner to comply with the Land Use Bylaw.

#### Relief from Occupancy Restriction

5. If the Owner is in default of the performance or observance of paragraph 2 of this Agreement, the Owner may request to be relieved from its obligations under that paragraph and paragraph 6 with respect to a particular Dwelling Unit for reasons of hardship related directly to the illness or bereavement of the occupier. No such request for relief may be made later than 30 days after the Owner has been given notice by the Trust Committee of a default. Any such request shall be delivered in writing to the Secretary of the Islands Trust, setting out the circumstances and the particular hardship involved, and shall be signed by both the Owner and the occupier concerned. The Owner acknowledges and agrees that the Trust Committee 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 Trust Committee in its sole discretion.

#### Damages

6. The Owner agrees that for each day a Dwelling Unit is occupied in breach of paragraph 2 of this Agreement, the Owner shall pay the Islands Trust \$50.00 as liquidated damages and not as penalty. Any such damages are due and payable on a monthly basis at the office of the Islands Trust on the last day of each month, and payment may be enforced by the Islands Trust in a court of competent jurisdiction as a contract debt, which debt does not run with the Lands.

#### Specific Performance of Agreement

7. The Owner agrees that the Trust Committee is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement. Further, the Owner agrees that the foregoing provision is reasonable given the public interest in restricting the occupancy of each Dwelling Unit on the Lands in accordance with this Agreement.

#### Indemnification for Costs

8. In the event of proceedings for enforcement of this Agreement commenced by the Trust Committee, the Owner agrees to indemnify the Trust Committee to the full extent of the Trust Committee's actual legal costs in the event that the Owner is held to have been in breach of any provision of this Agreement.

#### No Public Law Duty

9. Wherever in this Agreement an act, determination, consent, approval or agreement of the Trust Committee 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.

#### No Waiver

10. No condoning, excusing or overlooking by the Trust Committee of any default under this Agreement, nor any consent, approval or agreement whether written or otherwise shall be taken to operate as a waiver by the Trust Committee 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 Trust Committee.

#### Arbitration

11. Any matter 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 single 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.

#### Notice on Title

12. The Owner acknowledges that, pursuant to Section 905(5) of the *Local Government Act*, the Trust Committee 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.

#### Amendment and Termination

13. This Agreement may not be modified or amended except by bylaw of the Trust Committee, upon an agreement in writing between the Trust Committee, the Diocese, and the Owner. This Agreement may be terminated or discharged by the Trust Committee without the consent or agreement of the Owner or the Diocese.

#### Notices

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

#### Enurement

15. This Agreement shall enure to the benefit of and be binding on the Trust Committee and its successors and on the Owner and the Diocese and their heirs, successors, personal representatives, administrators, assignees, and successors in title, including the owners of any strata lot into which any residential apartment building on the Lands may be subdivided. Notwithstanding anything contained herein, neither the Owner named herein nor any future owner of the Lands or any portion thereof shall be liable under any of the covenants and agreements contained herein where such liability arises by reason of an act or omission occurring after the Owner or the future Owner, as the case may be, ceases to have any further interest in the Lands or portion of them.

#### Remedies Cumulative

16. The remedies of the Trust Committee specified in this Agreement are cumulative

and are in addition to any remedies of the Trust Committee at law or in equity. No remedy shall be deemed to be exclusive, and the Trust Committee may from time to time have recourse to one or more or all of the available remedies specified herein or at law or in equity.

#### Severability

17. Each covenant and agreement contained in this Agreement is, and shall be construed to be, a separate and independent covenant or agreement and the breach of any such covenant or agreement by the Owner shall not discharge or relieve the Owner from its obligations to perform. If any term or provision of this Agreement or its application to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

#### Joint and Several

18. In the case of more than one Owner, the grants, covenants, conditions, provisions, agreements, rights, powers, privileges and liabilities of the Owner shall be construed and held to be several as well as joint.

