

CITY OF BURNABY

BYLAW NO. 14727

A BYLAW to authorize the execution of a Housing Agreement
for the non-market rental housing development at
3770 Trinity Street, Burnaby

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY HOUSING AGREEMENT (3770 TRINITY STREET) BYLAW 2025**.

2. The City is hereby authorized to enter into a housing agreement with ACTION LINE HOUSING 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: 004-943-295

Lot 45 District Lot 186 Group 1 New Westminster District Plan 40140

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

FIRST READING this 11th day of February, 2025

SECOND READING this 11th day of February, 2025

THIRD READING this 11th day of February, 2025

RECONSIDERED AND ADOPTED day of , 2025

MAYOR

CORPORATE OFFICER

Schedule "A"

HOUSING AGREEMENT
(Section 483 *Local Government Act*)

THIS AGREEMENT is dated for reference _____, 2024,

BETWEEN:

ACTION LINE HOUSING SOCIETY (INC. NO. S0008045)
800-885 West Georgia Street
Vancouver, British Columbia, V6C 3H1

(the "**Owner**")

AND:

CITY OF BURNABY
4949 Canada Way
Burnaby, British Columbia, 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 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) **“Agreement”** means this agreement together with all schedules, appendices, attachments and priority agreements attached hereto;
- (b) **“BC Housing”** means the British Columbia Housing Management Commission;
- (c) **“Building”** means the four-storey multiple-family building with 48 Dwelling Units constructed or to be constructed on the Lands in accordance with the CD Plan and for clarity does not include any Existing Buildings;
- (d) **“Business Day”** means any day that is not a Saturday, Sunday, statutory holiday in the Province of British Columbia, or any other day in which the City is closed for regular business;
- (e) **“CD Plan”** means the comprehensive development plan for the Lands entitled “Seton Villa 3755 McGill Street Burnaby, BC” prepared by Eitaro Hirota Architecture Inc. and filed with the City’s General Manager Planning and Development;
- (f) **“City”** means the City of Burnaby;
- (g) **“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;
- (h) **“Deep Subsidy Income Limit”** means for residential units with less than two 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. For 2024, this figure is \$23,549.00 and if such income limit is no longer published by BC Housing, then “Deep Subsidy Income Limit” for a subsequent year is the last published income limit 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;

- (i) **“Deep Subsidy Rent Rate”** means the applicable rental rate for a Deep Subsidy Unit, as determined by the Rent Scale;
- (j) **“Deep Subsidy Units”** means Dwelling Units being rented, or that are intended to be rented, to Eligible Tenants at the Deep Subsidy Rent Rate and **“Deep Subsidy Unit”** means one such Dwelling Unit;
- (k) **“Dwelling Units”** means the residential dwelling units located or to be located in the Building and **“Dwelling Unit”** means one such residential dwelling unit;
- (l) **“Effective Date”** has the meaning set out in section 11.1;
- (m) **“Eligible Tenant”** means a Senior Household that:
 - (i) pursuant to the terms and conditions of the Operating Agreement is eligible to enter into a tenancy agreement for a Non-Market Housing Unit; and
 - (ii) has a cumulative annual gross income not exceeding:
 - A. in the case of Low End of Market Units, the Low and Moderate Income Limit;
 - B. in the case of Rent-Geared-to-Income Units, the Housing Income Limit; and
 - C. in the case of Deep Subsidy Units, the Deep Subsidy Income Limit,but excluding: (A) the Owner, any directors, officers, and employees of the Owner, as applicable, and their respective direct family members; and (B) if the Owner contracts a third party to manage and administer the Non-Market Housing Units pursuant to sections 5.5 or 5.6, such third party, any directors, officers and employees of such third party, as applicable, and their respective direct family members;
- (n) **“Existing Buildings”** means any buildings or structures existing on the Lands prior to April 20, 2022, and includes Seton Vella seniors’ residence tower, the accessory gymnasium building, and Overlynn Mansion;
- (o) **“Extended Expiration Date”** has the meaning set out in section 2.1(b);
- (p) **“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 apply;
- (q) **“Housing Agreement Bylaw”** means the housing agreement bylaw between the Owner and the City pursuant to Section 483 of the *Local Government Act*, approved by the Council of the City under Housing Agreement (3770 Trinity Street) Bylaw

2025 (Bylaw No. 14727) and noted on the title to the Lands, as such Housing Agreement may be amended or replaced from time to time;

