

THE CORPORATION OF THE VILLAGE OF CUMBERLAND

BYLAW NO. 1193

**A bylaw to authorize a Housing Agreement
under section 483 of the *Local Government Act*.**

The Council of the Corporation of the Village of Cumberland, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as “Housing Agreement (3345 Second Street) Bylaw No. 1193, 2023.”
2. The Mayor and the Village’s Chief Administrative Officer are authorized to execute the Housing Agreement:
 - (a) set out in Schedule A to this bylaw,
 - (b) between the Village, the Vancouver Island Health Authority, and the Comox Valley Transition Society, and
 - (c) that applies to the land known as 3345 Second Street, legally described as:

PID: 031-335-284 Lot A, District Lot 24, Nelson District, Plan EPP103460

READ A FIRST TIME THIS	8TH	DAY OF	MAY	2023.
READ A SECOND TIME THIS	8TH	DAY OF	MAY	2023.
READ A THIRD TIME THIS	8TH	DAY OF	MAY	2023.
ADOPTED THIS	29TH	DAY OF	MAY	2023.

Mayor

Corporate Officer

SCHEDULE A HOUSING AGREEMENT

HOUSING AGREEMENT AND SECTION 219 COVENANT

WHEREAS

- A. Under section 483 of the *Local Government Act*, a local government may, by bylaw, enter into a Housing Agreement with an owner regarding the occupancy of the housing units identified in the agreement, including but not limited to terms and conditions referred to in section 483(2) of the *Local Government Act*;
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of a local government in respect of the use of land or construction on land;
- C. The Vancouver Island Health Authority ("**VIHA**") is the registered owner in fee simple of the Land as defined in this Agreement, and is the initial "**Transferor**";
- D. VIHA intends to lease the Land to the Village so that the Village of Cumberland ("**Village**") can sub-lease the Land to a Housing Society for the purposes of constructing a residential housing development that includes housing units provided at subsidized rents, with up to four (4) market rental units for purposes of VIHA employee housing;
- E. The Village, as local government, is the initial "**Transferee**", and may also become the "**Transferor**", per their interest in registered leasehold, should the Village and VIHA agree to modify this Agreement to apply to the leasehold interest only. As the Housing Society would be operating the housing development, they are also a party to this agreement, and the parties are agreed that the practical operating and reporting requirements would be their obligations to report to the Village and VIHA;
- F. The Parties wish to enter into this Agreement as a housing agreement pursuant to section 483 of the *Local Government Act*, and a covenant under Section 219 of the *Land Title Act* to secure the agreement that certain Dwelling Units to be constructed on the Land shall be used to provide housing at subsidized rents.

NOW THIS AGREEMENT WITNESSES that pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act*, and in consideration of the premises and covenants contained in this Agreement, the parties agree each with the other as follows:

1.0 Definitions

1.1 Unless otherwise stated, the definitions of the Village of Cumberland Zoning Bylaw (firstly) and Official Community Plan (secondly), as amended and replaced from time to time, apply to this Housing Agreement and Covenant.

1.2 In this Agreement

- (a) "**Affordable Housing Funder**" means an entity such as BC Housing or Canada Mortgage and Housing Corporation, that provides a grant or preferential rate loan to support the development of Affordable Housing

Units on the Land;

- (b) **"Affordable Near Market Rental Unit"** means a unit on the Land where the rental price is linked to market conditions in Cumberland or the Courtenay/Comox region and the rental rate is approved by an Affordable Housing Funder;
- (c) **"Affordable Rental Unit"** means a unit on the land where the rental price must be less than 80% of the Median Market Rent as defined by Canada Mortgage and Housing Corporation;
- (d) **"Agreement"** means this agreement, including its recitals;
- (e) **"Dwelling Unit"** means either a studio, one bedroom, two bedroom, three bedroom, or four bedroom residential unit that is to be used by occupants as a primary residence;
- (f) **"Final Occupancy Date"** means the date upon which the entirety of the New Building has been approved for occupancy by the building inspector for the Village of Cumberland;
- (g) **"Land"** means those parcels of land legally described as:
 - a. Lot A, District Lot 24, Nelson District, Plan EPP103460;
- (h) **"Median Market Rent"** means the median monthly rents by unit type as determined in the annual fall survey of rents for the prior calendar year published by the Canada Mortgage and Housing Corporation;
- (i) **"New Building"** means the residential building to be constructed on the Land, or any multi-unit residential or mixed use building constructed on the Land;
- (j) **"Subdivision" or "Subdivide"** means the division of land into two (2) or more parcels whether by plan, apt descriptive words or otherwise, and includes subdivision under the *Strata Property Act*, SBC 1998, Chapter 43 and the creation, conversion, organization or development of "cooperative units" or "shared interests in land" as defined in the *Real Estate Development Marketing Act*, SBC 2002, Chapter 41;
- (k) **"Tenancy Agreement"** means an agreement between the Transferor or its agent and a tenant with respect to the possession and occupation of a Dwelling Unit in the New Building;
- (l) **"Transferor"** includes a person which acquires an interest in the Land, or any part of it and is thereby bound by this Agreement.

