

Schedule No. 1

PART 2 - TERMS OF INSTRUMENT

SECTION 219 LAND USE COVENANT, HOUSING AGREEMENT OPTION AND RIGHT OF FIRST REFUSAL

This Agreement dated for reference November 21, 2017

BETWEEN:

SALT SPRING ISLAND LOCAL TRUST COMMITTEE, a Local Trust Committee under the *Islands Trust Act*, R.S.B.C. 1996, c. 239, 200 1627 Fort Street, Victoria, B.C., V8R 1H8

("Local Trust Committee")

AND:

SALT SPRING AND SOUTHERN GULF ISLANDS COMMUNITY SERVICES SOCIETY, a society incorporated under the *Society Act* under number S11466, with an office at 268 Fulford - Ganges Road, Salt Spring Island, B.C., V8K 2N8

("Society")

GIVEN THAT:

- A. The Society is the registered owner of the Land located at Lot 3 Bishops Walk Road on Salt Spring Island, British Columbia, legally described as:

PID: 028-104-269

LOT 3, DISTRICT LOT 24, NORTH SALT SPRING ISLAND,
COWICHAN DISTRICT, PLAN VIP87215;

(the "Land");

- B. The Society wishes to grant to the Local Trust Committee a covenant under s. 219 of the *Land Title Act* and to enter into this Agreement as a housing agreement under s. 483 of the *Local Government Act*;
- C. The entire Land will be sub-divided resulting in 24 strata lots, and the remainder of the Land becoming Common Property of the Strata Corporation. Each of the 24 strata lots being created will become either an Affordable Ownership Unit (as later defined), or an Affordable Rental Housing Unit, (as later defined);
- D. The Local Trust Committee has, by bylaw, authorized the execution of this Agreement and the Society has duly authorized the execution of this Agreement; and
- E. In order to ensure that each Affordable Ownership Unit (as later defined) is occupied and disposed of in accordance with this Agreement, the Society grants to itself a right of first refusal to purchase and an option to purchase the Affordable Ownership Units on the

terms and conditions set out in this Agreement, with the intention that the right of first refusal and option to purchase will be binding on future owners of the Land

This Agreement is evidence that in consideration of \$2.00 paid by the Local Trust Committee to the Society, the Local Trust Committee and the Society agree, as covenants granted by the Society to the Local Trust Committee under s. 219 of the *Land Title Act* and, as an affordable housing agreement between the Society and the Local Trust Committee under s. 483 of the *Local Government Act*, and as a contract and a deed under executed and delivered seal among the Society and the Local Trust Committee, as follows:

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

1.01 Definitions

In this Agreement:

- (a) **"Affordable Housing Development"** means the affordable housing development to be constructed on the Land, comprised of up to 24 Dwelling Units, and associated services, landscaping and accessory structures, of which at least 4 shall be used for Affordable Rental Housing and the remainder shall be Affordable Ownership Units.
- (b) **"Affordable Ownership Unit"** means a privately-owned building strata Dwelling Unit sold with a Maximum First Purchase Price a minimum of 15% below Market Value to a Qualified Person and resale price escalations restricted to a Maximum Resale Price.
- (c) **"Affordable Rental Housing Unit"** means a rental housing Dwelling Unit owned by the Society and rented at a monthly price to households whose Annual Household Income does not exceed 100% of the Local Trust Area median household income as identified by Statistics Canada, or such other level of income as agreed upon by the Local Trust Committee and the Society. Between each subsequent release by Statistics Canada of median household income for the Local Trust Area, the foregoing median household income will be adjusted on a yearly basis by the Yearly CPI Change.
- (d) **"Annual Household Income"** means the combined gross income of all adult members of the household, as shown on line 150 of the preceding year's T1 General Income Tax and Benefit return.
- (e) **"Bona Fide Offer"** means an offer to purchase the Interest in an Affordable Ownership Unit:
 - (i) in writing,
 - (ii) signed by the purchaser, who must be a Qualified Person,
 - (iii) in a form legally enforceable against the Purchaser and which by the time it is submitted to the Society, contains no subject conditions except for the Seller's

