



1. Application

Document Fees: \$78.17

Ben Ramsden, Carvello Law Corporation
203 - 1005 Broad Street
Victoria BC V8W 2A1
250 590 7230

2. Description of Land

PID/Plan Number	Legal Description
031-335-284	LOT A DISTRICT LOT 24 NELSON DISTRICT PLAN EPP103460

3. Nature of Interest

Type	Number	Additional Information
LEASE		

4. Terms

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

5. Transferor(s)

VANCOUVER ISLAND HEALTH AUTHORITY

6. Transferee(s)

THE CORPORATION OF THE VILLAGE OF CUMBERLAND
 2673 DUNSMUIR AVENUE
 BOX 340
 CUMBERLAND BC V0R 1S0

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

Laylee Rohani
Barrister & Solicitor
 7th Floor - 1175 Douglas Street
 Victoria BC V8W 2E1

Execution Date

YYYY-MM-DD

2023-02-22

Transferor / Transferee / Party Signature(s)

**VANCOUVER ISLAND HEALTH
 AUTHORITY**
 By their Authorized Signatory

ROBERT GUENTHER

Cook Roberts LLP

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

Rachel Parker
**Commissioner for Taking Affidavits
 for British Columbia**
 2673 Dunsmuir Avenue
 PO Box 340
 Cumberland BC V0R 1S0

Execution Date

YYYY-MM-DD

2023-04-28

Transferor / Transferee / Party Signature(s)

**THE CORPORATION OF THE VILLAGE
 OF CUMBERLAND**
 By their Authorized Signatory

Name: Vickey Brown, Mayor

Corporate Officer
 as to all signatures

**Name: Michelle Mason, Chief
 Administrative Officer**

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.

**Benjamin Philip
 Ramsden EJS3H8**

**Digitally signed by
 Benjamin Philip Ramsden
 EJS3H8
 Date: 2023-06-16
 14:58:26 -07:00**

**TERMS OF INSTRUMENT - PART 2
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WHEREAS:

- A. The Tenant wishes to provide affordable rental units and agrees to use the Lands for this purpose.

- B. The Landlord is the owner of the Lands and has agreed to lease to the Tenant the Lands for the Term in order that the Tenant may construct, operate and maintain the Improvements, or sublet the Lands to a sub-lessee to do so, all upon the terms, conditions and provisos set forth in this Lease.

WITNESS that in consideration of the covenants and agreements herein set out, the Landlord and Tenant covenant and agree as follows:

1. INTERPRETATION

1.1. **Definitions.** In this Lease the following terms shall have the following meanings:

- (a) “Additional Rent” means all sums of money, whether or not designated as Additional Rent, including but not limited to Property Taxes, to be paid by the Tenant whether to the Landlord or otherwise under this Lease, and includes any money paid by the Landlord as a result of any default by the Tenant, save and except Basic Rent;
- (b) “Basic Rent” means ten dollars (\$10.00) for the entire length of the Term;
- (c) “Building” means one building containing a maximum of 22 residential units, containing, subject to any agreement between the parties for a different building layout, a maximum four (4) 2-bedroom units, fifteen (15) 3-bedroom units and three (3) 4-bedroom units which the Tenant intends to construct on the Lands;
- (d) “Commencement Date” means the date of registration of this Lease in the Land Title Office for the jurisdiction in which the Lands are situate;
- (e) “Village” means The Village of Cumberland;
- (f) “Environmental Laws” means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, criteria, permits, codes of practice, and other lawful requirements made by any Statutory Authority relating to the environment;
- (g) “General Instrument Part 1” means Part 1 of the General Instrument attached to, and forming part of, this Lease agreement, as prescribed by the Land Title (Transfer Forms) Regulation pursuant to the *Land Title Act* (British Columbia), as amended;
- (h) “Hazardous Substances” means without limitation, contaminants, pollutants or other substances, products, materials or goods which are

hazardous or dangerous to human, animal, or plant health or life or the environment, and, in particular, includes substances, products, materials or goods which are defined as hazardous substances or special waste in or pursuant to any Environmental Laws;

- (i) “Improvements” means the Building and all other improvements to be constructed on the Lands;
- (j) “Landlord” means the Person named in the General Instrument Part 1 as Transferor;
- (k) “Lands” means that certain parcel, or those certain parcels of land described in Item 2 of the General Instrument Part 1;
- (l) “Lease” means the General Instrument Part 1 and these Express Charge Terms under Part 2;
- (m) “Operator” means a non-profit organization with which the Village has entered into an Operator Agreement;
- (n) “Operator Agreement” means an agreement or agreements entered into or to be entered into between the Village and an Operator relating to the construction and operation of the Improvements and sub-lease of the Lands;
- (o) “Permitted Uses” means use of the Lands for affordable rental housing;
- (p) “Person” means any association, society, corporation, individual, joint-stock company, joint venture, partnership, trustee, administrator, legal representative, unincorporated organization, or Statutory Authority;
- (q) “Property Taxes” mean the aggregate of all taxes, charges, duties, assessments, rates, local improvement charges, school taxes, fees, levies or impositions, general or special, ordinary or extraordinary, now or hereafter imposed, assessed, rated, charged, or levied by any Statutory Authority in respect of or against or relating to the Lands;
- (r) “Removal Notice” means written notice from the Landlord to the Tenant delivered not later than one hundred-twenty (120) days prior to the expiration of the Term, unless earlier terminated pursuant to Section 17.1 wherein the written notice from the Landlord to the Tenant will be delivered concurrent with the Landlord’s delivery of its notice of default to the Tenant, requiring the Tenant to remove the Improvements in accordance with Section 14.1;
- (s) “Rent” means the aggregate of Basic Rent, any Additional Rent, and any other monies payable by the Tenant to the Landlord pursuant to this Lease;

- (t) “Statutory Authority” means any federal, provincial, regional, municipal, or other government, or authorized agency, department, or ministry thereof, which has jurisdiction with respect to any matter referred to in this Lease;
- (u) “Tenant” means the Village or their assignee; and
- (v) “Term” means fifty (50) years (or 60 years if the Affordable Housing Funder is BC Housing), commencing on the Commencement Date, unless earlier terminated pursuant to Sections 4.2 and 17.1 or renewed pursuant to Section 21.1.

2. TENANT'S CONDITIONS

2.1. **Conditions Precedent.** This Lease is subject to the following conditions being satisfied or waived within 24 months of the Commencement Date:

- (a) the Tenant being satisfied that the Lands are suitable for the Permitted Uses and;
- (b) The Tenant commencing construction at the site within 24 months of the Commencement Date.

2.2. **Tenant’s Sole Benefit.** The conditions precedent set forth in Section 2.1 are for the sole benefit of the Tenant and must be waived or declared fulfilled by written notice from the Tenant to the Landlord on or before the date set out above, otherwise this Lease will be terminated. The Tenant will pay ten dollars (\$10.00) to the Landlord, which is the consideration paid to the Landlord by the Tenant for not revoking its acceptance of this Lease prior to the satisfaction or waiver of the Tenant's conditions precedent.

3. ACCESS PRIOR TO COMMENCEMENT TERM

3.1. **Access.** Following the execution of this Lease, the Landlord will permit the Tenant, its officers, agents and contractors, at all reasonable times, to enter and have access to the Lands for the purpose of conducting testing and surveying to satisfy itself that the Lands are suitable for the Permitted Uses.

3.2. **Application of Lease.** To the extent that they are applicable, the terms and conditions contained in this Lease shall bind the Landlord and the Tenant between the date that this Lease is signed and the Commencement Date.

