

SALT SPRING ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. 469

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT

WHEREAS the Salt Spring Island Local Trust Committee is the Local Trust Committee having jurisdiction on and in respect of the Salt Spring 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 a housing agreement;

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

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

1. This Bylaw may be cited for all purposes as "Salt Spring Island Housing Agreement Bylaw No. 469, 2013".
2. Any one of the Trustees of the Salt Spring Island Local Trust Committee is authorized to execute an agreement in the form attached to this Bylaw with N.S.E. Holdings Ltd. (Incorporation Number 87926) and Norman Stephen Elliott and Sandra Diane Elliott.
3. 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.

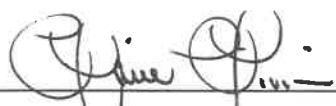
READ A FIRST TIME this 28th day of August, 2014

READ A SECOND TIME this 28th day of August, 2014

READ A THIRD TIME this 6th day of November, 2014

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this 18th day of November, 2014

ADOPTED this 8th day of January, 2015



SECRETARY



CHAIRPERSON

LAND TITLE ACT

TERMS OF INSTRUMENT – PART 2

Housing Agreement and Section 219 Covenant

THIS AGREEMENT DATED FOR REFERENCE THE ____ DAY OF _____, 2014:

WHEREAS:

- A. The Developer and Trust Committee wish to create a residential enclave that provides affordable homes to moderate income working individuals and families, and retirees residing on Salt Spring Island and in accordance with the Salt Spring Official Community Plan Section B.2.2 Affordable, Rental and Special Needs Housing;
- B. The Developer is the registered owner of the parcel situated on Salt Spring Island and legally described as PID: 004-443-489, That Part of the West 6 Chains of Section 5 Range 3 East North Salt Spring Island Cowichan District Lying to the North of the Lower Ganges Road (the "Parent Parcel");
- C. The Developer applied to the Trust Committee for an amendment of the Salt Spring Island Official Community Plan by means of Salt Spring Island Official Community Plan Bylaw, 1997 Amendment No. 1, 2005 and rezoning of the Parent Parcel by means of Salt Spring Island Land Use Bylaw, 1999 Amendment No. 3, 2005 to permit the development of a 26-unit affordable housing project on a portion of the Parent Parcel;
- D. Section 219 of the British Columbia *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;
- E. The Trust Committee may, pursuant to Section 29 of the British Columbia *Islands Trust Act* and Section 905 of the British Columbia *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 the lands of the owner;
- F. The Developer and the Trust Committee wish to enter into this Agreement to provide for Affordable Housing Units (as defined in Section 1) on the terms and conditions set out in this Agreement; and
- G. The Trust Committee has, by bylaw, authorized the execution of this Agreement and the Developer 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 Developer, the receipt and sufficiency of which is acknowledged by the Developer, and in consideration of the promises exchanged below, the Trust Committee and the Developer agree, as covenants granted by the Developer to the Trust Committee under s. 219 of the *Land Title Act*, and as a housing agreement between the Developer and the Trust Committee under s. 905 of the *Local Government Act*, as follows:

**ARTICLE 1
DEFINED TERMS**

1.1 Definitions: In this Agreement,

- (a) **"Affordable Housing Units"** means twenty-six (26) dwelling units in any combination of single-family dwellings and two-family dwellings on the Project Lands, in respect of which the ownership, rental, resale and occupancy are restricted in accordance with the terms of this Agreement and **"Affordable Housing Unit"** means any single unit;
- (b) **"Appraiser"** means an appraiser accredited by the Appraisal Institute of Canada and duly qualified to appraise an Affordable Housing Unit and on an approved list maintained by the NPO, if any;
- (c) **"Below Market Value"** means eighty-four percent (84%) of the Fair Market Value of a Property as determined pursuant to Section 7.8;
- (d) **"Business Day"** means any day other than Saturday, Sunday or a statutory holiday in the Province of British Columbia;
- (e) **"Closing Date"** means the 30th day after the Option Purchase Price is determined, or the first Business Day thereafter that the Land Title Office is open for business to the public;
- (f) **"Developer"** means, collectively, N.S.E. Holdings Ltd., Norman Stephen Elliott and Sandra Dianne Elliott or any successor as developer of the Project Lands;
- (g) **"Essential Services"** means those services related to the health, safety, education or the welfare of British Columbia residents, or persons employed by the federal or provincial government or a Crown corporation;
- (h) **"Fair Market Value"** of a Property means the purchase price from time to time which a willing purchaser would pay to a willing vendor, dealing at arm's length from each other, for the Property, subject only to the Permitted Encumbrances other than this Agreement;
- (i) **"Income"** has the meaning as defined in Schedule A, Section 5;
- (j) **"Maximum Monthly Rent"** means the monthly rent agreed to by the Owner and a Qualified Renter to rent a Rental Unit provided the monthly rent is not more than forty percent (40%) of the monthly Income of the persons who will occupy the Rental Unit;
- (k) **"Moderate Income"** means 80% to 120% of the Median (Before Tax) Economic Family Income for Salt Spring Island (Capital FRDA) for the current year as agreed by the Trust Committee and which as of the reference date of this Agreement is the range of \$49,907 to \$74,881;
- (l) **"Notice"** means the written notice that the Trust Committee delivers to the Owner of its election to exercise the Option pursuant to Section 8.3;
- (m) **"Notice Date"** means the day the Owner receives the Notice from the Trust Committee if delivered on a Business Day before 4:00 pm, otherwise it is deemed to be the next Business Day;

