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## Community in Property: Lessons from Tiny Homes Villages

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## Article

# Community in Property: Lessons from Tiny Homes Villages

Lisa T. Alexander<sup>†</sup>

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## INTRODUCTION

“The ache for home lies in all of us.”—Maya Angelou<sup>1</sup>

Housing insecurity and unaffordability are growing problems in the United States.<sup>2</sup> “Soaring housing costs are largely to blame, with the national median rent rising 20 percent faster than overall inflation in 1990–2016 and the median home price 41 percent faster.”<sup>3</sup> Increasingly, natural disasters also displace individuals as well as communities, and contribute to escalating

1. MAYA ANGELOU, *ALL GOD’S CHILDREN NEED TRAVELING SHOES* 196 (1986).

2. See, e.g., Robynn Cox et al., *Measuring Population Estimates of Housing Insecurity in the United States: A Comprehensive Approach* 1, 30 (Ctr. for Econ. & Soc. Research—Leonard D. Schaeffer Ctr. for Health Policy & Econ., Working Paper No. 2017-012, 2017) (defining housing insecurity as “a continuum of housing-related issues among seven dimensions—housing stability, housing affordability, housing quality, housing safety, neighborhood safety, neighborhood quality, and homelessness—with homelessness being the most severe form of housing insecurity”).

3. See JOINT CTR. FOR HOUS. STUDIES, HARVARD UNIV., *THE STATE OF THE NATION’S HOUSING 2018*, at 1, 30 (2018), [http://www.jchs.harvard.edu/sites/default/files/Harvard\\_JCHS\\_State\\_of\\_the\\_Nations\\_Housing\\_2018.pdf](http://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2018.pdf) [<https://perma.cc/YV8G-SHMU>] [hereinafter *STATE OF THE NATION’S HOUSING 2018*] (“More than 38 million US households have housing cost burdens, leaving little income left to pay for food, healthcare, and other basic necessities. As it is, federal housing assistance reaches only a fraction of the large and growing number of low-income households in need. Between the shortage of subsidized housing and the ongoing losses of low-cost rentals through market forces, low-income households have increasingly few housing options. Meanwhile, the rising incidence and intensity of natural disasters pose new threats to the housing stocks of entire communities.”).

housing costs.<sup>4</sup> As greater numbers of Americans struggle to maintain or secure housing, larger segments of the population face eviction and homelessness.<sup>5</sup> In fact, “[a]fter declining by 14 percent between 2010 and 2016, the number of people experiencing homelessness increased by 3,800” in 2017.<sup>6</sup> Reductions in national homelessness between 2010 and 2016 were largely due to federal initiatives that targeted veterans and the chronically homeless.<sup>7</sup> Yet, “the vast majority (83 percent) of people experiencing homelessness are not chronically homeless, and many who enter shelters—especially families—come directly from more stable housing situations.”<sup>8</sup>

Large high-cost cities most acutely experience the local effects of these national trends.<sup>9</sup> “More than half (56 percent) of the [nation’s] homeless population live in the nation’s highest-cost metros.”<sup>10</sup> “Since 2015, at least 10 cities or municipal regions in California, Oregon and Washington—and Honolulu, as well—have declared states of emergency due to the rise of homelessness, a designation usually reserved for natural disasters.”<sup>11</sup>

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4. See, e.g., Richard Florida, ‘Climate Gentrification’ Will Deepen Urban Inequality, CITYLAB (July 5, 2018), <https://www.citylab.com/equity/2018/07/the-reality-of-climate-gentrification/564152/> [<https://perma.cc/7CYG-EJF9>]; *3-in-5 Californians Cite Housing Displacement Issues After Severe Weather Events: Poll*, INS. J. (Jan. 17, 2019), <https://www.insurancejournal.com/news/west/2019/01/17/515085.htm> [<https://perma.cc/YVH8-KHUY>].

5. STATE OF THE NATION’S HOUSING 2018, *supra* note 3, at 34. See generally NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, PROTECT TENANTS, PREVENT HOMELESSNESS (2018), <https://www.nlchp.org/ProtectTenants2018> [<https://perma.cc/W887-VYEU>] (explaining how legal protections for low-income families and individuals may work to combat homelessness).

6. See STATE OF THE NATION’S HOUSING 2018, *supra* note 3, at 34.

7. *Id.*

8. *Id.*

9. See, e.g., Gillian Flaccus & Geoff Mulvihill, *Amid Booming Economy, Homelessness Soars on US West Coast*, U.S. NEWS (Nov. 8, 2017), <https://www.usnews.com/news/best-states/washington/Articles/2017-11-06/homeless-explosion-on-west-coast-pushing-cities-to-the-brink> [<https://perma.cc/2VAQ-4EKQ>] (“A new study funded by the real estate information firm Zillow and conducted by the University of Washington found a strong link between rising housing prices and rising homelessness numbers. A 5 percent rent increase in Los Angeles, for example, would mean about 2,000 more homeless people there, the authors said.”).

10. See STATE OF THE NATION’S HOUSING 2018, *supra* note 3, at 34 (“[T]he metros with the largest homeless populations—New York, Los Angeles, San Francisco, and Seattle—are the same high-cost markets where homelessness is increasing.”).

11. See, e.g., Flaccus & Mulvihill, *supra* note 9.

While many West Coast cities initially experienced the confluence of rising home prices, natural disasters, and homelessness, other cities increasingly face this trifecta of housing challenges.<sup>12</sup> Cities that confront rising numbers of homeless people often criminalize homelessness in an effort to remove homeless street sleepers and panhandlers from the city landscape.<sup>13</sup>

At less than 400 square feet per unit, tiny homes are a huge solution to these problems.<sup>14</sup> Tiny homes can provide rapid and inexpensive shelter for homeless people, victims of natural disasters, and the hard-to-house.<sup>15</sup> Tiny homes are an increasingly popular solution to ameliorate homelessness.<sup>16</sup> In cities throughout the country, particularly in those that have declared homelessness emergencies, municipalities and counties, nonprofits, members of the business community, volunteers, and homeless people now collaborate to build tiny homes villages for the unhoused.<sup>17</sup> This Article provides a typology of different kinds of tiny homes villages in at least 39 of the 50 states.<sup>18</sup> The villages

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12. See *The Carolinas, Florence & Homelessness*, ESRI, <https://www.arcgis.com/apps/Cascade/index.html?appid=92ff80a75d934904ad50cd7cfafe32b1> [<https://perma.cc/Y2N3-9XRH>]; Tim Vanderpool, *Climate Change Is Worsening Houston's Housing Crisis*, NRDC (Aug. 8, 2018), <https://www.nrdc.org/stories/climate-change-worsening-houstons-housing-crisis> [<https://perma.cc/C4CS-PLAD>].

13. See Maria Foscarinis et al., *Out of Sight—Out of Mind?: The Continuing Trend Toward the Criminalization of Homelessness*, 6 GEO. J. ON POVERTY L. & POL'Y 145 (1999).

14. See 2018 INTERNATIONAL RESIDENTIAL CODE app. Q, § 102.1 (2018) (stating tiny homes are 400 square feet or less); Mike Plunkett, *Tiny Houses Catch on in War on Homelessness*, DAILY HERALD (Nov. 4, 2018), <https://www.dailyherald.com/business/20181104/tiny-houses-catch-on-in-war-on-homelessness> [<https://perma.cc/7PX4-XYA2>].

15. See Plunkett, *supra* note 14 (using the term hard-to-house to refer to people who have difficulty obtaining housing and shelter in traditional housing and rental markets due to their social status and economic circumstances).

16. See *id.*

17. See *Articles of Incorporation*, DIGNITY VILLAGE, <https://dignityvillage.org/governance/articles-of-incorporation/> [<https://perma.cc/G5RH-RHDW>] [hereinafter *Articles of Incorporation*]; see also Husna Haq, *Tiny-House Villages: An Innovative Solution to Homelessness?*, CHRISTIAN SCI. MONITOR (Jan. 21, 2016), <https://www.csmonitor.com/USA/USA-Update/2016/0121/Tiny-house-villages-An-innovative-solution-to-homelessness> [<https://perma.cc/52GD-CK4F>].

18. See Lisa T. Alexander, *Tiny Homes Villages Projects* (2019) [hereinafter Alexander, *Tiny Homes Villages Projects*] (unpublished spreadsheet) (on file with author).

provide both short-term and long-term housing in communal village structures.<sup>19</sup> Some villages use traditional housing tenures, such as rentals and homeownership, but others create a new housing tenure this Article defines as *stewardship*.<sup>20</sup>

This Article conceives stewardship as a housing tenure or property relation that affords unhoused people access to land and space through co-management for individual and mutual benefit. Stewardship gives unhoused people protected rights in real property and obligations of co-management, often without formal title or without paying rent. The stewardship and co-management examples analyzed in this Article help formerly homeless people achieve self-realization, self-reconceptualization, independence, and access to productive communities because these property relationships provide some of the behavioral, psychological, and social benefits of ownership without the status of ownership.<sup>21</sup> Homeless people often design, construct, and co-manage tiny homes villages.<sup>22</sup> Thus, these communities grant formerly homeless people the self-determination, control, and access to productive communities they may have lost on the streets.<sup>23</sup> The villages may be preferable to standard shelters, in some instances, because of the control, community, and support they grant to formerly homeless people.<sup>24</sup>

The rules and regulations of these communities also give homeless residents a right to exclude others from their tiny home units.<sup>25</sup> The right to exclude affords formerly homeless people privacy—something people living on the streets or in shelters

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19. *See id.*

20. *See* discussion *infra* Part II.

21. *See generally* Stephanie M. Stern, *Behavioral Leasing: Renter Equity as an Intermediate Housing Form*, in EVIDENCE AND INNOVATION IN HOUSING LAW AND POLICY 177 (Lee Anne Fennell & Benjamin Keys eds., 2017) (explaining renter equity as a new type of housing form that also provides some of the behavioral benefits of ownership without the status of fee simple ownership).

22. *See Articles of Incorporation*, *supra* note 17; Sharon Lee, *Tiny House Villages in Seattle: An Efficient Response to Our Homelessness Crisis*, SHELTERFORCE (Mar. 15, 2019), <https://shelterforce.org/2019/03/15/tiny-house-villages-in-seattle-an-efficient-response-to-our-homelessness-crisis/> [<https://perma.cc/3L2A-NQS9>].

23. *See Articles of Incorporation*, *supra* note 17.

24. *See* Lee, *supra* note 22.

25. *Who Will Live There FAQs*, OCCUPY MADISON, <https://occupymadisoninc.com/wp-content/uploads/2014/01/who-will-live-there-faqs-for-printing-2.pdf> [<https://perma.cc/F7EM-VX9C>] [hereinafter *Who Will Live There FAQs*].

may lack. Yet, the rules often combine the right to exclude with a contractual obligation, or a strongly encouraged social norm, to participate in a productive community that enhances the human flourishing of all involved.<sup>26</sup> Human flourishing connotes a “well-lived life,” in which a person has external goods beyond those needed for basic physical survival.<sup>27</sup> The villages advance the residents’ human flourishing because they provide opportunities for residents to increase their capacities and human and social capital.<sup>28</sup> Formerly homeless people, who may have been isolated from mainstream social networks, can connect to one another and to market-rate housed neighbors in unique ways. Village residents also receive job training and skills development, connect to work opportunities and health resources, and learn sustainable practices.<sup>29</sup> The right to exclude is not the preeminent property right in these villages, nor is it used to enhance individual wealth maximization or sole dominion. Rather, the right to exclude has equal, if not subordinated, status to the right and obligation to community. The villages, therefore, exemplify progressive property theory,<sup>30</sup> property as personhood theory,<sup>31</sup> the shift from ownership to access,<sup>32</sup> stewardship principles,<sup>33</sup> and urban commons theories<sup>34</sup>—all of which challenge

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26. GREGORY S. ALEXANDER & EDUARDO M. PEÑALVER, AN INTRODUCTION TO PROPERTY THEORY 88 (2012) (“[A] flourishing human life is one that consists of rational and social activities expressing the human excellences or virtues and that such a life is supported by those external goods necessary for participation in such activities.”); *see also* GREGORY S. ALEXANDER, PROPERTY AND HUMAN FLOURISHING (2018).

27. ALEXANDER & PEÑALVER, *supra* note 26, at 87.

28. *See* ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 18–19 (2000) (explaining that social capital refers to networks of human relations that have value, and human capital refers to individual knowledge, skills, or assets).

29. *See* discussion *infra* Parts II–III.

30. *See generally* Gregory S. Alexander et al., *A Statement of Progressive Property*, 94 CORNELL L. REV. 743 (2009) (defining progressive property theory’s main tenets).

31. *See* Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982).

32. *See* Shelly Kreiczler-Levy, *Share, Own, Access*, 36 YALE L. & POL’Y REV. 155 (2017).

33. *See* Kristen A. Carpenter et al., *In Defense of Property*, 118 YALE L.J. 1022 (2009).

34. *See* Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL’Y REV. 281 (2016).

the predominance of the right to exclude in American property law.<sup>35</sup>

By making community participation and enhancement a requirement, or a strongly encouraged social norm, of possession, use, or ownership of property, these communities also illustrate an expanded role for community in property relations.<sup>36</sup> In the face of growing natural, economic, social, and political instability, Americans may need more flexible and adjustable property forms that foster greater support networks and positive communal relations.<sup>37</sup> As property becomes more inaccessible, precarious, and unstable,<sup>38</sup> new property relations that privilege sharing, co-management, and community building, may become an increasingly important component of contemporary property law. The stability that even temporary communal networks and activities can bring during radical upheaval may become as important as the stability traditionally associated with long-term, exclusive ownership. The villages' growing popularity is similar to the recent rise of intentional cohousing and coworking communities amongst market-rate millennials and senior citizens.<sup>39</sup> Yet, tiny homes villages for unhoused people generate unique arrangements that municipalities can replicate in other contexts, such as rebuilding after natural disasters, workforce development, and sustainable and affordable housing creation.

Property law and theory traditionally associate stability with long-term, exclusive ownership.<sup>40</sup> This Article argues that shorter-term, more informal property relationships that privilege co-management and sharing can also provide stability dur-

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35. *See id.*

36. *See generally* COMMUNITY, HOME, AND IDENTITY (Michael Diamond & Terry L. Turnipseed eds., 2012); EVAN MCKENZIE, PRIVATOPIA: HOMEOWNER ASSOCIATIONS AND THE RISE OF RESIDENTIAL PRIVATE GOVERNMENT (1994) (discussing the rise of private common interest communities); ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION (James E. Alt & Douglass C. North eds., 1990); PROPERTY AND COMMUNITY (Gregory S. Alexander & Eduardo M. Peñalver eds., 2010); Foster & Iaione, *supra* note 34, at 310; Carol Rose, *The Comedy of the Commons: Custom, Commerce and Inherently Public Property*, 53 U. CHI. L. REV. 711 (1986).

37. *See* discussion *infra* Parts II–III.

38. *Id.*

39. *See* discussion *infra* Part III.

40. *See generally* Abraham Bell & Gideon Parchomovsky, *A Theory of Property*, 90 CORNELL L. REV. 531 (2005) (describing the value of and factors that determine “stable ownership”).



ing uncertain times. Many scholars and practitioners also understand contemporary American housing challenges as, primarily, a supply and demand problem.<sup>41</sup> While many of our most insurmountable housing challenges result from inadequate supply at the moderate-to-low-income levels, there are also the problems of the quality of the supply, its location, and the quality of life that each form of shelter provides.<sup>42</sup> This Article provides a solution to the problem of the quality of supply for low-income people by showing how property arrangements that privilege community can foster positive bonding social capital<sup>43</sup> between low-income individuals and positive bridging social capital<sup>44</sup> with housed individuals,<sup>45</sup> and can connect marginalized groups to opportunities, even during uncertainty and radical change.<sup>46</sup>

While some tiny homes villages for the homeless face “Not In My Backyard” (NIMBY) resistance at the planning stage,<sup>47</sup> neighborhood opposition often wanes when neighbors witness how formerly homeless residents become part of productive communities and put vacant or underutilized land into productive

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41. Scott Beyer, *Does America's Housing Crisis Need Supply-Side or Demand-Side Solutions?*, MKT. URBANISM REP. (Oct. 11, 2018), <https://marketurbanismreport.com/will-americas-housing-crisis-fixed-supply-side-demand-side-solutions/> [https://perma.cc/PN7F-AK59].

42. See Lee, *supra* note 22.

43. See, e.g., Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power, and Law*, 63 HASTINGS L.J. 803, 826 (2012) (describing positive bonding social capital as insular networks that bond individuals with common interests or similar social statuses to one another and provide individuals with positive communal associations).

44. See, e.g., *id.* (stating that positive bridging social capital suggests that individuals can connect to new opportunities that are unavailable in more closely knit networks of families, friends, or neighbors through positive external social networks).

45. See PUTNAM, *supra* note 28, at 22–23.

46. In his seminal article written after Hurricane Katrina, John A. Lovett defines four primary characteristics that frequently conspire to produce a radically changed circumstance: suddenness, unexpectedness, intensely disruptive, and geographically pervasive. No one of these features is necessary, but these factors frequently converge to produce a radically changed circumstance. The term also applies to radical social, political, and economic change. See John A. Lovett, *Property and Radically Changed Circumstances*, 74 TENN. L. REV. 463, 471 (2007).

47. The Fly, *NIMBY Backlash over 'Tiny Homes' Prompts City To Reduce Number of Potential Sites*, SAN JOSE INSIDE (Aug. 23, 2017), <http://www.sanjoseinside.com/2017/08/23/nimby-backlash-over-tiny-homes-prompts-city-to-reduce-number-of-potential-sites/> [https://perma.cc/KD3Z-Y6ZC].

use.<sup>48</sup> This Article, therefore, makes a unique contribution to the emerging “Yes In My Backyard” (YIMBY)<sup>49</sup> movement by demonstrating how municipalities, nonprofits, and interested developers can create new housing supply for vulnerable and marginalized populations in ways that may garner broad community support.

Part I of this Article describes the growing phenomenon of tiny homes villages for unhoused people in municipalities throughout the United States. Part II.A introduces stewardship as a new housing tenure created by these villages that deviates from essentialist property theorists’ quintessential core of exclusive, long-term, individual ownership. Stewardship includes a right to exclude, but the right to exclude is not an individualistic right, rather the right to exclude is contingent upon participation in a community.<sup>50</sup> Consequently, these projects also exemplify property theories that challenge the centrality of the right to exclude in American property law, such as progressive property theory, property as personhood theory, ownership-to-access theories, stewardship, and urban commons theories. Part II.B, Part II.C, and Part II.D show how these villages use stewardship in both permanent and temporary housing arrangements, and how the stewardship housing tenure provides stewards with many of the behavioral benefits of ownership without the status of ownership. Part III describes how other villages affirmatively use rental or rent-to-own housing tenures, but place those housing tenures in constructive common interest and cohousing<sup>51</sup> settings that advance the self-actualization and human flourishing

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48. Doug Erickson, *One Year in, Madison’s Village of Tiny Houses Wins Over Many Neighborhood Critics*, WIS. ST. J. (Sept. 27, 2015), [https://madison.com/wsj/news/local/one-year-in-madison-s-village-of-tiny-houses-wins/article\\_6d1a54cc-343a-5775-b3de-5fa341677580.html](https://madison.com/wsj/news/local/one-year-in-madison-s-village-of-tiny-houses-wins/article_6d1a54cc-343a-5775-b3de-5fa341677580.html) [https://perma.cc/V7S7-SSGQ].

49. Alana Semuels, *From ‘Not in My Backyard’ to ‘Yes in My Backyard,’* ATLANTIC (July 5, 2017), <https://www.theatlantic.com/business/archive/2017/07/yimby-groups-pro-development/532437/> [https://perma.cc/AJ67-2BYE] (describing YIMBY as the idea that “[w]ith more housing . . . the cost of rent in thriving cities . . . will not rise so quickly, which will allow more people from different economic backgrounds to live there and share in the prosperity of the local economy”).

50. See discussion *infra* Parts II–III.

51. See Mark Fenster, *Community by Covenant, Process, and Design: Cohousing and the Contemporary Common Interest Community*, 15 J. LAND USE & ENVTL. L. 3, 5 (1999) (“Cohousing adapts the legal forms of the CIC to a more intensive, deliberative democracy and explicitly strives for a sense of community by neighborhood. With privately owned, individual residences constructed around an extensive ‘common house’ that includes shared cooking, dining, and

of formerly homeless residents. Part IV.A explains how tiny homes villages for the unhoused illustrate the growing importance of community in contemporary property law. It shows the importance of community in the property relations of the most vulnerable Americans, but also analyzes how municipalities can use these novel property arrangements in other contexts, such as disaster relief and affordable housing creation. Part IV.B posits ways that states and municipalities can legalize stewardship by codifying stewardship via statutes or ordinances, as well as by zoning tiny homes co-villages at the local level. Part IV.C explains how municipalities can use stewardship and tiny homes co-villages to ameliorate housing insecurity in other contexts besides homelessness such as during natural disasters and where there are affordable housing shortages. The Article concludes by analyzing the implications of these developments for housing law and policy, governance, and property law and theory.

#### I. TINY HOMES VILLAGES IN THE UNITED STATES

“Some wandered in the wilderness, lost and homeless. Hungry and thirsty, they nearly died. ‘Lord, help!’ they cried in their trouble, and he rescued them from their distress. He led them straight to safety, to a city where they could live.”—Psalms 107:4–7<sup>52</sup>

Municipalities, nonprofits, educational institutions, volunteers, the business community, and homeless people now collaborate to build tiny homes villages for unhoused people.<sup>53</sup> The villages provide permanent housing or temporary shelter. Some homeless people, as well as volunteers, use sweat equity<sup>54</sup>

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childcare facilities, cohousing employs participatory management through collective, consensus decision-making.”).

52. *Psalms* 107:4–7 (King James).

53. See, e.g., ANDREW HEBEN, TENT CITY URBANISM: FROM SELF-ORGANIZED CAMPS TO TINY HOUSE VILLAGES 51 (2014); *The Village Collaborative*, GOOGLE MAPS, <https://www.google.com/maps/d/viewer?mid=1ka5rY5f6uM1411xobWYUBEl5G0E&ll=30.21217439459483%2C-106.75689873643648&z=4> [https://perma.cc/GBZ2-FXCX] (showing locations of tiny house villages across the United States); *Tiny Homes: Villages Across the Country*, RESURRECTION VILLAGE, <https://resurrectionvillage.wordpress.com/links-and-resources/> [https://perma.cc/KL69-AR47].

54. *What Is Sweat Equity?*, HABITAT FOR HUMAN., <https://www.habitat.org/what-is-sweat-equity> [https://perma.cc/KQ8R-QPP9] [hereinafter *What Is Sweat Equity?*] (defining sweat equity as an ownership interest created by the sweat of a person’s labor).

to construct these villages, which reduces the costs of construction.<sup>55</sup> The tiny homes villages analyzed in this Article constitute unique types of cohousing<sup>56</sup> and common interest communities.<sup>57</sup> Cohousing is a particular form of common interest community, intentionally designed to facilitate a high degree of social cohesion, sharing, and teamwork amongst residents.<sup>58</sup> As with other cohousing communities, tiny homes villages for the homeless either require or strongly encourage residents to commit to being part of a community “for everyone’s mutual benefit.”<sup>59</sup> Some villages require residents to participate in community decision-making and community enhancement as a contractual precondition of possession and use; other villages strongly encourage community participation through social norms.<sup>60</sup> Residents in these cohousing communities share not only limited physical spaces, but also the realization of certain shared values, such as sustainability and the restoration of dignity and community to formerly homeless people.<sup>61</sup> The villages afford residents both privacy and community.