4. DEMISE AND TERM

- 4.1. **Demise.** In consideration of the Rent, covenants, agreements, and conditions herein to be paid, performed, or observed by the Tenant for the Term, the Landlord hereby demises and leases the Lands to the Tenant, and the Tenant hereby accepts that demise and lease, subject to the covenants, agreements, and conditions herein set out.
- 4.2. **Termination of Term.** Notwithstanding any other provision of this Lease, the Tenant shall have the right to terminate this Lease at any time during the Term on not less than one hundred twenty (120) days written notice to the Landlord (the "Termination Notice"). If the Tenant delivers the Termination Notice to the Landlord, this Lease will terminate on the date set out in the Termination Notice and if the Landlord delivers the Removal Notice to the Tenant, the Tenant will remove the Improvements in accordance with Section 14.1 by such date.

5. RENT

- 5.1. **Basic Rent.** The Tenant will pay to the Landlord the Basic Rent on the Commencement Date.
- 5.2. **Additional Rent.** The Tenant will pay Additional Rent to the Landlord within thirty (30) days of receipt by the Tenant of an invoice, and if not paid, will be collected as Rent in arrears, except if other terms for payment are expressly stipulated in this Lease.
- 5.3. **Irregular Periods.** If for any reason it becomes necessary to calculate Rent for irregular periods, an appropriate pro rata adjustment will be made on a daily basis as at the Commencement Date or the date of termination of the Term.

6. PROPERTY TAXES

- 6.1. **Right to Contest Property Taxes.** The Tenant may appeal in good faith the validity or amount of the Property Taxes, except that if the Tenant wishes to so appeal:
 - (a) the Tenant will deliver to the Landlord notice that it intends to do so; and
 - (b) the Tenant will pay the cost of the appeal.

7. PAYMENT OF UTILITIES

- 7.1. **Utilities.** The Tenant will pay to the Landlord, or to the appropriate Statutory Authority, or other Person entitled to receive payment, as and when due, all charges for gas, electricity, light, heat, power, water, telephone, and other utilities and services used in or supplied to the Lands, and all installation and hook-up charges.

8. NET LEASE

- 8.1. **Net Lease.** Except as otherwise expressly set out herein and as may be paid or discharged as applicable by a sub-lessee of the Tenant, the Tenant will pay and discharge all costs, expenses, and outlays incurred in respect of the Lands, and the Tenant acknowledges and agrees that it is intended that this Lease shall be a completely net lease for the Landlord.

9. CONSTRUCTION OF THE IMPROVEMENTS

- 9.1. **Good and Workmanlike Manner.** The construction of the Improvements will be done in a good and workmanlike manner in accordance with all applicable building and zoning ordinances and all applicable laws, orders, rules, regulations and requirements of all federal, provincial and civic governments and agencies.
- 9.2. **No Liens.** The Tenant will not allow any lien to be registered against the Lands relating to the construction, repair, maintenance or removal of the Improvements.

10. HAZARDOUS SUBSTANCES

- 10.1. **Not to Permit Hazardous Substance.** The Tenant will not bring onto the Lands, or suffer or permit to be brought onto the Lands, any Hazardous Substance in amounts that are in excess of that prescribed by Environmental Laws.

11. USE OF THE LANDS AND IMPROVEMENTS

- 11.1. **Permitted Uses.** Unless otherwise agreed to in writing by the Landlord, the Tenant will not use the Lands and Improvements for any purpose other than for the Permitted Uses.
- 11.2. **Management of Building.** The Tenant will oversee the operation of the Building so that the Tenant is not in breach of its obligations contained in this Lease, and will ensure that agreements are in place to require any sublessee of the Tenant to do the same.
- 11.3. **Nuisance.** The Tenant will not carry on, or suffer, or permit to be carried on, in or upon the Lands or the Improvements, anything which constitutes a nuisance or annoyance to any neighboring properties, or their owners or occupants. For greater certainty, the use of the Lands and Improvements for the Permitted Uses will not constitute a nuisance.
- 11.4. **Compliance with Laws.** The Tenant will comply, at its own expense, with all lawful requirements now or hereafter imposed by every Statutory Authority, or by insurers, concerning the Tenant's use of the Lands and the Improvements including the repair, maintenance or replacement of the Improvements.
- 11.5. **Obligations Contained in a Charge Registered Against the Lands.** The Tenant will observe and perform obligations contained in any charge or encumbrance registered against the title to the Lands, unless the Landlord agrees in writing to observe and perform such obligation.

12. COVENANTS OF THE LANDLORD

- 12.1. **Quiet Enjoyment.** The Landlord covenants that if the Tenant observes and performs its obligations as required by this Lease, the Tenant may peaceably hold and enjoy the Lands and Improvements during the Term without interruption or disturbance by the Landlord or any Person lawfully claiming under the Landlord.
- 12.2. **Co-Operation.** The Landlord will co-operate, execute, deliver and expedite any approval as reasonably requested by the Tenant and do all such acts as may be reasonably required to permit the Tenant or their sublessee to carry out the Permitted Uses.

13. OWNERSHIP OF IMPROVEMENTS

- 13.1. **Ownership During Term.** Notwithstanding the degree of fixation of the Improvements to the Lands, the Improvements will be deemed to be the separate property of the Tenant during the Term and not of the Landlord, but subject to and governed by the provisions of this Lease.
- 13.2. **Ownership Upon Expiry of Term.** Unless the Improvements are removed in accordance with Section 14.1, upon expiry of the Term, the Improvements will be deemed to be the property of the Landlord and not of the Tenant, and the Landlord agrees that the Landlord will take possession of the Improvements on an “as is” basis, that the Tenant is not obligated to repair or replace the Improvements at the expiry of the Term and that the Tenant has not made any representations, warranties, covenants or agreements with respect to the condition of the Improvements or the suitability of the Improvements for the Landlord's intended use or any use whatsoever.

14. REMOVAL OF IMPROVEMENTS

- 14.1. **Removal of Improvements.** If the Landlord delivers the Removal Notice to the Tenant, and unless otherwise agreed to by the Landlord, the Tenant will, prior to the expiry of the Term, remove the Improvements and all foundations and debris from the Lands, save and except driveways, sidewalks and retaining walls, will remove and/or cap all utility services and will restore the Lands to a neat and level condition.
- 14.2. **Landlord Entitlement upon Termination.** For greater clarity, and without derogating from the rights of the parties under this Agreement, upon the termination of this Lease, whether by the operation of section 4.2, by the completion of the Term, or a renewal Term, or by the operation of section 17.1, the Landlord is entitled to provide to the Tenant the Removal Notice on the terms and conditions described in section 1.1(r).

15. INSURANCE

- 15.1. **Insurance.** The Tenant, at its cost, will obtain and maintain in good standing: all risks property coverage and other coverage which a prudent tenant would obtain with respect to the contents of the Premises, in that amount which a prudent tenant would obtain; and comprehensive public liability coverage, including all risks against which a prudent tenant would insure with respect to the Tenant's use and occupancy of the Premises, in an amount of at least \$5,000,000 for claims for personal injury, death or property damage arising out of any one accident or occurrence. On request by the Landlord from time to time, the Tenant will deliver to the Landlord a certificate or certificates evidencing such coverage
- 15.2. **Workers' Compensation.** The Tenant will, at its own expense, obtain and maintain, or cause to be obtained and maintained, workers' compensation coverage in respect of all workers, employees and other Persons engaged in any work in or upon the Lands by the Tenant, the non-payment of which would create a lien claim against the Lands or would contravene the *Workers' Compensation Act* of British Columbia.

16. INDEMNITY BY TENANT

- 16.1. **Indemnity by Tenant.** The Tenant will indemnify and hold the Landlord harmless from and against every demand, claim, cause of action, judgment and expense, and all loss and damage arising from:
- (a) any injury, including death, or damage to the person or property, sustained by the Tenant or other Person on or about the Lands or Improvements, where the injury or damage is caused by negligence or wilful misconduct of the Tenant, its agents, servants or employees, or of any other person entering upon the Lands or Improvements under express or implied invitation of the Tenant, or results from the violation of any law, ordinance or governmental order of any kind or of any provision of this Lease by any of the foregoing;
 - (b) any loss or damage, however caused, to books, records, files, money, securities, negotiable instruments or papers in or about the Lands or Improvements; and
 - (c) any injury, including death, or damage not specified above to the person or property of the Tenant, its agents, servants or employees, or any other person entering the Lands or Improvements under express or implied invitation of the Tenant,

where the injury or damage is caused by any reason other than the negligence or misconduct of the Landlord.

