

CITY OF BURNABY

BYLAW NO. 14635

A BYLAW to authorize the execution of a Housing Agreement for the non-market rental housing development at 7415 Sussex Avenue

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY HOUSING AGREEMENT (7415 Sussex Avenue) BYLAW 2024.**

2. The City is hereby authorized to enter into a housing agreement with L’Arche Foundation of Greater Vancouver, 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: 017-146-313

Lot A District Lot 149 Group 1 New Westminster District Plan 85664

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

FIRST READING this 26th day of February, 2024

SECOND READING this 26th day of February, 2024

THIRD READING this 26th day of February, 2024

RECONSIDERED AND ADOPTED day of , 2024

MAYOR

CORPORATE OFFICER

Schedule "A"

HOUSING AGREEMENT
(Section 483 *Local Government Act*)

THIS AGREEMENT is dated for reference _____, 2023,

BETWEEN:

L'ARCHE FOUNDATION OF GREATER VANCOUVER

Incorporation No. 11389S
7415 Sussex Avenue
Burnaby, BC V5J 3V6

(the "**Owner**")

AND:

CITY OF BURNABY

4949 Canada Way
Burnaby, B.C. V5G 1M2

(the "**City**")

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 registered owner of the Lands (as hereinafter defined) at the time of execution of this Agreement and has constructed or will construct the Development on the Lands;
- C. The Owner is a successful proponent for funding from BC Housing's Building BC: Community Housing Fund to operate the Non-Market Units (as hereinafter defined) at a prescribed mix of rent levels aimed at different income households, and in connection therewith, it is anticipated that the Owner will enter into an Operating Agreement; and
- D. The Owner, and the City wish to enter into this Agreement (as hereinafter defined) to provide the Non-Market Units as affordable housing on the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of ten dollars (\$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) **“Agreement”** means this agreement together with all schedules, attachments and priority agreements attached hereto;
- (b) **“BC Housing”** means the British Columbia Housing Management Commission or its successor in function;
- (c) **“CD Plan”** means the comprehensive development plan for the Lands entitled “L’Arche Community Development” prepared by GBL Architects Inc. and ETA Landscape Architects and filed with the City’s General Manager Planning and Development;
- (d) **“City”** means the City of Burnaby;
- (e) **“Daily Amount”** means \$100.00 per day as of January 1, 2018, and adjusted annually on January 1st of each subsequent year by a percentage equal to the percentage of the increase in the Vancouver Headline CPI for the period from January 1 to December 31 of the preceding calendar year;
- (f) **“Deep Subsidy Income Limit”** means:
 - (i) for Units with less than two (2) bedrooms, a gross household income that does not exceed the maximum Old Age Security (OAS) plus Guaranteed Income Supplement (GIS) amount, as determined by BC Housing from time to time based on data provided by Statistics Canada (for 2022, this figure is \$ 21,946); and
 - (ii) for Units with two (2) or more bedrooms, a gross household income that does not exceed the maximum income threshold based on the income that would be required to pay 30% of income equal to the maximum shelter rate for a 3 person household, as determined by BC Housing from time to time (for 2022, this figure is \$26,600),and if such gross annual income limit is no longer published by BC Housing, then “Deep Subsidy Income Limit” means the last such gross annual income limit published by BC Housing adjusted annually, on January 1st of each subsequent year, by a percentage equal to the percentage of the increase in the Vancouver Headline CPI for the period January 1 to December 31 of the preceding calendar year or years;
- (g) **“Deep Subsidy Unit”** means a Non-Market Unit occupied by an Eligible Tenant (Deep Subsidy);
- (h) **“Development”** means the development of a new multi-age care facility containing 22 bedrooms for individuals thirteen (13) years and older with development disabilities, 10 units for semi-independent individuals, and 29 non-market rental

housing units constructed or to be constructed on the Lands in accordance with the CD Plan;

- (i) **“Eligible Tenant”** means collectively, Eligible Tenant(s) (Deep Subsidy), Eligible Tenant(s) (RGI) and Eligible Tenant(s) (Market), or each of them as the context requires, but excluding the Owner, any directors or officers of the Owner, as applicable, and their respective direct family members;
- (j) **“Eligible Tenant(s) (Deep Subsidy)”** means a Household with a gross annual household income that does not exceed the Deep Subsidy Income Limit (or such other income threshold approved by the City at its discretion);
- (k) **“Eligible Tenant(s) (Market)”** means a Household with a gross annual household income that does not exceed the Moderate Income Limit for the applicable unit type (or such other income threshold approved by the City at its discretion);
- (l) **“Eligible Tenant(s) (RGI)”** means a Household with a gross annual household income that does not exceed the Housing Income Limit (HILs) for the applicable unit type (or such other income threshold approved by the City at its discretion);
- (m) **“Household”** has the meaning ascribed to the term “family” in the Zoning Bylaw, and in the event such term is no longer defined in the Zoning Bylaw, the last effective definition of the term “family” will be in effect;
- (n) **“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 CB _____, as it may be amended or replaced from time to time;
- (o) **“Housing Income Limit (HILs)”** means the gross annual income limit for the HILs Lower Mainland planning area associated with the City of Burnaby, and published by BC Housing from time to time, and if such gross annual income limit is no longer published by BC Housing, then **“Housing Income Limit (HILs)”** means the last such gross annual income limit published by BC Housing adjusted annually, on January 1st of each subsequent year, by a percentage equal to the percentage of the increase in the Vancouver Headline CPI for the period January 1 to December 31 of the preceding calendar year;
- (p) **“Income Assistance”** means social assistance, social security or another form of payment that the provincial or federal government provides to people in need who do not have any other resources;
- (q) **“Interpretation Act”** means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238 together with all amendments thereto and replacements thereof;
- (r) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250 together with all amendments thereto and replacements thereof;

- (s) “**Lands**” means the following lands and premises situate in the City of Burnaby and any part thereof, including a building or a portion of a building, into which said lands are Subdivided:

Parcel Identifier: 017-146-313;

Lot A District Lot 149 Group 1 New Westminster District Plan 85664

- (t) “**Local Government Act**” means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;
- (u) “**LTO**” means the New Westminster Land Title Office or its successor;
- (v) “**Market Unit**” means a Non-Market Unit occupied by an Eligible Tenant (Market);
- (w) “**Moderate Income Limit**” means:
- (i) for Market 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 BC Housing from time to time. For 2023, this figure is \$82,310; and
 - (ii) for Market 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 from time to time. For 2023, this figure is \$128,810,

and if such gross annual income limit is no longer published by BC Housing, then “**Moderate Income Limit**” means the last such gross annual income limit published by BC Housing adjusted annually, on January 1st of each subsequent year, by a percentage equal to the percentage of the increase in the Vancouver Headline CPI for the period January 1 to December 31 of the preceding calendar year;

- (x) “**Non-Market Units**” means the 22 single bedrooms and 39 residential units including 10 semi-independent living units within the Development and located within the Development that are rented or offered for rent at the Permitted Rent, and “**Non-Market Unit**” means any such single bedroom or residential unit;
- (y) “**Operating Agreement**” means an agreement between BC Housing and the Owner with respect to the management of the Non-Market Units, as the same may be amended, amended and restated, supplemented or modified from time to time with the prior written consent of the City, such consent will not be unreasonably withheld;
- (z) “**Owner**” means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or any part thereof;
- (aa) “**Permitted Rent**” means an amount to be paid by the Eligible Tenant as follows:

- (A) in respect of a Deep Subsidy Unit, an amount that does not exceed the shelter allowance for the applicable household size and composition;
 - (B) in respect of a RGI Unit, an amount calculated based on the Rent Scale and which does not exceed 70% of HILs; and
 - (C) in respect of a Market Unit, an amount no greater than the CMHC Market Average Rent for the unit size and type (meaning, for greater certainty, number of bedrooms) of the Market Unit;
- (bb) **“Persons with Disabilities”** means a single person in receipt of a recognized disability pension, or a couple where at least one (1) person is in receipt of a recognized disability pension or are considered disabled for income tax purposes;
- (cc) **“Public Utility”** means any utility or service provider that is regulated by the British Columbia Utilities Commission, or its successor in function;
- (dd) **“Rent Scale”** means the rent scale attached as Schedule F to the Operating Agreement, which sets out the percentage rent (currently 30% of income) and calculations of rent for RGI Units, and as such schedule may be amended from time to time by BC Housing;
- (t) **“Residential Tenancy Act”** means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78 together with all amendments thereto and replacements thereof;
- (u) **“RGI Unit”** means a Non-Market Unit occupied by an Eligible Tenant (RGI);
- (v) **“Semi-Independent Units”** means a Non-Market Unit that is designed to be occupied by a semi-independent person;
- (w) **“Single Bedrooms”** refers to a highly accessible bedroom suite;
- (x) **“Tenancy Agreement”** means a tenancy agreement, lease, license or other agreement granting rights to occupy a Non-Market Unit on a month-to-month basis or for a fixed term not exceeding twelve (12) months;
- (y) **“Term”** means the period commencing on the date of adoption of Housing Agreement (7415 Sussex Avenue) Bylaw 2023 (Bylaw No. _____) and expiring sixty (60) years from the date of issuance of the final occupancy certificate for the Development;
- (z) **“Vancouver Headline 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; and
- (aa) **“Zoning Bylaw”** means the *Burnaby Zoning Bylaw, 1965*, and amendments thereto and re-enactments thereof.

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) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (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;
- (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 NON-MARKET UNITS

2.1 The Owner will construct and maintain on the Lands, during the Term, Non-Market Units in the following mix of unit sizes:

- (a) 22 Single Bedrooms
- (b) 14 studios;
- (c) 16 one-bedroom units
- (d) 6 two-bedroom units; and
- (e) 3 three-bedroom units.

- 2.2 The Owner will not change the mix of size and type of Non-Market Units set out in section 2.1 without the prior written consent of the City, which the City will not unreasonably withhold.
- 2.3 The Owner will ensure that throughout the Term the Permitted Rents for the Non-Market Units will be no greater than those set out in the Operating Agreement and the unit mix for Permitted Rents shall be generally as follows:
- (a) 22 of the Non-Market Units which are Single Bedrooms are Deep Subsidy Units;
 - (b) 24 of the Non-Market Units are RGI Units; and
 - (c) 15 of the Non-Market Units are Market Units.
- 2.4 The Owner will rent the Non-Market Units for the Permitted Rent to an Eligible Tenant.
- 2.5 The Owner agrees that, during the Term, each Tenancy Agreement will include a covenant requiring, that the applicable Non-Market Unit will only be used and occupied as the permanent residence of the applicable Eligible Tenant in accordance with this Agreement, the Operating Agreement (if applicable), and any permits issued by the City with respect to the Development and the CD Plan. For the purposes of this Article 2, “permanent residence” means that the Non-Market Unit is used as the usual, main, regular, habitual, principal residence, abode or home of the Eligible Tenant.
- 2.6 The Owner will at all times strictly comply with its obligations under the Operating Agreement, including without limitation, resident selection and management, and will not amend or terminate the Operating Agreement or amend the Permitted Rent unit mix or tenant mix set out in this Agreement without the prior written approval of the City. The Owner will at all times ensure that the City has a current copy of the fully executed Operating Agreement as same may be amended from time to time with the prior written consent from the City. In the event and notwithstanding the expiry or termination of the Operating Agreement for any reason during the Term, for the purposes of this Agreement, the terms of the then current version of the Operating Agreement will continue to govern with respect to the operation and management of the Non-Market Units as if same remains unexpired.
- 2.7 The Owner will not rent, lease, license or otherwise permit occupancy of any Non-Market Unit except in accordance with the following conditions:
- (a) the Non-Market Units will only be used or occupied as a permanent residence by an Eligible Tenant pursuant to a Tenancy Agreement and not be made available for short term rental;
 - (b) the monthly rent payable for Non-Market Units will not exceed the Permitted Rent for a Deep Subsidy Unit, RGI Unit, or Market Unit, as applicable;
 - (c) the Owner will not require the Eligible 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, sanitary sewer, storm sewer, water, or other utilities, property or similar taxes; provided, however, that an Owner may

charge the Eligible Tenant fees for parking, heat treatment room, laundry, cable television, telephone, other telecommunications, gas, or electricity in accordance with the operating budget approved by BC Housing;

