



The Corporation of the City of Courtenay

Bylaw No. 3152, 2024

A bylaw to authorize the City of Courtenay to enter into a housing agreement

WHEREAS the Council of the City of Courtenay may, by bylaw, under Section 483 of the Local Government Act enter into a Housing Agreement which may include terms and conditions agreed to by the Municipality and the Owner regarding occupancy of housing units identified in the Agreement;

AND WHEREAS Council has rezoned the development site, which includes those properties assigned the civic address of 120 and 125th 11th Street and 1128 Beckensell Avenue and an unaddressed City owned parcel which is more particularly described herein, to a new Comprehensive Development Zone (CD-41) to enable the development of 104 residential units of which 6 are to be developed as below-market affordable rental units;

AND WHEREAS the Owner has offered to register a Housing Agreement to ensure that the housing units are developed as proposed on the Lands described in this Bylaw, and the Municipality as deemed it expedient to require the Owner to enter into a Housing Agreement with the Municipality pursuant to Section 483 of the *Local Government Act*;

Applicant: PACSWELL DEVELOPMENTS COURTENAY GP2 INC., INC. NO. BC1431532

Civic Addresses: 120 and 125th 11th Street and 1128 Beckensell Avenue

NOW THEREFORE the Council of the City of Courtenay, in open meeting assembled, enacts as follows:

1. This Bylaw shall be cited as “Housing Agreement Bylaw No. 3152, 2024”.
2. The Municipality is authorized to enter into Housing Agreements pursuant to Section 483 of the *Local Government Act*, in substantially the form attached to this Bylaw as Schedule “1”, with any such revisions determined by the Director of Development Services as advisable in order to ensure the housing units are developed as below-market affordable rental units, with respect to the land located in the City of Courtenay known as 120 and 125th 11th Street and 1128 Beckensell Avenue and more particularly known as:

Lot A, Section 69, Comox District, Plan 32204;

Lot 2, Section 69, Comox District, Plan 6674;

Lot 1, Section 69, Comox District, Plan 6674; and

That part of Lot 10, Section 69, Comox District, Plan 3030, taken for road purposes and containing .27 of an acre more or less, shown in red on Plan 284BL

as shown on the map attached to this Bylaw as Appendix “A”.

3. The Mayor and the Corporate Officer of the Municipality are authorized to execute the Housing Agreement, or any other documents required to give effect to the Housing Agreement, on behalf of the Municipality. If a portion of this Bylaw is found invalid by a court, it will be severed and the remainder of the Bylaw will remain in effect.

4. This bylaw shall come into effect upon final adoption hereof.

Read a first time this [day] day of [month], [year]

