

## **TOWN OF COMOX**

### **BYLAW NO. 2040**

#### **A BYLAW TO AUTHORISE A HOUSING AGREEMENT**

---

WHEREAS the Council of the Town of Comox may enter into a housing agreement pursuant to s. 483 of the *Local Government Act*;

AND WHEREAS the Council authorized, via Council motion nos. 2024.387 and 2024.388, ACI Comox Investments Ltd., Inc. No. C1120339 to enter into a housing agreement with the Town for the provision of below-market housing, in-lieu of providing an Affordable Housing Contribution via Council Policy CCL-069.

NOW THEREFORE the Council of the Town of Comox, in open meeting assembled, enacts as follows:

#### **1. TITLE**

- (1) This bylaw may be cited for all purposes as the "Comox Housing Agreement Bylaw No. 2040".

#### **2. AUTHORIZATION**

- (1) Council hereby authorizes the Town of Comox to enter into
  - (a) a HOUSING agreement for 17 dwelling units for a 10-year term under s. 483 of the *Local Government Act*, in the form attached as Schedule "A" to this bylaw; and
  - (b) a HOUSING agreement for 3 dwelling units in perpetuity under s. 483 of the *Local Government Act*, in the form attached as Schedule "B" to this bylaw.
- (2) The Mayor and the Corporate Officer may execute and deliver two agreements with ACI Comox Investments Ltd., Inc. No. C1120339, in the form attached as Schedule "A" and Schedule "B" to this bylaw.

### **3. DEFINITIONS**

- (1) In this Bylaw, unless the context otherwise requires
- (a) "Council" means the Council of the Town of Comox;
  - (b) "Town" means the Town of Comox.

### **4. ADOPTION**

- (1) READ A FIRST, SECOND and THIRD time this 2<sup>nd</sup> day of April 2025
- (2) ADOPTED this 16<sup>th</sup> day of April 2025

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CORPORATE OFFICER

**COMOX HOUSING AGREEMENT BYLW NO. 2040**  
**SCHEDULE "A"**

**TERMS OF INSTRUMENT - PART 2**

**RENTAL HOUSING AGREEMENT AND SECTION 219 COVENANT**

THIS AGREEMENT dated for reference   , 2025,

BETWEEN:

**TOWN OF COMOX**  
1809 Beaufort Avenue  
Comox, BC V9M 1R9

(the "**Town**")

AND:

**ACI COMOX INVESTMENTS LTD., INC.NO. C1120339**  
Suite 3409 -13495 Central Avenue  
Surrey, BC  
V3T 0K2

(the "**Owner**")

WITNESSES THAT WHEREAS:

- A. Section 483 of the *Local Government Act* permits the Town to enter into housing agreements for the provision of affordable and special needs housing, which may include, without limitation, conditions in respect of the form of tenure of housing units, availability of housing units to classes of persons, and administration of housing units;
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Town in respect of the use of land, construction on land, or the subdivision of land;
- C. The Owner owns the Lands (as hereinafter defined) and intends to construct, operate, and maintain, *inter alia*, the rental housing located on the Lands;
- D. The Owner and the Town wish to enter into this Agreement to provide for rental housing on the Lands on the terms and conditions set out in this Agreement and 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
- E. The Town adopted Comox Housing Agreement Bylaw No. 2040, authorizing the Town to enter into this Agreement on the terms and conditions contained herein.

NOW THEREFORE, in consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the parties), and in consideration of the promises exchanged

below, the Owner and the Town covenant and agree, pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act*, as follows:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement the following terms have the following meanings:

- (a) **"Affordable Dwelling Unit"** means a Dwelling Unit with a form of tenure that is limited to rental tenure only and can only be used and occupied as a residential rental pursuant to a Tenancy Agreement.
- (b) **"Agreement"** means this agreement together with all schedules.
- (c) **"Building"** means each new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit.
- (d) **"Commencement Date"** means the date as of which this Agreement has reached full registration in the LTO.
- (e) **"CMHC"** means the Canada Mortgage and Housing Corporation or its' successor in function.
- (f) **"Cumulative Gross Annual Household Income"** means the cumulative income of each member of a Household that occupies an Affordable Dwelling Unit that is over 18 years of age.
- (g) **"Development Permit"** means any development permit issued by the Town pursuant to the Town of *Comox Planning Procedures Bylaw 1780* at any time following the date this Agreement is fully executed by the parties' authorizing development on the Lands (or any portion of the Lands).
- (h) **"Dwelling Unit"** means one or more rooms:
  - (i) constituting a self-contained unit with only one cooking facility; and
  - (ii) occupied as the permanent residence of one related or unrelated household for a continuous period of not less than 28 daysand does not include a mobile home or modular unit.
- (i) **"Eligible Tenant"** means a Household that has a Cumulative Gross Annual Household Income that does not exceed the Income Limit.

- (j) **"Household"** means:
- (i) a person;
  - (ii) two or more persons related by blood, marriage or adoption, or are in a marriage like relationship; or
  - (iii) a group of not more than three persons who are not related by blood, marriage or adoption.
- (k) **"Income Limit"** means a Cumulative Gross Annual Household Income limit equivalent to the median rental income in the CMHC data table titled "Real Median Household Income (Before Taxes) Renter Households, Canada, Provinces, and Selected Metropolitan Areas, 2019" for rural centres in British Columbia, provided that:
- (i) the Income Limit shall be adjusted annually on January 1 of each calendar year so that it is equal to the median renter income for rural centres in British Columbia as most recently published by CMHC or its successor in function; or
  - (ii) if CMHC ceases to publish the median renter income for rural centres in British Columbia region but publishes similar income information that is acceptable to the Town, such similar income information shall be used to create the "Income Limit" for the purposes of this Agreement; or
  - (iii) if CMHC ceases to publish the median renter income for rural centres in British Columbia and does not publish similar income information that is acceptable to the Town, then the "Income Limit" shall be determined by reference to the final median renter income for rural centres in British Columbia published by CMHC and thereafter increased annually by an amount equal to the increase, if any, in the All-Items Consumer Price Index for British Columbia, published from time to time by Statistics Canada, or its successor in function for the period of January 1 to December 31 of the previous calendar year.
- (l) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c 250.
- (m) **"Lands"** means the lands and premises described as follows:
- |                    |   |
|--------------------|---|
| Civic address:     | 1966 Guthrie Road                                     |
| PID:               | 027-869-067   |
| Legal Description: | LOT A, PLAN VIP86498, SECTION 77, COMOX LAND DISTRICT |
- (n) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 2015, c 1.
- (o) **"LTO"** means the Victoria Land Title Office or its successor in function.
- (p) **"Occupancy Date"** means the date on which the Town of Comox has issued an occupancy permit for each of the Affordable Dwelling Units.

- (q) **"Permitted Rent"** means, with respect to an Affordable Dwelling Unit, a monthly rent no greater than 1/12<sup>th</sup> of 30% of the Income Limit provided that the Owner may increase rent for the Affordable Dwelling Units in accordance with Part 3 of the *Residential Tenancy Act*.
- (r) **"Rental Breach"** means the Owner breaching this Agreement by failing to operate and manage an Affordable Dwelling Unit in accordance with this Agreement. For clarity, each Rental Breach committed in relation to an Affordable Dwelling Unit is a separate breach. For example, if the Owner fails to operate and manage two Affordable Dwelling Units in accordance with the Agreement, two Rental Breaches will have occurred.
- (s) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, c 78.
- (t) **"Subdivide"** means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of 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* S.B.C. 1998, c 43, or otherwise, and includes the creation, conversion, organization or development of "cooperative interests" or "shared interest in land" as defined in the British Columbia *Real Estate Development Marketing Act*, S.B.C. 2004, c.41.
- (u) **"Tenancy Agreement"** means a written tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Dwelling Unit.
- (v) **"Tenancy Default"** has the meaning set out in section 3.2(c)(iii) of this Agreement.
- (w) **"Tenant"** means a Household that occupies an Affordable Dwelling Unit.
- (x) **"Term"** has the meaning assigned to it in section 5.1(a).
- (y) **"Town"** means the Town of Comox and is called the "Town" when referring to the corporate entity and "Town of Comox" when referring to the geographic location.

