

Galiano Island Local Trust Committee Special Meeting Agenda

Date: September 19, 2016
Time: 12:30 pm
Location: Lions Park Society
992 Burrill Road, Galiano Island, BC

	Pages
1. CALL TO ORDER	12:30 PM - 12:35 PM
2. APPROVAL OF AGENDA	
3. COMMUNITY INFORMATION MEETING	12:35 PM - 2:35 PM
3.1 Galiano Island Local Trust Committee Bylaw No. 233 & 234	
4. PUBLIC HEARING	
4.1 Recess for Public Hearing	
4.1.1 <u>Galiano Island Local Trust Committee Bylaw No. 233</u>	
4.1.2 <u>Galiano Island Local Trust Committee Bylaw No. 234</u>	
4.2 Recall to Order	
5. APPLICATIONS AND REFERRALS	2:35 PM - 2:45 PM
5.1 GL-RZ-2011.1 (GLCHT) - Staff Report	2 - 42
5.1.1 <u>Bylaw No. 233 for Further Consideration</u>	
5.1.2 <u>Bylaw No. 234 for Further Consideration</u>	
6. ADJOURNMENT	2:45 PM - 2:45 PM

File No.: GL-RZ-2011.1 (Galiano Green)

DATE OF MEETING: September 19, 2016

TO: Galiano Island Local Trust Committee

FROM: Robert Kojima, Regional Planning Manager
Southern Planning Team

SUBJECT: Proposed Bylaws 233 and 234 – Post Public Hearing

Applicant: Galiano Green

Location: 409 Porlier Pass Road

RECOMMENDATIONS

1. That the Galiano Island Local Trust Committee Bylaw No. 233, cited as Galiano Island Official Community Plan Bylaw No. 108, 1995, Amendment No. 15, 2011, be read a third time
2. That the Galiano Island Local Trust Committee Bylaw No. 234, cited as Galiano Island Land Use Bylaw No. 127, 1999, Amendment No. 4, 2011, be amended by deleting 8.6.7 in its entirety and replacing it as follows:
“8.6.7 Buildings and Structures must be sited
8.6.7.1 at least 1.5 metres from any bare land strata lot line; and
8.6.7.2 at least 7.5 metres from any other lot line.”
3. That the Galiano Island Local Trust Committee Bylaw No. 234, cited as Galiano Island Land Use Bylaw No. 127, 1999, Amendment No. 4, 2011, be read a third time as amended
4. That the Galiano Island Local Trust Committee Bylaw No. 261, cited as Galiano Housing Agreement Bylaw No. 261, be read a first time
5. That the Galiano Island Local Trust Committee Bylaw No. 261, cited as cited as Galiano Housing Agreement Bylaw No. 261, be read a second time
6. That the Galiano Island Local Trust Committee Bylaw No. 261, cited as cited as Galiano Housing Agreement Bylaw No. 261, be read a third time
7. That the Galiano Island Local Trust Committee Bylaws No. 233, 234 and 261 be forwarded to the Secretary of the Islands Trust for approval by the Executive Committee
8. That the Galiano Island Local Trust Committee forward Bylaw No. 233, cited as cited as Galiano Island Official Community Plan Bylaw No. 108, 1995, Amendment No. 15, 2011, to the Minister of Community, Sport and Cultural Development for approval.
9. That the Galiano Island Local Trust Committee accept a covenant under section 219 of the *Land Title Act* from the registered owners of Lot 1, District Lot 3, Galiano Island, Cowichan District, Plan 29196 and designate the Chair of the Galiano Island Local Trust Committee to sign the covenant.

REPORT SUMMARY

The purpose of the report is to provide the LTC with post-public hearing options.

BACKGROUND

The Local Trust Committee is considering two bylaws to permit up to 20 units of affordable housing, along with a Housing Agreement to restrict occupancy. The bylaws would amend the OCP to re-designate the land to Community Housing, and amend the LUB to rezone the land to Community Housing One and to create the regulations for the zone. The Housing Agreement would restrict occupancy to qualified persons and control the re-sale price of the units (please see attachments for copies of the Proposed Bylaws).

A public hearing is a quasi-judicial process within and following which specific procedures must be followed. Following the hearing, the LTC may choose to give further readings to a bylaw, defeat a bylaw, or alter a bylaw within certain parameters. The procedural steps following the close of the hearing are as follows:

1. Consideration of Third Reading of the bylaws.
2. Forwarding of the bylaws to Executive Committee for approval.
3. Forwarding of the OCP amendment bylaw to the Minister's office for approval.
4. Reconsideration and adoption.

Following the close of the hearing, the LTC may not hear further submissions without holding a new hearing. The principle is that if new information is considered by the LTC, all other interested parties also need to have the opportunity to consider any new relevant material and to make further representations to the LTC. The courts have clarified that this does not open the door to endless public hearings: a local government body can legitimately decide that after a hearing it wishes to hear further from staff on issues raised at the hearing.

A bylaw may be altered after the hearing, based on information received or heard by the LTC at any point prior to the close of the hearing, provided that the amendments do not alter use or increase density, or decrease density without a landowner's consent.

As the proposal has been altered to include a bare land strata subdivision, the 7.5 setback from all lots in the proposed zoning would potential create issues with the siting of buildings and structures within the strata lots. The strata lots would be small and it would be difficult to site buildings 7.5 metres from the lot lines without variances. Staff are recommending that an additional, lesser setback of 1.5 metres be established for bare land strata lot lines, while the 7.5 metre setback be retained for the exterior lot lines abutting adjacent properties and the roads. A setback of 1.5 metres is recommended as it consistent with the minimum 3 metre fire separation requirement between buildings. The proposed amendments are shown in the attached version of bylaw 234.

If the Executive Committee and Minister approve the bylaw(s), the next step for the LTC would be to adopt the bylaws.

A housing agreement bylaw is not subject to a public hearing and may be given readings at any point in the process, however in the interests of convenience and in order to not potentially affect the post-public hearing process it is recommended that the Housing Agreement Bylaw be read concurrently with third reading the OCP and LUB bylaws.

Rationale for Recommendation:

Staff recommend that the application proceed, with the minor amendment to Bylaw 234, based on the following considerations: the applicant has revised the proposal to a bare land strata, a revised housing agreement has been prepared by legal counsel, and a s.219 covenant has been drafted.

ALTERNATIVES

As alternatives to the recommendation to proceed, the LTC may:

1. Consider amendments to the bylaws

As stated above, the LTC may consider amendments provided they do not result in a change in use or density without holding a new hearing

2. Hold the application in abeyance

The LTC may choose to hold the application in abeyance pending consideration of input received prior to and at the hearing. In this event the application will be placed on the next regular meeting agenda.

3. Request further information

The LTC may request additional technical analysis from staff concerning information already received prior to the close of the hearing; however the LTC cannot receive new information without holding a new hearing.

4. Deny the application

The LTC may deny the application.

NEXT STEPS

If the LTC chooses to proceed with the recommendations, the next steps will be for staff to refer the bylaws to the Executive Committee, and if approved the OCP amendment to the Minister's office. Prior to consideration of final adoption an executed copy of the s.219 covenant should be registered on title.

