

## ACCESS AGREEMENT

THIS ACCESS AGREEMENT (the “**Agreement**”) is made effective this \_\_\_\_\_ (the “**Effective Date**”).

BETWEEN:

**Village of Cumberland**, with registered offices at 2673 Dunsmuir Ave,  
Cumberland, BC V0R 1S0

(“**The Village**”)

AND

**VANCOUVER ISLAND HEALTH AUTHORITY**, with registered offices at 1952  
Bay St Victoria, BC V8R 1J8

(“**VIHA**”)

BACKGROUND:

- A. VIHA operates a convalescent hospital located at Lot 1 Plan VIP97690 District Lot 21 Land District 34 & DL 24 PID: 028-160-525 and uses a no-thru driveway to access VIHA’s parking lot and delivery bay (the “**Driveway**”) as shown crosshatched on Schedule A attached;
- B. The Village requires access to a property it has leased for a non-profit housing development located at 3345 Second Street, Cumberland, BC, legally described as PID: 031-335-284 Lot A, District Lot 24, Nelson District, Plan EPP103460, (the “**Development Property**”), which is accessible via the Driveway, in order to construct parking spaces and access the waste management collection area on the Development Property and to generally carry out its non-profit housing project (the “**Project**”); and
- C. The parties wish to make this Agreement to provide The Village with access to the Driveway to facilitate the completion of parking spaces; access the eight (8) parking spaces upon completion; access the waste management collection area; provide access to the Development Property for the Project.

NOW THEREFORE in consideration of the premises, mutual covenants, and agreements contained in this Agreement, the sufficiency of which is acknowledged, the parties agree as follows:

1. **Access.** VIHA grants access to the Driveway to the Village and the Village’s subcontractors, agents, lessees, sub-lessees, and tenants of the Village and their lessees and sub-lessees for the purposes of accessing the Development Property and constructing eight (8) parking spaces on the Development Property for the Project. It is understood by both parties that the use of the Driveway by the Village and the Village’s

subcontractors, agents, lessees, sub-lessees, and tenants, shall not impede VIHA's ability to use the Driveway and to conduct its business.

2. The Village's Requirements. The Village has provided the site plan attached to this Agreement as Schedule "A" describing the location of the parking spaces to be constructed on the Development Property. No changes or amendments can be made to the site plan without the prior consent of VIHA, with such consent not to be unreasonably withheld.
3. Payment. The Village will pay a one-time fee of ten dollars (\$10.00) for use of the Driveway for the Term, the receipt and sufficiency of which is hereby acknowledged.
4. Term. The term of this Agreement shall commence as of the Effective Date of this agreement, and shall end on the 50<sup>th</sup> anniversary (or on the 60<sup>th</sup> anniversary if the Affordable Housing Funder is BC Housing), or such other earlier termination in accordance with this Agreement (the "Term").
5. Dispute Resolution. If a dispute arises between the parties relating to this Agreement, the parties shall submit the dispute to arbitration by a single arbitrator, agreed upon by both parties, as per the *Arbitration Act* of British Columbia. The determination of the arbitrator will be final and binding on the parties. 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.
6. Termination. This Agreement may be terminated at any time by either party with nine (9) month's written notice of termination. In the event of a breach of this Agreement, including a material breach, the parties agree to proceed through dispute resolution pursuant to section 5 (Dispute Resolution).
7. Representations and Warranties. VIHA represents and warrants that its signatory below has the legal authority to enter into this Agreement and that there are no encumbrances or third party interests in the Parking Lot or otherwise, that would restrict VIHA carrying out its obligations under this Agreement.

The Village represents and warrants that its signatory below has the legal authority to enter into this Agreement and that there are no encumbrances or third party interests that restrict the Village from carrying out its obligations under this Agreement.

8. Indemnity. The Village does hereby indemnify and save harmless VIHA from against all losses, damages and costs suffered or incurred by VIHA as a consequence of granting the Village access to the Driveway as provided in this Agreement.
9. Assignment. Neither party may assign its rights under this Agreement without the express, prior written consent of the other party.

10. Nature of Agreement. This Agreement is legally binding.

11. Damages. In no circumstances shall either party bring a claim for, or be liable for, consequential damages under this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement as of the Effective Date.

**Village of Cumberland**

By its authorized signatory

Per:

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Michelle Mason, Chief Administrative Officer

**VANCOUVER ISLAND HEALTH AUTHORITY**

By its authorized signatory

Per:

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Name:

Title:

## SCHEDULE "A"

### THE VILLAGE PARKING SPACE REQUIREMENTS

The Village requires access to the Development Property via the Driveway owned by VIHA.

The Village plans to build eight (8) parking spaces located on the Development Property for use by the Village, its subcontractors, agents and tenants. The parking spaces will be accessed via the Driveway.