- (d) the Owner will not require the Eligible Tenant or any permitted occupant to pay any move in or move out fees or charges;
- (e) the Owner will include in each Tenancy Agreement, to the extent permitted by the *Residential Tenancy Act*, a clause entitling the Owner to terminate the Tenancy Agreement if:
 - (i) the Non-Market Unit is occupied by a person or persons other than an Eligible Tenant in the Eligible Tenant's absence;
 - (ii) the Non-Market Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; or

the Eligible Tenant subleases the Non-Market 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 Eligible 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;

- (f) the Tenancy Agreement will identify all permanent occupants of the Non-Market Unit and will stipulate that any individual over the age of 18 not identified in the Tenancy Agreement will be prohibited from residing at the Non-Market Unit for more than 30 consecutive days or more than 45 days total in any calendar year; and
 - (g) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement for a Non-Market Unit to the City as soon as practicable upon demand by the City.
- 2.8 Where the Owner has terminated the Tenancy Agreement, the Owner will use reasonable commercial efforts to cause the Eligible Tenant and all other persons that may be in occupation of the Non-Market Unit to vacate the Non-Market Unit on or before the effective date of termination.
- 1.1 The Owner will not permit a Tenancy Agreement for a Non-Market Unit to be subleased or assigned.
- 2.9 The Owner will comply with all laws, regulations, bylaws and orders in respect to the construction, maintenance, repair, operation and use of the Development and Non-Market Units. It is acknowledged by the Owner that each Non-Market Unit is intended to be made available to a Household in need of affordable rental housing that qualifies as an Eligible Tenant.

**ARTICLE 3
MANAGEMENT OF NON-MARKET UNITS**

- 3.1 The Owner covenants and agrees, at its cost and expense, to:
- (a) furnish good and efficient management of the Non-Market Units in accordance with the Operating Agreement;
 - (b) maintain the Non-Market Units in a good state of repair and fit for habitation and to comply with all laws, including health and safety standards applicable to the Lands and in accordance with the Operating Agreement and will permit representatives of the City to inspect the Non-Market Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*;
 - (c) ensure active management and administration of the Non-Market Units and:
 - (i) manage the Non-Market Units in accordance with this Agreement and the Operating Agreement (if applicable);
 - (ii) maintain the Non-Market Units in a good state of repair and fit for habitation and to comply with all laws, including health and safety standards, applicable to the Lands;
 - (iii) select tenants for:
 - (A) the Deep Subsidy Units in accordance with the eligibility criteria for Eligible Tenants (Deep Subsidy) Units;
 - (B) the RGI Units in accordance with the eligibility criteria for Eligible Tenants (RGI); and
 - (C) the Market Units in accordance with the eligibility criteria for Eligible Tenants (Market),
- provided that if the Owner meets the criteria set out in ((i)) and ((ii)) above, the Owner may itself undertake the management and administration of the Non-Market Units pursuant to this section 3.1(c);
- (d) communicate to all tenants and prospective tenants the rights and restrictions of the Owner and Eligible Tenants under this Agreement and, to the extent permitted by the *Residential Tenancy Act*, enforce all restrictions and exercise all rights of

termination under this Agreement, including under section 2.7(e) of this Agreement, to the satisfaction of the City; and

- (e) advise any prospective tenant of a Non-Market Unit that the Non-Market Units are subject to this Agreement and provide a copy of this Agreement to a tenant or prospective tenant upon request.

ARTICLE 4 REPORTING

- 4.1 On an annual basis, the Owner will deliver to the City copies of its annual operating budget and annual financial review required to be delivered to BC Housing in accordance with the Operating Agreement. In the event and notwithstanding the expiry or termination of the Operating Agreement for any reason during the Term, all reporting required to be provided to BC Housing pursuant to the Operating Agreement will be directly to the City in lieu.
- 4.2 Within 30 days after receiving notice from the City, the Owner will, in respect of each Non-Market 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, together with any other information required by the City in its discretion. The City may request such statutory declaration in respect to each Non-Market 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 a Non-Market 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.
- 4.3 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 5 INSURANCE

- 5.1 The Owner will insure, or cause to be insured, the Non-Market Units and all building and structures on the Lands to the full replacement cost against perils normally insured against by reasonable and prudent owners of similar buildings and lands in Burnaby and those additional policies set out in Appendix B attached hereto, as such requirements may be amended by the City's Risk Manager from time to time.
- 5.2 Upon request, the Owner will provide to the City proof of insurance coverage required by Section 5.1 of this Agreement.

ARTICLE 6 DAMAGE OR DESTRUCTION

- 6.1 The Owner covenants and agrees with the City that in the event of partial damage to or partial destruction of all or any of the Non-Market Units, the Owner will as soon as reasonably possible repair or replace such damage or destruction to a standard

comparable to the standard of the Non-Market Units being repaired or replaced immediately prior to the event of damage or destruction.

- 6.2 In the event of the complete or substantially complete destruction of the Non-Market Units to the extent of at least 25% of the full replacement cost thereof, as determined by the City's Chief Building Inspector, the Owner will reconstruct or replace the Non-Market Units with new Non-Market Units in a manner comparable to the Non-Market Units being replaced immediately prior to the event of damage or destruction within two years. This Agreement and the Housing Covenant will apply to the replacement Non-Market Units, to the same extent and in the same manner as such agreements apply to the original Non-Market Units, unless and until a new housing agreement and section 219 covenant are entered into between the Owner and the City with respect to the replacement Non-Market Units, at the discretion of the City.
- 6.3 Notwithstanding Sections 6.1 and 6.2 of this Agreement, the City and the Owner acknowledge and agree that if at the time of such damage or destruction, BC Housing, CMHC or an Approved Lender (as that term is defined under the National Housing Act (Canada)) as successor holds a mortgage charging the Lands and/or the Non-Market Units, then any insurance proceeds received may, at the option of such mortgagee, be applied to repair the Non-Market Units or rebuild replacement Non-Market Units on the Lands, be paid to the Owner (as the mortgagor) or be applied or paid partly in one way and partly in another, or be applied, in the sole discretion of the mortgagee, in whole or in part towards all indebtedness under such mortgage, whether due or not then due.

ARTICLE 7 DEFAULT AND REMEDIES

- 7.1 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 a Non-Market 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.
- 7.2 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 also constitutes a default under this Agreement.

ARTICLE 8 DISPUTE RESOLUTION

- 8.1 If a dispute arises between the parties out of or in connection with this Agreement the parties agree that the following dispute resolution process will be used:
- (a) a meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute;
 - (b) if, within fourteen (14) days after such meeting or such further period agreed to by the parties in writing, the parties have not succeeded in negotiating a resolution of the dispute, the parties agree to try to resolve the dispute by participating in a structured negotiation conference with a mediator agreed upon by the parties or, failing agreement, under the Mediation Rules of Procedure of the British Columbia International Commercial Arbitration Centre, in which case the appointing authority is the British Columbia International Commercial Arbitration Centre; and
 - (c) after dispute resolution attempts have been made under sections 8.1(a) and 8.1(b), any remaining issues in dispute will be determined by arbitration under the *Arbitration Act* (British Columbia) if the parties mutually agree to arbitration, and failing such agreement, either party may commence an action in the British Columbia courts to resolve any remaining issues in dispute.

ARTICLE 9 MISCELLANEOUS

9.1 **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) this Agreement and, if applicable, any amendments thereto are binding on all persons who acquire an interest in the Lands.

9.2 **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.

9.3 **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.

9.4 **Indemnity**

The Owner will indemnify and save harmless the City and each of its elected officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates from and against all claims, demands, actions, loss, damage, costs (including legal fees on a solicitor-client basis) 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, employees, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;
- (b) any requirements or obligations hereunder with respect to the construction, maintenance, repair, ownership, lease, license, operation, management or financing of any Non-Market Unit or the enforcement of any Tenancy Agreement; and/or
- (c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

9.5 **Release**

The Owner hereby releases and forever discharges the City and each of its elected officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates 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:

- (a) any requirements or obligations hereunder with respect to the construction, maintenance, repair, ownership, lease, license, operation or management of the Lands or any Non-Market Unit under this Agreement; and/or
- (b) the exercise by the City of any of its rights under this Agreement or an enactment.

9.6 **Survival**

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

9.7 **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.

9.8 **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.

9.9 **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 Eligible Tenant, or any future owner, lessee, occupier or user of the Lands or the Development or any portion thereof, including any Non-Market 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.

9.10 **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.

9.11 **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: City of Burnaby
4949 Canada Way
Burnaby, BC V5G 1M2

Attention: Director, Legislative Services, with copies to City Solicitor and General
Manager Planning and Development

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.

9.12 **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.

9.13 **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.

9.14 **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 by the City in exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.

9.15 **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 Non-Market 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 will, to the extent necessary to resolve such conflict, prevail.

9.16 **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.

9.17 **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.

9.18 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.

9.19 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.

9.20 Applicable Law and Jurisdiction

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. The parties agree to attorn to the exclusive jurisdiction of the courts of British Columbia.

9.21 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.

9.22 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 will be joint and several.

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

L'ARCHE FOUNDATION OF GREATER VANCOUVER,

by its authorized signatory(ies):

Per: _____

Name:

Title:

Per: _____

Name:

Title:

CITY OF BURNABY,

by its authorized signatory:

Per: _____

Name:

Title:

APPENDIX A

STATUTORY DECLARATION

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

TO WIT:

I, _____ of _____ (the "Owner"), 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 Non-Market 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 Non-Market Units.
3. For the period from _____ to _____, an Operating Agreement [was/was not] in effect.
4. For the period from _____ to _____, the Non-Market Units were occupied only by Eligible Tenants (as defined in the Housing Agreement) whose addresses and gross cumulative income appear below:

[Addresses and incomes of Eligible Tenants]

5. The unit size, occupancy status and rents charged each month for the Non-Market Units are as follows:

[Unit Size, Occupancy Status, Tenancy Start Date and Rents for each Non-Market Unit]

6. 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 title to the land on which the Non-Market Units are situated.

7. I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

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

APPENDIX B**INSURANCE**

1. The Owner, at its own cost, maintain throughout the term of the Housing Agreement, all of the following insurance:
 - (a) “all risks” (including flood and earthquake) property insurance on all insurable property and broad form boiler and machinery insurance in respect of the Development (the “**Property**”), and all objects owned, leased, or for which the Owner is legally responsible, or operated by the Owner or by others on behalf of the Owner in the Property or relating to or serving the Property, with reasonable deductibles, and which insurance will cover all property owned or leased by the Owner or for which the Owner is legally liable located on or about the Property, including but not limited to, all buildings, structures, contents, and the Owner’s improvements, in an amount not less than the full appraised replacement cost thereof and including a by-law endorsement; and
 - (b) commercial general liability insurance written on an occurrence form with inclusive limits of not less than Five Million Dollars (\$5,000,000) per occurrence, which insurance will provide indemnity against claims arising out of bodily injury and/or death to persons and against loss or damage to or destruction of the property of others, including the property of the City of Burnaby (the “**City**”), and for the loss of use thereof, and will also:
 - (i) include all operations of the Owner, owners’ protective, products, completed operations, intentional acts to protect persons or property, personal injury, employers and blanket contractual liability coverage, provisions for cross liability, severability of interests and occurrence property damage, and
 - (ii) name the City as an additional insured.
2. The Owner will deliver to the City certificates evidencing the required insurance signed by the Owner’s insurers or, if required by the City certified copies of the insurance policies.
3. The Owner will cause each policy of insurance to:
 - (c) be primary, non-contributing with, and not in excess of any other insurance available to the City;
 - (d) contain an endorsement prohibiting cancellation or adverse material change in coverage without thirty (30) days’ prior written notice to the City by registered mail;
 - (e) contain a waiver, where the City is insured, in respect of the respective interests of the City of any provision in any such insurance policies with respect to any breach or violation of any warranties, representations, declarations or conditions in such policies;

- (f) contain a waiver or waivers of subrogation by the insurer in favour of the City; and
- (g) be in a form and with such insurers reasonably satisfactory to the City.