#### Included Words

19. Wherever the singular of the masculine is used in this Agreement, it shall be deemed to include the plural or the feminine, or the body politic or corporate, where the context or the parties so require.

#### Governing Law

20. This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

#### Joint Venture

21. Nothing in this Agreement shall constitute the Owner as the agent, joint venturer or partner of the Trust Committee or give the Owner any authority or power to bind the Trust Committee in any way.

#### Time of Essence

22. Time is of the essence of this Agreement.


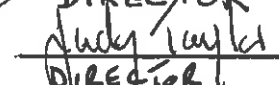
#### Further Assurances

23. The parties shall execute and do all such further deeds, acts, things and assurances as they reasonably require to carry out the intent of this Agreement.

No Fettering of Statutory Discretion

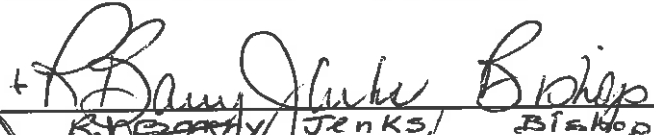
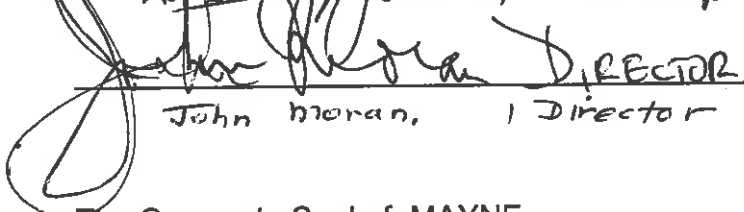
24. No consent or approval given by the Trust Committee under this Agreement shall derogate from or bind the Trust Committee in the exercise of any statutory duty, power or discretion.

The Corporate Seal of MAYNE )  
COMMUNITY ASSOCIATION )  
Was hereunto affixed in the presence of: )

  
\_\_\_\_\_  
DIRECTOR )  
  
\_\_\_\_\_  
DIRECTOR )


(c/s)

The Corporate Seal of THE )  
ANGLICAN SYNOD OF THE )  
DIOCESE OF BRITISH COLUMBIA )  
Was hereunto affixed in the presence of: )

+   
\_\_\_\_\_  
Bishop )  
  
\_\_\_\_\_  
John Moran, Director )

(c/s)

The Corporate Seal of MAYNE )  
ISLAND LOCAL TRUST COMMITTEE )  
Was hereunto affixed in the presence of: )

~~\_\_\_\_\_  
Chairperson:~~   
\_\_\_\_\_  
Chairperson: Kim Benson )

(c/s)

**APPENDIX "A"**  
**TO HOUSING AGREEMENT**

CANADA ) IN THE MATTER OF A  
PROVINCE OF BRITISH COLUMBIA ) the \_\_\_\_\_ day of \_\_\_\_\_ ) HOUSING AGREEMENT dated  
) \_\_\_\_\_, 1995 between  
) MAYNE COMMUNITY  
) ASSOCIATION (the "Owner")  
) and MAYNE ISLAND LOCAL  
) TRUST COMMITTEE (the  
) "Housing Agreement")

I, \_\_\_\_\_, of \_\_\_\_\_ in the Province of British Columbia, do solemnly declare:

1. That I am a \_\_\_\_\_ (director or officer) of the Owner and [make this declaration to the best of my personal knowledge] [have been informed by \_\_\_\_\_ and believe the statements in this declaration to be true.]
2. This declaration is made pursuant to the Housing Agreement in respect of Dwelling Unit No. \_\_\_\_\_.
3. For the period from \_\_\_\_\_, \_\_\_\_\_ to \_\_\_\_\_, \_\_\_\_\_ the Dwelling Unit was occupied by the following person whose names and present ages appear below, and by no other persons:

Name of  
Person

Age of  
Person