Condition or as authorized by Society policy under section 2.05 below,

- (iv) providing for a deposit of \$750.00, such deposit to be paid within 72 hours of the removal or waiver of the Seller's Condition,
 - (v) for a purchase price that does not exceed the Maximum Resale Price,
 - (vi) providing for an obligation on the seller of such Affordable Ownership Unit to remit an amount equal to the Society's Administration Fee to the Society forthwith upon closing, and
 - (vii) providing that the purchaser will not assign or transfer the contract for the purchase of the Affordable Ownership Unit.
- (f) **"Business Days"** means Monday to Friday inclusive except for those excluded days declared by lawful authority as holidays, and excluding any day that the Land Title Office (LTO) is not open for business.
- (g) **"CPI"** means the Consumer Price Index for Victoria, BC published from time to time by Statistics Canada.
- (h) **"CPI Change"** means the percentage change in the CPI between that published immediately prior to the date of the last Disposition of an Affordable Ownership Unit to that published immediately prior to the date of the contract for the next Disposition of an Affordable Ownership Unit.
- (i) **"Dispose"** means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, rent or sublet, divest, release and agree to do any of those things.
- (j) **"Dwelling Unit"** means a dwelling unit as defined in the Salt Spring Island Land Use Bylaw, 1999, as amended or replaced from time to time.
- (k) **"Efforts to Sell"** means the best efforts of the Unit Owner or Lender to sell the Affordable Ownership Unit using all reasonable means, for a period of least of 120 days, including, notifying the Society, notifying prospective purchasers on a waiting list maintained by the Society, listing the Affordable Ownership Unit for sale with a licensed real estate agent, advertising the Affordable Ownership Unit for sale in the local newspapers, posting "for sale" signs on any bulletin boards maintained by the Society or Local Trust Committee for the sale of such units:
- (i) with respect to a Unit Owner,
 - A. to a Qualified Person(s) for a purchase price not to exceed the Maximum Resale Price; and

- (ii) with respect to a Lender,
 - A. to a Qualified Person(s) for a purchase price not to exceed the Lender Price;
 - B. to the Society for a purchase price not to exceed the Lender Price by specifying in writing that it is offering to sell for a period of 15 days the Affordable Ownership Unit to the Society in accordance with section 3.03 clause (c) below.

- (l) **"Lender"** means a mortgagee which has a registered mortgage in the LTO against an Affordable Ownership Unit and that is a bank, credit union or other financial institution established or regulated under any enactment of British Columbia or Canada, or a receiver or receiver-manager acting on behalf of such mortgagee, who has obtained a right to acquire an interest in or has obtained the right to sell such Affordable Ownership Unit by enforcing its security under such mortgage.

- (m) **"LTO"** means the Victoria Land Title Office or its successor.

- (n) **"Market Value"** means the higher of:
 - (i) the average of estimated market selling price provided by three independent licensed Real Estate Agents, or
 - (ii) the appraised value.

- (o) **"Maximum First Purchase Price"** means the purchase price for an Affordable Ownership Unit not to exceed 85% of Market Value, and

- (p) **"Maximum Resale Price"** means the aggregate of:
 - (i) a purchase price for an Affordable Ownership Unit not to exceed the immediately preceding sale price of such Affordable Ownership Unit to the Owner as adjusted by the CPI Change, and
 - (ii) the value of capital improvements as authorized by Society rules/policy under section 2.05 below

- (q) **"Qualified Person"** means an individual or individuals who:
 - (i) is or intends to become an occupier and/or owner of fee simple title of an Affordable Ownership Unit, and
 - (ii) at the time of transfer of title to an Affordable Ownership Unit to him, her or them, meets the criteria set out in section 2.02 below.

