

**CITY OF BURNABY**

**BYLAW NO. 13996**

A BYLAW to authorize the execution of a Housing Agreement  
for the non-market rental housing development at  
4341 Rumble Street

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY HOUSING AGREEMENT (4341 RUMBLE STREET) BYLAW 2019.**

2. The City is hereby authorized to enter into a housing agreement with Fair Haven Homes Society, substantially in the form set out in Schedule “A” (the “Housing Agreement”), for the non-market rental housing development on lands legally described as:

PID: 024-066-516

Lot 1 District Lot 149 Group 1 New Westminster District Plan LMP37050 Except  
Plan EPP65675

3. The City Clerk is hereby authorized and empowered to execute the Housing Agreement on behalf of the City.

Read a first time this	day of	, 2019
Read a second time this	day of	, 2019
Read a third time this	day of	, 2019
Reconsidered and adopted this	day of	, 2019

MAYOR

CLERK

**SCHEDULE “A”**

**HOUSING AGREEMENT**  
**(Section 483 *Local Government Act*)**

**THIS AGREEMENT** is dated for reference \_\_\_\_\_, 2019,

**BETWEEN:**

**FAIR HAVEN HOMES SOCIETY (INC. NO. S0005955)**  
2720 East 48<sup>th</sup> Avenue  
Vancouver, BC V5S 1G7

(the “**Owner**” as more fully defined in section 1.1 of this Agreement)

**AND:**

**CITY OF BURNABY**  
4949 Canada Way  
Burnaby, BC V5G 1M2

(the “**City**” as more fully defined in section 1.1 of this Agreement)

**WHEREAS:**

- A. Section 483 of the *Local Government Act* permits the City to enter into and, by legal notation on title, note on title to lands, housing agreements which may include, without limitation, conditions in respect to the form of tenure of housing units, availability of housing units to classes of persons, administration of housing units and rent which may be charged for housing units;
- B. The Owner is the owner of the Lands (as hereinafter defined); and
- C. The Owner and the City wish to enter into this Agreement (as herein defined) to provide for affordable housing on the terms and conditions set out in this Agreement.

**NOW THEREFORE** in consideration of \$10.00 and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by both parties), and in consideration of the promises exchanged below, the Owner and the City covenant and agree as follows:

## **ARTICLE 1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words have the following meanings:

- (a) **“Affordable Housing Units”** means a Dwelling Unit within the Development that is not a caretaker suite or designated for other use in accordance with the CD Plan;
- (b) **“Agreement”** means this agreement together with all schedules, attachments and priority agreements attached hereto;
- (c) **“CD Plan”** means the comprehensive development plan for the Lands entitled “Fair Haven United Church Homes – Seniors Affordable Rental Housing” prepared by NSDA Architects and filed with the City’s Director Planning and Building;
- (d) **“City”** means the City of Burnaby;
- (e) **“CPI”** means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function;
- (f) **“Daily Amount”** means \$100.00 per day as of January 1, 2018 adjusted annually thereafter by adding thereto an amount calculated by multiplying \$100.00 by the percentage change in the CPI since January 1, 2018, to January 1 of the year that a written notice is delivered to the Owner by the City pursuant to section 4.1 of this Agreement;
- (g) **“Development”** means the four-storey, 145 unit, non-profit seniors’ housing facility constructed on the Lands in accordance with the CD Plan;
- (h) **“Dwelling Unit”** means one or more habitable rooms constituting one self-contained unit with a separate entrance, which is occupied or intended to be occupied as the permanent home or residence of one Family only and contains not more than one kitchen or one set of cooking facilities;
- (i) **“Eligible Tenant”** means a Family having a cumulative annual income not exceeding the Low and Moderate Income Limits, at the time the Family executes the first Tenancy Agreement for an Affordable Housing Unit;

- (j) **“Family”** means:
- (i) a person;
  - (ii) two or more persons related by blood, marriage, adoption or foster care; or
  - (iii) a group of not more than three (3) un-related non-transient persons living together as a single non-profit group in a Dwelling Unit and using common cooking facilities,
- at least one of whom is a Senior, but excludes boarders, lodgers and servants;
- (k) **“Housing Covenant”** means the agreements, covenants and charges granted by the Owner to the City (which includes covenants pursuant to section 219 of the *Land Title Act*) charging the Lands, registered under number CA7369774, as it may be amended or replaced from time to time;
- (l) **“Housing Income Limit (HILs)”** means the gross annual income limit required to pay the average market rent for a particular size of rental unit in the private market for the City of Burnaby or the HILs planning area associated with the City of Burnaby, as derived from the Canadian Housing and Mortgage Corporation’s annual Rental Market Survey and published by BC Housing Management Commission from time to time, and if such gross annual income limit is no longer published by BC Housing Management Commission, then **“Housing Income Limit (HILs)”** for a subsequent year is the last published income limit adjusted annually, on January 1<sup>st</sup> of each subsequent year, by a percentage equal to the percentage of the increase in the CPI for the period January 1 to December 31 of the preceding calendar year or years;
- (m) **“Interpretation Act”** means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;
- (n) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250, together with all amendments thereto and replacements thereof;
- (o) **“Lands”** means the lands and premises legally described as:
- PID: 024-066-516  
Lot 1 District Lot 149 Group 1 NWD Plan LMP37050 Except Plan EPP65675
- (p) **“Local Government Act”** means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;
- (q) **“Low and Moderate Income Limit”** means:

- (i) for Affordable Housing Units with less than two (2) bedrooms, a gross household income that does not exceed the median income for families without children in British Columbia, as determined by the British Columbia Housing Management Commission from time to time based on data provided by Statistics Canada (for 2018, this figure was \$71,200);
- (ii) for Affordable Housing Units with two (2) or more bedrooms, a gross household income that does not exceed the median income for families with children in British Columbia, as determined by BC Housing Management Commission from time to time based on data provided by Statistics Canada (for 2018, this figure was \$104,400),

and if such income limit is no longer published by BC Housing Management Commission, then “**Low and Moderate Income Limit**” for a subsequent year is the last published income limit adjusted annually, on January 1<sup>st</sup> of each subsequent year, by a percentage equal to the percentage of the increase in the CPI for the period January 1 to December 31 of the preceding calendar year or years;

- (r) “**LTO**” means the New Westminster Land Title Office or its successor;
- (s) “**Owner**” means the party described on page 1 of this Agreement as the Owner and any subsequent owner or successor in title of the Lands or any part thereof;
- (t) “**Permitted Rent**” means an amount not exceeding thirty percent (30%) of the Housing Income Limit (HILs) for a bachelor unit;
- (u) “**Residential Tenancy Act**” means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
- (v) “**Senior**” means an individual who is 55 years or older;
- (w) “**Tenancy Agreement**” means a tenancy agreement, lease, license or other agreement granting rights to occupy an Affordable Housing Unit on a month-to-month basis or for a fixed term not exceeding twelve (12) months;
- (x) “**Tenant**” means an occupant of an Affordable Housing Unit by way of a Tenancy Agreement; and
- (y) “**Term**” means the period commencing on the date of adoption of Housing Agreement (4341 Rumble Street) Bylaw 2019 and expiring on the later of:
  - (i) the date which the Development is demolished or substantially destroyed;
  - or

- (ii) sixty (60) years from the date of issuance of the final occupancy certificate for the Development.

1.2 In this Agreement:

- (a) reference to the singular includes a reference to the plural, and *vice versa*, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) any reference to any enactment is to the enactment in force on the date the Owner signs this Agreement, and to subsequent amendments to or replacements of the enactment;
- (f) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (g) time is of the essence;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes an Eligible Tenant, agent, officer and invitee of the party;
- (j) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- (k) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

**ARTICLE 2**  
**USE AND OCCUPANCY OF AFFORDABLE HOUSING UNITS**

- 2.1 The Owner agrees that, during the Term, each Affordable Housing Unit may only be used as a permanent residence occupied by one Eligible Tenant. For the purposes of this Article, “permanent residence” means that the Affordable Housing Unit is used as the usual, main, regular, habitual, principal residence, abode or home of the Eligible Tenant.
- 2.2 The Owner must not rent, lease, license or otherwise permit occupancy of any Affordable Housing Unit during the Term except in accordance with the following conditions:
- (a) the Affordable Housing Unit will only be used or occupied as a permanent residence by an Eligible Tenant pursuant to a Tenancy Agreement;
  - (b) the monthly rent payable for seventy-four (74) bachelor-size Affordable Housing Units will not exceed the Permitted Rent;
  - (c) the Owner will not require the Tenant or any permitted occupant to pay any extra charges or fees for use of any common areas, facilities or amenities, including without limitation bicycle storage or sanitary sewer, storm sewer, water, other utilities, property or similar tax; provided, however, that an Owner may charge the Tenant the Owner’s cost, if any, of providing cable television, telephone, other telecommunications, gas, or electricity fees, charges or rates, and the Owner may charge market fees for cleaning services for the common areas, facilities and amenities, for use of parking stalls and for laundry services;
  - (d) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:
    - (i) the Affordable Housing Unit is occupied by a person or persons other than an Eligible Tenant;
    - (ii) the Affordable Housing Unit is occupied by more than the number of people the City's building inspector determines can reside in the Affordable Housing Unit given the number and size of bedrooms in the Affordable Housing Unit and in light of any relevant standards set by the City in any bylaws of the City;
    - (iii) the Affordable Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and/or
    - (iv) the Tenant subleases the Affordable Housing Unit or assigns the Tenancy Agreement in whole or in part,

and in the case of each breach, the Owner hereby agrees with the City to forthwith provide to the Tenant a notice of termination, which notice of termination shall

provide that the termination of the tenancy shall be effective two (2) months following the date of the notice of termination or as required by the *Residential Tenancy Act*, or such longer period as the Owner considers to be fair and reasonable given the circumstances of the termination (such as a termination due to death of a spouse who was the Senior who qualified the Family as an Eligible Tenant);

- (e) the Tenancy Agreement will identify all occupants of the Affordable Housing Unit and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Affordable Housing Unit for more than 30 consecutive days or more than 45 days total in any calendar year; and
  - (f) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement for an Affordable Housing Unit to the City upon demand.
- 2.3 If the Owner has terminated the Tenancy Agreement, then the Owner shall use best efforts to cause the Tenant and all other persons that may be in occupation of the Affordable Housing Unit to vacate the Affordable Housing Unit on or before the effective date of termination.
- 2.4 The Owner will not permit a Tenancy Agreement for an Affordable Housing Unit to be subleased or assigned.
- 2.5 Within 30 days after receiving notice from the City, the Owner must, in respect of each Affordable Housing Unit, provide to the City a statutory declaration, substantially in the form (with, in the City Solicitor's discretion, such further amendments or additions as deemed necessary) attached as Appendix A, sworn by the Owner, containing all of the information required to complete the statutory declaration. The City may request such statutory declaration in respect to each Affordable Housing Unit no more than once in any calendar year; provided, however, notwithstanding that the Owner may have already provided such statutory declaration in the particular calendar year, the City may request and the Owner shall provide to the City such further statutory declarations as requested by the City in respect to an Affordable Housing Unit if, in the City's absolute determination, the City believes that the Owner is in breach of any of its obligations under this Agreement.
- 2.6 The Owner hereby irrevocably authorizes the City to make such inquiries as it considers necessary in order to confirm that the Owner is complying with this Agreement.

### **ARTICLE 3**

#### **MANAGEMENT OF AFFORDABLE HOUSING UNITS**

- 3.1 The Owner covenants and agrees that it will furnish good and efficient management of the Affordable Housing Units and will permit representatives of the City to inspect the



Affordable Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*.

- 3.2 The Owner further covenants and agrees that it will maintain the Affordable Housing Units in a good state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Lands.
- 3.3 Notwithstanding Sections 3.1 and 3.2, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Affordable Housing Units.

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

- 4.1 The Owner agrees that, in addition to any other remedies available to the City under this Agreement or the Housing Covenant or at law or in equity, if an Affordable Housing Unit is used or occupied in breach of this Agreement or the Housing Covenant or the Owner is otherwise in breach of any of its obligations under this Agreement or the Housing Covenant, the Owner will pay the Daily Amount to the City for every day that the breach continues after forty-five (45) days written notice from the City to the Owner stating the particulars of the breach. For greater certainty, the City is not entitled to give written notice with respect to any breach of the Agreement until any applicable cure period, if any, has expired. The Daily Amount is due and payable five (5) business days following receipt by the Owner of an invoice from the City for the same.
- 4.2 The Owner acknowledges and agrees that a default by the Owner of any of its promises, covenants, representations or warranties set-out in the Housing Covenant shall also constitute a default under this Agreement.

#### **ARTICLE 5 MISCELLANEOUS**

##### **5.1 Housing Agreement**

The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under section 483 of the *Local Government Act*;
- (b) the City may file notice of this Agreement in the LTO against the title to the Lands; and
- (c) during the Term, the housing agreement and, if applicable, the amendment to it is binding on all persons who acquire an interest in the land affected by the agreement, as amended if applicable.

## 5.2 **No Compensation**

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

## 5.3 **Modification**

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

## 5.4 **Indemnity**

The Owner will indemnify and save harmless the City and each of its elected officials, officers, directors, and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

- (a) any negligent act or omission of the Owner, or its officers, directors, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) the City refusing to issue a building permit or refusing to permit occupancy of any building, or any portion thereof, constructed on the Lands;
- (c) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Affordable Housing Unit or the enforcement of any Tenancy Agreement; and/or
- (d) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

## 5.5 **Release**

The Owner hereby releases and forever discharges the City and each of its elected officials, officers, directors, and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for the:

- (a) construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Affordable Housing Unit under this Agreement;

- (b) the City refusing to issue a building permit or refusing to permit occupancy of any building, or any portion thereof, constructed on the Lands; and/or
- (c) the exercise by the City of any of its rights under this Agreement or an enactment.

