

DENMAN ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. 205

A Bylaw to Authorize a Housing Agreement

WHEREAS the Denman Island Local Trust Committee is the Local Trust Committee having jurisdiction on and in respect of the Denman Island Local Trust Area, pursuant to the *Islands Trust Act*;

AND WHEREAS Section 905 of the Local Government Act and Section 29 of the *Islands Trust Act* permit the Local Trust Committee to enter into a housing agreement;

AND WHEREAS the Denman Island Local Trust Committee wishes to enter into a Housing Agreement;

NOW THEREFORE the Denman Island Local Trust Committee enacts in open meeting assembled as follows:

1. This Bylaw may be cited for all purposes as "Denman Island Housing Agreement Bylaw No. 205, 2012".
2. Any two Trustees of the Denman Island Local Trust Committee are authorized to execute an agreement in the form attached to this Bylaw with Denman Community Land Trust Association.

READ A FIRST TIME this 2nd day of April, 2013

READ A SECOND TIME this 16th day of July, 2013

READ A THIRD TIME this 16th day of July, 2013

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this 20th day of August, 2013

ADOPTED this 24th day of September, 2013

SECRETARY

CHAIRPERSON

Housing Agreement and Section 219 Covenant

THIS AGREEMENT DATED FOR REFERENCE THE..... DAY OF, 2013 is

BETWEEN:

DENMAN COMMUNITY LAND TRUST ASSOCIATION, a society incorporated under the laws of the province of British Columbia and having its office at 3900 Lacon Road, Denman Island, B.C., V0R 1T0

(the “Society”)

AND:

DENMAN ISLAND LOCAL TRUST COMMITTEE, a corporation under the *Islands Trust Act*, having an office at 2nd Floor, 1627 Fort Street, Victoria, B.C., V8R 1H8

(the “Trust Committee”)

WHEREAS:

- A. The Society is the registered owner of the Lands;
- B. The Society has applied to the Trust Committee for a rezoning of the Lands to permit the construction and use of one residential dwelling unit for affordable housing on the Lands as more particularly described in this Agreement;
- C. The Society intends to lease the Lands, by way of a leasehold agreement, at an affordable rate to Qualified Occupants;
- D. The Trust Committee may, pursuant to Section 29 of the *Islands Trust Act* and Section 905 of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure and availability to specified classes of persons of dwelling units located on those lands;
- E. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Trust Committee in respect of the use of land or construction on land;
- F. The Society and the Trust Committee wish to enter into this Agreement to provide affordable housing on the Lands on the terms and conditions of this Agreement; and
- G. The Trust Committee has, by bylaw, authorized the execution of this Agreement and the Society has duly authorized the execution of this Agreement.

THIS AGREEMENT is evidence that in consideration of \$2.00 paid by the Trust Committee to the Society (the receipt of which is acknowledged by the Society), and in consideration of the promises exchanged below, the Trust Committee and the Society agree, as covenants granted by the Society to the Trust Committee under Section 219 of the *Land Title Act*, and as a housing agreement between the Society and the Trust Committee under Section 905 of the *Local Government Act*, as follows:

1. **Definitions** – In this Agreement:

“Affordable Housing Unit” means a single-family dwelling on the Lands in respect of which the construction, tenure, rental and occupancy are restricted in accordance with sections 2 through 8 of this agreement;

“Household Income” means the aggregate of income from all sources of all the occupants of an Affordable Housing Unit, or of the sole occupant if such be the case;

“Lands” means that parcel of land located on Denman Island, B.C., legally described as: NO PID, Lot A Section 21 Denman Island Nanaimo District, Plan _____;

“Qualified Occupant” means a person who meets the eligibility criteria for tenancy of the Affordable Housing Unit that are set out in Schedule “A”.

2. **Construction and Maintenance** – The Society covenants and agrees with the Trust Committee that, while this Agreement is in effect:

(a) the Lands shall not be used, and no building or structure shall be constructed on the Lands, except for one Affordable Housing Unit that:

(i) is reasonably adequate in size and composition for the number of occupants;

(ii) is free of conditions that pose a threat to human health; and

(iii) has a total floor space that does not exceed 93 square metres (1,000 square feet),

and accessory buildings as permitted by bylaw;

(b) the Lands shall not be used and no building or structure shall be constructed on the Lands except in accordance with any siting and use permits issued by the Trust Committee;

(c) the Society must at all times ensure that the Lands are used and occupied in compliance with all statutes, laws, regulations, and order of any authority having jurisdiction;

(d) it will design, construct and maintain in a reasonable state of repair one Affordable Housing Unit on the Lands in accordance with the terms of this Agreement;

(e) the Lands must be used only in accordance with this Agreement;

- (f) if the Society wishes to cease using the Lands for affordable housing and the Trust Committee agrees to release this agreement from title to the Lands, the Society shall use the Lands thereafter only for conservation use.
3. **Occupancy** – The Society agrees that it shall not lease the Affordable Housing Unit or any part of the Lands to any person, or allow any person to occupy the Affordable Housing Unit or any part of the Lands, except for a Qualified Occupant and that person’s spouse. In consideration of the cliff adjacent to the Lands, the Society agrees not to permit the Affordable Housing Unit to be occupied as a residence by anyone under the age of 19 years.
4. **Rental of Affordable Housing Unit** – The Society must:
- (a) rent or lease the Affordable Housing Unit only by way of a Leasehold agreement;
 - (b) include in every Leasehold agreement a prohibition on subletting and assignment to any person who is not a Qualified Occupant, and a provision entitling the Society to terminate the Leasehold in the event of any breach of that prohibition;
 - (c) deliver to the Trust Committee a true copy of every Leasehold agreement entered into in respect of any Affordable Housing Unit within 10 days of any request to do so;
 - (d) specify in every Leasehold agreement the existence of this Agreement and the occupancy restrictions applicable to the Affordable Housing Unit, and provide to each tenant, upon their request, a copy of this agreement;
 - (e) select tenants in accordance with the tenant selection procedures attached as Schedule “A”, which procedures shall not be amended unless such amendment is approved by a bylaw adopted by the Trust Committee with the consent of the Society.
5. **Maximum Rent** – The Society shall:
- (a) not charge any tenant under a Leasehold a monthly rent, inclusive of utilities, that is greater than 30% of the monthly Household Income of all occupants of the Affordable Housing Unit; and
 - (b) not require any tenant under a Leasehold to pay any extra charges or fees for use of any well or septic, or property taxes. For clarity, this limitation does not apply to cablevision, telecommunications, laundry, or gas or electricity utility fees or charges.
6. **Order to Comply** - If the Society is in default of the performance or observance of this Agreement, the Trust Committee may give the Society a notice of default requiring the Society to comply with this Agreement within the time stated in the notice. The Society agrees that any breach or default in the performance of this Agreement on its part must be corrected, to the satisfaction of the Trust Committee, within the time stated on the notice of default provided to the society by the Trust Committee.
7. **Statutory Declaration from Society** – The Society shall deliver to the Trust Committee by the end of June of each year, a completed statutory declaration, substantially in the form attached as Schedule

“B”, sworn by the Society, in relation to the Leasehold. The Society irrevocably authorizes the Trust Committee to make inquiries it considers necessary and reasonable in order to confirm compliance with this Agreement.

8. **Management** – The Society covenants and agrees to furnish good and efficient management of the Lands. If and when the Trust Committee has reasonable grounds to believe that a continuing breach of this Agreement exists, the Trust Committee may authorize its representatives to inspect the Lands at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act* and subject to the concurrent delivery of such a notice to the Society.
9. **No Transfer** – Except for a reconveyance to the donor, Ilsa Pamela Brons, or her heirs, the Society must not transfer the Lands, other than to another non-profit organization or society incorporated under the *Society Act*, having as its objective the management of affordable housing. The Trust Committee must approve any transfer prior to its finalization and may require that, until a new organization is found, no further leases may be granted on the Lands.
10. **Society Standing** – The Society must maintain its standing as a society under the *Society Act*, and must not amend its Constitution in any manner that would prevent, or adversely affect, the ability of the Society to perform its obligations under this Agreement.
11. **Specific Performance of Agreement** – The Society 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 Society of this Agreement, in view of the public interest in restricting the occupancy of the Affordable Housing Unit. The Society further acknowledges that a breach of this Agreement may constitute a breach of the Trust Committee’s Land Use Bylaw, as amended from time to time.
12. **Term** – The Trust Committee covenants and agrees with the Society that this Agreement will cease to apply and have effect from and after the ninety-ninth (99th) anniversary of the date this Agreement was registered in the Land Title Office, and the Trust Committee agrees to sign a release of this Agreement prepared by the Society after that date.
13. **Assignment** – The Society acknowledges that the Trust Committee may delegate or assign the administration and management of this Agreement to a third party, and, in that event, any reference in this Agreement to the Trust Committee shall be interpreted as a reference to that party provided that the Trust Committee has so advised the Society.
14. **Indemnity** – The Society shall indemnify and save harmless the Trust Committee and each of its elected officials, officers, directors, employees, and agents from and against all claims, demands, actions, loss, damage, costs, and liabilities for which any of them may be liable by reason of any act or omission of the Society or its officers, directors, employees, agents or contractors or any other person for whom the Society is at law responsible, including breaches of this Agreement.
15. **Release** – The Society releases and forever discharges the Trust Committee and each of its elected officials, officers, directors, employees, and agents and each of their heir, executors, administrators, personal representatives, successors and assigns from all claims, demands, damages, actions, or causes of action arising out of the performance by the Society of its obligations under this Agreement, or the enforcement of this Agreement.

16. **Survival** – The obligations of the Society set out in sections 14 and 15 shall survive any termination of this Agreement.
17. **Trust Committee Powers Unaffected** – This Agreement does not limit the discretion, rights, duties or powers of the Trust Committee under any enactment or the common law, impose on the Trust Committee any duty or obligation, affect or limit any enactment relating to the use or subdivision of the Lands, or relieve the Society from complying with any enactment.
18. **No Public Law Duty** – 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.
19. **No Waiver** – 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.
20. **Arbitration** – Any matter in dispute between the parties under this Agreement, including any disputes as to whether a particular individual is eligible to occupy a Affordable Housing Unit, must 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 must be resolved in accordance with the provisions of the *Commercial Arbitration Act* of British Columbia.
21. **Notice on Title** – The Society acknowledges and agrees that this Agreement constitutes both a covenant under Section 219 of the *Land Title Act* and a housing agreement under Section 905 of the *Local Government Act*, and agrees that the Trust Committee will register a notice of this housing agreement against title to the Lands.
22. **Covenant Runs with the Land** – Every obligation and covenant of the Society in this Agreement constitutes both a contractual obligation and a covenant granted by the Society to the Trust Committee in accordance with section 219 of the *Land Title Act* in respect of the Lands and this Agreement burdens the Lands and runs with it and binds the Society's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including, by subdivision or by strata plan.
23. **Limitation on Society's Obligations** – The Society is only liable for breaches of this Agreement that occur while the Society is the registered owner of the Lands.
24. **Amendment and Termination** – This Agreement may not be modified or amended except by bylaw of the Trust Committee, upon an agreement in writing between the Trust Committee and the Society.

25. **Notices** – Any notice required to be given pursuant to this Agreement shall be in writing and shall be given to the Society or the Trust Committee, as the case may be, at the address first above written, or to any other address of which either the Society 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 only when actually received by the party to whom it is addressed.
26. **Enurement** – This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.
27. **Remedies Cumulative** – 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.
28. **Severability** – 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 Society shall not discharge or relieve the Society 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 found to 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.
29. **Joint and Several** – In the case of more than one owner, the grants, covenants, conditions, provisions, agreements, rights, powers, privileges and liabilities of the Society shall be construed and held to be several as well as joint.
30. **Included Words** – Wherever the singular or 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.
31. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.
32. **Joint Venture** – Nothing in this Agreement shall constitute the Society as an agent, joint venture or partner of the Trust Committee or give the Society any authority or power to bind the Trust Committee in any way.
33. **Time of Essence** – Time is of the essence in this Agreement.
34. **Further Assurances** – 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.
35. **Priority** – The Society agrees to do everything necessary at the Society's expense to ensure that this Agreement is registered against title to the Lands with priority over all financial charges, liens and encumbrances registered or pending at the time of application for registration of this Agreement.

36. **Deed and Contract** – By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

SCHEDULE "A" TO THE HOUSING AGREEMENT

Denman Community Land Trust Association (DCLTA)

Tenant Selection Procedure

1. The first tenant shall be selected by Ms. Ilsa Pamela Brons, the donor of the Lands to the Society.
2. Thereafter, selection of tenants shall be determined by a committee of not less than five people appointed by the directors of the Society. The committee members need not be members of the Society but must be residents of Denman Island who have been such for not less than three years. Where possible, the committee will include two members nominated by two other charitable societies on Denman Island (one nominee per society) and a retired or practicing physician. Committee members must not be related to, or close friends with, any of the people who are then applying for a tenancy.
3. A vacancy for an affordable housing tenancy shall be advertised in at least two editions of one or more publications circulated on Denman Island.
4. The committee shall first screen applicants to determine those who meet the following mandatory requirements:
 - i) the Household Income of the applicant for the previous three years must be shown to be less than 120% of the Low Income Cutoff as determined by Statistics Canada or its successor agency*;
 - ii) the applicant must have been primarily resident on Denman Island for at least the two years preceding the consideration of the application;
 - iii) the aggregate household assets of the applicant must not exceed \$50,000 (plus an inflation adjustment after 2012) unless the applicant has agreed to enter into an Equity Sharing Agreement** with DCLTA for use of the amount exceeding \$50,000. Assets included for valuation are: cash, funds on deposit, stocks, bonds, term deposits, annuities, mutual funds, equity in a business or real estate, RRSPs and RRIFs. Assets excluded for valuation are: personal jewelry, furniture, a vehicle for personal use, bursaries and scholarships, and trade tools for employment.
 - iv) the applicant must have provided satisfactory references to establish that the applicant would be a responsible tenant, i.e. would pay rent promptly, cause no damage, and create no nuisance.

*If Statistics Canada discontinues the publication of the Low Income Cutoff, the committee may substitute a similar monetary amount based upon available statistical information (adjusted to economic circumstances on Denman Island) which estimates the minimum income required to meet basic living needs and which, for example, may include reference to the CMHC Core Needs Income Threshold.

5. From the qualified applicants, the committee will select the tenant(s) by a points system applied to each of the following criteria:
 - i) the length of the applicant's connection to Denman Island;
 - ii) the contribution of the applicant to Denman Island through paid or volunteer work;
 - iii) the degree of unsuitability of the applicant's present housing;
 - iv) the degree of suitability of the personal characteristics of the applicant to the type of the available affordable housing project (e.g. seniors, special needs, single person, family, etc.).
6. In each of the points categories, each committee member shall evaluate the relative degree to which the criteria apply among the applicants and shall award from 0 to 10 points to each applicant accordingly.
7. The applicant with the greatest aggregate number of points from the committee members shall be selected as the tenant.
8. If a tie occurs the selection shall be made, from the tied applicants, by a majority vote of the committee.

**An Equity Sharing Agreement provides a method for low income people to develop an equity ownership interest in a home structure on land leased from the Society. At the end of the Agreement the home structure is either: donated to the Society, sold to the Society on a non-profit basis through an agreed formula, or removed to another location.

SCHEDULE "B"

OWNER STATUTORY DECLARATION

CANADA

IN THE MATTER OF A HOUSING AGREEMENT

PROVINCE OF BRITISH COLUMBIA

WITH THE DENMAN ISLAND LOCAL TRUST
COMMITTEE ("Housing Agreement")

declare that:

1. I am the _____ [director, officer, employee] of the Denman Community Land Trust Association, the owner of the land known as _____, Denman Island, legally described as: _____ (the "Lands")
2. I make this declaration to the best of my personal knowledge.
3. This declaration is made pursuant to the Housing Agreement registered against the Lands.
4. For the period from _____ to _____, the Affordable Housing Unit was used only by Qualified Occupants (as defined in the Housing Agreement).
5. At no time during the last year was the Affordable Housing Unit used as a short term vacation rental.
6. The lease payments charged for the Affordable Housing Unit were in compliance with the Housing Agreement and are listed in the attached.
7. No subletting of the Lands has been permitted.
8. I acknowledge and agree to comply with all of the Society's obligations under the Housing Agreement, and other charges registered against the Lands and confirm that the Society has complied with all of its obligations under these Agreements.
9. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at _____, British Columbia, this ____ day of _____.

A Commissioner for taking Affidavits
in British Columbia

Signature of person making declaration

Names of Occupants

Monthly Payment amount
