

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 25th day of May, 2022, is

BETWEEN:

LOBLAW PROPERTIES WEST INC. (Inc. No. A0074514)

3225 – 12 Street, N.E.

Calgary, AB T2E 7S9

(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 housing on the terms and conditions set out in this Agreement.

In consideration of one dollar (\$1.00) and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, 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) “Building” means the residential building proposed to be constructed on the Lands by the Owner after the reference date of this Agreement, which includes the Housing Income Limit Units;
- (c) “Dwelling Unit” means a residential dwelling unit or units located or to be located on the Lands;
- (d) “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;
- (e) “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;
- (f) “Housing Income Limit Unit” means a Dwelling Unit in respect of which the maximum monthly rent payable by a tenant of the unit is calculated in accordance with section 3.4 of this Agreement.
- (g) “LTO” means the Victoria Land Title Office or its successor;
- (h) “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);
- (i) “Tenancy Agreement” means a tenancy agreement, lease, license or other agreement granting rights to occupy a Housing Income Limit Unit; and
- (j) “Tenant” means an occupant of a Housing Income Limit 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 this Agreement and will not be developed and no building or structure will be constructed or used on the Lands unless as part of the development, construction, or use 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 twenty-five (25) Housing Income Limit Units.

2.2 Requirement for Statutory Declaration – The Owner agrees that each calendar year, no later than January 31, the Owner must, 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 a Housing Income Limit 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.

2.3 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.

2.4 Expiry of Housing Agreement – The City covenants and agrees with the Owner that this Agreement shall cease to apply from and after the tenth (10th) anniversary of the date the City of Courtenay grants an occupancy licence to the 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 Housing Income Limit Units – The Owner agrees that each Housing Income Limit 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 to determine the amount of rent payable in accordance with section 3.4, and on an annual basis thereafter; 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 Housing Income Limit Units – The Owner must not rent, lease, license or otherwise permit occupancy of any Housing Income Limit Unit except in accordance with the following additional conditions:

- (a) the Housing Income Limit 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 Housing Income Limit 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;
- (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 or on the Lands, including but not limited to those amenities described in subsection (d), above, and for the purpose of this provision the term “Building” means the entire building that contains the Housing Income Limit Units, 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;
- (f) the Owner will forthwith deliver a certified true copy of any Tenancy Agreement to the City upon demand.

3.4 Rental Rates of Housing Income Limit Units – The Owner shall not charge rental rates for Housing Income Limit Units that exceed the amount calculated using the following formula:

$$30\% \text{ applicable Housing Income Limits annual income level} / 12$$

for certainty, and subject to the *Residential Tenancy Act*, the Owner may increase rental rates from time to time to reflect increases in the Housing Income Limits.

3.5 Tenant to Vacate Rental Unit Upon Termination – If the Owner has terminated any Tenancy Agreement, then the Owner shall use best efforts to cause the Tenant and all other persons that may be in occupation of the Housing Income Limit Unit to vacate the Housing Income Limit Units on or before the effective date of termination.

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

ARTICLE 4 MISCELLANEOUS

4.1 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.

4.2 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.

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

- (a) the Owner shall furnish good and efficient management of the Housing Income Limit Units;
- (b) the Owner shall maintain the Housing Income Limit 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
- (c) without restricting the foregoing, the Owner shall 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.

4.4 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 Housing Income Limit 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.

4.5 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.

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

4.7 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.

4.8 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.

4.9 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 Housing Income Limit 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.

4.10 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.

4.11 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 Planning:

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.

4.12 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.

4.13 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.

4.14 Waiver – 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.

4.15 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 Housing Income Limit 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.

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

4.17 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.

4.18 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 only adequate remedy for a default under this Agreement.

4.19 Priority – The Owner shall cause this Agreement to be registered in the applicable land title office against title to the Lands with priority over all financial liens, charges and encumbrances, and any leases and options to purchase, registered or pending registration at the time of application for registration of this Agreement, including by causing the holder of each such lien, charge, encumbrance, lease or option to purchase to execute an instrument in a form required by the City under which such holder postpones all of the holder's rights to those of the City under this Agreement in the same manner and to the same extent as if such lien, charge, encumbrance, lease or option to purchase had been registered immediately after the registration of this Agreement.

Despite the above, the City and the Owner agree that any penalties or damages incurred related to any breach of this Agreement and subsequent remedies shall be subordinate to and without any priority over any mortgage insured by the Canada Mortgage and Housing Corporation, but such subordination shall not affect the priority of the Agreement otherwise.

4.20 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.

4.21 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 which is attached to and forms part of this Agreement.

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