## 1.2 Interpretation

In this Agreement:

- (a) **Party** – Any reference to a party herein will be deemed to include the successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) **Singular Gender** – Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) **Captions and Headings** – The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.

- (d) **References** – References to this "**Agreement**" and the words "**hereof**" "**herein**" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated recital, section, subsection or other subdivision is a reference to the designated recital, section, subsection or subdivision hereof.
- (e) **Governing Law** – This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
- (f) **Legislation** – Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made from time to time to such statute and regulations and as they are in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) **Time** – Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party. If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

## **ARTICLE 2**

### **SECTION 219 COVENANT – USE AND SUBDIVISION**

#### **2.1 Section 219 Covenant**

As a covenant pursuant to section 219 of the *Land Title Act*, the Owner covenants and agrees as follows:

- (a) **Designation** – Prior to constructing a Building on the Lands, the Owner will designate in writing to the Town which of the Dwelling Units to be constructed on the Lands will be the Affordable Dwelling Units. The Owner may change the foregoing designation by giving prior written notice to the Town of such change.
- (b) **Minimum Construction Requirements** – All of the Affordable Dwelling Units constructed on the Lands will be designed and constructed to the same standard as the rest of the Dwelling Units in the Buildings, in terms of general layout, workmanship, and materials.
- (c) **Proof that Minimum Construction Requirements Met** – The Owner covenants and agrees with the Town that none of the Lands nor any Dwelling Unit in a Building shall be occupied until the Owner has demonstrated to the Town, in whatever manner or form the Town requires, acting reasonably, that all of the Affordable Dwelling Units constructed on the Lands have been designed and constructed to the same standard, in terms of general layout, workmanship, and materials same standard as the rest of the Dwelling Units in the Buildings.

## **2.2 Town Authorized to Make Inquiries**

The Owner agrees that:

- (a) the Town is authorized to make such reasonable inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement, subject to applicable laws (including privacy laws);
- (b) on or before December 1 of each calendar year of the Term, the Owner must provide to the Town a certificate, substantially in the form (with, in the Town's discretion, such further amendments or additions as deemed necessary or desirable) attached as Schedule A, sworn by an authorized signatory of the Owner, containing all of the information required to complete the certificate; and
- (c) in addition to the annual requirement contained in the immediately preceding subsection, within 15 business days after receiving notice from the Town, the Owner must, in respect of each Affordable Dwelling Unit, provide to the Town:
  - (i) a certificate, substantially in the form (with, in the Town's discretion, such further amendments or additions as deemed necessary or desirable) attached as Schedule A, sworn by an authorized signatory of the Owner, containing all of the information required to complete the certificate;
  - (ii) a certified true copy of each tenancy agreement under which an Affordable Dwelling Unit is occupied at the time of the Town's request; and
  - (iii) all information the Owner has collected regarding a Household's Cumulative Gross Annual Household Income under section 3.9 of this Agreement.

## **2.3 Restriction on Subdivision**

The Owner shall not Subdivide the Lands nor any Building constructed thereon during the term of this Agreement unless the effect of such Subdivision is to create a single parcel containing all of the Dwelling Units located on the Lands. For clarity, as long as all the Dwelling Units on the Lands are contained within in a single parcel, the Owner may subdivide the Lands or the Building as it wishes.

# **ARTICLE 3**

## **OCCUPANCY AND MANAGEMENT OF AFFORDABLE DWELLING UNITS**

### **3.1 Designation and Use**

- (a) The Owner agrees that from the Occupancy Date until the end of the Term, not less than 17 Dwelling Units constructed on the Lands will be designated as Affordable Dwelling Units and used and occupied by an Eligible Tenant having, at the time they sign their applicable Tenancy Agreement, a Cumulative Gross Annual Household Income for the most recent tax year that does not exceed the Income Limit.



- (b) The Town agrees that if, despite using best efforts, the Owner is unable to locate an Eligible Tenant for a vacant Affordable Dwelling Unit after advertising the Affordable Dwelling Unit to potential Eligible Tenants for not less than 60 days, the Owner may enter into a Tenancy Agreement with a non-Eligible Tenant for such Affordable Dwelling Unit, and such Affordable Dwelling Unit will not be subject to the terms of this Agreement.
- (c) If (b) occurs, the Owner agrees that it will use best efforts to rent the next non-Affordable Dwelling Unit that becomes vacant to an Eligible Tenant by advertising to potential Eligible Tenants for not less than 60 days. If the Owner enters into a Tenancy Agreement with an Eligible Tenant for a non-Affordable Dwelling Unit pursuant to this section, such Dwelling Unit will become an Affordable Dwelling Unit for the purposes of this Agreement.
- (d) The Owner will advise the Town in writing of the occurrence of subsection (b) and (c) above as soon as reasonably practicable, and, upon request of the Town, will provide a certificate, sworn by an authorized signatory of the Owner, detailing the Owner's efforts to advertise the vacant Affordable Dwelling Unit or Dwelling Unit to Eligible Tenants in accordance with subsections (b) and (c) and relevant documentation reflecting such efforts acceptable to the Town, acting reasonably.

### **3.2 Tenant Selection**

- (a) At all times, the Owner will screen and select prospective tenants using typical screening procedures as would be implemented by a prudent property manager.
- (b) An Affordable Dwelling Unit may not be occupied by the Owner, the Owner's family members or any affiliate of the Owner.

### **3.3 Short-term Rentals Prohibited for All Affordable Dwelling Units**

- (a) No Affordable Dwelling Unit may be rented by the Owner to any person for a term of less than 30 days; and
- (b) Every Tenancy Agreement respecting an Affordable Dwelling Unit shall include a clause entitling the Owner to terminate the Tenancy Agreement if a Tenant subleases, rents or otherwise allows a non Eligible Tenant to occupy an Affordable Dwelling Unit for a term of less than 30 days.

### **3.4 Occupancy Terms and Conditions of Affordable Dwelling Units**

The occupancy of each Affordable Dwelling Unit shall comply at all times with all of the following terms and conditions:

- (a) Tenancy Agreement – An Affordable Dwelling Unit will be used or occupied only pursuant to a Tenancy Agreement that is entered into by a Tenant who is an Eligible Tenant at the time they sign the Tenancy Agreement.
- (b) Permitted Rent - The monthly rent charged for the Affordable Dwelling Unit will not exceed the Permitted Rent applicable to that Affordable Dwelling Unit.

