

SALT SPRING ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. 513

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 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 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. 513, 2018".
2. Any one Trustee of the Salt Spring Island Local Trust Committee are authorized to execute an agreement in the form attached to this Bylaw with Island Women Against Violence (IWAV)

READ A FIRST TIME this 27TH day of SEPTEMBER, 2018

READ A SECOND TIME this 27TH day of SEPTEMBER, 2018

READ A THIRD TIME this 27TH day of SEPTEMBER, 2018

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this

10TH day of OCTOBER, 2018

ADOPTED this 27TH day of AUGUST, 2019



SECRETARY



CHAIRPERSON

Housing Agreement and Section 219 Covenant

THIS AGREEMENT DATED FOR REFERENCE THE [day] OF [month], [year] is BETWEEN:

Island Women Against Violence (IWAV), a society incorporated under the laws of the province of British Columbia under number [S-29883] and having its office at [address]

(the "Owner");

AND:

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

(the "Trust Committee")

WHEREAS:

- A. The Owner is the registered owner of the Lands situated at 132 Corbett Road on Salt Spring Island, British Columbia and legally described as: PID 000-698-865, Lot A, Section 3 East, N. SSI, Cowichan District, Plan 41612, commonly known as Croftonbrook, (the "Lands");
- B. The Lands have been rezoned by the Salt Spring Local Trust Committee by means of Salt Spring Island Land Use Bylaw 2018 Amendment No. [#] to permit the development of an affordable development;
- C. The Owner has obtained funding from the Canada Mortgage and Housing Corporation (CMHC), the B.C. Housing Management Commission (BCHMC), and the Capital Regional District (CRD) under the Regional Housing First Program (RHFP), and the CRD under the Regional Housing Trust Fund (RHTF) to assist in the development of the Affordable Housing Units, and it is a condition of funding that the use and occupancy of the units be restricted in the manner required for a term of 40 years by the terms of RHFP operating agreements between the Owner and BCHMC and the terms of a s. 219 covenant (the "PRHC Covenant") and Option to Purchase (the "PRHC Option to Purchase") granted by the Owner to the Provincial Rental Housing Corporation ("PRHC").
- D. The Owner will rent the units on the Lands, by way of a rental agreement, at an affordable rate to Qualified Occupants (as defined in section 1.1);
- E. The Trust Committee may, pursuant to Section 29 of the *Islands Trust Act* and Section 483 of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure and availability to specified classes of persons of dwelling units located on those lands;
- F. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Trust Committee in respect of the use of land or construction on land;

G. The Owner and the Trust Committee wish to enter into this Agreement to provide affordable housing on the Lands on the terms and conditions of this Agreement to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*; and

H. The Trust Committee has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement.

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

Article 1: Definitions and Interpretation

1.1 Definitions – In this Agreement:

"Affordable Housing Unit" means dwelling unit on the Lands in respect of which the construction, tenure, rental and occupancy are restricted in accordance with sections 2.1 through 2.6 of this Agreement;

"Annual Household Income" means the annual household income accepted by BC Housing during the terms of its RHFP operating agreement, and the combined gross income of all adult members of a Household, as shown on line 150 of the preceding year's T1 General Income Tax and Benefit return after expiry of the BC Housing RHFP operating agreement.

"Business days" means Monday to Friday inclusive except for those excluded days declared by lawful authority as holidays.

"CPI" means the All-Items Consumer Price Index for Victoria as calculated by Statistics Canada, or its successor in function.

"Dwelling Unit" means a dwelling unit as defined in the Salt Spring Land Use Bylaw No. 355,1999, as amended or replaced from time to time.

"Household" means one or more individuals occupying the same Dwelling Unit.

"Lands" means that parcel of land legally described as PID 000-698-865, Lot A, Section 3 East, N. SSI, Cowichan District, Plan 41612.

"Maximum Monthly Rent" means the monthly rent agreed to by the Owner and a Qualified Renter to rent an Affordable Housing Unit which shall not exceed the lesser of the current Province of BC Shelter Allowance rate for Regional Housing First Program (RHFP) designated units during the term of the RHFP operating agreement, or 30 percent (30%) of Moderate Income of Salt Spring Island households.

"Moderate Income" means income that is less than 90% of the median household income of Salt Spring Island calculated from the most recent census data published by Statistics Canada and as

adjusted annually by the Yearly Victoria CPI Change.

"Qualified Renter" means a Household which meets the eligibility criteria for a residential tenancy of a Rental Unit, as set out in Section 2.2 Affordable Rental Housing Eligibility of this Agreement.

"Regional Housing First Program" means a joint CMHC, BC Housing, Capital Regional District, Island Health capital funding and support program that targets up to 20% of the units for those experiencing homelessness.

"Residential Tenancy Act" means the *Residential Tenancy Act* (British Columbia).

"Salt Spring Island Resident" means a person currently residing on Salt Spring Island for a minimum of 1 year, or a previous resident who left Salt Spring for a maximum of 2 consecutive years.

"Studio" means a dwelling unit which combines living room, bedroom, and kitchen into a single room.

"Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit.

"Yearly CPI Change" means the percentage change in CPI from the CPI for January of the immediately preceding calendar year, to the CPI for January of the then present calendar year.

1.2 Interpretation—

Reference in this Agreement to:

- a. a "party" is a reference to a party in this Agreement;
- b. a particular numbered "article" or "section" or to a particular lettered "schedule" is a reference to the corresponding numbered or lettered article, section, or schedule of this agreement;
- c. an "enactment" is a reference to an enactment as defined in the *Interpretation Act* and is a reference to any revision, amendment or re-enactment of, or replacement for, that enactment;
- d. wherever the singular or the masculine is used in this Agreement, it shall be deemed to include the plural or the feminine, or the body politic or corporate, where the context or the parties so require;
- e. the Local Trust Committee includes a reference to its successors in function, including a municipality.

1.3 Headings – The division of this Agreement into articles, sections and schedules is for convenience of reference only and does not affect its interpretation. The article and section headings used in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

1.4 Entire Agreement – This is the entire agreement among the parties concerning its subject and may be amended only by a document executed by all parties.

Article 2 – Affordable Housing

2.1 Agreement over the Lands – Pursuant to section 219 of the *Land Title Act* and section 483 of the *Local Government Act*, the Owner covenants and agrees that:

- a. the Lands will not be developed, and no new building or structure will be constructed on the Lands unless, as part of and concurrently with the development on the Lands, the Owner also constructs and completes a minimum of 34 Affordable Housing Units on the Lands;
- b. no building on the Lands may be subdivided by means of a strata plan without prior approval of the Trust Committee; and
- c. the Owner will maintain the Affordable Housing Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands.

2.2 Affordable rental housing eligibility - The Owner covenants and agrees not to rent or lease any Affordable Housing Units except to a Qualified Renter and in accordance with the following additional requirements:

- a. the Affordable Housing Unit will be used or occupied only pursuant to a Tenancy Agreement;
- b. the Qualified Renter's Annual Household Income at the time of signing the Tenancy Agreement does not exceed 90% of the median household income of Salt Spring Island calculated from the most recent census data published by Statistics Canada;
- c. the Qualified Renter will occupy the Affordable Housing Unit as its permanent, principal, and sole residence;
- d. Priority for occupancy will be given to *Salt Spring Island Residents*.
- e. each Tenancy Agreement will include a clause prohibiting subletting including short-term vacation rentals, a clause requiring the Qualified Renter to comply with the use and occupancy restrictions contained in this Agreement, and a provision entitling the Owner to terminate the rental agreement in accordance with the *Residential Tenancy Act* in the event of any breach of these use and occupancy clauses;
- f. the Owner will deliver to the Trust Committee a true copy of every Tenancy Agreement entered into in respect of any Affordable Housing Unit within 10 business days of any request do to so;
- g. the Owner will include in every Tenancy Agreement notice of the existence of this Agreement and the occupancy restrictions applicable to the Affordable Housing Unit, and will provide to each Qualified Renter upon their request, a copy of this Agreement; and

each Tenancy Agreement will provide that if one of the individuals comprising a Qualified Renter who rents an Affordable Housing Unit dies, that individual's spouse or adult child residing in the Affordable Rental Unit at the time of the Qualified Renter's death may continue to rent the Affordable Rental Unit.

2.3 Rental rates - The Owner covenants and agrees that it will:

- a. not charge any tenant a monthly rent, exclusive of utilities and excess water usage charges as established by the Owner, that is greater than the Maximum Monthly Rent, except that the Owner may, subject to the provisions of the *Residential Tenancy Act* increase the rent payable for the Affordable Housing Unit annually;
- b. not require any tenant under a Tenancy Agreement to pay any extra charges or fees for use of any common area, or for sanitary sewer, storm sewer, property taxes and similar services. For clarity, this limitation does not apply to cablevision, telecommunications, laundry, or gas, water or electricity utility fees or charges.

2.4 Policies/Rules and Regulations/Administration by Owner –The Owner is authorized to make and administer rules, regulations and policies necessary to fully implement and achieve the policy goals set out in this Agreement. Such rules, regulations and policies may include, but are not limited to, the following:

- a. Establishing and maintaining a wait list of potential Qualified Renters; and
- b. Establishing, administering, and enforcing a rental policy applicable to the terms of this Agreement and in accordance with the *Residential Tenancy Act*.

2.5 No Sublease or Assignment – Except as set out in this Agreement, the Owner will not permit the interest in an Affordable Housing Unit to be subleased or a Tenancy Agreement to be assigned.

2.6 Monitoring and Reporting to the Local Trust Committee - The Owner must deliver to the Local Trust Committee once each year on or before July 1, a completed statutory declaration, substantially in the form attached as Schedule "A", sworn by the Owner. If the Owner is found to be not in compliance with this agreement, the Owner must complete and supply the completed statutory declaration within 10 Business Days of receiving a request from the Local Trust Committee. The Owner irrevocably authorizes the Local Trust Committee to make reasonable inquiries it considers necessary in order to confirm compliance with this Agreement.

Article 3 – General Terms

3.1 Order to Comply - If the Owner is in default of the performance or observance of this Agreement, the Trust Committee may give the Owner a notice of default requiring the Owner to comply with this Agreement within the time stated in the notice. The Owner agrees that any breach or default in the performance of this Agreement on its part must be corrected, to the satisfaction of the Trust Committee, within the time stated on the notice of default provided to the owner by the Trust Committee.

3.2 Management – The Owner covenants and agrees to furnish good and efficient management of the Lands and the Affordable Housing Units on the Lands. If and when the Trust Committee has reasonable grounds to believe that a continuing breach of this Agreement exists, the Trust Committee may authorize its representatives to inspect the Lands at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act* and subject to the concurrent delivery of such a notice to the Owner.

- 3.3 Society Standing** – If the Owner is a society, the Owner must maintain its standing as a society under the *Society Act* and must not amend its Constitution in any manner that would prevent, or adversely affect, the ability of the Society to perform its obligations under this Agreement.
- 3.4 Specific Performance of Agreement** – The Owner agrees that the Trust Committee is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement, in view of the public interest in restricting the occupancy of the Affordable Housing Unit. The Owner further acknowledges that a breach of this Agreement may constitute a breach of the Trust Committee's Land Use Bylaw, as amended from time to time.
- 3.5 Assignment** – The Owner acknowledges that the Trust Committee may delegate or assign the administration and management of this Agreement to a third party, and, in that event, any reference in this Agreement to the Trust Committee shall be interpreted as a reference to that party provided that the Trust Committee has so advised the Owner.
- 3.6 Indemnity** – The Owner shall indemnify and save harmless the Trust Committee and each of its elected officials, officers, directors, employees, and agents from and against all claims, demands, actions, loss, damage, costs, and liabilities for which any of them may be liable by reason of any actor 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. This clause will survive the termination of this Agreement.
- 3.7 Release** – The Owner releases and forever discharges the Trust Committee and each of its elected officials, officers, directors, employees, and agents and each of their heirs, executors, administrators, personal representatives, successors and assigns from all claims, demands, damages, actions, or causes of action arising out of the performance by the Owner of its obligations under this Agreement.
- 3.8 Trust Committee Powers Unaffected** – This Agreement does not limit the discretion, rights, duties or powers of the Trust Committee under any enactment or the common law, impose on the Trust Committee any duty or obligation, affect or limit any enactment relating to the use or subdivision of the Lands, or relieve the Owner from complying with any enactment.
- 3.9 No Public Law Duty** – Wherever in this Agreement an act, determination, consent, approval or agreement of the Trust Committee is provided for, such act, determination, consent, approval or agreement may be done or made in accordance with the terms of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice shall have any application.
- 3.10 No Waiver** – No condoning, excusing or overlooking by the Trust Committee of any default under this Agreement, nor any consent, approval, or agreement whether written or otherwise shall be taken to operate as a waiver by the Trust Committee of any subsequent default or of the necessity for further consent, approval or agreement in respect of a subsequent matter requiring it under this Agreement, or in any way to defeat or affect the rights or remedies of the Trust Committee.
- 3.11 Arbitration** – Any matter in dispute between the parties under this Agreement, including any disputes as to whether a particular individual is eligible to occupy a Affordable Housing Unit, must be referred to a single arbitrator if the parties can agree on one, and otherwise to three arbitrators, one to be appointed by each of the parties and the third by those two so appointed, and the matter must

be resolved in accordance with the provisions of the *Arbitration Act* (British Columbia).

- 3.12 Notice on Title** – The Owner acknowledges and agrees that this Agreement constitutes both a covenant under Section 219 of the *Land Title Act* and a housing agreement under Section 483 of the *Local Government Act*, the Trust Committee is required to file a notice of housing agreement in the Land Title Office against title to the Lands, and once such a notice is filed, this Agreement binds all persons who acquire an interest in the Lands as a housing agreement under Section 483 of the *Local Government Act*.
- 3.13 Covenant Runs with the Land** – Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the Trust Committee in accordance with section 219 of the *Land Title Act* in respect of the Lands and this Agreement burdens the Lands and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including, by subdivision or by strata plan.
- 3.14 Limitation on Owner's Obligations** – The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands.
- 3.15 Amendment and Termination** – This Agreement may not be modified or amended except by bylaw of the Trust Committee, upon an agreement in writing between the Trust Committee and the Owner.
- 3.16 Notices** – Any notice required to be given pursuant to this Agreement shall be in writing and shall be given to the Owner or the Trust Committee, as the case may be, at the address first above written, or to any other address of which either the Owner or the Trust Committee may advise the others in writing in accordance with this paragraph. Notice to the Trust Committee must be addressed to the Secretary of the Islands Trust. If given in person or by facsimile transmission, such notice will be deemed to be received when delivered and, if mailed, such notice will be deemed to be received only when actually received by the party to whom it is addressed.
- 3.17 Enurement** – This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.
- 3.18 Remedies Cumulative** – The remedies of the Trust Committee specified in this Agreement are cumulative and are in addition to any remedies of the Trust Committee at law or in equity. No remedy shall be deemed to be exclusive, and the Trust Committee may from time to time have recourse to one or more or all of the available remedies specified herein or at law or in equity.
- 3.19 Severability** – If any term or provision of this Agreement, or its application to any person or circumstance shall to any extent be found to be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
- 3.20 Joint and Several** – In the case of more than one Owner, the grants, covenants, conditions, provisions, agreements, rights, powers, privileges and liabilities of the Owner shall be construed and held to be several as well as joint.
- 3.21 Further Acts** - The Owner will do everything reasonably necessary to give effect to the intent of this

Agreement, including execution of further instruments.

- 3.22 **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.
- 3.23 **Joint Venture** – Nothing in this Agreement shall constitute the Owner as an agent, joint venture or partner of the Trust Committee or give the Owner any authority or power to bind the Trust Committee in any way.
- 3.24 **Time of Essence** – Time is of the essence in this Agreement.
- 3.25 **Further Assurances** – The parties shall execute and do all such further deeds, acts, things and assurances as they reasonably require to carry out the intent of this Agreement.
- 3.26 **Priority** – The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement is registered against title to the Lands with priority over all financial charges, liens and encumbrances registered or pending at the time of application for registration of this Agreement.
- 3.27 **Deed and Contract** – By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.
- 3.28 **Foreclosure** – This Agreement shall not be binding on Canada Mortgage and Housing Corporation or any mortgagee of the Lands that is an "approved lender" holding a mortgage insured pursuant to the National Housing Act R.S.C. 1985 c. N-11. If, during foreclosure by such an approved lender, the court approves a sale of the Lands to Canada Mortgage and Housing Corporation or an arm's length bona fide purchaser, then the Trust Committee will abandon this agreement and cancel the notice of agreement in the records of the Land Title Office.

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

SCHEDULE "A"
OWNER STATUTORY DECLARATION

CANADA

IN THE MATTER OF A HOUSING AGREEMENT

PROVINCE OF BRITISH COLUMBIA

WITH THE SALT SPRING ISLAND LOCAL TRUST
COMMITTEE ("Housing Agreement")

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

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

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

A Commissioner for taking Affidavits
in British Columbia

Signature of person making declaration

ATTACHMENT TO OWNER STATUTORY DECLARATION
Annual Rental Rate Schedule (rent range per unit type)

<u>Unit Count and Type</u>		<u>(YEAR) Rental rate</u> <u>Range</u>
8	Studio	
12	1 bedroom	
10	2 bedrooms	
4	3 bedroom	
34	TOTAL	