- (r) **"Seller's Condition"** means the following clause which shall be inserted into any offer to purchase:

'The obligation of the seller to complete the transaction contemplated herein is subject to the following (the **"Seller's Condition"**):

- (i) the seller notifying the buyer in writing not later than _____ that the SALT SPRING AND SOUTHERN GULF ISLANDS COMMUNITY SERVICES SOCIETY (the **"Society"**) has approved the terms of the sale of the Affordable Ownership Unit to the buyer and
 - (ii) that the Society has decided not to exercise its right of first refusal or option to purchase the Affordable Ownership Unit with respect to this transaction; and
 - (iii) the Seller's Condition is for the sole benefit of the seller and may be satisfied by the seller by notice to the buyer. If the Seller's Condition is not satisfied on or before the date specified for its removal, this agreement will be automatically terminated, the deposit will be returned to the buyer and neither party will have any further obligation to the other under this agreement."
- (s) **"Society's Administration Fee"** means a fee, established by the Society, and as amended from time to time, which shall not exceed 1% of the Maximum Resale Price.
- (t) **"Statistics Canada"** means Statistics Canada or its successor in function.
- (u) **"Unit Owner"** means in respect of an Affordable Ownership Unit, any person(s) who is a registered owner in fee simple to an Affordable Ownership Unit. For clarity, prior to development of the Affordable Ownership Unit, **"Unit Owner"** refers to the Society as owner of the Land.
- (v) **"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.

1.02 Interpretation

Reference in this Agreement to:

- (a) the singular includes a reference to the plural and a reference to the plural includes a reference to the singular,
- (b) a "party" is a reference to a party to this Agreement,
- (c) 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,

- (d) 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, and
- (e) the Local Trust Committee includes a reference to its successors in function, including a municipality.

1.03 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.

1.04 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

2.01 Affordable Housing

Pursuant to section 219 of the *Land Title Act* and section 483 of the *Local Government Act*, the Society covenants and agrees that the Land may be used only in accordance with the following conditions:

- (a) the Land may be used only for construction, use, and occupation of the Affordable Housing Development and accessory uses permitted under Salt Spring Island Land Use Bylaw, 1999, as amended or replaced from time to time, and
- (b) the Land must contain at least 4 units of Affordable Rental Housing.

2.02 Affordable Ownership Unit Eligibility

- (a) Affordable Ownership Units will only be occupied by person or persons whose households meet all of the following criteria:
 - (i) the household's Annual Household Income does not exceed \$75,000.00, or such other level of income as agreed upon by the Local Trust Committee and the Society, and the foregoing qualifying income will be adjusted on a yearly basis by the Yearly CPI Change,
 - (ii) the household does not own any other real estate, and

- (iii) either:
 - i. the household will occupy the Affordable Ownership Unit as their permanent, principal, and sole residence, or
 - ii. the household will rent the Affordable Ownership Unit to a person or persons who satisfy the Affordable Rental Housing Eligibility Requirements set out in section 2.03 below and any policy or rules made pursuant to section 2.05 below.

2.03 Affordable Rental Housing Eligibility

- (a) Affordable Rental Housing Units will only be occupied by person or persons whose households meet all of the following criteria:
 - (i) the household's Annual Household Income does not exceed 100% of the Salt Spring Island Local Trust Area median household income as identified by Statistics Canada, or such other level of income as agreed upon by the Local Trust Committee and the Society, provided that between each subsequent release by Statistics Canada of median household income for the Salt Spring Island Trust Area, the foregoing median household income will be adjusted on a yearly basis by the Yearly CPI Change; and.
 - (ii) the household will occupy the Dwelling Unit as their permanent, principal, and sole residence.
- (b) If for reasons of hardship, the Society cannot comply with the requirements of this Agreement in relation to any Affordable Rental Housing Unit, the Society 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 Local Trust Committee in writing, explain the nature and circumstances of the hardship involved, the reasons why the Society cannot comply, and the hardship that compliance would cause. The Society agrees that the Local 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 Society's request or the hardship involved, and the relief, if any, is to be determined by the Local Trust Committee, in its sole discretion.
- (c) In the event that the Society has not, by its own best efforts, rented any Affordable Rental Housing Unit to persons who are qualified under the terms of this Agreement to occupy the units, the Society must identify to the Local Trust Committee which Affordable Rental Housing Units are, or are becoming, vacant and must make best efforts to rent the units to qualified applicants that meet the criteria established in this section from any waitlist maintained by the Society. The Local Trust Committee agrees that the Society is under no obligation to select any applicant from the waitlist that the Society deems in its sole discretion to be not suitable for residency on the Land.

2.04 Rental Rates

In the event that there is no agreement in place between the Society and the Local Trust Committee restricting the rental rates that apply to the Affordable Rental Housing Units, it is a condition of this Agreement that monthly rental rates be limited to:

- (a) One twelfth of 30% of the yearly median household income for the Local Trust Area published by Statistics Canada provided that between each subsequent release by Statistics Canada of median household income for the Local Trust Area, the foregoing median household income will be adjusted on a yearly basis by the Yearly CPI Change, so long as the monthly rental rate provides revenues that are sufficient to cover reasonable operating costs and servicing of debt. The Society may charge rental rates that exceed the maximum permitted by this section only if it demonstrates that such rental rate increases are required and receives written permission to make these increases from the Local Trust Committee. Extraordinary items that could permit such a monthly rental rate increase include, but are not limited to, use of substantial building repairs, unforeseen capital levies for utilities and services, or property taxes. For clarity, this limitation does not apply to telephone or other telecommunications, or gas or electricity utility fees or charges.

2.05 Policies/Rules and Regulations/Administration by Society

- (a) The Society is authorized to make rules, regulations and policies necessary to fully implement and achieve the policy goals set out in this Agreement. The issues to be dealt with include, but are not limited to, the following:
 - (i) establishing and maintaining a wait list of potential owners or renters,
 - (ii) establishing, administrating and enforcing a resale policy applicable to Affordable Ownership Units,
 - (iii) establishing, administrating and enforcing rental policy applicable to Affordable Ownership Units or Affordable Rental Housing Units,
 - (iv) establishing, administrating and enforcing policies relating to capital improvements made by owners to Affordable Ownership Units,
 - (v) setting and collecting any fees and special levies as needed, and
 - (vi) establishing and charging an administration fee to pay for the above.
- (b) The Society is authorized to amend existing rules, regulations and policies, repeal existing rules, regulations and policies and enact new rules, regulations and policies as necessary to fully implement and achieve the requirements set out in this Agreement.

2.06 Monitoring and Reporting to the Local Trust Committee

- (a) The Society will monitor and facilitate the use, occupancy, ownership, re-sale and transfer of the Affordable Ownership Units as set out in this Agreement and the Society will provide reports to the Local Trust Committee, providing a profile of the Unit Owner of each Affordable Ownership Unit in reasonable detail, including the household income and family size and such other matters as the Local Trust Committee may reasonably require.
- (b) The Society must deliver to the Local Trust Committee once each year, a completed statutory declaration, substantially in the form attached as Schedule A, sworn by the Society. Additionally, the Local Trust Committee may request this statutory declaration up to four times in any calendar year, and the Society must complete and supply the completed statutory declaration within 14 calendar days of receiving a request from the Local Trust Committee. The Society irrevocably authorizes the Local Trust Committee to make reasonable inquiries it considers necessary in order to confirm compliance with this Agreement.

ARTICLE 3 – SUBSEQUENT SALES OF AFFORDABLE OWNERSHIP UNITS

3.01 Sale by Mutual Agreement

At any time, a Unit Owner and the Society may agree, by mutual agreement in writing, that the Society may purchase the Affordable Ownership Unit from the Unit Owner for the Maximum Resale Price.

3.02 Non Bona Fide Offers/Non-Qualified Persons

Except as specifically permitted below, sales of Affordable Ownership Units, by way of offers that are not Bona Fide Offers, or to persons who are not Qualified Persons, are prohibited.

3.03 Right of First Refusal

The Unit Owner hereby grants to the Society a right of first refusal (the “Right of First Refusal”) to purchase its Affordable Ownership Unit as follows:

- (a) **Selling Affordable Ownership Units to a Qualified Person**
 - (i) Once the Unit Owner receives a Bona Fide Offer from a Qualified Person to purchase an Affordable Ownership Unit that he or she is prepared to accept, then the Unit Owner will offer to sell the Affordable Ownership Unit to the Society on the terms that are set out in the Bona Fide Offer, by giving to the Society a notice in writing (the "Notice"), a template of which is attached to this Agreement as Schedule B, which shall be attached and become part of the Bona Fide Offer. The Society will then have the exclusive right for 15 Business Days (the “Election Period”) from the date on which the Society receives from the Unit

Owner the Notice and copy of the Bona Fide Offer, which to elect to purchase the Affordable Ownership Unit on its own behalf or on behalf of such Qualified Person as the Society may direct.

- (ii) If the Society wishes to exercise this Right of First Refusal, the Society will give the Unit Owner written notice of such exercise on or before the end of the Election Period. If the Society exercises this Right of First Refusal, the Society shall have the right to assign the Bona Fide Offer to a third party Qualified Person of its choice. The purchase and sale will complete on the date chosen by the Society, acting reasonably, such date not to be later than thirty Business Days after the Society gives the Unit Owner notice of its intention to exercise the Right of First Refusal, unless otherwise agreed to by the Unit Owner and the Society.
- (iii) The Society shall only exercise its Right of First Refusal hereunder if the Society considers:
 - (A) the purchaser under the Bona Fide Offer not to be a Qualified Person;
 - (B) that the purchase price in the Bona Fide Offer is greater than the Maximum Resale Price; or
 - (C) that if for any other reason the offer is not a Bona Fide Offer.
- (iv) If the Society does not exercise its Right of First Refusal with respect to a particular Bona Fide Offer pursuant to this section and within the Election Period, the Society's rights under this Right of First Refusal with respect to that particular Bona Fide Offer will be waived, but only if the terms of the sale between the Unit Owner and the purchaser are in strict compliance with the terms stated in the Bona Fide Offer, and if the Owner complies with the following requirements:
 - (A) the Unit Owner paying the Society's Administration Fee by the closing date of such purchase and sale (the "Closing Date"); and
 - (B) the Unit Owner delivering to the Society at least 5 Business Days before the Closing Date:
 1. written proof, satisfactory to the Society, in its sole discretion, that the contract continues to be a Bona Fide Offer and the purchaser continues to be a Qualified Person
 2. a certified true copy of the vendor's statement of adjustments for the sale of the Affordable Ownership Unit; and
 3. an assumption agreement executed by the purchaser assuming all

of the obligations of the Unit Owner in this Agreement, the form and substance of which shall be satisfactory to the Society and the Local Trust Committee, acting reasonably; and

4. such further evidence as the Society may reasonably require to confirm the purchase price of the Affordable Ownership Unit and to confirm that the purchaser is a Qualified Person;
- (v) upon receipt of the documents described in subsection 3.03(a)(iv), the Society shall execute and deliver a registrable waiver of right of first refusal at least 1 Business Day prior to the Closing Date, which waiver may be delivered to the seller's solicitor on his or her undertaking to pay to the Society the Administration Fee on the Closing Date; and
 - (vi) if the sale and purchase does not complete on the terms and conditions set out in the approved Bona Fide Offer, then the Society's waiver of its Right of First Refusal will be void, and the Right of First Refusal will continue to be binding between the Unit Owner and the Society on the terms and conditions of this Agreement.
- (b) **Selling Affordable Ownership Units to a Non-Qualified Person**
- (i) If after making Efforts to Sell, the Unit Owner does not receive a single Bona Fide Offer, whether for the Maximum Resale Price, or a price less than the Maximum Resale Price, the Unit Owner may accept an offer to sell the Affordable Housing Unit that is a Bona Fide Offer in all respects except that the purchaser is a not a Qualified Person (hereafter called the "NQ Offer").
 - (iii) Once the Unit Owner receives a NQ Offer that it is prepared to accept, then the Unit Owner will offer to sell the Affordable Ownership Unit to the Society on the terms that are set out in the NQ Offer, by giving to the Society a notice in writing (the "Notice"), a template of which is attached to this Agreement as Schedule B, which shall be attached and become part of the NQ Offer. The Society will have the exclusive right for 15 Business Days (the "Election Period") from the date on which the Society receives from the Unit Owner the Notice and copy of the NQ Offer, with which to elect to purchase the Affordable Ownership Unit on its own behalf or on behalf of such Qualified Person as the Society may direct.
 - (iv) If the Society wishes to exercise this Right of First Refusal, the Society will give the Unit Owner written notice of such exercise on or before the end of the Election Period. If the Society exercises this Right of First Refusal, the Society shall have the right to assign the NQ Offer to a third party Qualified Person of its choice. The purchase and sale between the Unit Owner and the Society will complete on the date chosen by the Society, acting reasonably, such date not to be later than thirty Business Days after the Society gives the Unit Owner notice of its intention to accept the NQ Offer, unless otherwise agreed to by the Unit

Owner and the Society.

- (v) If the Society does not exercise its Right of First Refusal with respect to a particular NQ Offer pursuant to this section 3.03(b) and within the Election Period, the Society's rights under this Right of First Refusal with respect to that particular NQ Offer will be waived, but only if the terms of the sale between the Unit Owner and the purchaser are in strict compliance with the terms stated in the NQ Offer, and if the Owner complies with the following requirements:
 - A. the Unit Owner paying the Society's Administration Fee by the closing date of such purchase and sale (the "Closing Date"); and
 - B. the Unit Owner delivering to the Society at least 5 Business Days before the Closing Date:
 - 1. a certified true copy of the vendor's statement of adjustments for the sale of the Affordable Ownership Unit; and
 - 2. an assumption agreement executed by the purchaser assuming all of the obligations of the Unit Owner in this Agreement, the form and substance of which shall be satisfactory to the Society and the Local Trust Committee, acting reasonably; and
 - 3. such further evidence as the Society may reasonably require to confirm the purchase price of the Affordable Ownership Unit.
- (vi) Upon receipt of the documents in subsection 3.03(b)(v)(B) above, the Society shall execute and deliver a registrable waiver of its Right of First Refusal at least one Business Day prior to the Closing Date, which waiver may be delivered to the seller's solicitor on his or her undertaking to pay to the Society the Society's Administration Fee on the Closing Date.
- (vii) If the sale and purchase does not complete on the terms and conditions set out in the approved NQ Offer, then the Society's waiver of its Right of First Refusal will be void, and the Right of First Refusal will continue to be binding between the Unit Owner and the Society on the terms and conditions of this Agreement.

3.04 Option to Purchase

- (a) The Unit Owner hereby grants to the Society the sole and exclusive irrevocable option to purchase each Affordable Ownership Unit for the Maximum Resale Price (the "Option") for the Maximum Resale Price which may be exercised by the Society, with respect to a particular Affordable Ownership Unit at any time:
 - (i) following a breach of any of the Unit Owner's obligations contained herein;

- (ii) if the Unit Owner is purporting to sell or transfer his or her interest in such Affordable Ownership Unit for a price greater than the Maximum Resale Price or to a person or persons other than Qualified Persons, except as provided for in Section 3.03;
 - (iii) if such Affordable Ownership Unit is owned, occupied or used by a person who is not a Qualified Person or part of the Qualified Person's household, except as provided for in section 2.02; or
 - (iv) if a Lender becomes legally entitled to conduct the sale of such Affordable Ownership Unit.
- (b) With respect to subsections 3.04(a)(i), (ii), and (iii), the Completion, Possession and Adjustment Dates will be as directed by the Supreme Court of British Columbia. The Unit Owner shall provide vacant possession.
- (c) With respect to subsection 3.04(a)(iv), the Society shall have 15 Business Days (the "Election Period") from the date on which the Society receives from the Lender a copy of the entered Order of the Supreme Court of British Columbia granting the Lender conduct of sale of the Affordable Housing Unit within which to elect to purchase the Affordable Ownership Unit on its own behalf or on behalf of such Qualified Person as the Society may direct, which purchase and sale will complete on the date chosen by the Society, acting reasonably, such date not to be later than thirty Business Days after Society gives the Lender notice of its intention to exercise the Option.

If the Society wishes to exercise this Option, the Society will give the Lender written notice of such exercise on or before the end of the Election Period. If the Society exercises this Option, the Society shall have the right to assign it rights under the Option to a third party Qualified Person of its choice.

If the Society does not exercise its Option to purchase the Affordable Ownership Unit, the Society's rights under this Option with respect to that particular foreclosure will be waived, but will remain on title with respect to all subsequent dealings.

- (d) After normal adjustments (i.e. property taxes, water taxes, sewer taxes, and strata fees) the Society shall be entitled to deduct from the Maximum Resale Price any monies owing to it by the Unit Owner, all costs incurred to repair any damage to the Affordable Ownership Unit, any monies owing by the Unit Owner for any type of tax relating to the Affordable Ownership Unit, strata fees or special levies, and all legal fees, disbursements and bailiff fees incurred in exercising its Option. All remaining monies will be paid as directed by the Supreme Court of British Columbia.

3.04 Duration of Option and Right of First Refusal

The Option and the Right of First Refusal granted by this Agreement are effective until the date that is 80 years less a day after the date on which the Form C referring to this Agreement is deposited for registration in the Land Title Office.

3.05 Sale by Lender

Notwithstanding any other provision in this Agreement, if a Lender at any time becomes legally entitled to conduct the sale of an Affordable Ownership Unit and the Lender has, after being legally entitled to conduct such sale, made Efforts to Sell, and notwithstanding such Efforts to Sell has been unable to sell the Affordable Ownership Unit to a Qualified Person(s) or the Society pursuant to a Bona Fide Offer for a price not to exceed the greater of:

- (i) the Maximum Resale Price; and
 - (ii) the amount outstanding under its mortgage registered on the Affordable Ownership Unit (inclusive of recoverable costs);
- (the "Lender Price");

the Lender may sell the Affordable Ownership Unit to a purchaser who is not a Qualified Person for the Lender Price, provided that such price includes the payment by the purchaser of the Society's Administration Fee, and, notwithstanding section 2.02, may be occupied by the purchaser and their household, but this Agreement will apply to any subsequent Dispositions of the Affordable Ownership Unit.

If after a further period of 60 days of making Efforts to Sell, but to any purchaser whether a Qualified Person or not, and notwithstanding such Efforts to Sell, the Lender has been unable to sell the Affordable Ownership Unit at the Lender Price, the Lender may sell the Affordable Ownership Unit at any price to a person who is not a Qualified Person, provided that such price includes payment by the purchaser of the Society's Administration Fee and within a reasonable time after the Society receiving written request therefor following the completion of such purchase and sale of the Affordable Ownership Unit, the Local Trust Committee and the Society will execute a registerable discharge of this Agreement.

ARTICLE 4 - STRATA CORPORATION BYLAWS

4.01 Agreement Binding Upon Strata Corporation

This Agreement will be binding upon all strata corporations created upon the strata title subdivision of the Land or any building on the Land.

4.02 No Bylaws Restricting Use for Rental Accommodation

No strata corporation shall pass any bylaws or rules preventing, restricting or abridging the use or availability of any Affordable Rental Housing Unit as a rental unit.

4.03 No Force and Effect

Any strata corporation bylaw or rule that prevents, restricts, or abridges the right to use or availability of an Affordable Rental Housing Unit as a rental unit will have no force and effect.

ARTICLE 5 - GENERAL

5.01 Public Interest Issues

The Society agrees that given the public interest:

- (a) in effective protection against breaches of this Agreement, the public interest strongly favours an order for specific performance or a prohibitory or mandatory injunction in favour of the Local Trust Committee in respect of any breach by the Society of this Agreement, and
- (b) in ongoing use of the Land for the Affordable Housing Development and affordable rental housing on Salt Spring Island, the public interest weighs strongly against any modification, cancellation or discharge of this Agreement under s. 31 of the *Property Law Act*.

5.02 No Effect on Laws or Powers

This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the Local Trust Committee under any enactment or at common law, including in relation to the use or subdivision of the Land,
- (b) impose on the Local Trust Committee any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement,
- (c) affect or limit any enactment relating to the use or subdivision of the Land, or
- (d) relieve the Society from complying with any enactment, including in relation to the use or subdivision of the Land.

5.03 Waiver

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

5.04 Severance

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

5.05 Binding Effect

This Agreement binds the parties to it and their respective successors, assigns, lessees, sub-lessees, heirs, executors and administrators.

5.06 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.

5.07 Owner's Obligations

The Society agrees that it is bound by this Agreement by virtue of its execution and delivery by the Local Trust Committee, and also by virtue of the fact that this Agreement constitutes a covenant under s. 219 of the *Land Title Act* and a housing agreement under s. 483 of the *Local Government Act* registered in priority to any financial charges registered on title to the Land.

5.08 Liability during Ownership

The Society is only liable for breaches of this Agreement that occur while the Society is the registered owner of the Land.

5.09 Priority

The Society must do everything necessary at its expense to secure priority of registration and interest for this Agreement over all registered and pending liens, charges and encumbrances of a financial nature against the Land.

5.10 Notice of Housing Agreement

For clarity, the Society acknowledges and agrees that:

- (a) this Agreement constitutes both a covenant under section 219 of the *Land Title Act* and a housing agreement entered into under section 483 of the *Local Government Act*;
- (b) the Local Trust Committee is required to file a notice of housing agreement in the LTO against title to the Land; and
- (c) once such a notice is filed, this agreement binds all persons who acquire an interest in the Land as a housing agreement under section 483 of the *Local Government Act*.

This Agreement was entered into as authorized by bylaw of the Local Trust Committee, being Salt Spring Island Housing Agreement Bylaw No. 506, 2017, finally adopted on _____

_____.

As evidence of their agreement to be bound by the above terms, the Society and the Local Trust Committee 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
Statutory Declaration**

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

TO WIT:

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

1. I am the owner of _____ (the "Affordable Rental Housing Unit"), 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 Affordable Rental Housing Unit.
3. For the period from _____ to _____ the Affordable Rental Housing Unit was occupied only by persons eligible to occupy the Affordable Rental Housing Unit (as defined in section 2.03 of the Housing Agreement) whose names and current addresses appear below:

Name, addresses and phone numbers of eligible persons:

4. If, under 3 above, I am not shown as an occupant of the Affordable Rental Housing Unit, the rent charged each month for the Affordable Rental Housing Unit is as follows:
 - a. the monthly rent on the date 365 days before this date of this statutory declaration: \$_____ per month;
 - b. the rent on the date of this statutory declaration: \$_____; and
 - c. the proposed or actual rent that will be payable on the date that is 90 days after the date of this statutory declaration: \$_____.
5. I confirm that I have complied with all of the obligations of the Unit Owner (as defined in the Housing Agreement) under the Housing Agreement.
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 *Evidence Act* (British Columbia).

DECLARED BEFORE ME at the)
_____, British Columbia, this _____)
day of _____)
_____)
A Commissioner for taking Affidavits for British)
Columbia

Schedule B
Form of Notice – Affordable Housing Covenant

To the SALT SPRING AND SOUTHERN GULF ISLANDS COMMUNITY SERVICES SOCIETY, (the "Society").

I/We, _____ and _____, the owners, ("Owners"), of the following piece of real property:

Parcel Identifier: _____ - _____ - _____
Legal Description: Strata Lot _____, District Lot 24, North Salt Spring Island,
Cowichan District, Strata Plan _____
(the "Property")

have entered into a Contract of Purchase and Sale, (the "Contract") to sell the Property.

As required by a Covenant, Right of First Refusal and Option to Purchase, (collectively called the "Affordable Housing Covenant"), registered against the title of the Property, the Contract contains the "Seller's Condition" as defined in the Affordable Housing Covenant. A copy of the Contract is enclosed with this Notice.

Pursuant to Section 3.03 or 3.04 of the Affordable Housing Covenant, (as applicable), and as required by the Affordable Housing Covenant, the Owners are giving the Society Notice of their intent to sell the Property on the terms and conditions set out in the attached Contract. The Owners request that the Society waive, with respect to the Contract, the Society's Right of First Refusal and Option to Purchase so that the attached Contract may complete.

Dated this _____ day of _____, 20____.

Owner #1

Owner #2 (if applicable)