

DATE OF MEETING: May 30, 2022
TO: Mayne Island Local Trust Committee
FROM: Narissa Chadwick, Island Planner
Southern Team
COPY: Robert Kojima, Regional Planning Manager
SUBJECT: Affordable Housing Rezoning

RECOMMENDATION

1. That the Mayne Island Local Trust Committee request that a covenant under section 219 of the *Land Title Act* be granted by the registered owners of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 to address water treatment and monitoring, location of development on Lot 2 and 3, wetland protection, areas to be preserved, site remediation and development restrictions on Lot 2 prior to the adoption of the rezoning bylaws.
2. That the Mayne Island Local Trust Committee request that the covenant under section 219 of the *Land Title Act* be granted by the registered the owners of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 include the revised site plan identified as the “New Site Plan” in the May 20,2022 staff report.
3. That the Mayne Island Local Trust Committee endorse draft Housing Agreement changes to the structure of rental rates as proposed by the Mayne Island Housing Society.

REPORT SUMMARY

This report provides background on this project to date, introduces materials recently received from the MIHS including a new site plan and water management plan and provides summary and analysis of changes to the draft Section 219 Covenant and the draft Housing Agreement proposed by the MIHS.

BACKGROUND AND ANALYSIS

This project, to rezone the subject property from the Rural zone to a new zone that would permit multi-family residential and the subdivision of land for the creation of the new parcel for the multi-family residential housing targeted to be “affordable” was initiated by the Mayne Island Housing Society (MIHS) in 2020. Since then the MIHS has undertaken studies and provided information requested by the LTC. This includes:

- Assessment of Septic Feasibility
- Hydrogeologist Report
- Arborist Report
- Biologist Report
- Information Required for Housing Agreement

- Hydrologist Report/Wetland Restoration Report
- Revised legal survey to include revised proposed lot boundaries
- Site plan drawn to scale identifying location of proposed buildings, structures, clearings
- Site development Plan incorporating ecologist, arborist and hydrologist's recommendations
- Cost recovery agreement for Covenant and Housing Agreement

As a result of the family members of the current owner of the land, who hold power of attorney, requesting a pause to the process the Mayne LTC passed the following resolution at their November 2022 LTC meeting:

“that the Mayne Island Local Trust Committee direct that application MA-RZ-2020.1(MIHS) be placed in abeyance until such time as the family of the property owner, who currently hold Power of Attorney over the property, indicate that they would like the application to proceed or that the Local Trust Committee otherwise directs, and that staff follow up with the family members holding Power of Attorney within three months and report back to the Local Trust Committee”.

Upon receiving a message from the family of the property owner's lawyer identifying their support for the continuation of the project the following resolution was passed at the February 28, 2022 LTC meeting:

“that the Mayne Island Local Trust Committee take application MA-RZ-2020.1 (MIHS) out of abeyance”.

At the February 28, 2022 meeting a summary of comments from the APC following their meetings September 22, October 6 and October 13 was also provided. The LTC had requested APC review at their June 2021 regular meeting.

Staff note that the October 25, 2021 Staff report (Attachment 1) which contained the draft Housing Agreement, Draft Covenant and Draft Bylaws 181 and 183 had been shared publicly as part of the October 25, 2021 agenda package but not discussed with the LTC as the October 25, 2021 meeting had been cancelled due to weather. The report had been scheduled to be discussed at the November 2021 meeting. However, the request for a pause in the processing of the application resulted in it not being brought back to the LTC at that time.

Since November 2021, the MIHS has been working to address some of the issues with the draft Housing Agreement and the draft covenant. They have also done additional work related to water management planning and water level monitoring and provided a revised site plan. Recent documents provided by the MIHS include:

New Site Plan
Driveway Profile
Water Management Plan

Water Monitoring Report
Proposed revisions to the Housing Agreement
Proposed revisions to the Section 219 Covenant

New Site Plan (Attachment 2)

Responding to neighbour concerns regarding the proximity of the previously proposed circular driveway to the property line. The new site plan removes the circular driveway and proposes a different approach to the lot from the road. For comparison the new site plan and the previous site plan have been included below (Figure 1 and Figure 2). The new site plan is included in Attachment 2 and a driveway profile is included in Attachment 3.

Staff are supportive of the new site plan as it addresses the concerns regarding the driveway's proximity to the property line. Staff recommend the new site plan be included in the Covenant.

Figure 1: New Site Plan

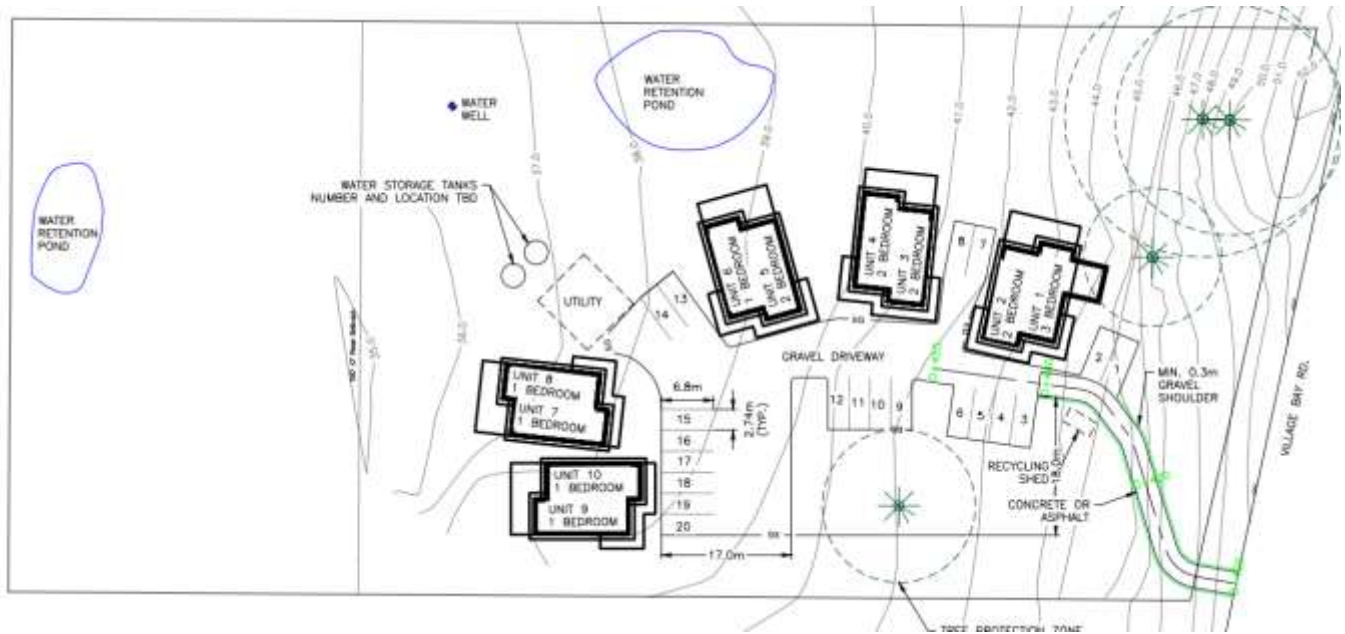
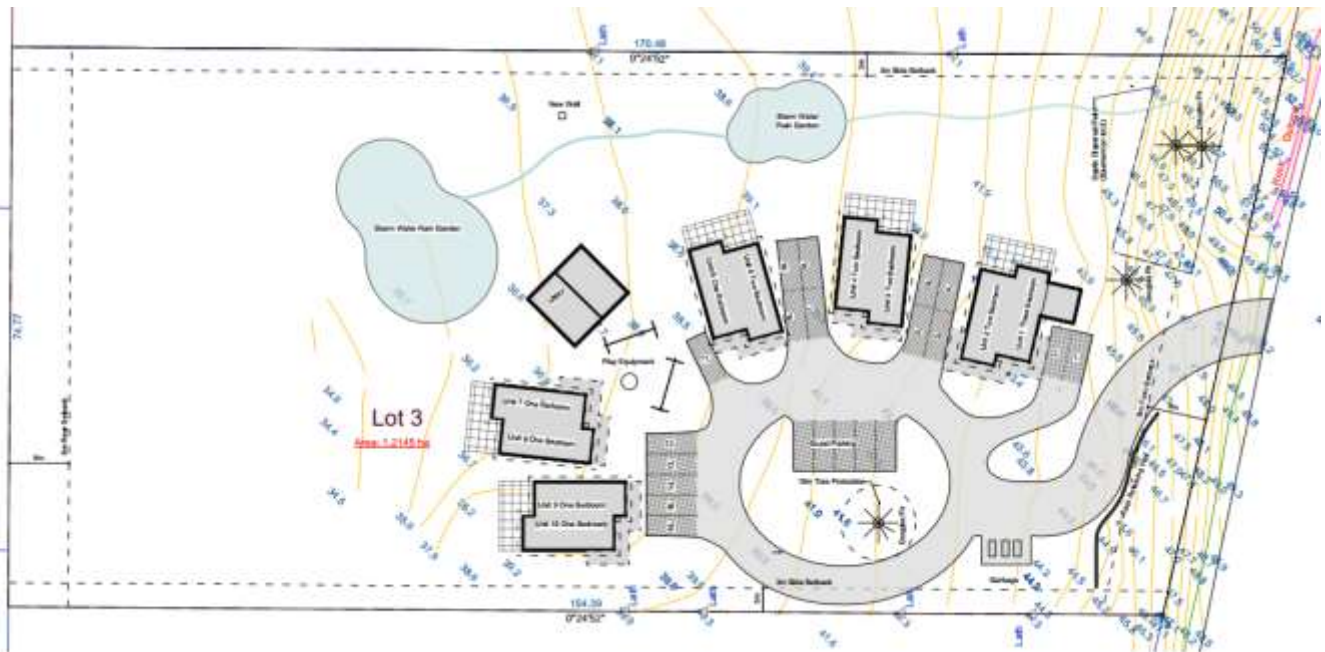


Figure 2: Previously Proposed Site Plan



LTC Question: Do you support the proposed new site plan?

Water Management Plan and Water Level Monitoring Report

To address concerns raised related to water demand requirements and storm water management, the MIHS hired MSR Solutions Inc to investigate water yield, explore storm water runoff and provide direction to MIHS with respect to mitigation measures.

The Water Level Monitoring Report addresses water availability. The datalogger was set up to detect any potential water level variation from neighbouring pumping wells and tidal effects. As identified in the Water Level Monitoring Report a large dataset of over 20,160 water level readings was generated for the period between September 30th and February 17th.

The Water Management Plan and Water Level Monitoring Report have both been shared with the LTC. It has been forwarded to the Freshwater Specialist for review. Once it has been reviewed, these reports as well as analysis and staff recommendations will be shared in a future staff report

Housing Agreement (Attachment 5)

At their November 30th, 2020 meeting the LTC passed a resolution requiring *“that a housing agreement related to the use of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 be adopted prior to the adoption of the rezoning bylaws”*. At the June 21, 2021 meeting staff identified that a draft housing agreement had been sent for legal review, initial comments were received and discussed with staff and further revisions were made. The revised housing agreement was then provided to the MIHS for their review and included in the October 25, 2021 staff report.

As identified in the October 25, 2021 staff report MIHS had identified two major issues with the housing agreement: 1) Sean McHugh’s name on the agreement 2) The need for more flexibility in defining rental unit rates. The MIHS’s proposed revision to the draft housing agreement addresses these two concerns and includes a few other proposed changes as identified below.

Removal of Sean McHugh/McHugh family name as party to agreement:

A housing agreement must be between the owner of the property and the LTC. Removing Sean McHugh/the McHugh family name from the housing agreement would require deferring the adoption of the agreement until after the transfer of ownership. The October 25, 2022 staff report identified that the mechanism for deferring adoption of the housing agreement would be to grant a covenant to the LTC, prior to adoption of rezoning, restricting any development or registration of a subdivision until the housing agreement is adopted and notice registered on title. The housing agreement would be attached to the covenant. The MIHS’s proposed revisions to the Housing Agreement and Section 219 covenant reflects this approach (See Attachment 5 and 6).

Staff had previously recommended the existing process, to have the housing agreement adopted prior to the adoption of the rezoning bylaw and continue to support this position based on the following:

- The LTC has passed a resolution requiring the Housing Agreement be adopted prior to adoption of the rezoning bylaws.
- Adopting the Housing Agreement after the subdivision will require a bylaw adoption process adding additional process, time and potential cost.
- The adoption of the Housing Agreement later in the process creates uncertainty for the LTC as well as the Housing Society as the LTC members may have changed, community support may shift, as well as MIHS membership.

- Having the name of the current property owner on the Housing Agreement does not place a burden on the current property owners as it does not require them to provide the housing.

Flexibility in Defining Rental Rates:

The draft housing agreement shared in the October 2022 staff report identifies the rental unit types as they relate to BC Housing's required mix of rental rates as follows:

20% of units will be Deep Subsidy Units for Deep Subsidy Income

50% of units will be Rent Geared to Income Units for Low Income households

30% of units will be Market Units for Moderate Income households

The MIHS is requesting a more flexible approach to defining rental rates. As identified in a letter to the LTC from the MIHS's consultant Eleni Gibson on May 6 (Attachment 4) the MIHS wants a Housing Agreement "that provides the society with enough flexibility to remain eligible for a variety of funding options, while still ensuring that a minimum level of affordability is secured".

The rental structure in the proposed revision to the Housing Agreement would be as follows:

- a) Rent for 1-bedroom Rental Housing Units in a calendar year will on average be at or below 30% of the average of:
 - a. Income of One-Person Households; and
 - b. Income of Couples without Children.
- b) Rent for 2 and 3-bedroom Rental Housing Units in a calendar year will on average be at or below 30% of the average of:
 - a. Income of Couples with Children; and
 - b. Income of Lone-Parent Families.

As Gibson's report identifies this approach to rental rates has recently been approved for two affordable housing projects on Galiano Island.

Staff are supportive of this approach. It is important that the Housing Agreement provide flexibility as funding programs evolve to address housing affordability needs. Staff are also supportive of related changes to the Housing Agreement which connect income groups to Stats Canada Census categories. This is an effective and reliable way to determine shifts in income levels that may influence rental rates in the future.

Staff note that there were some other changes requested to the Housing Agreement related to details such as number of units, sharing rental agreement with LTC, monitoring and reporting to the LTC, indemnity, release and dispute resolution. Staff suggest these changes remain in the draft Housing Agreement that is sent for legal review. Staff will provide further comments following legal review.

All proposed changes are highlighted in the revised Housing Agreement provide by the MIHS and contained in Attachment 5. The Housing Agreement, containing all the elements the LTC would like to retain will be sent for legal review before being brought back to the LTC

The Section 219 Covenant (Attachment 7)

The draft Covenant provided in the October 25, 2021 staff report focussed on the following key areas:

- **Water quality** – concerns identified in the hydrogeologist’s report requiring the installation of a water management system are addressed.
- **Lot 2 building location, site remediation and ecosystem protection** – identified on Schedule A containing subdivision plan .
- **Lot 2 building restriction** – covenant restricts building on lot 2 until *“the Owner of Lot 3 has completed the construction of, and received any occupancy permit required by the Capital Regional District for, at least XXX units of affordable housing on lot 3”*
- **Building Footprint on Lot 3** – identified in Subdivision Plan in Schedule A.
- **Lot 3 Ecological Protection and Restoration** – draft covenant requires that MIHS adhere to all recommendations made in the *“Ecological Assessment Report”* prepared by Keith Erikson and dated September 21st, 2020 and the *“Wetland Restoration Design Report”*, prepared by Robin Annschild and dated March 8, 2021”.

The MIHS’s proposed revision of the Covenant focusses on the following:

Adding Housing Agreement to the Covenant

As identified above, the MIHS would like to attach the Housing Agreement to the covenant and make it a condition of building and registration of subdivision to avoid requiring Sean McHugh or the McHugh family having to be party to the Agreement. The clause that has been proposed by the applicant is as follows:

5. *If the Land is subdivided in accordance with the Subdivision Plan, the Owner of Lot 3 shall not start building, land alteration, construction, or development on Lot 3 unless and until the Owner of Lot 3 executes the Housing Agreement with the Local Trust Committee.*

As indicated earlier in this report, this approach will increase process, time and create uncertainty for the LTC and the MIHS.

Limiting the time that Lot 2 cannot be built on

As identified above, the original covenant restricts building on Lot 2 until construction of a certain amount of units on Lot 3 have been provided with occupancy permits. MIHS proposes changing this restriction to 5 years.

“The Owner of Lot 2 shall not start the construction of any building or structure on Lot 2 until the Owner of Lot 3 has completed the construction of, and received any occupancy permit required by the Capital Regional District for, at least XXX units of affordable housing, on Lot 3. This restriction shall expire five (5) years after the date when the Land is subdivided in accordance with the Subdivision Plan”.

Staff does not support this approach as it does not address the LTC’s interests in ensuring that the affordable housing is provided before Lot 2 can be build on.

Removal of Lot 1 from the Covenant

As the property is yet to be subdivided the originally proposed Covenant would be registered on the lot as it is currently, however the restrictions would only apply to proposed Lots 2 and 3. The revision proposed by MIHS includes the following:

“This Agreement burdens and charges all of the Land and the parcels for Lots 2 and 3 into which it is subdivided by any means and any parcel into which the Land is consolidated”.