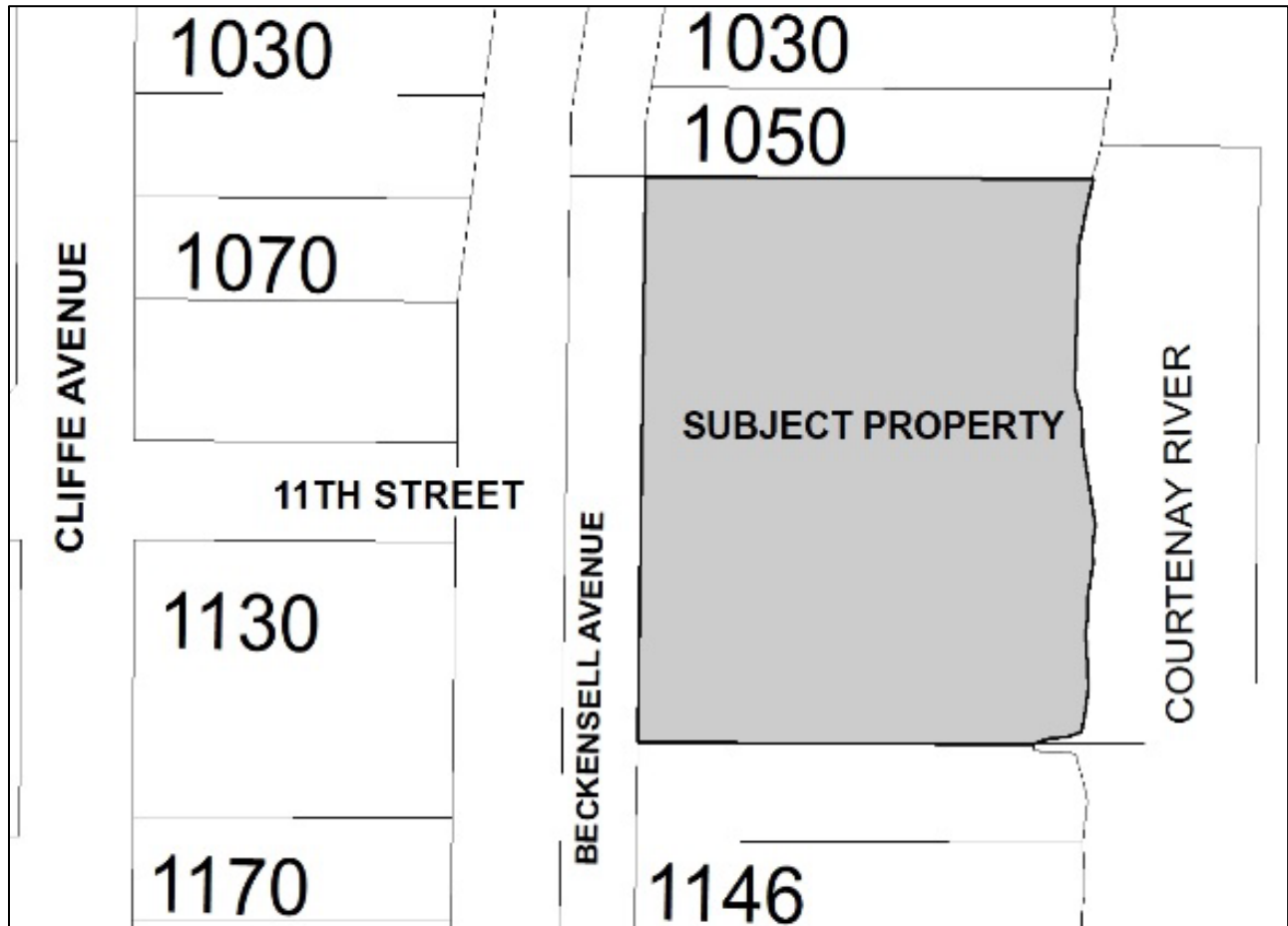
Read a second time this [day] day of [month], [year]

Read a third time this [day] day of [month], [year]

Adopted this [day] day of [month], [year]

Mayor Bob Wells

Corporate Officer



Property Subject to Bylaw No. 3152:

Lot A, Section 69, Comox District, Plan 32204;

Lot 2, Section 69, Comox District, Plan 6674;

Lot 1, Section 69, Comox District, Plan 6674; and

That part of Lot 10, Section 69, Comox District, Plan 3030, taken for road purposes and containing .27 of an acre more or less, shown in red on Plan 284BL

PART 2 – TERMS OF INSTRUMENT

HOUSING AGREEMENT AND COVENANT
(Section 483 *Local Government Act* and Section 219 *Land Title Act*)

THIS AGREEMENT made the _____ day of _____, 2024,

BETWEEN:

PACIFIC SWELL DEVELOPMENTS INC., a municipal corporation under the laws of the Province of British Columbia, and having its offices at 5759 Larson Place, West Vancouver, BC V7W 1S5

(the “**Owner**”)

OF THE FIRST PART

AND:

THE CORPORATION OF THE CITY OF COURTENAY, a municipal corporation under the *Community Charter* of the Province of British Columbia, and having its City Offices at 830 Cliffe Avenue, Courtenay, B.C. V9N 2J7

(the “**City**”)

OF THE SECOND PART

WHEREAS:

- A. 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;
- B. Section 219 of the *Land Title Act* (as hereinafter defined) permits the registration of a covenant of a positive or a negative nature in favour of the City in respect of the use of land and construction on land;
- C. The Owner (as hereinafter defined) is the owner of the Lands (as hereinafter defined);
- D. The City will consider adoption of Housing Agreement Bylaw No. 3117, authorizing the City to enter into this Agreement on the terms and conditions contained herein;
- D. The Owner made an application to rezone the Lands from Commercial Two (C-2) and Multiple Use Two (MU-2) to CD-41 Comprehensive Development Zone (120th 11th Street) to permit the Development; and
- E. The Owner and the City wish to enter into this Agreement (as hereinafter defined) to restrict

the use of and construction 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 to provide long-term rental housing on the terms and conditions set out in this Agreement.

In consideration of \$10.00 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 as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions – In this Agreement, the following words have the following meanings:

- (a) “**Affordable Rental Unit**” means each of the six (6) self-contained Dwelling Units, within the Development or any subsequent building constructed on the Lands, that are to be used and occupied in accordance with Article 2 of this Agreement for a rent charge of not more than the Permitted Rents in accordance with Schedule B of this Agreement;
- (b) “**Agreement**” means this agreement, together with all Land Title Office General Instrument forms, schedules, appendices, attachments and priority agreements attached hereto;
- (c) “**Daily Amount**” means \$100.00 per day as of January 1, 2024 adjusted annually thereafter by adding thereto an amount calculated by multiplying \$100.00 by the percentage change in the CPI since January 1, 2024, to January 1 of the year that a written notice is delivered to the Owner by the City pursuant to section 5.2 of this Agreement;
- (d) “**Development**” means a 5-storey purpose built rental apartment building of 104 residential dwelling units including 6 affordable rental units as shown on the site plan attached as Schedule C;
- (e) “**Dwelling Unit**” means a residential dwelling unit or units located, or to be located, on the Lands, and includes, where the context permits, an Affordable Rental Unit;
- (f) “**Excess Charges**” means any amount of rent charged in respect of a tenancy of an Affordable Rental Unit that is in excess of Permitted Rent, plus any fees or charges of any nature whatsoever that are charged in respect of the tenancy of an Affordable Rental Unit that are not Permitted Tenant Charges, and includes all such amounts charged in respect of any tenancy since the commencement date of the Tenancy Agreement in question, irrespective of when the City renders an invoice in respect of Excess Charges;
- (g) “**Income Tested Tenants**” for Affordable Housing Units means the tenants whose income does not exceed the income threshold, and "Income Tested Tenant" means any one of them;
- (h) “**Income Threshold**” means a gross household income of no more than 80 percent of the median household income in the City of Courtenay. Income as defined by and

based on data published in the most recent Census of Canada, or if such data is not currently published, by the Province of British Columbia, or if such data is not currently published, by the CMHC, from time to time. In the absence of obvious error or mistake, the City's calculation of the income of an Income Tested Tenant in any particular year shall be final and conclusive. The City may, but is not obliged to tolerate a deviation from the Income Threshold, up to a maximum of ten percent (10%) of the gross household income to create a buffer for existing Tenants who may otherwise lose their housing;