- (c) Use of Common Areas – An Affordable Dwelling Unit Tenant shall not be:
  - (i) prevented or prohibited from accessing any common areas or facilities within the Building or on the Lands; or
  - (ii) prevented or prohibited from accessing amenities within the Building or on the Lands, however, although reasonable rules may be implemented to govern all Tenants’ access to shared amenities, provided however that such rules will apply equally to the occupants of all Dwelling Units in the Building.
- (d) Tenancy Agreement Requirements – Every Tenancy Agreement respecting an Affordable Dwelling Unit Agreement shall comply with the following requirements:
  - (i) a copy of this Agreement shall be attached to the Tenancy Agreement;
  - (ii) the Tenancy Agreement shall include a clause requiring the Tenant and each permitted occupant of the Affordable Dwelling Unit to comply with this Agreement;
  - (iii) the Tenancy Agreement shall include a clause providing that the Owner may terminate the Tenancy Agreement if any of the following occur, each of which constitutes a “Tenancy Default”:
    - A. the Affordable Dwelling Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent;
    - B. the Tenant subleases the Affordable Dwelling Unit or assigns the Tenancy Agreement in whole or in part, without the Owner's consent;
    - C. the information provided by the Tenant regarding their Cumulative Gross Annual Household Income during the Town’s verification process pursuant to section 3.9 was false, inaccurate, or misleading; and
    - D. the Tenant refuses to provide information requested by the Town that the Town requires to verify the Tenant’s Cumulative Gross Annual Household Income;
  - (iv) the Tenancy Agreement will identify all occupants of the Affordable Dwelling Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing in the Affordable Dwelling Unit.

### 3.5 **Tenancy Agreement Defaults**

In the event of a Tenancy Default, the Owner will use commercially reasonable efforts to end the Tenancy Agreement by providing notice to the Tenant that ends the tenancy on the earliest date possible permitted under the *Residential Tenancy Act* and will use commercially reasonable efforts to cause the Tenant to vacate by that date to the extent permitted by the *Residential Tenancy Act*.

### **3.6 Income Limit**

The Owner will not enter into a Tenancy Agreement with a Household to rent an Affordable Dwelling Unit unless the Household establishes that its Cumulative Gross Annual Household Income for the most recent tax year does not exceed the Income Limit for the relevant Affordable Dwelling Unit.

### **3.7 Subleasing and Assignment**

The Owner will not consent to the assignment of a Tenancy Agreement or the subletting of an Affordable Dwelling Unit, except if the assignment or subletting is to an Eligible Tenant and, in the case of an assignment, the assignee does not pay any amount to the assignor in consideration of such assignment or in the case of a sublease, the subtenant does not pay monthly rent to the Tenant that exceeds the Permitted Rent applicable to the Affordable Dwelling Unit.

### **3.8 Delivery of Tenancy Agreements**

The Owner will forthwith deliver or cause to be delivered a certified true copy of every Tenancy Agreement (or for Affordable Dwelling Units Specified by the Town) to the Town upon demand from time to time, provided that nothing in this provision will compel the Owner to breach any law with respect to privacy or confidentiality.

### **3.9 Verifying Cumulative Gross Annual Household Income**

- (a) Prior to entering into a Tenancy Agreement for an Affordable Dwelling Unit, the Owner will verify or cause to be verified the Cumulative Gross Annual Household Income of each proposed occupant;
- (b) As part of its Cumulative Gross Annual Household Income verification process, the Owner will require each member of a Household occupying an Affordable Dwelling Unit over the age of 18 to provide the following information:
  - (i) pay stubs for the most recent three months; or
  - (ii) a letter from an employer that:
    - A. is on the employer's letterhead,
    - B. contains contact information for the person who signed the letter, the signature of the letter writer, and the date the letter was signed; and
    - C. contains the gross income, number of hours worked, taxable benefits, and frequency of pay; and
  - (iii) a certificate, substantially in the form (with, in the Town's discretion, such further amendments or additions as deemed necessary or desirable) attached as Schedule B, sworn by the prospective tenant, containing all of the information required to complete the certificate.

- (c) If at any point during a Tenancy Agreement:
    - (i) the Owner has any reason to suspect that the information provided by a Tenant regarding Cumulative Gross Annual Household Income is false, inaccurate, or misleading; or
    - (ii) the Town asks the Owner to collection such information
- the Owner will request additional documentation and information from a Household necessary to verify the Household's Cumulative Gross Annual Household Income.

### 3.10 **No Breach**

This Agreement is subject to the provisions of the *Residential Tenancy Act* and the *Personal Information Protection Act*, SBC 2003, c 63, and the parties hereto acknowledge and agree that the Owner will not be in default of any one or more provisions hereunder should such provisions require the Owner to take actions or to otherwise do thing that are contrary to or otherwise not permitted by the *Residential Tenancy Act* and/or the *Personal Information Act*, SBC 2003, c 63.

### 3.11 **Management -**

- (a) The Owner will at all times administer, manage and operate the Affordable Dwelling Units or will cause a contractor to administer, manage and operate the Affordable Dwelling Units in accordance with all of the restrictions and requirements of this Agreement and the Owner's obligations under this Agreement. For clarity, the Owner's engagement of a contractor pursuant to this Agreement will not relieve the Owner from any of the Owner's obligations under this Agreement or any of the restrictions or requirements of this Agreement.
- (b) The Owner will furnish or cause to be furnished good and efficient management of the Affordable Dwelling Units and will permit representatives of the Town to inspect the Affordable Dwelling Units at any reasonable time with advance notice of five days and subject to the notice provisions in the *Residential Tenancy Act*.
- (c) The Owner will maintain the Affordable Dwelling Units, or cause the Affordable Dwelling Units to be maintained, in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Affordable Dwelling Units.

### 3.12 **Increase in Cumulative Gross Annual Household Income**

If the Cumulative Gross Annual Household Income of a Household occupying an Affordable Dwelling Unit rises after they enter into a Tenancy Agreement and exceeds the Income Limit applicable to the Affordable Dwelling Unit the Household is occupying, the Owner is not required to terminate or attempt to terminate the Household's existing Tenancy Agreement on the basis that the Household ceases to qualify for the Affordable Dwelling Unit because the Household's Cumulative Gross Annual Household Income exceeds the Income Limit.

For clarity, if the Tenancy Agreement of a Household that ceases to qualify for the Affordable Dwelling Unit because the Household's Cumulative Gross Annual Household Income and exceeds the Income Limit is terminated, the Owner may only rent the Restricted Dwelling vacated as a result of such termination to a Household that establishes that its' Cumulative Gross Annual Household Income for the most recent tax year does not exceed the Income Limit for the relevant Affordable Dwelling Unit.

#### **ARTICLE 4 DEFAULT AND REMEDIES**

##### **4.1 Notice of Default**

If the Owner is in default of this Agreement, the Town may give the Owner written notice requiring that the Owner cure the default within 30 days of receiving such notice, or such longer period as the Owner reasonably requires if the default cannot be cured within 30 days if the Owner is acting diligently. The notice must specify the nature of the default. The Owner must act diligently to correct the default within the time specified in the notice.

##### **4.2 Costs**

The Owner will pay to the Town, upon demand by the Town, all of the Town's costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.

##### **4.3 Breach**

If a Rental Breach occurs, the Town may require the Owner to pay the Town the amount determined by the following formula:

*(Average Monthly rent of all non-Affordable Dwelling Units having the same number of bedrooms as the Affordable Dwelling Unit subject to the breach)*

*X*

*2*

*= Additional Rent payable per offending Dwelling Unit per month*

For example, if a Rental Breach Occurs in relation to two 2-bedroom Affordable Dwelling Units, and the average monthly rent of all non-Affordable Dwelling Units with 2 bedrooms is \$2,400.00, the calculation will be as follows:

$$(\$2,400.00 \times 2) + (\$2,400.00 \times 2) = \$9,600.00$$

In this case, \$9,600.00 per month is payable by the Owner per month.

##### **4.4 Payment for Rental Breach**

The amount payable pursuant to section 2.3(a) will be payable:

- (a) via the method indicated by the Town;

- (b) separately for each Dwelling Unit not properly operated, managed or used as an Affordable Dwelling Unit;
- (c) monthly, for each month or partial month the Rental Breach continues; and
- (d) until the Rental Breach being committed in relation to the Dwelling Unit is remedied.