Staff have no immediate concerns with this approach but will need legal advice before supporting.

In addition to the changes identified above there is proposed restructuring of content (addition of definitions section) and other changes related to LTC oversight. Staff suggest these changes remain in the draft Covenant that is sent for legal review. Staff will provide further comments following legal review.

Staff All of the proposed changes have been highlighted in the MIHS’s proposed Covenant contained in Attachment 7. The revised draft covenant containing the elements of the proposed revision that the LTC supports will be sent for legal review.

ALTERNATIVES

1. Read Bylaws for the First time

The OCP and LUB Bylaw amendments supporting the rezoning were presented in the October 25, 2022 staff report (see Attachment 1). Should the LTC choose to read these for the first time the resolution wording supporting next steps in the process, as provided in the October 25, 2022 staff report, is as follows:

That the Mayne Island Local Trust Committee Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” be read for a first time.

That the Mayne Island Local Trust Committee Bylaw No. 183, cited as as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021” be read for a first time.

That the Mayne Island Local Trust Committee request staff to schedule a Community Information Meeting concurrently with the Public Hearing for Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” and Bylaw No. 183, cited as as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”.

That the Mayne Island Local Trust Committee request staff to schedule a Public Hearing for Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” and Bylaw No. 183, cited as as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”.

2. Request Further Information

The LTC may request further information from the applicant. The type of information should be clearly identified in the resolution.

That the Mayne Island Local Trust Committee request that the Mayne Island Housing Committee provide information regarding.....

NEXT STEPS

- Water Management Plan and Water Level Monitoring Report will be reviewed by the Senior Freshwater Specialist and analysis provided to the LTC in future staff report.
- Draft Housing Agreement and Covenant will be sent for legal review.
- Amendments to the Housing Agreement and Covenant will be made as required.
- If the LTC does not read the bylaws for the first time these will be brought back to the June LTC meeting.

Submitted By:	Narissa Chadwick, Island Planner	May 19, 2022
Concurrence:	Robert Kojima, Regional Planning Manager	May 19, 2022

ATTACHMENTS

1. October 25, 2022 Staff Report
2. New Site Plan
3. Driveway Profile
4. Letter from Eleni Gibson re: Housing Agreement
5. Draft Housing Agreement (MIHS proposed revisions)
6. Letter from Deborah Goldman re: application
7. Draft Covenant (MIHS proposed revision)



STAFF REPORT

File No.: MA-RZ-202.1 (MIHS)

DATE OF MEETING: October 25, 2021
 TO: Mayne Island Local Trust Committee
 FROM: Narissa Chadwick, Island Planner
 Local Planning Services
 COPY: Robert Kojima, Regional Planning Manager
 SUBJECT: Report subject: MA-RZ-2020.1 (MIHS)

RECOMMENDATION

1. That the Mayne Island Local Trust Committee require that a housing agreement related to the use of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 with a focussed approach to identifying rental unit types be adopted prior to adoption of rezoning bylaws.
2. That the Mayne Island Local Trust Committee request that the Section 219 covenant be granted by the owners of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 address water treatment and monitoring, location of development on Lot 2 and 3, wetland protection, areas to be preserved, site remediation and development restrictions on Lot 2 prior to the adoption of the rezoning bylaws.
3. That the Mayne Island Local Trust Committee Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” be read for a first time.
4. That the Mayne Island Local Trust Committee Bylaw No. 183, cited as as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021” be read for a first time.
5. That the Mayne Island Local Trust Committee request staff to schedule a Community Information Meeting concurrently with the Public Hearing for Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” and Bylaw No. 183, cited as as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”.
6. That the Mayne Island Local Trust Committee request staff to schedule a Public Hearing for Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” and Bylaw No. 183, cited as as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”.

REPORT SUMMARY

This staff report presents the draft Housing Agreement and Section 219 Covenant to the LTC. It identifies two key issues raised by the Mayne Island Housing Society related to the housing agreement and provides options related to addressing these concerns. It identifies items included in the Section 219 Covenant and provides the LTC the opportunity to suggest changes or additions to the covenant.

The report also brings back the draft bylaws for consideration of first reading and provides the opportunity for the LTC to address the MIHS's interest in having an additional Community Information prior to public hearing.

BACKGROUND AND ANALYSIS

Housing Agreement (Attachment 1)

At their November 30th, 2020 meeting the LTC passed a resolution requiring ***“that a housing agreement related to the use of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 be adopted prior to the adoption of the rezoning bylaws”***. At the June 21, 2021 meeting staff identified that a draft housing agreement had been sent for legal review, initial comments were received and discussed with staff and further revisions were made. The revised housing agreement was then provided to the MIHS for their review.

In their review of the Draft Housing Agreement the MIHS identified a number of issues of concern. Some of the smaller issues have been addressed in the draft housing agreement attached. Two major issues, requiring decision by the LTC, are as follows:

Housing Agreement Issue 1: Removing Sean McHugh's name as party to the agreement.

The MIHS has identified that they do not want Sean McHugh, the current property owner, to be named as party to the agreement. Given that the relevant party to the housing agreement, other than the LTC, needs to be the property owner, not having Sean McHugh's name on the agreement would require the transfer of land. The transfer of land can only happen after subdivision and rezoning.

The MIHS has proposed that they enter into an “Agreement-in-Principle” related to the registration of the housing agreement. In the “Agreement-in-Principle”, the parties would agree to register the housing agreement on title upon the completion of the rezoning and subdivision.

With the “Agreement-in-Principle” approach there is no guarantee that the lands will be subdivided to create Lot 3 unless a covenant is required prior to or immediately after zoning adoption. There is also no clear mechanism for the LTC to use to ensure the transfer of land to the MIHS or prevent the selling of Lot 3.

Options for the LTC are as follows:

Support the existing process. A housing agreement must be with the current property owner, Sean McHugh; consequently, the LTC would only be able to require that the housing agreement bylaw be adopted, and notice of the agreement be registered on title, prior to the adoption of the rezoning bylaw (as previously supported through resolution) by entering into the agreement with the current property owner. It is important to point out that while the housing agreement places restrictions on the type of housing that can be provided it does not impose any obligation on the part of the landowner to provide that housing.

Defer adoption of the housing agreement. The mechanism would be for the owner to grant a covenant to the LTC, prior to adoption of rezoning, restricting any development or registration of a subdivision until the housing agreement is adopted and notice registered on title. The housing agreement would be attached to the covenant. Another option would be to integrate a density bonus approach into the new zoning so that the density in the form of the additional two lots and the addition residential density is contingent on the housing agreement being adopted and notice registered against lot 3 in addition to the Lot 3 housing being constructed. Neither of these options guarantee that the subdivided land will be sold to the MIHS.

Recommended option:

Support existing process. Entertaining options to remove Sean McHugh's, the property owner, name as party to the housing agreement will result in additional process. The LTC would not be able to adopt the housing agreement concurrently with the rezoning bylaws leaving the process open to change prior to the transfer of ownership and potentially leaving the approval of the housing agreement to the next elected Local Trust Committee.

Housing Agreement Issue 2: Flexibility in Defining the Rental Unit Rates

The draft housing agreement currently identifies the rental unit types as per the information provided by the MIHS to staff, the LTC and the community. The MIHS has identified that funding is anticipated to be received from BC Housing. As such, rental unit types would reflect BC Housing's required mix of rental rates as follows:

- 20% of units will be Deep Subsidy Units for Deep Subsidy Income
- 50% of units will be Rent Geared to Income Units for Low Income households
- 30% of units will be Market Units for Moderate Income households

Given the possibility that BC Housing may change their requirements and/or the project may be funded by other means, the MIHS has identified that they would like a more flexible approach to defining the rental rates and type of rental units.

In a meeting held with Islands Trust staff and BC Housing staff, BC Housing staff identified that BC Housing would prefer flexibility in housing agreements between local governments and affordable housing providers to allow for a range of funding programs and affordable rent structures to be utilized. However, BC Housing also recognizes that local governments have an obligation to ensure that housing agreements reflect the conditions being proposed at the time of rezoning and consistency with OCP policies. B.C. Housing staff stressed that the key elements of a success proposal are land (secure tenure to a site), zoning and water in unserved areas. Islands Trust staff will continue to work with BC Housing staff to ensure that they are supportive of the Islands Trust approach to the development of the housing agreement.

Options for the LTC are as follow:

1. **Focussed approach supporting the draft housing agreement as written.** The mix of rental unit types is defined in the housing agreement. The mix of rental unit types is based on the current BC Housing funding formula and corresponds with information originally provided by the MIHS. If this option is chosen and the BC Housing rates change in future or a different funding option emerges the housing agreement can be amended.
2. **Flexible approach supporting the MIHS proposal.** With this approach, instead of defining the type of rental units, the LTC would default to supporting a more broad definition of "affordable rental housing". The definition proposed by the MIHS is *"a Dwelling Unit on the Lands which is available as a permanent, principal and sole residence for rent to a Qualified Renter below median market rents as determined by CMHC"*. By adopting this approach the LTC is demonstrating an openness to supporting a housing mix and rental rate ratios that can change over time based on BC Housing standards for affordability. The LTC would need to consider if this approach is consistent with OCP policies related to rural land use and amenity zoning guidelines.
3. **Alternative approach.** The LTC could choose to have the definition of rental units clearly defined but based on a different approach identified by the MIHS. As opposed to the flexible approach where the housing agreement does not include a clear indication of the type of rental units to be provided, the LTC could

request that the MIHS come back with other options that provide details related to the type of rental units to be provided.

Covenant (Attachment 2)

The Mayne Island LTC has adopted two resolutions related to items to be contained in a Section 219 Covenant. These are as follow:

November 30, 2020 - ***“that the Mayne Island Local Trust Committee request that a Section 219 covenant be granted by the owners of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 that would identify the location of development, require water treatment and monitoring and areas to be preserved, as condition of adoption of the bylaws”.*** Related staff report: [https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/mayne/current-applications/MA-RZ-2020.1%20\(Mayne%20Island%20Housing%20Society\)/1.%20Staff%20Reports/2020-11-30_Staff%20Report.pdf](https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/mayne/current-applications/MA-RZ-2020.1%20(Mayne%20Island%20Housing%20Society)/1.%20Staff%20Reports/2020-11-30_Staff%20Report.pdf)

June 21, 2021 – ***“that the Mayne Island Local Trust Committee request that the owner of Lot B, Plan 27091 grant to the Local Trust Committee a suitably worded Section 219 covenant which would restrict development of proposed lot 2 until the construction of rental housing on proposed Lot 3 is completed and that the S.219 covenant be registered on title as a condition of rezoning and that building site for Lot 2 should be that identified as 'A' on map dated July 15, 2020 and wetlands area is to be preserved as shown on same map”.*** Related Staff Report: [https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/mayne/current-applications/MA-RZ-2020.1%20\(Mayne%20Island%20Housing%20Society\)/1.%20Staff%20Reports/2021-06-21_Staff%20Report.pdf](https://webfiles.islandstrust.bc.ca/islands/local-trust-areas/mayne/current-applications/MA-RZ-2020.1%20(Mayne%20Island%20Housing%20Society)/1.%20Staff%20Reports/2021-06-21_Staff%20Report.pdf)

The draft covenant addresses the following:

Water quality – To address concerns identified in the hydrogeologist’s report the draft covenant requires the design and installation of a water management system prior to occupancy or any building or structure on Lot 3.

Lot 2 building location, site remediation and ecosystem protection – To address the LTC’s interest in limiting the building footprint on Lot 2 and requiring wetland/ forest protection and remediation the draft covenant requires that *“No building or structure shall be constructed, placed or Located on Lot 2 except within the area of Lot 2 shown as “Building Zone” on the Subdivision Plan”* and that the recommendations of the *Wetland Restoration Design Report* by Robyn Annschild, be implemented on Lot 2 in the area identified as “Remediation Zone” and “Forest Protection Zone” on the Subdivision Plan (see covenant schedule A¹).

Lot 2 building restriction – To address the LTC’s interests in restricting development on Lot 2 until the rental housing has been constructed, the draft covenant states that *“The Owner of Lot 2 shall not start the construction of any building or structure on Lot 2 until the Owner of Lot 3 has completed the construction of, and received any occupancy permit required by the Capital Regional District for, at least XX units of affordable housing, on Lot 3”.*

¹ Note that there are currently two maps in covenant schedule A. Staff are still working with legal advisor to identify how maps should be presented in the covenant. It has been identified to staff that the Land Title Office may require a reference or explanatory plan prepared by a surveyor where a covenant charges to only part of a parcel. The applicants will be advised if this is identified to be necessary.

Building Footprint on Lot 3 – To ensure that the building footprint is minimized the draft covenant requires that all buildings be constructed within the location shown on the Subdivision Plan (see covenant schedule A). The covenant allows for minor alternations subject to LTC authorization .

Ecological Protection and Restoration on Lot 3 – To support LTC interests in maintaining as much of the ecological integrity of the site as possible, the draft covenant requires that the MIHS adhere to all of the recommendations made in the “*Ecological Assessment Report*” prepared by Keith Erikson and dated September 21st, 2020 and the “*Wetland Restoration Design Report*”, prepared by Robin Annschild and dated March 8, 2021;.

Questions for the LTC regarding the draft covenant:

How many units of affordable housing need to be required before building on Lot 2 can commence?

Is there anything the LTC would like to add to, change or take away from the requirements identified in the draft covenant?

Draft Bylaws 181 and 183 (Attachment 4 &3) and Process

At the November 2020 LTC meeting, the LTC requested staff prepare draft bylaws to amend Land Use Bylaw and Official Community Plan.

The draft bylaws include:

1. ***An amendment to the Land Use Bylaw*** which would:
 - Create a new zone (Comprehensive Development Three (CD3) Zone) to support multi-family rental housing.
 - Introduce additional definitions
 - Create a split zoned lot
 - Rezone the portion of the property being contemplated for multi-family rental from Rural (R) to Comprehensive Development Three (CD3)
 - Rezone the parent portion of the property to R(f) to enable the subdivision of the lot into two (in concurrence with amenity zoning provisions in the OCP)
 - Remove the new CD3 zone from the area permitted to have secondary suites
2. ***An amendment to the Official Community Plan*** which:
 - Designates the proposed multi-family rental housing portion of the parent property from Rural designation to Rural – Multi-family residential (R-MR) designation.

At the January 25th LTC meeting the LTC passed a resolution that ***the Mayne Island Local Trust Committee ask staff to amend the draft bylaws to account for a buffer zone.*** Staff revised the bylaw to include an 8 metre setback from interior side lot lines. Bylaws 181 and 183, with this amendment, were last presented to the LTC at the June 21, 2021 LTC meeting,

A Community Information Meeting (CIM) was held on April 26th 2021. A second CIM can be held concurrently with the Public Hearing.

ALTERNATIVES

RE: Approval of Housing Agreement

1. The LTC may defer the adoption of the housing agreement until after rezoning and subdivision. In this case Sean McHugh would not have to be party to the agreement. The housing agreement would be adopted once ownership is transferred. The LTC could agree to sign an “agreement-in-principal” with the MIHS to provide some certainty that the MIHS will adopt the housing agreement as drafted. This option does not guarantee that the housing agreement won’t be changed prior to transfer of ownership or that ownership will be transferred to the MIHS.

That the Mayne Island Local Trust Committee defer the adoption of the housing agreement related to the use of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 to after subdivision and transfer of land.

RE: Definition of Unit Types

1. The LTC may choose to support a more flexible approach to defining the type of rental units. This approach would support what has been proposed by the MIHS and will require amendments to the housing agreement as well as legal review .

That the Mayne Island Local Trust Committee require that a housing agreement related to the use of Lot B, Section 7, Mayne Island, Cowichan District, Plan 27091 support the a flexible approach to identifying rental unit types as identified in the October 25, 2021 staff report be adopted

2. The LTC may choose to explore an alternative approach to defining type of rental. This will require the MIHS returning with another proposal related to how rental units are defined. Amendments to the housing agreement will be made and legal review will be required.

That the Mayne Island Local Trust Committee request staff work with the MIHS to identify an alternative approach to defining rental units.

RE: Covenant

1. The LTC could direct staff to add additional elements to the covenant.

That the Mayne Island Local Trust Committee request staff to add the following additional elements to the covenant:

RE: First Reading of Bylaws

1. The LTC receive the proposed bylaws for information. The LTC may choose to receive the draft bylaws and wait until the process has moved further along before suggesting changes to the bylaws.

That the Mayne Island Local Trust Committee receive for information Bylaw No. 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021”.

That the Mayne Island Local Trust Committee receive for information Bylaw No. 183, cited as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”.

2. The LTC wait until the housing agreement has been finalized before moving to first reading.

That the Mayne Island Local Trust Committee Bylaw 181, cited as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021” and Mayne Island Local Trust Committee Bylaw No. 183, cited as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”, be brought back for first reading once the housing agreement has been finalized.

3. The LTC may decide to send the housing agreement and the covenant to the APC. Due to timing of meetings the draft housing agreement and covenant have not yet been shared with the APC . The APC was provided with an overview of what the covenant contained or their October 13th meeting.

That the Mayne Island Local Trust Committee request staff to send the Section 219 covenant and the housing agreement associated with MA-RZ-2020.1 (MIHS) to the Advisory Planning Commission for review.

NEXT STEPS

- Amendments will be made to the housing agreement as required.
- Amendments will be made to the covenant as required.
- The housing agreement and covenant will be reviewed by legal counsel before adoption.
- If bylaws are read for the first time staff will schedule public hearing.

Submitted By:	Narissa Chadwick RPP, Island Planner	October 15, 2021
Concurrence:	Robert Kojima, Regional Planning Manager	October 15, 2021

ATTACHMENTS

- 1. Housing Agreement**
- 2. Draft Covenant**
- 3. Draft Bylaw 181**
- 4. Draft Bylaw 183**

Housing Agreement and Section 219 Covenant

THIS AGREEMENT DATED FOR REFERENCE THE _____ DAY OF _____, 20____, IS
BETWEEN:

SEAN MCHUGH
375 Village Bay Road, Mayne Island, V0N 2J2

(the “Owner”);

AND

MAYNE ISLAND LOCAL TRUST COMMITTEE, a corporation under the Islands Trust Act,
having an office at 2nd floor, 1627 Fort Street, Victoria, BC, V8R 1H8

(the “Local Trust Committee”)

WHEREAS;

- A. The Owner is the registered owner of the lands situated on Mayne Island, British Columbia, and legally described as:
- PID: 002-552-256
- Lot B Plan VIP 27091 Section 7, Land District 16, Portion Mayne Island
- (the “Lands”);
- B. The Lands will be rezoned by the Local Trust Committee, with permission of the Owner, by means of Mayne Island Land Use Bylaw No. 146, 2008 Amendment No. 1, 2021, to permit the development of affordable multi-family rental housing (the “**Rezoning**”);
- C. The Mayne Island Housing Society (MIHS) intends to rent units on the Lands, by way of rental agreement, to Qualified Renters at affordable market and subsidized rates;
- D. The Local Trust Committee may pursuant to Section 29 of the *Islands Trust Act* and Section 483 of the *Local Government Act*, enter into a housing 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 land;
- E. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Local Trust Committee in respect of the use of land or construction on land;
- F. The Owner and Local Trust Committee wish to enter into this Agreement to provide rental

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 as housing agreement under Section 483 of the *Local Government Act*; and

- G. The Local 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 Local Trust Committee to the Owner (the receipt of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Local Trust Committee and the owner, agree as covenants granted by the Owner to the Local Trust Committee under Section 219 of the *Land Title Act*, and as a housing agreement between the Owner and the Local Trust Committee under Section 483 of the *Local Government Act*, as follows:

Article 1: Definitions and Interpretation

1.1 Definitions

in this Agreement:

"Annual Household Income"	means 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.
"BC Housing"	means the British Columbia Housing Management Commission or BC Housings' successor in function. For clarity, a "successor in function" of BC Housing will be a Crown Corporation, governmental department or other entity with a mandate from the provincial government to provide British Columbians with access to affordable, safe and appropriate housing that is accountable to the provinces' Minister responsible for Housing or their successor.
"Building" or "Buildings"	means any building located or constructed on the Lands containing a Rental Unit.
"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 British Columbia as calculated by Statistics Canada, or its successor in function.
"Deep Subsidy Income Limit"	means the Deep Subsidy Income Limits most recently published by BC Housing, provided that: a) The Deep Subsidy Income Limit amounts shall be adjusted annually to reflect the applicable Deep Subsidy Income Limits published by BCH Housing.

- b) In the event that BC Housing ceases to publish the Deep Subsidy Income Limits but replaces the Deep Subsidy Income Limits with similar income limits or standards that are acceptable to the Local Trust Committee for the purposes of this Agreement, such replacement limits or standards shall replace the Deep Subsidy Income Limits for the purposes of this Agreement.
- c) In the event that BC Housing ceases to determine the Deep Subsidy Income Limits and the Deep Subsidy Income Limits are not replaced by similar income limits or standards published by BC Housing that are acceptable to the Local Trust Committee, then the Maximum Income for Eligible Tenants of Deep Subsidy Units shall be determined by reference to the final the Deep Subsidy Income Limits published by BC Housing and thereafter increased annually by an amount below or equal to the increase, if any, in the CPI for the period of January 1 to December 31 of the previous calendar year

“Deep Subsidy Unit”	means a Rental Housing Unit occupied and operated as a Deep Subsidy Unit in accordance with this Agreement.
“Dwelling Unit”	means a dwelling unit as defined in the Mayne Island Land Use Bylaw 146, 2008.
“Eligible Tenant”	means for a Deep Subsidy Unit, Market Unit, and RGI Unit, a Household with an Annual Household Income equal to or less than the Permitted Rent applicable to such unit as set out in this Agreement.
“Household”	means one or more individuals occupying the same Dwelling Unit.
“HILs”	<p>Means the Housing Income Limits for Victoria published annually by BC Housing, provided that:</p> <ul style="list-style-type: none">a) The HILs shall be adjusted annually on January 1 of each calendar year to reflect the applicable Housing Income Limits for Mayne Island published by BC Housing.b) If BC Housing ceases to publish HILs but replaces HILs with a similar income limits or standards that are acceptable to the Local Trust Committee for the purposes of this Agreement, such replacement limit or standards shall replace HILs for the purposes of this Agreement.c) If BC Housing ceases to determine HILs and the HILs are not replaced by similar income limits or standards published by BC Housing that are acceptable to the Local Trust Committee, then the Maximum Income of Eligible Tenants of RGI Units shall be determined by reference to the final HILs published by BC Housing and thereafter increased annually by an amount equal to the increase, if any, in the

CPI for the period of January 1 to December 31 of the previous calendar year.

“Income Assistance” Social assistance, social security or another form of payment that the provincial or federal government provides to people in need who don’t have any other resource.

“Lands” has the meaning ascribed in Recital A.

“Lot 3 Equivalent” has the meaning ascribed to it in section 3.3 b).

“Market Rent” means a rent that is generally similar to the rent of other comparable Dwelling Units in the private (non-subsidized) housing market of Victoria or the Southern Gulf Islands.

“Market Rental Unit” means a Rental Housing Unit occupied and operated as a Market Rental Unit in accordance with this Agreement.

“Maximum Income” means:

- a) for a Dwelling Unit occupied and operated as a Deep Subsidy Unit, an Annual Household Income lower than the Deep Subsidy Income Limit applicable to the relevant unit;
- b) for a Dwelling Unit occupied and operated as a Market Unit, an Annual Household Income lower than the Middle Income Limits applicable to the relevant unit; and
- c) for a Dwelling Unit occupied and operated as a RGI Unit, an Annual Household Income lower than the HILs applicable to the relevant unit.

“Middle Income Limits” means the applicable Middle Income Limits published annually by BC Housing, provided that:

- a) The Middle Income Limits shall be adjusted annually on January 1 of each calendar year to reflect the applicable Middle Income Limits published by BC Housing.
- b) If BC Housing ceases to publish Middle Income Limits but replaces Middle Income Limits with a similar income limits or standards that are acceptable to the Local Trust Committee for the purposes of this Agreement, such replacement limit or standards shall replace Middle Income Limits for the purposes of this Agreement.
- c) If BC Housing ceases to determine Middle Income Limits and the Middle Income Limits are not replaced by similar income limits or standards published by BC Housing that are acceptable to the Local Trust Committee, then the Maximum Income of Eligible Tenants of

RGI Units shall be determined by reference to the final Middle Income Limits published by BC Housing and thereafter increased annually by an amount less than or equal to the increase, if any, in the CPI for the period of January 1 to December 31 of the previous calendar year.

“Permitted Housing Operator” means Mayne Island Housing Society, BC Housing, a housing society, a non-profit housing corporation, or other entity approved by the Local Trust Committee in writing.

“Permitted Rent” means:

- a) for a Dwelling Unit occupied and operated as a Deep Subsidy Unit, a monthly rent equal to or less than:
 - i. the monthly “Shelter Allowance” dictated by *Employment and Assistance Regulation*, BC Reg 263/2002, or equivalent housing allowance provided to families by the provincial government that receive Income Assistance, if the Eligible Tenant, collectively, is eligible to receive such Shelter Allowance, or
 - ii. 1/12 of 30% of the Eligible Tenant’s Annual Household Income;
- b) for a Dwelling Unit occupied and operated as a Market Unit, a monthly rent equal to or less than the applicable Market Rent; and
- c) for a Dwelling Unit occupied and operated as a RGI Unit, a monthly rent equal to or less than 1/12 of 30% of the Eligible Tenant’s Annual Household Income.

“Qualified Renter” means a Household:

- a) which meets the eligibility criteria for a Tenant of a Rental Housing Unit set out in Schedule A of this Agreement, and
- b) that has an Annual Household Income equal to or less than the Maximum Income applicable to such Rental Housing Unit as outlined in this Agreement. For clarity, the Maximum Income of a Rental Housing Unit is determined based on whether the unit is Deep Subsidy Unit, a Market Rental Unit, or a RGI Unit.

“Release” has the meaning ascribed in section 3.3 b).

“Rental Housing Unit” means a Dwelling Unit on the Lands in respect of which the construction, tenure, rent and occupancy are restricted in accordance with of this

Agreement.

"Rent-Geared-to-Income Unit" or "RGI Unit" means Rental Housing Unit occupied and operated as a Rental Unit where rent is related to income earned.

"*Residential Tenancy Act*" means the *Residential Tenancy Act* of British Columbia.

"Rezoning" has the meaning ascribed in Recital B.

"Subdivide" means to divide, apportion, consolidate or subdivide the Lands or any building on the Lands, or the ownership or right to possession or occupation of the Lands or any building on the Lands, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act* (British Columbia), or otherwise, and includes the creation, conversion, organization or development of "cooperative interests" or a "shared interest in land" as defined in the *Real Estate Development Marketing Act* (British Columbia);

"Tenancy Agreement" means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*.

"Tenant Default" has the meaning ascribed section 2.3(g).

1.2 Interpretation

Reference in this Agreement to:

- a) A "party" is a reference to a party to this Agreement;
- b) A particular numbered "article" or "section" or to a particular lettered "schedule" is a referent 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; and
- 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 – Rental 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 building or structure will be constructed on the Lands unless as part of and concurrently with the development and construction on the Lands, the Owner also constructs and completes 10 Rental Housing Units on the Lands.
- b) No building on the portion of the Lands zoned as Comprehensive Development Three (CD3) may be occupied or used for any purpose until and unless the Rental Housing Units are constructed in accordance with subsection 2.1 a) above.
- c) Neither the Lands nor any building thereon may be Subdivided without prior approval of the Local Trust Committee.
- d) It will maintain the Rental 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.
- e) If a Building is demolished or is otherwise replaced, this Agreement shall continue to apply to the Lands and the construction on the Lands shall be subject to the requirements of this Agreement.

2.2 Minimum Construction Requirements

The Rental Housing Units will be designed and constructed in accordance with the following requirements:

- a) all of the Rental Housing Units will be designed and constructed to the same standard, in terms of layout, workmanship, and materials;
- b) Rental Housing Units will consist of a mix of one bedroom units, two bedroom units and

at least one three bedroom unit

2.3 Occupancy and Management of Rental Housing Units

The Owner covenants and agrees not to rent or lease any Rental Housing Units except to a Qualified Renter and in accordance with the following additional requirements:

- a) The Rental Housing Units will be occupied as follows:
 - i. two of the Rental Housing Units will be occupied as Deep Subsidy Units, with each unit having not less than one bedroom;
 - ii. five of the Rental Housing Units will be occupied as Rent Geared to Income Units,
 - iii. three of the Rental Housing Units will be occupied as Market Rental Units.
- b) The monthly rent charged for a Rental Housing Unit will not exceed the Permitted Rent applicable to the Rental Housing Unit, and the Permitted Rent applicable to a unit is determined by the class of Eligible Tenant that occupies such unit. The Owner may increase the monthly rent under an existing Tenancy Agreement 12 months after the existing rent was initially established for the existing Tenants or 12 months after the date of the last rent increase allowed under this Agreement and by the maximum rent increase amount dictated by the *Residential Tenancy Act*.
- c) The Rental Housing Unit will be used or occupied only pursuant to a Tenancy Agreement.
- d) The Rental Housing Unit will be rented on a month-to-month basis or for a fixed term of one year or less.
- e) The Rental Housing Unit will only be occupied and rented to a Qualified Tenant, who will occupy the Rental Housing Unit as their permanent, principal and sole residence.
- f) The Owner will not require any Tenant under a Tenancy Agreement to pay any extra charges or fees for use of any common area or amenity, or for sanitary sewer, storm sewer, water utilities, property taxes and similar services. For clarity, this limitation does not apply to cablevision, telecommunications, laundry, or gas or electricity utility fees or charges.
- g) The Tenancy Agreement shall include a clause entitling the Owner to terminate the Tenancy Agreement if any of the following occur (each of which constitutes a "Tenancy Default"):
 - i. the Tenant subleases the Rental Housing Unit or assigns the Tenancy Agreement in whole or in part, without the Owner's consent; and
 - ii. the Tenant makes the Rental Housing Unit available, use, or allows it to be used as a short-term or vacation rental.
- h) In the event of a Tenancy Default, the Owner will end the Tenancy Agreement by

providing notice to the Tenant that ends the tenancy on the earliest date possible permitted under the *Residential Tenancy Act* and will cause the Tenant to vacate by that date.

- i) The Owner will not consent to the assignment of a Tenancy Agreement or the subletting of a Rental Housing Unit.
- j) The Owner will deliver to the Local Trust Committee a true copy of every Tenancy Agreement entered into in respect of any Rental Housing Unit within 10 business days of any request to do so.

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 Monitoring and Reporting to the Local Trust Committee

The Owner must deliver to the Local Trust Committee upon request, a completed statutory declaration, substantially in the form attached as **Schedule "A"**, sworn by the Owner. The Local 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 30 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.

2.6 Owner May Request Revision of Terms

The Owner may request that the Local Trust Committee modify the terms of this Agreement, aside from section 2.1 and 2.2, in order to meet requirements imposed by an entity that has conditionally agreed to provide the funding to the Owner to construct the Rental Housing Units or operate the Rental Housing Units, or to do both, so that the terms of this Agreement do not conflict with such requirements.

Article 3 – General Terms

3.1 Demolition

The Owner will not demolish a Building or a Rental Housing Unit unless:

- (a) the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Building or such Rental Housing Unit without demolishing same, and the Owner has delivered to the Local Trust Committee a copy of the engineer's or architect's report; or
- (b) the Building or such Rental Housing Unit is damaged or destroyed, to the extent of 40% or more of its value above its foundations, as determined by the Local Trust Committee, in its sole discretion,

and, in each case, a demolition permit for the Building or such Rental Housing Unit has been issued by the Capital Regional District. Upon the issuance of such demolition permit, the Owner will completely demolish the Building or such Rental Housing Unit, as the case may be, under that permit.

3.2 Management

The Owner covenants and agrees that:

- a) it will furnish, or cause a Permitted Housing Operator to furnish, good and efficient management of the Rental Housing Units and will permit the Local Trust Committee to inspect the Rental Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*; and
- b) if the Owner is not a Permitted Housing Operator, the Owner will at all times cause a Permitted Housing Operator to administer, manage and operate the Rental Housing Units and will cause that Permitted Housing Operator to administer, manage and operate the Rental Housing Units in accordance with all of the restrictions and requirements of this Agreement and the Owner's obligations under this Agreement. For clarity, the Owner's engagement of a Permitted Housing Operator pursuant to this Agreement will not relieve the Owner from any of the Owner's obligations under this Agreement or any of the restrictions or requirements of this Agreement.

3.3 Discharge

- a) After the Rezoning, the Owner intends to subdivide the Lands as shown on the proposed subdivision plan attached hereto as Schedule "C" to create parcels equivalent in size and configuration to those labelled Lot 1, Lot 2, and Lot 3.
- b) Upon subdivision of the Lands and creation of a legal parcel equivalent in size, location and configuration of the parcel shown as Lot 3 on the proposed subdivision plan attached hereto (the "Lot 3 Equivalent"), the Owner may, at its sole cost, direct its solicitor to prepare a release of this Agreement from any parcel that is not the Lot 3 Equivalent (the "Release"), and deliver it to the Local Trust Committee.

- c) Upon review of the Release, if the Local Trust Committee is satisfied that the Lot 3 Equivalent is equivalent to the Lot 3 shown on the proposed subdivision plan and that, after the Release is filed, this Agreement will remain on title and continue to bind the owner of the Lot 3 Equivalent, the Local Trust Committee will execute the Release and return it to the Owner within a reasonable time.
- d) Upon receipt of the executed Release from the Local Trust Committee, the Owner may file the Release in the LTO.

3.4 Order to Comply

If the Owner is in default of the performance or observance of this Agreement, the Local 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 Local Trust Committee, within the time stated on the notice of default provided to the Owner by the Local Trust Committee.

3.5 Society Standing

If the Owner is a society, the Owner must maintain its standing as a society under the *Society Act* (British Columbia) 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.

3.6 Specific Performance of Agreement

The Owner agrees that the Local 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 Rental Housing Units. The Owner further acknowledges that a breach of this Agreement may constitute a breach of the Local Trust Committee's Land Use Bylaw, as amended from time to time.