This Article asserts that the villages are interesting not only as solutions to mitigate the intractable problem of homelessness,

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55. See HEBEN, *supra* note 53, at 136.

56. See *What Is Cohousing?*, COHOUSING ASS’N U.S., [https://www.cohousing.org/what\\_is\\_cohousing](https://www.cohousing.org/what_is_cohousing) [<https://perma.cc/68JZ-GL9X>] [hereinafter *What is Cohousing?*] (“Cohousing is community intentionally designed with ample common spaces surrounded by private homes. Collaborative spaces typically include a common house . . . . Neighbors use these spaces to play together, cook for one another, share tools, and work collaboratively. Common property is managed and maintained by community members, providing even more opportunities for growing relationships.”).

57. See RESTATEMENT (THIRD) OF PROP.: SERVITUDES ch. 6, intro. note (AM. LAW INST. 2000) (“Common-interest communities are those in which the property is burdened by servitudes requiring property owners to contribute to maintenance of commonly held property or to pay dues or assessments to an owners association that provides services or facilities to the community. A variety of legal ownership forms may be used to create common-interest communities. Subdivisions with covenants requiring membership in a property-owners association and condominiums are the most common, but cooperatives and a variety of planned developments also create common-interest communities.”).

58. *What Is Cohousing?*, *supra* note 56.

59. *Id.*

60. See ULI AUSTIN CASE STUDY: COMMUNITY FIRST! VILLAGE, URBAN LAND INST. AUSTIN 5 (2017), <https://ulidigitalmarketing.blob.core.windows.net/ulidcnc/2019/02/CFV-CaseStudy-HD.pdf> [<https://perma.cc/U64K-FVX5>].

61. See *What Is Cohousing?*, *supra* note 56.

but also as examples of new cohousing arrangements for unhoused people that make community participation and enhancement a central aspect of property possession and ownership. Some villages' use and possession agreements decenter the individualistic right to exclude in favor of more cooperative arrangements that encourage formerly homeless residents, even temporarily, to form communities. The villages use different housing tenures including rental, rent-to-own, cooperatives, and a new housing tenure, stewardship. The tiny house contracts and community agreements create obligations between non-owners that advance human flourishing, self-determination, sharing, stability, and stewardship—all virtues normally associated with ownership.<sup>62</sup> Villages that do not require community participation facilitate communal relations through physical design and voluntary activities, rather than through contractual obligations.

The villages usually contain at least 3 and up to over 350 tiny homes, which range in size from 99 square feet per unit to a maximum of 400 square feet per unit.<sup>63</sup> Most tiny homes house one or two people, while a few villages have slightly larger units that can accommodate families.<sup>64</sup> Many villages have tiny homes with electricity in each unit, though some do not. Residents often share basic amenities such as bathrooms, water, and cooking facilities, as well as green spaces and other basic resources.<sup>65</sup> Unlike traditional rentals or prior sweat-equity and self-help communities,<sup>66</sup> these villages often require, as a condition of

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62. See Gregory S. Alexander, *Property's Ends: The Publicness of Private Law Values*, 99 IOWA L. REV. 1257, 1263 (2014) (identifying at least five private law values that are among property's main ends).

63. See discussion *infra* Parts II–III.

64. See discussion *infra* Part III.

65. See discussion *infra* Parts II–III.

66. During the 1970s and 1980s, when large urban areas, such as New York City, faced fiscal and budget crises, cities provided residents one percent interest rates on thirty-year mortgages and other affordable housing incentives, in exchange for resident labor to rehabilitate and revitalize city-owned abandoned buildings. Resident-led revitalization efforts that used sweat equity in other cities were also the predecessors of contemporary urban community development organizations. Self-help and informal housing models also exist amongst migrant farmworkers in areas such as the *colonias* in Texas and in rural agricultural areas. See Jane E. Larson, *Free Markets Deep in the Heart of Texas*, 84 GEO. L.J. 179, 183 (1995) (describing the Mexican government's response to *colonias* as a form of self-help housing); Richard R. Brann, Comment, *Housing of Migrant Agricultural Workers*, 46 TEX. L. REV. 933, 933–34 (1968) (defining self-help housing as a plan by which the poor themselves supply the necessary labor in the construction and improvement of their homes).

possession, that residents engage in community decision-making, construction, and preservation activities.<sup>67</sup> Certain villages require residents to attend community meetings or use sweat equity to contribute to the development and maintenance of the villages.<sup>68</sup> Traditional rooming houses and Single Room Occupancy (SRO) units often do not require residents to use sweat equity to construct and maintain the units and common areas, or require residents to participate in community decision-making.<sup>69</sup> Many prior sweat-equity projects were typical homeownership or rental projects that did not require residents to serve one another.<sup>70</sup> Contemporary tiny homes villages for the homeless often require or encourage more community participation and community service than earlier sweat-equity models.<sup>71</sup>

While tiny homes villages are also similar to mobile home parks, most mobile home owners are in a more traditional market-rate, landlord-tenant relationship than the ownership and use arrangements found in many tiny homes villages for homeless people. Mobile home residents often own their mobile homes but rent the lots.<sup>72</sup> Some landlords of mobile home parks privilege profits over community and exploit, rather than empower mobile home tenants.<sup>73</sup> Contemporary accessory dwelling units<sup>74</sup>

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67. See discussion *infra* Parts II.C–D.

68. See discussion *infra* Parts II.C–D.

69. See Suzanne K. Sleep, Comment, *Stonewalled by Seawall: New York Decision Impedes Legislative Solutions to Affordable Housing Shortage*, 45 U. MIAMI L. REV. 467, 468–69 (1991) (“SRO’s are low-cost residential hotels, rooming houses, or converted apartment buildings in which people rent single, furnished rooms. SRO’s contain shared bathroom and kitchen facilities, and often include management services, such as twenty-four-hour desk service, telephone switchboards, linens, and housekeeping.”).

70. See, e.g., *What Is Sweat Equity?*, *supra* note 54 (explaining that sweat equity in the Habitat for Humanity model is part of becoming a homeowner).

71. See *infra* Part II.A.

72. Peter Whoriskey, *A Billion-Dollar Empire Made of Mobile Homes*, WASH. POST (Feb. 14, 2019), [https://www.washingtonpost.com/business/economy/a-billion-dollar-empire-made-of-mobile-homes/2019/02/14/ac687342-2b0b-11e9-b2fc-721718903bfc\\_story.html?utm\\_term=.3d763ebf490b](https://www.washingtonpost.com/business/economy/a-billion-dollar-empire-made-of-mobile-homes/2019/02/14/ac687342-2b0b-11e9-b2fc-721718903bfc_story.html?utm_term=.3d763ebf490b) [<https://perma.cc/CW37-64G7>].

73. *Id.* (explaining that large financial firms are buying up mobile homes and some are exploiting residents for profits).

74. See John Infranca, *Housing Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units*, 25 STAN. L. & POL’Y REV. 53, 54 (2014) (“Accessory dwelling units (ADUs), which are often referred to as in-law units or secondary units, are self-contained units located on the property of a single-family home.”).

and market-rate micro-units<sup>75</sup> also differ from the tiny homes villages analyzed in this Article. Accessory dwelling units are either units on wheels or units that are an accessory part of a larger existing property.<sup>76</sup> This Article only analyzes tiny homes that are part of a common interest community and require residents to become members of that community. Many cities zone tiny homes villages for homeless people differently than accessory dwelling units or traditional micro-homes for market-rate populations. Tiny homes villages also often have community-participation and enhancement requirements that are not present in the tiny homes communities of many market-rate residents.

## II. TINY HOMES VILLAGES AND STEWARDSHIP

“The Lord God placed the man in the Garden of Eden to tend and watch over it.”—Genesis 2:15<sup>77</sup>

### A. STEWARDSHIP: A NEW HOUSING TENURE?

The earliest tiny homes villages for the homeless developed a novel housing tenure this Article terms stewardship.<sup>78</sup> The stewardship housing tenure was initially created in 2001 by Dignity Village in Portland, Oregon;<sup>79</sup> perfected in 2013 by Opportunity Village in Eugene, Oregon;<sup>80</sup> used for permanent housing in 2014 by OM Village, Inc., in Madison, Wisconsin;<sup>81</sup> and used

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75. *See id.*

76. *See id.*

77. *Genesis* 2:15 (New Living Translation).

78. *See A Tiny Contract for a Tiny House*, OCCUPY MADISON, <https://occupymadisoninc.files.wordpress.com/2013/07/a-tiny-contract-for-a-tiny-house.pdf> [<https://perma.cc/G5BS-ZHYT>] [hereinafter *OM Build Tiny House Contract*] (stating that occupants are called stewards).

79. Dome Village founded in 1993 in Los Angeles was the first homeless encampment to transform from a tent city to a village community consisting of homeless people renting fiberglass domes. Residents paid small rents to the owner of the parking lot and had chores of buying communal food and cooking in a communal dome kitchen. The community dissolved in 2006 as rents began to escalate in the Los Angeles area. Dome Village did not consist of tiny homes, therefore Dignity Village in Portland, Oregon is considered the first tiny homes village since Dome Village. Rong-Gong Lin II, *A Dream Dies as Dome Village Is Dismantled*, L.A. TIMES (Oct. 29, 2006), <http://articles.latimes.com/2006/oct/29/local/me-dome29> [<https://perma.cc/W6QG-3SUT>].

80. *See Village Manual*, SQUAREONE VILLAGES, [https://docs.wixstatic.com/ugd/bd125b\\_32be9eddb4d34ea7ae64cf4beed1ddb.pdf](https://docs.wixstatic.com/ugd/bd125b_32be9eddb4d34ea7ae64cf4beed1ddb.pdf) [<https://perma.cc/59VU-KNTU>] [hereinafter *Village Manual*] (revised May 4, 2017).

81. *See OM Build Tiny House Contract*, *supra* note 78.

most recently by Seattle, Washington, which has created at least seven transitional tiny homes villages for homeless people.<sup>82</sup> A person can only become a steward if they are homeless or unhoused.<sup>83</sup> Many of the villages that use stewardship emerged from informal homeless tents and encampments that formed in the wake of the 2008 U.S. housing crisis and Great Recession.<sup>84</sup> As cities outlawed informal tent encampments, homeless people, advocates, nonprofits, and municipalities began to search for alternative types of shelter that maintained the self-governance features of tent cities, but that were more acceptable to local decision-makers.<sup>85</sup> In many cases, tent cities transformed into tiny homes cohousing communities.<sup>86</sup> Tiny home communities for homeless people are often cheaper to produce and maintain than other forms of shelter and affordable housing because the units are smaller and made of cheaper materials.<sup>87</sup> Consequently, some market-rate neighbors and local decision-makers were more willing to accept tiny homes communities because the model advances efficiency, but also enhances human dignity, privacy, equity, access, and community.<sup>88</sup>

Stewardship is a property-use arrangement and a contractual agreement that gives stewards some of the social and economic benefits of homeownership without the status of ownership. Unlike a traditional rental or leasehold arrangement, many stewards do not pay rent in the form of money; instead, a certain amount of sweat-equity work credits, or hours of participation in an intentional housing community, is the price of the tiny home.<sup>89</sup> Stewardship's distinguishing factor is a community

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82. See *City-Permitted Villages*, CITY SEATTLE, <https://www.seattle.gov/homelessness/city-permitted-villages> [<https://perma.cc/2X35-KNFP>].

83. See, e.g., *How to Become a Resident of OM Village*, OCCUPY MADISON, [https://occupymadisoninc.com/wp-content/uploads/2013/07/04\\_how-to-become-a-resident-of-om-village.pdf](https://occupymadisoninc.com/wp-content/uploads/2013/07/04_how-to-become-a-resident-of-om-village.pdf) [<https://perma.cc/3BEH-K5LR>] [hereinafter *How to Become a Resident of OM Village*] (“Tiny Houses acquired through Occupy Madison, Inc. (OMI) are for people who currently are without housing or for those with insecure housing.”).

84. See HEBEN, *supra* note 53, at 44–56.

85. See *id.*

86. See *id.*

87. See *id.* at 56.

88. See, e.g., Erickson, *supra* note 48 (describing former critics of Occupy Madison as being more accepting of the community after about one year of its operation).

89. See *OM Build Tiny House Contract*, *supra* note 78 (defining stewardship).



participation and enhancement requirement that is not present in most traditional renting or even common ownership arrangements.<sup>90</sup> Stewardship gives an occupant a right of possession of the unit for a specified time period and a right to exclude others from the tiny house unit, as long as the steward has provided sufficient sweat-equity hours and complies with the terms of the common-interest community agreements.<sup>91</sup> Most villages also require residents to participate in weekly village meetings and in village upkeep.<sup>92</sup> Stewards may not transfer possession of the unit, other than back to the community, without the permission of the village.<sup>93</sup> Stewards also cannot sublease or rent the unit for money.<sup>94</sup> Most villages forbid drugs or other substances on the village site or in the vicinity.<sup>95</sup> Some villages provide on-site rehabilitation services and case management services to help stewards stabilize their lives and prepare for more permanent, long-term renting or ownership.<sup>96</sup>

The stewardship housing tenure emphasizes self-help and self-governance for individual and mutual benefit throughout the construction, maintenance, and operation of the facilities in ways that SROs, mobile homes, and shelters often do not. Unlike a traditional rental, SRO, or mobile home, a steward can only exclude someone from his or her unit once he or she has contractually committed to join the community, abide by its rules, and contribute to the advancement of the community through sweat equity credits or participation in co-management.<sup>97</sup> Stewardship

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90. See *id.* (“When the Occupant moves their house to the Land, they will be expected to participate in community life and activity.”).

91. See, e.g., *id.*; *Who Will Live There FAQs*, *supra* note 25.

92. *Village Manual*, *supra* note 80, at 2; see also HEBEN, *supra* note 53, at 198.

93. See *OM Build Tiny House Contract*, *supra* note 78.

94. See *id.*

95. See, e.g., *Camp Second Chance Code of Conduct*, CITY SEATTLE, <https://www.seattle.gov/Documents/Departments/Homelessness/CAC/C2C-CoC.pdf> [<https://perma.cc/8UPC-CUX9>]; *Entrance Agreement*, DIGNITY VILLAGE, <https://dignityvillage.org/services/entrance-agreement/> [<https://perma.cc/3PKJ-269P>] [hereinafter *Entrance Agreement*]; *Interbay/Tent City 5 Code of Conduct*, CITY SEATTLE, <https://www.seattle.gov/Documents/Departments/Homelessness/CAC/TC5-CoC.pdf> [<https://perma.cc/9Z2X-6FUT>]; *Nickelsville Rules*, CITY SEATTLE, <https://www.seattle.gov/Documents/Departments/Homelessness/CAC/Ballard-CoC.pdf> [<https://perma.cc/LL55-JG4D>].

96. See, e.g., *Entrance Agreement*, *supra* note 95 (offering “weekly NA and AA meetings” for residents with substance abuse problems).

97. See UNDERSTANDING SRO, U.S. DEP’T OF HOUS. & URBAN DEV. 2 (2001)

enables formerly homeless people, or low-income people on the verge of eviction, to obtain shelter and community without cost-prohibitive rents. Therefore, stewardship provides a necessary alternative to the dichotomy of renting or owning for the hard-to-house. A few villages that use the stewardship housing tenure also adopt a housing first approach by giving a homeless person shelter before requiring that they conquer addictions or other challenges.<sup>98</sup>

Some may characterize stewardship as a type of landlord and tenant relationship in which the rental price is services rather than monetary value. Critics could argue that some villages charge modest monthly fees to cover operations costs and these charges are simply modest or nominal rents. This Article asserts, however, that stewardship is a distinct housing tenure from traditional rentals because stewards are required to do more than merely pay nominal fees as a form of rent or provide sweat equity to build their units and maintain common areas. The cohousing rules and regulations of most tiny homes villages for homeless people require stewards to serve one another and to participate directly in co-management and democratic decision-making by attending required meetings.<sup>99</sup> Stewards can determine who

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(defining “SRO Housing” as “[a] residential property that includes multiple single room dwelling units” in which “[e]ach unit is for occupancy by a single eligible individual” and “[t]he unit need not, but may, contain food preparation or sanitary facilities, or both”); see also *How to Get a Tiny House*, OCCUPY MADISON, <https://occupymadisoninc.com/wp-content/uploads/2013/07/how-to-get-a-tiny-house.pdf> [<https://perma.cc/QDA5-6YGU>].

98. HUD adopted a housing first policy approach in its permanent supportive housing programs as early as 1987. Housing first programs seek to provide homeless people with permanent shelter, first, before requiring them to resolve other challenges, such as addiction or substance abuse. Prior approaches required agencies to give homeless people temporary shelter with some supportive services to help them conquer vices before receiving access to long-term or permanent shelter. Traditional housing first programs can be expensive to implement because of the high costs associated with providing permanent-quality shelter and supportive services. The lower costs associated with the production of some tiny homes can reduce the costs of providing permanent supportive housing. See, e.g., Nestor M. Davidson, *Rights as a Functional Guide for Service Provision in Homeless Advocacy*, 26 ST. LOUIS U. PUB. L. REV. 45, 56–57 (2007) (explaining housing first); *Housing First in Permanent Supportive Housing*, HUD EXCHANGE, <https://www.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf> [<https://perma.cc/TN5T-LQNX>]; *Housing First*, NAT’L ALLIANCE TO END HOMELESSNESS (Apr. 20, 2016), [http://www.endhomelessness.org/pages/housing\\_first](http://www.endhomelessness.org/pages/housing_first) [<https://perma.cc/J6US-HG2V>]; see also discussion *infra* Part II.B.

99. See discussion *infra* Part II.B.

may remain at the village and the communities' long-term goals and objectives.<sup>100</sup> Through the co-village model, stewards can develop management skills, as well as connect to one another and to life-enhancing activities not normally associated with renting.<sup>101</sup> Due to the decision-making control they have over their units and their communities, even temporary stewards—with no formal title, exchange of money, or long-term possession—can obtain some of the social and economic benefits normally associated with title and long-term possession.<sup>102</sup>

Stewardship is consistent with other types of common ownership, such as joint tenancies, condominiums, cooperatives, dormitories, single-room occupancy units, and cohousing itself. However, stewardship, as defined here, is unique because it removes the profit motive from common ownership and emphasizes co-management and the caretaking-in-common of limited resources to enhance the human and social capital of residents. Thus, stewardship is a distinct way of allocating rights and responsibilities in housing that gives stewards a limited right to exclude, but requires communal participation and decision-making as a condition of the right to exclude. Stewardship departs significantly from prior ways of thinking about housing homeless, low-income, and vulnerable people. Rather than viewing unhoused persons as “wards” of the state in need of shelter, or as individuals and communities that should navigate traditional markets, stewardship gives homeless individuals a role in co-managing and constituting their communities in a manner that privileges use value over exchange value.<sup>103</sup>

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100. See, e.g., *Village Manual*, *supra* note 80 (describing the village's probationary status policy, during which villagers may raise concerns about new residents).

101. See, e.g., *id.* (“Self-governance is a core value of Opportunity Village. This means that the success of the Village rests on the participation of those who live here. There are three governing groups for making decisions related to the management of the Village.”).

102. See *id.*

103. See Eduardo M. Peñalver, *Land Virtues*, 94 CORNELL L. REV. 821, 835 (2009) (“To distinguish between ‘use value’ and ‘exchange value’ is not merely to observe that homeowners typically place a subjective value on their home that is substantially higher than its exchange (i.e., market) value. Instead, the point is that a home facilitates owners’ access to a number of (nonfungible) goods that are not experienced as, mediated by, or readily reducible to market value and that often play a primary role in guiding homeowner conduct.”).

## B. STEWARDSHIP, THE RIGHT TO EXCLUDE, AND PROPERTY THEORY

Some villages use the stewardship housing tenure in both permanent housing and in temporary or transitional housing.<sup>104</sup> Stewardship includes a right to exclude others from your unit, but the right to exclude in this context promotes privacy, shelter, and community, rather than title or exclusive dominion.<sup>105</sup> Stewards retain extensive possession, control, and use rights over their respective tiny homes, even though they have no formal title or leases, and are not traditional renters.<sup>106</sup> Stewards cannot borrow against the tiny home, yet while a steward is in possession of a tiny home he or she can obtain many of the benefits associated with ownership including privacy, shelter, and access to improved shared amenities, such as electricity, bathrooms, cooking facilities, work opportunities, and communal decision-making.<sup>107</sup> Although most stewardship arrangements do not monetize the value of upkeep of the unit or the property, the stewardship housing tenure does incentivize initial quality construction or maintenance of the home by giving stewards sweat equity credits for their work, which, in turn, grants stewards longer-term possession of the quality shelter.<sup>108</sup>

Stewardship modifies the right to exclude by combining it with an obligation to participate in a community for purposes other than profit-making or short-term wealth maximization. If we understand property as a “category of legal doctrines concerned with allocating rights to material resources,”<sup>109</sup> then stewardship is a property form that grants control of, and access

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104. See discussion *infra* Parts II.C–D.

105. See *Management and Accountability*, OCCUPY MADISON, <https://occupymadisoninc.com/om-village-2046-e-johnson-st/faqs/how-will-the-property-be-managed/> [<https://perma.cc/M3PM-TFWP>] [hereinafter *Management and Accountability*]; see also discussion *infra* Parts II.C–D.

106. See discussion *infra* Parts II.C–D.

107. Since stewards do not own their homes or the land underneath their homes they cannot borrow against the home. However, as explained above stewardship does afford some of the benefits associated with ownership such as privacy, decision-making control, and community with neighbors. See *OM Build Tiny House Contract*, *supra* note 78; see, e.g., *Management and Accountability*, *supra* note 105 (detailing housing, privacy by way of fences and landscaping, and emphasis on community building in the village); *Village Manual*, *supra* note 80.

108. See *OM Build Tiny House Contract*, *supra* note 78.

109. GREGORY S. ALEXANDER & EDUARDO M. PEÑALVER, AN INTRODUCTION TO PROPERTY THEORY 6 (2012).

to, shelter without formal title, ownership, renting, or profit motive.<sup>110</sup> Stewardship also grants formerly homeless people decision-making control over resources in a manner similar to ownership, but without the emphasis on sole dominion and the individual exchange value of property.<sup>111</sup> While wealth maximization is not the primary objective of this form of stewardship, property possession and co-management through stewardship also connects stewards to economic resources and social networks that maximize their self-actualization, privacy, human flourishing, and community participation.<sup>112</sup> Thus, stewardship does not mean shielding property from development or lack of individual connection to property for productive uses. Rather, stewardship means access to property to participate in co-management and community building for personal self-actualization, individual benefit, and communal benefit.