PRIORITY AGREEMENT

With respect to a Housing Agreement (the “**Housing Agreement**”) made pursuant to Section 483 of the *Local Government Act* between the City of Burnaby and L’Arche Foundation of Greater Vancouver (the “**Owner**”) with respect to the lands and premises legally known and described as:

Parcel Identifier: 017-146-313
Lot A, DL 149, Gp 1, NWD, Plan 85664

(the “**Lands**”)

L’Arche Greater Vancouver Housing Society, Inc. No. S0072371 (the “**Chargeholder**”) is the holder of a Lease encumbering the Lands which Lease is registered in the Lower Mainland LTO under number CA9103297 (the “**Lease**”).

The Chargeholder, being the holder of the Lease, by signing below, in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder), hereby consents to the granting of the covenants in the Housing Agreement by the Owner and hereby covenants that the Housing Agreement will bind its interest in and to the Lands and will rank in priority upon the Lands over the Lease as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Lease. The grant of priority is irrevocable, unqualified and without reservation or limitation.

L’ARCHE GREATER VANCOUVER HOUSING SOCIETY

by its authorized signatory(ies):

Per: _____
Name:

Per: _____
Name:

PRIORITY AGREEMENT

With respect to a Housing Agreement (the “**Housing Agreement**”) made pursuant to Section 483 of the *Local Government Act* between the City of Burnaby and L’Arche Foundation of Greater Vancouver (the “**Owner**”) with respect to the lands and premises legally known and described as:

Parcel Identifier: 017-146-313
Lot A, DL 149, Gp 1, NWD, Plan 85664

(the “**Lands**”)

Provincial Rental Housing Corporation, Inc. No. BC0052129 (the “**Chargeholder**”) is the holder of an Option to Purchase encumbering the Lands which Option to Purchase is registered in the Lower Mainland LTO under number CA9886795 (the “**Option to Purchase**”).

The Chargeholder, being the holder of the Option to Purchase, by signing below, in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder), hereby consents to the granting of the covenants in the Housing Agreement by the Owner and hereby covenants that the Housing Agreement will bind its interest in and to the Lands and will rank in priority upon the Lands over the Option to Purchase as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Option to Purchase. The grant of priority is irrevocable, unqualified and without reservation or limitation.

PROVINCIAL RENTAL HOUSING CORPORATION

by its authorized signatory(ies):

Per: _____
Name:

Per: _____
Name:

PRIORITY AGREEMENT

With respect to a Housing Agreement (the “**Housing Agreement**”) made pursuant to Section 483 of the *Local Government Act* between the City of Burnaby and L’Arche Foundation of Greater Vancouver (the “**Owner**”) with respect to the lands and premises legally known and described as:

Parcel Identifier: 017-146-313
Lot A, DL 149, Gp 1, NWD, Plan 85664

(the “**Lands**”)

British Columbia Housing Management Commission (the “**Chargeholder**”) is the holder of Mortgages and Assignment of Rents of Lease CA9103297 encumbering the Lands which Mortgages are registered in the Lower Mainland LTO under numbers CA9886796 and CA9887937, and which Assignment of Rents is registered in the Lower Mainland LTO under number CA9886797 (collectively, the “**Financial Charges**”).

The Chargeholder, being the holder of the Financial Charges, by signing below, in consideration of the payment of Ten Dollars (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder), hereby consents to the granting of the covenants in the Housing Agreement by the Owner and hereby covenants that the Housing Agreement will bind its interest in and to the Lands and will rank in priority upon the Lands over the Financial Charges as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Financial Charges and prior to the advance of any money pursuant to the Financial Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

by its authorized signatory(ies):

Per: _____
Name:

Per: _____
Name: