



LAND TITLE ACT

TERMS OF INSTRUMENT – PART 2

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**Housing Agreement and Section 219 Covenant**

THIS AGREEMENT DATED FOR REFERENCE THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ is BETWEEN:

Denman Housing Association a society incorporated under the laws of the province of British Columbia and having its office at 3720 East Road, Denman Island, B.C. V0R 1T0

(the "Owner");

AND:

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

(the "Trust Committee")

WHEREAS:

A. The Owner is the registered owner of the lands situated at 1151 Northwest Road on Denman Island British Columbia and legally described as:

PID 000-393-941, Lot B, Sections 18 and 19, Denman Island, Nanaimo District, Plan 36263, commonly known as Denman Green (the "Lands");

B. The Lands have been rezoned by the Denman Island Local Trust Committee by means of Denman Island Official Community Plan, 2008, Amendment No. 241 and Denman Island Land Use Bylaw 2008 Amendment No. 242 and has been put in place to permit the development of an affordable housing project;

C. The Owner intends to construct on the Lands a residential development of affordable rental units (hereinafter defined) to rent, by way of a Tenancy Agreement, at an affordable rate to Qualified Occupants (hereinafter defined);

D. The Trust Committee may, pursuant to Section 29 of the *Islands Trust Act* and Section 483 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. As a condition of rezoning the Lands, the Owner and the Trust Committee wish to enter into this Agreement to provide affordable housing on the Lands and to restrict the use of, and construction on, the Lands and the use of the Affordable Housing Units constructed on the lands, on the terms and conditions of this Agreement to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*; and
- G. The Trust Committee has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement.

THIS AGREEMENT is evidence that in consideration of \$1.00 paid by the Trust Committee to the Owner (the receipt of which is acknowledged by the owner), and in consideration of the promises exchanged below, the Trust Committee and the Owner agree, as covenants granted by the Owner to the Trust Committee under Section 219 of the Land Title Act, and as a housing agreement between the Owner and the Trust Committee under Section 483 of the Local Government Act, as follows:

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

“Affordable Dwelling Unit” means a deed restricted or rent controlled Dwelling Unit that is designated as an Affordable Dwelling Unit by this Agreement and is available on an affordable basis as set out in this agreement;

“Affordable Housing Funder” means BC Housing, Canada Mortgage and Housing Corporation or other agency that provides a grant or preferential rate loan to support the development of affordable housing units on the Lands;

“Affordable Market Unit” means an affordable housing unit on the Lands where the rental price is linked to market conditions on Denman Island or the Comox Valley Regional District region, the rental rate is approved by an Affordable Housing Funder and meets the occupancy criteria set out in Section C;

“Annual Household Income” means the gross income, as shown on line 150 of their preceding year’s T1 General Income Tax and Benefit returns or an equivalent document produced by the Canada Revenue Agency, of all Qualified Occupants of an Affordable Dwelling Unit combined;

“BC Housing” means the British Columbia Housing Management Commission;

“Dwelling Unit” means one or more rooms in a building, containing a single set of cooking facilities, and used or intended to be used, as a residence by an individual or a group of individuals living together in common occupancy;

“Family Member” means a person who lives with and is related to the Tenant through blood, adoption or marriage including a person with whom the Tenant is living in a marriage-like relationship;

“Household” means one or more individuals occupying the same Dwelling Unit;

“Qualified Occupant” means a person who meets the eligibility criteria for occupancy as set out in Schedule B;

“Qualified Renter” means a Household which meets the eligibility criteria for a residential tenancy of an Affordable Housing Unit, as set out in Section C of this Agreement;

“Residential Tenancy Act” means the most recent version of the British Columbia *Residential Tenancy Act*;

“Schedule B” means that Schedule B annexed hereto or any variation thereof made by the Owner that does not contradict any of the terms in the balance of this Agreement;

“Senior” means a person who is 65 years or older at the time of first occupying a housing unit;

“Tenancy Agreement” means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*.

- b. **Agreement over the Lands** – Pursuant to section 219 of the Land Title Act and section 483 of the Local Government Act, the Owner covenants and agrees that:
- ii the Lands must at all times be used and occupied in compliance with all statutes, laws, regulations, orders of any authority having jurisdiction, and this Agreement;
  - iii it will design, construct and maintain in a reasonable state of repair the Affordable Housing Units on the Lands, including Affordable Market Units in accordance with the terms of this Agreement;
  - iv the Lands must not be used or occupied for residential purposes unless the buildings have been designed to meet
    - 1. at least the performance requirements of the BC Energy Step Code 2 energy efficiency standards established by the British Columbia Building Code Regulation, BC Reg. 264/2012 (the “Performance Standards”) of the Building Act (BC); or
    - 2. if required by an Affordable Housing Funder, a different energy performance target; and
    - 3. the Owner shall provide to the Trust Committee a Compliance Report, from a certified energy adviser, that the building has been constructed and is operating in accordance with 1. or 2. as the case may be.
  - v the development on the Lands will be constructed with a Type 3 advanced secondary treatment sewage system, or equivalent alternative as approved by the Affordable Housing Funder, that meets similar performance criteria
  - vi up to five (5) units of housing will be reserved for seniors.
- c. **Affordable rental housing eligibility** – The Owner covenants and agrees that Affordable Dwelling Units will only be occupied in accordance with the following criteria:

- i Either;
  - a. the Household's Annual Household Income must be less than or equal to BC Housing's Housing Income Limits for the Comox Valley Planning Area or,
  - b. if the Owner has an agreement with an Affordable Housing Funder under which the Affordable Housing Funder has agreed to provide funding for the construction and operation of affordable housing on the Lands, the Household meets the income or non-financial criteria imposed on the occupancy of the relevant Affordable Housing Units on the Lands established by such Affordable Housing Funder, which may include but are not limited to the requirement that a Qualified Occupant has certain physical or mental conditions, is a senior receiving the Guaranteed Income Supplement, or is a recipient of social or disability assistance.
- ii the household will occupy the Affordable Housing Unit as their permanent, principal and sole residence; and
- iii the household is comprised of at least one Qualified Occupant;  
  
and the Owner covenants and agrees to:
- iv include in every Tenancy Agreement a prohibition on subletting, including short-term vacation rentals, and a provision entitling the Owner to terminate the Tenancy Agreement in accordance with the *Residential Tenancy Act* in the event of any breach of that prohibition;
- v deliver to the Trust Committee a true copy of every Tenancy Agreement entered into in respect of any Affordable Housing Unit within 10 days of any request to do so;
- vi specify in every Tenancy 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, and
- vii if one of the individuals comprising a Qualified Renter who rents an Affordable Housing Unit dies, that individual's spouse or adult child residing in the Affordable Housing Unit at the time of the Qualified Renter's death may continue to rent the Affordable Housing Unit for the longer of:
  - a. The balance of the fixed term under the Tenancy Agreement; or
  - b. twelve (12) months on the same terms, including monthly rent, set out in the Tenancy Agreement.

**d. Rental rates** - The Owner covenants and agrees that:

- i the rent payable by a Qualified Renter for an Affordable Housing Unit, exclusive of utilities, must not exceed 30% of the gross monthly Household income of the Qualified Renter, except in the case of an Affordable Market Unit; and
  - ii not require any tenant under a Tenancy Agreement to pay any extra charges or fees for use of any water or septic system, or property taxes. For clarity, this limitation does not apply to cablevision, telecommunications, laundry, or gas or electricity utility fees or charges.
- e. Affordable Housing Units – The Owner covenants and agrees that it will

- i. not rent an Affordable Market Unit unless the Affordable Market Unit is approved by an Affordable Housing Funder and there are other Affordable Housing Units occupied by households whose income does not exceed the Housing Income Limits; and
- ii. will not include more than 30% of the Affordable Housing Units as Affordable Market Units unless necessary to meet the requirements of an Affordable Housing Funder, and not before informing the Trust Committee and providing the Trust Committee and the Denman Island public an opportunity to assist the Owner in limiting the number of Affordable Market Units to 30%

**f. Order to Comply** - If the Owner is in default of the performance or observance of this Agreement, the Trust Committee may give the Owner a notice of default requiring the Owner to comply with this Agreement within the time stated in the notice. The Owner 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 owner by the Trust Committee.

**g. Statutory Declaration from Owner** – The Owner shall deliver to the Trust Committee by the end of January of each year, a completed statutory declaration, substantially in the form attached as Schedule 'A', sworn by the Owner, in relation to the Affordable Housing Units. The Owner irrevocably authorizes the Trust Committee to make enquiries it considers necessary and reasonable in order to confirm compliance with this Agreement.

**h. Management** – The Owner covenants and agrees to furnish good and efficient management of the Lands and the Affordable Housing Units on 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 Owner.

**i. No Transfer** – The Owner must not transfer the Lands, other than to another non-profit organization or society incorporated under the Societies Act, having as its objective the management of affordable housing, or the Provincial Rental Housing Corporation

**j. Society Standing** – The Owner must maintain its standing as a society under the *Societies Act* and must not amend its Constitution in any manner that would prevent, or adversely affect, the ability of the Owner to perform its obligations under this Agreement.

**k. Specific Performance of Agreement** – 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, in view of the public interest in restricting the occupancy of the Affordable Housing Unit. The Owner 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.

**l. Assignment** – The Owner 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 Owner.

**m. Indemnity** – The Owner 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 Owner or its officers, directors, employees, agents or contractors or any other person for whom the Owner is at law responsible, including breaches of this Agreement.

**n. Release** – The Owner releases and forever discharges the Trust Committee and each of its elected officials, officers, directors, employees, and agents and each of their heirs, executors, administrators, personal representatives, successors and assigns from all claims, demands, damages, actions, or causes of action arising out of the performance by the Owner of its obligations under this Agreement, or the enforcement of this Agreement.

**o. 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 Owner from complying with any enactment.

**p. 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.

**q. 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.

**r. Arbitration** – Any matter in dispute between the parties under this Agreement, including any disputes as to whether a particular individual is eligible to occupy an 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 *Arbitration Act* (British Columbia).

**s. Notice on Title** – The Owner acknowledges and agrees that this Agreement constitutes both a covenant under Section 219 of the *Land Title Act* and a housing agreement under Section 483 of the *Local Government Act*, and agrees that the Owner will register a notice of this Agreement against title to the Lands.

**t. Covenant Runs with the Land** – Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner 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 Owner'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.

**u. Limitation on Owner's Obligations** – The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands.

**v. Amendment** – 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 Owner.

**w. Notices** – Any notice required to be given pursuant to this Agreement shall be in writing and shall be given to the Owner 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 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.

**x. Enurement** – This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.

**y. 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.

**z. 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 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 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.

**aa. Joint and Several** – 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.

**bb. 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.

**cc. Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.

**dd. Joint Venture** – Nothing in this Agreement shall constitute the Owner as an agent, joint venture or partner of the Trust Committee or give the Owner any authority or power to bind the Trust Committee in any way.

**ee. Time of Essence** – Time is of the essence in this Agreement.

**ff. 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.

**gg. Priority** – The Owner agrees to do everything necessary at the Owner'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.

**hh. 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"**

**OWNER'S STATUTORY DECLARATION**

CANADA, PROVINCE OF BRITISH COLUMBIA

IN THE MATTER OF A HOUSING AGREEMENT WITH THE DENMAN ISLAND LOCAL TRUST COMMITTEE ("Housing Agreement")

I, \_\_\_\_\_, Denman Island, BC, declare that:

1. I am the \_\_\_\_\_ [director, officer, employee] of the Denman Housing Association, the Owner of the land known as Denman Green, Denman Road, Denman Island, legally described as: xxx (the "Lands").
2. The terms in this declaration have the same meaning as those defined in the Housing Agreement.
3. I make this declaration to the best of my personal knowledge.
4. This declaration is made pursuant to the Housing Agreement registered against the Lands.
5. For the period from \_\_\_\_\_ to \_\_\_\_\_, the Affordable Dwelling Units were used only by Qualified Occupants meeting all eligibility requirements of the Housing Agreement, including, without limitation, the restrictions on Annual Household Income.
6. At no time during the last year were any of the Affordable Dwelling Units used as a short-term vacation rental or sublet.
7. The rental amounts charged for the Affordable Dwelling Units were in compliance with the Housing Agreement.
8. I acknowledge and agree to comply with all of the Owner's obligations under the Housing Agreement, and other charges registered against the Lands and confirm that the Owner 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 \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
A Commissioner for taking Affidavits  
Columbia

\_\_\_\_\_  
Signature of person making declaration in British  
Columbia

## SCHEDULE B

### Definition of a Qualified Occupant

A Qualified Occupant means a person aged 19 years or older who fits into at least one of the following categories, which are not listed in any particular priority order;

- i) Has been living on Denman Island for a minimum of one year prior to application for housing; or
- ii) Has been commuting to Denman Island for at least half-time work (20 hours per week) for a minimum of one year prior to application for housing; or
- iii) Indigenous peoples whose ancestry relates to those First Nations having territorial claims to Denman Island.

Except that where there are no persons meeting the categories specified above in clause i, ii or iii of this Schedule who make an application to rent an available Affordable Housing Unit and the lack of applications would result in the Affordable Housing Unit being vacant for more than one month, then a Qualified Occupant may be a person aged 19 years or older who fits into at least one of the following categories, which are not listed in any particular priority order:

- a. Previous resident of Denman Island who has lived away from Denman Island for a maximum of three consecutive years; or
- b. Non-resident who is hired to begin at least half-time work (20 hours per week) on Denman Island; or
- c. A person who has worked at least half-time on Denman Island (20 hours per week) for less than one year; or
- d. A person with an immediate family member whose principal residence is on Denman Island; or
- e. On-reserve and off-reserve, status and non-status, and/or self-identifying indigenous, Inuit, or Métis people, as outlined in Calls for Justice #4.1 of the "Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls and 231 Calls for Justice" (June 2019)

Except that where there are no persons meeting the categories specified in clause i, ii or iii nor a, b, c, d or e of this Schedule who make an application to rent an available Affordable Housing Unit and the lack of applications would result in an Affordable Housing Unit being vacant for more than one month, then a Qualified Occupant may be any person permitted by an Affordable Housing Funder.