New essentialist property theorists<sup>113</sup> assert that property has an essential core, and the concepts of title, long-term ownership, possession, and exclusion are at the center of that core.<sup>114</sup> New essentialists further argue that popular recognition of the essential features of property enables large numbers of people to allocate property resources efficiently.<sup>115</sup> The “*numerus clausus*” of property—well-recognized, standard property forms—such as fee simple estates in land, concurrent interests, non-possessory interests, and personal property help property owners minimize

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110. See generally Joseph William Singer, *Property and Social Relations: From Title to Entitlement*, in PROPERTY AND VALUES: ALTERNATIVES TO PUBLIC AND PRIVATE OWNERSHIP 3 (Charles Geisler & Gail Daneker eds., 2000).

111. See *id.*

112. See *id.*

113. New essentialist property theory critiques as indeterminate the view that property is a bundle of rights. Rather, new essentialists assert that property has a well-defined and ascertainable core essence and that should not be destabilized by regulation. See Katrina M. Wyman, *The New Essentialism in Property*, 9 J. LEGAL ANALYSIS 183 (2017) (arguing that new essentialist theorists have a formalist conception of property that characterizes property as having a stable core).

114. See, e.g., Thomas W. Merrill & Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 YALE L.J. 1, 8 (2000) [hereinafter Merrill & Smith, *Numerus Clausus Principle*]; Thomas W. Merrill & Henry E. Smith, *The Morality of Property*, 48 WM. & MARY L. REV. 1849, 1853 (2007) [hereinafter Merrill & Smith, *The Morality of Property*].

115. Merrill & Smith, *Numerus Clausus Principle*, *supra* note 114, at 8.

transaction and information costs when utilizing and exchanging property.<sup>116</sup> While essentialists concur with law and economics scholars that efficiency should be the primary goal of property laws and institutions, they do not embrace a purely functional conception of property; they also believe that the right to exclude is a moral right.<sup>117</sup> Except in rare circumstances, all people must refrain from limiting or infringing ownership, long-term possession, and exclusion rights for moral, as well as efficiency, reasons.<sup>118</sup> In this conception, the right to exclude is a necessary feature of anything we recognize as property, but that right can include a more modest right of non-interference.<sup>119</sup> Essentialists characterize the rare instances in which exclusion is not paramount, as non-core property.<sup>120</sup> Under these circumstances, “prudential considerations supplement, or sometimes even override, the core exclusionary aspects of property that rest on ordinary morality.”<sup>121</sup> Essentialists maintain that property law’s few exceptions do not undermine the core.<sup>122</sup>

Some scholars within the law and economics tradition now question the predominance of the right to exclude and the fee simple absolute in American property law.<sup>123</sup> Professor Lee Anne Fennell argues that “[t]he endless duration and physical rootedness of the fee simple” often impedes efficient land reassembly under contemporary urban conditions.<sup>124</sup> Urbanization has made neighboring landowners more dependent upon one another to create land value.<sup>125</sup> *Patterns* of complementary land holdings, rather than single parcels, often maximize values in

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116. Merrill & Smith, *The Morality of Property*, *supra* note 114, at 1853.

117. *Id.* at 1850 (“[T]he right of the owner to act as the exclusive gatekeeper of the owned thing—must be regarded as a moral right.”).

118. *Id.*

119. Thomas W. Merrill, *Property and the Right to Exclude II*, 3 BRIGHAM-KANNER PROP. RTS. CONF. J. 1, 2–3 (2014).

120. Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730 (1998).

121. Merrill & Smith, *The Morality of Property*, *supra* note 114, at 1894.

122. *Id.* (“Yet it does not appear that the more complex picture that emerges when we consider this fine-tuning calls into question the analysis of the importance of the core, or the centrality of morality in maintaining the core.”).

123. *See, e.g.*, Lee Anne Fennell, *Fee Simple Obsolete*, 91 N.Y.U. L. REV. 1457, 1516 (2016).

124. *Id.* at 1457, 1489.

125. *See id.* at 1460–64 (discussing urbanization and the coordination of landowners to create land value).

urban centers.<sup>126</sup> “It is no longer enough for the law to protect an owner’s domain and forestall overt land use conflicts, when the opportunity cost of failing to put together complementary uses in valuable patterns looms ever larger.”<sup>127</sup> Fennell argues for alternative property tenures that “move away from the endless duration and physical rootedness of the fee simple.”<sup>128</sup>

Fennell’s insight—that the fee simple absolute has limitations under contemporary urban conditions<sup>129</sup>—indicates the need for additional property configurations. It also highlights an increased need for collaboration and cooperation to effectively manage increasingly scarce urban resources under contemporary conditions. Her observations are particularly relevant to increasingly vulnerable and historically marginalized populations in urban space. Is the traditional workhorse tenure form—the fee simple absolute—the best form to which increasingly vulnerable and historically marginalized groups should always aspire? Are traditional shelters, with beds and cots or group homes with few co-management obligations, the only efficient alternatives to homeownership or renting? Is there any middle ground? Municipalities also need additional property configurations, besides the fee simple absolute, that can adapt to “radically changed circumstances,” and economic, social, and natural transformations.<sup>130</sup>

This Article identifies stewardship as an alternative property form that deviates from the essentialist prototypes of traditional ownership and renting, yet maximizes efficiency and advances equity for marginalized groups facing uncertainty and precariousness. In *Property, Concepts, and Functions*, new essentialist theorist, Eric R. Claeys, contends that a more capacious definition of property<sup>131</sup> includes a category of lesser rights than fee simple ownership that facilitates a “purposeful, beneficial, and sociable use.”<sup>132</sup> Although residents in most of the tiny homes villages studied here do not have classic ownership rights, one might characterize their uses of tiny homes as purposeful,

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126. *Id.* at 1475.

127. *See id.* at 1516.

128. *See id.* at 1482.

129. *See generally* Fennell, *supra* note 123.

130. *See* Lovett, *supra* note 46.

131. Eric R. Claeys, *Property, Concepts, and Functions*, 60 B.C. L. REV. 1, 19 (2019) (“I think property scholars can develop satisfying accounts of property in the capacious sense on which this Article focuses.”).

132. *See id.* at 46.

social, and beneficial uses. Yet, the increasing prevalence of ownership forms and housing tenures that challenge the core tenets of essentialist theory raises questions about the efficacy of the core under contemporary conditions.<sup>133</sup> While stewardship fits within a new essentialist expansive definition of ownership, because the right to exclude is a limited element, stewardship, as conceptualized in this Article, hints at a broader conception of property than the essentialist notion.

In their article, *In Defense of Property*, Kirsten A. Carpenter, Sonia K. Katyal, and Angela R. Riley outline concepts of stewardship in corporate, environmental, and indigenous law.<sup>134</sup> In corporate organizational management theory, stewardship offers a model of organizational behavior in which “pro-organizational, collectivistic behaviors have higher utility than individualistic, self-serving behaviors.”<sup>135</sup> Stewardship in the environmental context often connotes protection of natural resources from overuse or development.<sup>136</sup> Stewardship also has its origins in indigenous American conceptions of property. Carpenter, Katyal, and Riley developed a model of stewardship to “explain and justify indigenous peoples’ cultural property claims in terms of nonowners’ fiduciary obligations toward cultural resources.”<sup>137</sup> They assert that stewards have fiduciary duties of care and loyalty over cultural resources.<sup>138</sup> The authors’ framing of stewardship, as a property concept, is broad enough to include the circumstances under which indigenous people steward resources, but act without traditional title or ownership. “Indigenous peoples, rather than holding property rights delineated by

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133. Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 HARV. L. REV. 1685, 1737 (1976) (“What distinguishes the modern situation is the breakdown of the conceptual boundary between the core and the periphery . . . . Now, each of the conflicting visions claims universal relevance, but is unable to establish hegemony anywhere.”).

134. See Carpenter et al., *supra* note 33, at 1022. Certain religious traditions also have conceptions of stewardship. See, e.g., Peter W. Salsich, Jr., *Toward a Property Ethic of Stewardship: A Religious Perspective*, in PROPERTY AND VALUES: ALTERNATIVES TO PUBLIC AND PRIVATE OWNERSHIP 21 (Charles Geisler & Gail Daneker eds., 2000) (explaining the Judeo-Christian conception of stewardship).

135. Carpenter et al., *supra* note 33, at 1071.

136. See *id.* at 1075.

137. *Id.* at 1022.

138. *Id.* at 1069–71.



notions of title and ownership, often hold rights, interests, and obligations to preserve cultural property irrespective of title.”<sup>139</sup>

Stewardship, as defined in this Article, encourages co-management, co-development, and construction for the common good, rather than conservation or refraining from development. This Article’s definition of stewardship also evokes Native American concepts of stewardship because it offers a conception of property relations that decenters the right to exclude in favor of a right to be included in, and to serve, a community in ways not traditionally associated with classic fee simple ownership or even renting.<sup>140</sup> Yet, stewardship, as defined in the Article, differs from indigenous notions because no one culture is privileged in tiny homes villages. Tiny homes stewards, however, do create communities through sharing space and decision-making, and time spent with other stewards, but these efforts are not for preservation of a religious or cultural community. Rather, these efforts advance the individual and collective self-determination of formerly homeless people. While stewards can exclude others from their respective tiny homes, the right to exclude is not the penultimate right in the bundle of sticks.<sup>141</sup> Rather, the villages privilege the right to be included in a new community over the right to exclude. While tiny homes villages for the homeless and the stewardship housing tenure should not replace traditional forms of shelter or affordable housing, they can supplement those forms by increasing the meaningful housing choices available to vulnerable people.

### C. PERMANENT STEWARDSHIP: WISCONSIN

A tiny homes village in Madison, Wisconsin was the first village to use the stewardship property tenure for permanent housing for homeless people.<sup>142</sup> Occupy Madison, Inc. (OMI) is a non-profit organization established by formerly homeless and unhoused people who were part of the Occupy Madison movement.<sup>143</sup> Initially, the unincorporated association of homeless and unhoused volunteers started a tent city for homeless people within Madison, Wisconsin.<sup>144</sup> When the City of Madison shut

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139. *Id.* at 1067.

140. *See id.* at 1101.

141. *See* Anna di Robilant, *Property: A Bundle of Sticks or a Tree?*, 66 VAND. L. REV. 869, 877 (2013) (outlining the bundle-of-sticks model of property).

142. *See* HEBEN, *supra* note 53, at 49.

143. *See id.*

144. *See id.*

down the initial encampment, the group shifted focus to identify a “legal” place for Madison’s homeless to reside.<sup>145</sup> Drawing from the experiences of two other transitional tiny homes villages in Portland and Eugene, Oregon, respectively, OMI sought to build tiny homes on wheels and identify a legal place for the homes to remain.<sup>146</sup> OMI identified land on the site of a former gas station and auto body shop as a possible location.<sup>147</sup> OMI raised money through private donations to purchase the site, and the City of Madison’s Planning Commission zoned the site as a planned unit development (PDU).<sup>148</sup> OMI used the existing structure on the site as a workshop to build the tiny homes. The central wood-working shop that used to be an old auto repair shop contains running water, toilets, and showers.<sup>149</sup>

The site was named OM Village, Inc. and it provides permanent housing to formerly homeless people.<sup>150</sup> There are currently at least nine people in the village, but the nonprofit community hopes to expand to accommodate up to eleven people on the site.<sup>151</sup> OMI owns the land and the PDU upon which OM Village sits.<sup>152</sup> OMI also owns each tiny house created by or located in OM Village.<sup>153</sup> Each tiny home is approximately ninety-eight square feet and contains a master bedroom with storage space. The homes have electricity and insulation, but no running water.<sup>154</sup> Each tiny home costs approximately \$5,000 dollars to construct.<sup>155</sup> OM Village operates exclusively on private donations

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145. *See id.* at 28.

146. *See id.* at 49.

147. *History*, OCCUPY MADISON (Sept. 20, 2017), <https://occupymadisoninc.com/about/history/> [<https://perma.cc/ZV84-APUG>] [hereinafter *History*].

148. ZONING TEXT GDP/SIP: OM VILLAGE (Aug. 13, 2014).

149. *History*, *supra* note 147.

150. *See* HEBEN, *supra* note 53, at 49.

151. Lisa Speckhard Pasque, *Occupy Madison Tiny Homes Village Looks to Expand*, CAP TIMES (Aug. 21, 2017), [https://madison.com/ct/news/local/city-life/occupy-madison-tiny-homes-village-looks-to-expand/Article\\_76697ab3-e175-59bb-8e59-dda685c7b684.html](https://madison.com/ct/news/local/city-life/occupy-madison-tiny-homes-village-looks-to-expand/Article_76697ab3-e175-59bb-8e59-dda685c7b684.html) [<https://perma.cc/SLQ3-9RSE>].

152. *See How to Become a Resident of OM Village*, *supra* note 83.

153. *Id.*

154. Shelly K. Mesch, *Occupy Madison’s Tiny House Village Seeks Funds to Expand Its Community with Fundraising Auction*, WIS. ST. J. (Aug. 23, 2017), [https://madison.com/wsj/news/local/occupy-madison-s-tiny-house-village-seeks-funds-to-expand/Article\\_a45e29d6-900a-57dc-946e-a70ff634f7cf.html](https://madison.com/wsj/news/local/occupy-madison-s-tiny-house-village-seeks-funds-to-expand/Article_a45e29d6-900a-57dc-946e-a70ff634f7cf.html) [<https://perma.cc/BV64-JVTT>].

155. *See Village Case Study Matrix*, SQUAREONE VILLAGES, [https://docs.wixstatic.com/ugd/bd125b\\_37cb3576ec184848ae45c7ec3ccec279.pdf](https://docs.wixstatic.com/ugd/bd125b_37cb3576ec184848ae45c7ec3ccec279.pdf)

through crowdfunding, auctions, and volunteer and in-kind donations, including the money the nonprofit (OMI) obtained to purchase the site.<sup>156</sup> The group is reluctant to accept government or foundation money,<sup>157</sup> but wants to raise approximately \$90,000 from private donors to expand the village's communal space by adding a community room and a kitchen, both of which are required for the City of Madison to grant OM Village additional zoning and building permissions to add four more houses to the property.<sup>158</sup>

The "Tiny House Contract" and the "OM Community Agreement" create the status and rights of stewardship.<sup>159</sup> They define stewardship as:

Possession subject to conditions set out in this contract, including but not limited to the Occupant's compliance with conduct and sanitation obligations, timely fulfillment of repayment obligations [in the form of sweat equity], and keeping the Tiny House in a place agreed to by [Occupy Madison, Inc.]. Failure to meet these conditions may result in possession of the Tiny House reverting to OMI.<sup>160</sup>

The Tiny House Contract, therefore, creates "a title deed" to a new housing status called stewardship.<sup>161</sup> Only homeless people or people facing housing insecurity can become stewards of a tiny home in the village.<sup>162</sup> Anyone who owns, or has rights to, another residence cannot become a steward.<sup>163</sup> A homeless person can only become a steward if he or she has amassed 500 sweat-equity work credits, but once a person attains 160 sweat-equity hours, he or she is placed on the list of applicants for a tiny home.<sup>164</sup> The steward's payoff obligation is a personal obligation;

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[<https://perma.cc/G879-6RMZ>] [hereinafter *Village Case Study Matrix*] (last updated Mar. 2017).

156. See Lisa T. Alexander, *Occupying the Constitutional Right to Housing*, 94 NEB. L. REV. 245, 292 (2015).

157. See *id.* at 287 (explaining that OM Village leaders are reluctant to receive government or foundation funding because they want to maintain freedom from governmental or foundation decision-making control over the village's agenda).

158. Mesch, *supra* note 154.

159. See *Community Agreement*, OCCUPY MADISON, [https://occupymadisoninc.com/wp-content/uploads/2013/07/05\\_community-agreement.pdf](https://occupymadisoninc.com/wp-content/uploads/2013/07/05_community-agreement.pdf) [<https://perma.cc/EKE9-ADD4>] [hereinafter *Community Agreement*]; *OM Build Tiny House Contract*, *supra* note 78.

160. See *OM Build Tiny House Contract*, *supra* note 78.

161. See *id.*

162. See *How to Become a Resident of OM Village*, *supra* note 83.

163. See *id.*

164. *Id.*

a steward cannot substitute money or sweat-equity credits from others to fulfill this obligation without the consent of OMI.<sup>165</sup>

Stewardship tenure in OMI is permanent once a person passes a six-month probationary period unless (1) he or she violates the rules and regulations of the community or (2) three-quarters of the general membership present at a village meeting vote the person out of the community.<sup>166</sup> The Tiny Home Contract permits joint occupancy of approved stewards.<sup>167</sup> Joint occupants also have rights of survivorship.<sup>168</sup> The OM Community Agreement contains restrictions on who can be a guest and how long a guest can stay.<sup>169</sup> A steward can acquire sweat-equity credits by providing labor to build his or her tiny home, or to build the tiny homes of other prospective residents, or from labor that benefits the general common-interest community.<sup>170</sup> Stewards are required to use sweat equity to obtain their home, but they are also required to use their sweat-equity hours to help build the homes of others, and/or to improve other parts of the village.<sup>171</sup> The communal service and work requirements in OMI's stewardship agreements are not present in a typical rental agreement, SRO, or sweat-equity project.

OMI “work[s] with police . . . and other law enforcement” to locate sex offenders in the neighborhood so that it may “ensure the well[-]being of [the] community.”<sup>172</sup> This ensures the safety of residents and makes the community more acceptable to outsiders. Other criminal arrests or convictions do not preclude a person from becoming a member of the community.<sup>173</sup> Unlike many rental or rent-to-own programs for low-income people, prior rental or eviction histories, past-due debts, or even past (or current) drug use do not preclude a person from becoming a

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165. See *OM Build Tiny House Contract*, *supra* note 78.

166. *How to Become a Resident of OM Village*, *supra* note 83, ¶¶ 11–12.

167. See *OM Build Tiny House Contract*, *supra* note 78.

168. *Id.*

169. *Community Agreement*, *supra* note 159, § (g).

170. See *OM Build Tiny House Contract*, *supra* note 78.

171. *Id.*; see also *How to Become a Resident of OM Village*, *supra* note 83, ¶ 3.

172. See *Police, Safety, Security & Quality of Life*, OCCUPY MADISON, <https://occupymadisoninc.com/om-village-2046-e-johnson-st/faqs/police-safety-and-security/> [<https://perma.cc/LUR5-XGSR>].

173. *Who Will Live There FAQs*, *supra* note 25.

steward.<sup>174</sup> While a steward cannot use substances on site, a potential steward may struggle with addiction.<sup>175</sup> OMI and other tiny homes villages using the status of stewardship measure a potential steward's suitability based upon the steward's present positive behavior and contributions to the tiny homes village community, rather than on his or her past housing, payment, or criminal history.

Stewards must also become general members of Occupy Madison, Inc.<sup>176</sup> OMI requires general members to attend a minimum of two general body meetings and to provide services to the organization or the tiny house village.<sup>177</sup> OM Village has an extensive organizational and site plan that provides many opportunities for stewards to serve the village. Stewards can run to become part of the board of directors or they can participate in one of three workgroups: (1) OM Build, the woodworking shop where the homeless and housed volunteers construct the tiny homes;<sup>178</sup> (2) OM Village Store, where wood products and jewelry made on site are sold;<sup>179</sup> and (3) OM Grow, the agricultural and gardening effort that includes beekeeping and other beautification projects.<sup>180</sup> These community service requirements connect formerly homeless people to a new community and a new beginning. The Tiny House Contract and the Code of Conduct also outline the causes for eviction.<sup>181</sup> For example, "[s]tealing will not be tolerated" and "[v]iolence in your Tiny house, in the trailer, or anywhere in the vicinity of the shop, church property, or the surrounding neighborhood will not be tolerated."<sup>182</sup> The documents available on OM Village's website do not outline a process by which grievances between stewards or between a steward and

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174. *See id.*

175. *See id.*

176. *See How to Become a Resident of OM Village, supra* note 83.

177. *See Conduct Policy*, OCCUPY MADISON, <https://occupymadisoninc.com/wp-content/uploads/2013/07/conduct-policy.pdf> [<https://perma.cc/N7KR-PJ3R>] [hereinafter *Conduct Policy*]; *see also How to Become a Resident of OM Village, supra* note 83.

178. *See Mesch, supra* note 154; *OM Workgroups*, OCCUPY MADISON, <https://occupymadisoninc.com/about/om-workgroups/> [<https://perma.cc/342S-G53W>].

179. *Id.*

180. *Id.*

181. *See Conduct Policy, supra* note 177; *OM Build Tiny House Contract, supra* note 78.

182. *See id.*

OMI can be resolved.<sup>183</sup> Media reports allege that some former residents struggled with alcohol or drug abuse and OMI asked at least two former residents to leave the village.<sup>184</sup>

### 1. Permanent Stewardship and Property Theory

The OM Village's stewardship housing tenure grants formerly homeless people a viable alternative to fee simple homeownership or renting, that provides them many of the benefits of ownership and renting, without formal title or a traditional rental lease. In *Behavioral Leasing: Renter Equity as an Intermediate Housing Form*, Professor Stephanie M. Stern explores alternatives to traditional homeownership and renting for low-income groups.<sup>185</sup> She analyzes renter equity as an alternative housing form that "monetizes and allocates to tenants a share of the financial value created by their upkeep and participation in the property—and frames that allocation as an incentive in order to support a range of homeownership-like behaviors and benefits."<sup>186</sup> Renter equity leases specifically enable:

[R]enters to earn monthly renter equity credits (i.e., savings credits) in exchange for three behaviors: paying their rent on time, participating in a resident community association and attending its monthly meetings, and completing their assigned property upkeep tasks in common areas (for ease of monitoring, the typical work assignments require tenants to maintain specified physical spaces in the building or its grounds). The upkeep task takes each tenant approximately one to two hours per week.<sup>187</sup>

Stern frames renter equity as an alternative for low-income individuals who can't afford ownership, but who desire the economic and social benefits of ownership.<sup>188</sup> She contrasts renter equity against traditional renting, which fails to create the same positive behavioral incentives as homeownership.<sup>189</sup> She notes that the psychological benefits of homeownership "include

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183. See generally OCCUPY MADISON, <https://occupymadisoninc.com> [<https://perma.cc/E59U-4CBS>].

184. See Pasque, *supra* note 151.

185. See Stern, *supra* note 21, at 177.

186. *Id.* at 178.

187. *Id.* at 183.

188. *Id.* at 191.

189. See *id.* at 183–91 (comparing renter equity, traditional renting, and homeownership).

greater control and governance rights,”<sup>190</sup> “incentives to maintain and improve property,”<sup>191</sup> and stronger rights to remain.<sup>192</sup> Renter equity is similar to stewardship because it creates incentives for greater control and governance rights and incentives for tenants to maintain their residences.<sup>193</sup> However, renter equity is different from stewardship because it uses monetary exchange for the payment of rents and it monetizes and grants to individual tenants the economic benefits of improvements they make to the property.<sup>194</sup> Stewardship incentivizes greater co-management, shared decision-making, and sharing of space than renter equity; it also de-emphasizes the profit motive for wealth building.<sup>195</sup> Yet, renter equity is another example of the growing panoply of new housing tenures that make co-management, community participation, and limited sharing of resources and space, elements of possession and use.<sup>196</sup>

While most stewards do not reap the economic benefits of the improvements they make to the tiny home, the more labor they put into the upkeep of the entire village, the more likely it is that the steward will be accepted into the community and directed to life-enhancing opportunities.<sup>197</sup> Stewardship, therefore, incentivizes ownership-like behaviors through social norms. Although stewards do not have title to the tiny homes, the use and membership rights inherent in stewardship provide unhoused people with control and governance rights.<sup>198</sup> As members of the common-interest community, stewards can vote to determine who can remain in the village and how the community will develop.<sup>199</sup> Property theory traditionally conceives that title,

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190. *Id.* at 177.

