

**SALT SPRING ISLAND LOCAL TRUST COMMITTEE**

**BYLAW NO. 429**

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**A BYLAW TO AUTHORIZE A HOUSING AGREEMENT**

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1. 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 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. 429, 2008".
- 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 Salt Spring and Southern Gulf Islands Community Services Society.
- 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.

2. Salt Spring Island Housing Agreement Bylaw No. 424, 2006 is repealed by this bylaw.

READ A FIRST TIME this 5<sup>th</sup> day of June, 2008


READ A SECOND TIME this 5<sup>th</sup> day of June, 2008

READ A THIRD TIME this 5<sup>th</sup> day of June, 2008

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this 24<sup>th</sup> day of June, 2008

ADOPTED this 3<sup>rd</sup> day of July, 2008

  
SECRETARY

  
CHAIRPERSON

**SALT SPRING ISLAND LOCAL TRUST COMMITTEE**

**Housing Agreement**

THIS AGREEMENT DATED FOR REFERENCE THE 4<sup>th</sup> DAY OF July 2008 is BETWEEN:

**SALT SPRING AND SOUTHERN GULF ISLANDS COMMUNITY SERVICES SOCIETY**

(Incorporation #S-11466)

and having its office at [address] 268 Fulford Cranes Rd., Salt Spring Island, BC V8K 2K6  
(the "Owner")

AND

**SALT SPRING ISLAND LOCAL TRUST COMMITTEE**

2<sup>nd</sup> Floor, 1627 Fort Street

Victoria, B.C. V8R 1H8

(the "Trust Committee")

**WHEREAS:**

- A. The Owner is the registered Owner of those Lands situated at 167 Rainbow Road on Salt Spring Island and legally described as Lot A Section 1 Range 3 East North Salt Spring Island Cowichan District Plan 30218, commonly known as Murakami Gardens (the "Lands");
- B. The Lands have been rezoned by the Salt Spring Island Local Trust Committee by means of Salt Spring Island Land Use Bylaw, 1999 Amendment No. 5, 2005 (Bylaw No. 412) to permit the development of a 27-unit Community housing project on the Lands;
- C. The Owner has obtained funding from the B.C. Housing Management Commission ("BCHMC"), Canada Mortgage and Housing Corporation ("CMHC") and the Capital Regional District's Regional Housing Trust Fund ("RHTF") to assist in the development of the Community Housing Units, and it is a condition of funding that the use and occupancy of the units be restricted in the manner required by the terms of operating agreements between the Owner and BCHMC, the Owner and CMHC, and the Owner and RHTF (the "Operating Agreements") and the terms of a s.219 covenant (the "PRHC Covenant") granted by the Owner to the Provincial Rental Housing Corporation ("PRHC");
- D. The Trust Committee and the Capital Region Housing Corporation have agreed that the Corporation will administer this Agreement on the Trust Committee's behalf;
- E. The Trust Committee may, pursuant to Section 29 of the *Islands Trust Act* and Section 905 of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure and availability to specified classes of persons of dwelling units located on the lands of the owner;
- F. The Owner and the Trust Committee wish to enter into this Agreement to provide for Community Housing Units on the terms and conditions set out in this Agreement, and the Owner has granted to the Trust Committee a covenant and rent charge under s. 219 of the *Land Title Act* dealing with the use of the Lands; and

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

**THIS AGREEMENT** is evidence that in consideration of \$2.00 paid by the 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 Trust Committee and the Owner agree, as a housing agreement between the Owner and the Trust Committee under s. 905 of the *Local Government Act*, as follows:

#### **INTERPRETATION**

1. In this Agreement "Community Housing Units" means 27 rent-controlled dwelling units in a multi-family building on the Lands, the purpose of which dwelling units is to provide acceptable accommodation to qualified residents, the rent and the tenure of which dwelling units are restricted in accordance with sections 7 through 19 of this Agreement. "Acceptable accommodation", as used in this paragraph, means accommodation that is affordable, suitable and adequate according to family income, size and composition.

#### **USE OF LAND FOR COMMUNITY HOUSING UNITS**

2. The Owner covenants and agrees with the Trust Committee that the Owner will use the Lands in accordance with the PRHC Covenant and the BCHMC, CMHC and RHTF Operating Agreements.
3. The Owner shall not demolish any Community Housing Unit on the Lands 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 Community Housing Unit, and the Owner has delivered to the Trust Committee a copy of the engineer's or architect's report;
  - b. the Community 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 in its sole discretion on the basis of advice from a building official of the Capital Regional District, or
  - c. a demolition order has been issued by the Capital Regional District.
4. In the event of such demolition the Owner must make reasonable efforts to replace the demolished Community Housing Unit, including obtaining funding and obtaining any required approval of the Trust Committee, the Capital Regional District and any other authority having jurisdiction, and upon reconstruction, the Owner must use and occupy any replacement Community 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 unit.
5. The Owner covenants and agrees that, in the original construction of the Community Housing Units, construction standards will meet or exceed the requirements of the 2006 BC Building Code and further, that energy efficiency standards will meet BCHMC requirements which target 25% greater efficiency than the BC Building Code.
6. The Owner covenants and agrees that it will maintain the Community 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, and at a minimum to the standard prescribed by the *Residential Tenancy Act*.

#### **OCCUPANCY OF COMMUNITY HOUSING UNITS**

7. In the event of any inconsistency between the terms of this Agreement and the terms of the PRHC Covenant or the BCHMC Operating Agreement, the latter agreements shall prevail, and for that purpose an inconsistency exists if the Owner cannot at the same time comply with this Agreement and the PRHC Covenant or the Operating Agreement.

8. The Community Housing Units may be occupied only in accordance with the CMHC Operating Agreement, the PRHC Covenant and the BCHMC Operating Agreement from time to time, and the Owner agrees to provide to the Trust Committee a copy of any agreement of any kind whatsoever, including any funding or contribution agreement and any mortgage or other loan agreement, that contains terms, conditions or stipulations as to the use or occupancy of any unit.
9. In the event that there is no agreement in place between the Owner and PRHC or BCHMC restricting the tenure of the Community Housing Units to rental tenure, it is a condition of this Agreement that the occupancy of the Community Housing Units be restricted to rental tenure. For certainty, "rental tenure" does not include any time share ownership plan or time share use plan as those terms are defined in the *Real Estate Development Marketing Act*, or any corporate or fractional ownership scheme.
10. In the event that there is no agreement in place between the Owner and PRHC or BCHMC restricting the rental rates that apply to the Community Housing Units, it is a condition of this Agreement that the rental rates be limited to the lowest of:
  - a. the rates as set out in Schedule A, adjusted annually on the basis of the All Items Consumer Price Index for Victoria;
  - b. 30% of the Core Needs Income Threshold for Victoria, published from time to time by CMHC, or as otherwise stipulated by CMHC; and
  - c. 30% of the median household income for Salt Spring Island published by Statistics Canada,

so long as the option chosen provides revenues that are sufficient to cover reasonable operating costs and servicing of debt, and in that regard the Owner may charge rental rates that exceed the maximum permitted by this paragraph only if it provides information satisfactory to the Trust Committee demonstrating that such rental rates are required. The Owner must not require any occupant of a Community Housing 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.

11. In the event that there is no agreement in place between the Owner and PRHC or BCHMC restricting the occupancy of the Community Housing Units to low income persons, it is a condition of this Agreement that the occupancy of the Community Housing Units be restricted to persons deemed by the Trust Committee to be eligible to occupy the units on the basis of having limited incomes. For that purpose having a limited income means having an income less than the lower of the incomes referred to in paragraphs 10(b) and (c).
12. The parties agree that the Qualification Criteria attached as Schedule B shall be used to assess eligibility for occupancy.
13. The Owner must deliver to the Trust Committee once each year, a completed statutory declaration, substantially in the form attached as Schedule C, sworn by the Owner. Additionally, the Trust Committee may request this 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 Trust Committee. The Owner irrevocably authorizes the Trust Committee to make reasonable inquiries it considers necessary in order to confirm compliance with this Agreement.
14. The Owner covenants and agrees to furnish good and efficient management of the Community Housing Units and will permit representatives of the Trust Committee to inspect the units at any reasonable time, on 48 hours' notice to the Owner and otherwise subject to the notice provisions in the *Residential Tenancy Act*.
15. If for reasons of hardship, the Owner cannot comply with the requirements of this Agreement in relation to any Community Housing Unit, the Owner may request a temporary waiver or alteration of the terms in this Agreement in respect of that unit. This request must be delivered to the Trust Committee in writing, explain the nature and circumstances of the hardship involved, the reasons why

the Owner cannot comply, and the hardship that compliance would cause. 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's request or the hardship involved, and the relief, if any, is to be determined by the Trust Committee, acting reasonably in its sole discretion.

#### RENTAL OF COMMUNITY HOUSING UNITS

16. The Owner agrees that the Community Housing Units shall be occupied only pursuant to tenancy agreements complying with the *Residential Tenancy Act*, and that every such tenancy agreement must state that subletting and assignment are prohibited without the Owner's written consent, which will only be permitted for persons who are qualified under the terms of this Agreement to occupy the units, and must entitle the Owner to terminate the tenancy agreement in the event of any breach of that prohibition.
17. The Owner must include in every tenancy agreement in respect of a Community Housing Unit a clause disclosing the existence of this Housing Agreement, and make available to the tenant a copy of this Agreement.
18. The Owner must make available to the Trust Committee for inspection at the Owner's premises upon five days' notice a true copy of any tenancy agreement in respect of any Community Housing Unit.
19. In the event that the Owner has not, by its own best efforts, rented any Community Housing Unit to persons who are qualified under the terms of this Agreement to occupy the units, the Owner must identify to the Trust Committee which Community Housing Units are, or are becoming, vacant and must make best efforts to rent the units to qualified applicants that meet the Qualification Criteria in Schedule B from any waitlist maintained by the Trust Committee. The Trust Committee agrees that the Owner is under no obligation to select any applicant from the waitlist maintained by the Trust Committee that the Owner deems in its sole discretion to be not suitable for residency on the Lands.

#### DEFAULT AND REMEDIES

20. 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 in any Notice of Default provided to the Owner by the Trust Committee, which except as otherwise provided in this Agreement shall be 30 days.
21. 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 for any breach of this Agreement, in view of the public interest in restricting the use and occupancy of the Community Housing Units.
22. The Owner agrees that in addition to any other remedies available under this Agreement or at law or in equity, if a Community Housing Unit is used or occupied in breach of this Agreement, or rented by the Owner 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 on which the breach continues, provided that the Trust Committee has given the Owner 30 days' written notice of the breach. The foregoing amount shall be increased on January 1 of each year by the CPI-based percentage increase referred to in section 10. 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 *Taxation (Rural Area) Act*.
23. The Owner further acknowledges that a breach of this Agreement may constitute a breach of the Trust Committee's zoning bylaw.
24. The parties will endeavour to resolve any disputes with regard to default by negotiations; however, if a dispute is not resolved by negotiation within 10 days of commencing negotiations, the Trust Committee and the Owner will forthwith submit the dispute to a mediator who is acceptable to both parties and whose expenses will be shared equally by them. If they cannot agree on a mediator, a

25. If mediation pursuant to paragraph 28 does not result in a resolution of the dispute within 10 days of the commencement of mediation, the parties will forthwith submit the dispute to arbitration by a single arbitrator who is acceptable to both parties and whose expenses will be shared equally by them. If they cannot agree on an arbitrator, an arbitrator will be appointed by the British Columbia International Arbitration Centre. The determination of the arbitrator will be conclusive and binding on the parties. The *Commercial Arbitration Act of British Columbia* or successor legislation will apply to the arbitration.

#### GENERAL PROVISIONS

26. **Notice of Housing Agreement.** The Owner acknowledges and agrees that this Agreement constitutes a housing agreement under s.905 of the *Local Government Act* and that the Trust Committee will register a notice of housing agreement against title to the Lands.
27. **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. The Owner may not assign this Agreement without the consent in writing of the Trust Committee, which the Trust Committee agrees shall not be unreasonably withheld, and acknowledges that such consent may require a bylaw of the Trust Committee and a public hearing.
28. **Indemnity.** In the event of the Owner's breach of this Agreement, the Owner must indemnify and save harmless the Trust Committee and each of its elected officials, officers, directors, employees and agents from and against all resulting 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.
29. **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.
30. **Survival.** The obligations of the Owner set out in sections 28 and 29 shall survive any termination of this Agreement.
31. **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 Land, or relieve the Owner from complying with any enactment.
32. **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.
33. **Notice.** Any notice required or contemplated by any provision of this Agreement shall be given in writing enclosed in a sealed envelope addressed, in the case of a notice to the Owner, to:
- 268 Fulford Ganges Road  
Salt Spring Island, BC V8K 2K6
- and in the case of a notice to the Trust Committee, to:
- 1-500 Lower Ganges Road,  
Salt Spring Island, BC V8K 2N8

and mailed, registered and postage prepaid. The time of giving of such notice shall be conclusively deemed to be the third business day after the date of such mailing. Such notice may also be given by delivery or electronic means and shall be conclusively deemed to have been given and received at the time of such delivery. PROVIDED that either party may, by notice to the other, from time to time, designate another address in Canada for such notices.

- 34. **Enuring Effect.** This Agreement is binding upon, and enures to the benefit of parties and their respective successors and permitted assigns.
- 35. **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.
- 36. **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.
- 37. **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.
- 38. **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.
- 39. **No Joint Venture.** Nothing in this Agreement will constitute the Trust Committee as the joint venturer, agent or partner of the Owner or give the Owner any authority to bind the Trust Committee in any way.
- 40. **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.
- 41. **Time of Essence.** Time shall be of the essence of this Agreement.
- 42. **Interpretation of Words.** Wherever the singular or the masculine is used in this Agreement, the same shall be deemed to include the plural or the feminine or the body politic or corporation, where the context or the Parties so require.
- 43. **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.

Signed at Ganges, British Columbia this 4<sup>th</sup> day of July, 2008

SALT SPRING AND SOUTHERN GULF ISLANDS COMMUNITY SERVICES SOCIETY

[Signature]  
[Signature]

witness to both signatures:

[Signature]  
**EAMON MURPHY**  
Barrister & Solicitor  
#1 - 105 Rainbow Road  
Salt Spring Island, BC  
V8K 2V5

SALT SPRING ISLAND LOCAL TRUST COMMITTEE

[Signature]

**Pauline Brazier**  
Commissioner for Taking Affidavits  
for British Columbia  
1-500 Lower Ganges Road  
Salt Spring Island, British Columbia  
V8K 2N8 Ph (250) 537-9144

[Signature]

**SCHEDULE A  
INITIAL RENTAL RATES AND MAXIMUM INCOME**

Unit Type	Number of Units	Maximum Monthly Rental (2008)	Maximum Annual Income (2006 CNIT published by CMHC)
bachelor	8	\$560	\$23,000
1 bedroom	12	\$667	\$27,500
2 bedroom	5	\$839	\$34,500
3 bedroom	2	\$1,065	\$44,000
Total / Weighted Average	27	\$697	\$28,685



**SCHEDULE B  
QUALIFICATION CRITERIA**

1. Residency and/or employment / livelihood  
Applicants must be a lawful resident of Canada and meet one of the following residency / employment categories:
  - a. Salt Spring current resident for minimum of one year, or
  - b. Commuter to Salt Spring for three-quarter to full-time employment for a minimum two years, or
  - c. Salt Spring Essential Service worker
  
2. Incoming income limits  
The incoming income limits will be the lesser of:
  - a. the CMHC established CNIT (core need income threshold) or alternative as per Paragraph 13; and
  - b. in the event that there is no agreement in place between the Owner and PRHC or BCHMC, the median household income for Salt Spring Island published by Statistics Canada.
  
3. Assets  
Assets of applicant are not to exceed \$50,000, excluding RRSPs and tools of the trade. A reasonable return on assets will be included in income qualification calculations.
  
4. Restrictions on ownership of real estate  
No real estate assets may be owned.  
  
The Owner may consider exceptions on a case-by-case basis in situations where current housing is inadequate for health and safety reasons, or for the family size, composition, and/or income make current living conditions unsuitable. In such cases, applicants must enter into an agreement to sell within a specified time period as a condition of tenancy, and proceeds from such sale should not cause the family to exceed the income or asset limits.
  
5. Demonstrated Need  
Owner's tenant selection process will clearly demonstrate need based on affordability (income limits), with weighted criteria to include such features as disability, inadequacy or safety of current housing situation and urgency.
  
6. Residency  
Owner's selection process will clearly demonstrate priority for applicants meeting the residency and/or employment/livelihood criteria. Should best efforts result in no suitable applications for an available unit, the following categories of residency may then be applied:
  - a. Family member of a Salt Spring current resident, or
  - b. A community member who was formerly a permanent resident on Salt Spring
  
7. Ongoing Eligibility for Residency  
Owner's residency policy will provide for the ability to end a tenancy, within any limits imposed by the Residential Tenancy Act in the event a tenant's financial circumstances improve significantly so as they no longer meet the income or asset qualification criteria, and are not expected to meet the criteria in the foreseeable future. In such circumstances, tenants will be encouraged to find alternate housing. Any determination to end tenancy will be at the discretion of the Owner.

**SCHEDULE C**  
**SALT SPRING ISLAND LOCAL TRUST COMMITTEE**  
**FORM OF STATUTORY DECLARATION**

**CANADA** )  
 ) **IN THE MATTER OF A HOUSING AGREEMENT**  
 ) **with the Salt Spring Island Local Trust Committee**  
**PROVINCE OF BRITISH COLUMBIA** ) **("Housing Agreement")**  
 )

I, \_\_\_\_\_, of \_\_\_\_\_, British Columbia, do solemnly declare:

1. That I am the authorized representative of the Salt Spring and Southern Gulf Islands Community Services Society (the "Society") which is the registered owner of Lot A Section 1 Range 3 East North Salt Spring Island Cowichan District Plan 30218 (the "Land"), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the Land.
3. On the \_\_\_\_\_ day of \_\_\_\_\_, 200\_ the Society created a current list of all the housing units on the Land and the monthly rentals being charged in respect of each of the housing units. That list is available for inspection by the Trust Committee at the Society's offices in accordance with the requirements of the Housing Agreement.
4. The occupants of the units set out on the current list meet the eligibility requirements of the Housing Agreement in relation to their annual household incomes and qualification criteria, or have been granted an exemption by the Trust Committee.
5. There is no agreement between the Society and B.C. Housing Management Commission, the Provincial Rental Housing Corporation, Canada Mortgage and Housing Corporation, or the Regional Housing Trust Fund concerning the use or occupancy of the housing units on the Land, other than those agreements of which copies have previously been provided to the Trust Committee and any additional agreements of which copies are attached to this solemn declaration.
6. 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*.

**SWORN BEFORE ME** at \_\_\_\_\_, in the  
Province of British Columbia, this \_\_\_ day of \_\_\_\_  
\_\_\_\_\_, 200\_.

\_\_\_\_\_  
A Commissioner for Taking Affidavits for British  
Columbia

)  
)  
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\_\_\_\_\_  
) Signature of person making declaration  
)  
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<u>Unit Number</u>	<u>Unit Type</u>	<u>Monthly Rental</u>
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**NOTE:** For reasons of privacy, tenant name and/or identifying information not to be provided with Statutory Declaration, but rather made available to the Islands Trust for Housing Agreement monitoring purposes at the owner's place of business or on-site at the project.