- (n) **"NPO"** means the Capital Regional District (Housing Secretariat) or other non-profit housing organization or person retained by the Trust Committee from time to time to administer the sale of Affordable Housing Units;
- (o) **"Option"** means the option to purchase granted by the Developer and the Owner to the Trust Committee pursuant to Article 8;
- (p) **"Option Purchase Price"** means ninety-five percent (95%) of the Below Market Value;
- (q) **"Owner"** means the registered owner of an Affordable Housing Unit from time to time and includes the Developer and its respective heirs, legal representatives, successors and assigns;
- (r) **"Permitted Encumbrances"** means those charges or encumbrances listed in Schedule B or any charge or encumbrance approved in writing by the Trust Committee;
- (s) **"Personal Property"** means all lighting, fixtures, appliances, equipment, cabinetry, affixed carpeting, drapes and blinds located within an Affordable Housing Unit, except as otherwise agreed in writing by the Trust Committee, but does not include an Owner's personal effects;
- (t) **"Project Lands"** means the subdivided portion of the Parent Parcel on which the Owner will develop and construct the Affordable Housing Units in accordance with the terms of this Agreement;
- (u) **"Property"** means an Affordable Housing Unit and all Personal Property within that Affordable Housing Unit;
- (v) **"Qualified Person"** means a person who meets the criteria set out in Schedule A to own and occupy an Affordable Housing Unit or to own and rent an Affordable Housing Unit;
- (w) **"Qualified Renter"** means a person who meets the rental criteria set out in Section 4(b) of Schedule A;
- (x) **"Rental Unit"** means an Affordable Housing Unit that is rented by the Owner in accordance with the terms of this Agreement;
- (y) **"Spouse"** means a person who is the spouse, as the term "spouse" is defined in the British Columbia *Family Relations Act*, of a Qualified Person or of a Qualified Renter;
- (z) **"Term"** means the period commencing on the date of registration of this Agreement in the Land Title Office and ending on the earlier of: (a) the date which is ninety-nine (99) years thereafter, or (b) for a specific Affordable Housing Unit, the date of any destruction or statutorily deemed destruction of that Affordable Housing Unit;
- (aa) **"Transfer"** means an instrument in a statutorily prescribed form by which the Owner transfers title to an Affordable Housing Unit to the Trust Committee; and
- (bb) **"Trust Committee"** means Salt Spring Island Local Trust Committee.

ARTICLE 2
AFFORDABLE HOUSING RESTRICTIONS AND SUBDIVISION

- 2.1 Use and Building Restrictions:** The Developer covenants and agrees with the Trust Committee that, in perpetuity:
- (a) no building or structure may be constructed on the Project Lands, other than the Affordable Housing Units;
 - (b) no building or structure may be constructed on the Project Lands except in accordance with the guidelines prescribed in the Salt Spring Island Official Community Plan Development Permit Area 1, any building permit issued by the Capital Regional District and any other agreement entered into between the Developer and the Trust Committee; and
 - (c) the Developer must at all times ensure that the Project Lands are owned, used and occupied in compliance with all statutes, laws, regulations, and orders of any authority having jurisdiction.
- 2.2 Permitted Subdivision.** The Developer agrees that the Parent Parcel shall not be subdivided except by the deposit of a subdivision plan to create the Project Lands as a separate parcel consisting of approximately 5 acres. The Project Lands shall not thereafter be subdivided except for the purpose of developing the Affordable Housing Units and not for any other purpose.
- 2.3 Partial Discharge of Agreement.** On the completion of the subdivision of the Parent Parcel described in Section 2.2 the Developer may request a discharge of this Agreement from the remaining portion of the Parent Parcel which does not form part of the Project Lands. The Developer will provide a form of discharge to the Trust Committee, and the Trust Committee shall execute and deliver such to the Developer. The Owner shall pay the cost of preparation of the discharge and related filings in the Land Title Office.
- 2.4 Water Conservation.** The Developer and the Owner shall comply at all times with the water conservation provisions attached as Schedule C, the Developer in its development of the Project Lands and construction of the Affordable Housing Units, and the Owner in its use, occupation, resale and replacement of the Affordable Housing Units from time to time.

ARTICLE 3
MANAGEMENT OF AFFORDABLE HOUSING UNITS

- 3.1 Request for an Exemption.** If the Owner or the Owner's tenant cannot comply with the requirements of this Agreement in relation to any Affordable Housing Unit or Rental Unit, the Owner or the Owner's tenant may request a temporary waiver of certain terms of this Agreement in respect of that unit. The request must be delivered to the NPO in writing (with a copy to the Trust Committee) and explain the nature and circumstances involved and the reasons why the Owner or the Owner's tenant cannot comply. The Trust Committee will provide a written reply to any written request within thirty (30) days. The Owner agrees that the Trust Committee 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 or the Owner's tenant's request, and the relief, if any, is to be determined by the Trust Committee, at its sole discretion. For the purpose of delivering the request described in this section, the address of the NPO is: Capital Regional District (Housing Secretariat), 625 Fisgard Street, Victoria, BC, V8W 2S6, Attention: Operations Manager.