191. *Id.*

192. *Id.*

193. *See id.* at 196.

194. *See id.* at 179.

195. *See id.* at 184 (“[A]ffordable housing protections and nonprofit involvement provide renter equity tenants greater de facto control over exit and rent costs than traditional renters . . . .”); *id.* at 194 (“[R]enter equity affords tenants more control and decision-making power . . . .”).

196. *See id.*

197. *E.g., Who Will Live There FAQs*, *supra* note 25 (“Anyone who wants to participate is welcome as long as they . . . are voted into membership, put in their sweat equity hours, apply and are accepted, agree to live in our cooperative community, follow the rules of their contract, the conduct rules and shop rules.”).

198. *See* discussion *supra* Part II.A.

199. *See* discussion *supra* Part II.A.

long-term possession, equity, and transferability are the key features of ownership that incentivize residents to steward, maintain, and improve their properties.<sup>200</sup> Yet tiny homes villages also incentivize those behaviors even without ownership, but through social norms. While the right to exclude others from a tiny house unit is an important right that affords formerly homeless people privacy, that right to exclude is consonant with a right to be included and participate in the decision-making and advancement of the common-interest community. The villages privilege community building and positive social behavior, rather than wealth maximization, with a status that is less stable and less profitable than ownership or traditional renting.

The common interest community rules and decision-making structures of OM Village also help advance the goal of human flourishing heralded by progressive property scholars,<sup>201</sup> and human self-realization touted by property-as-personhood theorists.<sup>202</sup> Progressive property theorists assert that property laws and institutions should also further human flourishing and democratic values, rather than just maximizing efficiency.<sup>203</sup> The democratic values that property institutions should serve include: “liberty, equality, and democracy.”<sup>204</sup> These normative goals can be a constraint on fee simple ownership and the right to exclude when an owner’s property rights undermine the human flourishing of others or threaten democratic values. Progressive property theorists also embrace informal property forms as a way of advancing human flourishing and other democratic ends.<sup>205</sup> According to progressive property theorists, property should serve as a bedrock for human relations and communal associations.<sup>206</sup> Some argue that Section 8 vouchers or rent control are examples of progressive property theory, but many critics chide the theory’s lack of concrete examples.<sup>207</sup> This

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200. See Stern, *supra* note 21, at 179.

201. See ALEXANDER & PEÑALVER, *supra* note 26, at 88 (defining human flourishing).

202. See Radin, *supra* note 31, at 957.

203. Joseph William Singer, *Property as the Law of Democracy*, 63 DUKE L.J. 1287, 1303 (2014).

204. *Id.*

205. Joseph William Singer, *The Rule of Reason in Property Law*, 46 U.C. DAVIS L. REV. 1369, 1433–34 (2013) (“Property rights are based as much on informal practices as on formal arrangements.”).

206. Zachary Bray, *The New Progressive Property and the Low-Income Housing Conflict*, BYU L. REV. 1109, 1121–23 (2012).

207. *Id.* at 1114 (“What remains to be done is a close examination of the new



Article adds an additional example of progressive property theory in action because it shows how tiny homes villages can advance human flourishing and democratic participation.

“Property-as-personhood” theorists also argue that property should further human self-realization.<sup>208</sup> Professor Margaret Jane Radin derived the property as personhood theory from Hegel.<sup>209</sup> “The premise underlying the personhood perspective is that to achieve proper self-development—to be a *person*—an individual needs some control over resources in the external environment.”<sup>210</sup> Professor Radin outlines a dichotomy between two kinds of property: personal and fungible.<sup>211</sup> Personal property is property so constitutive of a person’s self-conception that the loss of that property cannot be remedied by substitutes.<sup>212</sup> Fungible property can easily be replaced by substitutes.<sup>213</sup> Some tiny homes, even temporary or transitional tiny homes, constitute a form of personal property that can help to restore hope, dignity, self-pride, and self-worth to formerly homeless people. When formerly homeless people are able to design, build, and steward their shelter, as well as participate in community decision-making and self-determination, they develop a personal relationship with the tiny home, and the broader village community, that can serve as a form of personal property, even though they do not formally rent or own the units. Thus, for formerly homeless or unhoused people, tiny homes can constitute a form of personhood property even without ownership.<sup>214</sup>

Many homeless people have also lost connections to positive communities. OM Village requires its stewards to contribute to community self-governance and enhancement.<sup>215</sup> These work requirements and service opportunities force stewards into

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progressive property on some of its own terms by carefully considering the plural and incommensurable underlying values, purposes, and social relationships that recent progressive-property accounts seek to serve.”).

208. See Radin, *supra* note 31, at 968 (“If an object you now control is bound up in your future plans or in your anticipation of your future self, and it is partly these plans for your own continuity that make you a person, then your personhood depends on the realization of these expectations.”).

209. See *id.* at 958–59 (describing the “personhood perspective” as having been developed by Hegel).

210. See *id.* at 957.

211. See *id.* at 960.

212. See *id.*

213. See *id.*

214. See *id.* at 992 (describing residential tenancies as personhood property).

215. *How to Become a Resident of OM Village*, *supra* note 83 (explaining the

community with other stewards by working on communal projects, such as constructing one another's homes or making projects for sale to support community upkeep costs.<sup>216</sup> The projects can also help residents develop skills they can transfer to the workforce or use to sustain themselves. In Phase Three of the OM Village project, for example, OMI contemplates creating a day laborer program that can employ stewards.<sup>217</sup> The community gardens in which stewards can participate also help provide healthy and organic food for use by stewards and area neighbors.<sup>218</sup> These features of the village help advance the human flourishing of stewards beyond shelter. While stewards are not home owners in the traditional sense, stewardship gives formerly homeless individuals access to a well-lived life. Stewardship also grants formerly homeless people access to a form of personal property, the tiny home, which helps residents regain the hope, dignity, self-worth, and human flourishing that they may have lost on the streets.

OM Village, clearly, has limitations; it is not a panacea to solve homelessness. Because the project intentionally does not benefit from government funding or land donations, it can serve only a small number of homeless people.<sup>219</sup> The homeless population in Madison is clearly larger than the number of people who

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expectation of stewards to “contribute to the maintenance and operation of OM Village along with other members of OMI” and to attend General Membership meetings).

216. *Community Agreement*, *supra* note 159 (“I agree to participate in the work of self-governance, including governance meetings, the dispute resolution process, and agreed-upon approaches to de-escalation of any conflicts . . . I know there are costs to keep the residential area running. Stewards will support the goal of self-sufficiency by contributing in a sustainable way appropriate to individual circumstances.”).

217. *See Phase 1*, OCCUPY MADISON, <https://occupymadisoninc.com/om-village-phases/phase-1/> [<https://perma.cc/7LGJ-U8FK>].

218. *See OM Grow Workgroup*, OCCUPY MADISON, <https://occupymadisoninc.com/om-grow-workgroup/> [<https://perma.cc/CFS4-PBTL>].

219. *See Management and Accountability*, *supra* note 105 (explaining that funding derives primarily from donations).

will benefit,<sup>220</sup> and the units are not large enough to accommodate small families.<sup>221</sup> The residents, some of whom may have histories of substance abuse, do not receive any counseling or services as part of their stewardship in OM Village, and the residents of OM Village are not diverse,<sup>222</sup> so the project, currently, does not substantially advance integration. Yet, despite these limitations, OM Village makes a meaningful contribution to the range of options for homeless people in Madison.

#### D. TEMPORARY STEWARDSHIP: COLORADO, OREGON, AND WASHINGTON

Some tiny homes villages also use stewardship in temporary or transitional villages. Beloved Community Village in Denver, Colorado;<sup>223</sup> Dignity Village in Portland, Oregon;<sup>224</sup> Opportunity Village in Eugene, Oregon;<sup>225</sup> Quixote Village in Olympia, Washington;<sup>226</sup> and several villages established by the City of Seattle,

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220. According to the July 2018 Point-In-Time Count, which takes a snapshot of the number of homeless people in the Madison/Dane County Metropolitan Area, 640 people were homeless on July 25, 2018. See *2018 July Point-In-Time Count, Madison Dane County Continuum of Care*, HOMELESS SERVS. CONSORTIUM, [https://docs.wixstatic.com/ugd/73dee7\\_fa1b98477ce346e9a0cb5cd6fc25cb98.pdf](https://docs.wixstatic.com/ugd/73dee7_fa1b98477ce346e9a0cb5cd6fc25cb98.pdf) [<https://perma.cc/XBP8-TVNG>].

221. *Who Will Live There FAQs*, *supra* note 25 (noting that only two people may live in a tiny house at any given time).

222. I did not undertake a demographic study of OM Village residents. However, videos of some of the residents and the surrounding neighborhood suggest that the residents of the village are predominately white. See generally Joppa, *Stories from a Tiny Home Village: Madison*, YOUTUBE (Apr. 27, 2016), <https://www.youtube.com/watch?v=C4QAb61aqAs>; TEDx Talks, *From Tent City to Tiny House Village*, YOUTUBE (Nov. 5, 2015), <https://www.youtube.com/watch?v=3a5TXdj1Ugl>. Additionally, it appears that the residents of the village are less diverse than the original group of activists that participated in the Occupy Madison tent communities, based upon recounting the history of the movement from a tent city to a village and the comments of current residents and surrounding neighbors. See *id.* The racial composition of the Dane County homeless population is 48% black and 52% white, so the racial composition of village residents does not appear to reflect that of the homeless population in Dane County where Madison, Wisconsin is located. See *The Demographics of Homelessness*, ROAD HOME DANE COUNTY (Feb. 16, 2019), <https://trhome.org/the-demographics-of-homelessness/> [<https://perma.cc/58VG-9XPQ>].

223. See BELOVED COMMUNITY VILLAGE, <https://belovedcommunityvillage.wordpress.com> [<https://perma.cc/X6SS-99ZH>].

224. See *Entrance Agreement*, *supra* note 95.

225. See HEBEN, *supra* note 53, at 156–64 (describing Opportunity Village).

226. See *id.* (describing Quixote Village).

Washington<sup>227</sup> use stewardship as a temporary housing tenure for homeless people. As the Entrance Agreement of Dignity Village in Portland, Oregon explains:

We are **not permanent housing**. Show us you are looking for a job, or housing—anything to help achieve these goals. You have a maximum of 2 years from the date you become a resident to find alternative housing. This is mandated by our contract and is not up for debate.<sup>228</sup>

Most transitional tiny homes villages that use stewardship allow stewards to spend up to two years in a tiny home unit.<sup>229</sup> Membership in the cohousing community is a condition of possession.<sup>230</sup> Consequently, a formerly homeless person cannot become a temporary steward unless he or she becomes a member of the village counsel and attends village meetings.

Dignity Village, established in 2001, was the first tiny homes village that utilized stewardship in a transitional housing village.<sup>231</sup> It has approximately forty-three dwelling structures on 1.15 acres of land that provide temporary shelter for up to fifty to sixty homeless people per day.<sup>232</sup> The City of Portland, Oregon provides the land for the village, so the encampment is on city-owned land.<sup>233</sup> The tiny homes are approximately 120 square feet per unit.<sup>234</sup> The shared common buildings have plumbing and electricity, but each tiny home does not.<sup>235</sup> All residents must be eighteen years of age or older and homeless.<sup>236</sup> Unlike at OM Village in Madison, residents at Dignity Village pay nominal fees of \$35 per month for insurance, plus \$10 per month in utility charging fees.<sup>237</sup> All residents are required to

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227. See *Update: City Permitted Villages*, CITY SEATTLE (July 31, 2018), <https://homelessness.seattle.gov/update-city-permitted-villages/> [<https://perma.cc/6UU3-CR5V>] [hereinafter *Update: City Permitted Villages*].

228. See *Entrance Agreement*, *supra* note 95 (emphasis in original).

229. See *id.*

230. See *id.*

231. See HEBEN, *supra* note 53, at 129–43 (describing Dignity Village).

232. See *id.*

233. See *id.*

234. See *id.*

235. See *id.*

236. See *id.*

237. See *id.* (finding that in this way stewardship at Dignity Village is more like renting, with homeless stewards paying a nominal rent to cover fees, rather than a rent that gives the landlord a profit; those without income have tried to establish micro-businesses to raise the necessary funds to cover such fees).

provide a minimum of ten hours per week of sweat equity for the time period that they possess a tiny home.<sup>238</sup>

The basic rules to which temporary residents must abide at Dignity Village are: (1) no violence to yourself or others; (2) no theft; (3) no alcohol, illegal drugs, or drug paraphernalia on site or within a one-block radius; (4) no constant disruptive behavior; and (5) everyone must contribute to the operation and maintenance of the village through sweat-equity hours.<sup>239</sup> “The village allows couples to live together and also includes pets—arrangements not permitted by the traditional shelter system.”<sup>240</sup> Under Oregon state law, Dignity Village is considered a legally permitted “transitional campground.”<sup>241</sup> A 2007 Dignity Village survey showed that from the village’s establishment in 2001 to March of 2007, approximately 700 people cycled through it; twenty-five percent stayed for only a few days or a few weeks; fifty-five percent stayed for several months; and approximately twenty percent stayed more permanently, although the survey did not collect data regarding where former residents transitioned.<sup>242</sup> The 2007 survey also revealed that seventy percent of the residents were male, and seventy-five percent were white and between the ages of thirty-one and fifty.<sup>243</sup>

Beloved Community Village, in the RiNo District of Denver, Colorado, is another transitional stewardship tiny homes village.<sup>244</sup> The community has approximately eleven 8-by-12-foot tiny homes, a bathhouse, two portable toilets, and a circular common building from which food and running water is distributed.<sup>245</sup> The tiny homes are insulated and have electricity, but no running water.<sup>246</sup> Each tiny home costs approximately \$22,000 to construct.<sup>247</sup> The Baron Institute for Philanthropy

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238. *See id.*

239. *Id.*

240. *Id.* at 135.

241. *See* OR. REV. STAT. § 446.265 (2017) (detailing that a campground used for providing transitional housing accommodations are limited to people who lack permanent shelter and may provide access to water, toilet, cooking or other services through separate or shared facilities).

242. HEBEN, *supra* note 53, at 135.

243. *See* BELOVED COMMUNITY VILLAGE, *supra* note 223.

244. *See id.*

245. *See id.*

246. *See id.*

247. *See id.*

and Social Enterprise, which is a part of Denver University, invested \$91,725 to build and study the Beloved Community Village, as well as a proposed second village in Denver.<sup>248</sup> The Beloved Community Village is self-governed through a Village Council that consists of formerly homeless village residents.<sup>249</sup> An Advisory Council consisting of volunteers and technical professionals assists the Village Council and provides expertise when needed to assist the Village Council with decision-making.<sup>250</sup> A local church called “The Beloved Community” acts as the fiscal agent for the project and provides support as a member of the Advisory Council.<sup>251</sup> The landlord, who owns the land on which the project sits, is the Urban Land Conservancy.<sup>252</sup>

Bayaud Enterprises provides weekly visits by the laundry truck and is developing a day laborer program for the villagers.<sup>253</sup> The Denver Food Rescue Program provides food and groceries, and the Denver Homeless Outreach Collaborative provides additional social resources.<sup>254</sup> Residents must also agree to and abide by community rules as well as provide sweat-equity work hours in order to become and remain a steward.<sup>255</sup> Beloved Community Village has experienced a few difficulties: two stewards were asked by the Village Council to leave due to violations of community rules and the village incurred \$25,000 in additional costs because it had to relocate from its original site to a location across the street because the city changed its regulations regarding transitional encampments.<sup>256</sup> Yet, despite these

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248. See COLORADO VILLAGE COLLABORATIVE, <https://www.coloradovillagecollaborative.org/beloved-community-village> [<https://perma.cc/DH8P-33NH>].

249. See BELOVED COMMUNITY VILLAGE, *supra* note 223.

250. See *id.*

251. See *id.*

252. *Fiscal Sponsorship for Nonprofits*, NAT'L COUNCIL NONPROFITS, <https://www.councilofnonprofits.org/tools-resources/fiscal-sponsorship-nonprofits> [<https://perma.cc/22TE-KF3Y>] (“Using a fiscal sponsorship arrangement offers a way for a cause to attract donors even when it is not yet recognized as tax-exempt under Internal Revenue Code Section 501(c)(3).”); see BELOVED COMMUNITY VILLAGE, *supra* note 223.

253. See BELOVED COMMUNITY VILLAGE, *supra* note 223.

254. See *id.*

255. See *id.*

256. Joe Rubino, *Tiny Home Village for the Homeless Thriving in Denver's RiNo District*, DENVER POST (July 28, 2018), <https://www.denverpost.com/2018/07/27/tiny-home-homeless-thriving-denver-rino-neighborhood/> [<https://perma.cc/LG32-ZP8E>].

initial obstacles, the project helps provide a low-barrier form of housing for people otherwise on the streets or even in temporary shelters. A study of the village one year after its opening, conducted by the Denver University Burns Center on Poverty and Homelessness, found that:

Of the 12 original village residents who participated in the study—one person declined—10 remained housed through April. It goes beyond the scope of the study, but those 10 people are still in stable housing today, Chandler said. Three residents moved out of the village into housing of their own. Two of them, a couple, saved up for their own apartment, Chandler said. A third person was approved for Section 8 rental assistance. And all villagers—nine of whom were already working when they moved in—were either employed, in school or collecting disability, as of April. That fact also holds true today.<sup>257</sup>

Seattle, Washington also derives its transitional housing model from Dignity Village. Unlike Colorado and Oregon, Seattle has established a system of at least seven transitional tiny home encampment villages.<sup>258</sup> In 2014, the Mayor of Seattle convened an Emergency Task force on Homelessness.<sup>259</sup> The taskforce recommended that the City of Seattle legally permit homeless encampments on city-owned land or privately-owned, non-religious property.<sup>260</sup> The city adopted a strategic plan called Pathways Home.<sup>261</sup> As part of that plan, Seattle offered public land and some city funding to support the creation of permitted tiny home encampments.<sup>262</sup> Some Seattle villages, such as Nickelsville, are on land privately owned by a church.<sup>263</sup> Others are on city-owned land.<sup>264</sup> The villages serve formerly homeless people who need a form of shelter to transition from the streets to more permanent indoor living.<sup>265</sup>

In 2015, the Seattle City Council unanimously adopted an ordinance “related to land use and zoning to permit transitional

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257. *Id.*

258. *Update: City Permitted Villages*, *supra* note 227.

259. *See* CITY OF SEATTLE, PERMITTED ENCAMPMENT EVALUATION 2 (2017), <http://www.seattle.gov/Documents/Departments/HumanServices/AboutUs/Final%202017%20Permitted%20Encampment%20Evaluation.pdf> [<https://perma.cc/Z8N3-RVL2>].

260. *See id.*

261. *See id.*

262. *See id.*

263. *Village Case Study Matrix*, *supra* note 155.

264. *Id.*

265. *See id.*

encampments as an interim use on City-owned or private property.”<sup>266</sup> The ordinance restricts the number of people that each site can accommodate “and limits the permitted use for one year, with the possibility of permit renewal for an additional year.”<sup>267</sup> Previously, Seattle law only allowed transitional encampments for a 90-day period; now, formerly homeless people can remain in the encampments for up to two years.<sup>268</sup> A City of Seattle study of the encampments maintains that “[t]his longer-term sitting means residents can make greater progress towards their stability goals and build stronger relationships with the surrounding community.”<sup>269</sup> There is also a related Joint Director’s Rule that establishes compatible service requirements and operational standards for the encampments.<sup>270</sup> The Joint Director’s Rule also requires “the creation of Community Advisory Councils (CACs) to provide neighborhood and business input on proposed encampment operations.”<sup>271</sup> The CACs also identify methods for complaint and dispute resolution at each site.<sup>272</sup>

The permitted transitional encampments follow a unique model of combining village self-government by homeless people with city-supported case management services. Like Dignity Village, residents do pay a nominal rent of approximately \$90 per month that covers some operational expenses.<sup>273</sup> The Low-Income Housing Institute (LIHI), an established nonprofit (501)(c)(3) organization dedicated to developing, owning, and operating housing for low-income people, owns and operates most of the tiny homes permitted encampments.<sup>274</sup> LIHI is in a contractual relationship with the City of Seattle to provide case-management services to residents at almost all of the seven encampments.<sup>275</sup> Each village has a slightly different governance structure, but each site shares the following fundamental characteristics: (1) democratic decision-making which requires homeless stewards to become members of the village association and attend community meetings with each member having one equal

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266. PERMITTED ENCAMPMENT EVALUATION, *supra* note 259, at 2.

267. *Id.*

268. *Id.* at 3.

269. *Id.*

270. *Id.* at 2.

271. *Id.*

272. *Id.* at 3.

273. See HEBEN, *supra* note 53, at 129–43 (describing Dignity Village).

274. See PERMITTED ENCAMPMENT EVALUATION, *supra* note 259, at 13.

275. *Id.*



vote; (2) all residents must provide sweat-equity hours toward the day-to-day operation of the village; (3) each site has a grievance procedure; and (4) the stewardship tenure can be temporarily or permanently revoked if stewards violate established community rules.<sup>276</sup> The possibility of re-entry is determined based upon the severity of the offense.<sup>277</sup>

“[F]rom September 2015 through May 2017, 759 people have been served through these programs and, 121 people have transitioned into safe, permanent places to live.”<sup>278</sup> “During 2016, 403 adults over the age of 18 and 64 children as part of a family were served at the permitted encampments.”<sup>279</sup> “Of the total population, 60% were male and 39% female.”<sup>280</sup> “The other 1% includes two individuals who identify as transgender, one who selected ‘doesn’t identify as male, female or transgender’ and two who declined to share their gender identity.”<sup>281</sup> 57 percent of the people served are white, 19% are Black or African-American, and 10% identified as mixed race.<sup>282</sup> However, the City of Seattle study noted that:

One of the primary findings of this evaluation and, recommendations for future study is the high percentage of White individuals (57%) served at the encampment as compared to City funded Single Adult Enhanced Emergency Shelters (43%). The low representation of Black/African American, American Indian or Alaska Native and Native Hawaiian people as compared to other programs should be researched to identify any racial disparities and make programmatic changes that lead to racial equity.<sup>283</sup>

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276. *Id.*

277. *Id.*

278. *Id.* at 1.

279. *Id.* at 5.

280. *Id.*

281. *Id.*

282. *Id.*

283. *Id.* The King County 2016 Point-In-Time Survey also revealed that 52% of the white sheltered homeless population was in emergency shelter in 2016, and 49% of the white sheltered homeless population was in transitional housing. Therefore, the percentage of whites in the transitional tiny house villages is higher than in other forms of homeless shelters in King County. Additionally, 39% of the sheltered homeless population in King County is Black or African American, even though African Americans are only 6.7% of the general population in King County. Thus, the number of Blacks or African Americans in the tiny homes villages is significantly smaller than their overall representation in the sheltered homeless population. KATE SPELTZ, KING CTY. CMTY. SERVS. DIV., KING COUNTY ONE NIGHT COUNT SUMMARY OF 2016 DATA 3 tbl.3 (2016), <http://allhomekc.org/wp-content/uploads/2015/09/2016-KC-ONC-numbers.pdf> [<https://perma.cc/MZ6T-8V2S>].