Submitted By:	Robert Kojima Regional Planning Manager	August 31, 2016
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ATTACHMENTS

1. Proposed Bylaw 233
2. Proposed Bylaw 234
3. Proposed Bylaw 261
4. Draft Covenant

**A BYLAW TO AMEND THE GALIANO ISLAND
OFFICIAL COMMUNITY PLAN BYLAW NO. 108, 1995**

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

AND WHEREAS Section 29 of the *Islands Trust Act* gives the Galiano Island Local Trust Committee the same power and authority of a Regional District under Part 26, except sections 932 to 937 and 939, of the *Local Government Act*;

AND WHEREAS the Galiano Island Local Trust Committee wishes to amend the Galiano Island Official Community Plan Bylaw No. 108, 1995;

AND WHEREAS the Galiano Island Local Trust Committee has held a Public Hearing;

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

1. CITATION

This Bylaw may be cited for all purposes as “Galiano Island Official Community Plan Bylaw No. 108, 1995, Amendment No. 15, 2011.”

2. SCHEDULES

Galiano Island Official Community Plan No. 108, 1995 is amended as shown on Schedule 1, attached to and forming part of this bylaw.

3. SEVERABILITY

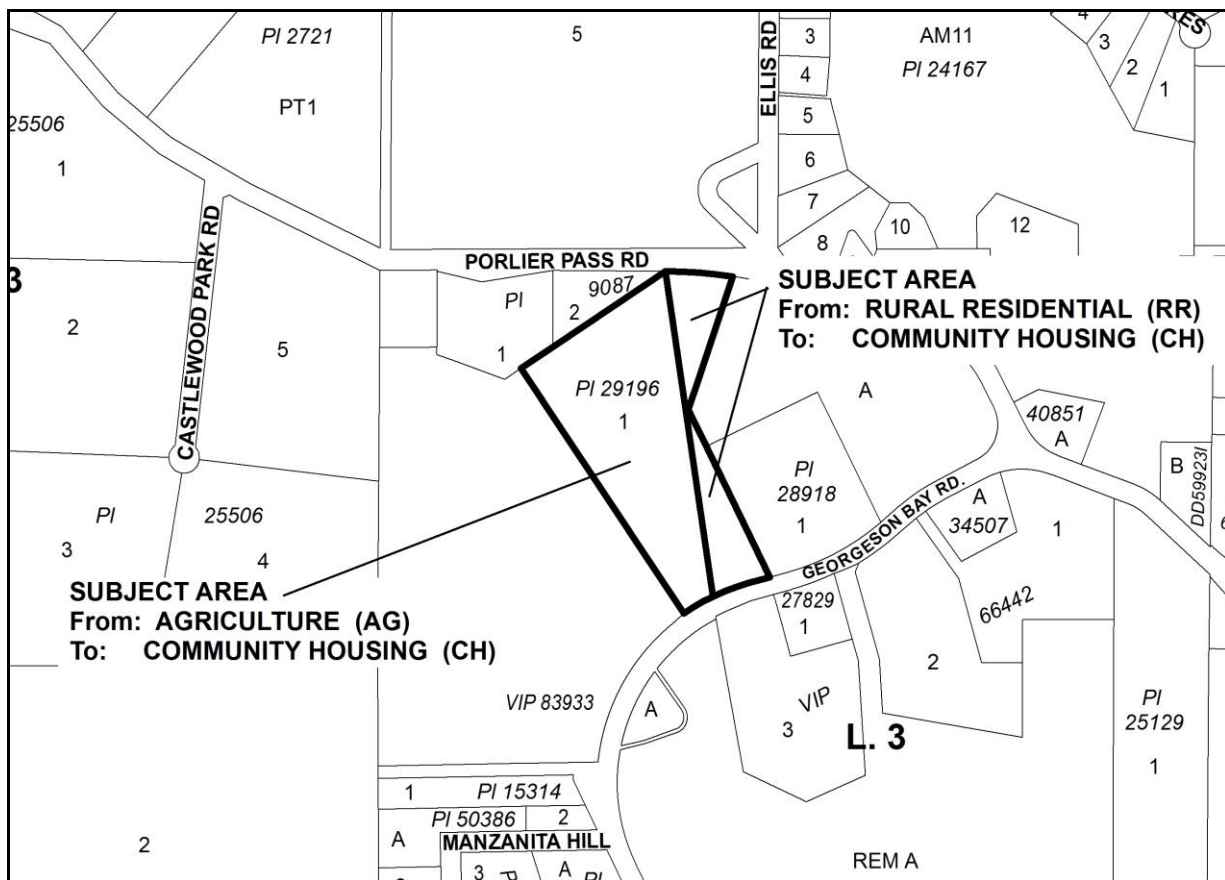
If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

READ A FIRST TIME THIS 9th DAY OF July , 2012
READ A SECOND TIME THIS 8th DAY OF September , 2014
PUBLIC HEARING HELD THIS DAY OF , 20.
READ A THIRD TIME this day of , 20.
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this
day of , 20.
APPROVED BY THE MINISTER OF COMMUNITY, SPORT AND CULTURAL
DEVELOPMENT this day of , 20.
ADOPTED this day of , 20.

DEPUTY SECRETARY

CHAIR

1. Schedule B (Land Use Designations) is amended for a portion of the lands legally described Lot 1, District Lot 3, Galiano Island, Cowichan District, Plan VIP29196 as depicted on the map below.



A BYLAW TO AMEND GALIANO ISLAND LAND USE BYLAW NO. 127, 1999

The Galiano Island Local Trust Committee, being the Trust Committee having jurisdiction in respect of the Galiano Island Trust Committee Area under the *Islands Trust Act*, enacts as follows:

1. Bylaw No. 127, cited as “Galiano Island Land Use Bylaw No. 127, 1999” is amended as follows:
 - a) By amending section 2.17 by adding the words “This setback does not apply to buildings and structures in the Community Housing 1 zone” immediately following the words “of the Agricultural (AG) zone.”.
 - b) By adding “Community Housing 1 (CH1)” in Section 4.1 after “Health and Wellness (HW)”.
 - c) By adding the following after Section 8.5:

“8.6 Community Housing 1 – CH1

Permitted Uses

8.6.1 In the Community Housing 1 zone the following uses are permitted, subject to the regulations set out in this section and the general regulations set out in Parts 2 and 3, and all other uses are prohibited.

8.6.1.1 Dwellings for the provision of affordable housing, subject to a housing agreement under Section 483 of the Local Government Act.

8.6.1.2 Home occupations

Permitted Density

8.6.2 One dwelling is permitted on each lot.

8.6.3 Maximum floor area of a dwelling must not exceed 100 square metres.

8.6.4 One accessory building not exceeding a floor area of 10 square metres is permitted in respect of each permitted dwelling.

8.6.5 Two communal accessory buildings not exceeding a total combined floor area of 278 square metres.

Permitted Height

8.6.6 No building or structure for a use permitted by this section may exceed 9 metres in height.

Minimum Setbacks

8.6.7 Buildings and structures must be sited ~~at least 7.5 metres from all lot lines.~~

8.6.7.1 at least 1.5 metres from any bare land strata lot line; and
8.6.7.2 at least 7.5 metres from any other lot line.

Average Lot Size

8.6.8 No subdivision may be approved unless the lots created by subdivision have an average area of at least 0.19 hectares.

- d) Section 13.22 is amended by adding the words “or in an area zoned Community Housing 1” immediately following the words “on Schedule C”.
- e) Section 14.1 (Parking Regulations) is amended by inserting a new subsection 14.1.16 as follows:

14.1.16	Dwellings for the provision of affordable housing in the CH1 zone	1 per dwelling and 6 visitor spaces for a maximum of 26 spaces.
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- f) Map Schedule “B”, is amended as follows:
 - (i) By changing the zoning of a portion of the lands legally described as Lot 1, District Lot 3, Plan 29196, Galiano Island, Cowichan District from the Rural Residential - (RR) zone to the Community Housing 1 (CH1) zone as shown on Plan No. 1 which is attached to and forms part of this bylaw.
 - (ii) By adding Community Housing 1 (CH1) to the map legend.

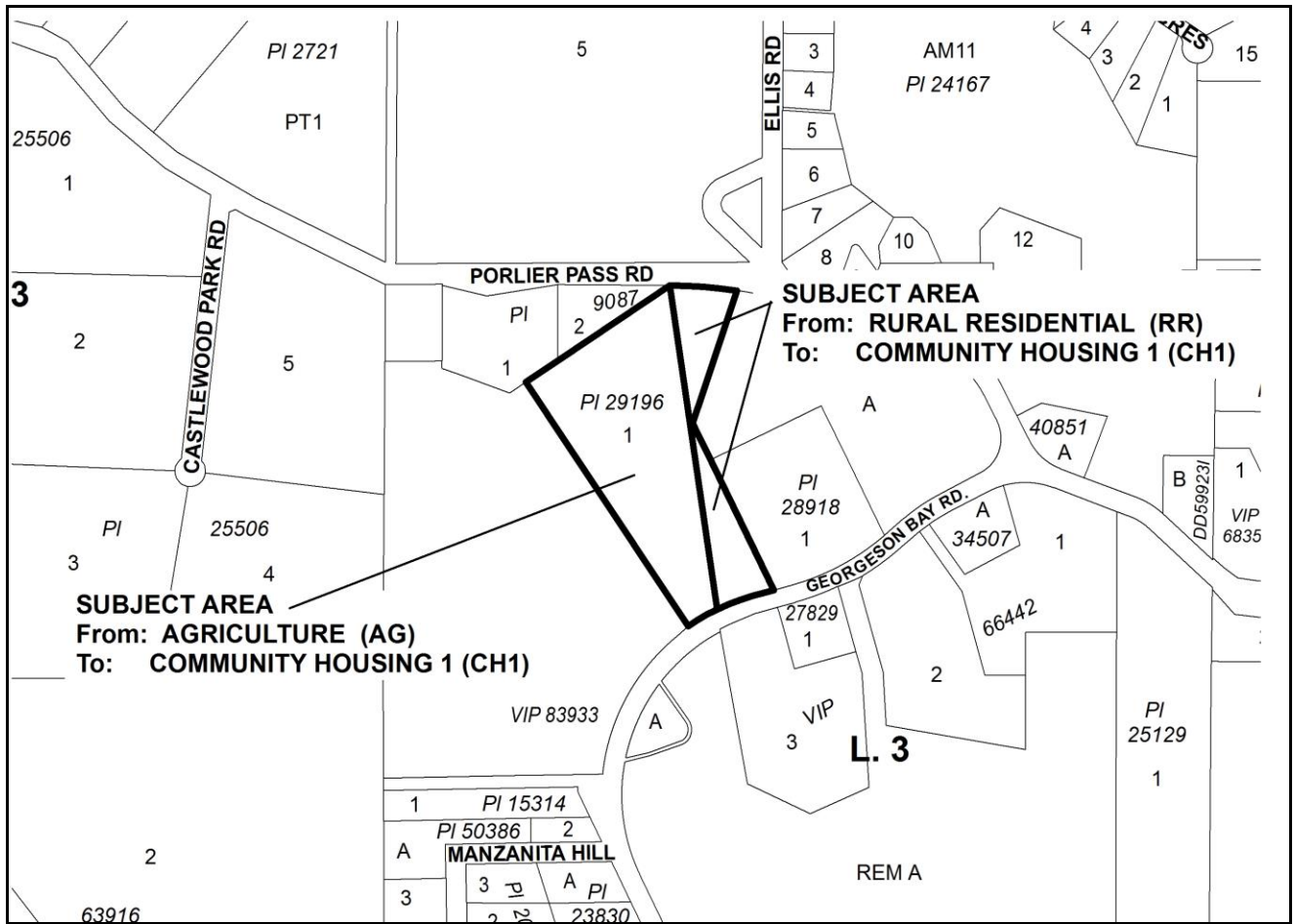
B. This bylaw may be cited for all purposes as the “Galiano Island Land Use Bylaw No. 127, 1999, Amendment No. 4, 2011”.

READ A FIRST TIME THIS	9 th	DAY OF	July	2012
READ A SECOND TIME THIS	6 th	DAY OF	June	2016
PUBLIC HEARING HELD THIS		DAY OF		20
READ A THIRD TIME THIS		DAY OF		20
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS		DAY OF		20
ADOPTED THIS		DAY OF		20

 DEPUTY SECRETARY

 CHAIRPERSON

**GALIANO ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 234
PLAN NO. 1**



HOUSING AGREEMENT

GALIANO GREEN AFFORDABLE HOME OWNERSHIP PROJECT

GALIANO ISLAND Local Trust Committee

BYLAW NO. 261

A Bylaw to Authorise a Housing Agreement

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

AND WHEREAS Section 483 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 Galiano Island Local Trust Committee wishes to enter into a Housing Agreement;

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

1. This Bylaw may be cited for all purposes as "Galiano Island Housing Agreement Bylaw No. 261.
2. The Galiano Island Local Trust Committee is authorized to enter into the Local Government Act section 483 housing agreement attached to this Bylaw as Appendix 1 (the "Housing Agreement").
3. Any Trustee of the Galiano Island Local Trust Committee is authorised to execute the Housing Agreement and the Corporate Secretary or his or her designate is authorized to sign and file in the Land Title Office a notice of the Housing Agreement, as required by the Local Government Act.

READ A FIRST TIME this ____th day of _____, 20__

READ A SECOND TIME this ____th day of _____, 20__

READ A THIRD TIME this ____th day of _____, 20__

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST

 this ____th day of _____, 20__

ADOPTED this ____th day of _____, 20__

SECRETARY

CHAIRPERSON

APPENDIX 1

Housing Agreement

THIS AGREEMENT DATED FOR REFERENCE this _____th day of _____, 201____ is

BETWEEN:

GALIANO LAND AND COMMUNITY HOUSING TRUST, a society incorporated in British Columbia under No. S-0037495
Suite 2A – 33 Manzanita
Galiano Island B.C. V0N 1P0

(the “Owner”)

AND

GALIANO ISLAND LOCAL TRUST COMMITTEE, a local trust committee under the *Islands Trust Act* of British Columbia
2nd Floor, 1627 Fort Street
Victoria, B.C. V8R 1H8

(the “Local Trust Committee”)

WHEREAS:

1. The Owner and the Local Trust Committee wish to create a residential community that provides affordable homes to moderate income individuals and families residing on Galiano Island and in accordance with the Galiano Island Official Community Plan Bylaw No. 108, 1995 Section 1.6 Community Housing Policies;
2. The Owner is the registered owner of those Lands situated on Galiano Island, British Columbia and legally described as:

PARCEL IDENTIFIER: 001-416-987
LOT 1, DISTRICT LOT 3, GALIANO ISLAND, COWICHAN DISTRICT, PLAN 29196

(the “Lands”)

3. The Owner is a not-for-profit society under the *Society Act* of British Columbia and has as one of its objects the creation of an affordable housing community on Galiano Island;
4. The Owner has applied to the Galiano Island Local Trust Committee for a rezoning of the Lands by way of Galiano Island Land Use Bylaw 233 which amends OCP Bylaw #108, 1995, and Bylaw 234 which amends LUB #127, 1999 to permit a bare land strata subdivision of up to 20 strata lots with a single family house located on each strata lot, as well as two community buildings to be located on the Lands;

5. The Owner intends to develop housing that is affordable for individuals and families earning less than 90% of the median income of Capital Electoral Area G, either by way of leasehold agreements of up to 20 bare land strata lots, at an affordable rate to individuals, so that individuals may construct homes on those bare land strata lots, or by way of the rental of constructed homes at an affordable rent;
6. The Local 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 and dwelling units located on the Lands;
7. The Owner and the Local Trust Committee wish to enter into this Agreement on the terms and conditions set out in this Agreement;
8. The Local Trust Committee has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement; and
9. The Owner agrees that the requirements of this Agreement are reasonable given the public interest in maintaining housing affordability on and restricting the occupancy and disposition of the Lands.

THIS AGREEMENT is evidence that in consideration of \$2.00 paid by the Local Trust Committee to the Owner, the receipt and sufficiency of which are acknowledged by the Owner, and in consideration of the promises exchanged below, the Local Trust Committee and the Owner agree, as a housing agreement between the Owner and the Local Trust Committee under s. 483 of the *Local Government Act*, as follows:

DEFINITIONS

1. In this Agreement:
 - (a) "Affordable Housing Units" means 20 single-family dwellings, each constructed on a Strata Lot, in respect of which the tenure, rental, and occupancy are restricted in accordance with sections 3 through 7 of this Agreement;
 - (b) "CMC" means a community management committee or organization which administers this Agreement, as more particularly described in Schedule "F";
 - (c) "CPI" means the Consumer Price Index for the Capital Region as calculated by Statistics Canada.
 - (d) "household" means an one or more individuals;
 - (e) "Income" means income from all sources as defined in Schedule "A".
 - (f) "Leasehold" means the leasehold interest in a Strata Lot, pursuant to a lease agreement entered into between the Owner and a Qualified Leaseholder, which

interest includes the right to construct, alter, maintain, and alter an Affordable Housing Unit on a Strata Lot;

- (g) “Maximum Monthly Rent” means the monthly rent agreed to by the Owner and a Qualified Renter to rent a Rental Unit which shall not exceed thirty percent (30%) of the total monthly Income of the Qualified Renter at the time the Rental Unit is occupied by the Qualified Renter;
- (h) “Moderate Income” means an annual Income that is less than 90% of the median income of the Southern Gulf Islands Electoral Area (Capital Area G) calculated from the most recent census data and as adjusted annually for the CPI.
- (i) “Qualified Leaseholder” means a household which meets the eligibility criteria for ownership of a Leasehold, as set out in Schedule “A”, or which met the eligibility criteria for ownership of a Leasehold at the time the household acquired a legal interest in the Leasehold;
- (j) “Qualified Person” means a Qualified Leaseholder or a Qualified Renter;
- (k) “Qualified Renter” means a household which meets the eligibility criteria for a residential tenancy of a Rental Unit, as set out in Schedule “A”;
- (l) “Rental Unit” means an Affordable Housing Unit which is rented by the Owner to a household, in accordance with the terms of this Agreement;
- (m) “Strata Lot” means one of the bare land strata lots to be created upon the filing of a bare land strata plan for the Lands, as generally shown as Schedule “E”;
- (n) “Stipulated Maximum Price” means the price of an Affordable Housing Unit located on a Strata Lot determined as follows:
 - (i) if the Affordable Housing Unit is one of the first three units constructed on the Lands, then the Stipulated Maximum Price shall be \$130 per square foot of Affordable Housing Unit;
 - (ii) if the Affordable Housing Unit is constructed after the first three units on the Lands, then the Stipulated Maximum Price shall be:
 - (A) the actual cost of construction of the unit, which cost shall include construction materials, labour, on-site septic tank, plumbing and electrical costs, septic and electric connections, permits and fees; or
 - (B) the replacement cost of the Affordable Housing Unit, as determined by a certified appraiser, the cost of which appraisal shall be borne by the Owner,

but in no case shall the Stipulated Maximum Price ever exceed \$130 per square foot of Affordable Housing Unit, except for annual adjustments for the CPI.

2. The Owner covenants and agrees with the Local Trust Committee that, in perpetuity:
 - (a) the Lands must not be used and no building or structure may be constructed on the Lands except in accordance with any development permit issued by the Local Trust Committee, any building permit issued by the Capital Regional District and this Agreement;
 - (b) the Owner must at all times ensure that the Lands are used and occupied in compliance with all statutes, laws, regulations, orders of any authority having jurisdiction, and this Agreement; and
 - (c) the Lands, including any lots into which the Lands may be subdivided, either by way of a subdivision under the *Land Title Act* or the deposit of a bare land strata plan, shall not be sold or otherwise transferred separately from any other portion of the Lands. For certainty, this prohibition does not prevent the sale of an Affordable Housing Unit or the granting, transfer or assignment of a Leasehold interest in accordance with this Agreement.

LEASEHOLDS

3. Except as provided in section 6, the Owner covenants and agrees that it shall not enter into a Leasehold agreement or grant a Leasehold interest for any part of the Lands to any person, or allow any person to occupy any part of the Lands, except for:
 - (a) a Qualified Leaseholder and that person's spouse, children, parents and grandparents; and
 - (b) the guest of such a Qualified Leaseholder.
4. The Owner covenants and agrees:
 - (a) that prior to entering into a Leasehold agreement with any person, the Owner shall obtain written confirmation from the CMC that a prospective person is a Qualified Leaseholder;
 - (b) that the monthly payment amounts for a Leasehold shall not exceed those amounts shown in the following table, provided however that the Owner may adjust the maximum monthly lease payment every 5 years in accordance with prevailing interest and mortgage rates, with notice to the Local Trust Committee of the amount of the adjustment:

Affordable Housing Unit Size (square feet)	Maximum Monthly Lease Payment
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500 square feet and smaller	\$136.66
501 to 600 square feet	\$156.18
601 to 700 square feet	\$175.70
701 to 800 square feet	\$195.23
801 to 900 square feet	\$214.75
901 square feet and larger	\$234.27

- (c) that the monthly payment strata fee amounts for a Leasehold shall not exceed those amounts shown in the following table, provided however that maximum monthly strata fees may increase from the previous year in an amount no greater than CPI and every year thereafter as determined by the Owner, or at a greater amount if agreed to in writing by the Local Trust Committee and only if the Local Trust Committee, in its sole discretion, considers that such an increase would not compromise the affordability objectives of this Agreement;