- (i) “**Interpretation Act**” means the *Interpretation Act*, RSBC 1996, Chapter 238;
- (j) “**Lands**” means the land described in Item 2 of the General Instrument and any part, including the Building or a portion of the Building, into which said land is Subdivided;
- (k) “**Land Title Act**” means the *Land Title Act*, RSBC 1996, Chapter 250;
- (l) “**Local Government Act**” means the *Local Government Act*, RSBC 2015, Chapter 1;
- (m) “**LTO**” means the Land Title and Survey Authority of British Columbia, or its successor;
- (n) “**Owner**” means the Transferor described in Item 5 of the General Instrument, and any subsequent owner of the Lands or of any part into which the Lands are Subdivided, and includes any person who is a registered owner in fee simple of a Dwelling Unit from time to time;
- (o) “**Real Estate Development Marketing Act**” means the *Real Estate Development Marketing Act*, SBC 2004, Chapter 41;
- (p) “**Permitted Rent**” means the maximum rent set out in Schedule B of this Agreement in respect of the Affordable Rental Units in question;
- (q) “**Permitted Tenant Charges**” means resident parking, typical monthly insurance premiums for tenant's household contents and third party liability insurance plus an amount equal to the average monthly charge for electricity supplied to all Dwelling Units on the lands by the B.C. Hydro and Power Authority based on electricity consumption over the previous twelve months only, and excludes without limitation any other amounts charged by the Owner from time to time in respect of any laundry, services or programs provided by or on behalf of the Owner and any other permitted charges as set out in section 3.1(c) whether or not such amounts are charged on a monthly or other basis to the Tenants;
- (r) “**Residential Tenancy Act**” means the *Residential Tenancy Act*, SBC 2002, Chapter 78;
- (s) “**Rezoning**” means the rezoning of the Lands;
- (t) “**Strata Property Act**” means the *Strata Property Act*, S.B.C. 1998, Chapter 43;
- (u) “**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;

- (v) “**Tenancy Agreement**” means a tenancy agreement, lease, license or other agreement granting rights to occupy a Dwelling Unit; and
- (w) “**Tenant**” means a person occupying a Dwelling Unit by way of a Tenancy Agreement; and
- (x) “**Term**” commences on the deposit of this Agreement in the Land Title Office and shall remain in full force and effect in perpetuity.

1.2 Interpretation – In this Agreement:

- (a) wherever the singular or masculine is used herein, the same shall be construed as meaning the plural, feminine or body corporate or politic, where the contents or parties so require.
- (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* 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, calendar 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 DWELLING UNITS

2.1 Use and Construction of Lands – The Owner covenants and agrees that:

- (a) the Lands 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 the Affordable Rental Units 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; and
- (b) notwithstanding that the Owner may be otherwise entitled, the Owner shall not occupy, or permit to be occupied, any Dwelling Unit on the Lands unless the Owner has:
 - (i) constructed the Affordable Rental Units in accordance with this Agreement;
 - (ii) ensured that all of the Affordable Rental Units are ready for occupancy in accordance with all applicable laws, regulations and bylaws; and
 - (iii) delivered to the Director, Development Services, a final rent roll confirming the rents to be charged to the first occupants of the Affordable Rental Units; andwithout limiting the general scope of section 6.4 and 6.5, the Owner does hereby waive, remise and release absolutely any and all claims against the City and City Personnel for any losses that may derive from withholding occupancy until there is compliance with the provisions of this section 2.1.

2.2 Use of Affordable Rental Units – The Owner agrees covenants and agrees that Tenants of the Affordable Rental Units must not be charged rent in excess of the Permitted Rent, excluding Permitted Tenant Charges.

2.3 Operation of Dwelling Units – The Owner agrees to be fully responsible for complying with all applicable laws and regulations, including the *Residential Tenancy Act*, the Canadian Charter of Rights and Freedoms, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982, c 11 a.*, as amended or re-enacted from time to time, and the British Columbia *Human Rights Code*, RSBC 1996, Chapter 210, as amended or re-enacted from time to time and will:

- (a) be responsible for the management and administration of Affordable Rental Units occupied by a Tenant;
- (b) furnish good and efficient management of the Affordable Rental Units, and will permit representatives of the City to inspect the Affordable Rental Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*; and

- (c) maintain the Affordable Rental Units in a satisfactory state of repair and ensure they are fit for habitation and comply with all applicable laws, including any health and safety standards.
- 2.4 Short-term Rentals Prohibited** – The Owner agrees that no Dwelling Unit may be rented to any Tenant as a short-term rental with a term of less than twenty-seven (27) days and, except in exceptional circumstances, the first term of any Tenancy Agreement will be a period of no less than one (1) year.
- 2.5 Requirement for Statutory Declaration** – Following occupancy of the building, the Owner must provide the City with a statutory declaration in the form attached hereto as Schedule A-1 on the first business day of January each year, that declares that the Permitted Rent of the Affordable Rental Units and the Income Thresholds of the Income Tested Tenants who hold Tenancy Agreements for the Affordable Rental Units all meet the requirements found within this Housing Agreement.
- 2.6 No Subdivision to Allow Separate Sale** – The Owner must not, without the prior approval of the City Council, Subdivide the Lands or stratify a building containing a Dwelling Unit or transfer an interest in land to a Dwelling Unit to any other person. Without limitation, the Owner acknowledges that the City will not support applications for stratification or Subdivision of any buildings on the Lands in any manner that would allow the Dwelling Units to be sold independently of each other.
- 2.7 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. To determine eligibility of a prospective Income Tested Tenant of a Dwelling Unit, the Owner may reasonably rely on information provided by the prospective Income Tested Tenant, provided that the Owner will require all reasonable information necessary to confirm eligibility (including without being exhaustive, birth certificates, school records, residence and/or employment history, and other relevant documentation evidencing the Income of a prospective Income Tested Tenant). Unless the Owner’s reliance is unreasonable, negligent or in willful misconduct, the Registered Owner will have no liability, nor will it have breached this Agreement if the prospective Income Tested Tenant intentionally or unintentionally provides inaccurate information respecting their eligibility and suitability for tenancy.
- 2.8 Expiry of Housing Agreement** – 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 Land Title Office.

ARTICLE 3 OCCUPANCY OF AFFORDABLE RENTAL UNITS

- 3.1 Occupancy of Affordable Rental Units** – The Owner must not rent, lease, license or otherwise permit any use or occupancy of any Affordable Rental Unit for the Term of this Agreement except in accordance with the following additional conditions:

- (a) the Affordable Rental Unit will be used or occupied only pursuant to a Tenancy Agreement;
- (b) the monthly rent payable by a Tenant for the right to occupy an Affordable Rental Unit must not exceed the Permitted Rent in respect of the number of bedrooms of the Dwelling Unit;
- (c) the Owner will not require the Tenant or any permitted occupant to pay any extra charges or fees for use of any facilities or amenities, or for sanitary sewer, storm sewer, water, other utilities (other than electricity), or property or similar tax;
- (d) the Owner will attach a copy of this Agreement to every Tenancy Agreement entered into for an Affordable Rental Unit;
- (e) the Owner will include in the Tenancy Agreement a clause:
 - (i) requiring the Tenant of the Affordable Rental Unit to comply with this Agreement;
 - (ii) requiring the Tenant to annually provide to the Owner a statutory declaration verifying their eligibility to occupy an Affordable Rental Unit, in substantially the form attached as Schedule A-2, and the parties may agree to a modified statutory declaration from time to time that achieves the intention of this provision; and
 - (ii) stating that in the event of the death of a Tenant residing in the Affordable Rental Unit, any spouse, common-law spouse, or live-in caregiver(s), of said Tenant will be allowed to reside in the Dwelling Unit for the remainder of the lease term applicable under the Tenancy Agreement and the *Residential Tenancy Act* regardless of whether the spouse, common-law spouse, or live-in caregiver(s) are listed as a Tenant in the Tenancy Agreement;
- (f) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:
 - (i) an Affordable Rental Unit is occupied by a person or persons other than the Tenant, with the exception of any spouse, common-law spouse, or caregiver(s), of a Tenant;
 - (ii) the Affordable Rental Unit is occupied by more than the number of people the City's building inspector determines can reside in the Affordable Rental Unit given the number and size of bedrooms in the Affordable Rental Unit and in light of any relevant standards set by the City in its bylaws;
 - (iii) the Affordable Rental Unit remains vacant for three (3) consecutive months or longer, notwithstanding the timely payment of rent;
 - (iv) the Tenant fails to pay rent when due in accordance with the Tenancy Agreement and the *Residential Tenancy Act*; and/or
 - (v) the Owner is entitled, for any reason, to terminate the Tenancy Agreement in accordance with the Tenancy Agreement and the *Residential Tenancy Act*,

and in the case of each breach, the Owner hereby agrees with the City to forthwith provide to the Tenant a notice of termination. The notice of termination shall provide that the termination of the tenancy shall be effective thirty (30) days following the date of the notice of termination;

- (g) the Tenancy Agreement will identify all occupants of the Affordable Rental Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Affordable Rental Unit for more than thirty (30) consecutive days or more than forty-five (45) days total in any calendar year; and
- (h) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement and each Tenant's annual statutory declaration to the City upon demand subject to the *Residential Tenancy Act*.

3.2 Tenant to Vacate Rental Unit Upon Termination – If the Owner has terminated the Tenancy Agreement, then the Owner shall use best efforts to cause the Tenant and all other persons that may be in occupation of the Affordable Rental Unit to vacate the Affordable Rental Unit on or before the effective date of termination subject to the *Residential Tenancy Act*.

3.3 No Separate Sale – The Owner covenants with the City that the Owner will not sell or transfer, or agree to sell or transfer, any interest in any building on the Lands containing an Affordable Rental Unit other than a full interest in the title to all Dwellings Units, and to a person that will continue to ensure that all Affordable Rental Units are available for rental in accordance with this Agreement.

3.4 Rental Tenure – Rental tenure will be guaranteed for the Dwelling Units for the life of the building.

ARTICLE 4 DEMOLITION OF AFFORDABLE RENTAL UNIT

4.1 Demolition – The Owner will not demolish or carry out substantial renovations to an Affordable Rental Unit unless 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 Affordable Rental Unit while it is occupied by a Tenant. Following demolition, the Owner will use and occupy any replacement Affordable Rental Unit in compliance with this Agreement to the same extent and in the same manner as this Agreement .

ARTICLE 5 DEFAULT AND REMEDIES

- 5.1 Payment of Excess Charges** – The Owner agrees that, in addition to any other remedies available to the City under this Agreement or at law or in equity, if a Dwelling Unit is used or occupied in breach of this Agreement, if an Dwelling Unit is rented at a rate in excess of the Permitted Rent or the Owner imposes in respect of any tenancy of a Dwelling Unit any fee or charge of whatsoever nature other than Permitted Tenant Charges, the Owner will pay the Excess Charges to the City. The Excess Charges are due and payable five (5) business days following receipt by the Owner of an invoice from the City for the same.
- 5.2 Payment of Daily Amount** – The Owner agrees that, in addition to any other remedies available to the City under this Agreement or at law or in equity, if a Dwelling Unit is used or occupied in breach of this Agreement, the Owner submits a false or incorrect statutory declaration, or the Owner is otherwise in breach of any of its obligations under this Agreement, the Owner will pay the Daily Amount to the City for every day that the breach continues after forty-five (45) days’ written notice from the City to the Owner stating the particulars of the breach. In the absence of obvious error or mistake, any calculation by the City of the Daily Amount in any particular year shall be final and conclusive. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the City for the same.
- 5.4 Default Costs** - Without limiting anything in this Part, if at any time the Lands are being used in contravention of this Agreement, the Owner shall reimburse the City promptly and on demand for any reasonable expenses or costs incurred by the City to investigate or inspect the Lands, or otherwise enforce the terms of this Agreement, including legal fees on a solicitor and their own client costs (collectively the “Default Costs”).
- 5.3 Rent Charge** – The Owner hereby grants to the City a perpetual rent charge against the Lands securing payment by the Owner to the City of the Default Costs or any amount payable by the Owner pursuant to section 5.2 or 5.3 of this Agreement. The Owner agrees that the City, at its option, may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the City at law or in equity. This rent charge is created both under section 219(6)(b) of the *Land Title Act* as an integral part of the statutory covenant created by this Agreement and as a fee simple rent charge at common law. Enforcement of this rent charge by the City does not limit, or prevent the City from enforcing, any other remedy or right the City may have against the Owner.

ARTICLE 6 MISCELLANEOUS

- 6.1 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 Owner will, at its sole cost register, this Agreement in the LTO as a Covenant

pursuant to section 219 of the *Land Title Act* and the City will cause to be registered a notice pursuant to section 483 of the *Local Government Act* against the title to the Lands.

- 6.2 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.
- 6.3 Management** – The Owner covenants and agrees that it will furnish good and efficient management of the Dwelling Units, that all Dwelling Units will be managed by the same manager and that the Owner will permit representatives of the City to inspect the Dwelling Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Dwelling Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, acting reasonably, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Dwelling Units.
- 6.4 Indemnity** – The Owner will indemnify 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 Dwelling 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.
- 6.5 Release** – The Owner 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 Dwelling Unit under this Agreement; or
 - (b) the exercise by the City of any of its rights under this Agreement.

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

6.7 Priority – The Owner will do everything necessary, at the Owner’s expense, to ensure that this Agreement will be noted and registered against title to the Lands in priority to all financial charges and financial encumbrances which may have been registered or are pending registration against title to the Lands save and except those specifically approved in advance in writing by the City or in favour of the City, and that a notice under section 483(5) of the *Local Government Act* will be filed on the title to the Lands.

6.8 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.

6.9 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 Dwelling Unit; 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.

6.10 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.

6.11 Notice Any notices or other documents to be given or delivered pursuant to this Agreement will be addressed to the proper party as follows:

- (a) as to the City:

City of Courtenay
830 Cliffe Avenue, Courtenay, BC V9N 2J7
Attention: Director of Development Services

(b) as to the Registered Owner:

The Address of the Owner set out in the records at the LTO,

or such other address as such party may direct by five business days' notice in writing to the other parties. Any notice or other documents to be given or delivered pursuant to this Agreement will be sufficiently given or delivered if delivered to the particular party at its address set out or determined in accordance with this section and shall be deemed complete two days after the day of delivery.

It is specifically agreed that for any notice or document to be validly given or delivered pursuant to this Agreement, such notice or document must be delivered and not mailed.

- 6.12 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.
- 6.13 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.
- 6.14 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.
- 6.15 Whole Agreement** – This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the City and the Owner respecting the use and occupation of the Dwelling Unit, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in or contemplated by this Agreement.
- 6.16 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.
- 6.17 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.
- 6.18 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.

- 6.19 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.
- 6.20 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.
- 6.21 Deed and Contract** – By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.
- 6.22 Joint and Several** – If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.
- 6.23 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 provided however that notwithstanding that the Owner is no longer the registered owner of the Lands, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Lands.

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.

Schedule A - 1

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF A HOUSING
	)	AGREEMENT WITH THE
	)	CORPORATION OF THE
	)	CITY OF COURTENAY
PROVINCE OF BRITISH COLUMBIA)	
	)	("Housing Agreement")

TO WITNESS:

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

1. I am the owner or authorized signatory of the owner of _____), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the Affordable Rental Units.
3. For the period from _____ to _____ the Affordable Rental Units are to be occupied only by the tenant(s) whose names, current addresses, Permitted Rents and Income Thresholds and whose current addresses appear below:

[Names, addresses, telephone number of Tenant(s) and the Permitted Rents and Income Thresholds for the Affordable Rental Units where they reside]