2.0 Housing Agreement

- 2.1 The parties covenant and agree that, for a period of fifty (50) years (or 60 years if the Affordable Housing Funder is BC Housing) commencing on the Final Occupancy Date that:

(a) Rents for at least 30% of the units must be at less than 80% of the Median Market Rent,

(b) The average rental price in the New Building must be less than 80% of the Median Market Rent, and

(c) The average rental price in the New Building may be achieved through a combination of Affordable Near Market Rental Units and Affordable Rental Units provided the proposed unit mix complies with sections 2.1(a) and 2.1(b).

2.2 VIHA Staff Housing:

(a) Up to four (4) Dwelling Units that are market rental units must be reserved for VIHA for use as housing of VIHA employees employed in Cumberland. For certainty, the requirement to be employed in Cumberland only applies at initial tenancy, and a VIHA employee is not, by this Agreement, required to cease tenancy if transferred elsewhere.

(b) VIHA may make those units available to the Housing Society, but agrees to be responsible for market rents when not available to the Housing Society, whether the units are occupied or not.

(c) VIHA agrees that it shall not use these units, in a manner that jeopardizes senior government funding of the proposed development.

3.0 219 Covenant

3.1 The Land shall not be used, or built upon or subdivided except in strict accordance with this Agreement.

3.2 The Transferor covenants and agrees not to make any application to deposit a subdivision plan, strata plan, or any other plan if depositing the plan would result in the New Building or the Dwelling Units in the New Building being subdivided.

3.3 The Lands shall not be used or built upon for residential purposes unless such residential use or construction is in accordance with Article 2.0 of this Agreement.

4.0 Reporting

4.1 The Housing Society covenants and agrees to provide to the Village no later than March 1 of each year following the execution of this Agreement and no later than March 1 of each following year up to and including fifty (50) years (60 years if the Affordable Housing Funder is BC Housing) following the Final Occupancy Date, a report in writing confirming compliance with the provisions of this Agreement including without limitation article 2.0 and section 3.3.

4.2 The parties acknowledge that the Village will not impose reporting requirements more than once per calendar year, unless there are reasonable grounds to believe that there may be a breach, in fact or in spirit, of this Housing Agreement (as determined at the Village's sole discretion, for the purposes of reporting).

4.3 For greater certainty, the Housing Society is not required to provide a Statutory Declaration and accompanying report unless the Village so requests, but when

the Village requests a report the Village may request the information for the year in which such report is requested and for previous years not previously reported.

4.4 The parties agree that VIHA has no reporting obligations under this Agreement.

5.0 Notice to be Registered in Land Title Office

5.1 Notice of this Agreement (the "**Notice**") will be registered in the Land Title Office by the Village in accordance with section 483(5) of the *Local Government Act*, and this Agreement is binding on the parties to this Agreement as well as all persons who acquire an interest in the Land after registration of the Notice.

5.2 Further, the restrictions and covenants herein contained shall be covenants running with the Land and shall be perpetual, and shall continue to bind all of the Land when subdivided, and shall be registered in the Victoria Land Title Office pursuant to section 219 of the *Land Title Act* as covenants in favour of the Transferee as a first charge against the Land.

5.3 The parties intend this Agreement to be perpetual, however if, after fifty (50) years (60 years if the Affordable Housing Funder is BC Housing) following the Final Occupancy Date, all residential uses of the Lands cease, and the building is either destroyed, demolished, converted to other use or no longer suitable for residential purposes, then VIHA may require the Village to execute and deliver a release in registrable form of this Agreement.

5.4 Provided the proposed lease between VIHA and the Village adequately secures the Village's control of the Land for purposes of the proposed development, VIHA may require the release of this Agreement from the fee simple, for registration only against the Village's leasehold interest, if permitted by law.

5.5 The parties agree that this Agreement may be amended in writing without further public hearing.

6.0 General Provisions

6.1 Notice

If sent as follows, notice under this Agreement is considered to be received seventy-two (72) hours after the time of its mailing (by registered mail) or faxing, and on the date of delivery if hand-delivered, to the Transferee:

Village of Cumberland
2673 Dunsmuir Avenue
Cumberland, BC V0R 1S0
Attention: Corporate Officer

to the Transferor:
Vancouver Island Health Authority
1952 Bay Street
Victoria, BC V8R 1J8
Attention: Capital Planning & Leasing

to the Housing Society:
Comox Valley Transition Society
625 England Avenue
Courtenay, BC V9N 2N5
Attention: Heather Ney, Executive Director

If a party identifies alternate contact information in writing to another party, notice is to be given to that alternate address.

If normal mail service or facsimile service is interrupted by strike, work slow-down, force majeure, or other cause,

- (a) notice sent by the impaired service is considered to be received on the date of actual receipt, and
- (b) the sending party must use its best efforts to ensure prompt receipt of a notice by using other uninterrupted services, or by hand delivering the notice.

Time

6.2 Time is of the essence of this Agreement.

Binding Effect

6.3 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and permitted assignees.

Equitable Remedies

6.4 The Transferor acknowledges and agrees that damages would be an inadequate remedy for the Transferee for 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.

Waiver

6.5 The waiver by a party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement is not to be construed as a waiver of any future or continuing failure, whether similar or dissimilar.

7.6 The enforcement of this Agreement shall be entirely within the discretion of the Transferee and the execution and registration of the Agreement against title to the Land shall not be interpreted as creating any duty on the part of the Transferee to the Transferor or to any other person to enforce any provision of the breach of any provision of this Agreement.

Headings

- 7.7 The headings in this Agreement are inserted for convenience and reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any provision of it.

Language

- 7.8 Wherever the singular, masculine and neuter are used throughout this Agreement, the same is to be construed as meaning the plural or the feminine or the body corporate or politic as the context so requires.

Cumulative Remedies

- 7.9 No remedy under this Agreement is to be deemed exclusive but will, where possible, be cumulative with all other remedies at law or in equity.

Entire Agreement

- 7.10 This Agreement when executed will set forth the entire agreement and understanding of the parties as at the date it is made.

No Derogation from Statutory Authority

- 7.11 Nothing in this Agreement shall:
- (a) limit, impair, fetter or derogate from the statutory powers of the Transferee all of which powers may be exercised by the Transferee from time to time and at any time to the fullest extent that the Transferee is enabled and no permissive bylaw enacted by the Transferee, or permit, licence or approval granted, made or issued thereunder shall estop, limit, or impair the Transferee from relying upon and enforcing this Agreement;
 - (b) impose any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Housing Agreement & Covenant or the breach of any provision in this Housing Agreement & Covenant;
 - (c) impose any public law duty, whether arising from the principles of procedural fairness or the rules of natural justice, on the Village with respect to its exercise of any right or remedy expressly provided in this Housing Agreement & Covenant or at law or in equity; or
 - (d) relieve the Transferor from complying with any enactment, including the Transferee's bylaws, or any obligation of the Transferor under any other agreement with the Transferee.

Further Assurances

- 7.12 Each of the parties will do, execute, and deliver, or cause to be done, executed, and delivered all such further acts, documents and things as may be reasonably required from time to time to give effect to this Agreement.

Amendment

7.13 This Agreement may be amended from time to time upon terms and conditions acceptable to the parties.

Law Applicable

7.14 This Agreement is to be construed in accordance with and governed by the laws applicable in the Province of British Columbia.

Priority

7.15 At the Transferor's expense, the Transferor must do everything necessary to secure priority of registration and interest for this Agreement and the Section 219 Covenant it creates over all registered and pending charges and encumbrances of a financial nature against the Lands.

IN WITNESS WHEREOF the parties ~~convened~~ ~~and~~ ~~agree~~ as of the date of registration of this Agreement:

VILLAGE OF CUMBERLAND, by its authorized signatory(ies):

Name: _____

Name: _____

VANCOUVER ISLAND HEALTH AUTHORITY, by its authorized signatory(ies):

Name: _____

Name: _____

COMOX VALLEY TRANSITION SOCIETY, by its authorized signatory(ies):

Name: _____

Name: _____