Affordable Housing Unit Size (square feet)	Maximum Monthly Strata Fees
500 square feet and smaller	\$40.00
501 to 600 square feet	\$45.00
601 to 700 square feet	\$50.00
701 to 800 square feet	\$55.00
801 to 900 square feet	\$60.00
901 square feet and larger	\$65.00

- (d) not to require any Leaseholder to pay any extra charges or fees for use of any common area, or for common sanitary sewer, common storm sewer, common water utilities, or common property taxes. For clarity, this limitation does not apply to cablevision, telecommunications, laundry, gas or electricity utility fees or charges, or septic infrastructure located on a bare land strata lot, including holdings tanks;
- (e) to include in every Leasehold agreement all of the following:
- (i) a clause prohibiting subletting and assignment to any person who is not a Qualified Leaseholder and who has not been approved by the CMC,

which clause shall entitle the Owner to terminate the Leasehold in the event of any breach of that prohibition;

- (ii) a clause stipulating the maximum Leasehold payments as contemplated in section 4(b);
- (iii) a clause stipulating the maximum strata fee payments as contemplated in section 4(c); and
- (iv) a clause referencing the requirements of this Housing Agreement, and to attach a copy of this Agreement to the Leasehold agreement.

5. The parties agree as follows:

- (a) if one of the individual comprising a Qualified Leaseholder in possession of an Affordable Housing Unit dies, that individual's Spouse or adult children residing in the Affordable Housing Unit at the time of the Qualified Leaseholder's death, may continue to lease and reside in the Affordable Housing Unit for the remainder of the Spouse or adult child's life, in accordance with this Agreement;
- (b) a Qualified Leaseholder may sell their Leasehold interest, including the Affordable Housing Unit, provided:
 - (i) the CMC has provided written confirmation that the purchaser is a Qualified Leaseholder;
 - (ii) the purchase and sale price shall not exceed the Stipulated Maximum Price, less the estimated cost of reasonable repairs necessary to bring the Affordable Housing Unit in good working condition, as agreed between the purchaser and the seller, or where the parties are unable to reach agreement, as determined by an arbitrator in accordance with the *Commercial Arbitration Act*, the cost of whom shall be borne equally between the purchaser and the seller;
 - (iii) any Qualified Leaseholder who intends to sell their Leasehold interest, including the Affordable Housing Unit, shall provide notice of such intent to the Owner before listing the property for sale. During a period of 2 months from the date of notice provided by the Leaseholder, the Owner will have the option to purchase the Leasehold interest, Affordable Housing Unit, and other improvements at the price specified in s. 5(b)(ii); and
 - (iv) if, for a period greater than 60 days, a Qualified Leaseholder is in arrears on mortgage payments for their Affordable Housing Unit, then the Owner may purchase the Leasehold interest and Affordable Housing Unit for the price specified in s. 5(b)(ii), less the amount of mortgage arrears, and the

Owner shall be responsible for the mortgage arrears and all costs associated therewith.

RESIDENTIAL TENANCIES

6. Except as provided in section 3, the Owner covenants and agrees that it shall not rent any Strata Lot, Rental Unit or other dwelling to any person, or allow any person to occupy any Strata Lot, Rental Unit or other dwelling, other than a Qualified Renter.
7. The Owner covenants and agrees that:
 - (a) the monthly rent for a Rental Unit will not be more than the Maximum Monthly Rent at any time during the term of the tenancy;
 - (b) all residential tenancy agreements shall be fixed term tenancies for 6 months, and shall include the following:
 - (i) an end date for the tenancy on which the Qualified Renter will be required to vacate the Rental Unit if a new tenancy agreement is not entered into;
 - (ii) a clause stating that a new tenancy agreement will not be entered into if the tenant no longer satisfies the criteria for a Qualified Renter; and
 - (iii) a clause prohibiting subletting and assignment to any person who is not a Qualified Renter, and upon breach of said term, the Owner shall be permitted to terminate the tenancy agreement in accordance with the *Residential Tenancy Act*; and
 - (iv) a clause permitting monthly rental increases in accordance with the *Residential Tenancy Act*, provided that the monthly rent shall never exceed the Maximum Monthly Rent;
 - (c) the Owner shall not require any Qualified Renter to pay any extra charges or fees for use of any common area, or for common sanitary sewer, common storm sewer, common water utilities, or common property taxes. For clarity, this limitation does not apply to cablevision, telecommunications, laundry, or gas or electricity utility fees or charges; and
 - (d) if one of the individuals comprising a Qualified Renter who rents a Rental Unit dies, that individual's Spouse or adult child residing in the Rental Unit at the time of the Qualified Renter's death may continue to rent the Rental Unit for the longer of:
 - (i) the balance of the fixed term under the tenancy agreement; or
 - (ii) twelve (12) months on the same terms, including monthly rent, set out in the tenancy agreement.

OWNER'S FURTHER OBLIGATIONS

8. The Owner shall:

- (a) deliver to the Local Trust Committee or the CMC a true copy of any Leasehold agreement or residential tenancy agreement in respect of any Affordable Housing Unit within 5 days of any request by the Local Trust Committee or CMC to do so;
- (b) obtain by the end of January of each year, a completed statutory declaration for each and every Leasehold and tenancy of a Rental Unit, substantially in the form attached as Schedule "B", sworn by the Qualified Leaseholder, or Qualified Renter, as the case may be;
- (c) deliver to the CMC by the end of February of each year a completed statutory declaration, substantially in the form attached as Schedule "C", sworn by the Owner, in relation to each and every Leasehold and tenancy of a Rental Unit. In addition, the Local Trust Committee or the CMC may request the statutory declaration up to four times in any calendar year, and the Owner must complete and supply the completed statutory declaration within 14 calendar days of receiving a request from the Local Trust Committee or the CMC. The Owner irrevocably authorizes the Local Trust Committee or the CMC to make inquiries it considers necessary and reasonable in order to confirm compliance with this Agreement;
- (d) permit representatives of the Local Trust Committee or the CMC to inspect the Lands at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*;
- (e) not transfer the Lands, other than to another non-profit organization or society incorporated under the *Society Act*, having as its object the management of affordable housing. The Local Trust Committee must approve any transfer prior to its finalization, and that until a new organization is found, no further Leaseholds or residential tenancies may be granted on the Lands; and
- (f) maintain its standing as a society under the *Society Act*, and must not amend its Constitution, a copy of which is attached to this Agreement as Schedule "D", without the written approval of the Local Trust Committee, which approval may be withheld if the Local Trust Committee in its absolute discretion considers that the proposed amendment would affect the tenure of occupancy of the Lands.

9. The Owner further covenants, agrees and acknowledges:

- (a) that any breach or default in the performance of this Agreement on its part must be corrected, to the satisfaction of the Local Trust Committee, within a

reasonable amount of time stated in any notice of default provided to the Owner by the Local Trust Committee;

- (b) that the Local Trust Committee is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction for any breach of this Agreement, in view of the public interest in restricting the use and occupancy of the houses;
- (c) that a breach of this Agreement may constitute a breach of the Local Trust Committee's land use bylaw, as amended from time to time; and
- (d) that the Owner has sought its own legal advice and is not relying, in any way, on the advice of the Local Trust Committee or the Local Trust Committee's solicitors with respect to this Agreement.

THE PARTIES' OBLIGATIONS

- 10. If, for reasons of hardship, the Owner, a Qualified Leaseholder, or Qualified Renter cannot comply with the requirements of this Agreement in relation to any Affordable Housing Unit, the Owner, a Qualified Leaseholder, or a Qualified Renter may request a temporary waiver by the CMC of certain terms of this Agreement in respect of that Affordable Housing Unit. The request must be delivered to the CMC in writing (with a copy to the Local Trust Committee) and explain the nature and circumstances of the hardship involved and the reasons why the Owner, the Qualified Leaseholder, or the Qualified Renter cannot comply. The Owner agrees that the CMC is under no obligation to grant any relief and may proceed with all remedies available under this Agreement and at law and in equity, despite the Owner, the Qualified Leaseholder, or the Qualified Renter's request, and the relief, if any, is to be determined by the CMC at its sole discretion.

GENERAL PROVISIONS

- 11. **Not Binding on CMHC.** This Agreement shall not be binding on the Canada Mortgage and Housing Corporation ("CMHC") or any mortgagee of the Lands which is an "Approved Lender", as defined in the *National Housing Act*, R.S.C. 1985, C.N-11, who holds a mortgage insured pursuant to the *National Housing Act*. If, during foreclosure by an Approved Lender, the court approves a sale of the Lands or part of the Lands (the "Foreclosed Lands") to CMHC or any arm's length bona fide purchaser, then the City agrees that this Agreement will not apply to the Foreclosed Lands from the time of foreclosure to the expiry of the Leasehold interest for the Foreclosed Lands.
- 12. **Term.** This Agreement shall be effective in perpetuity.
- 13. **Subdivision.** The Lands shall not be subdivided by subdivision plan, strata plan, or otherwise except for a bare land strata plan in accordance with Schedule "E", provided however that the layout shown in Schedule "E" may be modified or changed with the written consent of the Director of Local Planning Services or his or her delegate.

14. **Housing Agreement.** The Owner acknowledges and agrees that this Agreement constitutes a housing agreement under s.483 of the *Local Government Act* and that the Local Trust Committee will register a notice of this housing agreement against title to the Lands.
15. **Delegation or Assignment by Local Trust Committee.** The Owner acknowledges that the Local 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 Local Trust Committee shall be interpreted as a reference to that party provided that the Local Trust Committee has so advised the Owner.
16. **Indemnity.** The Owner shall indemnify and save harmless the Local 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.
17. **Release.** The Owner releases and forever discharges the Local 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.
18. **Survival.** The obligations of the Owner set out in sections 15 and 16 shall survive any termination of this Agreement.
19. **Local Trust Committee Powers Unaffected.** This Agreement does not limit the discretion, rights, duties or powers of the Local Trust Committee under any enactment or the common law, impose on the Local 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.
20. **No Public Law Duty.** Where the Local Trust Committee is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Local Trust Committee is under no public law duty of fairness or natural justice in that regard and the Owner agrees that the Local Trust Committee may do any of those things in the same manner as if it were a private party and not a public body.
21. **Notice.** Notice required or permitted to be served under this Agreement is sufficiently served if delivered in person or mailed to the postal address of the Owner or the Local Trust Committee, as the case may be, at the address set out above, and in the case of mailed notice shall be deemed to have been received on the third day following mailing.

22. **Enurement.** This Agreement is binding upon, and enures to the benefit of parties and their respective successors and permitted assigns.
23. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable it shall be severed from this Agreement and the remainder shall remain in full force and effect.
24. **Remedies and Waiver.** All remedies of the Local Trust Committee under this Agreement are cumulative, and may be exercised in any order or concurrently, any number of times. Waiver of or delay by the Local Trust Committee in exercising any remedy shall not prevent the later exercise of any remedy for the same or any similar breach.
25. **Sole Agreement.** This Agreement represents the entire agreement between the parties respecting the tenure, use and occupancy of the houses, and there are no representations, conditions or collateral agreements on the part of the Local Trust Committee other than those set out in this Agreement.
26. **Further Assurance.** The Owner must forthwith do all acts and execute such instruments as may be reasonably necessary in the opinion of the Local Trust Committee to give effect to this Agreement.
27. **Covenants Binding.** This Agreement is binding on the Owner and all persons who acquire an interest in the Lands.
28. **No Joint Venture.** Nothing in this Agreement will constitute the Local Trust Committee as the joint venturer, agent or partner of the Owner or give the Owner any authority to bind the Local Trust Committee in any way.
29. **Modification.** This Agreement may be modified or amended from time to time, by consent of the Owner and a bylaw duly passed by the Local Trust Committee and thereafter if it is signed by the Local Trust Committee and the Owner.
30. **Owner's Representations, Warranties and Covenants** – The Owner hereby represents and warrants to the Local Trust Committee that the following are true:
 - (a) the Owner has taken all necessary or desirable actions, steps and other proceedings to approve or authorize, validly and effectively, the entering into, and the execution, delivery and performance of this Agreement; and
 - (b) the Owner has the power and capacity to enter into and carry out the obligations provided for in this Agreement.
31. **Agreement for Benefit of Local Trust Committee Only.** The Owner and the Local Trust Committee agree that:
 - (a) this Agreement is entered into only for the benefit of the Local Trust Committee;

- (b) this Agreement is not intended to protect the interests of the Owner, any Qualified Leaseholder, any Qualified Tenant, or any future owner, lessee, occupier or user of the Lands or the buildings or any portion thereof, including any Affordable Housing Unit; and
 - (c) the Local Trust Committee may at any time release this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
- 32. **Deed and Contract.** By executing and delivering this Agreement the Owner intends to create a contract executed and delivered under seal.
- 33. **Time of Essence.** Time shall be of the essence of this Agreement.
- 34. **Interpretation.** In this Agreement:
 - (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - (c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
 - (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
 - (f) the provisions of section 25 of the Interpretation Act with respect to the calculation of time apply;
 - (g) time is of the essence;
 - (h) all provisions are to be interpreted as always speaking;
 - (i) reference to a “party” is a reference to a party to this Agreement and to that party’s respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a “party” also includes a Tenant, agent, officer and invitee of the party;
 - (j) reference to a “day”, “month”, or “year” is a reference to a calendar day, calendar month, calendar or calendar year, as the case may be, unless otherwise expressly provided; and

- (k) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

As evidence of their agreement to be bound by the above terms, the parties have executed this agreement below.

GALIANO LAND AND COMMUNITY HOUSING TRUST
by its authorized signatories:

Name:

Name:

GALIANO ISLAND LOCAL TRUST COMMITTEE
by its authorized signatories:

Name:

SCHEDULE A

Criteria for determining Qualified Persons

Households meeting the following criteria are qualified to occupy Affordable Housing Units, as either Qualified Leaseholders or Qualified Renters as the case may be, together with their spouses, children, parents, and grandparents:

1. A person who provides satisfactory evidence to the Local Trust Committee, the CMC, or its designate that:
 - (a) The person's household which resides or intends to reside in the Affordable Housing Unit has a Moderate Income;
 - (b) At least one adult, being between the age of 19 and 65, in the household is employed or self-employed or will be employed or self-employed for not less than twenty (20) hours per week within the Galiano Island Local Trust Area;
 - (c) if not currently employed, any adult in the household has accepted an offer of employment that will commence in the next six (6) months;
 - (d) all adults in the household will make the Affordable Housing Unit their principal residence;
 - (e) no adult in the household owns any other property anywhere in the world unless exempted by the Local Trust Committee on a permanent, temporary or conditional basis; and
 - (f) no adult in the household, nor the household as a whole has assets in excess of \$100,000.00 anywhere in the world at the time of application.
2. Calculating a Household's Income. For the purpose of this Agreement, "Income" means the total income before tax from all sources of all persons residing or intending to reside in the Affordable Housing Unit including, without limitation:
 - (a) all income from earnings, including commission and tips;
 - (b) all income from all public and private pension plans, old age security and guaranteed income supplement;
 - (c) all income received under the British Columbia *Employment and Assistance Act* and the British Columbia *Employment and Assistance for Persons with Disabilities Act*;
 - (d) disabled veteran's allowance;
 - (e) alimony;

- (f) child support;
- (g) workers' compensation benefits;
- (h) employment insurance;
- (i) Income from Assets (see s.3 below); or
- (j) such other sources of income as the Local Trust Committee may designate from time to time;

but excluding the following:

- (k) child tax benefits;
 - (l) capital gains, such as insurance settlement, inheritances, disability awards and sale of effects in the year they are received;
 - (m) the earnings of a person aged 18 years or under;
 - (n) student loans, student loan equalization payments and student grants but excluding non-repayable training allowances, research fellowships or similar grants;
 - (o) shelter aid for elderly renters (SAFER) or rental assistance program (RAP) payments received prior to purchasing an Affordable Housing Unit;
 - (p) GST rebates;
 - (q) taxable benefits received through employment;
 - (r) government provided daycare allowance;
 - (s) payments for foster children, or child in home of relative (CIHR) income under the British Columbia *Employment and Assistance Act*; or
 - (t) such other sources of income as the Local Trust Committee or its designate may designate from time to time.
3. Income from Assets. With respect to Section 3 of this Schedule A, "Income from Assets" means computing income from assets of all persons intending to live in the Affordable Housing Unit but excluding the first ten thousand dollars (\$10,000) of income from assets earned by such person or such other greater dollar figure as the Local Trust Committee or its designate may specify from time to time.
4. A person must provide to the Owner, the CMC, and/or the Local Trust Committee financial records showing current income, financial assets and debts, and other documentation determined by and in the sole discretion of the Owner, the CMC, or the

Local Trust Committee, proving the ability and/or financial means to construct a house and pay lease payments.

SCHEDULE B

Leaseholder and Qualified Renter Statutory Declaration

CANADA	)	IN THE MATTER OF A HOUSING
	)	AGREEMENT WITH THE GALIANO
PROVINCE OF	)	ISLAND Local Trust Committee
BRITISH COLUMBIA	)	("Housing Agreement")

I, _____ of _____, British Columbia, do solemnly declare that:

1. I am the tenant of / the owner of a leasehold interest in [circle one] the lands and improvements located at on Site # _____, at the address 409 Porlier Pass Rd., Galiano Island.
2. I make this declaration to the best of my personal knowledge.
3. This declaration is made pursuant to the Housing Agreement.
4. For the period from _____ to _____ the land and improvements were occupied only by myself and the following members of my family: _____.
5. The land lease charged each month was as follows:
 - (a) the monthly lease payment on the date 365 days before this date of this statutory declaration was \$_____ per month;
 - (b) the lease payment on the date of this statutory declaration is \$_____;
6. *[If applicable]* If the house was rented or sublet, the payment amounts charged each month were as follows:
 - (a) the monthly payment amount on the date 365 days before this date of this statutory declaration was \$_____ per month;
 - (b) the monthly payment amount on the date of this statutory declaration is \$_____; and
7. At no time during the last year has the house been used as a Short Term Vacation Rental.
8. I acknowledge and agree to comply with all Qualified Renter or Leaseholder's obligations under the Housing Agreement, and other charges in favour of Galiano Land

and Community Housing Trust registered in the land title office against the land on which the house is situated and confirm that I have complied with all of Qualified Renter or Leaseholder's 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 the _____, British Columbia, this ____ day of _____

A Commissioner for taking Affidavits in
British Columbia

Signature of person making declaration

SCHEDULE C

Owner Statutory Declaration

CANADA	)	IN THE MATTER OF A HOUSING
	)	AGREEMENT WITH THE GALIANO
PROVINCE OF	)	ISLAND LOCAL TRUST COMMITTEE
BRITISH COLUMBIA	)	("Housing Agreement")

1. I, _____ of _____, British Columbia, do solemnly declare that:
2. I am the [*director, officer, employee*] of the Galiano Land and Community Housing Trust, the owner of the land known as 409 Porlier Pass Road, Galiano Island, legally described as PID: 001-416-987, Lot 1 District Lot 3, Galiano Island, Cowichan District, Plan 29196 (the "Lands").
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 _____ all Affordable Housing Units were occupied only by Qualified Persons (as defined in the Housing Agreement).
6. At no time during the last year have any of the Affordable Housing Units been used as a Short Term Vacation Rental.
7. The leasehold or rental payments charged for each Affordable Housing Unit were in compliance with the Housing Agreement, and are listed in the attached.
8. Rental Units are rented in compliance with the Housing Agreement.
9. In respect of sublets, each Affordable Housing Unit was in compliance with the Housing Agreement.
10. I acknowledge and agree to comply with all the Owner's obligations under this Agreement, and other charges registered against the Lands and confirm that the the Owner has complied with all the Owner's obligations under these Agreements.
11. 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 the _____, British Columbia, this ____ day of _____

A Commissioner for taking Affidavits for
British Columbia

Signature of person making declaration

<u>Unit Number</u>	<u>Names of Occupants</u>	<u>Monthly payment amount</u>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

Schedule D

[Constitution of the Owner]

Schedule E

Site Plan

Schedule F

Community Management Committee

1. General Principles –

- a. The Community Management Committee (“CMC”) will be responsible for administering this Agreement, in accordance with the terms of this Agreement and generally guided by the following practices and principles in this Schedule.
- b. The CMC is a separate and independent arm’s length committee.
- c. The CMC, in undertaking all of its business, will operate in an open manner, consistent with the principles of procedural fairness, and including having all meetings open to the public, and consistent with Robert’s Rules of Order.

2. Composition of the first CMC

- a. The first CMC will be comprised of five (5) individuals selected by the Owner and consented to by the LTC, on a reasonable basis, prior to the issuance of any occupancy permit for the Lands.
- b. The Owner will publish in a local newspaper a notice requesting applications for the CMC.
- c. Individuals selected for the first CMC will serve consecutive terms of one year, which, where a member is willing continue to serve, will automatically renew, subject to section 3(a) below.
- d. Individuals selected for the first CMC will meet the following criteria (the “CMC Member Qualifications”):
 - i. Resident on Galiano Island for at least the preceding three (3) years;
 - ii. Active in community affairs;
 - iii. Interested in promoting affordable housing;
 - iv. Knowledgeable about affordable housing issues on Galiano Island;
 - v. Not a member of the Local Trust Committee, or staff of the Islands Trust; and
 - vi. Not a director, member, or affiliate of the Galiano Land and Community Housing Trust.

3. Continuing composition of CMC

- a. Following the expiry of a given one year term of the initial members of CMC, the CMC shall be comprised of Qualified Leaseholders resident on the Lands. Qualified Leaseholders may replace initial members of the CMC on a rolling basis as a Qualified Leaseholder becomes a resident of the Lands, and following the expiry of a given one year term.
- b. If at any time fewer than three (3) Qualified Leaseholders are available or willing to serve on the CMC, the Owner shall select, with the consent of the LTC, individuals who are not Qualified Leaseholders but who otherwise meet the CMC Member Qualifications.
- c. Members of the CMC will serve terms of one year.
- d. Quorum of the CMC shall be three (3) members.

4. Responsibilities of the CMC

- a. The CMC will receive, by February 15 of each year, statutory declarations from Qualified Leaseholders, Qualified Renters and the Owner, and where requested by the Local Trust Committee, forward same.
- b. The CMC will report to the Local Trust Committee any breaches of this Agreement in a timely manner.
- c. The CMC will cooperate with all requests of the Local Trust Committee with respect to the administration of this Agreement.
- d. Without limiting the generality of any obligations of the CMC contemplated in this Agreement, the CMC will be responsible for reviewing applications for Qualified Leaseholders and Qualified Renters and selecting same based on the criteria articulated herein.
- e. The CMC will endeavour to approve or deny applications for Qualified Leaseholders and Qualified Renters within two weeks of receiving same.

END OF DOCUMENT

PART 2 – TERMS OF INSTRUMENT

SECTION 219 COVENANT

This Agreement dated for reference the ____ day of _____, _____ is

AMONG:

GALIANO LAND AND COMMUNITY HOUSING TRUST, a society
incorporated in British Columbia under No. S-0037495
Suite 2A – 33 Manzanita
Galiano Island B.C. V0N 1P0

(the “Owner”)

AND:

GALIANO ISLAND LOCAL TRUST COMMITTEE, a Corporation
under the *Islands Trust Act*, R.S.B.C. 1996, c.239, with an office at
Suite 200, 1627 Fort Street, Victoria, British Columbia, V8R 1H8

(the “Trust Committee”)

GIVEN THAT:

- A. The Owner is the registered owner in fee simple of that parcel of land located on Galiano Island, British Columbia which is legally described as:

Parcel Identification Number: 001-416-987

Legal Description: Lot 1, District Lot 3, Galiano Island, Cowichan District, Plan 29196

(the “Land”);

- B. Section 219 of the *Land Title Act* (British Columbia) provides that there may be registered as a charge against the title to land a covenant, whether of a negative or positive nature, in respect of the use of land, the building on land, the subdivision of land and the preservation of land or a specified amenity on the land;
- C. The Owner has requested that the Trust Committee rezone the Lands to Community Housing 1 (CH1), and the Owner has granted the Trust Committee this covenant in order to induce the Trust Committee to rezone the Lands;

- D. The Owner wishes to grant and the Trust Committee wishes to accept this Covenant over the Land, restricting the use of the Land in the manner specified;

This Agreement is evidence that in consideration of the premises and covenants herein contained, the payment of two dollars (\$2.00) by the Trust Committee to the Owner, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

S. 219 Covenant

1. The Owner shall not use or permit the use of the Land or any building on the Land for any purpose, construct any buildings on the Land, or subdivide the Land except in strict accordance with this Agreement.

Restrictions on Development

2. The siting and configuration of lots and dwellings shall be substantially consistent with that shown on the site plan attached hereto as Schedule A (the "Site Plan"). The Owner shall be solely responsible for preparation and registration of a bare land strata subdivision plan that substantially conforms with the 20 lots shown in outline on the Site Plan.
3. The siting of the pumphouse, laundry and shower building and the meeting room, studios and workshop (collectively the "Common Buildings") shall be substantially consistent with that shown on the Site Plan, and shall be constructed by the Owner at its expense to total completion, to the satisfaction of the Trust Committee.
4. The siting and configuration of all internal roads and parking areas shall be substantially consistent with that shown on the Site Plan and shall be constructed by the Owner at its expense, to total completion, to the satisfaction of the Trust Committee.
5. Of the first six dwellings, one dwelling must be constructed by the Owner of the Land, either solely or in conjunction with a leaseholder.
6. The Owner has stated the intention that all dwellings on the Land will provide potable water through individual rainwater catchment systems installed on buildings rather than by creating a community water system. Upon completion of the first six dwellings in Phase1, and prior to applying for building permits for any further dwellings on the Land, the Owner shall provide to the Trust Committee a report prepared by a professional engineer or geohydrologist with relevant experience certifying that the rainwater catchment systems have been installed professionally and are capable of providing potable water in a sufficient quantity on an on-going

basis, to the satisfaction of the Trust Committee. If such certification cannot be provided to the satisfaction of the Trust Committee, the Trust Committee may require that all subsequent dwellings on the Land be provided with potable water by connection to a community water system.

No Effect On Laws or Powers

7. This Agreement does not
 - (a) affect or limit the discretion, rights, duties or powers of the Trust Committee under any enactment or at common law, including in relation to the use or subdivision of the Land;
 - (b) impose on the Trust Committee any duty of care or other legal duty of any kind to the Owner or to anyone else;
 - (c) oblige the Trust Committee to enforce this Agreement, which is a policy matter within the sole discretion of the Trust Committee;
 - (d) affect or limit any enactment relating to the use or subdivision of the Land;
 - (e) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

Limitation on Obligations

8. The Owner is only liable for breaches of this Agreement caused or contributed to by the Owner or which the Owner permits or allows. The Owner is not liable for the consequences of the requirements of any enactments or law or any order, directive, ruling or government action thereunder. The Owner is liable only for breaches of this Agreement which occur while the Owner is the registered owner of any interest in the Land and then only to the extent of that interest.

Entry by Trust Committee Staff

9. The Owner hereby authorizes the Trust Committee, through its employees or agents, to enter the Land at all reasonable times for the express purpose of confirming whether or not this Agreement is being complied with.

Indemnity

10. The Owner hereby indemnifies and saves harmless the Trust Committee and its elected and appointed officials, officers, employees and agents,

from and against all loss, damage, cost, actions, suits, debts, expenses and harm of any kind whatsoever which the Trust Committee may at any time suffer or incur arising out of or related to this Agreement or any breach of it.

No Liability in Tort

11. The parties agree that this Agreement creates only contractual obligations. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of or any default under or in respect of this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

Covenant Runs With the Land

12. Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted under section 219 of the *Land Title Act* (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

Registration

13. The Owner agrees to do everything necessary, at the Owner's expense, to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Agreement.

Waiver

14. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver by the Trust Committee of a breach of this Agreement by the Owner does not operate as a waiver of any other breach of this Agreement.

Severance

15. If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

No Other Agreements

16. This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

Binding of Successors

17. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

Further Acts

18. The Owner must do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

Deed and Contract

19. By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the terms of this instrument, the parties each have executed the Land Title Office Form C which is attached hereto and which forms part of this Agreement.

Schedule A