3.7 Assignment

The Owner acknowledges that the Local 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 Local Trust Committee shall be interpreted as a reference to that party provided that the Local Trust Committee has also advised the Owner.

3.8 Indemnity

The Owner shall indemnify and save harmless the Local 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 act or omission of the Owner or its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible, including breaches

of this Agreement. This clause will survive the termination clause of this Agreement.

3.9 Release

The Owner releases and forever discharges the Local 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 advice or direction respecting the ownership, lease, operation or management of the Land or the Housing Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination clause of this Agreement.

3.10 Local Trust Committee Powers Unaffected

This Agreement does not limit the discretion, rights, duties or powers of the Local Trust Committee under any enactment or the common law, impose on the Local Trust Committee any duty or obligation, affect or limit any enactment relating to the use of the Lands, or relieve the Owner from complying with any enactment.

3.11 No Public Law Duty

Wherever in this Agreement an act, determination, consent, approval or agreement of the Local 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.

3.12 No Waiver

No condoning, excusing or overlooking by the Local 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 Local 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 Local Trust Committee.

3.13 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*.

3.14 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 Local 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.

3.15 Limitation of the Owners' Obligations

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

3.16 Amendment and Termination

This Agreement may not be modified or amended except by bylaw of the Local Trust Committee, upon an agreement in writing between the Local Trust Committee and the Owner.

3.17 Notices

Any notice required to be given pursuant to this Agreement shall be in writing and shall be given to the Owner or the Local 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 Local Trust Committee may advise the others in writing in accordance with this paragraph. Notice to the Local 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 have been 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.

3.18 Enurement

This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.

3.19 Remedies Cumulative

The remedies of the Local Trust Committee specified in this Agreement are cumulative and are in addition to any remedies the Local Trust Committee at law or in equity. No remedy shall be deemed to be exclusive, and the Local 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.

3.20 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.

3.21 Joint and Several

In the case of more than one Owner, the grants, covenants, conditions, provisions, agreements, rights, power, privileges and liabilities of the Owner shall be construed and held to be several as well as joint.

3.22 Further Acts

The Owner will do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

3.23 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.

3.24 Joint Venture

Nothing in this Agreement shall constitute the Owner as an agent, joint venture or partner of the Local Trust Committee or give the Owner any authority or power to bind the Local Trust Committee in any way.

3.25 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, and any leases and options to purchase, registered or pending at the time of application for registration of this Agreement.

3.26 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.

CONSENT AND PRIORITY AGREEMENT

WHEREAS COMPUTERSHARE TRUST COMPANY OF CANADA, Inc. No. A052313 (the “Chargeholder”) is the holder of a Mortgage (the “Charge”) encumbering the lands (the “Lands”) described in item 2 of the *Land Title Act* Form C attached hereto, which was registered in the Victoria Land Title Office under number CA2493482.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant attached hereto (the “Covenant”) and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder’s right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form C above which is attached hereto and forms part of this Agreement.

CONSENT AND PRIORITY AGREEMENT

WHEREAS THE TORONTO-DOMINION BANK (the “Chargeholder”) is the holder of a Mortgage (the “Charge”) encumbering the lands (the “Lands”) described in item 2 of the *Land Title Act* Form C attached hereto, which was registered in the Victoria Land Title Office under number CA7179193.

THEREFORE THIS CONSENT AND PRIORITY AGREEMENT IS EVIDENCE THAT IN CONSIDERATION OF \$1.00 AND OTHER GOOD AND VALUABLE CONSIDERATION PAID BY THE TRANSFEREE TO THE CHARGEHOLDER:

1. The Chargeholder hereby consents to the granting and registration of the Section 219 Covenant attached hereto (the “Covenant”) and the Chargeholder hereby agrees that the Covenant shall be binding upon its interest in and to the Lands.
2. The Chargeholder hereby grants to the transferee described in item 6 of the *Land Title Act* Form C attached hereto priority for the Covenant over the Chargeholder’s right, title and interest in and to the Lands, and the Chargeholder does hereby postpone the Charge and all of its right, title and interest thereunder to the Covenant as if the Covenant had been executed, delivered and registered prior to the execution, delivery and registration of the Charge.

IN WITNESS WHEREOF, the Chargeholder has executed and delivered this Consent and Priority Agreement by executing the *Land Title Act* Form C above which is attached hereto and forms part of this Agreement.

SCHEDULE “A”

OWNER STATUTORY DECLARATION

CANADA

IN THE MATTER OF A HOUSING AGREEMENT

PROVINCE OF BRITISH COLUMBIA

WITH THE MAYNE ISLAND LOCAL TRUST
COMMITTEE (“Housing Agreement”)

I, _____ declare that:

1. I am the _____ [director, officer, employee] of the [Owner’s], the owner of the land, known as _____ [address], Mayne Island, legally described as
Parcel Identifier: _____
Legal Description: _____
 (“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 Rental Housing Units were only used by Qualified Renters (as defined in the Housing Agreement).
5. At no time during the last year were any of the Rental Housing Units used as a short-term vacation rental.
6. The rental payments charged for the Rental Housing Units 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 Owners’ 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 pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at _____, British Columbia, this _____ day of _____, 20_____.

A Commissioner for taking Affidavits in
British Columbia

Signature of person making declaration

SCHEDULE “B”

Definition of a Qualified Renter

A Qualified Renter means a person aged 19 years or older who fits into at least one of the following categories, which are not listed in any particular priority order:

- 1) Has been living on Mayne Island for a minimum of one year; or
- 2) Is registered or is eligible to be a registered member of a First Nation with rights and responsibilities in and around what is known as Mayne Island, or, is considered by members of these First Nation communities to be part of the First Nation community regardless of current location of residence or work.

Except that where there are no persons meeting the categories specified in clause 1), 2), who make an application to rent an available unit and the lack of applications would result in the unit being vacant for more than one month, then a Qualified Renter may be a person aged 19 years or older who fits into at least one of the following categories, which are not listed in any particular priority order:

- a. Previous resident of Mayne Island who has lived away from the island for a maximum of three consecutive years; or
- b. Non-resident of Mayne Island who is hired to begin at least half-time work (20 hours per week) on Mayne Island; or
- c. A person who has been living on Mayne Island for less than a year but more than 6 months;
- d. A person with immediate family already living on Mayne Island. Immediate family means an individual to whom the person is related by blood, or by marriage, or common-law relationship, or by adoption.

Except that where there are no persons meeting the categories specified in clause 1), 2), or 3), nor a., b., c., d., e., or f. who make an application to rent an available unit and the lack of applications would result in a unit being vacant for more than one month, then a Qualified Occupant may be any person permitted by the funding organization

SCHEDULE “C”

Proposed Subdivision Plan

[Attach Proposed Full Size version of Subdivision Plan]

Commented [NC1]: This may be included with the covenant instead. Still to be determined.

PART 2 - TERMS OF INSTRUMENT

SECTION 219 COVENANT (Water Supply)

This Agreement dated for reference March 9, 2021 is between:

(the “**Owner**”)

AND:

MAYNE ISLAND LOCAL TRUST COMMITTEE, a corporation under the *Island Trust Act*, R.S.B.C. 1996, c. 239, having an office at Suite 200, 1627 Fort Street, Victoria, British Columbia, V8R 1H8

(the “**Local Trust Committee**”)

GIVEN THAT:

- A. The Owner is the registered owner of land on Mayne Island more particularly described as:
(the “**Land**”).
- B. The Owner proposes to subdivide and develop the Land for residential use.
- C. The Owner wishes to grant the Local Trust Committee and the Capital Regional District a covenant under s. 219 of the *Land Title Act* (British Columbia) to regulate the use of the Land.

NOW THEREFORE, in consideration of the payment of \$2.00 by the Local Trust Committee to the Owner (the receipt and sufficiency of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Owner covenants and agrees with the Local Trust Committee in accordance with s. 219 of the *Land Title Act* (British Columbia) as follows:

Approvals

- 1. Where this Agreement requires the approval of the Local Trust Committee, approval may be given by the Islands Trust’s Regional Planning Manager, Southern Team and must, if given, be in writing.

Restriction on Use and Subdivision

- 2. The Owner shall not use or occupy the Land or any area into which the Land may be subdivided, for any residential or domestic purpose, unless the Owner is in full compliance with the terms of this Agreement.
- 3. The Land shall not be subdivided except to create lots having boundaries generally in accordance with the subdivision plan attached to this Agreement as Schedule A (the “**Subdivision Plan**”).
- 4. In this Agreement a reference to a numbered “Lot” is a reference to that Lot or area of the Land as shown on the Subdivision Plan, whether or not the Land has been subdivided.

Lot 3 Water Supply

5. The Owner of Lot 3 shall not start the construction or placement of any new residential building or structure on Lot 3 until the Owner has submitted to the Local Trust Committee and received the Local Trust Committee's approval of, a design for a water treatment system (the "**Water Treatment System**") for Lot 3 which is effective to make the water from any well that is proposed to supply domestic water in respect of any use of Lot 3 potable. Reference to the term "**potable**" in this Agreement shall mean that the water is safe to drink and suitable for domestic purposes and, without limiting the foregoing, meets a standard for potability no less than that specified in both the Land Use Bylaw and the Guidelines for Canadian Drinking Water Quality, as those standards may be revised from time to time. The design for the Water Treatment System shall be prepared by a certified water treatment specialist having professional qualifications acceptable to the Local Trust Committee acting reasonably (a "**Specialist**"), and shall include recommendations for ongoing maintenance to ensure the Water Treatment System continues to function as designed (the "**Maintenance Recommendations**").

6. No part of Lot 3, or any building or structure on Lot 3, shall be used or occupied for residential purposes, nor shall the Owner of Lot 3 request an occupancy permit for any building or structure on Lot 3, until the Owner of Lot 3 has installed the Water Treatment System and provided to the Local Trust Committee written confirmation from a Specialist that the Water Treatment System is operating as designed, and in particular, is capable of delivering sufficient potable water for residential uses on Lot 3.

7. The Owner of Lot 3 shall maintain the Water Treatment System in accordance with the Maintenance Recommendations and any manufacturer's instructions, and shall within 30 days of receiving a written request from the Local Trust Committee, provide written confirmation from a Specialist that the Water Treatment System has been properly maintained and is functioning as designed and intended.

Remediation and preservation of Land

8. No building, land alteration, construction or development is permitted on Lot 2 or Lot 3 except in accordance with all of the recommendations contained in the each of the following two reports (together, the "Environmental Reports"), excerpts of which are attached to this Covenant as Schedule B, and copies of which are held on file at the offices of the Local Trust Committee:

- (a) "Ecological Assessment Report for Proposed Affordable Housing Property", prepared by Keith Erickson and dated September 21st, 2020;
- (b) "Wetland Restoration Design Report", prepared by Robin Annschild and dated March 8, 2021;

except that in respect of Lot 2, the requirement to follow the recommendations of the Wetland Restoration Design Report for wetland remediation only applies to the area labelled "Wetland Remediation Zone Lot 2" on the Subdivision Plan.

9. Neither of Lot 2 or Lot 3 may be used or occupied for residential purposes until:

- (a) the Local Trust Committee has received written confirmation from a suitably qualified professional that the recommendations in the Environmental Reports have been adhered to and implemented where applicable; and
- (b) if required by the Local Trust Committee in its sole discretion, the title of Lot 2 or Lot 3 is charged with a further covenant to ensure ongoing preservation of any areas of land,

trees, or other vegetation on Lot 2 or 3 that are identified for preservation in the Environmental Reports.

Lot 3 Construction

10. No buildings shall be constructed or developed on Lot 3, except in the areas of Lot 3 where buildings are shown on the Subdivision Plan, and subject to such further minor alterations as may be authorized by the Local Trust Committee.

Lot 2 Construction

11. No building or structure shall be constructed, placed or Located on Lot 2 except within the area of Lot 2 shown as "Building Zone" on the Subdivision Plan.

12. The Owner of Lot 2 shall not start the construction of any building or structure on Lot 2 until the Owner of Lot 3 has completed the construction of, and received any occupancy permit required by the Capital Regional District for, at least XXX units of affordable housing, on Lot 3.

No Effect on Laws or Powers

13. 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 except as expressly set out herein;
- (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 except as expressly set out herein;
- (c) affect or limit any enactment relating to the use or subdivision of the Land;
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

Limitation on Obligations

14. The Owner is only liable for breaches of this Agreement caused or contributed to by the Owner or which the Owner permits or allows. The Owner is not liable for the consequences of the requirements of any enactments or law or any order, directive, ruling or government action thereunder. The Owner is liable only for breaches of this Agreement which occur while the Owner is the registered owner of any interest in the Land and then only to the extent of that interest.

No Liability in Tort

15. The parties agree that this Agreement creates only contractual obligations. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

Covenant Runs With the Land

16. Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and also a covenant granted under s. 219 of the Land Title Act (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and any parcel into which it is subdivided by any means and any parcel into which the Land is consolidated.

Registration

17. The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Agreement.

Waiver

18. 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.

Severance

19. 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.

No Other Agreements

20. This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

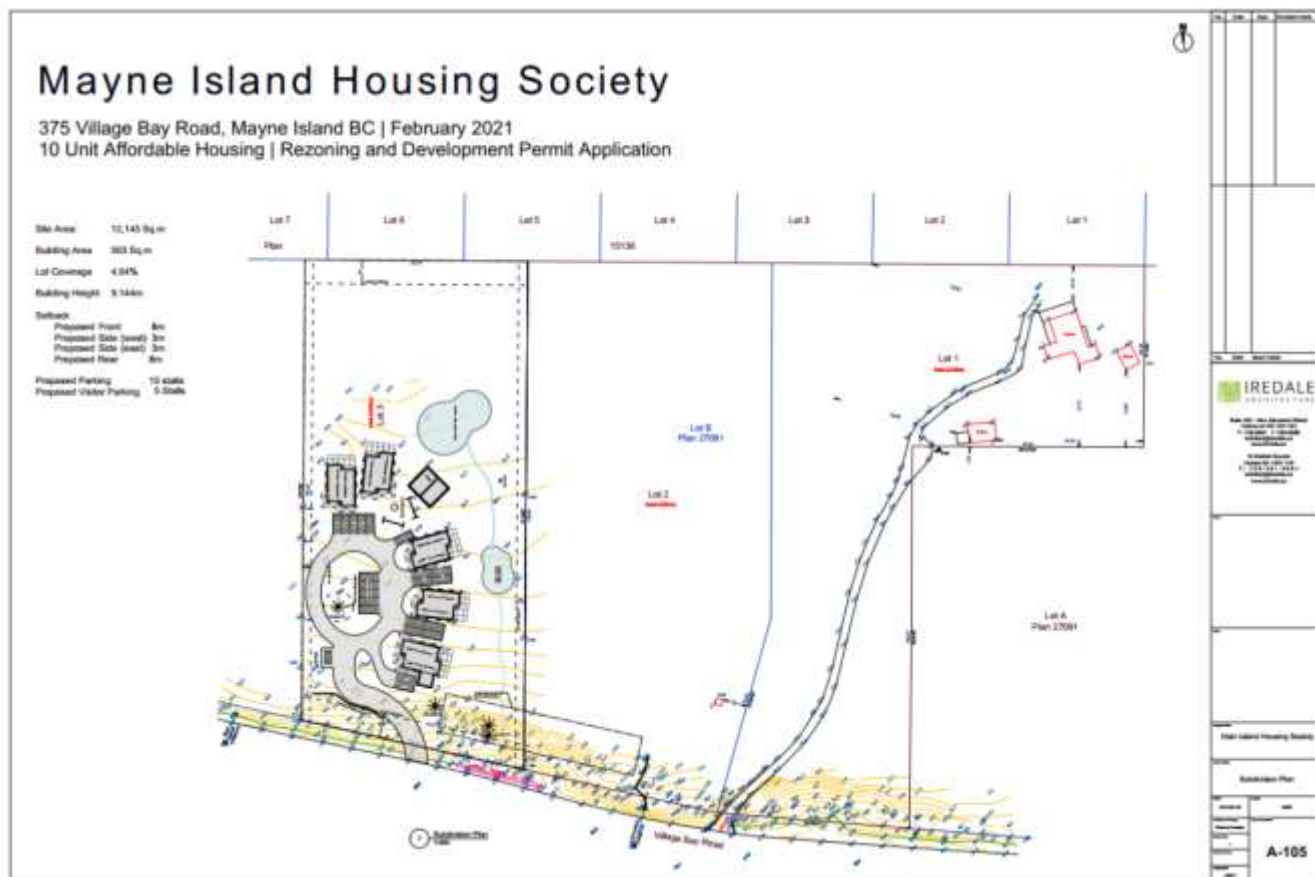
Binding of Successors

21. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

Execution Using Form C

22. As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement 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 – THE SUBDIVISION PLAN



Schedule B – Environmental Report Excerpts

To be completed

DRAFT

MAYNE ISLAND LOCAL TRUST COMMITTEE BYLAW NO. 181

A BYLAW TO AMEND MAYNE ISLAND OFFICIAL COMMUNITY PLAN BYLAW NO. 144, 2007

The Mayne Island Local Trust Committee enacts in open meeting assembled as follows:

1. CITATION

This Bylaw may be cited for all purposes as “Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021”.