#### 5.6 **Survival**

The obligations of the Owner set out in this Agreement will survive termination or discharge of this Agreement.

#### 5.7 **Priority**

The Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement, if required by the City Solicitor, will be noted against title to the Lands in priority to all financial charges and encumbrances which may have been registered or are pending registration against title to the Lands save and except those specifically approved in advance in writing by the City Solicitor or in favour of the City, and that a notice under section 483(5) of the *Local Government Act* will be filed on the title to the Lands.

#### 5.8 **City's Powers Unaffected**

This Agreement does not:

- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Lands;
- (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
- (c) affect or limit any enactment relating to the use or subdivision of the Lands; or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Lands.

#### 5.9 **Agreement for Benefit of City Only**

The Owner and the City agree that:

- (a) this Agreement is entered into only for the benefit of the City;
- (b) this Agreement is not intended to protect the interests of the Owner, any Tenant, or any future owner, lessee, occupier or user of the Lands or the building or any portion thereof, including any Affordable Housing Unit; and

- (c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.

#### 5.10 **No Public Law Duty**

Where the City is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the City is under no public law duty of fairness or natural justice in that regard and agrees that the City may do any of those things in the same manner as if it were a private party and not a public body.

#### 5.11 **Notice**

Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of the Owner set out in the records at the LTO, and in the case of the City addressed:

To: Clerk, City of Burnaby  
4949 Canada Way  
Burnaby, BC V5G 1M2

And to: City Solicitor and Director Planning and Building

or to the most recent postal address provided in a written notice given by each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

#### 5.12 **Enuring Effect**

This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

#### 5.13 **Severability**

If any provision of this Agreement is found to be invalid or unenforceable, such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.

#### 5.14 **Waiver**

All remedies of the City will be cumulative and may be exercised by the City in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the City exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

**5.15 Sole Agreement**

This Agreement, and any documents signed by the Owners contemplated by this Agreement (including, without limitation, the Housing Covenant), represent the whole agreement between the City and the Owner respecting the use and occupation of the Affordable Housing Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement. In the event of any conflict between this Agreement and the Housing Covenant, this Agreement shall, to the extent necessary to resolve such conflict, prevail.

**5.16 Further Assurance**

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

**5.17 Covenant Runs with the Lands**

This Agreement burdens and runs with the Lands and all of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Lands.

**5.18 Equitable Remedies**

The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for any breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.

**5.19 No Joint Venture**

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

**5.20 Applicable Law**

Unless the context otherwise requires, the laws of British Columbia (including, without limitation, the *Residential Tenancy Act*) will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

**5.21 Deed and Contract**

By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

**5.22 Joint and Several**

If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

**5.23 Limitation on Owner's Obligations**

The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands provided however that notwithstanding that the Owner is no longer the registered owner of the Lands, the Owner will remain liable for breaches of this Agreement that occurred while the Owner was the registered owner of the Lands.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first above written.

**FAIR HAVEN HOMES SOCIETY,**  
by its authorized signatory(ies):

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**CITY OF BURNABY,**  
by its authorized signatory(ies):

Per: \_\_\_\_\_  
Name:  
Title:

**Appendix A to Housing Agreement**

**STATUTORY DECLARATION**

<b>CANADA</b>	)	<b>IN THE MATTER OF A</b>
	)	<b>HOUSING AGREEMENT WITH</b>
<b>PROVINCE OF BRITISH COLUMBIA</b>	)	<b>THE CITY OF BURNABY</b>
	)	<b>("Housing Agreement")</b>

TO WIT:

I, \_\_\_\_\_ of \_\_\_\_\_, British Columbia, do solemnly declare that in my capacity as a director or officer of the Owner:

1. I am an authorized signatory of the Owner of the Affordable Housing Units (as defined in the Housing Agreement) at \_\_\_\_\_, and make this declaration to the best of my personal knowledge.

2. This declaration is made pursuant to the Housing Agreement in respect of the Affordable Housing Units.

3. For the period from \_\_\_\_\_ to \_\_\_\_\_, the Affordable Housing Units were occupied only by the Eligible Tenants (as defined in the Housing Agreement) whose addresses and gross cumulative income appear below:

*[Addresses and incomes of Eligible Tenants]*

4. The rents charged each month for the Affordable Housing Units are as follows:

*[Rents for each Affordable Housing Unit]*

5. The Owner is in compliance with the Owner's obligations under the Housing Agreement, and other charges in favour of the City noted or registered in the Land Title Office against the land on which the Affordable Housing Units are situated.

- DECLARED BEFORE ME at the City of \_\_\_\_\_ )  
\_\_\_\_\_, in the Province of British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_ )  
\_\_\_\_\_, 20\_\_\_\_. )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
A Commissioner for Taking Affidavits in the Province of British Columbia )

DECLARANT