- (r) **“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;
- (s) **“Housing Income Limit (HILs)”** means the gross annual income limit for the HILs Lower Mainland planning area associated with the City of Burnaby, as derived from CMHC’s annual Rental Market Survey 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;
- (t) **“Income Limit”** means, collectively, the Low and Moderate Income Limit, Housing Income Limit and the Deep Subsidy Income Limit;
- (u) **“Interpretation Act”** means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;
- (v) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, Chapter 250, together with all amendments thereto and replacements thereof;
- (w) **“Lands”** means the lands and premises legally described as PID: 004-943-295 Lot 45 District Lot 186 Group 1 New Westminster District Plan 40140;
- (x) **“Local Government Act”** means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;
- (y) **“Low and Moderate Income Limit”** means for residential units with less than two (2) bedrooms, a gross household income that does not exceed the median income for couples without children in BC, as determined by BC Housing from time to time. For 2024, this figure is \$84,780.00 and if such income limit is no longer published by BC Housing, then **“Low and Moderate Income Limit”** for a subsequent year is the last published income limit 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;
- (z) **“Low End of Market Rent Rate”** means an amount agreed to by the Owner and BC Housing pursuant to the Operating Agreement;

- (aa) “**Low End of Market Units**” means Dwelling Units being rented, or that are intended to be rented, to Eligible Tenants at the Low End of Market Rent Rate. “**Low End of Market Unit**” means one such Dwelling Unit;
- (bb) “**LTO**” means the New Westminster Land Title Office or its successor;
- (cc) “**Minimum Affordability Threshold**” has the meaning set out in section 3.2;
- (dd) “**Non-Market Housing Units**” means, collectively, the Deep Subsidy Units, Low End of Market Units and Rent-Geared-to-Income Units and “**Non-Market Housing Unit**” means one such unit;
- (ee) “**Operating Agreement**” means the operating agreement executed between the Owner and BC Housing and, if applicable, includes replacement or amended operating agreement(s);
- (ff) “**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;
- (gg) “**Purchaser**” has the meaning set out in section 11.1;
- (hh) “**Permitted Rate**” means the maximum permitted rental rate for each Non-Market Housing Unit, as set out or determined in accordance with the Operating Agreement and this Agreement and which,
 - (i) in the case of Low End of Market Units, will not exceed the Low End of Market Rent Rate;
 - (ii) in the case of Rent-Geared-to-Income Units, will not exceed the Rent-Geared-to-Income Rate; and
 - (iii) in the case of Deep Subsidy Units, will not exceed the Deep Subsidy Rent Rate;
- (ii) “**Rent-Geared-to-Income Rate**” means the applicable rental rate for a Rent-Geared-to-Income Unit, as determined by the Rent Scale;
- (jj) “**Rent-Geared-to-Income Units**” means Dwelling Units being rented, or that are intended to be rented, to Eligible Tenants at the Rent-Geared-to-Income Rate. “**Rent-Geared-to-Income Unit**” means one such Dwelling Unit;
- (kk) “**Rent Scale**” means the rent scale included or attached as a schedule to the Operating Agreement, which sets out the percentage rent (which as of the date of this Agreement is 30% of income) and calculations of rent for Deep Subsidy Units and Rent-Geared-to-Income Units, as such schedule may be amended from time to time by BC Housing;

- (ll) “**Replacement Non-Market Housing Units**” has the meaning set out in section 8.2;
- (mm) “**Residential Tenancy Act**” means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
- (nn) “**Senior Household**” means an individual who is 55 years or older or a Household where at least one individual is aged 55 years or older;
- (oo) “**Tenancy Agreement**” means a tenancy agreement, lease, license or other agreement granting rights to occupy a Non-Market Housing Unit on a month-to-month basis or for a fixed term not exceeding twelve (12) months;
- (pp) “**Tenant**” means an occupant of a Non-Market Housing Unit by way of a Tenancy Agreement;
- (qq) “**Term**” has the meaning set out in section 2.1(a);
- (rr) “**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
- (ss) “**Zoning Bylaw**” means *Burnaby Zoning Bylaw*, 1965, as may be amended or replaced from time to time.

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 dollar amounts referred to herein are in the lawful currency of Canada;
- (i) all provisions are to be interpreted as always speaking;
- (j) the schedules attached hereto form an integral part of this Agreement;
- (k) 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;
- (l) 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
- (m) 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

TERM

2.1 The parties agree that:

- (a) this Agreement will commence on the date of adoption of the Housing Agreement Bylaw and expire on the latest of:
 - (i) the end of the natural life of the Building, as determined by the City's Chief Building Inspector;
 - (ii) 60 years following the date of adoption of the Housing Agreement Bylaw; and
 - (iii) the Extended Expiration Date, (if applicable);
(the "**Term**"); and
- (b) in the event of the complete or substantially complete destruction of the Non-Market Housing Units, as contemplated by section 8.2, then this Agreement will be extended, and such extended term will commence on the date of such event of destruction and expire on the later of:
 - (i) the end of the natural life of the Replacement Non-Market Housing Units, as determined by the City's Chief Building Inspector; and
 - (ii) 60 years following the date of adoption of the Housing Agreement Bylaw plus the number of days accruing between the date of complete or

substantially complete destruction of the Non-Market Housing Units, as contemplated by section 8.2, and the date the final certificate of occupancy is issued in respect of the Replacement Non-Market Housing Units,

(the “**Extended Expiration Date**”).

ARTICLE 3 SIZE AND MIX OF NON-MARKET HOUSING UNITS

- 3.1 The Owner will construct and maintain on the Lands the Building containing the Non-Market Housing Units in the following mix of unit sizes:
- (a) 45 studio Dwelling Units; and
 - (b) 3 one-bedroom Dwelling Units.
- 3.2 Subject to section 3.3, the Owner will ensure that at all times during the Term, it selects Eligible Tenants in a manner that achieves the following unit mix to the extent reasonably possible, and it charges such Eligible Tenants the Permitted Rate:
- (a) 10 Deep Subsidy Units;
 - (b) 24 Rent-Geared-to-Income Units; and
 - (c) 14 Low End of Market Units,
- (collectively, the “**Minimum Affordability Threshold**”).
- 3.3 The Owner will not change the mix of size and type of the Non-Market Housing Units set out in sections 3.1(a) to 3.1(b) or the Minimum Affordability Threshold without the prior written consent of the City.

ARTICLE 4 USE AND OCCUPANCY OF NON-MARKET HOUSING UNITS

- 4.1 The Owner agrees that each Non-Market Housing Unit may only be used and occupied as the permanent residence of an Eligible Tenant. For the purposes of this Agreement, “permanent residence” means that the Non-Market Housing Unit is used as the usual, main, regular, habitual, principal residence, abode or home of the Eligible Tenant.
- 4.2 The Owner must not rent, lease, license or otherwise permit occupancy of any Non-Market Housing Unit except in accordance with the following conditions:
- (a) the Non-Market Housing Unit will only be used or occupied as the 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 Housing Units will not exceed the Permitted Rate applicable to that Non-Market Housing Unit;
- (c) the Owner will not require the Eligible Tenant 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 an Eligible Tenant the Owner's cost, if any, of providing cable television, telephone, other telecommunications, gas, or electricity fees, charges or rates;
- (d) the Owner will not require any Eligible Tenant of a Non-Market Housing Unit to pay any move-in or move-out charges;
- (e) the Owner may, to the extent each Non-Market Housing Unit is individually metered for electricity and/or gas usage, require the Eligible Tenant to pay directly to the Public Utility, the cost of such utilities or services;
- (f) the Owner may charge the Eligible Tenant of a Non-Market Housing Unit on a per use basis, extra charges or fees, for reasonable cost recovery related to: the cleaning and maintenance of amenity areas, facilities and common areas; for use of parking stalls; meals provided by the Owner; and for laundry services in the Building except for the use of outdoor amenity spaces, required bicycle storage, lobby and elevator, for which no fee can be charged;
- (g) the Owner may charge the Eligible Tenant of a Non-Market Housing Unit for reasonable cost recovery related to the repair of damage caused by such Eligible Tenant, or if the item is damaged beyond repair, then for reasonable cost recovery related to the replacement of such item, provided, for certainty, that the Owner will have first deducted all recoveries which reduce any charge payable by the Eligible Tenant of a Non-Market Housing Unit, including recoveries under any warranties and recoveries under any insurance policies maintained by the Owner;
- (h) the Owner may not form a private utility to service the Non-Market Housing Units unless the Owner has received the prior written consent of the City, which consent may be qualified or arbitrarily withheld in the City's sole discretion;
- (i) the Owner will include in the Tenancy Agreement a clause entitling the Owner to collect personal information of any Tenant of a Non-Market Housing Unit, including their age, and to disclose that personal information to the City;
- (j) the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement if:
 - (i) the Non-Market Housing Unit is occupied by a person or persons other than an Eligible Tenant;

- (ii) the Non-Market Housing Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent;
- (iii) the Eligible Tenant subleases the Non-Market Housing Unit or assigns the Tenancy Agreement in whole or in part, subject to section 4.5; and/or
- (iv) the gross annual income of the Senior Household exceeds the applicable Income Limit for the Non-Market Housing Unit for more than one consecutive annual income review,

and in the case of each such event, the Owner hereby agrees with the City to forthwith provide to the Eligible Tenant under the applicable Tenancy Agreement a notice of termination, unless termination of the Tenancy Agreement by the Owner would not be permitted in the circumstances pursuant to *the Residential Tenancy Act* or the Human Rights Code or any other applicable law. Such notice of termination will provide that the termination of the tenancy will be effective two (2) months following the date of such notice or as required by the *Residential Tenancy Act* in the circumstances described in subparagraphs (i), (ii) and (iii) of this section 4.2(j), and six (6) months following the date of such notice or as required by the *Residential Tenancy Act* in the circumstance described in subparagraph (iv) of this section 4.2(j), or such longer period as the Owner considers to be fair and reasonable given the circumstances of the termination;

- (k) the Tenancy Agreement will identify all permanent occupants of the Non-Market Housing Unit and will stipulate that:
 - (i) any individual under the age of 18 will be prohibited from residing at the Non-Market Housing Unit for more than 30 consecutive days or more than 45 days total in any calendar year; and
 - (ii) any individual over the age of 18 not identified in the Tenancy Agreement will be prohibited from residing at the Non-Market Housing Unit for more than 30 consecutive days or more than 45 days total in any calendar year; and
 - (l) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement for a Non-Market Housing Unit to the City upon demand.
- 4.3 For greater certainty, if a Non-Market Housing Unit is rented to a Senior Household that qualifies as an Eligible Tenant at the commencement of such tenancy but such Senior Household subsequently ceases to qualify as an Eligible Tenant due to an increase in the gross household income of such Senior Household, then the Owner will not be in breach of any requirement hereunder so long as the Owner complies with section 4.2(j).
- 4.4 If the Owner has terminated the Tenancy Agreement, then the Owner will use best efforts to cause the Tenant and all other persons that may be in occupation of the Non-Market

- Housing Unit to vacate the Non-Market Housing Unit on or before the effective date of termination.
- 4.5 The Owner agrees to restrict subletting or assignment of a Non-Market Housing Unit, to the extent permitted by the *Residential Tenancy Act*.
- 4.6 When an Eligible Tenant moves out of a Non-Market Housing Unit, the Owner will not enter into a Tenancy Agreement or permit occupancy of a Non-Market Housing Unit by anyone who is not an Eligible Tenant. Subject to section 3.2, when an Eligible Tenant moves out of a Non-Market Housing Unit, the Owner may adjust the Permitted Rate for such unit to the applicable Permitted Rate for the unit size and type as of the date the Owner and new Eligible Tenant enter into a Tenancy Agreement for the Non-Market Housing Unit.
- 4.7 Notwithstanding anything else contained herein, the Owner and City each acknowledge and agree that the Owner's operation of the Building and its renting of the Non-Market Housing Units to Eligible Tenants at rents compliant with the Permitted Rate as required herein are only financially viable given the existence and continuation of the Operating Agreement. The City agrees that, if the Operating Agreement is terminated for any reason (and, for certainty, not replaced), the Owner and the City will, each acting reasonably and prudently, negotiate in good faith and revise and amend the definitions of, and/or the applicability of, the Minimum Affordability Threshold, Eligible Tenants, and Permitted Rate, to ensure the continued viability of the Owner's operation of the Building in support of the Owner's and the City's mutual goal of continuing to make available affordable housing as generally contemplated herein. During the period of any negotiation, and if the parties are unable to come to an agreement on the aforementioned revisions, the Owner will operate the Non-Market Housing Units in accordance with section 5.2.

ARTICLE 5 MANAGEMENT OF NON-MARKET HOUSING UNITS

- 5.1 The Owner will operate and manage the Non-Market Housing Units pursuant to the terms of the Operating Agreement, as may be amended or replaced from time-to-time, subject to section 5.3.
- 5.2 If the Operating Agreement is expired or terminated, then notwithstanding such expiration or termination, the Owner will continue to operate the Non-Market Housing Units in accordance with the Operating Agreement as if such Operating Agreement remained unexpired and in full force and effect.
- 5.3 Should the Owner wish to enter into any additional or replacement Operating Agreement(s) for the Non-Market Housing Units or amend the Operating Agreement, it may do so without the consent of the City, except in the event of any changes to:
- (a) the Minimum Affordability Threshold;
 - (b) the Rent Scale;

- (c) the Permitted Rates; and
 - (d) any defined term in the Operating Agreement related to the Minimum Affordability Threshold, Rent Scale, and Permitted Rates where such change is applicable only to the Operating Agreement in respect of the Building and does not apply on a program-wide basis to all other operating agreements under BC Housing's Community Housing Fund program.
- 5.4 The Owner will obtain the City's prior written approval, which approval will not be unreasonably withheld, of any changes described in sections 5.3(a) to 5.3(d). The Owner will promptly provide a copy of all such additional, replacement or amended Operating Agreement(s) to the City in all circumstances irrespective of whether the City's consent is required, with inconsistencies identified, before executing any such additional, replacement or amended Operating Agreement.
- 5.5 The Owner covenants and agrees, at its cost and expense, to manage the Non-Market Housing Units in accordance with the Operating Agreement, and at all times to:
- (a) furnish good and efficient management of the Non-Market Housing Units to the satisfaction of the City;
 - (b) permit representatives of the City to inspect the Non-Market Housing Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*;
 - (c) maintain the Non-Market Housing Units in a good state of repair and fit for habitation and to comply with all laws, including the *Zoning Bylaw*, health and safety standards applicable to the Lands to the satisfaction of the City;
 - (d) ensure active management and administration of the Non-Market Housing Units and, unless it is itself undertaking some or all of the following activities, contract a third party that is, to the satisfaction of the City: (1) experienced in rental property management; and (2) licensed under the *Real Estate Services Act* to provide rental property management services, unless such third party is exempt from the requirement to be licensed under the *Real Estate Services Act* and regulations thereto, and cause such third party to undertake the following activities which the Owner itself is not undertaking:
 - (i) manage and maintain the Non-Market Housing Units in accordance with this Agreement;
 - (ii) select tenants for Non-Market Housing Units in accordance with the eligibility criteria for Eligible Tenants for Non-Market Housing Units in this Agreement; and
 - (iii) conduct on an annual basis a review of the gross income for a Senior Household occupying a Non-Market Housing Unit to ensure that such

Senior Household continues to qualify as an Eligible Tenant for a Non-Market Housing Unit,

provided that if the Owner meets the criteria set out in (1) and (2) above, the Owner may itself undertake the management and administration of the Non-Market Housing Units pursuant to this section 5.5(d). The current Owner, Action Line Housing Society, represents and warrants to the City that it is experienced in rental property management and is exempt from the requirement to be licensed under the *Real Estate Services Act* and regulations thereto;

- (e) to hire a person or company with the skill and expertise to manage the Non-Market Housing Units in accordance with section 5.5(d) to the satisfaction of the City, if so required by the City pursuant to section 5.6;
- (f) to hire qualified and experienced contractors to provide maintenance services to the Non-Market Housing Units, including but not limited to, landscaping and general maintenance;
- (g) 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 4.2(j) of this Agreement, to the satisfaction of the City; and
- (h) advise any prospective tenant of a Non-Market Housing Unit that the Non-Market Housing Units are subject to this Agreement and provide a copy of this Agreement to a tenant or prospective tenant upon request.

5.6 Notwithstanding the Owner's right to itself undertake the management and administration of the Non-Market Housing Units pursuant to section 5.5(d), if the Owner is in default of its obligations to manage the Non-Market Housing Units in accordance with section 5.5(d) and does not cure such breach within thirty (30) days after receiving notice thereof from the City (or, if it is not reasonably possible for the Owner to cure such breach within such period, then the Owner fails within such period to commence to diligently cure such breach and thereafter to continually and expeditiously cure such breach as soon as reasonably possible in the circumstances), then the City may, in its absolute discretion, require the Owner to hire a person or company with the skill and expertise to manage the Non-Market Housing Units to the satisfaction of the City.

ARTICLE 6 REPORTING

6.1 Within 30 days after receiving notice from the City, the Owner will:

- (a) in respect of each Non-Market 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, in

form and content satisfactory to the City, sworn by the Owner, containing all of the information required to complete the statutory declaration, a copy of the Owner's or, if the Owner has contracted a third party pursuant to sections 5.5(d), 5.5(e) or 5.6, a copy of such third party's Rental Property Management Licence (if applicable), and documentation of experience managing rental properties together with any other information required by the City, subject to compliance with all applicable laws; and

- (b) provide to the City a copy of any report required to be provided by the Owner to BC Housing pursuant to the terms of the Operating Agreement, subject to compliance with all applicable laws.
- 6.2 The City may request the statutory declaration in respect to each Non-Market Housing Unit pursuant to section 6.1(a) 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 will provide to the City such further statutory declarations as requested by the City in respect to a Non-Market 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.
- 6.3 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.
- 6.4 The Owner will provide the City with a copy of the executed Operating Agreement, and any replacement and amended Operating Agreement(s), forthwith once executed by the parties thereto.

ARTICLE 7 INSURANCE

- 7.1 The Owner will insure, or cause to be insured, the Non-Market Housing Units and the Building containing such Non-Market Housing Units to the full replacement cost thereof 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.
- 7.2 Upon request, the Owner will provide to the City proof of insurance coverage required by section 7.1 of this Agreement.

ARTICLE 8 DAMAGE OR DESTRUCTION

- 8.1 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 Housing 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 Housing Units being repaired or replaced immediately prior to the event of damage or destruction.

- 8.2 In the event of the complete or substantially complete destruction of the Non-Market Housing Units within the 60-year period following the date of adoption of the Housing Agreement Bylaw, to the extent of at least 75% of the full replacement cost thereof, as determined by the City's Chief Building Inspector, the Owner will reconstruct or replace the Non-Market Housing Units with new Non-Market Housing Units in a manner comparable to the Non-Market Housing Units being replaced immediately prior to the event of damage or destruction within two years ("**Replacement Non-Market Housing Units**"). This Agreement and the Housing Covenant will apply to the Replacement Non-Market Housing Units for the duration of the Term, to the same extent and in the same manner as such agreements applied to the original Non-Market Housing 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 Housing Units, at the discretion of the City.

ARTICLE 9 DEFAULT AND REMEDIES

- 9.1 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 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.
- 9.2 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 will also constitute a default under this Agreement.

ARTICLE 10 DISPUTE RESOLUTION

- 10.1 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 Vancouver International Arbitration Centre, in which case the appointing authority is the Vancouver International Arbitration Centre; and

- (c) after dispute resolution attempts have been made under sections 10.1(a) and 10.1(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 11 MISCELLANEOUS

11.1 Sale, Transfer or Disposition

The Owner agrees that it will not sell, transfer or otherwise dispose of the whole or any part of the Lands to any person, trust, corporation, partnership or other entity (in this section 11.1, a “**Purchaser**”) unless the Owner requires the Purchaser, as a condition precedent to the transfer, to enter into an assumption agreement with the Owner and the City, in form and content satisfactory to the City, pursuant to which agreement the Purchaser, beginning at the effective date of such transfer (in this section 11.1, the “**Effective Date**”), will unconditionally assume all of the Owner’s covenants and obligations hereunder and upon delivery of a fully executed copy of such assumption agreement to the City, the Owner will be released from any of its covenants and obligations hereunder which arise on or after the Effective Date (but, for greater certainty, the Owner will remain liable for breaches or non-observance or non-performance of the Owner’s covenants and obligations contained herein occurring or arising prior to the Effective Date).

11.2 Housing Agreement

The Owner acknowledges and agrees that:

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

11.3 **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.

11.4 **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.

11.5 **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 at law 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) 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 Housing Unit under this Agreement, 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.

11.6 **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 Non-Market 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.

11.7 **Survival**

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

11.8 **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.

11.9 **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.

11.10 **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 Building or any portion thereof, including any Non-Market 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.

11.11 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.

11.12 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

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.

11.13 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.

11.14 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.

11.15 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.

11.16 **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 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 will, to the extent necessary to resolve such conflict, prevail.

11.17 **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.

11.18 **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.

11.19 **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.

11.20 **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.

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

11.22 **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.

11.23 Counterparts and Delivery

This Agreement may be executed in counterparts and delivered by facsimile or pdf email transmission, and each such counterpart, facsimile or pdf email transmission copy will constitute an original document and such counterparts, taken together, will constitute one and the same instrument

11.24 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.

ACTION LINE HOUSING 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

STATUTORY DECLARATION

CANADA)	IN THE MATTER OF A
)	HOUSING AGREEMENT WITH
PROVINCE OF BRITISH COLUMBIA)	CITY OF 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:

a. I am an authorized signatory of the Owner of the Non-Market Housing Units (as defined in the Housing Agreement) at _____, and make this declaration to the best of my personal knowledge and in my capacity as such authorized signatory and not in my personal capacity, and without personal liability.

b. This declaration is made pursuant to the Housing Agreement in respect of the Non-Market Housing Units.

c. For the period from _____ to _____, to the best of my knowledge, the Non-Market Housing Units were occupied only by Eligible Tenants (as defined in the Housing Agreement) whose ages, addresses and gross cumulative income appear below:

[Addresses, ages and incomes of Eligible Tenants occupying Non-Market Housing Units]

d. The unit size, type (Deep Subsidy Unit, Rent-Geared-to-Income Unit, or Low End of Market Unit), occupancy status and rents charged each month for the Non-Market Housing Units are as follows:

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

e. The number of Non-Market Housing Units that were rented to existing Burnaby residents were: _____

f. Unless the Owner, or the third party contracted to manage the Non-Market Housing Units, is exempt from the requirement to be licensed under the *Real Estate Services Act*, attached as Exhibit "A" is a true copy of the current and valid Rental Property Management licence issued by the BC Financial Services Authority for the Owner, or the party contracted to

manage the Non-Market Housing Units, together with a summary of their experience managing rental properties.

- g. The Owner is, to the best of my knowledge, 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 Housing Units are situated.
- h. 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

Exhibit “A” to Appendix A

A. Licence

[Unless the Owner or third party contracted to manage the Non-Market Housing Units is exempt from the requirement to be licensed under the *Real Estate Services Act*, attach Rental Property Management licence]

B. List of rental property management experience

[List relevant rental property management experience for the Owner or third party contracted to manage the Non-Market Housing Units, as applicable]

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 Lands (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 Action Line Housing Society (INC. NO. S0008045) (the “**Owner**”) with respect to the lands and premises legally known and described as:

PID: 004-943-295
LOT 45 DISTRICT LOT 186 GROUP 1 NEW WESTMINSTER
DISTRICT PLAN 40140 (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 New Westminster Land Title Office under number BA273538 (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 Action Line Housing Society (INC. NO. S0008045) (the “**Owner**”) with respect to the lands and premises legally known and described as:

PID: 004-943-295
LOT 45 DISTRICT LOT 186 GROUP 1 NEW WESTMINSTER
DISTRICT PLAN 40140 (the “**Lands**”)

Peoples Trust Company Inc. No. A033943 (the “**Chargeholder**”) is the holder of a Mortgage and Assignment of Rents encumbering the Lands which Mortgage and Assignment of Rents were registered in the New Westminster Land Title Office as follows:

- (i) Mortgage: under numbers BA273539, inter alia, modified by BA496910 and BB1526867; and
- (ii) Assignment of Rents under numbers BA273540, inter alia, modified by BA496911,

(collectively, the “**Bank Charges**”).

The Chargeholder, being the holder of the Bank 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 the Bank Charges in the Lands and will rank in priority upon the Lands over the Bank Charges as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

PEOPLES TRUST COMPANY

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 Action Line Housing Society (INC. NO. S0008045) (the “**Owner**”) with respect to the lands and premises legally known and described as:

PID: 004-943-295
LOT 45 DISTRICT LOT 186 GROUP 1 NEW WESTMINSTER
DISTRICT PLAN 40140 (the “**Lands**”)

British Columbia Housing Management Commission (the “**Chargeholder**”) is the holder of a Mortgage encumbering the Lands which Mortgage was registered in the New Westminster Land Title Office under number CB1301451 (the “**Bank Charges**”).

The Chargeholder, being the holder of the Bank 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 the Bank Charges in the Lands and will rank in priority upon the Lands over the Bank Charges as if the Housing Agreement had been signed, sealed and delivered and noted on title to the Lands prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank 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: