

SALT SPRING ISLAND LOCAL TRUST COMMITTEE

BYLAW NO 388

A BYLAW TO AUTHORIZE A HOUSING AGREEMENT


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

1. The Salt Spring Island Local Trust Committee authorizes the entering into of a Housing Agreement substantially in the form attached to this Bylaw with Long Harbour Ventures Ltd.
2. Any two of the Trustees of the Local Trust Committee are authorized and empowered to execute and deliver the Housing Agreement.
3. This Bylaw may be cited as "Salt Spring Island Housing Agreement Bylaw No. 388, 2003".

READ A FIRST TIME THIS	28 TH	DAY OF	AUGUST	, 2003
READ A SECOND TIME THIS	28 TH	DAY OF	AUGUST	, 2003
READ A THIRD TIME THIS	28 TH	DAY OF	AUGUST	, 2003
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS	10 TH	DAY OF	SEPTEMBER	, 2003
ADOPTED THIS	27 TH	DAY OF	SEPTEMBER	, 2003


SECRETARY


CHAIRPERSON

CERTIFICATE
Certified a true and correct copy of
Bylaw No. 388 for Salt Spring Island.

Deputy Secretary, Islands Trust
December 9, 2003
Date

Housing Agreement and Section 219 Covenant

THIS AGREEMENT DATED FOR REFERENCE THE DAY OF , 2003, is

BETWEEN:

LONG HARBOUR VENTURES LTD., a company incorporated under the laws of the Province of British Columbia and having its office at P.O. Box 10424, Pacific Centre, Suite 1300, 777 Dunsmuir Street, VANCOUVER BC V7Y 1K2

(the "Owner")

AND:

SALT SPRING ISLAND LOCAL TRUST COMMITTEE, a corporation under the *Islands Trust Act*, having an office at 1206-115 Fulford Ganges Road, Salt Spring Island, BC, V8K 2T9

(the "Trust Committee")

WHEREAS:

- A. The Owner has applied to the Trust Committee for rezoning of the Lands to permit the construction of a seniors' supportive housing complex on the Lands, more particularly described in this Agreement;
- B. The Trust Committee may, pursuant to s.905 (1) of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy of housing units located on those lands;
- C. 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;

- D. The Owner and the Trust Committee wish to enter into this Agreement to provide for the construction of Dwelling Units and the occupation of Dwelling Units by Seniors, and agree that this Agreement is both a section 219 covenant under the *Land Title Act* and a housing agreement under Section 905 of the *Local Government Act*; and
- E. 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 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 s.219 of the *Land Title Act*, and as a housing agreement between the Owner and the Trust Committee under s.905(1) of the *Local Government Act*, as follows:

1. **Definitions** - In this Agreement:

"Consumer Price Index" means the All-items Consumer Price Index for British Columbia, as compiled and published by Statistics Canada or its successor;

"Dwelling Unit" means one or more rooms in a building that are used, or constructed so as to be capable of being used, for the residential use of a single household, and containing a common access, one kitchen, and eating, sleeping and living areas;

"Housing Complex" means the Seniors' Supportive Housing Complex to be constructed and maintained under the Agreement;

"Lands" means Lot A, Section 3, Range 3 East, North Salt Spring Island, Cowichan Land District, Plan 8563 except Part in Plan VIP65503.

"New Housing Price Index" means the New Housing Price Index for Victoria, British Columbia, as compiled and published by Statistics Canada or its successor;

"Owner" means the registered owner of the Lands from time to time and any parcels into which the lands are subdivided; and

"Senior" means an individual aged 65 years or over.

2. Construction and Maintenance - The Owner covenants and agrees:

- (a) to design, construct and maintain a Seniors' Supportive Housing Complex on the Lands in accordance with the terms of Salt Spring Island Local Trust Committee Bylaw No. 371 (as it exists upon its adoption) and this Agreement;
- (b) that the Lands must be used only in accordance with this Agreement; and
- (c) that the Lands must be used only for the construction, use and occupation of Dwelling Units for Seniors.

3. Occupancy -

- (1) With the exception of one Dwelling Unit in each of five buildings which may be occupied by the house-manager of the Housing Complex, the Owner must not permit a Dwelling Unit to be occupied as a residence by any person other than an individual who resides in the Dwelling Unit on a full-time basis and who is:
 - (a) a Senior; or
 - (b) living in the Dwelling Unit with a Senior in a spousal relationship, or as a caregiver to the Senior.
- (2) An individual occupying a Dwelling Unit under section 3(1)(b) in a spousal relationship with a Senior may continue to occupy that Dwelling Unit after such time as the Senior has vacated the Dwelling Unit due to death, illness or other causes.

4. Availability and Rental of Dwelling Units - The Owner must:

- (a) rent or lease a Dwelling Unit only on a month-to-month basis or by a lease agreement not to exceed three years, including any rights of renewal; and
- (b) specify in every lease or tenancy agreement the existence of this Agreement and the occupancy restrictions applicable to the Dwelling Unit, and provide to each tenant, upon their request, a copy of this agreement.

5. Maximum Rent -

- (a) The Owner must not charge a Tenant occupying a Dwelling Unit a monthly rent amount (not including charges for support services) greater than the amount set out in the following table, during the first 12-month period of that Dwelling Unit's occupancy:

Size of Unit	Maximum Monthly Rent for First 12-month Period of Occupancy
Studio	\$750.00
1 bedroom	\$910.00
2 bedroom	\$1,070.00

- (b) Prior to the first rental of any Dwelling Unit, the amounts set out in Section 5(a) may be adjusted by the Owner semi-annually from the date of this Agreement in accordance with changes in the New Housing Price Index.
- (c) Despite Section 5(a), the Owner may charge the first tenant of a Dwelling Unit more than the amount set out if the Owner has first received from the Trust Committee written approval of the higher initial rent.
- (d) After the first rental of any Dwelling Unit, the Owners must not increase the rent charge for the Dwelling Unit over any period of time by an amount greater than the percentage increase in the Consumer Price Index during that same period of time, unless the Owner has received from the Trust Committee written approval of the higher rent charge.
- (e) Despite Section 5(d), no rent increase for a Dwelling Unit may be greater than that permitted under the *Residential Tenancy Act*.
- (f) The Owners must provide to the Trust Committee a record of rental charges for each month of occupancy of a Dwelling Unit, as well as sufficient additional information to demonstrate compliance with this Agreement, provided that the Trust Committee must not make such a request more frequently than once in any year.

6. **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.

7. **Statutory Declaration** - Within five days after receiving notice from the Trust Committee, the Owner must deliver to the Trust Committee a statutory declaration, substantially in the form attached as Schedule "A", sworn by the Owner, or a knowledgeable director, officer, or employee of any corporate Owner, under oath before a commissioner for taking affidavits in British Columbia, containing all of the information required to complete the statutory declaration.
8. **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. Further, the Owner agrees that the foregoing provision is reasonable given the public interest in restricting the occupancy of each Dwelling Unit on the Lands in accordance with this Agreement.
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.
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.
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 Dwelling 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 *Commercial Arbitration Act* of British Columbia.
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 905 of the *Local Government Act*, and agrees that the Trust Committee must file in the Land Title Office a notice that the Lands are subject to this Agreement, and that, once the notice is filed, this Agreement is binding on all persons who acquire an interest in the Lands.

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.
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.
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. This Agreement may be terminated or discharged by the Trust Committee without the consent or agreement of the Owner.
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 have been received on the tenth business day after the date of mailing except in the event of an interruption in mail service, when such notice will be deemed to be received only when actually received by the party to whom it is addressed.
17. **Enurement** - This Agreement shall enure to the benefit of and be binding on the Trust Committee and its successors and on the Owner and its heirs, successors, personal representatives, administrators, assignees, and successors in title.
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.
19. **Severability** - Each covenant and agreement contained in this Agreement is, and shall be construed to be, a separate and independent covenant or agreement and the breach of any such covenant or agreement by the Owner shall not discharge or relieve the Owner from its obligations to perform. If any term or provision of this Agreement, or its application to any person or circumstance shall to any extent be 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.

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.
21. **Included Words** - Wherever the singular or the masculine is used in this Agreement, it shall be deemed to include the plural or the feminine, or the body politic or corporate, where the context or the parties so require.
22. **Governing Law** - This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.
23. **Joint Venture** - Nothing in this Agreement shall constitute the Owner as an agent, joint venturer or partner of the Trust Committee or give the Owner any authority or power to bind the Trust Committee in any way.
24. **Time of Essence** - Time is of the essence in this Agreement.
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.
26. **No Fettering of Statutory Discretion** - No consent or approval given by the Trust Committee under this Agreement shall derogate from or bind the Trust Committee in the exercise of any statutory duty, power or discretion.
27. **Release of this Agreement** - The Trust Committee agrees that within a reasonable time after a demand by the Owner, the Trust Committee must execute and deliver to the Owner a discharge of this Agreement, executed in registerable form, discharging this Agreement from the Lands if
 - (a) the Land has not been rezoned to permit the Housing Complex on or before May 31, 2001, or
 - (b) a bylaw of the Trust Committee has come into force repealing the rezoning and restoring the zoning of the Lands to that existing on the reference date of this Agreement, or
 - (c) the Canada Mortgage and Housing Corporation, as the lender, becomes mortgagee in possession.

28. **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.
29. **Deed and Contract** – By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

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

SCHEDULE "A" TO THE HOUSING AGREEMENT

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

I, _____, of _____, do solemnly declare:

1. This declaration is made with respect to the Housing Complex legally or otherwise described as follows:

Lot A, Section 3, Range 3 East, North Salt Spring Island, Cowichan District, Plan 8563 except Part in Plan VIP65503

2. That I am the Owner of the Housing Complex and make this declaration to the best of my personal knowledge.

(or)

That I am the _____ [director, officer, employee] of the Owner of the Housing Complex and [make this declaration to the best of my personal knowledge] [or: have been informed by _____ and believe the statements in this declaration to be true].

3. This declaration is made pursuant to the Housing Agreement in respect of the Housing Complex.

4. The individuals who reside in the Housing Complex meet the requirements specified in Section 3 of the Housing Agreement.

5. 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 _____)
 _____, 20 ____)
 _____)
 A Commissioner for Taking Affidavits in _____)
 the Province of British Columbia)

Signature of person making declaration

END OF DOCUMENT

LAND TITLE ACT
FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

16 MAR 2004 09 44

EW030446

(This area for Land Title Office use)

Page 1 of 11 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Fran Hinton, McCarthy Tétrault LLP
1300-777 Dunsmuir Street, Vancouver, B.C. V7Y 1K2
Phone: (604) 643-7100 Client No. 010452

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID) (LEGAL DESCRIPTION)
005-555-256 Lot A, Section 3, Range 3 East, North Salt Spring Island, Cowichan District, Plan 8563 Except Part in Plan VIP65503

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (PAGE AND PARAGRAPH)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	entire document	Transferee

4. TERMS: Part 2 of this instrument consists of (select one only):

- (a) Filed Standard Charge Terms D.F. Number:
- (b) Express Charge Terms Annexed as Part 2
- (c) Release There is no Part 2 of this instrument.

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

LONG HARBOUR VENTURES LTD. (Inc. No. 654888)

6. TRANSFEREE(S): (including postal address(es) and postal code(s))*

SALT SPRING ISLAND LOCAL TRUST COMMITTEE, a corporation under the *Islands Trust Act*, having an office at 1206 - 115 Fulford Ganges Road, Salt Spring Island, B.C., V8K 2T9

7. ADDITIONAL or MODIFIED TERMS:* NIL

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

USE BLACK INK ONLY

Officer Signature(s)

B. GLENN LEUNG
Barrister & Solicitor
1300 - 777 DUNSMUIR STREET
VANCOUVER, B.C. V7Y 1K2
(604) 643-7108

Execution Date

Y M D

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USE BLACK INK ONLY

Party(ies) Signature(s)

LONG HARBOUR VENTURES LTD. by its authorized signatory(ies):

Print Name: WILTON DERBY

Print Name:


OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

USE BLACK INK ONLY

Officer Signature(s)



Pauline Brazier
Commissioner for Taking Affidavits
for British Columbia
#1206 - 115 Fulford-Ganges Road
Salt Spring Island, British Columbia
V8K 2T9 Ph (250) 537-9144

Execution Date

Y M D

04	03	04
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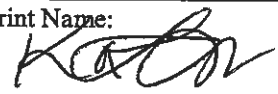
USE BLACK INK ONLY

Party(ies) Signature(s)

SALT SPRING ISLAND LOCAL
TRUST COMMITTEE by its
authorized signatories:




Print Name:


Kimberly Lineger
Print Name:

OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.