



1. Application

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File No.: 32374-0690
BCHMC No.: 96328/11742
Covenant - Development Cost Charges Waiver

2. Description of Land

PID/Plan Number	Legal Description
000-408-999	LOT 8, SECTION 16, COMOX DISTRICT, PLAN 6065 EXCEPT PART IN PLAN 1149RW

3. Nature of Interest

Type	Number	Additional Information
COVENANT		Entire Instrument

4. Terms

Part 2 of this instrument consists of:
(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

PROVINCIAL RENTAL HOUSING CORPORATION, NO.BC0052129

6. Transferee(s)

THE CORPORATION OF THE CITY OF COURTENAY
830 CLIFFE AVENUE
COURTENAY BC V9N 2J7

7. Additional or Modified Terms



8. Execution(s)

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

Provincial Rental Housing Corporation
By their Authorized Signatory

Name:

Name:

Officer Certification

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

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

The Corporation of the City of Courtenay
By their Authorized Signatory

Name:

Name:

Officer Certification

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



Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

TERMS OF INSTRUMENT - PART 2

WHEREAS:

- A. The Transferor is the registered owner of those lands and premises set out in Item 2, Part 1 of this instrument (the "**Lands**");
- B. The Transferee is a municipality incorporated under the laws of the Province of British Columbia;
- C. Pursuant to section 563 of the Act, the Transferee may waive or reduce a development cost charge by bylaw for certain classes of eligible developments, including not-for-profit and for-profit rental housing;
- D. The Transferee has enacted the Bylaw which provides that Development Cost Charges shall be reduced by 100% for that portion of the Development which provides Non-Profit Affordable Rental Housing, provided that (i) the Zoning Bylaw as it applies to the Lands is amended by the Zoning Amendment Bylaw to permit only Non-Profit Affordable Rental Housing; and (ii) the Non-Profit Affordable Rental Housing is secured through a covenant on title to the Lands which restricts the use of that portion of the Lands for the Term;
- E. The Zoning Bylaw as it applies to the Lands has been amended by the Zoning Amendment Bylaw to permit only Non-Profit Affordable Rental Housing, being:
 - a) purpose-built shelter, being the provision of communal, transitional accommodation, and ancillary uses required to operate such accommodation, sponsored or supervised by a public authority or non-profit agency intended to provide basic lodgings for persons requiring immediate shelter and assistance for a short period of time. This use includes an ancillary supportive housing use if the majority of the gross floor area is used for temporary shelter services;
 - b) supportive housing, being subsidized housing with on-site supports for people at risk of or experiencing homelessness;
 - c) housing owned by a government agency or corporation, or non-profit society;
 - d) community service;
 - e) office; and
 - f) accessory buildings and structures;
- F. The Transferor acknowledges that it is in the public interest that the use and development of the Lands be restricted as set out in this Agreement;
- G. Section 219 of the *Land Title Act* provides that a covenant, whether of negative or positive nature, in respect of the use of land or the use of a building on or to be erected on land, or that land is not to be built on or subdivided except in accordance with the covenant may be granted.

NOW THEREFORE THIS AGREEMENT WITNESSES that under Section 219 of the *Land Title Act*, and in consideration of the premises and the mutual covenants and agreements contained herein, and the sum of ONE (\$1.00) DOLLAR of lawful money of Canada now paid to the Transferor by the Transferee (the receipt and sufficiency of which is hereby acknowledged), and for other good and valuable consideration the parties covenant and agree each with the other as

follows:

1.0 DEFINITIONS

1.1 The following terms have the following meanings:

- a) **"Agreement"** means this agreement;
- b) **"Act"** means the *Local Government Act*, RSBC 2015, c 1;
- c) **"Bylaw"** means *City of Courtenay Development Cost Charges Waiver (Affordable Housing) Bylaw No. 3118*;
- d) **"Development"** means the development that is or will be constructed on the Lands comprised of a purpose-built shelter with support services, supportive housing, and non-market housing, including 27 Shelter Units and 70 Dwelling Units;
- e) **"Development Cost Charges"** means a charge imposed by a City of Courtenay bylaw pursuant to section 559(1) of the Act;
- f) **"Dwelling Units"** means a habitable room which constitutes one self-contained unit used or intended to be used for living and sleeping purposes for which is provided cooking equipment or the facilities for the installation of cooking equipment and one or more bathrooms with a water closet, wash basin and shower or bath;
- g) **"Lands"** has the meaning given to it at Recital "A";
- h) **"Non-Profit Affordable Rental Housing"** means housing that is owned and/or operated by a registered non-profit society, Provincial Rental Housing Corporation and/or BC Housing Management Commission that is subject to a covenant registered to title to the satisfaction of the City of Courtenay's Director of Development Services;
- i) **"Term"** means the life of that portion of the building;
- j) **"Shelter Units"** means a habitable room containing various number of temporary beds to be provided to persons experiencing homelessness or housing insecurity;
- k) **"Zoning Amendment Bylaw"** means Bylaw No. 3154 to rezone the Lands from Residential Four A (R-4A) to Comprehensive Development Zone 43 (CD-43); and
- l) **"Zoning Bylaw"** means the City of Courtney Bylaw No. 2500, 2007, as amended from time to time.

2.0 COVENANTS

- 2.1 The purpose of this Agreement is to establish the terms and conditions under which the Transferor agrees that it will build on the Lands, and the Transferor therefore covenants and agrees with the Transferee that it shall not construct any building on the Lands except in accordance with this Agreement.
- 2.2 During the Term, the Transferor covenants and agrees with the Transferee that it shall not use or permit the use of the Lands or any building on the Lands for any purpose, construct any building on the Lands or subdivide the Lands except in strict accordance with this Agreement.

2.3 Prior to the issuance of a building permit for any buildings or structures on the Lands, the Transferor covenants and agrees to make a financial contribution to the Transferee in the amount equal to <@> per m² of gross floor area of all buildings located on the Lands (the “**Development Cost Charges**”).

2.4 If any of the following considerations apply, the Development Cost Charges for the Development shall be reduced in accordance with the Bylaw, as it was on the date this Agreement was entered:

Development Cost Charges shall be reduced by 100% for that portion of a development which provides Non-Profit Affordable Rental Housing, provided that the Non-Profit Affordable Rental Housing:

- a) May be secured through a zoning restriction; and
- b) Is secured through a covenant on title which restricts the use of that portion of the applicable development class for the life of that portion of the building.

2.5 Notwithstanding section 2.4 of this Agreement, in the event the Transferor applies for the stratification of any part or the whole of the Development for which Development Cost Charges were waived or reduced pursuant to section 2.4 of this Agreement, the Development Cost Charges will be due and payable at the then-current rate of the Transferee.

2.6 During the Term, the Transferor covenants and agrees with the Transferee that it shall not use or permit the use of the Lands or any building on the Lands for any purpose or construct any building on the Lands until:

(a) the Transferor has paid the Development Cost Charges, if any, in accordance with section 2.3; and

(b) the Transferor has registered on title to the Lands all covenants required by section 2.4, if any.

Notwithstanding the foregoing, the parties agree that the existing buildings and improvements in place, may continue to be used and operated in their current capacity.

3.0 PUBLIC BODY

3.1 Nothing contained or implied within this Agreement shall prejudice or affect the duties, rights and powers of the Transferee in the exercise of its functions under any public or private statutes, bylaws, orders or regulations, all of which may be fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered.

3.2 Nothing in this Agreement shall relieve the Transferor from any obligation or requirement arising under any applicable statute, bylaw or regulation in respect of the development of the Lands.

4.0 GENERAL PROVISIONS

- 4.1 At the Transferor's expense, the Transferor must do everything necessary to secure priority of registration and interest for this Agreement and the Section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Lands.
- 4.2 Time is of the essence of this Agreement.
- 4.3 The recitals form part of this Agreement.
- 4.4 The Transferor covenants and agrees for itself, its heirs, executors, successors and assigns, that it will at all times perform and observe the requirements and restrictions set out in this Agreement and they shall be binding upon the Transferor as personal covenants only during the period of its respective ownership of any interest in the Lands.
- 4.5 It is mutually understood, acknowledged and agreed by the parties hereto that the Transferee has made no representations, covenants, warranties, guarantees, promises or agreements (oral or otherwise) with the Transferor other than those contained in this Agreement.
- 4.6 The waiver by a party of any breach of this Agreement or failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar, and no waiver shall be effective unless it is in writing signed by both parties.
- 4.7 Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.
- 4.8 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.
- 4.9 The enforcement of this Agreement shall be entirely within the discretion of the Transferee and the execution and registration of the Agreement against title to the Lands shall not be interpreted as creating any duty on the part of the Transferee to the Transferor or to any other person to enforce any provision or the breach of any provision of this Agreement.
- 4.10 Subject the expiry of the Term, the restrictions and covenants herein contained shall be covenants running with the Lands, and shall continue to bind all of the Lands when subdivided, and shall be registered in the Land Title Office pursuant to section 219 of the *Land Title Act* as covenants in favour of the Transferee.
- 4.11 Upon the expiry of the Term or the earlier termination of this Agreement, the Transferor may prepare or cause to be prepared a discharge of this Agreement at the Transferor's sole cost, and the Transferor will promptly execute same. The Transferor will pay for the cost of registering such discharge.
- 4.12 The Transferor agrees to execute all other documents and provide all other assurances necessary to give effect to the covenants contained in this Agreement.

- 4.13 This Agreement represents the entire agreement between the Transferee and the Transferor regarding the matters set out in this Agreement and supersedes all prior agreements, letters of intent, or understandings about these matters.
- 4.14 This Agreement may be executed in any number of counterparts and delivered via facsimile or email, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.
- 4.15 If any part of this Agreement is found to be illegal or unenforceable, that part will be considered separate and severable and the remaining parts will not be affected thereby and will be enforceable to the fullest extent permitted by law.
- 4.16 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

As evidence of their agreement to be bound by the terms of this instrument, the parties have each executed 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.