2. SCHEDULES

Mayne Island Official Community Plan No. 144, 2007 is amended as shown on Schedule 1, attached to and forming part of this bylaw.

3. SEVERABILITY

If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

READ A FIRST TIME THIS _____ DAY OF _____ 2021.

READ A SECOND TIME THIS _____ DAY OF _____ 2021.

READ A THIRD TIME THIS _____ DAY OF _____ 2021.

PUBLIC HEARING HELD THIS _____ DAY OF _____ 2021.

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS _____ DAY OF _____ 20__

APPROVED BY THE MINISTER MUNICIPAL AFFAIRS AND HOUSING
THIS _____ DAY OF _____ 20__

ADOPTED THIS _____ DAY OF _____ 20__

Chair

Secretary

**MAYNE ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 181**

SCHEDULE 1

The Mayne Island Official Community Plan No. 144, 2007, is amended as follows:

1. By amending Schedule B by changing the land use designation on a portion of Lot B, Section 7, Mayne Island, Cowichan District Plan 27091 from Rural (R) to Rural – Multi-Family Residential (R-MR) as shown on Plan No. 1, which is attached to and forms part of this bylaw.

DRAFT

MAYNE ISLAND LOCAL TRUST COMMITTEE BYLAW NO. 183

A BYLAW TO AMEND MAYNE ISLAND LAND USE BYLAW NO. 146, 2008

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

1. Citation

This bylaw may be cited for all purposes as “Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021”.

2. Mayne Island Local Trust Committee Bylaw No. 146, cited as “Mayne Island Land Use Bylaw No. 146, 2008,” is amended as follows:

2.1 By adding to Definitions ““Multi-family rental housing” means residential use of attached dwelling units that are limited to residential rental tenure.’

2.2 By adding to the definition of Dwelling unit “multi-family housing” after “secondary suite”

2.3 By adding to Definitions ““Residential rental tenure” means the granting of a right to occupy a dwelling unit as living accommodation where the minimum occupancy period is thirty consecutive days, and where the dwelling unit is not owned by a dwelling unit occupant, but where regular payments are made to the owner for the use of the dwelling unit.’

2.4 By inserting a new row in the table in subsection to 5.5 (14) in the Rural (R) zone as follows:

Column 1	Column 2	Column 3
Site-Specific Zone	Location Description	Site Specific Regulations
R (f)	A portion of Lot B, Section 7, Mayne Island, Cowichan District Plan 27091	(1) Despite 5.5(13) above the average lot area must not be less than 1.3 hectares (3.3 acres).

2.5 By adding “5.28 Comprehensive Development Three (CD3) Zone” as a new zone following subsection 5.27:

“The purpose of the Comprehensive Development Three Zone is to provide for and regulate the development of multi-family rental housing.

Permitted Uses

(1) The following uses are permitted, subject to the regulations set out in this Section and the general regulations, and all other uses are prohibited:

- (a) Multi-family rental housing
- (b) Accessory uses, buildings and structures

Density

- (2) The maximum number of dwelling units in the CD3 zone is 10
- (3) The maximum lot coverage is 20%.

Size and Siting

- (4) The minimum setback for any building or structure is:
 - (a) 8 metres (26 feet) from any front, rear or exterior side lot line;
 - (b) ~~8.3~~ metres (~~26.49~~ feet) from any interior side lot line;
- (5) The maximum height for any dwelling unit is 9 metres (29.5 feet).
- (6) The maximum height for any accessory building or structure is 5 metres (16.5 feet).

Subdivision Lot Area Requirements

- (7) The minimum lot area is 1.3 hectares (3.3 acres).

Form of Tenure

- (8) All dwelling units in the Comprehensive Development Three (CD3) Zone shall be limited to residential rental tenure."

- 2.6 By adding "Comprehensive Development Three CD3" to 4.1(1) (Division into Zones) following "Comprehensive Development Two CD2"
- 2.7 Schedule "B" – Zoning Map, is amended by changing the zoning classification of a portion of Lot B, Section 7, Mayne Island, Cowichan District Plan 27091, from Rural (R) to Comprehensive Development Three (CD3) as shown on Plan No.1, which is attached to and forms part of this bylaw, and by making such alterations to Schedule "B" to Bylaw No. 146 as required to effect this change.
- 2.8 Schedule "B" – Zoning Map, is amended by changing the zoning classification of a portion of Lot B, Section 7, Mayne Island, Cowichan District Plan 27091, from Rural (R) to (R(f) as shown on Plan No.1, which is attached to and forms part of this bylaw, and by making such alterations to Schedule "B" to Bylaw No. 146 as required to effect this change.
- 2.9 Schedule "D" – Zoning Map, is amended by removing a portion of Lot B, Section 7, Mayne Island, Cowichan District Plan 27091 from " areas where secondary suites are permitted" as shown on Plan No.2, which is attached to and forms part of this bylaw, and the making of such alterations to Schedule "D" to Bylaw No.146 as required to effect this change.

3. SEVERABILITY

If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

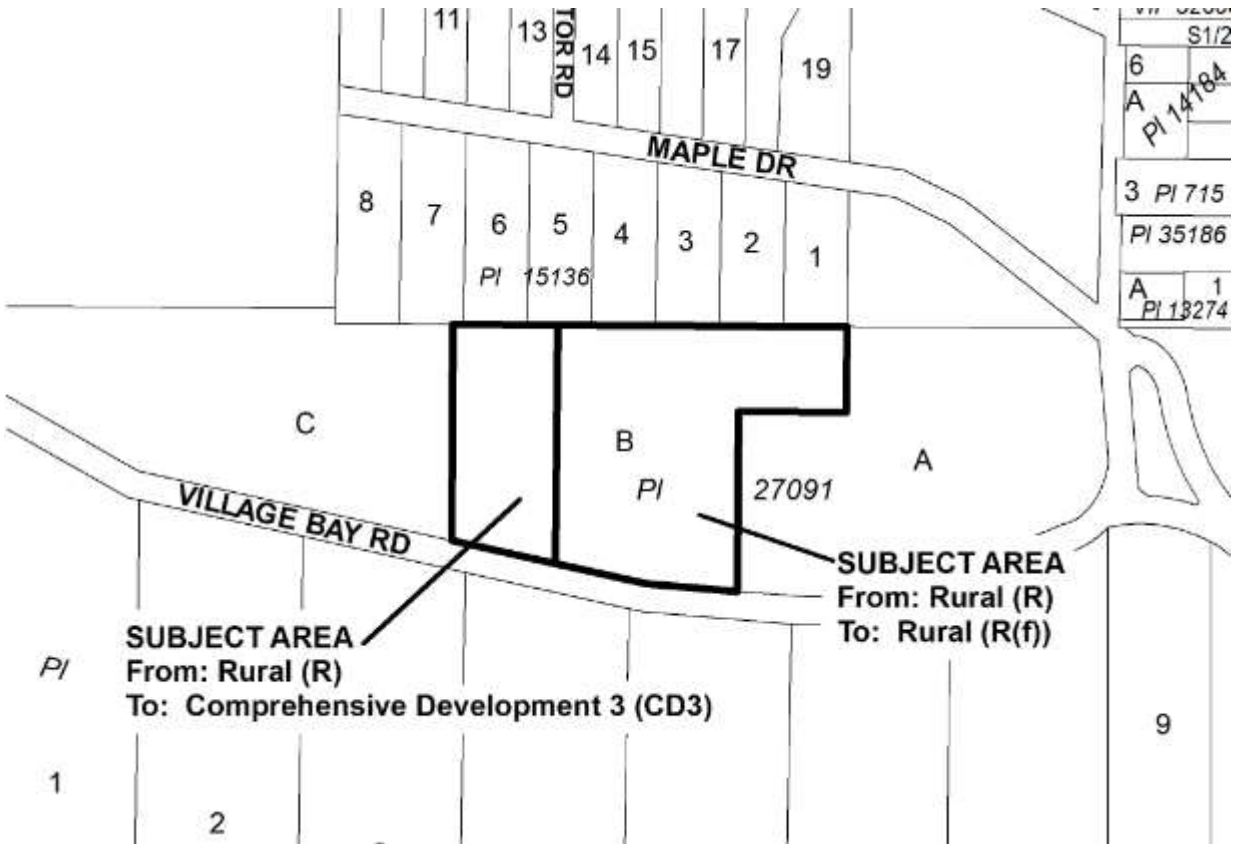
READ A FIRST TIME THIS	DAY OF	2021.
READ A SECOND TIME THIS	DAY OF	2021.
READ A THIRD TIME THIS	DAY OF	2021.
PUBLIC HEARING HELD THIS	DAY OF	2021.
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS	DAY OF	20__
ADOPTED THIS	DAY OF	20__

Chair

Secretary

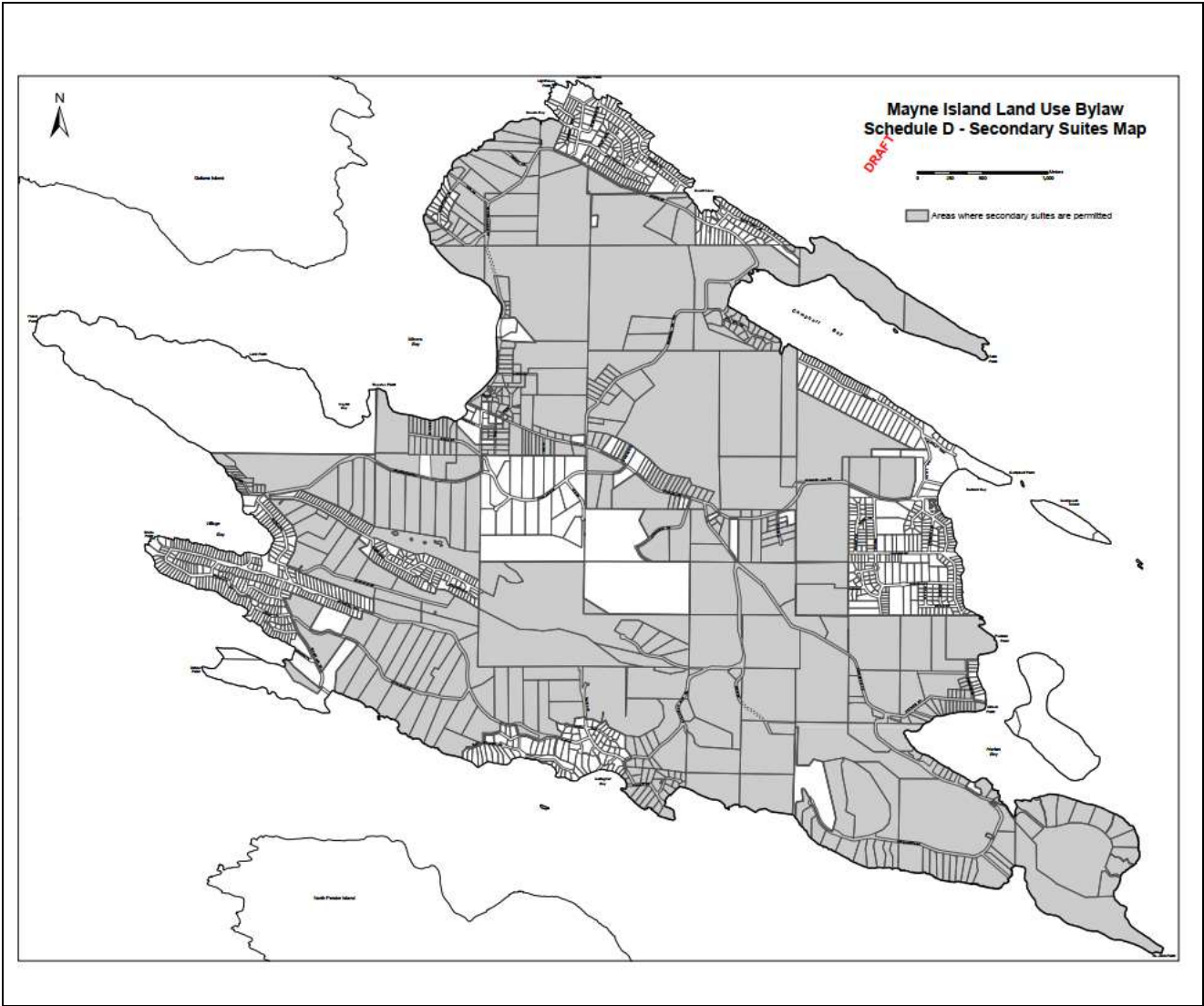
MAYNE ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 183

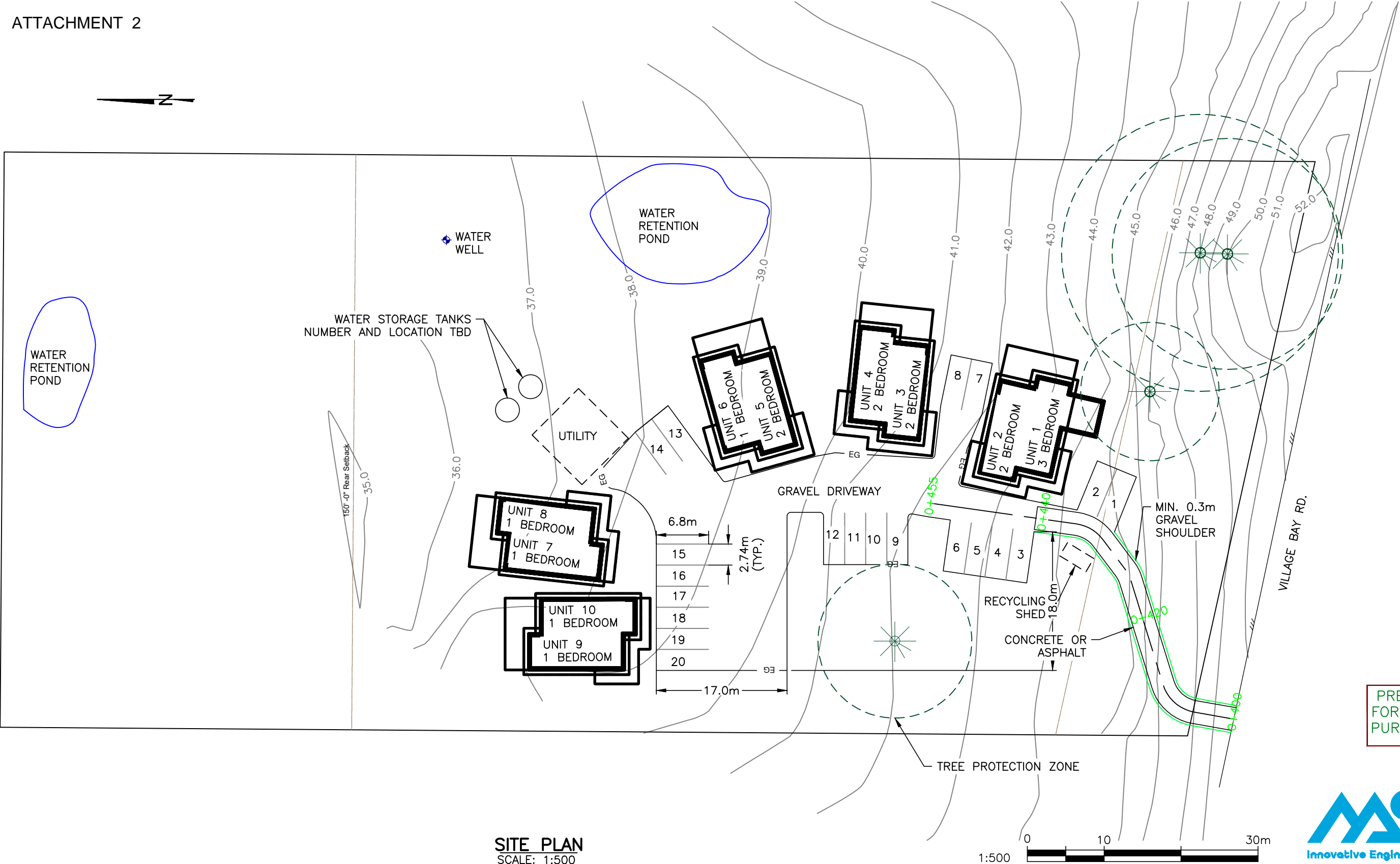
Plan No. 1



MAYNE ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 183

Plan No. 2





SITE PLAN
SCALE: 1:500

PRELIMINARY –
FOR DISCUSSION
PURPOSES ONLY
APRIL 2022

MSR
Innovative Engineering Solutions
PERMIT TO PRACTICE #1001876

BC
CALL
BEFORE
YOU DIG
1-800-474-6886
or 604-261-1111
Hazardous Area 800-460

NO.	DATE	BY	REVISIONS	ENG

NO.	DATE	BY	ISSUED	ENG
1.	2022.04.25	A.M.	ISSUED FOR DISCUSSION	K.W.

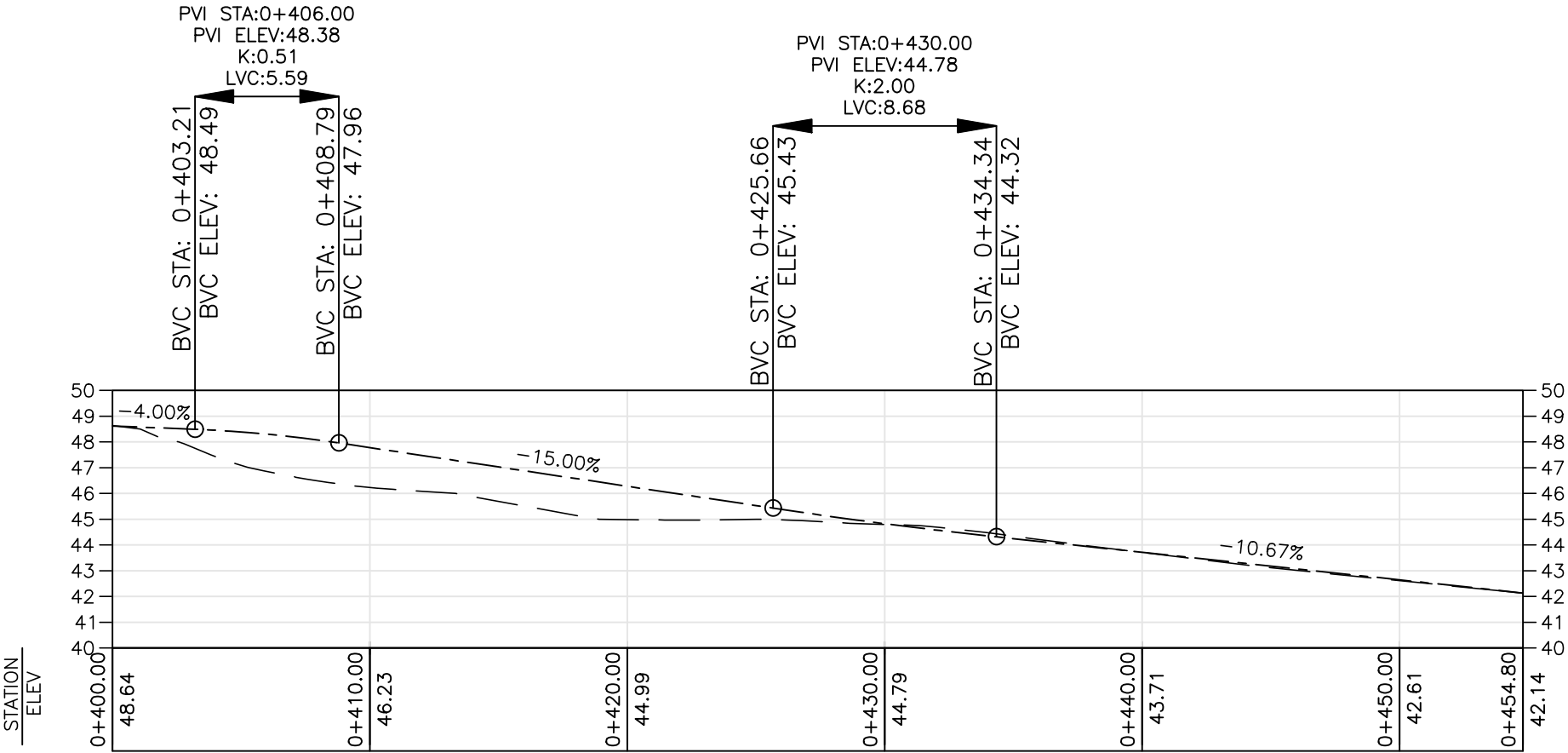
PROJECT:
MAYNE ISLAND HOUSING

DESCRIPTION:
SITE PLAN

MSR SOLUTIONS INC.
INNOVATIVE ENGINEERING SERVICES
125 - 662 GOLDSTREAM AVENUE, VICTORIA B.C.
V8B 0N6
OFFICE: (250) 479 - 5164
FAX: 888.277.2816
info@msrsolutions.ca
www.msrsolutions.ca

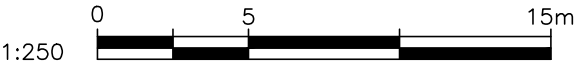
DESIGN BY: T.M.	DATE: 2022.02.10.
DRAWN BY: T.M.	DATE: 2022.02.10.
CHECKED BY: K.W.	DATE: 2022.04.25.
APPROVED BY: K.W.	DATE: 2022.04.25.

HORIZ. SCALE: 1:500	DRAWING No.: C01
VERT. SCALE: 1:500	PROJ No.: 21-653
SHEET 1 OF 2	VERSION No.: 1



DRIVEWAY PROFILE
SCALE: 1:250

PRELIMINARY –
FOR DISCUSSION
PURPOSES ONLY
APRIL 2022



NO.	DATE	BY	REVISIONS	ENG

NO.	DATE	BY	ISSUED	ENG
1.	2022.04.25	A.M.	ISSUED FOR DISCUSSION	X.X.

PROJECT:	MAYNE ISLAND HOUSING
DESCRIPTION:	DRIVEWAY DESIGN PROFILE

MSR SOLUTIONS INC.
INNOVATIVE ENGINEERING SERVICES
125 - 662 GOLDSTREAM AVENUE, VICTORIA B.C.
V9B 0N6
OFFICE: (250) 479 - 5164
FAX: 888.277.2816
info@msrsolutions.ca
www.msrsolutions.ca

DESIGN BY:	DATE:
T.M.	2022.01.04.
DRAWN BY:	DATE:
T.M.	2022.01.04.
CHECKED BY:	DATE:
K.W.	2022.04.25.
APPROVED BY:	DATE:
K.W.	2022.04.25.

HORZ. SCALE:	1:250	DRAWING No.:	C02
VERT. SCALE:	1:250	PROJ No.:	21-653
SHEET	2 OF 2	VERSION No.:	1



Local Trust Committee
Islands Trust - Mayne Island Trust Area
Sent via email

May 6, 2022

RE: Affordability and Rental Structure - Mayne Island Housing Society (MA-RZ-2020.1)

Dear Trustees,

I am writing on behalf of the Mayne Island Housing Society (MIHS) regarding their project and associated rezoning application for 375 Village Bay Road. This letter is to provide an update on the proposed rental/affordability structure; how it relates to the Housing Agreement for their project; and seek direction on next steps for the rezoning application.

MIHS has been seeking a Housing Agreement that provides the society with enough flexibility to remain eligible for a variety of funding options, while still ensuring that a minimum level of affordability is secured. Previous Housing Agreement drafts have been too restrictive and would have been seen as a risk by funders. As a result, MIHS is proposing the following proposal for affordability:

- Units will, on average, be rented at or below 30% of the before-tax income of median-income earners in the SGI electoral area, as reported by Statistics Canada for representative household types.
 - Because median incomes are typically reported on a 5-year cycle through the Census, MIHS proposes an allowance for an annual adjustment to median incomes by the Consumer Price Index (CPI) for any years between Census years. This will ensure that MIHS can maintain a sustainable operation and respond to increases in operational costs as needed.
- Eligibility for affordable units will be tied to Low and Median Income Limits, as determined by BC Housing from time to time. The current Low and Median Income Limits are outlined below:
 - For residential units with less than two (2) bedrooms, a gross household income that does not exceed the median income for couples without children in BC, as determined by BC Housing from time to time. For 2022, this figure is \$77,430 (compared to \$75,730 last year).
 - For residential units with two (2) or more bedrooms, a gross household income that does not exceed the median income for families with children in BC, as determined by BC Housing from time to time. For 2022, this figure is \$120,990 (compared to \$117,080 last year)

MIHS believes that this metric of affordability will:

- Meet or exceed the funding requirements of a range of provincial and federal funders
- Provide MIHS with the flexibility to rent individual units at prices that balance tenants' needs with the financial requirements of the project, while meeting affordability targets



Wiser Projects

Competent. Creative. Committed.

- Provide a level of affordability and stability to tenants that is needed on Mayne Island
- Align with recommendations in the 2018 SGI Housing Needs Report
- Provide below-market rents

This metric of affordability has also recently been approved for two affordable housing projects on Galiano Island. MIHS has attached a draft housing agreement to this letter, based on a housing agreement for Galiano, now being reviewed by IT staff and legal counsel. The Galiano housing agreement has been adapted to the Mayne Island context. We hope that the information provided today will allow the LTC to provide direction to staff review the proposed housing agreement and schedule first reading of the bylaws for this rezoning as soon as possible.

MIHS believes that this project provides an exciting opportunity to meet several community objectives. It will provide safe, reliable, and affordable rental units to Mayne Island residents who need it and will be developed in an inclusive and sustainable way. A resilient and complete community provides for all its members, and housing is a fundamental component of that. The current housing conditions on Mayne Island make it difficult for many low- and median-income households to thrive, whether it is seniors on a fixed income or young families and the workforce of the island.

The MIHS team hopes that this provides enough information to staff and to the LTC to move forward with a housing agreement that reflects this affordability metric.

Please do not hesitate to reach out if you have any questions.

Thank you,

Eleni Gibson

Eleni Gibson
Project Planner
Wiser Projects

Cc: MIHS Board
Narissa Chadwick, Planner, Islands Trust

Attach:
Draft Housing Agreement

ATTACHMENT 5

MAYNE ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. XXX

A Bylaw to Authorize a Housing Agreement

WHEREAS the Mayne Island Local Trust Committee is the Local Trust Committee having jurisdiction on and in respect of the Mayne 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 Mayne Island Local Trust Committee wishes to enter into a Housing Agreement;

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

- 1. This Bylaw may be cited for all purposes as "Mayne Island Housing Agreement Bylaw No. XXX, year".
- 2. Any one Trustee of the Mayne Island Local Trust Committee are authorized to execute an agreement in the form attached to this Bylaw with [owner]

READ A FIRST TIME this X day of month, year
READ A SECOND TIME this X day of month, year
READ A THIRD TIME this X day of month, year

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this
X day of month, year
ADOPTED this X day of month, year

SECRETARY

CHAIRPERSON

LAND TITLE ACT
TERMS OF INSTRUMENT – PART 2

Housing Agreement and Section 219 Covenant

THIS AGREEMENT DATED FOR REFERENCE THE _____ DAY OF, 20 __, IS BETWEEN:

MAYNE ISLAND HOUSING SOCIETY, a society incorporated under the laws of the province of British Columbia under S0069211 and having its office at 518 Dalton Drive, Mayne Island BC, V0N 2J2

Commented [NC1]: Proposed change

(the “Owner”);

AND:

MAYNE 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 “Local Trust Committee”)

WHEREAS:

- A. The registered owner of the Property situated on Mayne Island, British Columbia, and legally described as:

PID: 002-552-256

Lot B Plan VIP 27091 Section 7, Land District 16, Portion Mayne Island

(the “Property”)

Commented [NC2]: Reference to the “Property” as opposed to the “Lands”

agreed to rezone and subdivide the Property to permit the transfer of a portion of the Property to the Owner following rezoning and subdivision for the development and construction of affordable multi-family rental housing;

- B. The Property has been rezoned by the Local Trust Committee, with permission of the registered owner by means of Mayne Island Land Use Bylaw No. 146, 2008 Amendment No. 1, 2021, to permit the development of affordable multi-family rental housing (the “Rezoning”);

- C. The Property has been subdivided, with permission of the registered owner, to permit the creation and transfer of the Lands to the Owner for the development and construction of affordable multi-family rental housing (the “Subdivision”);

- D. The Lands have been transferred to the Owner for the development and construction of affordable multi-family rental housing;

Commented [NC3]: A-D added

E. The Owner is the registered owner of the Lands situated on Mayne Island, British Columbia, and legally described as:

PID: [NTD – insert legal description of Lot 3 following subdivision]

Mayne Island

(the “Lands”);

- F. The Owner intends to rent units on the Lands, by way of rental agreement, to Qualified Renters at affordable rates;
- G. The Local 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 Qualified Renters of dwelling units located on those lands;
- H. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Local Trust Committee in respect of the use of land or construction on land;
- I. The Owner and the Local Trust Committee wish to enter into this Agreement to provide rental 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
- J. The Local 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 Local Trust Committee to the Owner (the receipt of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Local Trust Committee and the Owner agree, as covenants granted by the Owner to the Local Trust Committee under Section 219 of the *Land Title Act*, and as a housing agreement between the Owner and the Local 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 Funder”	means an entity with a mandate to create and promote affordable housing, such as BC Housing or CMHC, that provides a grant or preferential rate loan to support the development of Rental Housing Units on the Lands.
“Annual Household Income”	means 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.
“BC Housing”	means the British Columbia Housing Management Commission or BC Housings’ successor in function.

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

"Building" or "Buildings" Means any building located or constructed on the Lands containing a Rental Unit

"Census Profile" means the most recently available census profile published by Statistics Canada for the Southern Gulf Islands, regional district electoral area census subdivision or, in the event that Southern Gulf Islands, regional district electoral area census subdivision is amended, eliminated or replaced, a successor census subdivision which includes Mayne Island;

"CMHC" means Canada Mortgage and Housing Corporation or its successors in function.

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

"Dwelling Unit" means a dwelling unit as defined in the Mayne Island Land Use Bylaw 146, 2008.

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

"Income of Couples with Children" means the median total income of couple economic families with children as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.

"Income of Couples without Children" means the median total income of couple economic families without children or other relatives as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.

"Income of Lone-Parent Families" means the median total income of lone-parent economic families as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.

"Income of One-Person Households" means the median total income of one-person households as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.

"Lands" has the meaning ascribed in Recital E.

"Low and Moderate Income Limits" means, as determined by BC Housing from time to time,
a) for residential units with less than two (2) bedrooms, an Annual Household Income that does not exceed the median income for couples without children in British Columbia, as an example, for 2022 this figure is \$77,430; and

Commented [NC4]: Removal of definition of "Deep Subsidy Unit" and "Eligible Tenant"

Commented [NC5]: These references replacing the use of Housing Income Limits for Victoria.

Commented [NC6]: Replacing reference to "Market rental unit" "maximum income", "middle income limits"

b) for residential units with two (2) or more bedrooms, an Annual Household Income that does not exceed the median income for families with children in British Columbia, and as an example, for 2022 this figure is \$120,990.

“Operating Agreement” means an agreement that sets out the amount, duration, and conditions of the subsidy provided by the provincial and/or federal governments, or an Affordable Housing Funder for the construction and/or operation of Rental Housing Units.

Commented [NC7]: Definition added

“Owner” means the registered owner of the Lands.

Commented [NC8]: Definition added

“Permitted Housing Operator” means the Mayne Island Housing Society, BC Housing, CMHC, a housing society, a non-profit housing corporation, or other entity approved by the Local Trust Committee in writing.

“Property” has the meaning ascribed in Recital A.

Commented [NC9]: Added

“Qualified Renter” means a person who meets the eligibility criteria for tenancy as set out in Schedule B and who meets the occupancy criteria set out in Section 2.3 of this Agreement and the Operating Agreement, if any.

Commented [NC10]: Definition added

Definition for “Permitted Rent” removed

Definition “Rent-Geared-to-Income” removed

“Rental Housing Unit” means a Dwelling Unit on the Lands in respect of which the construction, tenure, rent, and occupancy are restricted in accordance with this Agreement.

“Residential Tenancy Act” means the *Residential Tenancy Act* (British Columbia).

“Rezoning” has the meaning ascribed in Recital B.

“Statistics Canada” means the national statistics office or Statistics Canada’s successor in function.

Commented [NC11]: Definition added

“Subdivide” means to divide, apportion, consolidate or subdivide the Lands or any Building on the Lands, or the ownership or right to possession or occupation of the Lands or any Building on the Lands, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act* (British Columbia), or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or a “shared interest in land” as defined in the *Real Estate Development Marketing Act* (British Columbia).

“Tenancy Agreement” means a written tenancy agreement as defined in, and subject to, the Residential Tenancy Act.

“Tenant Default” has the meaning ascribed in section 2.3(d)(v).

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 gendered language is used in this Agreement, it shall be deemed to include the plural or all genders, or the body politic or corporate, where the context or the parties so require; and
- 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 in accordance with section 3.15.

Commented [NC12]: Additional detail added

Article 2 – Rental 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 the Owner constructs Rental Housing Units in accordance with this Agreement, any development permit or rezoning issued by the Local Trust Committee, and any Building permit issued by the Capital Regional District.
- b) Neither the Lands nor any Building thereon may be Subdivided without prior approval of the Local Trust Committee.
- c) It will maintain the Rental Housing Units in a satisfactory state of repair and fit for habitation and will comply with this Agreement and all laws, including health and safety standards applicable to the Lands.
- d) If a Building is demolished or is otherwise replaced, this Agreement shall continue to apply to the Lands and the construction on the Lands shall be subject to the requirements of this Agreement.

Commented [NC13]: # of rental units removed

Commented [NC14]: Highlighted part added

2.2 Minimum Construction Requirements

- a) All the Rental Housing Units will be designed and constructed to the same standard in terms of layout, skill, and materials.
- b) Rental Housing Units will consist of a mix of one-bedroom, two-bedroom and at least one three-bedroom units.