#### **4.5 Remedying Rental Breach**

The Owner covenants and agrees to remedy any Rental Breach as soon as reasonably possible (without the obligation to terminate any existing Tenancy Agreement) and in any event no later than one (1) year of receipt of notice of such breach by the Town.

#### **4.6 Liquidated Damages**

The Owner acknowledges and agrees that a significant reason the Town amended the Town's zoning bylaw to permit the Owner's development was because the Owner agreed to provide Affordable Dwelling Units as part of the development, as the Town believes that the construction of affordable rental housing will benefit the community as a whole. As such, if the Affordable Dwelling Units are not used in accordance this Agreement, the Town will suffer significant loss of benefit that is difficult to quantify. Accordingly, the Owner hereby covenants and agrees to make the payments outlined in section 4.3 above as liquidated damages in the circumstances in which each payment applies, with the Owner and the Town agreeing that each such payment is a genuine pre-estimate of the Town's losses in the circumstances in which such payment is made.

#### **4.7 Specific Relief**

The Owner agrees that, without affecting any other rights or remedies the Town may have in respect of any breach of this Agreement that continues beyond the cure period, the Town is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement that continues beyond the cure period. The Owner agrees that this is reasonable given the public interest in ensuring the provision of Affordable Dwelling Units to be occupied by Eligible Tenants and restricting occupancy of the Lands in accordance with this Agreement.

#### **4.8 No Penalty or Forfeiture**

The Owner acknowledges and agrees that it is entering into this Agreement to benefit the public interest in providing Affordable Dwelling Units for Eligible Tenants, and that the Town's rights and remedies under this Agreement are necessary to ensure that this purpose is carried out, and the Town's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.

#### **4.9 Cumulative Remedies**

No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit, or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right to remedy, but any party, from time to time, may exercise any one or more of such rights or remedies

independently, successively, or in combination. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

## **ARTICLE 5 MISCELLANEOUS**

### **5.1 Term and Discharge**

This Agreement will expire and become null and void on the date that is 10 years from the Occupancy Date (the “**Term**”).

On or after the expiration of this Agreement, the Owner may submit a discharge of this Agreement and a cancellation of the notice of this Agreement filed in the LTO pursuant to section 483 of the *Local Government Act* to the Town and the Town shall, within a reasonable time after request by the Owner, execute and deliver to the Owner such discharge of this Agreement and cancellation of the notice.

### **5.2 No Compensation**

The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the Town, for any decrease in the market value of the Lands which at any time may result directly or indirectly from the operation of this Agreement.

### **5.3 Modification**

This Agreement may be modified or amended from time to time, by the written consent of all of the parties and a bylaw duly passed by the Council of the Town and thereafter if it is signed by the Town and the Owner.

### **5.4 Indemnity**

Pursuant to section 219(6) of the *Land Title Act*, the Owner will indemnify and save harmless the Town 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, losses, damages, 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) the use or occupancy of any Dwelling Unit, save and except for any Dwelling Unit leased to the Town;
- (b) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom the Owner is responsible at law in connection with the observance or performance of the obligations of the Owner under this Agreement;
- (c) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Dwelling Unit (save and except for any Dwelling Unit leased to the Town); or

- (d) any breach of this Agreement by the Owner.

#### 5.5 Release

The Owner hereby releases and forever discharges the Town 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 the:

- (a) construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Dwelling Unit, save and except for any Dwelling Unit leased to the Town; and
- (b) exercise by the Town of any of its rights under this Agreement.

#### 5.6 Registration & Priority

The Owner will cause this Agreement to be registered as a covenant under section 219 of the *Land Title Act* against title to the Lands in priority to all charges and encumbrances registered or pending registration against title to the Lands save and except those in favour of the Town or specifically approved in advance in writing by the Town, and will cause a notice of this Agreement under section 483(5) of the *Local Government Act* to be filed in the Land Title Office and shown as a legal notation on title to the Lands.

#### 5.7 Town's Powers Unaffected

This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the Town under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) impose on the Town 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.

#### 5.8 Agreement for Benefit of Town Only

The Owner and the Town agree that:

- (a) this Agreement is entered into only for the benefit of the Town;
- (b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, Owner, occupier or user of the Lands or the building or any portion thereof, including any Affordable Dwelling Unit, and not third-parties other than the Town shall have any rights under this Agreement; and



- (c) the Town 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.

**5.9 No Public Law Duty**

Where the Town 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 Town is under no public law duty of fairness or natural justice in that regard and agrees that the Town may do any of those things in the same manner as if it were a private party and not a public body.

**5.10 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.

**5.11 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.

**5.12 Waiver**

All remedies of the Town against the Owner will be cumulative and may be exercised by the Town 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 Town exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

**5.13 Sole Agreement**

This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the Town and the Owner respecting the use and occupation of the Affordable Dwelling Units, and there are no warranties, representations, conditions or collateral agreements made by the Town except as set forth in this Agreement.

**5.14 Further Assurance**

Upon request by the Town, the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the Town to give effect to this Agreement.

**5.15 Agreement Runs with the Lands**

This Agreement shall burden and run with, and bind the successors in title to, the leasehold interest of the Owner in the Lands and every parcel into which the Lands may be Subdivided.

**5.16 No Joint Venture**

Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the Town or give the Owner any authority to bind the Town in any way.

**5.17 Applicable Law**

Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

**5.18 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.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the General Instrument - Part 1 of the Land Title Act Form C which is a part hereof.

## SCHEDULE A

### OWNER'S CERTIFICATE – RENTAL INFORMATION

I, \_\_\_\_\_ of \_\_\_\_\_, British Columbia, certify that:

1. I am the Owner subject to a Housing Agreement with the Town of Comox date for reference \_\_\_\_\_ or an authorized signatory of the Owner of the Building located at \_\_\_\_\_ (the "**Building**"), and make this certificate to the best of my personal knowledge.
2. Certified true copies of the Tenancy Agreements for all Eligible Tenants in force at the date of this Agreement are attached to this Certificate.
3. Copies of all information the Owner has collected regarding Cumulative Gross Annual Household Income under section 3.9 of this Agreement for all Eligible Tenants having Tenancy Agreements in force at the date of this Agreement are attached to this Certificate.
4. The rent roll for the Building is attached to this Certificate and the information contained in the rent roll is current to the date of this certificate.
5. The rent roll contains the following information for each Dwelling Unit located in the Building:
  - (a) Unit Number
  - (b) Unit Size in square feet
  - (c) Unit Type/Number of Bedrooms
  - (d) Rental Rate
  - (e) Rent Rate per square foot
  - (f) Tenancy Agreement Commencement Date
6. I acknowledge and agree to comply with the Owner's obligations under the Housing Agreement in relation to the Affordable Dwelling Units and confirm that the Owner has complied with such obligations to date.
7. I make this certificate, conscientiously believing it to be true and knowing that the Town of Comox will be relying upon the statements made herein.

[Owner]

\_\_\_\_\_  
Signature

**SCHEDULE B**

**CERTIFICATE – TENANT INFORMATION**

I, \_\_\_\_\_ of \_\_\_\_\_, British Columbia, certify that:

1. I am applying to become a tenant of a Dwelling Unit located at \_\_\_\_\_[building address]\_\_\_\_\_, and make this certificate to the best of my personal knowledge.
2. My Cumulative Gross Annual Household Income for the most recent financial year is \$\_\_\_\_\_.
3. Attached to this Certificate is the following documentation demonstrating my Cumulative Gross Annual Household Income:  
  
[pay stubs for the most recent three months, employment letter]
4. I make this certificate, conscientiously believing it to be true and knowing that the landlord will be relying upon the statements made herein.

*[Applicant]*

\_\_\_\_\_  
Signature

**COMOX HOUSING AGREEMENT BYLW NO. 2040**

**SCHEDULE "B"**

**TERMS OF INSTRUMENT - PART 2**

**RENTAL HOUSING AGREEMENT AND SECTION 219 COVENANT**

THIS AGREEMENT dated for reference     , 2025,

BETWEEN:

**TOWN OF COMOX**  
1809 Beaufort Avenue  
Comox, BC V9M 1R9

(the "**Town**")

AND:

**ACI COMOX INVESTMENTS LTD., INC.NO. C1120339**  
Suite 3409 -13495 Central Avenue  
Surrey, BC  
V3T 0K2

(the "**Owner**")

WITNESSES THAT WHEREAS:

- A. Section 483 of the *Local Government Act* permits the Town to enter into housing agreements for the provision of affordable and special needs housing, which may include, without limitation, conditions in respect of the form of tenure of housing units, availability of housing units to classes of persons, and administration of housing units;
- B. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Town in respect of the use of land, construction on land, or the subdivision of land;
- C. The Owner owns the Lands (as hereinafter defined) and intends to construct, operate, and maintain, *inter alia*, the rental housing located on the Lands;
- D. The Owner and the Town wish to enter into this Agreement to provide for rental housing on the Lands on the terms and conditions set out in this Agreement and 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
- E. The Town adopted Comox Housing Agreement Bylaw No. 2040, authorizing the Town to enter into this Agreement on the terms and conditions contained herein.

NOW THEREFORE, in consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the parties), and in consideration of the promises exchanged

below, the Owner and the Town covenant and agree, pursuant to section 483 of the *Local Government Act* and section 219 of the *Land Title Act*, as follows:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement the following terms have the following meanings:

- (a) **"Affordable Dwelling Unit"** means a Dwelling Unit with a form of tenure that is limited to rental tenure only and can only be used and occupied as a residential rental pursuant to a Tenancy Agreement.
- (b) **"Agreement"** means this agreement together with all schedules.
- (c) **"Building"** means each new building or structure to be built on the Lands as contemplated by the Development Permit, and includes any portion of any such building or structure, but does not include temporary buildings or structures on the Lands during the period of, and required for the purposes of, any construction contemplated by the Development Permit.
- (d) **"Commencement Date"** means the date as of which this Agreement has reached full registration in the LTO.
- (e) **"CMHC"** means the Canada Mortgage and Housing Corporation or its' successor in function.
- (f) **"Cumulative Gross Annual Household Income"** means the cumulative income of each member of a Household that occupies an Affordable Dwelling Unit that is over 18 years of age.
- (g) **"Development Permit"** means any development permit issued by the Town pursuant to the Town of *Comox Planning Procedures Bylaw 1780* at any time following the date this Agreement is fully executed by the parties' authorizing development on the Lands (or any portion of the Lands).
- (h) **"Dwelling Unit"** means one or more rooms:
  - (i) constituting a self-contained unit with only one cooking facility; and
  - (ii) occupied as the permanent residence of one related or unrelated household for a continuous period of not less than 28 daysand does not include a mobile home or modular unit.
- (i) **"Eligible Tenant"** means a Household that has a Cumulative Gross Annual Household Income that does not exceed the relevant Income Limit.

- (j) **"Household"** means:
- (i) a person;
  - (ii) two or more persons related by blood, marriage or adoption, or are in a marriage like relationship; or
  - (iii) a group of not more than three persons who are not related by blood, marriage or adoption.
- (k) **"Income Limit"** means a Cumulative Gross Annual Household Income limit equivalent to the median rental income in the CMHC data table titled "Real Median Household Income (Before Taxes) Renter Households, Canada, Provinces, and Selected Metropolitan Areas, 2019" for rural centres in British Columbia, provided that:
- (i) the Income Limit shall be adjusted annually on January 1 of each calendar year so that it is equal to the median renter income for rural centres in British Columbia as most recently published by CMHC or its successor in function; or
  - (ii) if CMHC ceases to publish the median renter income for rural centres in British Columbia region but publishes similar income information that is acceptable to the Town, such similar income information shall be used to create the "Income Limit" for the purposes of this Agreement; or
  - (iii) if CMHC ceases to publish the median renter income for rural centres in British Columbia and does not publish similar income information that is acceptable to the Town, then the "Income Limit" shall be determined by reference to the final median renter income for rural centres in British Columbia published by CMHC and thereafter increased annually by an amount equal to the increase, if any, in the All-Items Consumer Price Index for British Columbia, published from time to time by Statistics Canada, or its successor in function for the period of January 1 to December 31 of the previous calendar year.
- (l) **"Land Title Act"** means the *Land Title Act*, R.S.B.C. 1996, c 250.
- (m) **"Lands"** means the lands and premises described as follows:
- |                    |   |
|--------------------|---|
| Civic address:     | 1966 Guthrie Road                                     |
| PID:               | 027-869-067   |
| Legal Description: | LOT A, PLAN VIP86498, SECTION 77, COMOX LAND DISTRICT |
- (n) **"Local Government Act"** means the *Local Government Act*, R.S.B.C. 2015, c 1.
- (o) **"LTO"** means the Victoria Land Title Office or its successor.
- (p) **"Occupancy Date"** means the date on which the Town of Comox has issued an occupancy permit for each of the Affordable Dwelling Units.

- (q) **"Permitted Rent"** means, with respect to an Affordable Dwelling Unit, a monthly rent no greater than 1/12<sup>th</sup> of 30% of the Income Limit provided that the Owner may increase rent for the Affordable Dwelling Units in accordance with Part 3 of the *Residential Tenancy Act*.
- (r) **"Rental Breach"** means the Owner breaching this Agreement by failing to operate and manage an Affordable Dwelling Unit in accordance with this Agreement. For clarity, each Rental Breach committed in relation to an Affordable Dwelling Unit is a separate breach. For example, if the Owner fails to operate and manage two Affordable Dwelling Units in accordance with the Agreement, two Rental Breaches will have occurred.
- (s) **"Residential Tenancy Act"** means the *Residential Tenancy Act*, S.B.C. 2002, c 78.
- (t) **"Subdivide"** means to divide, apportion, consolidate or subdivide the Lands, or the ownership or right to possession or occupation of 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* S.B.C. 1998, c 43, or otherwise, and includes the creation, conversion, organization or development of "cooperative interests" or "shared interest in land" as defined in the British Columbia *Real Estate Development Marketing Act*, S.B.C. 2004, c.41.
- (u) **"Tenancy Agreement"** means a written tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Dwelling Unit.
- (v) **"Tenancy Default"** has the meaning set out in section 3.2(c)(iii) of this Agreement.
- (w) **"Tenant"** means a Household that occupies an Affordable Dwelling Unit.
- (x) **"Term"** has the meaning assigned to it in section 5.1(a).
- (y) **"Town"** means the Town of Comox and is called the "Town" when referring to the corporate entity and "Town of Comox" when referring to the geographic location.

## 1.2 Interpretation

In this Agreement:

- (a) **Party** – Any reference to a party herein will be deemed to include the successors, assigns, employees, servants, agents, officers, contractors, licensees and invitees of such parties wherever the context so permits or requires.
- (b) **Singular Gender** – Wherever the singular or masculine or neuter is used in this Agreement, the same will be construed to mean the plural or the feminine or body corporate or politic, and vice versa, as the context or the parties so require.
- (c) **Captions and Headings** – The captions and headings appearing in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Agreement or any of the provisions hereof.



- (d) **References** – References to this "**Agreement**" and the words "**hereof**" "**herein**" and similar words refer to this Agreement as a whole and not to any section or subsection or other subdivision hereof and any reference in this Agreement to a designated recital, section, subsection or other subdivision is a reference to the designated recital, section, subsection or subdivision hereof.
- (e) **Governing Law** – This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in British Columbia.
- (f) **Legislation** – Any reference to a statute includes and is a reference to such statute and to the regulations made pursuant thereto, with all amendments made from time to time to such statute and regulations and as they are in force from time to time, and to any statute and regulations that may be passed which have the effect of supplementing or superseding such statutes and regulations.
- (g) **Time** – Time shall be of the essence of this Agreement and each part of it. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party. If a time is specified in this Agreement for observing or performing any obligation, such time shall be local Vancouver, British Columbia time.

## **ARTICLE 2**

### **SECTION 219 COVENANT – USE AND SUBDIVISION**

#### **2.1 Section 219 Covenant**

As a covenant pursuant to section 219 of the *Land Title Act*, the Owner covenants and agrees as follows:

- (a) **Designation** – Prior to constructing a Building on the Lands, the Owner will designate in writing to the Town which of the Dwelling Units to be constructed on the Lands will be the Affordable Dwelling Units. The Owner may change the foregoing designation by giving prior written notice to the Town of such change.
- (b) **Minimum Construction Requirements** – All of the Affordable Dwelling Units constructed on the Lands will be designed and constructed to the same standard as the rest of the Dwelling Units in the Buildings, in terms of general layout, workmanship, and materials.
- (c) **Proof that Minimum Construction Requirements Met** – The Owner covenants and agrees with the Town that none of the Lands nor any Dwelling Unit in a Building shall be occupied until the Owner has demonstrated to the Town, in whatever manner or form the Town requires, acting reasonably, that all of the Affordable Dwelling Units constructed on the Lands have been designed and constructed to the same standard, in terms of general layout, workmanship, and materials same standard as the rest of the Dwelling Units in the Buildings.

## 2.2 Town Authorized to Make Inquiries

The Owner agrees that:

- (a) the Town is authorized to make such reasonable inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement, subject to applicable laws (including privacy laws);
- (b) on or before December 1 of each calendar year of the Term, the Owner must provide to the Town a certificate, substantially in the form (with, in the Town's discretion, such further amendments or additions as deemed necessary or desirable) attached as Schedule A, sworn by an authorized signatory of the Owner, containing all of the information required to complete the certificate; and
- (c) in addition to the annual requirement contained in the immediately preceding subsection, within 15 business days after receiving notice from the Town, the Owner must, in respect of each Affordable Dwelling Unit, provide to the Town:
  - (i) a certificate, substantially in the form (with, in the Town's discretion, such further amendments or additions as deemed necessary or desirable) attached as Schedule A, sworn by an authorized signatory of the Owner, containing all of the information required to complete the certificate;
  - (ii) a certified true copy of each tenancy agreement under which an Affordable Dwelling Unit is occupied at the time of the Town's request; and
  - (iii) all information the Owner has collected regarding a Household's Cumulative Gross Annual Household Income under section 3.9 of this Agreement.

## 2.3 Restriction on Subdivision and Discharge

- (a) The Owner shall not Subdivide the Lands nor any Building constructed thereon during the term of this Agreement unless the effect of such Subdivision is to create a single parcel containing all of the Dwelling Units located on the Lands. For clarity, as long as all the Dwelling Units on the Lands are contained within in a single parcel, the Owner may subdivide the Lands or the Building as it wishes.
- (b) If the Owner Subdivides the Lands in accordance with section 2.3(a), following such Subdivision, the Owner may submit a discharge of this Agreement from title to a parcel that does not contain any Dwelling Units and a corresponding cancellation of the notice of this Agreement filed in the LTO pursuant to section 483 of the *Local Government Act* to the Town and the Town shall, within a reasonable time after request by the Owner, execute and deliver to the Owner such discharge of this Agreement and cancellation of the notice.

**ARTICLE 3**  
**OCCUPANCY AND MANAGEMENT OF AFFORDABLE DWELLING UNITS**

**3.1 Designation and Use**

- (a) The Owner agrees that from the Occupancy Date until the end of the Term, not less than three Dwelling Units constructed on the Lands will be designated as Affordable Dwelling Units and used and occupied by an Eligible Tenant having, at the time they sign their applicable Tenancy Agreement, a Cumulative Gross Annual Household Income for the most recent tax year that does not exceed the Income Limit.
- (b) The Town agrees that if, despite using best efforts, the Owner is unable to locate an Eligible Tenant for a vacant Affordable Dwelling Unit after advertising the Affordable Dwelling Unit to potential Eligible Tenants for not less than 60 days, it may enter into a Tenancy Agreement with a non-Eligible Tenant for such Affordable Dwelling Unit, and such Affordable Dwelling Unit will not be subject to the terms of this Agreement.
- (c) If (b) occurs, the Owner agrees that it will use best efforts to rent the next non-Affordable Dwelling Unit that becomes vacant to an Eligible Tenant by advertising to potential Eligible Tenants for not less than 60 days. If the Owner enters into a Tenancy Agreement with an Eligible Tenant for a non-Affordable Dwelling Unit pursuant to this section, the such Dwelling Unit will become an Affordable Dwelling Unit for the purposes of this Agreement.
- (d) The Owner will advise the Town in writing of the occurrence of subsection (b) and (c) above as soon as reasonably practicable, and, upon request of the Town, will provide a certificate, sworn by an authorized signatory of the Owner, detailing the Owner's efforts to advertise the vacant Affordable Dwelling Unit or Dwelling Unit to Eligible Tenants in accordance with subsections (b) and (c) and relevant documentation reflecting such efforts.

**3.2 Tenant Selection**

- (a) At all times, the Owner will screen and select prospective tenants using typical screening procedures as would be implemented by a prudent property manager.
- (b) An Affordable Dwelling Unit may not be occupied by the Owner, the Owner's family members or any affiliate of the Owner.

**3.3 Short-term Rentals Prohibited for All Affordable Dwelling Units**

- (a) No Affordable Dwelling Unit may be rented by the Owner to any person for a term of less than 30 days; and
- (b) Every Tenancy Agreement respecting an Affordable Dwelling Unit shall include a clause entitling the Owner to terminate the Tenancy Agreement if a Tenant subleases, rents or otherwise allows a non Eligible Tenant to occupy an Affordable Dwelling Unit for a term of less than 30 days.

### 3.4 **Occupancy Terms and Conditions of Affordable Dwelling Units**

The occupancy of each Affordable Dwelling Unit shall comply at all times with all of the following terms and conditions:

- (a) Tenancy Agreement – An Affordable Dwelling Unit will be used or occupied only pursuant to a Tenancy Agreement that is entered into by a Tenant who is an Eligible Tenant at the time they sign the Tenancy Agreement.
- (b) Permitted Rent - The monthly rent charged for the Affordable Dwelling Unit will not exceed the Permitted Rent applicable to that Affordable Dwelling Unit.
- (c) Use of Common Areas – An Affordable Dwelling Unit Tenant shall not be:
  - (i) prevented or prohibited from accessing any common areas or facilities within the Building or on the Lands; or
  - (ii) prevented or prohibited from accessing amenities within the Building or on the Lands, however, although reasonable rules may be implemented to govern all Tenants’ access to shared amenities, provided however that such rules will apply equally to the occupants of all Dwelling Units in the Building.
- (d) Tenancy Agreement Requirements – Every Tenancy Agreement respecting an Affordable Dwelling Unit Agreement shall comply with the following requirements:
  - (i) a copy of this Agreement shall be attached to the Tenancy Agreement;
  - (ii) the Tenancy Agreement shall include a clause requiring the Tenant and each permitted occupant of the Affordable Dwelling Unit to comply with this Agreement;
  - (iii) the Tenancy Agreement shall include a clause providing that the Owner may terminate the Tenancy Agreement if any of the following occur, each of which constitutes a “Tenancy Default”:
    - A. the Affordable Dwelling Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent;
    - B. the Tenant subleases the Affordable Dwelling Unit or assigns the Tenancy Agreement in whole or in part, without the Owner's consent;
    - C. the information provided by the Tenant regarding their Cumulative Gross Annual Household Income during the Town’s verification process pursuant to section 3.9 was false, inaccurate, or misleading; and
    - D. the Tenant refuses to provide information requested by the Town that the Town requires to verify the Tenant’s Cumulative Gross Annual Household Income;

- (iv) the Tenancy Agreement will identify all occupants of the Affordable Dwelling Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing in the Affordable Dwelling Unit.

### 3.5 Tenancy Agreement Defaults

In the event of a Tenancy Default, the Owner will use commercially reasonable efforts to end the Tenancy Agreement by providing notice to the Tenant that ends the tenancy on the earliest date possible permitted under the *Residential Tenancy Act* and will use commercially reasonable efforts to cause the Tenant to vacate by that date to the extent permitted by the *Residential Tenancy Act*.

### 3.6 Income Limit

The Owner will not enter into a Tenancy Agreement with a Household to rent an Affordable Dwelling Unit unless the Household establishes that its Cumulative Gross Annual Household Income for the most recent tax year does not exceed the Income Limit for the relevant Affordable Dwelling Unit.

### 3.7 Subleasing and Assignment

The Owner will not consent to the assignment of a Tenancy Agreement or the subletting of an Affordable Dwelling Unit, except if the assignment or subletting is to an Eligible Tenant and, in the case of an assignment, the assignee does not pay any amount to the assignor in consideration of such assignment or in the case of a sublease, the subtenant does not pay monthly rent to the Tenant that exceeds the Permitted Rent applicable to the Affordable Dwelling Unit.

### 3.8 Delivery of Tenancy Agreements

The Owner will forthwith deliver or cause to be delivered a certified true copy of every Tenancy Agreement (or for Affordable Dwelling Units Specified by the Town) to the Town upon demand from time to time, provided that nothing in this provision will compel the Owner to breach any law with respect to privacy or confidentiality.

### 3.9 Verifying Cumulative Gross Annual Household Income

- (a) Prior to entering into a Tenancy Agreement for an Affordable Dwelling Unit, the Owner will verify or cause to be verified the Cumulative Gross Annual Household Income of each proposed occupant;
- (b) As part of its Cumulative Gross Annual Household Income verification process, the Owner will require each member of a Household occupying an Affordable Dwelling Unit over the age of 18 to provide the following information:
  - (i) pay stubs for the most recent three months; or
  - (ii) a letter from an employer that:
    - A. is on the employer's letterhead,

- B. contains contact information for the person who signed the letter, the signature of the letter writer, and the date the letter was signed; and
  - C. contains the gross income, number of hours worked, taxable benefits, and frequency of pay; and
- (iii) a certificate, substantially in the form (with, in the Town's discretion, such further amendments or additions as deemed necessary or desirable) attached as Schedule B, sworn by the prospective tenant, containing all of the information required to complete the certificate.
- (c) If at any point during a Tenancy Agreement:
- (i) the Owner has any reason to suspect that the information provided by a Tenant regarding Cumulative Gross Annual Household Income is false, inaccurate, or misleading; or
  - (ii) the Town asks the Owner to collection such information
- the Owner will request additional documentation and information from a Household necessary to verify the Household's Cumulative Gross Annual Household Income.

### 3.10 **No Breach**

This Agreement is subject to the provisions of the *Residential Tenancy Act* and the *Personal Information Protection Act*, SBC 2003, c 63, and the parties hereto acknowledge and agree that the Owner will not be in default of any one or more provisions hereunder should such provisions require the Owner to take actions or to otherwise do thing that are contrary to or otherwise not permitted by the *Residential Tenancy Act* and/or the *Personal Information Act*, SBC 2003, c 63.

### 3.11 **Management -**

- (a) The Owner will at all times administer, manage and operate the Affordable Dwelling Units or will cause a contractor to administer, manage and operate the Affordable Dwelling Units in accordance with all of the restrictions and requirements of this Agreement and the Owner's obligations under this Agreement. For clarity, the Owner's engagement of a contractor pursuant to this Agreement will not relieve the Owner from any of the Owner's obligations under this Agreement or any of the restrictions or requirements of this Agreement.
- (b) The Owner will furnish or cause to be furnished good and efficient management of the Affordable Dwelling Units and will permit representatives of the Town to inspect the Affordable Dwelling Units at any reasonable time with advance notice of five days and subject to the notice provisions in the *Residential Tenancy Act*.
- (c) The Owner will maintain the Affordable Dwelling Units, or cause the Affordable Dwelling Units to be maintained, in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Affordable Dwelling Units.

### 3.12 Increase in Cumulative Gross Annual Household Income

If the Cumulative Gross Annual Household Income of a Household occupying an Affordable Dwelling Unit rises after they enter into a Tenancy Agreement and exceeds the Income Limit applicable to the Affordable Dwelling Unit the Household is occupying, the Owner is not required to terminate or attempt to terminate the Household's existing Tenancy Agreement on the basis that the Household ceases to qualify for the Affordable Dwelling Unit because the Household's Cumulative Gross Annual Household Income exceeds the Income Limit.

For clarity, if the Tenancy Agreement of a Household that ceases to qualify for the Affordable Dwelling Unit because the Household's Cumulative Gross Annual Household Income and exceeds the Income Limit is terminated, the Owner may only rent the Restricted Dwelling vacated as a result of such termination to a Household that establishes that its' Cumulative Gross Annual Household Income for the most recent tax year does not exceed the Income Limit for the relevant Affordable Dwelling Unit.

## ARTICLE 4 DEFAULT AND REMEDIES

### 4.1 Notice of Default

If the Owner is in default of this Agreement, the Town may give the Owner written notice requiring that the Owner cure the default within 30 days of receiving such notice, or such longer period as the Owner reasonably requires if the default cannot be cured within 30 days if the Owner is acting diligently. The notice must specify the nature of the default. The Owner must act diligently to correct the default within the time specified in the notice.

### 4.2 Costs

The Owner will pay to the Town, upon demand by the Town, all of the Town's costs of exercising its rights or remedies under this Agreement, on a full indemnity basis.

### 4.3 Breach

If a Rental Breach occurs, the Town may require the Owner to pay the Town the amount determined by the following formula:

*(Average Monthly rent of all non-Affordable Dwelling Units having the same number of bedrooms as the Affordable Dwelling Unit subject to the breach)*

*X*

*2*

*= Additional Rent payable per offending Dwelling Unit per month*

For example, if a Rental Breach Occurs in relation to two 2-bedroom Affordable Dwelling Units, and the average monthly rent of all non-Affordable Dwelling Units with 2 bedrooms is \$2,400.00, the calculation will be as follows:

$$(\$2,400.00 \times 2) + (\$2,400.00 \times 2) = \$9,600.00$$

In this case, \$9,600.00 per month is payable by the Owner per month.

#### 4.4 **Payment for Rental Breach**

The amount payable pursuant to section 2.3(a) will be payable:

- (a) via the method indicated by the Town;
- (b) separately for each Dwelling Unit not properly operated, managed or used as an Affordable Dwelling Unit;
- (c) monthly, for each month or partial month the Rental Breach continues; and
- (d) until the Rental Breach being committed in relation to the Dwelling Unit is remedied.

#### 4.5 **Remedying Rental Breach**

The Owner covenants and agrees to remedy any Rental Breach as soon as reasonably possible (without the obligation to terminate any existing Tenancy Agreement) and in any event no later than one (1) year of receipt of notice of such breach by the Town.

#### 4.6 **Liquidated Damages**

The Owner acknowledges and agrees that a significant reason the Town amended the Town's zoning bylaw to permit the Owner's development was because the Owner agreed to provide Affordable Dwelling Units as part of the development, as the Town believes that the construction of affordable rental housing will benefit the community as a whole. As such, if the Affordable Dwelling Units are not used in accordance this Agreement, the Town will suffer significant loss of benefit that is difficult to quantify. Accordingly, the Owner hereby covenants and agrees to make the payments outlined in section 4.3 above as liquidated damages in the circumstances in which each payment applies, with the Owner and the Town agreeing that each such payment is a genuine pre-estimate of the Town's losses in the circumstances in which such payment is made.

#### 4.7 **Specific Relief**

The Owner agrees that, without affecting any other rights or remedies the Town may have in respect of any breach of this Agreement that continues beyond the cure period, the Town is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement that continues beyond the cure period. The Owner agrees that this is reasonable given the public interest in ensuring the provision of Affordable Dwelling Units to be occupied by Eligible Tenants and restricting occupancy of the Lands in accordance with this Agreement.

#### 4.8 **No Penalty or Forfeiture**

The Owner acknowledges and agrees that it is entering into this Agreement to benefit the public interest in providing Affordable Dwelling Units for Eligible Tenants, and that the Town's rights and



remedies under this Agreement are necessary to ensure that this purpose is carried out, and the Town's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.

#### 4.9 Cumulative Remedies

No reference to nor exercise of any specific right or remedy under this Agreement or at law or at equity by any party will prejudice, limit, or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right to remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement.

### ARTICLE 5 MISCELLANEOUS

#### 5.1 Term and Discharge

This Agreement will expire and become null and void on the date that is 60 years from the Occupancy Date (the “**Term**”).

On or after the expiration of this Agreement, the Owner may submit a discharge of this Agreement and a cancellation of the notice of this Agreement filed in the LTO pursuant to section 483 of the *Local Government Act* to the Town and the Town shall, within a reasonable time after request by the Owner, execute and deliver to the Owner such discharge of this Agreement and cancellation of the notice.

#### 5.2 No Compensation

The Owner acknowledges and agrees that no compensation is payable, and the Owner is not entitled to and will not claim any compensation from the Town, for any decrease in the market value of the Lands which at any time may result directly or indirectly from the operation of this Agreement.

#### 5.3 Modification

This Agreement may be modified or amended from time to time, by the written consent of all of the parties and a bylaw duly passed by the Council of the Town and thereafter if it is signed by the Town and the Owner.

#### 5.4 Indemnity

Pursuant to section 219(6) of the *Land Title Act*, the Owner will indemnify and save harmless the Town 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, losses, damages, 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) the use or occupancy of any Dwelling Unit, save and except for any Dwelling Unit leased to the Town;
- (b) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom the Owner is responsible at law in connection with the observance or performance of the obligations of the Owner under this Agreement;
- (c) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Dwelling Unit (save and except for any Dwelling Unit leased to the Town); or
- (d) any breach of this Agreement by the Owner.

#### 5.5 Release

The Owner hereby releases and forever discharges the Town 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 the:

- (a) construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Dwelling Unit, save and except for any Dwelling Unit leased to the Town; and
- (b) exercise by the Town of any of its rights under this Agreement.

#### 5.6 Registration & Priority

The Owner will cause this Agreement to be registered as a covenant under section 219 of the *Land Title Act* against title to the Lands in priority to all charges and encumbrances registered or pending registration against title to the Lands save and except those in favour of the Town or specifically approved in advance in writing by the Town, and will cause a notice of this Agreement under section 483(5) of the *Local Government Act* to be filed in the Land Title Office and shown as a legal notation on title to the Lands.

#### 5.7 Town's Powers Unaffected

This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the Town under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) impose on the Town 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.

**5.8 Agreement for Benefit of Town Only**

The Owner and the Town agree that:

- (a) this Agreement is entered into only for the benefit of the Town;
- (b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, Owner, occupier or user of the Lands or the building or any portion thereof, including any Affordable Dwelling Unit, and not third-parties other than the Town shall have any rights under this Agreement; and
- (c) the Town 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.

**5.9 No Public Law Duty**

Where the Town 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 Town is under no public law duty of fairness or natural justice in that regard and agrees that the Town may do any of those things in the same manner as if it were a private party and not a public body.

**5.10 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.

**5.11 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.

**5.12 Waiver**

All remedies of the Town against the Owner will be cumulative and may be exercised by the Town 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 Town exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

**5.13 Sole Agreement**

This Agreement, and any documents signed by the Owner contemplated by this Agreement, represent the whole agreement between the Town and the Owner respecting the use and occupation of the Affordable Dwelling Units, and there are no warranties, representations, conditions or collateral agreements made by the Town except as set forth in this Agreement.

**5.14 Further Assurance**

Upon request by the Town, the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the Town to give effect to this Agreement.

**5.15 Agreement Runs with the Lands**

This Agreement shall burden and run with, and bind the successors in title to, the leasehold interest of the Owner in the Lands and every parcel into which the Lands may be Subdivided.

**5.16 No Joint Venture**

Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the Town or give the Owner any authority to bind the Town in any way.

**5.17 Applicable Law**

Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

**5.18 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.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the General Instrument - Part 1 of the Land Title Act Form C which is a part hereof.

## SCHEDULE A

### OWNER'S CERTIFICATE – RENTAL INFORMATION

I, \_\_\_\_\_ of \_\_\_\_\_, British Columbia, certify that:

1. I am the Owner subject to a Housing Agreement with the Town of Comox date for reference \_\_\_\_\_ or an authorized signatory of the Owner of the Building located at \_\_\_\_\_ (the "**Building**"), and make this certificate to the best of my personal knowledge.
2. Certified true copies of the Tenancy Agreements for all Eligible Tenants in force at the date of this Agreement are attached to this Certificate.
3. Copies of all information the Owner has collected regarding Cumulative Gross Annual Household Income under section 3.9 of this Agreement for all Eligible Tenants having Tenancy Agreements in force at the date of this Agreement are attached to this Certificate.
4. The rent roll for the Building is attached to this Certificate and the information contained in the rent roll is current to the date of this certificate.
5. The rent roll contains the following information for each Dwelling Unit located in the Building:
  - (a) Unit Number
  - (b) Unit Size in square feet
  - (c) Unit Type/Number of Bedrooms
  - (d) Rental Rate
  - (e) Rent Rate per square foot
  - (f) Tenancy Agreement Commencement Date
6. I acknowledge and agree to comply with the Owner's obligations under the Housing Agreement in relation to the Affordable Dwelling Units and confirm that the Owner has complied with such obligations to date.
7. I make this certificate, conscientiously believing it to be true and knowing that the Town of Comox will be relying upon the statements made herein.

[Owner]

\_\_\_\_\_  
Signature

**SCHEDULE B**

**CERTIFICATE – TENANT INFORMATION**

I, \_\_\_\_\_ of \_\_\_\_\_, British Columbia, certify that:

1. I am applying to become a tenant of a Dwelling Unit located at \_\_\_\_\_[building address]\_\_\_\_\_, and make this certificate to the best of my personal knowledge.
2. My Cumulative Gross Annual Household Income for the most recent financial year is \$\_\_\_\_\_.
3. Attached to this Certificate is the following documentation demonstrating my Cumulative Gross Annual Household Income:  
  
[pay stubs for the most recent three months, employment letter]
4. I make this certificate, conscientiously believing it to be true and knowing that the landlord will be relying upon the statements made herein.

*[Applicant]*

\_\_\_\_\_  
Signature