17. DEFAULTS AND REMEDIES

17.1. **Events of Default.** If and whenever:

- (a) the Tenant defaults in its obligation to pay Additional Rent and such default continues for thirty (30) days after the Landlord delivers notice of the default to the Tenant; or
- (b) the Tenant defaults in observing or performing any other obligation under this Lease, and such default continues for thirty (30) days after the Landlord delivers to the Tenant notice of the default, except that if the default, by its nature, requires more than thirty (30) days to rectify, the Tenant may have such further time to rectify the default so long as the Tenant begins to rectify the default promptly and thereafter proceeds with all due diligence to rectify the default;

then, and in every such case, it will be lawful for the Landlord, without further notice to the Tenant, to immediately re-enter the Lands, whereupon this Lease will terminate and if the Landlord delivers the Removal Notice to the Tenant, the Tenant shall remove the Improvements in accordance with Section 14.1. Such termination will be wholly without prejudice to the Landlord's right to recover arrears of Rent or damages for any breach of an obligation of the Tenant contained in this Lease which occurred prior to the termination of this Lease and the Landlord may subsequently recover from the Tenant all losses, damages, costs, including legal costs, and expenses that the Landlord suffers by reason of this Lease having been prematurely terminated.

17.2. **Landlord's Right to Perform Covenants.** If the Tenant fails to observe or perform any obligation contained in this Lease after receiving notice as provided for in this Lease, the Landlord may observe or perform such obligation without waiving or releasing the Tenant from its obligation to do so, and without limiting or abrogating any other right or remedy it may have. The Tenant will pay to the Landlord all sums paid or costs incurred by the Landlord in so observing or performing the Tenant's covenants and obligations under this Section 17.2 on demand.

17.3. **Remedies Cumulative.** The exercise of any specific right or remedy by the Landlord will not prejudice or preclude the Landlord from exercising any other right or remedy in respect thereof, whether at law or in equity, or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the Landlord may from time to time exercise any one or more of such remedies independently or in combination.

17.4. **Interest.** The Tenant will pay to the Landlord interest on any Rent in arrears from the date such Rent was due until it is paid, at the rate of interest prescribed from time to time under the *Land Act* of British Columbia and the regulations made pursuant thereto.

18. ARBITRATION

18.1. **Arbitration Process.** If and whenever any dispute arises between the Landlord and Tenant concerning this Lease, including the interpretation or enforceability of any provision, or the rights or obligations of either the Landlord or Tenant that dispute shall be determined by a single arbitrator selected pursuant to the *Arbitration Act* of British Columbia, as amended from time to time, or any legislation substituted therefor. All remedies contained herein will be held in abeyance pending the decision of the arbitrator. The costs and expenses of the arbitration will be dealt with as follows:

- (a) each party will bear its own expense of preparing and presenting its case to the arbitrator, irrespective of whether any such expense was incurred or contracted for prior to the appointment of the arbitrator, including the expenses of appraisals, witnesses and legal representation; and
- (b) the fees of the arbitrator will be shared by the parties equally unless the arbitrator decides otherwise.

19. ASSIGNMENT AND SUBLETTING

19.1. **Assignment.** The Tenant may assign its interest in this Lease with the prior written consent of the Landlord, such consent not to be unreasonably withheld. Notwithstanding the foregoing, the Landlord acknowledges and agrees that the Improvements will be constructed and operated in accordance with the Operator Agreement, a copy of which will be delivered to the Landlord.

19.2. **Subletting.** The Tenant may sublet or licence all or part of the Lands or Improvements without the consent of the Landlord.

20. OPTION TO EXTEND

20.1. **Option to Extend.** Subject to a requirement of the Landlord for an alternative use of the Land, notice of which will be provided to the Village upon receipt of the notice to the Landlord from the Village herein described, the Village will have an option to extend this Lease for a further term of years of a duration to be determined by the parties at the time, both acting reasonably, which option shall be initiated by a written notice to the Landlord from the Village and provided at least one year prior to the termination date of the Lease. Any dispute about the duration of the extended term of the Lease will be referred to arbitration as provided in section 18. In the absence of a requirement of the Landlord for an alternative use of the Land, it is agreed that the social housing use of the Land will be continued at the termination of this Lease.

21. SURRENDER OF LEASE

21.1. **Surrender.** The Tenant will peaceably surrender this Lease to the Landlord at the expiry or earlier termination of the Term in accordance with its obligations contained in this Lease. The Tenant will deliver to the Landlord, in a timely manner, upon the request of the Landlord, a discharge of this Lease in registrable form.

22. GENERAL PROVISIONS

- 22.1. **Time.** Time is of the essence of this Lease.
- 22.2. **Governing Law.** This Lease will be governed by and construed and enforced in accordance with the laws of British Columbia and the laws of Canada applicable therein.
- 22.3. **Construction.** The division of this Lease into sections and the use of headings are for convenience of reference only and are not intended to govern, limit, or aid in the construction of any provision contained in this Lease. In all cases, the language in this Lease will be construed simply, according to its fair meaning, and not strictly for or against either party.
- 22.4. **No Waiver.** Neither party will be deemed to have waived the exercise of any right under this Lease unless such waiver is in writing. Failure by either party to exercise any of its rights, powers or remedies hereunder, or its delay in doing so, shall not constitute a waiver of those rights, powers or remedies.
- 22.5. **Relationship.** Nothing in this Lease will create any relationship between the Landlord and Tenant except that of landlord and tenant.
- 22.6. **Notices.** Any demand or notice which may be given pursuant to this Lease will be in writing and delivered or faxed or emailed and addressed to the other party as follows:

to the Landlord:

Vancouver Island Health Authority
1952 Bay Street
Victoria, B.C. V8R 1J8
Attention: Capital Planning & Leasing
Email: CapitalPlanning@islandhealth.ca

to the Tenant:

Village of Cumberland
2673 Dunsmuir Avenue
Cumberland, BC V0R 1S0
Attention: Corporate Officer
Email: info@cumberland.ca

or at such other address or fax number as such party may specify in writing to the other party. The time of giving and receiving any such notice will be deemed to be on the day of delivery or transmittal.

- 22.7. **Overholding.** If the Tenant remains in possession of the Lands after the expiry of the Term, the Tenant will be deemed to be occupying the Lands on a month to month tenancy and the provisions of this Lease will continue to bind the Landlord and the Tenant to the extent that they apply to a month to month tenancy. The Landlord will provide notice to cancel the lease based on the minimum notice period in the *Residential Tenancy Act* plus 30 days to allow the Village to cancel its sublease.
- 22.8. **Enuring effect.** This Lease will enure to the benefit of and be binding upon the successors and assigns of the Landlord and the successors and permitted assigns of the Tenant.
- 22.9. **Modification or Amendment.** Except as expressly provided in this Lease no amendment, supplement, restatement or termination of any provision of this Lease is binding unless it is in writing and signed by the Landlord and the Tenant.
- 22.10. **Further Assurances.** The parties will forthwith from time to time execute and do or cause to be executed and done all further deeds, documents, acts and things which in the reasonable opinion of the legal advisors of the Landlord or Tenant are necessary or advisable for the clarification or performance of the terms and conditions of this Lease.
- 22.11. **Execution.** By signing the General Instrument Part 1, the Landlord and Tenant have agreed to be bound by their respective obligations contained in this Lease.