2.3 Occupancy of Rental Housing Units

The Owner covenants and agrees that Rental Housing Units will only be occupied when all of the following criteria are met:

- a) the Household's Annual Household Income does not exceed the Low and Moderate Income Limits for the specified unit type at the time of application and initial occupancy;
- b) the Household is composed of at least one Qualified Renter;
- c) the Qualified Renter will occupy the Rental Housing Unit as its permanent, principal, and sole residence;
- d) the Qualified Renter has signed a Tenancy Agreement with the Owner, and the Tenancy Agreement includes;
 - i. a clause prohibiting subletting for short-term vacation rentals and in all other circumstances prohibiting subletting without obtaining prior Owner consent in accordance with section 2.6;
 - ii. notice of the existence of this Agreement and the occupancy restrictions applicable to the Rental Housing Unit, and notice that the Owner will provide to each Qualified Renter upon their request, a copy of this Agreement;
 - iii. a clause requiring the Qualified Renter to comply with the use and occupancy restrictions contained in this Agreement;
 - iv. a clause confirming that a breach by the Qualified Renter of any of the provisions set out in 2.3(f)(i) or 2.3(f)(iii) (each of which constitutes a "Tenancy Default") will entitle the Owner to end the tenancy for cause, in accordance with the Residential Tenancy Act, as a failure to comply with a material term.

Commented [NC15]: Section changed to reflect revised references to eligible tenants

Clause referring to sharing of Tenancy Agreements with LTC upon request has been removed

2.4 Management of Rental Housing Units

The Owner covenants and agrees that:

- a) Rent for 1-bedroom Rental Housing Units in a calendar year will on average be at or below 30% of the average of:
 - a. Income of One-Person Households; and
 - b. Income of Couples without Children.
- b) Rent for 2 and 3-bedroom Rental Housing Units in a calendar year will on average be at or below 30% of the average of:

Commented [NC16]: New section to identify rental structure

- a. Income of Couples with Children; and
- b. Income of Lone-Parent Families.

- c) It will not require any Qualified Renter under a Tenancy Agreement to pay any extra charges or fees for use of any common area or amenity, or for sanitary sewer, storm sewer, water utilities, property taxes and similar services. For clarity, this limitation does not apply to parking, cablevision, telecommunications, laundry, cleaning fee for private events, or gas or electricity utility fees or charges.

2.5 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 waiting 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*.

2.6 No Sublease of Rental Housing Unit Unless Requirements Met

The Owner will not consent to the sublease of a Tenancy Agreement, except in accordance with this Agreement, the Residential Tenancy Act, and the Owner's rules, regulations and policies. For greater clarity, the Owner will not consent to a sublease for the purposes of a short-term vacation rental, and the Owner will not otherwise consent to a sublease unless the sublessee meets the requirements set out in section 2.3.

Commented [NC17]: New section added

2.7 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. Additionally, the Local Trust Committee may request this statutory declaration up to one additional time in any calendar year, and 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.

Commented [NC18]: Original draft identifies that "The Owner must deliver to the LTC upon request". This is more specific.

Commented [NC19]: Original draft says "up to four times in a calendar year"

Commented [NC20]: Original says "within 30 business days"

2.8 Owner May Request Revision of Terms

The Owner may request that the Local Trust Committee modify the terms of this Agreement, aside from section 2.1 and 2.2, in order to meet requirements imposed by an entity that has conditionally agreed to provide the funding to the Owner to construct the Rental Housing Units or operate the Rental Housing Units, or to do both, so that the terms of this Agreement do not conflict with such requirements.

2.9 Operating Agreement Prevails

Notwithstanding section 2.8, the provisions in section 2.3 and 2.4 apply except if the Rental Housing Units are subject to an Operating Agreement which conflicts with all or any of them, in which case the Operating Agreement prevails to the extent of the conflict only.

Prior to execution of an Operating Agreement that the Owner expects to conflict with the provisions in section 2.3 and 2.4 of this Agreement, the Owner shall provide the draft Operating Agreement to the Local Trust Committee. The Local Trust Committee may request that Affordable Housing Funder modify the terms of the Operating Agreement so that its terms do not conflict with section 2.3 and 2.4 of this Agreement.

Article 3 – General Terms

3.1 Management

The Owner covenants and agrees that:

- a) it will furnish, or cause a Permitted Housing Operator to furnish, good and efficient management of the Lands and the Rental Housing Units on the Lands;
- b) if and when the Local Trust Committee has reasonable grounds to believe that a continuing breach of this Agreement exists, it will permit the Local Trust Committee to inspect the Lands and any Buildings at any reasonable time with reasonable notice, subject to the notice provisions of the Residential Tenancy Act; and
- c) the Owner will, or if the Owner is not the Permitted Housing Operator, the Owner will cause the Permitted Housing Operator to, administer, manage and operate the Rental Housing Units in accordance with all of the restrictions and requirements of this Agreement, and the Owner's obligations under this Agreement. For clarity, the Owner's engagement of a Permitted Housing Operator pursuant to this Agreement will not relieve the Owner from any of the Owner's obligations under this Agreement or any of the restrictions or requirements of this Agreement.

Commented [NC21]: Provisions related to demolition have been removed

Commented [NC22]: Section 3.3 Discharge has been removed in light of proposal to connect Housing Agreement to covenant.

3.2 Order to Comply

If the Owner is in default of the performance or observance of this Agreement, the Local Trust Committee may give the Owner a notice of default requiring the Owner to comply with this Agreement within the reasonable 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 Local Trust Committee, within the time stated on the notice of default provided to the Owner by the Local Trust Committee.

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 Local 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 Rental Housing Units. The Owner further acknowledges that a breach of this Agreement may constitute a breach of the Local Trust Committee's Land Use Bylaw.

Commented [NC23]: "as amended from time to time" has been removed

3.5 Assignment

The Owner acknowledges that the Local 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 Local Trust Committee shall be interpreted as a reference to that party provided that the Local Trust Committee has so advised the Owner.

3.6 Indemnity

The Owner shall indemnify and save harmless the Local 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 act or omission of the Owner or its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible in relation to this Agreement, unless resulting from the respective gross negligence or unlawful acts of the Local Trust Committee or its elected officials, officers, directors, employees, and agents.

The Local Trust Committee shall indemnify and save harmless the Owner and each of its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible in relation to this Agreement, from and against all claims, demands, actions, loss, damage, costs and liabilities for which any of them may be liable by reason of any act or omission of the Local Trust Committee or its elected officials, officers, directors, employees, or agents, unless resulting from the respective gross negligence or unlawful acts of the Owner or its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible in relation to this Agreement.

Commented [NC24]: This paragraph was added

This clause will survive the termination of this Agreement.

3.7 Release

The Owner releases and forever discharges the Local 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 advice or direction respecting the ownership, lease, operation or management of the Lands or the Rental Housing Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them, unless resulting from the respective gross negligence or unlawful acts of the Local Trust Committee or its elected officials, officers, directors, employees, and agents and each of their heirs, executors, administrators, personal representatives, successors and assigns.

Commented [NC25]: Section added

The Local Trust Committee releases and forever discharges the Owner and each of its officers, directors, employees, agents and contractors, and any other person for whom the Owner is by law responsible in relation to this Agreement 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 advice or direction respecting the ownership, lease, operation or management of the Lands or the Rental Housing Units which has been or at any time after the commencement of this Agreement may be given to the Local Trust Committee by all or any of them, unless resulting from the respective gross negligence or unlawful acts of the Owner or its officers, directors, employees, agents and contractors, and any other person for whom the Owner is by law responsible in relation to this Agreement and each of their heirs, executors, administrators, personal representatives, successors and assigns.

This clause will survive the termination of this Agreement.

3.8 Local Trust Committee Powers Unaffected

This Agreement does not limit the discretion, rights, duties or powers of the Local Trust Committee under any enactment or the common law, impose on the Local Trust Committee any duty or obligation, affect or limit any enactment relating to the use 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 Local 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 a party of any default under this Agreement of the other party, nor any consent, approval, or agreement whether written or otherwise shall be taken to operate as a waiver by the non-defaulting party 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 non-defaulting party.

Commented [NC26]: Changed from "Local Trust Committee"

3.11 Dispute Resolution

Any matter in dispute between the parties under this Agreement, including any disputes as to whether a particular individual is eligible to occupy a Rental 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).

Commented [NC27]: added

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 Local 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 Local 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 Local Trust Committee, upon an agreement in writing between the Local 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 Local 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 Local Trust Committee may advise the others in writing in accordance with this paragraph. Notice to the Local 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 specified in this Agreement are cumulative and are in addition to any remedies of the parties at law or in equity. No remedy shall be deemed to be exclusive, and a party 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 parties 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 Local Trust Committee or give the Owner any authority or power to bind the Local 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.

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.

(Consent and Priority Agreement removed because of proposal to connect Housing Agreement to Covenant)

SCHEDULE "A"

**OWNER STATUTORY
DECLARATION**

CANADA

IN THE MATTER OF A HOUSING AGREEMENT

PROVINCE OF BRITISH COLUMBIA

WITH THE Mayne Island ISLAND LOCAL
TRUST COMMITTEE ("Housing Agreement")

I, _____

declare that:

1. I am the _____ [director, officer, employee] of the Owner of the land known as _____, Mayne Island, legally described as
Parcel Identifier: _____
Legal Description: _____
(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 Rental 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 Rental Housing Units used as a short-term vacation rental.
6. The rental payments charged for the Rental Housing Units were in compliance with the Housing Agreement.
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

SCHEDULE "B"

Eligibility Criteria for Tenancy

A Qualified Renter means a person aged 19 years or older who meets the financial and other requirements of the Housing Agreement (the "Agreement") and fits into at least one of the following categories, subject to the Operating Agreement, and which are not listed in any particular priority order:

- 1) Residents of Mayne Island;
- 2) Indigenous peoples with rights and responsibilities in and around what is known as Mayne Island, or, is considered by members of these First Nation communities to be part of the First Nation community.

Except that where there are no persons meeting the categories specified in clause 1 or 2 above, who make an application to rent an available unit and the lack of applications from the categories specified above would result in a unit being vacant for more than one month, then a Qualified Renter may be a person aged 19 years or older who meets the financial and other requirements of the Agreement and fits into at least one of the following categories, which are not listed in any particular priority order:

- a. Previous resident of Mayne Island who has lived away from the island for a maximum of three consecutive years; or
- b. Non-resident who is hired to begin at least half-time work (20 hours per week) on Mayne Island; or
- c. Person with immediate family already living on Mayne Island. For greater clarity, immediate family means an individual to whom the person is related by blood, or by marriage, or common-law relationship, or by adoption.

Except that where there are no persons meeting the categories specified in clause 1 or 2, nor a, b, or c above, who make an application to rent an available unit and the lack of applications from the categories specified above would result in a unit being vacant for more than one month, then a Qualified Renter may be any person permitted by the Operating Agreement who meets the financial and other requirements of the Agreement.

ATTACHMENT 6



Mayne Island Housing Society
274 Mariners Way
Mayne Island, BC
V0N 2J2
mihousingsociety@gmail.com

May 6, 2022

To: Chair Dan Rogers, Trustees Jeanine Dodds and David Maude
Cc: Planner Narissa Chadwick

Dear Trustees Rogers, Dodds and Maude,

The Mayne Island Housing Society (MIHS) is writing to you today about our proposed affordable housing project on Mayne Island (the Project). Our Project has been championed by local resident Dr. Sean McHugh, who has agreed to donate a portion of his land to see this Project come to fruition. The Project is based upon a rezoning and subdivision that would split Dr. McHugh's property into three lots, with Lot 1 and 2 to be retained by Dr. McHugh, and Lot 3 to be transferred to the MIHS for affordable housing.

As you are all aware, in the Fall of 2021, there was a change of circumstances that led to appointment of attorneys to act on behalf of Dr. McHugh. This difficult and sad situation led to an abeyance of the application before the Local Trust Committee (LTC) during the Winter months. During that abeyance, the MIHS was fortunate to work with the attorneys to provide a history of the Project, the status of the application before the LTC, and to confirm their intention to have the MIHS continue to represent Dr. McHugh in the proceedings and to carry out Dr. McHugh's wishes to donate land for the Project.

The attorneys have advised the MIHS that they are comfortable with how the Project and application have developed, including with respect to the proposed Lot 2 building zone restrictions, the inclusion of the ecological protection zones, and the restricted access to proposed Lot 2 by way of the existing driveway on Lot 1. The attorneys have made one request and asked that the MIHS bring their request to you for consideration. In particular, the attorneys seek a reasonable time limit on the building restriction on Lot 2. The building restriction currently states that the owner of Lot 2 may not start construction of any building or structure on Lot 2, until the owner of Lot 3 has completed the construction of, and received an occupancy permit, for the affordable housing on Lot 3 (the "Lot 2 Building Restriction").

Upon a successful rezoning and subdivision, it will certainly be MIHS' priority to move this Project to occupancy as soon as practicable, but MIHS, and indeed no society, can guarantee a timeline for development and construction of the Project, which means that Lot 2 is left in limbo. The attorneys propose that this Lot 2 Building Restriction should expire 5 years after the date of subdivision. The MIHS is bringing their request to you as a reasonable compromise in considering the burden of care and uncertainty facing Dr. McHugh and his family.

Dr. McHugh's generous donation of land for the Project represents a significant contribution to the Mayne Island community. Without a secured parcel of land with appropriate zoning, it is impossible to proceed with an affordable housing Project. And we must stress that the need for affordable housing on Mayne Island is both urgent and critical, as underlined by the Islands Trust Council's declaration of a

Housing Crisis (Motion: TC-2021-127, December 2, 2021.) This donation will facilitate the creation of a community amenity to provide affordable housing, and this community amenity will be guaranteed in perpetuity by the rezoning, regardless of when construction occurs.

The MIHS respects the position taken by the Trustees to prioritize construction and development on Lot 3. Your position that the land donor should not receive a benefit on Lot 2, before the community reaps the benefit of the affordable housing on Lot 3, is understandable. However, it also creates significant uncertainty for the owner of Lot 2. The creation of Lot 2 is certainly a benefit to Dr. McHugh, but it is a benefit anticipated and permitted by the Mayne Island OCP when a property owner offers to provide a voluntary community amenity. An indefinite hold on the development of Lot 2 turns a benefit to the land donor into a complicated restriction on title for Lot 2 – in other words, a liability.

We request that the Trustees consider the attorneys' request for a reasonable time-limit on the Lot 2 Building Restriction. MIHS believes that denial of this request would be a disservice to this family and their generosity to the Mayne Island community, and may risk the entire application and Project.

The MIHS has made significant efforts to move this Project forward, with the support of pre-development funding from a variety of government and corporate sources, including: the Capital Regional District (CRD), Canada Mortgage and Housing Corporation (CMHC); the Federation of Canadian Municipalities (FCM), and Vancity Credit Union. Further, as a member of the SGI Housing Coalition, we have been funded to develop a solution to mitigate the barriers to developing affordable housing on the Southern Gulf Islands. To continue to move the Project forward, MIHS will apply for capital funding from CMHC and FCM once the zoning and subdivision approvals are in place. Other funding sources, such as the BC Housing Community Housing Fund, become available on an intermittent basis and while MIHS has not yet applied for BC Housing funding, we intend to do so.

Although the MIHS has been successful in obtaining funds during the pre-development stage, the unpredictable timing of funding opportunities, and the pending rezoning and subsequent subdivision approval processes create uncertainty for the Project. The best prospect for MIHS to improve access to funding for the Project is to obtain the rezoning, subdivision and transfer of the property to MIHS, thus achieving Dr. McHugh's vision of donating Lot 3 to the MIHS for affordable housing. An indefinite Lot 2 Building Restriction turns a benefit to Dr. McHugh into a liability, and imperils the donation and his vision. We hope that you will carefully consider the proposal put forward by the attorneys to mitigate this liability in a way that still prioritizes the community amenity on Lot 3. The attorneys' have offered to assist with the application before the LTC, and may be available for discussion with the Trustees if that will be helpful to this process.

Thank you for your consideration of this request.

Yours truly,

Deborah Goldman, Pres.

Submitted On behalf Mayne Island Housing Society

MAYNE ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. XXX

A Bylaw to Authorize a Housing Agreement

WHEREAS the Mayne Island Local Trust Committee is the Local Trust Committee having jurisdiction on and in respect of the Mayne 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 Mayne Island Local Trust Committee wishes to enter into a Housing Agreement;

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

- 1. This Bylaw may be cited for all purposes as "Mayne Island Housing Agreement Bylaw No. XXX, year".
- 2. Any one Trustee of the Mayne Island Local Trust Committee are authorized to execute an agreement in the form attached to this Bylaw with [owner]

READ A FIRST TIME this	X	day of	month, year
READ A SECOND TIME this	X	day of	month, year
READ A THIRD TIME this	X	day of	month, year

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this	X	day of	month, year
ADOPTED this	X	day of	month, year

SECRETARY

CHAIRPERSON

LAND TITLE ACT
TERMS OF INSTRUMENT – PART 2

Housing Agreement and Section 219 Covenant

THIS AGREEMENT DATED FOR REFERENCE THE _____ DAY OF, 20 __, IS BETWEEN:

MAYNE ISLAND HOUSING SOCIETY, a society incorporated under the laws of the province of British Columbia under S0069211 and having its office at 518 Dalton Drive, Mayne Island BC, V0N 2J2

Commented [NC1]: Proposed change

(the “Owner”);

AND:

MAYNE 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 “Local Trust Committee”)

WHEREAS:

- A. The registered owner of the Property situated on Mayne Island, British Columbia, and legally described as:

PID: 002-552-256

Lot B Plan VIP 27091 Section 7, Land District 16, Portion Mayne Island

(the “Property”)

Commented [NC2]: Reference to the “Property” as opposed to the “Lands”

agreed to rezone and subdivide the Property to permit the transfer of a portion of the Property to the Owner following rezoning and subdivision for the development and construction of affordable multi-family rental housing;

- B. The Property has been rezoned by the Local Trust Committee, with permission of the registered owner by means of Mayne Island Land Use Bylaw No. 146, 2008 Amendment No. 1, 2021, to permit the development of affordable multi-family rental housing (the “Rezoning”);

- C. The Property has been subdivided, with permission of the registered owner, to permit the creation and transfer of the Lands to the Owner for the development and construction of affordable multi-family rental housing (the “Subdivision”);

- D. The Lands have been transferred to the Owner for the development and construction of affordable multi-family rental housing;

Commented [NC3]: A-D added

E. The Owner is the registered owner of the Lands situated on Mayne Island, British Columbia, and legally described as:

PID: [NTD – insert legal description of Lot 3 following subdivision]

Mayne Island

(the “Lands”);

- F. The Owner intends to rent units on the Lands, by way of rental agreement, to Qualified Renters at affordable rates;
- G. The Local 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 Qualified Renters of dwelling units located on those lands;
- H. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Local Trust Committee in respect of the use of land or construction on land;
- I. The Owner and the Local Trust Committee wish to enter into this Agreement to provide rental 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
- J. The Local 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 Local Trust Committee to the Owner (the receipt of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Local Trust Committee and the Owner agree, as covenants granted by the Owner to the Local Trust Committee under Section 219 of the *Land Title Act*, and as a housing agreement between the Owner and the Local 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 Funder”	means an entity with a mandate to create and promote affordable housing, such as BC Housing or CMHC, that provides a grant or preferential rate loan to support the development of Rental Housing Units on the Lands.
“Annual Household Income”	means 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.
“BC Housing”	means the British Columbia Housing Management Commission or BC Housings’ successor in function.

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

"Building" or "Buildings" Means any building located or constructed on the Lands containing a Rental Unit

"Census Profile" means the most recently available census profile published by Statistics Canada for the Southern Gulf Islands, regional district electoral area census subdivision or, in the event that Southern Gulf Islands, regional district electoral area census subdivision is amended, eliminated or replaced, a successor census subdivision which includes Mayne Island;

"CMHC" means Canada Mortgage and Housing Corporation or its successors in function.

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

"Dwelling Unit" means a dwelling unit as defined in the Mayne Island Land Use Bylaw 146, 2008.

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

"Income of Couples with Children" means the median total income of couple economic families with children as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.

"Income of Couples without Children" means the median total income of couple economic families without children or other relatives as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.

"Income of Lone-Parent Families" means the median total income of lone-parent economic families as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.

"Income of One-Person Households" means the median total income of one-person households as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.

"Lands" has the meaning ascribed in Recital E.

"Low and Moderate Income Limits" means, as determined by BC Housing from time to time,
a) for residential units with less than two (2) bedrooms, an Annual Household Income that does not exceed the median income for couples without children in British Columbia, as an example, for 2022 this figure is \$77,430; and

Commented [NC4]: Removal of definition of "Deep Subsidy Unit" and "Eligible Tenant"

Commented [NC5]: These references replacing the use of Housing Income Limits for Victoria.

Commented [NC6]: Replacing reference to "Market rental unit" "maximum income", "middle income limits"

b) for residential units with two (2) or more bedrooms, an Annual Household Income that does not exceed the median income for families with children in British Columbia, and as an example, for 2022 this figure is \$120,990.

“Operating Agreement” means an agreement that sets out the amount, duration, and conditions of the subsidy provided by the provincial and/or federal governments, or an Affordable Housing Funder for the construction and/or operation of Rental Housing Units.

Commented [NC7]: Definition added

“Owner” means the registered owner of the Lands.

Commented [NC8]: Definition added

“Permitted Housing Operator” means the Mayne Island Housing Society, BC Housing, CMHC, a housing society, a non-profit housing corporation, or other entity approved by the Local Trust Committee in writing.

“Property” has the meaning ascribed in Recital A.

Commented [NC9]: Added

“Qualified Renter” means a person who meets the eligibility criteria for tenancy as set out in Schedule B and who meets the occupancy criteria set out in Section 2.3 of this Agreement and the Operating Agreement, if any.

Commented [NC10]: Definition added

Definition for “Permitted Rent” removed

Definition “Rent-Geared-to-Income” removed

“Rental Housing Unit” means a Dwelling Unit on the Lands in respect of which the construction, tenure, rent, and occupancy are restricted in accordance with this Agreement.

“Residential Tenancy Act” means the *Residential Tenancy Act* (British Columbia).

“Rezoning” has the meaning ascribed in Recital B.

“Statistics Canada” means the national statistics office or Statistics Canada’s successor in function.

Commented [NC11]: Definition added

“Subdivide” means to divide, apportion, consolidate or subdivide the Lands or any Building on the Lands, or the ownership or right to possession or occupation of the Lands or any Building on the Lands, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act* (British Columbia), or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or a “shared interest in land” as defined in the *Real Estate Development Marketing Act* (British Columbia).

“Tenancy Agreement” means a written tenancy agreement as defined in, and subject to, the Residential Tenancy Act.

“Tenant Default” has the meaning ascribed in section 2.3(d)(v).

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 gendered language is used in this Agreement, it shall be deemed to include the plural or all genders, or the body politic or corporate, where the context or the parties so require; and
- 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 in accordance with section 3.15.

Commented [NC12]: Additional detail added

Article 2 – Rental 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 the Owner constructs Rental Housing Units in accordance with this Agreement, any development permit or rezoning issued by the Local Trust Committee, and any Building permit issued by the Capital Regional District.
- b) Neither the Lands nor any Building thereon may be Subdivided without prior approval of the Local Trust Committee.
- c) It will maintain the Rental Housing Units in a satisfactory state of repair and fit for habitation and will comply with this Agreement and all laws, including health and safety standards applicable to the Lands.
- d) If a Building is demolished or is otherwise replaced, this Agreement shall continue to apply to the Lands and the construction on the Lands shall be subject to the requirements of this Agreement.

Commented [NC13]: # of rental units removed

Commented [NC14]: Highlighted part added

2.2 Minimum Construction Requirements

- a) All the Rental Housing Units will be designed and constructed to the same standard in terms of layout, skill, and materials.
- b) Rental Housing Units will consist of a mix of one-bedroom, two-bedroom and at least one three-bedroom units.

2.3 Occupancy of Rental Housing Units

The Owner covenants and agrees that Rental Housing Units will only be occupied when all of the following criteria are met:

- a) the Household's Annual Household Income does not exceed the Low and Moderate Income Limits for the specified unit type at the time of application and initial occupancy;
- b) the Household is composed of at least one Qualified Renter;
- c) the Qualified Renter will occupy the Rental Housing Unit as its permanent, principal, and sole residence;
- d) the Qualified Renter has signed a Tenancy Agreement with the Owner, and the Tenancy Agreement includes;
 - i. a clause prohibiting subletting for short-term vacation rentals and in all other circumstances prohibiting subletting without obtaining prior Owner consent in accordance with section 2.6;
 - ii. notice of the existence of this Agreement and the occupancy restrictions applicable to the Rental Housing Unit, and notice that the Owner will provide to each Qualified Renter upon their request, a copy of this Agreement;
 - iii. a clause requiring the Qualified Renter to comply with the use and occupancy restrictions contained in this Agreement;
 - iv. a clause confirming that a breach by the Qualified Renter of any of the provisions set out in 2.3(f)(i) or 2.3(f)(iii) (each of which constitutes a "Tenancy Default") will entitle the Owner to end the tenancy for cause, in accordance with the Residential Tenancy Act, as a failure to comply with a material term.

Commented [NC15]: Section changed to reflect revised references to eligible tenants

Clause referring to sharing of Tenancy Agreements with LTC upon request has been removed

2.4 Management of Rental Housing Units

The Owner covenants and agrees that:

- a) Rent for 1-bedroom Rental Housing Units in a calendar year will on average be at or below 30% of the average of:
 - a. Income of One-Person Households; and
 - b. Income of Couples without Children.
- b) Rent for 2 and 3-bedroom Rental Housing Units in a calendar year will on average be at or below 30% of the average of:

Commented [NC16]: New section to identify rental structure

- a. Income of Couples with Children; and
- b. Income of Lone-Parent Families.

- c) It will not require any Qualified Renter under a Tenancy Agreement to pay any extra charges or fees for use of any common area or amenity, or for sanitary sewer, storm sewer, water utilities, property taxes and similar services. For clarity, this limitation does not apply to parking, cablevision, telecommunications, laundry, cleaning fee for private events, or gas or electricity utility fees or charges.

2.5 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 waiting 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*.

2.6 No Sublease of Rental Housing Unit Unless Requirements Met

The Owner will not consent to the sublease of a Tenancy Agreement, except in accordance with this Agreement, the Residential Tenancy Act, and the Owner's rules, regulations and policies. For greater clarity, the Owner will not consent to a sublease for the purposes of a short-term vacation rental, and the Owner will not otherwise consent to a sublease unless the sublessee meets the requirements set out in section 2.3.

Commented [NC17]: New section added

2.7 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. Additionally, the Local Trust Committee may request this statutory declaration up to one additional time in any calendar year, and 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.

Commented [NC18]: Original draft identifies that "The Owner must deliver to the LTC upon request". This is more specific.

Commented [NC19]: Original draft says "up to four times in a calendar year"

Commented [NC20]: Original says "within 30 business days"

2.8 Owner May Request Revision of Terms

The Owner may request that the Local Trust Committee modify the terms of this Agreement, aside from section 2.1 and 2.2, in order to meet requirements imposed by an entity that has conditionally agreed to provide the funding to the Owner to construct the Rental Housing Units or operate the Rental Housing Units, or to do both, so that the terms of this Agreement do not conflict with such requirements.

2.9 Operating Agreement Prevails

Notwithstanding section 2.8, the provisions in section 2.3 and 2.4 apply except if the Rental Housing Units are subject to an Operating Agreement which conflicts with all or any of them, in which case the Operating Agreement prevails to the extent of the conflict only.

Prior to execution of an Operating Agreement that the Owner expects to conflict with the provisions in section 2.3 and 2.4 of this Agreement, the Owner shall provide the draft Operating Agreement to the Local Trust Committee. The Local Trust Committee may request that Affordable Housing Funder modify the terms of the Operating Agreement so that its terms do not conflict with section 2.3 and 2.4 of this Agreement.

Article 3 – General Terms

3.1 Management

The Owner covenants and agrees that:

- a) it will furnish, or cause a Permitted Housing Operator to furnish, good and efficient management of the Lands and the Rental Housing Units on the Lands;
- b) if and when the Local Trust Committee has reasonable grounds to believe that a continuing breach of this Agreement exists, it will permit the Local Trust Committee to inspect the Lands and any Buildings at any reasonable time with reasonable notice, subject to the notice provisions of the Residential Tenancy Act; and
- c) the Owner will, or if the Owner is not the Permitted Housing Operator, the Owner will cause the Permitted Housing Operator to, administer, manage and operate the Rental Housing Units in accordance with all of the restrictions and requirements of this Agreement, and the Owner's obligations under this Agreement. For clarity, the Owner's engagement of a Permitted Housing Operator pursuant to this Agreement will not relieve the Owner from any of the Owner's obligations under this Agreement or any of the restrictions or requirements of this Agreement.

Commented [NC21]: Provisions related to demolition have been removed

Commented [NC22]: Section 3.3 Discharge has been removed in light of proposal to connect Housing Agreement to covenant.

3.2 Order to Comply

If the Owner is in default of the performance or observance of this Agreement, the Local Trust Committee may give the Owner a notice of default requiring the Owner to comply with this Agreement within the reasonable 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 Local Trust Committee, within the time stated on the notice of default provided to the Owner by the Local Trust Committee.

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 Local 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 Rental Housing Units. The Owner further acknowledges that a breach of this Agreement may constitute a breach of the Local Trust Committee's Land Use Bylaw.

Commented [NC23]: "as amended from time to time" has been removed

3.5 Assignment

The Owner acknowledges that the Local 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 Local Trust Committee shall be interpreted as a reference to that party provided that the Local Trust Committee has so advised the Owner.

3.6 Indemnity

The Owner shall indemnify and save harmless the Local 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 act or omission of the Owner or its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible in relation to this Agreement, unless resulting from the respective gross negligence or unlawful acts of the Local Trust Committee or its elected officials, officers, directors, employees, and agents.

The Local Trust Committee shall indemnify and save harmless the Owner and each of its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible in relation to this Agreement, from and against all claims, demands, actions, loss, damage, costs and liabilities for which any of them may be liable by reason of any act or omission of the Local Trust Committee or its elected officials, officers, directors, employees, or agents, unless resulting from the respective gross negligence or unlawful acts of the Owner or its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible in relation to this Agreement.

Commented [NC24]: This paragraph was added

This clause will survive the termination of this Agreement.

3.7 Release

The Owner releases and forever discharges the Local 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 advice or direction respecting the ownership, lease, operation or management of the Lands or the Rental Housing Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them, unless resulting from the respective gross negligence or unlawful acts of the Local Trust Committee or its elected officials, officers, directors, employees, and agents and each of their heirs, executors, administrators, personal representatives, successors and assigns.

Commented [NC25]: Section added

The Local Trust Committee releases and forever discharges the Owner and each of its officers, directors, employees, agents and contractors, and any other person for whom the Owner is by law responsible in relation to this Agreement 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 advice or direction respecting the ownership, lease, operation or management of the Lands or the Rental Housing Units which has been or at any time after the commencement of this Agreement may be given to the Local Trust Committee by all or any of them, unless resulting from the respective gross negligence or unlawful acts of the Owner or its officers, directors, employees, agents and contractors, and any other person for whom the Owner is by law responsible in relation to this Agreement and each of their heirs, executors, administrators, personal representatives, successors and assigns.

This clause will survive the termination of this Agreement.

3.8 Local Trust Committee Powers Unaffected

This Agreement does not limit the discretion, rights, duties or powers of the Local Trust Committee under any enactment or the common law, impose on the Local Trust Committee any duty or obligation, affect or limit any enactment relating to the use 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 Local 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 a party of any default under this Agreement of the other party, nor any consent, approval, or agreement whether written or otherwise shall be taken to operate as a waiver by the non-defaulting party 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 non-defaulting party.

Commented [NC26]: Changed from "Local Trust Committee"

3.11 Dispute Resolution

Any matter in dispute between the parties under this Agreement, including any disputes as to whether a particular individual is eligible to occupy a Rental 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).

Commented [NC27]: added

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 Local 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 Local 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 Local Trust Committee, upon an agreement in writing between the Local 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 Local 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 Local Trust Committee may advise the others in writing in accordance with this paragraph. Notice to the Local 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 specified in this Agreement are cumulative and are in addition to any remedies of the parties at law or in equity. No remedy shall be deemed to be exclusive, and a party 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 parties 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 Local Trust Committee or give the Owner any authority or power to bind the Local 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.

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.

(Consent and Priority Agreement removed because of proposal to connect Housing Agreement to Covenant)

SCHEDULE "A"

**OWNER STATUTORY
DECLARATION**

CANADA

IN THE MATTER OF A HOUSING AGREEMENT

PROVINCE OF BRITISH COLUMBIA

WITH THE Mayne Island ISLAND LOCAL
TRUST COMMITTEE ("Housing Agreement")

I, _____

declare that:

1. I am the _____ [director, officer, employee] of the Owner of the land known as _____, Mayne Island, legally described as
Parcel Identifier: _____
Legal Description: _____
(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 Rental 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 Rental Housing Units used as a short-term vacation rental.
6. The rental payments charged for the Rental Housing Units were in compliance with the Housing Agreement.
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

SCHEDULE "B"

Eligibility Criteria for Tenancy

A Qualified Renter means a person aged 19 years or older who meets the financial and other requirements of the Housing Agreement (the "Agreement") and fits into at least one of the following categories, subject to the Operating Agreement, and which are not listed in any particular priority order:

- 1) Residents of Mayne Island;
- 2) Indigenous peoples with rights and responsibilities in and around what is known as Mayne Island, or, is considered by members of these First Nation communities to be part of the First Nation community.

Except that where there are no persons meeting the categories specified in clause 1 or 2 above, who make an application to rent an available unit and the lack of applications from the categories specified above would result in a unit being vacant for more than one month, then a Qualified Renter may be a person aged 19 years or older who meets the financial and other requirements of the Agreement and fits into at least one of the following categories, which are not listed in any particular priority order:

- a. Previous resident of Mayne Island who has lived away from the island for a maximum of three consecutive years; or
- b. Non-resident who is hired to begin at least half-time work (20 hours per week) on Mayne Island; or
- c. Person with immediate family already living on Mayne Island. For greater clarity, immediate family means an individual to whom the person is related by blood, or by marriage, or common-law relationship, or by adoption.

Except that where there are no persons meeting the categories specified in clause 1 or 2, nor a, b, or c above, who make an application to rent an available unit and the lack of applications from the categories specified above would result in a unit being vacant for more than one month, then a Qualified Renter may be any person permitted by the Operating Agreement who meets the financial and other requirements of the Agreement.