

**PART 2 – TERMS OF INSTRUMENT**

**HOUSING AGREEMENT AND COVENANT**

(Section 483 *Local Government Act* and Section 219 *Land Title Act*)

THIS AGREEMENT dated for reference the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, is

BETWEEN:

**PACSWELL DEVELOPMENTS COURTENAY, INC.** (INC. NO. BC1263001)  
5759 LARSON PLACE  
WEST VANCOUVER, BC  
V7W 1S5

(the “Owner”)

AND:

**THE CORPORATION OF THE CITY OF COURTENAY**  
830 Cliffe Avenue  
Courtenay, BC V9N 2J7

(the “City”)

**WHEREAS:**

- A. The Owner is the registered owner in fee simple of the lands and premises in the City of Courtenay, British Columbia which are legally described in Item 2 of the Form C attached hereto (the “Lands”);
- B. Section 483 of the *Local Government Act* permits the City to enter into and note on title to lands housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units, and rent that may be charged for housing units;
- C. Section 219 of the *Land Title Act* permits the registration of a covenant of a positive or a negative nature in favour of the City in respect of the use of, construction on, and subdivision of land; and
- D. The City and the Owner wish to enter into this Agreement to provide long-term affordable rental units on the terms and conditions set out in this Agreement.

In consideration of the covenants and agreements herein, and one dollar (\$1.00) paid to the Owner by the City (the receipt and sufficiency of which is acknowledged by the Owner), and other good and valuable consideration, the Owner and the City covenant and agree pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act* as follows:

**ARTICLE 1     DEFINITIONS AND INTERPRETATION****1.1 Definitions** – In this Agreement, the following words have the following meanings:

- (a) “BC Housing” means the British Columbia Housing Management Commission;
- (b) “Dwelling Unit” means a residential dwelling unit or units located or to be located on the Lands;
- (c) “Eligible Tenant” means a Tenant who, at the time he or she enters into a Tenancy Agreement, has a gross household income equal to or less than the Housing Income Limits;
- (d) “Existing Building” means the existing residential building on the Lands as of the reference date of this Agreement.
- (e) “Affordable Housing Unit” means a Dwelling Unit in respect of which the monthly rent payable by a Tenant of the unit is calculated in accordance with section 3.4 of this Agreement.
- (f) “Housing Income Limits” means the Housing Income Limits for affordable housing programs (for each category of dwelling unit) established by BC Housing from time to time in the “Courtenay-Comox Planning Area” as shown in the annual Housing Income Limits report published by BC Housing;
- (g) “LTO” means the Victoria Land Title Office or its successor;
- (h) “Rental Rate One” means a monthly rental rate of \$711.75.
- (i) “Rental Rate Two” means a monthly rental rate of \$806.65.
- (j) “Proposed Building” means the residential building proposed to be constructed on the Lands by the Owner after the reference date of this Agreement, which includes Affordable Housing Units;
- (k) “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*, 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);
- (l) “Tenancy Agreement” means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit; and
- (m) “Tenant” means an occupant of an Affordable Housing Unit by way of a Tenancy Agreement.

**1.2 Interpretation** – In this Agreement:

- (a) reference to the singular includes a reference to the plural, and *vice versa*, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (f) the provisions of section 25 of the *Interpretation Act* (British Columbia) with respect to the calculation of time apply;
- (g) time is of the essence;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a “party” is a reference to a party to this Agreement and to that party’s respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a “party” also includes a Tenant, agent, officer and invitee of the party;
- (j) reference to a “day”, “month”, or “year” is a reference to a calendar day, calendar month, or calendar year, as the case may be, unless otherwise expressly provided; and
- (k) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

**ARTICLE 2 USE AND CONSTRUCTION OF LANDS AND HOUSING INCOME LIMIT UNITS**

**2.1 Use and Construction of Lands** – The Owner covenants and agrees that the Lands shall not be used except in accordance with the terms of these agreement, and specifically that:

- (a) The Lands will not be further developed and no further building or structure will be constructed or occupied on the Lands unless as part of the development or construction of any such building or structure, the Owner also designs and constructs to completion, in accordance with a building permit issued by the City, any development permit issued by the

City and, if applicable, any rezoning consideration applicable to the development on the Lands, at least three (3) Affordable Housing Units;

- (b) As soon as reasonably possible, the Owner will designate at least two (2) Affordable Housing Units in the Existing Building; and
- (c) The Proposed Building will not be occupied or otherwise used unless the Owner has designated not less than five (5) Affordable Housing Units on the Lands.

**2.2 Short-term Vacation Rentals Prohibited** – The Owner agrees that no Affordable Housing Units may be rented to or tenanted by any person for a term of less than thirty (30) days.

**2.3 Requirement for Statutory Declaration** – The Owner agrees that each calendar year, no later than January 14, the Owner must, in respect of each Affordable Housing Unit, provide to the City a statutory declaration, substantially in the form (with, in the City’s discretion, such further amendments or additions as deemed necessary or desirable) attached as Appendix A, sworn by an authorized signatory of the Owner, containing all of the information required to complete the statutory declaration. Notwithstanding that the Owner may have already provided such statutory declaration in the particular calendar year, the City may request and the Owner shall provide to the City such further statutory declarations as requested by the City in respect to an Affordable Housing Unit if, in the City’s absolute determination, the City believes that the Owner is in breach of any of its obligations under this Agreement.

**2.4 City Authorized to Make Inquiries** – The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

**2.5 Expiry of Housing Agreement** – The City covenants and agrees with the Owner that this Agreement shall cease to apply from and after the tenth (10<sup>th</sup>) anniversary of the date the City grants an occupancy permit to the Proposed Building. Upon expiry, the Owner may provide to the City a discharge of this Agreement, which the City shall execute and return to the Owner for filing in the LTO.

### **ARTICLE 3 USE OF HOUSING INCOME LIMIT UNITS**

**3.1 Use of Affordable Housing Units** – The Owner agrees that each Affordable Housing Unit may only be used as a residence occupied by an Eligible Tenant.

**3.2 Tenant Screening and Records** – The Owner covenants and agrees with the City as follows:

- (a) the Owner shall review income of each prospective Tenant at the commencement of each Tenancy to determine whether the prospective Tenant is an Eligible Tenant; and
- (b) the Owner shall maintain a system of records indicating the incomes of and rent paid by each past and current Tenant.

**3.3 Occupancy and Tenure of Affordable Housing Units** – The Owner must not rent, lease, license or otherwise permit occupancy of any Affordable Housing Unit except in accordance with the following additional conditions:

- (a) the Affordable Housing Units will be used or occupied only pursuant to a Tenancy Agreement;
- (b) The Owner shall enter into a minimum 1-year Tenancy Agreement for each of the Affordable Housing Units which will convert to a month-to-month tenancy at the end of the first-year term.
- (c) the Owner will not require the Tenant or any permitted occupant to pay any extra charges or fees for sanitary sewer, storm sewer, water or property or similar tax. For greater clarity, this subsection does not apply to optional charges or electricity;
- (d) the Owner will not require the Tenant to pay any additional fee for, nor prevent or prohibit Tenants from accessing any common areas or amenities within the building for which they reside, and for the purpose of this provision the term “building” means the entire building that contains the Affordable Housing Unit, regardless of any subdivision of that building, and “Lands” means entire area of the Lands as of the reference date of this Agreement, regardless of any subsequent subdivision of that parcel;
- (e) the Owner will attach a copy of this Agreement, or at a minimum Articles 2 and 3 of this Agreement, to every Tenancy Agreement; and
- (f) the Owner will notify the City when a Tenancy Agreement terminates for any reason and will notify the City when the Owner enters into a Tenancy Agreement.
- (g) the Owner will forthwith deliver a certified true copy of any Tenancy Agreement to the City upon demand.

**3.4 Rental Rates of Affordable Housing Units** – For Affordable Housing Units located in the Existing Building, the Owner shall not charge rental rates that exceed Rental Rate One. For Affordable Housing Units located in the Proposed Building, the Owner shall not charge rental rates that exceed Rental Rate Two.

**3.5 Notice of Termination** – The Owner will provide a Tenant with no less than three (3) months’ notice if the Owner intends to terminate a Tenancy.

**3.6 Tenant to Vacate Rental Unit Upon Termination** – If the Owner has terminated any Tenancy Agreement, then the Owner shall use best efforts to ensure the Tenant and all other persons that may be in occupation of that Affordable Housing Unit do not remain in occupation of the Affordable Housing Unit after the effective date of termination.

**ARTICLE 4     DEFAULT AND REMEDIES**

**4.1 Default and Remedies** – The Owner acknowledges and agrees that:

- (a) The City may, acting reasonably, give to the Owner a written notice (in this section, the “Notice”) requiring the Owner to cure a default under this Agreement within thirty (30) days of receipt of the Notice. The Notice must specify the nature of the default. The Owner must act with diligence to correct the default within the time specified.
- (b) If the default is non-compliance with the rent restrictions under this Agreement applicable to an Affordable Housing Unit, and such default is not corrected within the time specified under section 4.1(a), the Owner will pay to the City each month the default remains, the applicable Rental Rate One or Two for each Affordable Housing Unit in default. The monies collected from default will be deposited to the City’s Affordable Housing Reserve Fund.
- (c) If the default is non-compliance with the statutory declaration contemplated in section 2.3, and such default is not corrected within the time specified under section 4.1(a), the Owner will pay to the City each month the default remains, the sum of \$1,000.00. The monies collected from default will be deposited to the City’s Affordable Housing Reserve Fund.
- (d) For any default payment contemplated under section 4.1(b) or (c), the payment shall become payable immediately and without demand by the City upon the expiry of the time specified under section 4.1(a).
- (e) The Owner will pay to the City on demand by the City all the City's costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.
- (f) The Owner acknowledges and agrees that it is entering into this Agreement to benefit the public interest in providing housing for rental purposes, and that the City's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out and that the City's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.
- (g) No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right or remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination.
- (h) All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach

**ARTICLE 5 MISCELLANEOUS**

**5.1 Housing Agreement** – The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act* and a covenant under section 219 of the *Land Title Act*;
- (b) the City may file notice of, and register, this Agreement in the LTO pursuant to section 483(5) of the *Local Government Act* against the title to the Lands.

**5.2 Modification** – This Agreement may be modified or amended from time to time, by consent of the Owner and a bylaw duly passed by the Council of the City and thereafter if it is signed by the City and the Owner.

**5.3 Management** – The Owner covenants and agrees with the City that:

- (a) the Owner shall furnish good and efficient management of the Affordable Housing Units;
- (b) the Owner shall permit representatives of the City to inspect the Affordable Housing Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*;
- (c) the Owner shall maintain the Affordable Housing Units in a good state of repair and fit for habitation in accordance with the requirements of the *Residential Tenancy Act*, reasonable wear and tear excepted; and
- (d) without restricting the foregoing, the Owner will comply with all applicable provisions of the *Residential Tenancy Act* and any other provincial or municipal enactments imposing obligations on landlords in relation to residential tenancies.

**5.4 Indemnity** – The Owner, on its behalf, will indemnify, defend and save harmless the City and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- (a) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Housing Unit or the enforcement of any Tenancy Agreement; or
- (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

**5.5 Release** – The Owner, on its behalf, hereby releases and forever discharges the City and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:

- (a) construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Housing Income Limit Units under this Agreement; or
- (b) except to the extent arising from the negligence or wilful misconduct of the City or those for whom it is at law responsible, the exercise by the City of any of its rights under this Agreement.

**5.6 Costs** – The Owner agrees to reimburse the City for all legal costs reasonably incurred by the City for the preparation, execution and registration of this Agreement. The Owner will bear their own costs, legal or otherwise, connected with the preparation, execution or registration of this Agreement. The Owner further agrees that the Owner shall perform its obligations under this Agreement at its own expense and without compensation from the City.

**5.7 Survival** – The indemnity and release set out in this Agreement will survive termination or discharge of this Agreement.

**5.8 City's Powers Unaffected** – This Agreement does not:

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

**5.9 Agreement for Benefit of City Only** – The Owner and the City agree that:

- (a) this Agreement is entered into only for the benefit of the City;
- (b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future Owner, lessee, occupier or user of the Lands or the building or any portion thereof, including any Affordable Housing Units; and
- (c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.



**5.10 No Public Law Duty** – Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

**5.11 Notice** – Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered,

- (a) to the postal address of the Owner set out in the records at the LTO, and
- (b) to the postal address of the City set out on the first page of the terms of this Agreement and to the attention of the Director of Development Services or his/her designate:

or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

**5.12 Enuring Effect** – This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

**5.13 Severability** – If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

**5.14 Waiver** – An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement..

**5.15 Entire Agreement** – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the entire agreement between the City and the Owner respecting the use and occupation of the Affordable Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in or contemplated by this Agreement.

**5.16 Further Assurance** – Upon request by the City the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the City to give effect to this Agreement.

**5.17 Agreement Runs with Lands** – This Agreement burdens and runs with the Lands and every parcel into which it is Subdivided in perpetuity. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement acquire an interest in the Lands.

**5.18 Equitable Remedies** – The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the remedy for a default under this Agreement.

**5.19 No Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.

**5.20 Applicable Law** – The laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement on the *Land Title Act* Form C and D which is attached to and forms part of this Agreement.

**Appendix A to Housing Agreement**

**STATUTORY DECLARATION**

<b>CANADA</b>	)	<b>IN THE MATTER OF A HOUSING</b>
	)	<b>AGREEMENT WITH THE</b>
	)	<b>CORPORATION OF THE CITY OF</b>
<b>PROVINCE OF BRITISH COLUMBIA</b>	)	<b>COURTENAY</b>
	)	<b>(“Housing Agreement”)</b>

TO WIT:

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

1. I am an authorized signatory of the owner of the lands located at 1600 Riverside Lane, Courtenay, B.C. (the “**Lands**”), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the Lands.
3. For the period from \_\_\_\_\_ to \_\_\_\_\_ the Affordable Housing Units, as that term is defined in the Housing Agreement were occupied only by the tenants whose names and current addresses appear below:

Name(s) of Tenant	Address of Tenant	Phone Number of Tenant	Rent Paid by Tenant

4. I confirm that the Owner has complied with the Owner’s obligations under the Housing Agreement.

5. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at the City of \_\_\_\_\_ )  
\_\_\_\_\_, in the Province of British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_. )  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
\_\_\_\_\_)  
A Commissioner for Taking Affidavits in the Province of British Columbia )

\_\_\_\_\_  
DECLARANT

**PRIORITY AGREEMENT**

**WHEREAS:**

- A. **Bank Of Montreal** (the "**Chargeholder**") is the holder of a mortgage and assignment of rents (the "**Financial Charges**") encumbering the lands described in Item 2 of Part 1 of the Form C General Instrument to which this Priority Agreement is attached and which is registered in the Victoria Land Title Office as Mortgage CA9611994 and Assignment of Rents CA9611995; and
- B. A covenant and housing agreement is being granted pursuant to Part 2 of the Form C General Instrument to which this Priority Agreement is attached (the "**City's Charge**") which is or will be registered against title to the lands.

**NOW THEREFORE** for one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder hereby grants to the City priority for the City's Charges over all the Chargeholder's right, title and interest in and to the lands as if the City's Charges had been executed, delivered and registered prior to the execution and registration of the Financial Charges and prior to the advance of any monies pursuant to the Financial Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.