4. I acknowledge and agree to comply with the Owner's obligations under the Housing Agreement, and other charges in favour of the City noted or registered in the Land Title Office against the land on which the Affordable Rental Units are situated and 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 _____, 2021)

)

)

)

A Commissioner for Taking Affidavits in the Province of
British Columbia

Declarant

Schedule A - 2

STATUTORY DECLARATION

CANADA	)	IN THE MATTER OF A HOUSING
	)	AGREEMENT WITH THE
	)	CORPORATION OF THE
	)	CITY OF COURTENAY
PROVINCE OF BRITISH COLUMBIA)	
	)	("Housing Agreement")

TO WITNESS:

I, _____ of _____, British Columbia,
[Print name] [Address]

DO SOLEMNLY DECLARE THAT:

1. This declaration is made with respect to the Dwelling Unit municipally described as _____, Courtenay, British Columbia and legally described as PID: _____ (the "Affordable Rental Units").
2. I am an occupier of the Affordable Rental Units, having reached the Age of Majority, and make this declaration to the best of my personal knowledge and believe the statements in this declaration are true.
3. This declaration is made pursuant to the Housing Agreement registered against title to the Affordable Rental Units (the "Affordable Rental Units").
4. I have received and reviewed a copy of the Housing Agreement and acknowledge that the terms and definitions in the Housing Agreement also apply to this declaration.

5. The names of all persons in my Household and their addresses for the past twelve (12) months are as follows:

[Insert names and addresses of all occupants of Affordable Rental Units]

6. The annual gross income of all of the individuals described in paragraph 5 above who have reached the Age of Majority is \$ _____. This amount does not exceed the Income Threshold under paragraph 7 below. Accompanying this declaration, unless otherwise waived in writing by the City, are true copies of the Notices of Assessment provided by the Canada Revenue Agency for the two most recent years for all individuals of my Household who are older than the Age of Majority.

7. As of the date of this declaration, the current Income Threshold for my Household is \$ _____.

8. I have a real and substantial connection with the City of Courtenay based on one of the following considerations (*initial applicable box and provide details in space beside box*):

I, or at least one member of my Household has resided in the City of Courtenay for at least twelve (12) months before occupying the Affordable Rental Unit (*provide details if applicable*):

I, or at least one member of my Household has full-time employment within the City of Courtenay (*provide details if applicable*):

at least one member of the Household is enrolled in school or college on a full-time basis within the City of Courtenay (*provide details if applicable*):

[] I have a real and substantial connection with the City of Courtenay based on the following considerations (*provide details if applicable*):

- 9. I agree to comply with the Owner's obligations under the Housing Agreement and other charges in favour of the City registered in the Land Title Office against the Affordable Rental Unit for so long as I am an occupier of the Rent Controlled Rental Unit.
- 10. I acknowledge and agree that damages are not an adequate remedy to the City in respect of any breach of the Housing Agreement by the Owner of an Affordable Rental Unit, such that I agree the City will be entitled to an order for specific performance, injunction or other specific relief respecting any breach of this Agreement by the Owner or an occupier and to legal costs on a solicitor and client basis.
- 11. 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)
_____ THIS)
_____ DAY OF _____, 20____)
)
)
_____)
Print name:)
A commissioner of oaths for the)
the Province of British Columbia)
[Affix Commissioner's stamp or seal)
)
)
)

DECLARANT

NOTE: A false declaration may result in a fine of up to \$2000.00, up to six months' imprisonment, or both.

Schedule B

PERMITTED RENT

“Dwelling Units”	
Unit Type	Affordable Rental Unit
Base Rent in perpetuity following the occupancy of the building	30% below the Market Rate for the Courtenay (CY) Census Subdivision (CSD) for rental units in the primary rental market constructed after 2000 as determined by Canadian Mortgage and Housing Corporation (CMHC) from time to time.