- 3.2 **Strata Bylaws.** The Owner agrees that no bylaw of any strata corporation formed on subdivision of the Project Lands shall conflict with the provisions of this Agreement.

ARTICLE 4 OWNER-OCCUPIED HOUSING UNITS

- 4.1 **Ownership and Rental Restrictions.** No Affordable Housing Unit shall be owned by any person who is not a Qualified Person other than the Developer and, unless designated a Rental Unit, no Affordable Housing Unit shall be rented to any person whatsoever.
- 4.2 **Spouse Exemption - Death of a Qualified Person.** If a Qualified Person who owns an Affordable Housing Unit dies, that person's Spouse may continue to own and reside in the Affordable Housing Unit for the rest of the Spouse's life.
- 4.3 **Owner Registration at Land Title Office.** Title to an Affordable Housing Unit may be registered in the name of the Qualified Person and that person's Spouse either as joint tenants or tenants in common, in whichever fractional interests they so choose.

ARTICLE 5 RENTAL HOUSING UNITS

- 5.1 **Designation of Rental Units.** Unless approved by the Trust Committee in writing, no more than five (5) Affordable Housing Units may be designated Rental Units at any time.
- 5.2 **Restrictions on Lease of a Rental Unit.** Unless approved by the Trust Committee in writing, no Rental Unit will be leased to any person other than a Qualified Renter and the monthly rent will not be more than the Maximum Monthly Rent at any time during the term of the residential lease. The residential tenancy agreement will include a term it can be terminated by the Owner on two months' notice if the renter no longer meets the requirements of a Qualified Renter.
- 5.3 **Spouse Exemption - Death of a Qualified Renter.** If a Qualified Renter who rents a Rental Unit dies, that person's Spouse may continue to rent the Rental Unit for the longer of:
- (a) the balance of the term under the residential tenancy agreement if the residential tenancy agreement has a fixed term; or
 - (b) twelve (12) months on the same terms, including monthly rent, set out in the residential tenancy agreement.
- 5.4 **Assignment and Subleasing Prohibition.** The Owner agrees that every residential tenancy agreement in respect of a Rental Unit will prohibit subletting and assignment to any person who is not a Qualified Renter, and will entitle the Owner to terminate the residential tenancy agreement in the event of any breach of that prohibition by the tenant.
- 5.5 **Increase to Monthly Rent.** An increase to the monthly rent for a Rental Unit payable under any residential tenancy agreement is subject to the allowable rent increase for the applicable period as prescribed under the British Columbia *Residential Tenancy Act*, as amended from time to time, but will not result in monthly rent that is greater than the Maximum Monthly Rent.
- 5.6 **Extra Fees and Charges.** The Owner will not require any Qualified Renter or permitted occupant of a Rental Unit to pay any extra charges or fees for use of any common area, or for sanitary sewer, storm sewer, water utilities, or property taxes. For clarity, this limitation

does not apply to cablevision, telephone or other telecommunications, or gas or electricity utility fees or charges, which will be for the Qualified Renter's account.

- 5.7 Copy of Housing Agreement.** The Owner will include in every residential tenancy agreement in respect of a Rental Unit a clause referencing the requirements of this Agreement and attach a copy of this Agreement to the residential tenancy agreement.
- 5.8 Copy of Residential Tenancy Agreement.** The Owner will deliver to the Trust Committee, promptly upon execution and within five (5) days of receiving a written request from the Trust Committee, a true copy of any residential tenancy agreement in respect of any Rental Unit and satisfactory evidence that the renter is a Qualified Renter and the rent paid under the residential tenancy is less than the Maximum Monthly Rent.
- 5.9 Inspection.** The Trust Committee or its agent may inspect the Rental Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*.

ARTICLE 6

SALE AND RENTAL OF AFFORDABLE HOUSING UNITS BY DEVELOPER

- 6.1 Qualified Buyer.** The Developer will only sell Affordable Housing Units to buyers who are Qualified Persons. The Developer will obtain written confirmation from the NPO that a prospective buyer is a Qualified Person before the Developer enters into an unconditional and binding contract of purchase and sale with a buyer for an Affordable Housing Unit. The selling price for an Affordable Housing Unit by the Developer will be mutually agreed to by the Developer and the NPO. If the Developer and NPO cannot agree on the selling price, then the Developer and NPO will determine the selling price in accordance with the protocol for determining Fair Market Value and Below Market Value for Affordable Housing Units as set out in Sections 7.2 to 7.11 of this Agreement. No fee will be payable to the NPO with respect to the original sale of an Affordable Housing Unit by the Developer.
- 6.2 Developer Designation of Rental Units.** The Developer will be the initial entity that determines which, if any, of the Affordable Housing Units are Rental Units and has the power to change from time to time which of the Affordable Housing Units are designated Rental Units. The Developer may resign as the entity responsible for designating which of the Affordable Housing Units are Rental Units by delivering written notice of resignation to the Trust Committee. After receiving notice of resignation from the Developer, the Trust Committee may appoint a third party as the new entity responsible for determining which of the Affordable Housing Units are Rental Units.
- 6.3 Developer Lease of Rental Units.** The Developer will only rent Affordable Housing Units that are designated as Rental Units and only to persons who are Qualified Renters, unless approved by the Trust Committee. The monthly rent payable to the Developer will not be more than the Maximum Monthly Rent at any time during the term of the residential lease. The residential tenancy agreement will include a term it can be terminated by the Developer on two months' notice if the renter no longer meets the requirements of a Qualified Renter.

ARTICLE 7

PROCEDURE FOR SALE OF AFFORDABLE HOUSING UNIT

- 7.1 Owner Notifies NPO of Intention to Sell.** If at any time after the first conveyance of a Property by the Developer, an Owner wishes to sell, assign or otherwise transfer the Property, the Owner will do so in accordance with a bona fide arm's length agreement of purchase and sale (or as a court may order in a proceeding to enforce a mortgage of the Property) and the Owner will, prior to:

- (a) listing or offering the Property for sale; and
- (b) accepting an offer to purchase the Property;

deliver to the NPO written notice of its intention to sell the Property, such notice to be in the form required by the NPO.

- 7.2 Owner Retains Appraisal.** After the Owner notifies the NPO of its intention to sell a Property, the Owner will retain an Appraiser to undertake an appraisal (the "**Owner Appraisal**") of the Fair Market Value of the Property. The Owner will deliver a copy of the Owner Appraisal to the NPO within seven (7) days after the Owner receives the Owner Appraisal.
- 7.3 Owner and NPO Agree on Maximum Selling Price.** If the Owner and the NPO agree within seven (7) days after the Owner Appraisal is delivered to the NPO (the "**Appraisal Review Period**") that the Fair Market Value of the Property is as stated in the Owner Appraisal, the Fair Market Value stated in the Owner Appraisal, less sixteen percent (16%), will be the maximum price at which the Owner will be permitted to sell the Property during a period of six (6) months commencing on the effective date of the Owner Appraisal.
- 7.4 Owner and NPO Do Not Agree on Maximum Selling Price.** If the Owner and the NPO do not agree within the Appraisal Review Period that the Fair Market Value of the Property is as stated in the Owner Appraisal, the NPO will retain its own Appraiser to undertake an appraisal (the "**NPO Appraisal**") of the Fair Market Value of the Property, in which case the average of the Fair Market Value stated in the Owner Appraisal and the Fair Market Value stated in the NPO Appraisal, less sixteen percent (16%), will be the maximum price at which the Owner will be permitted to sell the Property during a period of six (6) months commencing on the effective date of the NPO Appraisal.
- 7.5 Copy of NPO Appraisal.** The NPO will deliver a copy of the NPO Appraisal to the Owner within seven (7) days after the NPO receives the NPO Appraisal.
- 7.6 Failure to Deliver NPO Appraisal.** If the NPO Appraisal is not delivered to the Owner within thirty (30) days after the end of the Appraisal Review Period, the Fair Market Value stated in the Owner Appraisal, less sixteen percent (16%), will be the maximum price at which the Owner will be permitted to sell the Property during a period of six (6) months commencing on the effective date of the Owner Appraisal.
- 7.7 Owner Responsible for Appraisal Costs.** The Owner will be responsible for the cost of both the Owner Appraisal and the NPO Appraisal, if any. If the cost of the NPO Appraisal is initially paid by the NPO, the Owner will reimburse the NPO for the cost of the NPO Appraisal within thirty (30) days after written demand by the NPO. If any amount owed by the Owner to the NPO with respect to the NPO Appraisal is not paid prior to the completion of the sale of the Property by the Owner, a portion of the sale proceeds equal to the amount owing to the NPO will be deemed to have been irrevocably assigned by the Owner to the NPO.
- 7.8 NPO Notifies Owner of Maximum Selling Price.** Within seven (7) days after the Fair Market Value of the Property has been determined under Section 7.3 or 7.4, the NPO will notify the Owner in writing of the maximum sale price determined under Section 7.3 or 7.4, at which time the Owner will be permitted to offer to sell the Property for a price that does not exceed the maximum sale price so determined, which price shall be deemed to be the Below Market Value of the Property.

- 7.9 Owner to Deliver True Copy of Sale Contract to NPO.** The Owner will immediately deliver a true copy to the NPO of any contract of purchase and sale which the Owner may enter into with respect to the sale of the Property or any interest therein (the "**Sale Contract**"). Along with a copy of the Sale Contract, and otherwise promptly on request of the NPO, the Owner will also deliver to the NPO such information with respect to the buyer named in the Sale Contract as the NPO may reasonably require to determine whether the buyer is a Qualified Person.
- 7.10 Terms to be Included in the Sale Contract.** The Sale Contract will be in writing and will:
- (a) be for a selling price not greater than the Below Market Value of the Property;
 - (b) be subject to the NPO determining and notifying the Owner in writing (within a period of ten (10) Business Days after the NPO receives a true copy of the Sale Contract) that (1) the Owner has complied with the requirements of Section 7.8, and (2) the buyer is a Qualified Person, failing which the Sale Contract will be null and void; and
 - (c) include a statement that the buyer agrees to purchase the Property subject to the terms of this Agreement.
- 7.11 No Sale After Six Months Without New Appraisal.** The NPO will not be obligated to review or make any determination with respect to a Sale Contract as stated in Section 7.10 above if the date of receipt by the NPO of a true copy of the Sale Contract and any other information required by the NPO under Section 7.9 is more than six (6) months after the NPO notified the Owner in writing of the maximum sale price under Section 7.8. If the six (6) month period has expired, the process under Section 7.1 will begin again, with the Owner giving fresh notice to the NPO of its intention to sell the Property.
- 7.12 Trust Committee Will Notify Owner of Change in the NPO.** The Trust Committee will notify the Owner in writing of any appointment or replacement of an NPO and of the address to which notices to the NPO should be sent.
- 7.13 Fee to NPO.** The NPO will be entitled to payment of a fee equal to half a percent (0.5%) of the gross selling price of a Property, such fee to be paid on closing on the sale of such Property by the selling Owner and a portion of the sale proceeds equal to the amount owing to the NPO will be deemed to have been irrevocably assigned by the Owner to the NPO. For certainty, the NPO will not be entitled to payment of any fee in the event the Trust Committee purchases a Property pursuant to Article 9.

ARTICLE 8 OPTION TO PURCHASE

- 8.1 Option to Purchase.** The Owner hereby grants the Trust Committee an exclusive and irrevocable option to purchase the Property during the Term at the Option Purchase Price in accordance with Articles 8 and 9.
- 8.2 Exercise of the Option.** The Trust Committee may exercise the Option only if the Owner:
- (a) defaults in its obligations under Articles 4, 5 or 7; or
 - (b) acquired the Property from a previous Owner (other than the Developer) for a price which was, as of the date of closing the transaction, greater than the Below Market Value; or
 - (c) if the Owner was not, as of the date it acquired the Property, a Qualified Person.

- 8.3 Method of Exercise of Option.** The Trust Committee may exercise the Option by delivering written notice of exercise of the Option to the Owner.
- 8.4 Effect of Exercise of Option.** From and after the Notice Date, this Agreement and the Notice will together constitute a binding and enforceable contract between the Owner and the Trust Committee for the purchase and sale of the Property in accordance with the terms of Article 9.
- 8.5 Assignment of Option.** The Owner acknowledges and agrees that the Trust Committee may assign the Option to a third party, and in that event, any reference in Articles 8 and 9 of this Agreement to the "Trust Committee" shall be interpreted as a reference to that third party, provided that the Trust Committee has so advised the Owner.

ARTICLE 9 EXERCISE OF OPTION – TERMS OF PURCHASE AND SALE

- 9.1 Purchase and Sale.** Subject to the terms and conditions of this Article 9 and relying on the warranties and representations herein set out, the Owner agrees to sell and the Trust Committee agrees to purchase the Property on the Closing Date for the Option Purchase Price, and the Owner agrees that, at the request of the Trust Committee, it will transfer registered title to the Property, including the Affordable Housing Unit, to the Trust Committee or such other person as the Trust Committee may designate, such as Islands Trust Council, the Capital Regional District, or other party as permitted by the *Islands Trust Act*.
- 9.2 Option Purchase Price.** The Trust Committee will pay the Option Purchase Price, subject to adjustment pursuant to Section 9.10, to the Owner on the Closing Date. The Option Purchase Price will be mutually agreed to by the Owner and the Trust Committee within ten (10) Business Days of the Trust Committee exercising the Option. If the Owner and Trust Committee cannot agree on the Option Purchase Price, then the Owner and the Trust Committee will determine the Option Purchase Price in accordance with the protocol for determining Fair Market Value and Below Market Value for Affordable Housing Units as set out in Sections 7.2 to 7.11 of this Agreement, as modified by this section. In the event the Option Purchase Price is not agreed to by the Owner and the Trust Committee, then the Owner must provide an Owner Appraisal to the Trust Committee within fifteen (15) Business Days of the Trust Committee exercising the Option and, if the Owner fails to provide an Owner's Appraisal within such time period, the Fair Market Value of the Affordable Unit will be the amount determined by the NPO Appraisal.
- 9.3 Repair and Maintenance.** From and after the Notice Date to the Closing Date, the Owner will take good care of the Property, will carry out all necessary repairs, maintenance and replacements, will take reasonable care to protect and safeguard the Property and will in all other respects deal with the Property so that the warranties and representations of the Owner set out in this Agreement remain true and correct.
- 9.4 Insurance.** From and after the Notice Date to the Closing Date, the Owner will ensure that all policies of insurance with respect to the Property remain in full force and effect.
- 9.5 Risk.** The Property will be at the risk of the Owner up to the time the Transfer is submitted for registration at the Land Title Office on the Closing Date and will be at the risk of the Trust Committee after the time the Transfer is submitted for registration at the Land Title Office on the Closing Date.
- 9.6 Damage.** If, prior to the time the Transfer is submitted for registration at the Land Title Office, any damage occurs to the Property or any of the assets comprising the Property, the

Trust Committee, by notice to the Owner, may elect to postpone the Closing Date for a period of not more than 30 days and may also:

- (a) elect not to acquire the Property, in which case neither party will have any further obligation to the other under this Article 9 pertaining to that particular Notice; or
- (b) require that the Owner assign to the Trust Committee the Owner's right to receive any and all insurance proceeds payable with respect to the damage, subject to any bona fide loss payee designation, in which case the Owner will execute and deliver to the Trust Committee an assignment satisfactory to the Trust Committee.

9.7 Construction Warranties. From and after the Closing Date, the Owner will assign to the Trust Committee all of the Owner's rights under all warranties, guaranties or contractual obligations against any contractor or supplier who was engaged in the construction, renovation, or repair of all or any part of the Property or any improvement to the Affordable Housing Unit. The Trust Committee's acceptance of this assignment will not represent a waiver by the Trust Committee of the Owner's covenants, agreements, representations and warranties set out in this Agreement.

9.8 Owner's Covenants. The Owner will:

- (a) take all proper actions and proceedings on its part to enable the Owner to transfer a good and marketable title to the Property, including the Affordable Housing Unit, to the Trust Committee or such person as the Trust Committee may designate, free and clear of all encumbrances other than Permitted Encumbrances;
- (b) deliver vacant possession of the Property to the Trust Committee or such person as the Trust Committee may designate on the Closing Date, subject to prior receipt of the Option Purchase Price by the Owner;
- (c) not, from and after the Notice Date to the Closing Date, sell, transfer, dispose or remove from the Affordable Housing Unit any Personal Property; and
- (d) both before and after the Closing Date do such other things as the Trust Committee may reasonably require for transferring to and vesting in the Trust Committee or such person as the Trust Committee may designate title to the Property, including the Affordable Housing Unit, as contemplated by Section 9.8(a).

9.9 Documents. The Trust Committee will prepare the documents necessary to complete the transaction which will be in form and substance reasonably satisfactory to the Trust Committee and its lawyers.

9.10 Adjustments and Credits. The Owner and the Trust Committee will adjust, as at the Closing Date, all usual adjustments for a property similar to the Property including taxes, utility rates and any moneys owing to the strata corporation formed in respect of the Project Lands.

9.11 Closing. The Owner and the Trust Committee will complete the transaction on the Closing Date at the offices of the Trust Committee or its lawyers.

9.12 Owner's Closing Documents. At the closing, the Owner will deliver to the Trust Committee the following executed documents:

- (a) the Transfer;

- (b) a vendor's statement of adjustments;
- (c) a bill of sale for the Personal Property and all other deeds, transfers, assignments, resolutions, consents, estoppels and other certificates and assurances as the Trust Committee may reasonably require;
- (d) a certificate in confirmation that the sale of the Affordable Housing Unit to the Trust Committee is exempt from taxes under the *Excise Tax Act* (the "GST") or, alternatively, a certified cheque or bank draft payable to the Trust Committee in an amount equal to the GST payable by the Trust Committee on the Option Purchase Price; and
- (e) unless waived in writing by the Trust Committee, a certified cheque or bank draft payable to the Trust Committee in the amount, if any, by which the moneys owing under and required to discharge any mortgage or mortgages of the Property exceed the Option Purchase Price (calculated in accordance with Section 9.2) as adjusted under Section 9.10.

9.13 Trust Committee's Closing Documents. At the closing, the Trust Committee will deliver to the Owner:

- (a) a purchaser's statement of adjustments; and
- (b) a cheque for the Option Purchase Price, as adjusted under Section 9.10.

9.14 Tabling. Except for the Transfer, all documents and cheques will be tabled at the closing. The Trust Committee will cause its lawyers, on the Closing Date, to conduct a pre-registration index search of the Affordable Housing Unit in the Land Title Office. If that search indicates that no liens, charges or encumbrances have been registered or filed in respect of the Affordable Housing Unit except for the Permitted Encumbrances and encumbrances which the lawyers for the Owner have undertaken to discharge, the lawyers for the Trust Committee or their agents shall submit the Transfer for registration and then conduct a post-filing registration index search. If the post-filing registration search indicates that no liens, charges or encumbrances have been registered or filed in respect of the Affordable Housing Unit since the pre-filing registration index search, all documents and payments will be released to each of the Owner and the Trust Committee according to the entitlement of each of them.

9.15 Reimbursement. If the Trust Committee waives payment on the Closing Date of the amount referred to in Section 9.12(e), the Owner shall pay such amount to the Trust Committee, on demand, with interest thereon at the rate of eighteen percent (18%) per annum, compounded monthly, from the Closing Date to the date of payment.

9.16 Survival. All representations, warranties, covenants and agreements of the Owner and the Trust Committee contained in this Agreement will survive the Closing Date, registration of documents and payment of the Option Purchase Price.

ARTICLE 10 MAINTENANCE OF AFFORDABLE BUILDING UNITS

10.1 Maintenance. The Owner covenants and agrees that it will maintain the Affordable Housing Units in a satisfactory state of repair, fit for habitation, commensurate with the condition in which a prudent owner would keep a similar property, in compliance with the water conservation provisions set out in Schedule C and at a minimum to the standard prescribed by the *Residential Tenancy Act*.

- 10.2 Destruction of an Affordable Housing Unit.** The Owner shall not demolish any Affordable Housing Unit unless:
- (a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length from the Owner that it is no longer reasonable or practical to maintain and repair the Affordable Housing Unit, and the Owner has delivered to the Trust Committee a copy of the engineer's or architect's report;
 - (b) the Affordable Housing Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the Trust Committee acting commercially reasonably; or
 - (c) a demolition order has been issued by the Capital Regional District.
- 10.3 Obligation to Rebuild.** In the event of such demolition the Owner must make reasonable efforts to replace the demolished Affordable Housing Unit, including obtaining any required approval of the Trust Committee, the Capital Regional District or any other authority having jurisdiction. On reconstruction, the Owner must use and occupy any replacement Affordable Housing Unit only in compliance with this Agreement, and all conditions shall apply to the replacement unit to the same extent and manner as to the original Affordable Housing Unit.

ARTICLE 11 DEFAULT AND REMEDIES

- 11.1 Owner Breach.** 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 twenty-one (21) days of receipt of notice of default provided to the Owner by the Trust Committee.
- 11.2 Specific Performance.** The Owner agrees that the Trust Committee is entitled to obtain an order for specific performance of this Agreement or 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 Affordable Housing Units.
- 11.3 Daily Damages.** The Owner agrees that in addition to any other remedies available under this Agreement or at law or in equity, if an Affordable Housing Unit is used or occupied in breach of this Agreement, or rented for an amount in excess of the rent permitted under this Agreement, the Owner will pay to the Trust Committee as liquidated damages \$300 for each day that the breach continues. The amount shall be due and payable immediately upon receipt by the Owner of an account from the Trust Committee and shall bear interest at the rate applicable to taxes in arrear under the *British Columbia Taxation (Rural Area) Act*. This Section does not apply to the fees payable to the NPO pursuant to Section 7.13.
- 11.4 Damages for Improper Sale.** The Owner agrees that in addition to any other remedies available under this Agreement or at law or in equity, if an Affordable Housing Unit is sold in breach of the provisions of this Agreement restricting the purchase price, the Owner will pay to the Trust Committee as liquidated damages the amount by which the paid purchase price exceeds the purchase price permitted under this Agreement. The amount shall be due and payable immediately upon receipt by the Owner of an account from the Trust Committee and shall bear interest at the rate applicable to taxes in arrear under the *British Columbia Taxation (Rural Area) Act*. This Section does not apply to the fees payable to the NPO pursuant to Section 7.13.

- 11.5 Remedies and Waiver.** All remedies of the 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 Trust Committee in exercising any remedy shall not prevent the later exercise of any remedy for the same or any similar breach.
- 11.6 Zoning Bylaws.** The Owner further acknowledges that a breach of this Agreement may constitute a breach of the Trust Committee's zoning bylaw.

ARTICLE 12 TRUST COMMITTEE PROVISIONS

- 12.1 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 Parent Parcel or the Project Lands, or relieve the Owner from complying with any enactment, including any bylaw of the Trust Committee.
- 12.2 No Public Law Duty.** Where the 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 Trust Committee is under no public law duty of fairness or natural justice in that regard and the Owner agrees that the Trust Committee may do any of those things in the same manner as if it were a private party and not a public body.
- 12.3 No Joint Venture.** Nothing in this Agreement will constitute the Trust Committee as the joint venturer, agent or partner of the Owner or Developer or give the Owner or Developer any authority to bind the Trust Committee in any way.
- 12.4 Indemnity.** The Owner and the Developer shall each indemnify and save harmless the Trust Committee and each of its elected officials, officers, directors, employees and agents (including the NPO) 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 the Developer or their officers, directors, employees, agents or contractors or any other person for whom the Owner or Developer is at law responsible, that constitutes a breach of this Agreement. This Section does not apply to the fees payable to the NPO pursuant to Section 7.13.
- 12.5 Release.** The Owner and the Developer each releases and forever discharges the Trust Committee and each of its elected officials, officers, directors, employees and agents (including the NPO) 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 Trust Committee of its obligations under this Agreement except in the case of willful misconduct or gross negligence of the Trust Committee or any other person for whom the Trust Committee is at law responsible.

ARTICLE 13 GENERAL PROVISIONS

- 13.1 Housing Agreement and Covenant.** The Owner acknowledges and agrees that this Agreement constitutes a covenant under s.219 of the British Columbia *Land Title Act* and a housing agreement under s.905 of the British Columbia *Local Government Act* and that the Trust Committee will register a notice of this Agreement against title to the Parent Parcel. Following subdivision of the Parent Parcel in accordance with Section 2.2, and together with its request to discharge this Agreement under Section 2.3, the Owner may request a

discharge of such notice from the remaining portion of the Parent Parcel which does not form part of the Project Lands.

- 13.2 Disclosure.** The Owner must disclose the restrictions contained in this Agreement in any prospectus or disclosure statement issued in respect of the Project Lands.
- 13.3 Assignment.** The Owner acknowledges that the Trust Committee may delegate from time to time all of its rights, duties and obligations under this Agreement or to a third party provided that the Trust Committee has so advised the Owner in writing.
- 13.4 Other Occupants.** An Affordable Housing Unit that is owned by a Qualified Person may also be occupied by a Spouse or the Qualified Person's partner, children, parents, grandparents or any family dependent and, if permitted under the applicable residential tenancy agreement, a Rental Unit may also be occupied by the Spouse of a Qualified Renter or such person's partner, children, parents, grandparents or any family dependent. Except as permitted in Sections 3.1, 4.1, 4.2 and 5.3 and this Section 13.4, no other person may reside in the Affordable Housing Unit and no other person may occupy the Affordable Housing Unit for more than fourteen (14) days in any month (i.e. an exemption for a temporary guest or traveller).
- 13.5 Registration.** The Owner must do everything necessary, at the Owner's expense, to ensure that this Agreement is registered against title to the Parent Parcel or Project Lands, as applicable, in priority to all financial charges and encumbrances which may have been registered, or are pending registrations, against title to the Parent Parcel or the Project Lands, except those specifically approved in writing by the Trust Committee or in favour of the Trust Committee.
- 13.6 Survival.** The obligations of the Owner set out in Sections 11.3, 11.4, 12.4 and 12.5 shall survive any termination of this Agreement.
- 13.7 Notice.** Notice required or permitted to be served under this Agreement is sufficiently served if delivered in person or sent by registered mail to the postal address of the Owner or the 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.
- 13.8 Enuring Effect.** This Agreement is binding upon, and enures to the benefit of parties and their respective successors and permitted assigns.
- 13.9 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.
- 13.10 Further Assurance.** The Owner must forthwith do all acts and execute such instruments as may be reasonably necessary in the opinion of the Trust Committee to give effect to this Agreement.
- 13.11 Covenant Runs with the Land.** This Agreement runs with the Parent Parcel and is binding on the Owner and all persons who acquire an interest in the Parent Parcel.
- 13.12 Limitation on Owner's and Developer's Obligations.** The Owner and Developer is only liable for breaches of this Agreement that occur while the Owner or Developer, as applicable, is the registered owner of the Parent Parcel or the Project Lands, as applicable, or, in respect of a specific Affordable Housing Unit, the owner of the fee simple parcel or strata lot for that Affordable Housing Unit.

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

13.14 Time of Essence. Time shall be of the essence of this Agreement.

As evidence of their intention to be bound by this Agreement, the parties have executed and delivered the Land Title Office Form C to which these Terms of Instrument is attached and which forms part of this Agreement.

SCHEDULE A

QUALIFIED PERSONS CRITERIA

A person who meets the criteria in any one of Section 1, 2 or 3 is a Qualified Person and may own and occupy and Affordable Housing Unit, or if the person meets the criteria in Section 4, he or she may own and rent an Affordable Housing Unit.

1. **General Employment Criteria.** A person who provides satisfactory evidence to the Trust Committee that:
 - (a) the Income of their household which resides or intends to reside in the Affordable Housing Unit is equal to or less than a Moderate Income;
 - (b) the person is employed or self-employed or will be employed or self-employed for not less than twenty (20) hours per week within the Salt Spring Island Local Trust Area;
 - (c) if not currently employed, the person has accepted an offer of employment that will commence in the next six (6) months;
 - (d) the person will make the Affordable Housing Unit their principal residence; and
 - (e) the person does not own any other property on Salt Spring Island unless exempted by the Trust Committee on a permanent, temporary or conditional basis.

2. **Essential Service Employment Criteria.** A person who provides satisfactory evidence to the Trust Committee that:
 - (a) the Income of their household which resides or intends to reside in the Affordable Housing Unit is equal to or less than a Moderate Income;
 - (b) the person is employed or self-employed or will be employed or self-employed in an Essential Service for not less than ten (10) hours per week within the Salt Spring Island Local Trust Area;
 - (c) if not currently employed, the person has accepted an offer of employment in an Essential Service that will commence in the next six (6) months;
 - (d) the person will make the Affordable Housing Unit their principal residence; and
 - (e) the person does not own any other property on Salt Spring Island unless exempted by the Trust Committee on a permanent, temporary or conditional basis.

3. **Retired Person Criteria.** A person who provides satisfactory evidence to the Trust Committee that:
 - (a) the Income of their household which resides or intends to reside in the Affordable Housing Unit is equal to or less than a Moderate Income;
 - (b) the person is over the age of sixty-five (65) years;

- (c) the person worked, on average for the five (5) year period before they retired, of not less than twenty (20) hours per week within the Salt Spring Island Local Trust Area;
 - (d) the person will make the Affordable Housing Unit their principal residence; and
 - (e) the person does not own any other property on Salt Spring Island unless exempted by the Trust Committee on a permanent, temporary or conditional basis.
4. **Rental Owner Criteria.** A person, company or other legal entity that provides satisfactory evidence to the Trust Committee that:
- (a) the person regularly employs persons who meet the General Employment Criteria set out in Section 1 of this Schedule A or the Essential Services Employment Criteria set out in Section 2 of this Schedule A and has a regular need to rent Affordable Housing Units to its employees; or
 - (b) the person will purchase and rent an Affordable Housing Unit to a person who meets the General Employment Criteria set out in Section 1 of this Schedule A, the Essential Services Criteria set out in Section 2 of this Schedule A or the Retired Person Criteria set out in Section 3 of this Schedule A (a “**Qualified Renter**”).
5. **Calculating a Person’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; or
 - (j) such other sources of income as the 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 Trust Committee may designate from time to time.

6. **Income from Assets.** With respect to Section 5(i) 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 Trust Committee may specify from time to time.

**SCHEDULE B
PERMITTED ENCUMBRANCES**

Easement C27765

**SCHEDULE C
WATER CONSERVATION PROVISIONS**

1. At the time of initial construction or replacement, each Affordable Housing Unit shall be equipped with the following:
 - (a) an individual water meter and individual North Salt Spring Water District billing for water consumed by that unit;
 - (b) low flush toilets (maximum 6 litres per flush) and shower/faucet flow restrictors; and
 - (c) water efficient appliances.
2. The development scheme approved for the Project Lands shall include a water-efficient landscaping plan including elements such as indigenous, drought resistant plantings, minimal lawn areas and rainwater catchment measures.
3. Individual exterior hose bibs are not permitted.
4. Each Affordable Housing Unit shall be inspected for water leaks by a qualified house inspector at the time of resale.

END OF DOCUMENT