Some criticize Seattle's use of transitional tiny homes villages as an alternative to permanent supportive housing.<sup>284</sup> Some worry that transitional tiny homes villages isolate the homeless from the broader community and from needed long-term services.<sup>285</sup> The villages also do not substantially promote racial integration.<sup>286</sup> As Seattle develops more transitional villages in close proximity to existing market-rate neighborhoods, neighborhoods respond in classic not-in-my-backyard (NIMBY) fashion. For example, some Seattle residents sued the city for failing to conduct adequate environmental review of the villages, inadequate community outreach, and violating a city ordinance specifying the number of transitional homeless camps permitted in the city.<sup>287</sup> One of Seattle's permitted tiny homes encampments, Licton Springs, was the only project that explicitly permitted drugs and alcohol on site, using a housing first and recovery-from-substance-abuse second model.<sup>288</sup> Crime complaints in the areas surrounding Licton Springs did increase after the site was created and community residents complained about the site.<sup>289</sup> As a result, Licton Springs closed in March of 2019, and Licton Springs was the Seattle project that received the most criticism and NIMBY resistance.<sup>290</sup>

### 1. Temporary Stewardship and Property Theory

Stewardship, even as a temporary housing tenure, provides residents some of the behavioral, social, and economic benefits

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284. See, e.g., Vernal Coleman, *Seattle's Tiny-House Villages Could Reduce Federal Funding for Homelessness*, SEATTLE TIMES (June 15, 2018), <https://www.seattletimes.com/seattle-news/homeless/seattles-tiny-house-villages-could-reduce-federal-funding-for-homelessness/> [https://perma.cc/2QCJ-RSMA].

285. *Id.*

286. SPELTZ, *supra* note 283, at 3 tbl.3.

287. Sarah Wu, *Lawsuit Filed over New Tiny-House Homeless Village in Seattle's South Lake Union Neighborhood*, SEATTLE TIMES (July 2, 2018), <https://www.seattletimes.com/seattle-news/homeless/lawsuit-filed-as-tensions-flare-over-new-seattle-tiny-house-homeless-village/> [https://perma.cc/5XU2-E68A].

288. All of the other Seattle-permitted tiny homes villages prohibit drugs and alcohol on the premises. Violations of the city-permitted transitional villages' respective codes of conduct can result in excommunication from the villages. Kate Walters, *Inside the New South Lake Union Tiny House Village*, KUOW (Oct. 2, 2018, 3:33 PM), <https://www.kuow.org/stories/inside-the-south> [https://perma.cc/3C4H-VLXX].

289. See *id.*

290. See *id.*

of ownership, without the status of ownership. The village agreements require stewards to sometimes create and, in some instances, improve the units they steward.<sup>291</sup> Failure to fulfill that obligation can mean excommunication from the community.<sup>292</sup> According to John Locke's labor theory of appropriation,<sup>293</sup> by constructing their tiny homes, and mixing their labor with their tiny homes, stewards develop a sense of control over the unit,<sup>294</sup> even temporarily. Even though the transitional stewardship tenure is no longer than two years, the other village community rules and regulations incentivize the steward to maintain the unit, because the risk of not maintaining the unit is expulsion from the community and its attendant benefits.<sup>295</sup>

The transitional villages are also the types of informal housing communities that progressive property theorists consider property, even without ownership.<sup>296</sup> According to Professor Joseph William Singer, property rights can accrue from social relationships of reliance and dependence, rather than from clear title or ownership.<sup>297</sup> Although some residents may stay only a few days, weeks, or months, stewards form a dependence on one another and on the housing provider to continue to provide adequate housing that advances human flourishing. The housing

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291. See *supra* Part II.C.

292. See *supra* Part II.C.

293. See John Locke, *Second Treatise on Civil Government*, in PROPERTIES OF PROPERTY 3, 8 (Gregory S. Alexander & Hanoach Dagan eds., 2012) ("Thus Labour, in the Beginning, gave a Right of Property, where-ever any one was pleased to employ it, upon what was common . . ." (emphasis in original)).

294. See ALEXANDER & PENALVER, *supra* note 26, at 39 (discussing the labor theory of appropriation's impact on communal property).

295. See, e.g., *OM Build Tiny House Contract*, *supra* note 78 (explaining that failure to meet the work equity repayment obligation on a new tiny house could result in the tiny house possession reverting to the organization); *Village Manual*, *supra* note 80 (listing expulsion as a possible consequence of missing work shifts).

296. In contrast, the social relations approach directs our attention in the following ways: (1) it encourages us to see people as situated in various relationships with others that continue over time; (2) it describes social relations as comprising a spectrum from short-lived relations among strangers to continuing relations in the market to intimate relations in the family; (3) it comprehends rights as emerging out of understandings that develop over the course of relationships rather than as being fully articulated at clear decision points; and (4) it encourages us to ask various questions about the relationship between the parties. Joseph William Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611, 655 (1988).

297. *Id.*

provider also has obligations to the stewards that arise out of their special relationship.<sup>298</sup> As such, the transitional tiny homes villages reflect progressive property scholars' social relations view of property rights.<sup>299</sup> The transitional villages also further the human flourishing of even temporary residents.<sup>300</sup> The villages provide more than shelter. They provide social activities that encourage residents to pursue excellence in trades and skills that advance the community.<sup>301</sup> The villages bring stewards into positive communal relations with other stewards.<sup>302</sup> Yet, the village model also respects autonomy because villagers have privacy and self-determination when needed.<sup>303</sup> The best transitional villages also advance the well-being of the broader communities in which they are located through sustainable practices, artisan workshops, and service opportunities.<sup>304</sup>

The self-help, self-management, and sweat-equity aspects of the villages also illustrate the property-as-personhood theory. Margaret Jane Radin emphasized that other forms besides fee simple ownership could constitute personal property.<sup>305</sup> Even though stewards do not have title or long-term tenure over their tiny homes, they develop a sense of community with other stewards and have a decision-making stake in their communities, because they often construct their tiny homes and participate in

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298. *E.g., Community Agreement, supra* note 159 (describing the role of the Occupy Madison, Inc. organization in relation to the stewards' agreement and conduct, such as maintaining an emergency phone line).

299. *See Singer, supra* note 296, at 655.

300. ALEXANDER & PEÑALVER, *supra* note 26, at 88.

301. *See* PERMITTED ENCAMPMENT EVALUATION, *supra* note 259, at 9.

302. *See* BELOVED COMMUNITY VILLAGE, *supra* note 223.

303. *See, e.g., Community Agreement, supra* note 159 (listing agreements such as respecting property and individual dignity).

304. *See* PERMITTED ENCAMPMENT EVALUATION, *supra* note 259, at 9.

305. Radin, *supra* note 31, at 993–94 (“Viewing the leasehold as personal property recognizes a claim in all apartment dwellers, not just poor ones. The common law revolution in tenants’ rights, to the extent it relies only on landlords being rich and tenants being poor, could reflect merely a conviction about wealth redistribution. But it is my thesis that the intuition that the leasehold is personal is also at work in the recent common law development. New tenants’ rights are granted to all tenants, even where the result is to redistribute wealth to tenants who are wealthier than their landlords. Viewing the leasehold as personal would tend to influence courts and legislatures to grant to all tenants entitlements intended to make an apartment a comfortable home—a perpetual and non-waivable guarantee of habitability.”).

community meetings.<sup>306</sup> Formerly homeless people can experience a kind of self-actualization that is not present in other transitional homeless shelters. The village gives the steward an opportunity to restore his or her sense of dignity through the privacy the tiny home provides, and to forge a new sense of identity and accomplishment through participation in the cohousing community. Even temporary stewards can fuse their self-conceptions with their tiny home units and communities, such that the property helps the steward to develop as a person. The threat of loss of the unit or of participation in the community also incentivizes stewards to engage in many of the positive behaviors frequently associated with long-term ownership.

Temporary stewardship also exemplifies the shift in property law from ownership to access. Professor Shelly Kreiczer-Levy defines access as “the casual, short-term use of property.”<sup>307</sup> She argues that Americans, particularly millennials, now prefer short-term access to property and are losing interest in fee simple ownership.<sup>308</sup> Share is “a communal form of access,” in which the property asset itself is less important than the communal exchange and cooperation it facilitates.<sup>309</sup> “Technological advances, the economic downturn, consumer ideology, and no less importantly, generational attitudes,” facilitate these trends.<sup>310</sup> Kreiczer-Levy argues that the shift to access and share property relationships constitutes younger Americans’ rejection of traditional property ownership.<sup>311</sup> She further asserts that, as new property forms, the access and share relationships will require state support and incentives to flourish.<sup>312</sup>

Temporary stewardship is both the “access” form of property and the “share” form of property, where “[t]he [property] asset itself is replaceable, but it is consumed in a cooperative manner.”<sup>313</sup> Most of the villages provide lower-barrier access to shelter than traditional rentals, but place more barriers than some

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306. *E.g.*, *How to Become a Resident of OM Village*, *supra* note 83 (detailing requirements to attend General Membership meetings and paying off one’s sweat-equity mortgage by building a tiny house).

307. *See* Kreiczer-Levy, *supra* note 32, at 156.

308. *See id.* at 157.

309. *See id.* at 158.

310. *Id.* at 157.

311. *See id.* at 161.

312. *See id.*

313. *Id.* at 158.

shelters.<sup>314</sup> Some of the homeless people in the transitional villages remain for only a few days or a few months; yet unlike traditional shelters, homeless stewards can access some of the benefits of communal living while they are in the village.<sup>315</sup> These villages also illustrate the share form of property. Social norms, rather than money, incentivize the temporary stewards to maintain their units and to share with other homeless residents in the present and in the future.<sup>316</sup> Stewards often share water, sinks, showers, and port-a-potties.<sup>317</sup> The access and share forms of property give homeless people both shelter and connections to communities that they may have lacked while on the streets or living in emergency shelters. While tiny homes villages for the homeless can be a viable and positive alternative to life on the streets, they are not a replacement for longer-term supportive housing. The small size of the units may not be suitable for larger families or unhoused people with aversion to small spaces. Some homeless and unhoused individuals may not want to participate in community activities. Therefore, respect for their autonomy requires cities to produce alternative housing arrangements. Transitional stewardship, therefore, should be only one solution in a continuum of approaches to ameliorating homelessness.

### III. TINY HOMES VILLAGES AS COHOUSING COMMUNITIES

“It takes a community to raise a village.”<sup>318</sup>

This Part discusses tiny homes villages that do not utilize the stewardship housing tenure but use the rental, rent-to-own, and cooperative housing tenures in cohousing settings that enhance the self-determination and human flourishing of unhoused people. “Cohousing communities are intentional, collaborative neighborhoods that combine extensive common facilities

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314. See BELOVED COMMUNITY VILLAGE, *supra* note 223.

315. See *id.*

316. See *id.*

317. *About*, DIGNITY VILLAGE, <https://dignityvillage.org/about-2/> [<https://perma.cc/S8AW-QSN8>].

318. *Emerald Village Eugene*, SQUAREONE VILLAGES, <https://www.squareonevillages.org/emerald> [<https://perma.cc/6PC2-4EQD>] [hereinafter *Emerald Village Eugene*].

with private homes to create strong and successful housing developments.”<sup>319</sup> Cohousing’s distinctive characteristics include: fostering relationships among residents; balancing privacy and community; participatory design, building, and decision-making processes; helping other residents attain shared goals and shared values; and promoting sustainable practices.<sup>320</sup> Kathryn McCamant and Charles Durrett brought cohousing to the United States and popularized it in their seminal book, *Creating Cohousing: Building Sustainable Communities*.<sup>321</sup> Cohousing has its roots in nineteenth century communes, but cohousing communities do not always have a shared ideology or religion.<sup>322</sup> While the United States has long had other forms of communal housing, cohousing has recently flourished in the United States.<sup>323</sup>

Cohousing’s increasing popularity in the United States is part of the growth of the new “sharing economy.”<sup>324</sup> As housing prices escalate in high-cost cities, many millennials gravitate towards cohousing communities in cities, such as New York, Washington, D.C., and Chicago.<sup>325</sup> Real estate companies such as Common, Pure House, WeLive, and WeWork now comprise

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319. *Cohousing in the United States: An Innovative Model of Sustainable Neighborhoods*, COHOUSING ASS’N U.S., <https://www.cohousing.org/sites/default/files/attachments/StateofCohousingintheU.S.%203-6-17.pdf> [<https://perma.cc/Z8BR-RMNK>] [hereinafter *Cohousing in the United States*] (last updated Mar. 6, 2017); see also KATHRYN MCCAMANT & CHARLES DURRETT, *CREATING COHOUSING: BUILDING SUSTAINABLE COMMUNITIES* 25 (2011).

320. See *Cohousing in the United States*, *supra* note 319.

321. See generally MCCAMANT & DURRETT, *supra* note 319.

322. See *id.* at 9.

323. See generally Chris Bentley, *Can Boomers Make Cohousing Mainstream?*, ATLANTIC: CITYLAB (Jan. 20, 2015), <https://www.citylab.com/equity/2015/01/can-boomers-make-cohousing-mainstream/384624/> [<https://perma.cc/MF63-S5K9>]; Zoë Bernard, *Take a Look Inside the Stylish, Modern-Day Communes that Are Taking Over US Cities*, BUS. INSIDER (Feb. 28, 2018), <https://www.businessinsider.com/common-co-living-spaces-is-spreading-into-more-us-cities-2018-2> [<https://perma.cc/7DW6-Y34C>]; *Cohousing in the United States*, *supra* note 319.

324. See, e.g., THE CAMBRIDGE HANDBOOK ON THE LAW OF THE SHARING ECONOMY 1 (Nestor M. Davidson et al. eds., 2018); Kellen Zale, *Sharing Property*, 87 U. COLO. L. REV. 501 (2016) (providing a taxonomy of property sharing activities).

325. See James Hamblin, *Communal Living Is Alleviating Millennial Ennui*, ATLANTIC (July 28, 2016), <https://www.theatlantic.com/health/archive/2016/07/communes-in-the-city/492599/> [<https://perma.cc/7SR3-VEZE>].

part of the communal living industry.<sup>326</sup> Landlords seeking profits now create intentional cohousing communities.<sup>327</sup> In these communities, six or more residents live together, each renting separate individual rooms, but sharing common spaces, amenities, and experiences.<sup>328</sup> Landlords rent to several residents at a time, in small spaces, through month-to-month contracts with rents upwards of \$1,000 per month.<sup>329</sup> Communal living companies also buy in bulk to reduce costs and provide residents with amenities such as furniture, toilet paper, paper towels, and other items.<sup>330</sup> Communal living particularly appeals to millennials confronting extremely high rental prices in technology hub cities, and seeking communal associations similar to the ones they may have had in college or graduate school.<sup>331</sup> Some cohousing rental communities offer communal yoga, group massages, and community dinners.<sup>332</sup> These arrangements minimize millennial isolation and ennui, but also make huge profits for landlords and real estate companies.<sup>333</sup> Cohousing has also become popular amongst seniors looking to downsize and find community as they age.<sup>334</sup>

The tiny homes rental cohousing villages analyzed in this Article, however, differ from the millennial and senior communal living arrangements described above in several respects. For example, tiny homes villages for homeless people remove the profit motive from the project, so that rents generally cover upkeep and maintenance, rather than enrich landlords.<sup>335</sup> The villages facilitate community through physical design and through voluntary communal experiences that enable unhoused people to shape their environments through co-management and collaboration.<sup>336</sup> The villages also combine housing with a number of other amenities and activities essential to human flourishing,

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326. *See id.*

327. *See id.*

328. *See id.*

329. *See id.*

330. *See* Alana Semuels, *Dorms for Grownups: A Solution for Lonely Millennials?*, ATLANTIC (Nov. 6, 2015), <https://www.theatlantic.com/business/archive/2015/11/coliving/414531/> [<https://perma.cc/G42T-VM4G>].

331. *See id.*

332. *See* Hamblin, *supra* note 325.

333. *See id.* (“Along with WeWork, the co-working space part of the company, WeLive is part of a \$16 billion valuation.”).

334. Bentley, *supra* note 323.

335. *See* discussion *supra* Part II.A.

336. *See* discussion *supra* Part II.A.



such as physical and decision-making control over the environment, physical and mental health outreach, healthy food opportunities, sustainable living practices, work opportunities, transportation access, childcare, spiritual renewal, and interactions with market-rate housed individuals.<sup>337</sup> These villages illustrate how communal property relations have the potential to mitigate some of the negative aspects of poverty, homelessness, and vulnerability.

#### A. RENTAL TINY HOMES CO-VILLAGES: FLORIDA, HAWAII, TEXAS

This Section describes and analyzes three rental tiny homes villages that scale up the village model to serve hundreds of un-housed people in permanent rental housing. The rental villages described below emerged out of successful public and private partnerships often spurred by wealthy developers or nonprofit organizations seeking new solutions to homelessness and housing unaffordability.<sup>338</sup> Although these villages use a rental model, they also place the units in cohousing settings that strongly encourage resident sharing, communal associations, and community participation and enhancement through social norms and group activities.<sup>339</sup> Other villages encourage socialization and community cohesion and enhancement through physical design.<sup>340</sup> Some villages build the tiny homes with small front porches facing one another in a circular or parallel design to encourage neighbors to socialize.<sup>341</sup> Most villages also host community events, communal artisan projects, community gardening, or community micro-enterprise and workforce development opportunities.<sup>342</sup> These villages also illustrate successful collaboration between stakeholders that often conflict in contemporary urban redevelopment.<sup>343</sup>

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337. See, e.g., *Community Works*, MOBILE LOAVES & FISHES, <https://mlf.org/community-works/> [<https://perma.cc/FPC8-SRWL>] [hereinafter *Community Works*] (offering a variety of amenities such as cinema, gardens, woodworking, concessions, and more to develop new skills and community).

338. Megan Kimble, *Austin's Fix for Homelessness: Tiny Houses and Lots of Neighbors*, CITYLAB (Nov. 12, 2018), <https://www.citylab.com/design/2018/11/community-first-village-homeless-tiny-homes-austin-texas/575611/> [<https://perma.cc/D9ZG-WY7Q>].

339. See *id.*

340. *Id.*

341. See *id.*

342. See *id.*

343. See ULI AUSTIN CASE STUDY, URBAN LAND INST. 3–4 (2016).

Community First! Village in Austin, Texas is the largest tiny homes village for the homeless in the United States.<sup>344</sup> It is “a 27-acre master planned community that provides affordable, permanent housing, and a supportive community for the disabled and chronically homeless in Central Texas.”<sup>345</sup> Mobile Loaves and Fishes (MLF) is a nonprofit 501(c)(3) organization in Austin that develops a range of programs for homeless people.<sup>346</sup> It owns the village and the land on which the village sits.<sup>347</sup> The site has a variety of housing units including tiny homes, recreational vehicles (RVs), and canvas teepee huts.<sup>348</sup> It costs about \$10,333 per unit to build the studio tiny homes unit, and \$22,500 per unit to construct the one-bedroom tiny homes.<sup>349</sup> The per unit cost of production for RVs is about \$10,000 and the cost of production for the insulated canvas side tee-pee huts is approximately \$5,313 per unit.<sup>350</sup> After MLF completes phase two of the village, it will have a total of fifty acres and 500 housing units for homeless people.<sup>351</sup>

The village currently has approximately 250 housing units.<sup>352</sup> The tiny homes units range from 121 to 300 square feet per unit.<sup>353</sup> Prospective residents must be chronically homeless, defined as “living in a place not meant to be lived in for at least one year, and having at least one qualifying disability.”<sup>354</sup> “Prospective residents must also have been in Travis County for at least one year.”<sup>355</sup> Residents at Community First! Village must pay a low-cost rent which ranges from \$225 per month to \$380 per month.<sup>356</sup> Residents can use Supplemental Security Income

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344. Kimble, *supra* note 338; *see also Village Case Study Matrix, supra* note 155.

345. *See Community First! Village*, MOBILE LOAVES & FISHES, <https://mlf.org/community-first/> [<https://perma.cc/7JPK-DLDZ>].

346. *See* MOBILE LOAVES & FISHES, <https://mlf.org> [<https://perma.cc/MVG4-AR9S>].

347. *See* ULI AUSTIN CASE STUDY, *supra* note 343.

348. *See id.* (detailing that the village has 125 micro or tiny homes, 100 RVs, and 20 canvas teepee cottages).

349. *See id.* at 9.

350. *See id.*

351. *See id.*

352. *Village Case Study Matrix, supra* note 155.

353. *Id.*

354. *How to Apply for a Home*, MOBILE LOAVES & FISHES, <https://mlf.org/apply-for-a-home/> [<https://perma.cc/A9GX-XGFY>].

355. *Id.*

356. *Village Case Study Matrix, supra* note 155.

(SSI), Social Security Disability Income (SSDI), or working on or off site through the village's community works program in order to meet the rental obligation.<sup>357</sup>

The project began when Alan Graham, the executive director of MLF, decided that RVs were a great way to lift homeless people off the streets.<sup>358</sup> MLF purchased four RVs to house formerly homeless people and placed them in RV parks throughout Austin.<sup>359</sup> As a former commercial real estate developer, Graham had the vision to create a special RV park for formerly homeless residents of Austin.<sup>360</sup> He found a national consultant for creating RV parks, and they created a pro forma for the development, which is the basis of Community First! Village today.<sup>361</sup> MLF approached then-mayor of Austin, Will Wynn, whose grandfather had died as a homeless alcoholic, about creating an RV park for the homeless on city-owned land.<sup>362</sup> But the project faced obstacles: "in late 2007, new City of Austin rulings for 'Quality of Life' called for no camping, no siting, no lying on Austin's streets."<sup>363</sup> Local developers called for increased criminalization of homelessness and for removal of the homeless people from the city's revitalizing downtown areas.<sup>364</sup> Neither former Mayor Wynn, Alan Graham, nor real estate developers from the Urban Land Institute (ULI) could get the city council to provide land for the effort.<sup>365</sup>

MLF then worked with an architecture class at the University of Texas (under Professor Steve Ross) to search for private land appropriate for an RV park.<sup>366</sup> The chosen site is reasonably close to wastewater/water, outside of the city limits, near public transportation, accessible to electricity, and has rich soil for farming.<sup>367</sup> Since the site is outside of Austin's city limits, the zoning laws of Austin do not apply.<sup>368</sup> The site is a planned unit

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357. *Id.*

358. *See* ULI AUSTIN CASE STUDY, *supra* note 343, at 3.

359. *Id.*

360. *Id.*

361. *Id.*

362. *See id.*

363. *Id.*

364. *See id.*

365. *See id.* at 4.

366. *Id.*

367. *See id.*

368. *Frequently Asked Questions*, MOBILE LOAVES & FISHES, <https://mlf.org/faqs/> [<https://perma.cc/2PVP-EKEV>] [hereinafter MOBILE LOAVES FAQs].

development that accommodates a range of uses on the site.<sup>369</sup> After MLF selected and purchased its present twenty-seven-acre site, Alan Graham realized that small tiny homes could also provide adequate shelter in the village.<sup>370</sup> Graham approached a chapter of the American Institute of Architects to create a tiny homes design competition for the tiny homes that would be on the site.<sup>371</sup> The four design models that Community First! Village currently uses emerged from this competition.<sup>372</sup> Unlike the villages described earlier, Community First! Village uses a traditional landlord and tenant housing tenure.<sup>373</sup> Formerly homeless people sign a lease agreement and pay rent.<sup>374</sup> The rent covers the costs of the electricity for the tiny homes and the canvas-sided cottages, and some of the costs of maintaining the village common areas, such as toilets, showers, laundry, and the outdoor kitchens.<sup>375</sup>

Before a prospective resident's ability to pay is assessed, prospective residents must complete a Coordinated Community Assessment that evaluates the prospective tenant's homeless status for at least one year, and their health and disability status.<sup>376</sup> The Coordinated Community Assessment enables MLF to ensure they are serving chronically homeless individuals and families.<sup>377</sup> It also enables MLF to work with caseworkers to assess residents' service needs.<sup>378</sup> Community First! Village also

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369. See ULI AUSTIN CASE STUDY, *supra* note 343, at 4–8.

370. *Id.* at 4.

371. *Id.*

372. *Id.* at 5.

373. The central feature of contemporary landlord-tenant law is the lease which specifies the agreed-upon possession and use terms, as well as the landlord and tenant obligations including the amount of the rent and the terms of the tenancy. JOHN G. SPRANKLING, UNDERSTANDING PROPERTY LAW 234 (3d ed. 2012) (defining modern landlord-tenant law as “an evolving compromise between two competing bodies of law: traditional property law concepts and emerging contract law doctrines”).

374. See Telephone Interview with Jamie May, Property Manager, Community! First Village (Nov. 30–Dec. 1, 2018) (notes on file with author).

375. See *Community First Village Statement of Resident Qualifying Criteria*, MOBILE LOAVES & FISHES 1, <https://mlf.org/wp-content/uploads/2018/09/Resident-Qualifying-Criteria-for-website-2018.09.05.pdf> [<https://perma.cc/CY67-MBGB>] [hereinafter *Community First Village Statement of Resident Qualifying Criteria*] (last updated Aug. 1, 2018).

376. See *id.* at 2.

377. *Id.* at 1.

378. See *Experiencing Homelessness?*, ECHO, <http://www.austinecho.org/cal> [<https://perma.cc/FC4T-SYX3>].

has a medical facility on site that provides residents with physical and mental health screenings as well as respite and hospice care.<sup>379</sup>

Prospective residents must also complete a criminal background check.<sup>380</sup> A past or present history as a sex offender precludes prospective residents from becoming tenants in the village.<sup>381</sup> Other criminal history that may preclude a prospective tenant from becoming a resident includes: “capital murder, murder/manslaughter, kidnapping, child molestation, rape, and crimes of a sexual nature, or arson.”<sup>382</sup> Applicants with a misdemeanor assault record within seven years of applying for a unit in limited circumstances may be accepted as a resident if they successfully complete anger management courses provided by MLF.<sup>383</sup> These requirements protect the safety of residents at the village and minimize NIMBY concerns. Many of the lower-level misdemeanors that often preclude formerly homeless people from becoming renters in typical units do not preclude them from becoming residents at the village.<sup>384</sup> While there are barriers to accessing the village, the barriers are lower than in more typical rental units in Austin.<sup>385</sup> Community First! Village is also a drug-free campus.<sup>386</sup> Once a formerly homeless person becomes a renter at the village they can remain a resident in the village indefinitely.<sup>387</sup> There is no time limit on how long someone can be a resident.<sup>388</sup> Some formerly homeless people use the

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379. ULI AUSTIN CASE STUDY, *supra* note 343, at 1.

380. *See Community First Village Statement of Resident Qualifying Criteria*, *supra* note 375, at 2.

381. *How to Apply for a Home*, *supra* note 354.

382. *See Community First Village Statement of Resident Qualifying Criteria*, *supra* note 375, at 2.

383. *See id.*

384. Lynn M. Clark, *Landlord Attitudes Toward Renting to Released Offenders*, 71 FED. PROB. 20, 23–24 (2007).

385. *See, e.g., LOCKED OUT: CRIMINAL HISTORY BARRIERS TO AFFORDABLE RENTAL HOUSING IN AUSTIN & TRAVIS COUNTY, TEXAS, AUSTIN/TRAVIS COUNTY REENTRY ROUNDTABLE 4* (2016), <http://www.austinecho.org/wp-content/uploads/2017/12/Criminal-Background-White-Paper.pdf> [<https://perma.cc/GD8G-72GZ>].

386. *See MOBILE LOAVES FAQs*, *supra* note 368 (requiring residents to comply with laws prohibiting possession of illegal drugs).

387. *See Kimble*, *supra* note 338.

388. *See MOBILE LOAVES FAQs*, *supra* note 368.

village as a stepping stone to more traditional housing and others remain at the village long-term.<sup>389</sup>

The renters at Community First! Village, however, also live in a cohousing village setting. All members of the village can benefit economically and socially from participating in maintaining the shared amenities and undertaking communal micro-enterprise and artisan endeavors.<sup>390</sup> Homeless people often lose connections to positive communities that can advance their human flourishing.<sup>391</sup> Community First! Village restores these connections through a range of shared amenities and community activities that give residents an opportunity to earn nominal wages and gain skills.<sup>392</sup> Community First! Village also has a woodworking shop in which residents can gain transferable skills as artisans that they can use when, and if, they exit the community.<sup>393</sup> There are outdoor places for worship, a memorial garden, and a prayer labyrinth.<sup>394</sup>

One unique feature of Community First! Village is that it provides opportunities for formerly homeless people to experience community with housed or non-homeless people. The site has an Outdoor Community Movie Theater provided by famous movie theater purveyor, Alamo Drafthouse.<sup>395</sup> Residents of Community First! Village work at the concessions stands and in the theater.<sup>396</sup> Work at the theater and other opportunities at the village can serve as a dignified income for renting a unit in certain cases, or as compensation that can be used to pay the monthly rent or other expenses.<sup>397</sup> The site also has a bed and breakfast called the Community Inn which enables housed residents to rent more luxurious RVs or tiny homes on the site via

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389. *See id.*

390. *See Community Works, supra* note 337.

391. *E.g.*, Michael Rowe & Charles Barber, *The Power of Giving Homeless People a Place to Belong*, CITYLAB (June 12, 2018), <https://www.citylab.com/solutions/2018/06/the-power-of-giving-the-homeless-a-place-to-belong/562595/> [<https://perma.cc/9J2X-2AX4>].

392. *See Community Works, supra* note 337.

393. *See id.*

394. *Community First! Village, supra* note 345.

395. *Community Cinema*, MOBILE LOAVES & FISHES, <https://mlf.org/community-cinema/> [<https://perma.cc/ENM3-Q4QH>].

396. *See id.*

397. *See Community Works, supra* note 337; *see also* Telephone Interview with Jamie May, *supra* note 374.

Airbnb.<sup>398</sup> Airbnb renters can stay overnight at the village and interact with village residents through community service projects, the community theater, community woodworking projects, beekeeping, or other artisan activities.<sup>399</sup> Although Community First! Village does not utilize an alternative housing tenure, it provides a meaningful example of a large-scale permanent tiny homes village that advances the human flourishing of a significant number of formerly homeless people.

Similar to Community First! Village, the Dwellings is the first partially-completed, large-scale, rental tiny homes community for the homeless and unhoused in Florida.<sup>400</sup> Located in Tallahassee, Florida, it is a sustainable tiny homes village community that serves the “financially, socially, or institutionally disadvantaged.”<sup>401</sup> The village offers three models of rental homes: small homes are 220 square feet per unit and rent for \$600 per month; medium homes are 290 square feet per unit and rent for \$750 per month; and large homes are 410 square feet per unit and rent for \$900 per month.<sup>402</sup> The rent is a flat fee that covers utilities and there are no upfront fees, making it low-barrier housing.<sup>403</sup> The village’s design facilitates communal relations between residents and the sharing of facilities and space. Upon completion, the Dwellings will have up to 130 tiny homes in a village setting that includes: communal laundry services, walking trails, a community center, community gardens, a hydroponic greenhouse, a community kitchen and dining hall, outside gathering spaces, training and educational facilities, and

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398. See COMMUNITY INN, <https://communityinn.mlf.org> [<https://perma.cc/KEZ9-2D8J>].

399. See *About the Community Inn*, COMMUNITY INN, <https://communityinn.mlf.org/about-us/> [<https://perma.cc/6UPS-BZRM>].

400. See *Florida Philanthropist Creates Unprecedented Housing Concept for the Disadvantaged*, DWELLINGS (Apr. 4, 2019), [http://www.thedwellings.org/wp-content/uploads/2019/04/Dwellings-Community-Center-PR-4\\_4\\_19.pdf](http://www.thedwellings.org/wp-content/uploads/2019/04/Dwellings-Community-Center-PR-4_4_19.pdf) [<https://perma.cc/5PWW-U5BA>].

401. See *Our Program*, DWELLINGS, <http://www.thedwellings.org/about-our-program/> [<https://perma.cc/A2PQ-6UT3>].

402. *Housing*, DWELLINGS, <http://www.thedwellings.org/housing/> [<https://perma.cc/9JWZ-34NL>].

403. See *Tackling Homelessness: More Affordable Housing in Tallahassee*, WTXL TALLAHASSEE (Dec. 19, 2018), [https://www.wtxl.com/news/tackling-homelessness-more-affordable-housing-in-tallahassee/article\\_1ca17b84-03d6-11e9-aa60-738a0e3776c9.html](https://www.wtxl.com/news/tackling-homelessness-more-affordable-housing-in-tallahassee/article_1ca17b84-03d6-11e9-aa60-738a0e3776c9.html).

shuttle services to connect residents to resources and work opportunities in the broader Tallahassee community.<sup>404</sup> Each unit has a low-carbon footprint<sup>405</sup> and high-tech amenities such as smart meters to measure utility consumption, solar powered options, smart televisions, lighting, door knobs, fans, locks, and air conditioning units, as well as an Amazon Echo for health care and transportation assistance.<sup>406</sup> Like Community First! Village, the Dwellings is a drug-free campus.<sup>407</sup>

CESC, Inc. is the nonprofit owner of the project and property manager of the facility.<sup>408</sup> Since the Dwellings is a supportive rental housing community, all residents are required to participate in on-site case management to resolve barriers to attaining long-term housing and self-sufficiency as well as to attend resident meetings whenever they are held.<sup>409</sup> Any resident who cannot attend one of the resident town hall meetings must get an exemption from CESC program staff.<sup>410</sup> The Dwellings only requires limited community participation from residents, yet, like Community First! Village, the Dwellings encourages community participation through the village's design and social norms. Notably, wealthy area business man and developer, Rick Kearney, who funded a nearby Tallahassee homeless shelter, had the vision to create the Dwellings, a \$7.8 million project.<sup>411</sup> Kearney envisioned that the Dwellings could mitigate homelessness, spur community development, and provide affordable housing alternatives.<sup>412</sup> The Dwellings project did face initial NIMBY resistance and was the subject of litigation, but the county adopted

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404. See *Our Community*, DWELLINGS, <http://www.thedwellings.org/about-our-community/> [<https://perma.cc/4NXC-U4EK>].

405. See *Our Program*, *supra* note 401.

406. *Our Technology*, DWELLINGS, <http://www.thedwellings.org/about-our-technology/> [<https://perma.cc/M2GM-5P5Z>].

407. *The Dwellings Program Agreement*, DWELLINGS 1, <http://www.thedwellings.org/wp-content/uploads/2018/08/Dwellings-Program-Agreement.pdf> [<https://perma.cc/LFS7-E8RF>] [hereinafter *The Dwellings Program Agreement*].

408. See *Connecting Everyone with Second Chances*, CESC, <http://cesctlh.org> [<https://perma.cc/VZ75-J6F3>].

409. See *The Dwellings Program Agreement*, *supra* note 407, at 1–2.

410. See *id.* at 2.

411. TaMaryn Waters, *'Tiny House' Community Proposed in Southwest Tallahassee*, TALLAHASSEE DEMOCRAT (Apr. 1, 2016), <https://www.tallahassee.com/story/money/2016/04/01/tiny-house-community-proposed-northwest-tallahassee/82389800/> [<https://perma.cc/SMH8-57TS>].

412. See *id.*



the recommendations of an administrative law judge and the project moved forward.<sup>413</sup>

Kahauiki Village, in Oahu, Hawaii, is a 11.3-acre developing affordable housing community that will consist of 144 one- and two-bedroom plantation-style tiny homes for homeless and unhoused families with children.<sup>414</sup> Families must first receive rehabilitation services at local social service agencies before they are eligible to live in Kahauiki Village.<sup>415</sup> The village will provide long-term, permanent, affordable rental housing for approximately 153 families, or up to 600 people.<sup>416</sup> Each unit will have electricity and its own kitchen and bathroom.<sup>417</sup> The housing is designed for families who work and have children, but who are homeless or unhoused.<sup>418</sup> The one-bedroom homes rent for \$725 per month and the two-bedroom homes rent for \$900 per month, utilities included—all below-market rents in Hawaii.<sup>419</sup> The village also provides work and training opportunities on site to help residents afford the rent and become more self-sufficient.<sup>420</sup>

Kahauiki Village is also the brain child of Hawaiian wealthy business man and aio founder, Duane Kurisu.<sup>421</sup> He is the son of a Hawaiian sugar plantation worker and was raised on the big island's famous Hakalau plantation camp.<sup>422</sup> The camp had sixty or more small hut-style homes grouped around central quads

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413. TaMaryn Waters, *Big Step for 'Tiny House' Development*, TALLAHASSEE DEMOCRAT (June 14, 2016), <https://www.tallahassee.com/story/money/2016/06/14/big-step-tiny-house-development/85897946/> [<https://perma.cc/24H5-83FD>].

414. KAHAIKI VILLAGE, <http://www.kahauiki.org> [<https://perma.cc/HUF4-WU9L>].

415. *See id.*

416. *Id.*

417. *Id.*

418. *See id.*

419. Stephanie Silverstein, *Welcome Home*, HAWAII HOME + REMODELING (Dec. 2017), <https://hawaiihomemag.com/Article/welcome-home-0> [<https://perma.cc/T562-2WQZ>].

420. KAHAIKI VILLAGE, *supra* note 414.

421. Robbie Dingeman, *Once-Homeless Families Move into Sand Island's New Kahauiki Village*, HONOLULU MAG. (Jan. 12, 2018), <http://www.honolulumagazine.com/Honolulu-Magazine/January-2018/Once-Homeless-Families-Move-into-Sand-Islands-New-Kahauiki-Village/> [<https://perma.cc/TFB2-LJ5P>].

422. Allyson Blair, *Tiny Homes Development Aimed at Helping Ease Homeless Crisis*, HAWAII NEWS NOW (July 14, 2016), <https://www.hawaiinewsnow.com/story/32451059/hawaii-businessman-brings-tiny-homes-to-hawaii-to-ease-homeless-crisis/> [<https://perma.cc/54KF-YYE5>].

with recreational spaces and shared resources.<sup>423</sup> In 2011, Kurisu purchased approximately 200 modular homes from Japan where the homes were used to house “more than 5,000 people in Japan displaced by the Tohoku earthquake and tsunami.”<sup>424</sup> Kurisu thought to use the emergency homes to create an affordable housing tiny homes village for homeless families with children.<sup>425</sup> Kahauiki Village is also the product of a public-private partnership between the state of Hawaii, the city and county of Honolulu, and the aio Foundation.<sup>426</sup> The project is on state-owned land which the state transferred to the city and county, which then leases it for \$1.00 per year for twenty years to the aio Foundation.<sup>427</sup> The city agreed to dedicate approximately \$4 million to the project for separate water and sewer facilities for the site.<sup>428</sup> The village also has its own separate efficient microgrid and energy storage facility, enabling the project to operate almost entirely off Oahu’s power grids.<sup>429</sup> Phase one of the project completed thirty homes in December 2017.<sup>430</sup> “[E]ach residence is remodeled from the emergency homes built for the Tohoku, Japan tsunami victims by System House, formerly known as Komatsu.”<sup>431</sup> The wooden siding and corrugated roofs added to the homes are reminiscent of the old Hawaiian plantation-style communities.<sup>432</sup> During the mid-1900s, sugar plantation owners

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423. WYLAN MARQUEZ, HAWAII PLANTATION VILLAGE DESIGN CONCEPTS: SUBDIVISIONS TO VILLAGES IN HAWAII, NORTH KOHALA 39–40 (May 2012), [https://scholarspace.manoa.hawaii.edu/bitstream/10125/45696/Marquez\\_Wylan\\_Spring%202012.pdf](https://scholarspace.manoa.hawaii.edu/bitstream/10125/45696/Marquez_Wylan_Spring%202012.pdf) [<https://perma.cc/FF5S-YZJF>].

424. Blair, *supra* note 422.

425. See KAHAIKI VILLAGE, *supra* note 414.

426. *Id.*; aio Foundation, AIO, <https://www.aiohawaii.com/aio-foundation/> [<https://perma.cc/9672-GAEQ>] (“The aio Foundation is a 501(c)3 nonprofit that supports programs that empower Hawaii.”).

427. KAHAIKI VILLAGE, *supra* note 414.

428. Blair, *supra* note 422.

429. Stephanie Silverstein, *Microgrid, Major Savings*, HAW. HOME + REMODELING (Dec. 2017), <https://hawaiihomemag.com/Article/microgrid-major-savings> [<https://perma.cc/EY9G-BZUL>].

430. Moanike’ala Nabarro, *30 Homeless Families on Oahu Will Have a Place to Call Home Next Month*, KITV (Dec. 15, 2017), <https://www.kitv.com/story/37080157/30-homeless-families-on-oahu-will-have-a-place-to-call-home-next-month> [<https://perma.cc/G32P-SHZ4>].

431. KAHAIKI VILLAGE, *supra* note 414.

432. *Id.*

built majestic Hawaiian Kama'aina homes.<sup>433</sup> Field laborers lived in small “camp houses” with limited shared amenities.<sup>434</sup>

Like the old Hawaiian plantation communities, Kahauiki Village facilitates community interactions and associations through its physical design and layout. The modular homes are placed in a circular arrangement so units face one another.<sup>435</sup> There are designated areas for community vegetable gardens, fruit trees, and fish farms that facilitate interactions between residents and help residents pay their rents and develop skills.<sup>436</sup> There is a coin-operated central laundry facility and drying lines on the sides of homes to minimize laundry facility use.<sup>437</sup> The village has a preschool and a daycare for children who are not school-aged.<sup>438</sup> These facilities enable families and single parents to obtain work opportunities. Residents can also use these common facilities for evening events when the preschool and daycare are not in use.<sup>439</sup> Lastly, the village is located near United Laundry, a company that has agreed to hire formerly homeless Kahauiki Village residents in need of work.<sup>440</sup> Hata & Co. is also providing job training in the food and beverage industry for Kahauiki residents in need of work.<sup>441</sup>

In each of these three case studies, homeless people, homeless advocates, and municipalities adapted the cohousing model to mitigate homelessness. The villages also demonstrate various design choices and activities that facilitate communal relations, encourage residents to share scarce resources, enhance their collective well-being, and develop positive social and economic networks.

Housing scholarship often criticizes rental communities with significant concentrations of poor people.<sup>442</sup> The mixed-income philosophy heralds mixed-income communities in which

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433. *Id.*

434. *See id.*

435. *Id.*

436. *Id.*

437. *Id.*

438. *Id.*

439. *Id.*

440. *Id.*

441. *Id.*

442. *See generally* WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987); Robert C. Ellickson, *The False Promise of the Mixed-Income Housing Project*, 57 *UCLA L. REV.* 983 (2010).

poor residents live with middle- and upper-class mentors to forge more positive social networks.<sup>443</sup> While municipalities should still pursue deconcentration of poverty in certain instances, these case studies show how the most vulnerable, low-income people can live together in smaller, very productive communities that restore self-worth and self-determination. Municipalities and developers can replicate the cohousing and communal aspects of these rental arrangements in other contexts while maintaining efficiencies of scale. This Article's analysis of these villages suggests that some formerly homeless people may value the community-building, sharing, and caretaking-in-common features of cohousing, as property access and tenure become increasingly insecure and unpredictable.<sup>444</sup> These co-management, sharing, and community-building features are desirable, precisely because they grant unhoused people control over their environment during periods of chaos and provide vulnerable people a positive community during difficult times.

#### B. SMALLER-SCALE CO-VILLAGES FOR VETERANS AND SPECIAL POPULATIONS

Other smaller-scale rental tiny homes villages cater to special populations. Tiny homes villages for veterans are popular in many cities. The Veterans Community Project (VCP) in Kansas City, Missouri is a 501(c)(3) nonprofit, started in 2015 by veteran

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443. See Alexander, *supra* note 43 (explaining the deconcentration hypothesis).

444. Tiny homes villages for the homeless and unhoused also exemplify effective stakeholder collaboration and management of the urban commons. Professors Sheila Foster and Christian Iaione in *The City as a Commons*, proffer their theory of "urban collaborative governance" as a more effective way to mitigate resource conflicts within the city than public or private ownership. Foster & Iaione, *supra* note 34, at 335. The state plays a facilitative, rather than top-down command and control role in urban collaborative governance, and "redistributes decision making power and influence away from the center and towards an engaged public." *Id.* The state merely creates the conditions under which citizens and stakeholders can develop collaborative relationships. *Id.* at 346. Tiny homes villages for unhoused people successfully collaborate to manage the urban commons. *Id.* at 347. The stakeholder collaborations often include homeless people, public cities, counties, and states, as well as third-sector nonprofits, and fourth-sector social enterprises, seeking to make profits and enhance the public good. See *id.* at 329–30. These examples also show a powerful role for traditionally marginalized stakeholders in housing and urban reform. See generally *id.*

Chris Stout and other formerly homeless veterans.<sup>445</sup> VCP's mission is to eliminate veteran homelessness through transitional housing in the form of tiny homes villages and to connect veterans to needed services.<sup>446</sup> VCP built its first tiny homes village in Kansas City with forty-nine completed homes.<sup>447</sup> Each home is 240 or 360 square feet on a foundation and connects to city electricity, water, and sewer services.<sup>448</sup> Each home comes equipped with "furniture, kitchen supplies, linens, toiletries, food and even gift baskets of coffee and cookies."<sup>449</sup> The village also facilitates camaraderie among veterans and provides needed services including: outreach services, identification issues, financial counseling, discharge upgrades, disability, various mental and physical health services, substance abuse treatment, independent living skills, cooking classes, case management, veterinary services, transition services, homeless prevention services, and mentoring services.<sup>450</sup> One veteran resident analogized the village to the military "barracks lifestyle," in which service members take care of each other and foster community.<sup>451</sup> VCP seeks to replicate its model in St. Louis, Missouri; Denver, Colorado; and Nashville, Tennessee.<sup>452</sup> The James A. Peterson Veteran Village and SC Johnson Community Center in Racine, Wisconsin, created by Veterans Outreach of Wisconsin, is another veterans' cohousing village that provides shelter, services, and community to formerly homeless veterans.<sup>453</sup> Approximately twelve other tiny homes for homeless veterans' projects are in development throughout the United States.<sup>454</sup>

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445. Kathleen Toner, *Veteran: Tiny Houses for Homeless Vets Make a Lot of Sense*, CNN (Dec. 9, 2018), <https://www.cnn.com/2018/10/18/us/cnnheroes-chris-stout-veterans-community-project/index.html> [<https://perma.cc/5BCN-4JN3>].

446. *Frequently Asked Questions*, VETERANS COMMUNITY PROJECT, <https://www.veteranscommunityproject.org/faq-s> [<https://perma.cc/8EA2-86P7>] [hereinafter *Veterans FAQ*].

447. *Id.*

448. *Id.*

449. Toner, *supra* note 445.

450. *See id.*; *VCP Village*, VETERANS COMMUNITY PROJECT, <https://www.veteranscommunityproject.org/vcpkc> [<https://perma.cc/38PW-7U62>]; *Veterans FAQ*, *supra* note 446.

451. Toner, *supra* note 445.

452. *Id.*; *see also Veterans FAQ*, *supra* note 446.

453. *The Veteran Village*, VETERANS OUTREACH WIS., <https://vetsoutreachwi.us/vets-village/> [<https://perma.cc/QJ9E-XJYX>].

454. Alexander, *Tiny Homes Villages Projects*, *supra* note 18.

Some villages are single-sex villages.<sup>455</sup> Second Wind Cottages, for example, is a tiny homes village for homeless men in Newfield, New York outside of downtown Ithaca, New York.<sup>456</sup> “From September 2013–January 2014, Second Wind built six single-occupancy 16’x20’ year-round cottages for formerly homeless men.”<sup>457</sup> Three additional cottages were built each year bringing the total number of cottages to eighteen by 2018.<sup>458</sup> Each cottage costs approximately \$12,000 to \$15,000 to build, and residents are encouraged, but not required, to provide sweat equity to assist with construction costs.<sup>459</sup> There is a small administrative building on site which has a kitchenette and washing machines and dryers for residents.<sup>460</sup> “Second Wind does not turn away the most difficult[-]to[-]place felons, including arsonists and sex offenders.”<sup>461</sup> The residents pay rent as they are able to help defray operating expenses.<sup>462</sup> Residents have access to certain services and communal activities such as “a drug and alcohol counselor, GED assistance, Christian fellowship and support, life skills training, meals and social events such as movie nights with other residents and the larger community, laundry facilities, exercise equipment, and a food pantry.”<sup>463</sup> The site is also on a bus route which gives residents access to jobs and other municipal resources.<sup>464</sup> Residents can stay as long as they want, but at least six residents progressed from the village to more traditional permanent housing.<sup>465</sup> Second Wind Cottages also has plans to build another tiny homes village on nearby land for women and children.<sup>466</sup>

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455. See, e.g., SECOND WIND COTTAGES, <https://www.secondwindcottages.org> [<https://perma.cc/DGK9-UAT7>] (describing a tiny homes village for homeless men).

456. *Id.*

457. *Our Story*, SECOND WIND COTTAGES, <https://www.secondwindcottages.org/our-story> [<https://perma.cc/4SAA-XY9V>].

458. Jaime Cone, *Second Wind Cottages Expands*, ITHACA.COM (Feb. 18, 2017), [https://www.ithaca.com/news/newfield/second-wind-cottages-expands/article\\_e9d9581e-f3a8-11e6-b404-cb36737515dd.html](https://www.ithaca.com/news/newfield/second-wind-cottages-expands/article_e9d9581e-f3a8-11e6-b404-cb36737515dd.html) [<https://perma.cc/5LMD-9TPC>].

459. *Id.*

460. *Id.*

461. *Id.*

462. *Id.*

463. SECOND WIND COTTAGES, *supra* note 455.

464. Cone, *supra* note 458.

465. *Id.*

466. *Id.*

Kenton Women's Shelter in Portland, Oregon is another creative transitional tiny homes village for homeless and low-income women.<sup>467</sup> The village has fourteen sleeping pods that are eight-by-twelve feet at the largest.<sup>468</sup> The common spaces include a fully operational kitchen and shower facilities, housed in customized shipping containers, as well as a community garden to promote positive social interactions among residents.<sup>469</sup> Catholic Charities provides services to the residents including case management, employment assistance, access to legal and financial services, mental and physical health care, as well as support in creating a personalized transition plan to permanent housing.<sup>470</sup> Although Kenton Village only provides temporary transitional housing, the privacy, safety, and opportunities for self-governance, self-determination, and leadership that the village affords women is a welcome alternative to the bureaucracy, noise, and lack of privacy and safety in many emergency shelters.<sup>471</sup>

In addition to single-sex villages, a few others cater to homeless youth.<sup>472</sup> These examples illustrate how nonprofits and municipalities use the cohousing village model to serve select populations. These villages, however, only serve limited numbers of residents and do not meet the overwhelming need for these projects.<sup>473</sup> However, the villages do help reduce homelessness and promote human flourishing in unique ways.

Lastly, some smaller villages adopt a purely housing first<sup>474</sup> permanent supportive housing model in which chronically homeless individuals with substance abuse histories receive housing

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467. *Kenton Women's Village*, CATH. CHARITIES, <https://www.catholiccharitiesoregon.org/services/housing-services/446kenton-womens-village/> [<https://perma.cc/Z3QF-PXSG>].

468. *Id.*

469. *Id.*

470. *Id.*

471. *Id.*

472. *See, e.g.*, YOUTH SPIRIT ARTWORKS, <http://youthspiritartworks.org> [<https://perma.cc/LHU9-EBZX>] ("Youth Spirit Artworks (YSA) . . . is committed to empowering homeless and low-income San Francisco Bay Area young people, ages 16-25.").

473. *See, e.g.*, *Homelessness Statistics*, CITY PORTLAND, <https://www.portlandoregon.gov/toolkit/article/562207> [<https://perma.cc/QW6N-T848>] (counting the number of homeless unsheltered people in Oregon's Multnomah County as almost 1,900 as of 2015).

474. *What Housing First Really Means*, NAT'L ALLIANCE TO END HOMELESSNESS (Mar. 18, 2019), <https://endhomelessness.org/what-housing-first-really>

before remediation.<sup>475</sup> One example is the Cottages at Hickory Crossing, a tiny homes village serving fifty chronically homeless individuals in Dallas, Texas.<sup>476</sup> The project is the product of a public and private consortium between the nonprofit CitySquare, the Joint Dallas County Mental Health and Mental Retardation Center, Dallas County Jail Mental Health Steering Committee, and UT Southwestern Medical Center.<sup>477</sup> The project's goal is to reduce city expenditures on homelessness by serving those "who create the biggest financial burden on Dallas tax payers [sic]."<sup>478</sup> Residents are provided adequate shelter, extensive services, and communal life in a tiny homes village.<sup>479</sup> The Cottages at Hickory Crossing project was budgeted to cost \$10 million to acquire the land, construct the facilities, and operate for three years.<sup>480</sup> The units are approximately 430 square feet with a kitchen, a small bedroom, and a bathroom with a shower.<sup>481</sup> The units are arranged in groups of six or eight units with a common green space.<sup>482</sup> Villagers pay as much rent as they are able given their respective sources of income, with a minimum mandatory rent of fifty dollars per month.<sup>483</sup> Each unit

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-means/ [<https://perma.cc/39AB-388W>] ("This is what we mean by Housing First: that homelessness is a problem with a solution, and that the solution is housing. For everyone. Whether you follow the rules or not. Whether you are 'compliant' with treatment or not. Whether you have a criminal record or not. Whether you have been on the streets for one day or ten years. Permanent housing is what ends homelessness. It is the platform from which people can continue to grow and thrive in their communities.").

475. See, e.g., *Housing First Initiatives*, HRDC BOZEMAN, <https://thehrdc.org/how-we-help/housing/housing-first-initiatives/> [<https://perma.cc/4GJ4-ZEJX>] (discussing Bozeman's Housing First Village, "which limits the barriers to entry . . . while providing supportive services, such as mental health [and] addiction services").

476. Kristin Dickerson, *Tiny Homes for Dallas' Chronically Homeless*, NBC DFW (June 14, 2018), <https://www.nbcdfw.com/news/local/Tiny-Homes-For-Dallas-Chronically-Homeless-483403151.html> [<https://perma.cc/7PUG-JFV8>].

477. Mark Lamster, *How Tiny Houses and Shipping Containers Just Might Solve the Dallas Homeless Crisis*, DALLAS MORNING NEWS (Apr. 18, 2018), <https://www.dallasnews.com/arts/arts/2018/04/18/tiny-houses-shipping-containers-just-might-solve-dallas-homeless-crisis> [<https://perma.cc/JG4D-VGTT>].

478. Dickerson, *supra* note 476.

479. *Id.*

480. *Id.*

481. *Id.*

482. *Id.*

483. *Id.*



is also allotted a parking space.<sup>484</sup> There is a 3,000 square foot common building with administrative and caseworker offices as well as common spaces.<sup>485</sup> The village is located across the street from other services CitySquare provides, including a food bank, an employment center, a clinic, and a thrift store.<sup>486</sup> The retention rate for residents is an impressive eighty percent.<sup>487</sup> Critics argue that small, supportive housing tiny homes villages are expensive compared to the small number of homeless people served,<sup>488</sup> but compared to the high emergency room and criminal justice costs that municipalities often spend on the chronically homeless,<sup>489</sup> tiny homes villages may have some efficiencies.

The tiny homes cohousing rental villages analyzed in this Article demonstrate how communities can use the rental housing tenure in tiny homes co-villages that emphasize community. These examples also indicate how landlords could structure villages to bring low-income and market-rate individuals into community with each other to advance common life needs in a cost-effective way. Independent low- and moderate-income seniors could live in tiny homes villages with millennials seeking affordable housing, community, and mentorship. The villages could require millennials and seniors to participate in community decision-making meetings. Millennials could periodically volunteer to provide needed services to aging seniors, such as mowing community lawn spaces as well as reading with and assisting aging seniors. Conversely, qualifying aging seniors could volunteer to help run on-site childcare for working millennials with children.<sup>490</sup> These villages, therefore, illustrate an increasingly vital role for community in housing opportunities for vulnerable people.

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484. *Id.*

485. *Id.*

486. *Id.*

487. *Id.*

488. *Id.*

489. *Ending Chronic Homelessness Saves Taxpayers Money*, NAT'L ALLIANCE TO END HOMELESSNESS (Feb. 17, 2017), <https://endhomelessness.org/resource/ending-chronic-homelessness-saves-taxpayers-money-2> [<https://perma.cc/G3JG-3UL4>].

490. Ina Jaffe, *A Community Built Around Older Adults Caring for Adoptive Families*, NPR (Aug. 4, 2015), <https://www.npr.org/2015/08/04/429219678/at-hope-meadows-in-illinois-older-adults-help-families-care-for-foster-children> [<https://perma.cc/R28H-QQSH>].

IV. TINY HOMES CO-VILLAGES: THE CASE FOR  
COMMUNITY IN PROPERTY

“We’re saying we’d rather be part of a community . . . that’s pulling together to solve a problem.”<sup>491</sup>

A. CONTINUUM OF TINY HOMES CO-VILLAGES FOR UNHOUSED  
PEOPLE

This Part argues that municipalities should create a panoply of tiny homes cohousing villages for unhoused people because these communities, if properly designed, can have an ameliorative effect on formerly homeless and vulnerable people that advances human flourishing. Municipalities, in collaboration with the nonprofit and private sectors, can develop a continuum of tiny homes co-villages for unhoused people that embrace the ameliorative power of community. Stewardship can become one option, among a continuum of housing tenures, for tiny homes villages for unhoused people in any municipality.

A few tiny homes villages for unhoused people embrace a more traditional ownership model.<sup>492</sup> Tiny Homes Detroit, for example, is a project of nonprofit Cass Community Social Services (CCSS), which develops programs to provide food, health, housing, and jobs in areas of concentrated poverty within Detroit, Michigan.<sup>493</sup> The project will comprise a total of twenty-five tiny homes in a village structure with each home ranging from 250 to 400 square feet per unit.<sup>494</sup> So far approximately thirteen homes have been built by volunteers; “six more are under construction with six more planned.”<sup>495</sup> Each home will sit on its own foundation and lot with a front porch or rear deck to maximize living space.<sup>496</sup> Tiny Homes Detroit will serve a range of unhoused and

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491. Eric Westervelt, *Tiny Homes for Homeless Get the Go-Ahead in the Wake of California’s Worst Wildfire*, NPR (Feb. 18, 2019), <https://www.npr.org/2019/02/18/694863105/tiny-homes-for-homeless-get-the-go-ahead-in-the-wake-of-californias-worst-wildfire> [<https://perma.cc/AH45-PYXJ>].

492. See, e.g., *Tiny Homes Detroit*, CASS COMMUNITY SOC. SERVS., <https://casscommunity.org/tinyhomes/> [<https://perma.cc/B9ZS-LNQU>] [hereinafter *Tiny Homes Detroit*].

493. *About Cass Community Social Services*, CASS COMMUNITY SOC. SERVS., <https://casscommunity.org/about/about/> [<https://perma.cc/P4DW-TJWY>].

494. *Tiny Homes Detroit*, *supra* note 492.

495. T.R. Goldman, *In Detroit, Tiny Homes Are More than a Lifestyle Trend*, POLITICO MAG. (July 11, 2019), <https://www.politico.com/magazine/story/2019/07/11/housing-detroit-tiny-homes-trend-227274> [<https://perma.cc/7DDB-SBW9>].

496. *Tiny Homes Detroit*, *supra* note 492.

hard-to-house people including formerly homeless people, senior citizens, low-income college students, children aging out of foster care, and a few CCSS staff members.<sup>497</sup> All village residents must qualify as low-income.<sup>498</sup>

Tiny Homes Detroit uses a rent-to-own model.<sup>499</sup> Initially, residents will rent their tiny homes at the cost of one dollar per square foot, which means rents will range from \$250 to no more than \$400 per month.<sup>500</sup> However, anyone who remains in the community for seven years will have the opportunity to own the tiny home and the lot upon which it sits.<sup>501</sup> The project also enables individuals with incomes less than \$8,000 per year to rent and own quality homes.<sup>502</sup> The requirements for admission into the Tiny Homes Detroit community are more rigorous than many of the other villages analyzed in this Article, but less stringent than more traditional rental or homeownership models.<sup>503</sup> “Anyone convicted of a violent offense within the last decade, drug dealing in the last five years, or a sexual offense was not considered.”<sup>504</sup> The program also “requires residents to meet with a financial coach and eventually join a home ownership association.”<sup>505</sup> Residents are also required to attend financial literacy classes and volunteer eight hours per month at the village.<sup>506</sup> The first villagers are slated to have traditional title to the homes by 2023.<sup>507</sup> Unlike some of the other villages analyzed in this Article, Tiny Homes Detroit serves many people of color.<sup>508</sup> Tiny Homes Detroit provides an example of how municipalities might use the homeownership model in a tiny house village, creating a continuum of housing options throughout a city or county area.

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497. *Id.*

498. *Id.*

499. Goldman, *supra* note 495.

500. *Id.*

501. *Id.*

502. *Id.*

503. Megan Woolhouse, *The Tiny Home Evangelist: STH Alum Takes the Trend to Detroit's Trenches*, B.U.: BOSTONIA (Mar. 27, 2018), <http://www.bu.edu/articles/2018/tiny-homes-detroit/> [<https://perma.cc/C9AP-BN8H>].

504. *Id.*

505. *Id.*

506. *Id.*

507. *Id.*

508. *Id.*

Emerald Village in Eugene, Oregon is an affordable tiny homes cooperative for low-income people.<sup>509</sup> Formerly homeless residents will become owners under this model, except they will own shares in a cooperative housing corporation, rather than owning single-family homes.<sup>510</sup> Emerald Village will have twenty-two tiny homes that qualify as “permanent dwellings” under the local building code.<sup>511</sup> Each unit will have “sleeping and living areas, a kitchenette, and bathroom—all in 160[–]300 square feet.”<sup>512</sup> The site will have common buildings that contain a community kitchen, a gathering area, laundry, restroom, and tool storage to encourage sharing.<sup>513</sup> Cooperative members will pay between \$250 and \$300 per month to help with operating costs.<sup>514</sup> “As part of this payment, each household will also accumulate a \$1,500 share, paid in increments over the course of 30 months.”<sup>515</sup> The cooperative model enables residents to accumulate an asset that they can cash out if they choose to leave the village, promoting wealth building and exit from the community as well as access to affordable housing.<sup>516</sup> Emerald Village is a project of the nonprofit SquareOne Villages, which will build a similar tiny homes village cooperative in Cottage Grove, Oregon.<sup>517</sup> SquareOne Villages also operates the transitional Opportunity Village in Eugene, Oregon.<sup>518</sup> SquareOne Villages demonstrates how nonprofits working with local officials and the homeless can create a continuum of housing choices throughout a city.

Municipalities working in collaboration with multiple stakeholders, such as nonprofits, social enterprises, corporations, and universities, should create a continuum of tiny homes villages throughout their respective jurisdictions. Temporary stewardship in a cohousing village setting could be an initial housing tenure. After two years, stewards could accrue different rights

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509. *Emerald Village Eugene*, *supra* note 318.

510. *Id.*

511. *Id.*

512. *Id.*

513. *Id.*

514. *Id.*

515. *Id.*

516. *Id.*

517. *Cottage Village*, SQUAREONE VILLAGES, <https://www.squareonevillages.org/cvc> [<https://perma.cc/K548-DRSX>].

518. *Opportunity Village*, SQUAREONE VILLAGES, <https://www.squareonevillages.org/opportunity> [<https://perma.cc/463B-G884>].

while remaining in the same tiny home unit and village. Stewards could become renters under a traditional rental or renter equity model. After five or seven years of residing at the village, a resident could transition to a rent-to-own model or a cooperative cohousing village that contains some stewardship models and in which the land is held by a broader nonprofit or municipality in a community land trust (CLT) structure.<sup>519</sup> These housing tenures could be used in one village or in noncontiguous parcels. Municipalities can explore endless creative permutations to expand the housing choices available to vulnerable people. Tiny homes projects that mandate or encourage a village or communal structure can provide an important alternative form of shelter for unhoused people.

#### B. LEGALIZING STEWARDSHIP AND TINY HOMES FOR UNHOUSED PEOPLE

Private law—e.g., informal agreements, formal contracts, deeds, and leases—creates the communal aspects of tiny homes villages. Yet, public law—e.g., local zoning laws, building codes, and local land use laws—is needed to legalize and legitimize tiny homes villages in a given jurisdiction. Tiny homes are still not legal throughout the United States.<sup>520</sup> Tiny homes that are less than 400 square feet per unit can violate local building codes, and emergency makeshift transitional homeless encampments are not permitted under many local zoning laws.<sup>521</sup> While tiny house regulations vary substantially from state to state, and cities, towns, and counties within each state have different zoning and building codes, some areas have begun to make tiny homes

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519. A CLT “is an organization created to hold land for the benefit of a community. It is a democratically structured nonprofit corporation, with an open membership and a board of trustees elected by the membership. . . . The CLT acquires land through purchase or donation with an intention to retain title in perpetuity, thus removing the land from the speculative market.” INST. FOR CMTY. ECON., *THE COMMUNITY LAND TRUST HANDBOOK* 18 (1982); *see also* *THE LEGAL GUIDE TO AFFORDABLE HOUSING DEVELOPMENT* 107 (Tim Iglesias & Rochelle E. Lento eds., 2005).

520. *See, e.g.*, HEBEN, *supra* note 53, at 34; Katherine M. Vail, *Saving the American Dream: The Legalization of the Tiny House Movement*, 54 U. LOUISVILLE L. REV. 357, 358 (2016).

521. *See, e.g.*, Vail, *supra* note 520, at 370–75 (explaining Louisville, Kentucky’s laws limiting tiny homes).

legal.<sup>522</sup> The 2018 International Residential Code defines a tiny home as “[a] dwelling that is 400 square feet (37 m<sup>2</sup>) or less in floor area excluding lofts.”<sup>523</sup> Tiny homes on foundations, therefore, should be legal in any city that has adopted the 2018 International Residential Code.

In the wake of the 2008 Great Recession, many cities amended their local building codes to permit micro-units for market-rate residents.<sup>524</sup> In some cities, such as New York City, housing maintenance code regulations on “rooming houses” limit the ownership and types of single-room occupancy units, and density regulations limit the number of micro-units on a lot.<sup>525</sup> These regulations restrict the creation of micro-units by private entities, but there are exceptions for developments run by non-profits and churches.<sup>526</sup> Some local laws also characterize tiny homes as accessory dwelling units (ADUs).<sup>527</sup> A few states have encouraged municipalities to change their building codes to accommodate ADUs.<sup>528</sup> However, some ADU laws require that ADUs can only be built as an accessory to an existing lot or dwelling and cannot be located on an independent lot,<sup>529</sup> thus, not all tiny homes units can be characterized as ADUs.

There are other land use and zoning considerations when creating a tiny homes village. Many jurisdictions use variance exceptions to local zoning codes to create tiny homes villages for

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522. See *The Legality of Tiny Houses*, TINY HOUSE DESIGN (Mar. 24, 2011), <https://tinyhousedesign.com/the-legality-of-tiny-houses/> [<https://perma.cc/V2A4-ZERF>] (noting that some communities are less restrictive of tiny homes).

523. 2018 INTERNATIONAL RESIDENTIAL CODE, *supra* note 14, app. Q., § 102.1.

524. Vicki Been et al., *Responding to Changing Households: Regulatory Challenges for Micro-Units and Accessory Dwelling Units 2* (N.Y.U. Furman Ctr. for Real Estate & Urban Policy, Working Paper Jan. 2014), [http://furmancenter.org/files/NYUFurmanCenter\\_RespondingtoChangingHouseholds\\_2014\\_1.pdf](http://furmancenter.org/files/NYUFurmanCenter_RespondingtoChangingHouseholds_2014_1.pdf) [<https://perma.cc/9ZRH-8WLK>].

525. Eric Stern & Jessica Yager, *21st Century SROs: Can Small Housing Units Help Meet the Need for Affordable Housing in New York City?* 14–15 (N.Y.U. Furman Ctr. for Real Estate & Urban Policy, Working Paper Jan. 31, 2018), <http://furmancenter.org/research/publication/21st-century-sros-can-small-housing-units-help-meet-the-need-for-affordable> [<https://perma.cc/HGL2-QLZG>].

526. *Id.* at 14.

527. See Infranca, *supra* note 74, at 69; Molli McGee, *Tiny House Laws in the United States*, TINY HOUSE SOC’Y (Dec. 13, 2018), <https://www.tinysociety.co/articles/tiny-house-laws-united-states/> [<https://perma.cc/FEE8-J74P>].

528. See Infranca, *supra* note 74, at 69.

529. McGee, *supra* note 527.

the homeless.<sup>530</sup> Other villages obtain a planned unit development zoning designation for the village.<sup>531</sup> Some cities create special zoning designations for temporary tiny homes villages.<sup>532</sup> For example, the City of Seattle in 2015 unanimously adopted an ordinance which permitted “transitional encampments . . . on City-owned or private property” for up to two years.<sup>533</sup>

Other jurisdictions codify the transitional encampment concept through state legislation. In 2001, Dignity Village encouraged the state to enact a statute that created a special zoning designation called “transitional housing accommodations.”<sup>534</sup> The legislation empowers municipalities to approve temporary, transitional campgrounds for homeless and unhoused people.<sup>535</sup> The party establishing the transitional campground can provide utilities such as water, toilets, showers, cooking facilities, laundry, or telephone services through separate or shared facilities.<sup>536</sup>

States can learn from the examples of Oregon and Washington, which both developed model statutes to permit transitional campgrounds in cases of emergency. California enacted a state law in 2017 that allowed the City of San Jose to bypass restrictive state building codes to create tiny homes villages for homeless people.<sup>537</sup> “The law requires the city to first declare a ‘shelter

530. See Emily Keable, *Building on the Tiny House Movement: A Viable Solution to Meet Affordable Housing Needs*, 11 U. ST. THOMAS J.L. & PUB. POL'Y 111, 128 (2017).

531. See discussion *supra* Part III.

532. See, e.g., Conor McCormick-Cavanagh, *Tiny Home Villages Getting Home in Denver Zoning Code This Fall*, WESTWORD (June 6, 2019), <https://www.westword.com/news/tiny-home-villages-built-into-denver-zoning-code-11369036> [<https://perma.cc/MR8C-5LJQ>].

533. SEATTLE CITY COUNCIL LEGISLATIVE SUMMARY OF ORD. NO. 124747, OFF. CITY CLERK SEATTLE 1, 3, 8 (2015), [http://clerk.seattle.gov/~archives/Ordinances/Ord\\_124747.pdf](http://clerk.seattle.gov/~archives/Ordinances/Ord_124747.pdf) [<https://perma.cc/7RRG-WWX5>].

534. OR. REV. STAT. § 446.265 (2017); see HEBEN, *supra* note 53, at 133.

535. OR. REV. STAT. § 446.265 (“A municipality may approve the establishment of a campground inside an urban growth boundary to be used for providing transitional housing accommodations. The accommodations may consist of separate facilities, in the form of yurts, for use as living units by one or more individuals or by families.”).

536. *Id.* (“The person establishing the accommodations may provide access to water, toilet, shower, laundry, cooking, telephone or other services either through separate or shared facilities. The accommodations shall provide parking facilities and walkways.”).

537. *San Jose Waives State Building Codes for Tiny Houses for the Homeless*, TINY HOUSE COMMUNITY (Oct. 9, 2016), <http://tinyhousecommunity.com/1008>

crisis’—which it did last December—and to use city-owned or city-leased land for the tiny homes. The homes must be insulated, have weather-proof roofing, lighting and electrical outlets . . . .”<sup>538</sup> Tiny homes for individuals must be a minimum of 70 square feet, and 120 square feet for couples.<sup>539</sup> The San Jose City Council approved two locations for its first emergency tiny homes villages for the homeless in 2018.<sup>540</sup> These examples show how states and localities can legalize tiny homes villages.

California state law also creates an opportunity for other cities in California to use transitional tiny homes villages as disaster relief housing.<sup>541</sup> Nonprofits in the City of Chico, in Butte County Northern California, wanted to create a tiny homes village for the homeless, but the city lacked the political will to create a village.<sup>542</sup> The political will emerged out of the ashes of the 2018 historic California Camp Fire.<sup>543</sup> The fire tore through the area killing approximately eighty people and damaging 14,000 homes.<sup>544</sup> After the fire, the Chico City Council approved a 2.6 acre site for Simplicity Village, a thirty-three unit tiny homes co-village.<sup>545</sup> Each tiny home will contain a bed, kitchenette, and bathroom.<sup>546</sup> The village will have five community buildings on site for community meetings, community meals, a community kitchen, shared laundry facilities, a workshop, and a guard-house.<sup>547</sup> Residents can also receive mental health services, health care, and job training services on site.<sup>548</sup> One third of the units will be specifically set aside for homeless victims of the Camp Fire and the other units will be for Chico’s approximately 2,000 other homeless families.<sup>549</sup> Simplicity Village shows how

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-san-jose-waives-state-building-codes-for-tiny-houses-for-the-homeless/  
[<https://perma.cc/CZ7W-9DFB>].

538. *Id.*

539. *Id.*

540. *San Jose Approves 2 Tiny Home Locations for Emergency Housing*, CBS SF BAYAREA (Dec. 19, 2018), <https://sanfrancisco.cbslocal.com/2018/12/19/san-jose-approves-tiny-home-locations-emergency-housing/> [<https://perma.cc/XFG4-A729>].

541. *Id.*

542. Westervelt, *supra* note 491.

543. *Id.*

544. *Id.*

545. *Id.*

546. *Id.*

547. *Id.*

548. *Id.*

549. *Id.*



public and private partnerships can legalize the tiny homes co-village model to respond to gentrification and to a natural disaster.

None of the previously mentioned building code, land use, or zoning categories fully legalize stewardship as a housing tenure. Currently, written or verbal contracts and agreements create stewardship.<sup>550</sup> Other rules are enforced through social norms.<sup>551</sup> The tiny house contracts clearly outline the stewards' obligations to each other, and to the village sponsor, but the duties of the village sponsor to the stewards are not well defined.<sup>552</sup> Further, nonprofit organizations, municipalities, or social enterprises seeking to advance a triple bottom line sponsor most villages.<sup>553</sup> As organizations interested in advancing social welfare, these sponsors use the stewardship or at-cost rental housing tenures to empower, rather than exploit, low-income and vulnerable tenants.<sup>554</sup> However, state statutes or local ordinances should codify stewardship as a new housing tenure and outline the minimum obligations of landlords to stewards, stewards to landlords, and stewards to each other. Stewardship differs from renting because it removes the profit motive from shelter provision and grants vulnerable people access to housing in a way that fosters positive human and social capital through property co-management and shared experiences. Just as statutes and ordinances were needed to codify condominium ownership in the 1960s, ordinances and statutes may be needed to legitimize and define stewardship in the future.<sup>555</sup> Through codification, localities can recognize stewardship as distinct from renting.

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550. See, e.g., *Entrance Agreement*, *supra* note 95 (outlining responsibilities of residents of tiny homes villages); *How to Become a Resident of OM Village*, *supra* note 83.

551. See e.g., *Entrance Agreement*, *supra* note 95 (depicting an example of a written agreement).

552. See e.g., *OM Build Tiny House Contract*, *supra* note 78.

553. Timothy F. Slaper & Tanya J. Hall, *The Triple Bottom Line: What Is It and How Does It Work?*, 86 IND. BUS. REV. 4, 4 (2011) ("The [Triple Bottom Line] is an accounting framework that incorporates three dimensions of performance: social, environmental and financial.").

554. Rent-to-own and informal housing models can often be exploitative. See Tonya L. Brito, *The Child Support Bubble*, 9 U.C. IRVINE L. REV. 953, 955 (2019) (describing rent-to-own contracts, payday loans, and subprime mortgages as potentially exploitative); see also Eligio Pementel, *Renting-to-Own: Exploitation or Market Efficiency*, 13 LAW & INEQ. 369 (1995).

555. See Jan Z. Krasnowiecki, *The Pennsylvania Uniform Planned Community Act*, 106 DICK. L. REV. 463, 473 (2002) ("There is some dispute concerning when and where the condominium concept originated. In the United States, the

Codifying the stewardship tenure may also mitigate the likelihood that profit-oriented or unscrupulous landlords will co-opt or exploit stewardship's informality,<sup>556</sup> flexibility, and community orientation for nefarious ends.<sup>557</sup> Statutes or ordinances might create different rights, rules, and obligations for permanent, rather than temporary, stewardship. Different jurisdictions might have different goals and policies for stewardship that they can codify via local ordinances or state statutes.<sup>558</sup> Statutes and ordinances might also outline the minimum due process rights of stewards, as well as reinforce villages' commitments to non-discrimination since the cohousing rules and regulations of many villages empower stewards to vote each other out of the community. Formalizing stewardship may help it become an empowering housing tenure, rather than a weak status that segregates and ghettoizes the poor and the vulnerable.<sup>559</sup> Legalizing stewardship may also enable municipalities and developers to apply the housing tenure in other contexts such as disaster relief, no-fault evictions, or extreme gentrification.

Just as medieval farmers were the paradigmatic tenants at the time of the medieval farming lease,<sup>560</sup> and the poor urban

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idea began to take hold in 1963 when the FHA published a Model Statute for Creation of Apartment Ownership. As this title indicates, the idea was first thought of as a solution to providing ownership of apartment units in high-rise structures. Until this idea took hold, the closest an apartment unit dweller could come to 'ownership' was in the cooperative form.”).

556. See, e.g., Ray Thomas, *The Plight of Texas Colonias*, 62 TEX. B.J. 1045 (1999) (explaining that *colonias* are unincorporated subdivisions of plots of valuable agricultural land sold to Mexican immigrants near the Texas, Arizona, and New Mexico borders through land installment contracts); Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 ST. LOUIS U. PUB. L. REV. 113, 137 (2009) (explaining the title problems with Texas colonias).

557. Whoriskey, *supra* note 72 (explaining how large financial firms exploit mobile home parks for financial gain).

558. Local ordinances can go beyond minimum state requirements, but differences between local ordinances and state statutes could raise preemption versus home rule challenges in home rule jurisdictions. See Lauren E. Phillips, *Impeding Innovation: State Preemption of Progressive Local Regulation*, 117 COLUM. L. REV. 2225 (2017).

559. SARA ABARBANEL ET AL., U.S. DEP'T OF HOUS. & URBAN DEV., MAKING A TINY DEAL OUT OF IT: A FEASIBILITY STUDY OF TINY HOME VILLAGES TO INCREASE AFFORDABLE HOUSING IN LANE COUNTY, OREGON 23 (2016); see also U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, ASKING THE RIGHT QUESTIONS ABOUT TINY HOUSES (2016) (analyzing questions to consider about tiny homes for the homeless).

560. SPRANKLING, *supra* note 373, at 220.

tenant was the motivation behind 1960s revolution in landlord-tenant law,<sup>561</sup> perhaps the unstable and displaced tenant will become the paradigmatic tenant of the future. The medieval farmer was the motivation for the leasehold estate as a conveyance of land under English-feudal law.<sup>562</sup> The landlord was understood as an absentee owner who conveyed his interest to the farmer who provided the labor on the estate.<sup>563</sup> The landlord had few service obligations to the tenant because the tenant was understood to be a manual laborer who could maintain the land, and the owner was landed “gentry,” who did not perform manual labor.<sup>564</sup> In the late 1960s, the poor urban tenant replaced this older conception and led to a statutory and common law revolution in which the tenant gained more rights and the landlord had more obligations because the urban tenant could not perform the basic services needed to maintain the estate.<sup>565</sup> Since instability may become more prevalent in the future, formalizing the status of stewardship and encouraging cohousing villages with shared space and responsibilities may be a wise choice for localities and states.

### C. NATURAL DISASTERS, STEWARDSHIP, AND PRECARIOUS PROPERTY

Municipalities may also need to legalize stewardship and tiny homes co-villages for unhoused people as natural disasters and economic and social upheaval become more common. Natural disasters are now a common feature of everyday life in the United States.<sup>566</sup> Many metropolitan areas experience routine hurricanes, flooding, wildfires, earthquakes, and other natural disasters.<sup>567</sup> The historic Camp Fire that devastated Northern California in November of 2018, California’s deadliest natural disaster on record, was the world’s costliest natural disaster in

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561. *Id.* at 229.

562. *Id.* at 220–21.

563. *Id.* at 221.

564. *Id.*

565. *Id.* at 229.

566. *Weather-Related Disasters Are Increasing*, ECONOMIST (Aug. 29, 2017), <https://www.economist.com/graphic-detail/2017/08/29/weather-related-disasters-are-increasing> [<https://perma.cc/A97R-2BQN>].

567. See Doyle Rice, *USA Had World’s 3 Costliest Natural Disasters in 2018, and Camp Fire Was the Worst*, USA TODAY (Jan. 8, 2019), <https://www.usatoday.com/story/news/2019/01/08/natural-disasters-camp-fire-worlds-costliest-catastrophe-2018/2504865002/> [<https://perma.cc/NHA4-2S8N>] (detailing natural disasters around the world and their resulting damage).

2018.<sup>568</sup> Hurricane Michael, which fiercely blew through the Florida panhandle in October of 2018, caused \$16 billion of damages and was the world's second most costly natural disaster in 2018.<sup>569</sup> Hurricane Florence, which dumped historically heavy rains across the Carolinas, was the world's third costliest disaster in 2018 at a total cost of \$14 billion.<sup>570</sup> Dane County, Wisconsin was underwater in 2018 from historic rainfalls that overflowed its rivers and caused significant human and physical damage.<sup>571</sup> The recent eruption of the Kilauea Volcano on Hawaii's Big Island in 2018 is now one of the biggest volcanic eruptions in recent history.<sup>572</sup> Hurricane Harvey, which devastated Houston and other parts of southern Texas in 2017, tied with 2005's Hurricane Katrina as the costliest tropical cyclone on record, causing \$125 billion in damages.<sup>573</sup>

Many of the same cities that experience natural disasters also experience homelessness emergencies, gentrification, and severe affordable housing shortages.<sup>574</sup> Natural disasters not only cause loss of life and costly infrastructure damages, they also cause housing loss, displacement, and instability.<sup>575</sup> This confluence of factors leads to a state of precariousness regarding property possession, use, and ownership. As natural disasters proliferate and housing instability increases, Americans will increasingly need property forms that can adapt to these new realities. Scholars normally understand long-term, fee simple ownership to provide the most stability and predictability.<sup>576</sup> Under

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568. *Id.*

569. *Id.*

570. *Id.*

571. Eric Holthaus, *Wisconsin's Floods Are Catastrophic—and Only Getting Worse*, WIRED (Sept. 8, 2018, 7:00 AM), <https://www.wired.com/story/wisconsins-floods-are-catastrophic-and-only-getting-worse/> [<https://perma.cc/9G2F-88YJ>].

572. See Doyle Rice, *Kilauea Volcano Eruption Is One of the Biggest in Recent Hawaii History, Enough to Fill 100,000 Pools*, USA TODAY (June 20, 2018), <https://www.usatoday.com/story/news/nation/2018/06/20/hawaii-volcano-eruption-now-one-biggest-recent-history/718415002/> [<https://perma.cc/KP8J-XE9S>].

573. NAT'L OCEANIC & ATMOSPHERIC ADMIN., COSTLIEST U.S. TROPICAL CYCLONES TABLES UPDATED (2018), <https://www.nhc.noaa.gov/news/UpdatedCostliest.pdf> [<https://perma.cc/2W8E-N4RT>].

574. See Oliver Milman, *Climate Gentrification: The Rich Can Afford to Move – What About the Poor?*, GUARDIAN (Sept. 25, 2018), <https://www.theguardian.com/environment/2018/sep/25/climate-gentrification-phoenix-flagstaff-miami-rich-poor> [<https://perma.cc/R2H8-4BYX>].

575. See *id.*

576. See Katrina M. Wyman, *In Defense of the Fee Simple*, 93 NOTRE DAME

increasingly precarious circumstances, however, communities may need more flexible and adjustable property forms that foster trust, cooperation, positive self-determination, and community empowerment. Transitional or permanent stewardship in cohousing settings might provide better housing alternatives for some victims of natural disasters than FEMA trailers or make-shift shelters. Cities can use some of the zoning designations and categories created by tiny homes villages for the homeless to create temporary disaster recovery housing for six months or up to two years. Nonprofits or churches can act as fiscal sponsors for villages on their land or on city- or county-owned land. Using stewardship, individuals living in emergency tiny home communities can live rent free in cohousing communities that they create with other victims and displaced people as they work to reconstitute their former lives. Displaced people can steward the new tiny homes units, rent free, for a certain period of time, or permanently in some cases.

Village sponsors can employ cohousing rules and regulations that require stewards to engage in sweat-equity efforts and community decision-making in their new villages. Emergency tiny homes villages using a traditional rental model can charge at-cost rents and provide low barriers to entry. They can also adopt some of the barriers that protect villagers from harm, such as no substances, violence, or other crime allowed on the property. The villages can employ affordable and sustainable construction practices such as community gardens or solar roofs. The tiny homes villages may not always be able to withstand hurricanes, earthquakes, floods, or other natural disasters, but municipalities can more easily reconstitute the villages in more habitable places if natural disasters destroy them. Villages that encourage or require residents to serve one another may be a solution to property's increasing precariousness.<sup>577</sup> In times of radical upheaval, community, not exclusive ownership, can play a central role in restoring stability.

The cohousing tiny homes villages that rent to formerly homeless residents at affordable rents also provide promising models for new affordable housing efforts outside of the context

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L. REV. 1, 1, 39, 50 (2017) (arguing that fee simple ownership combats landowners' "vulnerab[ility] to the whims of others").

577. The author is not talking about precarious possession, which has a specific meaning under Roman and French civil law and Louisiana state law. Rather, this Article refers to the increasing uncertainty and instability of property possession. See John A. Lovett, *Precarious Possession*, 77 LA. L. REV. 617 (2017).

of homelessness or natural disasters. Municipalities can integrate different housing tenures, income levels, and property forms into one large site enabling low-income people to live among market-rate and housed renters. Cities can also build a range of villages on noncontiguous parcels throughout a city, and all of the villages could become part of a municipal community land trust (CLT).<sup>578</sup> Cities seeking to create a variety of temporary and permanent affordable tiny homes villages can place all of the land in a municipal CLT.<sup>579</sup> Municipalities using this approach will need for-profit social entrepreneurs and nonprofit partners willing to sacrifice profits in certain circumstances to foster the social benefits of these communities. Municipalities can spur these efforts through tax incentives and abatements or density bonuses.<sup>580</sup>

In dense, high-cost cities with scant available land at affordable prices, the village cohousing model may not provide a workable solution. Boston, Massachusetts, Los Angeles, California, and a growing number of metropolitan areas now encourage existing home- and land-owners to house one or two homeless families in tiny homes on their backyards as granny flats or accessory dwelling units.<sup>581</sup> Homeless people will receive housing

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578. Stephen R. Miller, *Community Land Trusts: Why Now Is the Time to Integrate This Housing Activists' Tool into Local Government Affordable Housing Policies*, 23 J. AFFORDABLE HOUS. & COMMUNITY DEV. L. 349, 359 (2015) ("Chicago and Irvine are illustrative of the rise of major cities that are sponsoring city-wide CLTs and are arguably two of the most ambitious of the new wave of city CLTs.").

579. Municipalities such as Irvine, California; Chicago, Illinois; and Burlington, Vermont have developed municipal CLTs. Each city creates a 501(c)(3) corporation that holds title to noncontiguous parcels of land throughout the municipality but keeps all housing units and improvements on that land affordable in perpetuity. *See id.*

580. *See Density Bonus*, INCLUSIONARY HOUSING, <http://inclusionaryhousing.org/designing-a-policy/land-dedication-incentives/density-bonus/> [<https://perma.cc/XHF4-3JU5>] (defining a "density bonus" as "provid[ing] an increase in allowed dwelling units per acre (DU / A), Floor Area Ratio (FAR) or height which generally means that more housing units can be built on any given site").

581. *See, e.g.*, Anthony Flint, *Boston Wants People to Build Tiny Houses in Their Yards*, CITYLAB (May 11, 2018), <https://www.citylab.com/design/2018/05/boston-wants-residents-to-build-tiny-houses-in-their-backyards/560267/> [<https://perma.cc/A7FY-85RR>]; Gale Holland, *L.A. County Wants to Help Build Guest Houses in Backyards—for Homeless People*, L.A. TIMES (Apr. 11, 2018), <https://www.latimes.com/local/lanow/la-me-ln-homeless-tiny-house-20180411-story.html> [<https://perma.cc/9KNE-JAM9>]; Jennifer Medina, *A Novel Solution for the Homeless: House Them in Backyards*, N.Y. TIMES (Oct. 29, 2018),

vouchers that enable them to pay rents that are thirty percent of their respective incomes.<sup>582</sup> The owners who participate in these programs will receive the rents.<sup>583</sup> While this approach may expand the number of homeless people a city can serve through tiny homes units, it does not foster communal relations between unhoused people. Yet, municipalities can add a communal element to the accessory dwelling unit and granny flat approach through placing all noncontiguous villages into a municipal community land trust.

Increasing natural disasters, gentrification, and housing insecurity are the unpredictable phenomena to which property forms must respond. In his seminal article, *Property and Radically Changed Circumstances*, Professor John Lovett asserted that property forms must be resilient in the face of “radically changed circumstances.”<sup>584</sup> Discussing property relationships in the wake of Hurricane Katrina, Professor Lovett emphasized that radically changed circumstances are often sudden,<sup>585</sup> unexpected,<sup>586</sup> intensely disruptive,<sup>587</sup> and geographically pervasive.<sup>588</sup> Professor Lovett proffered five criteria to judge the responsiveness of various property forms to radical change.<sup>589</sup> First, he argued that responsive and resilient property forms facilitate the preservation of existing property, but also foster democratically responsive processes to “substantially improve,” and “adaptively alter” that property.<sup>590</sup> Second, resilient property regimes also “spread risk,” and “enlist . . . exogenous institutional and financial resources to respond to radical change.”<sup>591</sup> Third, responsive property forms also take advantage of economies of scale in the face of radical change.<sup>592</sup> Fourth, resilient forms facilitate exit from property relationships in a manner that encourages trust between parties.<sup>593</sup> Finally, responsive and resilient

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<https://www.nytimes.com/2018/10/29/us/homeless-housing-los-angeles.html>  
[<https://perma.cc/AZ59-EY4C>].

582. Holland, *supra* note 581.

583. Medina, *supra* note 581.

584. Lovett, *supra* note 46, at 471.

585. *Id.*

586. *Id.* at 472.

587. *Id.*

588. *Id.* at 473.

589. *Id.* at 472.

590. *See id.* at 484.

591. *See id.* at 487.

592. *See id.* at 489.

593. *See id.* at 490.

property forms also enable entry into communities of opportunity and facilitate the sharing of resources.<sup>594</sup>

The permanent and temporary tiny homes villages analyzed in this Article meet the criteria for resilient property under radically changed circumstances. First, most villages require or strongly encourage democratically responsive co-management as a condition of possession. Many villages also encourage formerly homeless individuals to use sweat equity or participate in community decision-making, which gives residents the self-determination they may have lost on the streets. Second, public and private partnerships create most of these villages, in which municipalities and nonprofits and the homeless collaborate to enlist endogenous resources. Third, many villages scale up the model to serve from 350 to 1,000 unhoused people. Fourth, all villages encourage trust through shared resources and experiences. Finally, the villages connect formerly unhoused people to each other and to important social and human networks that increase their life chances.

#### CONCLUSION

Tiny homes villages appear to be more than a passing market-rate fad. Tiny homes can mitigate housing insecurity for unhoused people. As the natural and social world becomes more unpredictable, property forms will need to respond to uncertainty. This Article suggests that tiny homes villages stewarded and co-managed by formerly unhoused people who collaborate and share space, land, and experiences may provide important housing alternatives to vulnerable people facing housing insecurity. This study of tiny homes villages for unhoused people may also reveal a new, more central role for community-building and sharing in the property relations of unhoused, low-income, and vulnerable people.

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594. *See id.* at 492.