

**CITY OF BURNABY**

**BYLAW NO. 14477**

A BYLAW to authorize the execution of a Housing Agreement  
for the non-market rental housing development at  
4279 Norland Avenue

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY HOUSING AGREEMENT (4279 NORLAND AVENUE) BYLAW 2022**.

2. The City is hereby authorized to enter into a housing agreement with Dania 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: 006-146-805

Lot 62 District Lot 79 Group 1 New Westminster District Plan 73491

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

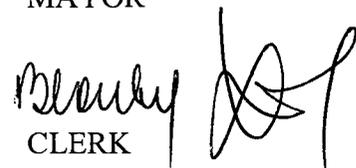
Read a first time this 4<sup>th</sup> day of July, 2022

Read a second time this 4<sup>th</sup> day of July, 2022

Read a third time this 4<sup>th</sup> day of July, 2022

Reconsidered and adopted this 25<sup>th</sup> day of July, 2022

  
MAYOR

  
CLERK

Schedule "A"

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

**THIS AGREEMENT** is dated for reference July 25, 2022,

**BETWEEN:**

**DANIA SOCIETY**  
(Incorporation No. 2704S)  
4729 Norland Avenue  
Burnaby, B.C. V5G 3Z6

(the "**Owner**" as more fully defined in Section 1.1 of this Agreement)

**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, attachments and priority agreements attached hereto;
- (b) **“BC Housing”** means the British Columbia Housing Management Commission;
- (c) **“CD Plan”** means CD Comprehensive Development District (based on P5 Community Institutional District, RM3 Multiple Family Residential District and Central Administrative Area Plan as guidelines and in accordance with the development plan entitled “Dania Seniors Affordable Housing” prepared by NSDA Architects);
- (d) **“City”** means the City of Burnaby;
- (e) **“CPI”** means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function;
- (f) **“Daily Amount”** means \$100.00 per day as of 2022, adjusted annually thereafter by adding thereto an amount calculated by multiplying \$100.00 by the percentage change in the CPI since 2022, to January 1 of the year that a written notice is delivered to the Owner by the City pursuant to Section 7.1 of this Agreement;
- (g) **“Deep Subsidy Income Limit”** means:
  - (i) for Non-Market 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 2021, this figure is \$19,813);
  - (ii) for Non-Market 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 2021, this figure is \$26,400);and if such gross annual income limit is no longer determined by BC Housing, then “Deep Subsidy Income Limit (HILs)” for a subsequent year

is the last income limit determined by BC Housing adjusted annually, on January 1<sup>st</sup> of each subsequent year, by a percentage equal to the percentage of the increase in the CPI for the period January 1 to December 31 of the preceding calendar year or years;

- (h) “**Deep Subsidy Unit**” means a Non-Market Unit occupied by an Eligible Tenant with a gross household income does not exceed the Deep Subsidy Income Limit and whose rent is calculated based on the Rent Scale;
- (i) “**Development**” means the six-storey non-market seniors’ affordable rental housing development constructed on the Lands in accordance with the CD Plan;
- (j) “**Eligible Tenant**” means a Household having a household gross annual income, at the time the Senior executes the first Tenancy Agreement for a Non-Market Housing Unit, not exceeding the income level for the Deep Subsidy Unit, Rent-Geared-to-Income Unit or Moderate Income Unit, as applicable, and legally entitled to reside in a Non-Market Unit pursuant to a residential Tenancy Agreement;
- (k) “**Household**” means:
  - (i) a person; or
  - (ii) two or more persons related by blood, marriage, adoption or foster care, at least one of whom is a Senior, but excludes boarders, lodgers and servants;
- (l) “**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 CA \_\_\_\_\_, as it may be amended or replaced from time to time;
- (m) “**Housing Income Limit (HILs)**” means the gross annual income limit required to pay the average market rent for a particular size of rental unit in the private market for the City of Burnaby or the HILs planning area associated with the City of Burnaby, as derived from the Canadian Housing and Mortgage Corporation’s annual Rental Market Survey and published by BC Housing from time to time, and if such gross annual income limit is no longer published by BC Housing, then “**Housing Income Limit (HILs)**” for a subsequent year is the last published income limit adjusted annually, on January 1<sup>st</sup> of each subsequent year, by a percentage equal to the percentage of the increase in the CPI for the period January 1 to December 31 of the preceding calendar year or years;
- (n) “**Interpretation Act**” means the *Interpretation Act*, R.S.B.C. 1996, Chapter 238, together with all amendments thereto and replacements thereof;
- (o) “**Land Title Act**” means the *Land Title Act*, R.S.B.C. 1996, Chapter 250, together with all amendments thereto and replacements thereof;

- (p) “**Lands**” means the lands and premises legally described as:
- Parcel Identifier: 006-146-805  
Legal Description: Lot 62 Block 11 District Lot 79 New Westminster  
District Plan 73491
- (q) “**Local Government Act**” means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;
- (r) “**Low Income**” means income at or below the HILs which represent the maximum income for eligibility for Rent-Geared-to-Income Units, which maximum is set by BC Housing;
- (s) “**LTO**” means the New Westminster Land Title Office or its successor;
- (t) “**Moderate Income Limit**” means:
- (i) for Non-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 based on data provided by Statistics Canada (for 2022, this figure is \$77,430);
- (ii) for Non-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 based on data provided by Statistics Canada (for 2022, this figure is \$120,990);
- and if such income limit is no longer published by BC Housing, then “**Moderate Income Limit**” for a subsequent year is the last published income limit adjusted annually, on January 1<sup>st</sup> of each subsequent year, by a percentage equal to the percentage of the increase in the CPI for the period January 1 to December 31 of the preceding calendar year or years;
- (u) “**Moderate Income Units**” means a Non-Market Unit occupied by an Eligible Tenant whose gross household income does not exceed the Moderate Income Limit and whose rent is based on the market rent for the community;
- (v) “**Non-Market Unit(s)**” means a residential unit within the Development that is not a caretaker suite or designated for other use in accordance with the CD Plan;
- (w) “**Operating Agreement**” means agreement entitled “Building BC: Community Housing Fund Operating Agreement” dated for reference \_\_\_\_\_, 2022 entered into between BC Housing and the Owner, as the same may be amended, amended and restated, supplemented or modified from time to time with the prior written consent of the City;

- (x) “**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;
- (y) “**Permitted Rent**” means an amount to be paid by the Eligible Tenant in accordance with the Operating Agreement;
- (z) “**Rent**” means the amount an Eligible Tenant is obliged to pay monthly to the Owner for a Non-Market Unit;
- (aa) “**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 Deep Subsidy Units and Rent-Geared-to-Income Units, and as such schedule may be amended from time to time by BC Housing;
- (bb) “*Residential Tenancy Act*” means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78, together with all amendments thereto and replacements thereof;
- (cc) “**Rent-Geared-to-Income Unit**” means a Non-Market Unit occupied by an Eligible Tenant with Low Income and whose Rent is calculated based on the Rent Scale;
- (dd) “**Senior**” means an individual who is 55 years or older;
- (ee) “**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; and
- (ff) “**Term**” means the period commencing on the date of adoption of Housing Agreement (4279 Norland Avenue) Bylaw 14477 and expiring sixty (60) years from the date of issuance of the final occupancy certificate for the Development.

1.2 In this Agreement:

- (a) reference to the singular includes a reference to the plural, and *vice versa*, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (e) any reference to any enactment is to the enactment in force on the date the Owner signs this Agreement, and to subsequent amendments to or replacements of the enactment;

- (f) the provisions of Section 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (g) time is of the essence;
- (h) all provisions are to be interpreted as always speaking;
- (i) reference to a “party” is a reference to a party to this Agreement and to that party’s respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a “party” also includes an Eligible Tenant, agent, officer and invitee of the party;
- (j) reference to a “day”, “month”, “quarter” or “year” is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- (k) where the word “including” is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word “including”.

## **ARTICLE 2 USE AND OCCUPANCY OF NON-MARKET UNITS**

- 2.1 The Owner will construct and maintain on the Lands, during the Term, one hundred fifty-five (155) Non-Market Units in the following mix of unit sizes:
- (a) one adaptable studio unit;
  - (b) 144 adaptable one-bedroom units; and
  - (c) 10 accessible one-bedroom units,
- and agrees to not change the mix of unit sizes on the Lands without the prior written consent of the City.
- 2.2 The Owner agrees that 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 a follows:
- (a) 31 Deep Subsidy Units at the Permitted Rent for an Eligible Tenant that meets the Deep Subsidy Income Limit;
  - (b) 78 Rent-Geared-to-Income Units at the Permitted Rent for an Eligible Tenant that qualifies as Low Income; and
  - (c) 46 Moderate Income Units at the Permitted Rent for an Eligible Tenant that meets the Moderate Income Limit.

- 2.3 The Owner agrees that, during the Term, each Non-Market Unit may only be used as a permanent residence occupied by one Eligible Tenant in accordance with this Agreement, the Operating Agreement, any permits issued by the City with respect to the Development and the CD Plan. For the purposes of this Article, “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.
- 2.4 The Owner shall 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 set out in Section 2.2 of this Agreement without the prior written consent of the City. The Owner shall 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 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.
- 2.5 The Owner must not rent, lease, license or otherwise permit occupancy of any Non-Market Unit during the Term except in accordance with the following conditions:
- (a) the Non-Market Unit will only be used or occupied as a permanent residence by an Eligible Tenant pursuant to a Tenancy Agreement;
  - (b) the monthly rent payable for Non-Market Units will not exceed the Permitted Rent applicable to that class of Non-Market Unit;
  - (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 with respect to a Deep Subsidy Unit to pay any move in or move out fees or charges;
  - (e) the Owner will include in the Tenancy Agreement 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;
    - (ii) the Non-Market Unit is occupied by more than the number of people the City's building inspector determines can reside in the Non-Market Unit

given the number and size of bedrooms in the Non-Market Unit and in light of any relevant standards set by the City in any bylaws of the City;

- (iii) the Non-Market Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent; and/or
- (iv) 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 (such as a termination due to death of a spouse who was the Senior who qualified the Household as an Eligible Tenant);

- (f) the Tenancy Agreement will identify all occupants of the Non-Market Unit and will stipulate that anyone 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 upon demand.
- 2.6 Where the Owner has terminated the Tenancy Agreement, the Owner will use best 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.
- 2.7 The Owner will not permit a Tenancy Agreement for a Non-Market Unit to be subleased or assigned.
- 2.8 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.

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

- 3.1 The Owner covenants and agrees that it will furnish good and efficient management of the Non-Market Units 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*.
- 3.2 The Owner further covenants and agrees that it will maintain the Non-Market Units in a good state of repair and fit for habitation and will comply with all laws, including health

and safety standards applicable to the Lands and in accordance with the Operating Agreement.

- 3.3 Notwithstanding Sections 3.1 and 3.2, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Non-Market Units.

#### **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 must, 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 Development, the Owner will as soon as reasonably possible either:
- (a) replace any part of the Development damaged or destroyed with a new structure in accordance with any agreement which may be made by the Owner with the City;  
or
  - (b) in the absence of any such agreement, repair or replace such damage or destruction to a standard comparable to the standard of the structure 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 Development 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 Development, as applicable, with a new structure or structures in accordance with any agreement which may be made by the Owner with the City or, in the absence of any such agreement, in a manner comparable to the structure or structures being replaced immediately prior to the event of damage or destruction within two years or other length of time approved by the City and in either such event, the Term of this Agreement will be extended by a period equal to the period between the date a building permit for the Building to be reconstructed is issued to the Owner by the City, and the date a certificate of occupancy in respect of such newly reconstructed Development is issued to the Owner by the City. The Owner will comply with all applicable laws, regulations and bylaws, including any orders from the Fire Department, in securing the Lands or any portion thereof following an event of the complete or substantially complete destruction of the Development.

**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 shall also constitute 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), and the decision of the arbitrator will be final and binding and will not be subject to appeal on a question of fact, law or mixed fact and law.

## **ARTICLE 9 MISCELLANEOUS**

### **9.1 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 (a “**Purchaser**”) unless the Owner includes in any agreements relating to such sale, transfer or disposition a covenant binding upon the Purchaser in favour of the City whereby the Purchaser:

- (a) acknowledges that the Purchaser is aware of the terms of this Agreement; and
- (b) assumes and agrees to observe and perform the terms of this Agreement.

### **9.2 Housing Agreement**

The Owner acknowledges and agrees that:

- (a) this Agreement includes a housing agreement entered into under Section 483 of the *Local Government Act*;

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

### 9.3 **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.

### 9.4 **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.

### 9.5 **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 for whom at law the Owner is responsible relating to this Agreement;
- (b) the City refusing to issue a building permit or refusing to permit occupancy of any building, or any portion thereof, constructed on the Lands;
- (c) the construction, maintenance, repair, ownership, lease, license, operation, management or financing of the Lands or any Non-Market Unit or the enforcement of any Tenancy Agreement; and/or
- (d) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

### 9.6 **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 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.

#### 9.7 **Survival**

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

#### 9.8 **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.

#### 9.9 **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.

#### 9.10 **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 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.

#### 9.11 **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.

#### 9.12 **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

And 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.

#### 9.13 **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.

#### 9.14 **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.

#### 9.15 **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.

**9.16 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 Units, and there are no warranties, representations, conditions or collateral agreements made by the City except as set forth in this Agreement. In the event of any conflict between this Agreement and the Housing Covenant, this Agreement shall, to the extent necessary to resolve such conflict, prevail.

**9.17 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.

**9.18 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.

**9.19 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.

**9.20 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.

**9.21 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.

**9.22 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.

**9.23 Joint and Several**

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

**5.23 Limitation on Owner's Obligations**

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

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

**DANIA SOCIETY,**  
by its authorized signatory(ies):

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

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

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

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

**Appendix A to Housing Agreement**

**STATUTORY DECLARATION**

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

TO WIT:

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

1. I am an authorized signatory of the Owner of the 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 \_\_\_\_\_, the Non-Market Units were occupied only by the Eligible Tenants (as defined in the Housing Agreement) whose addresses and gross cumulative income appear below:

*[Addresses and incomes of Eligible Tenants]*

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

*[Unit Size, Occupancy Status, and Rents for each Non-Market Unit]*

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

6. 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 currently located at 4279 Norland Ave. (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:
  - (a) be primary, non-contributing with, and not in excess of any other insurance available to the City;
  - (b) contain an endorsement prohibiting cancellation or adverse material change in coverage without thirty (30) days’ prior written notice to the City by registered mail;
  - (c) 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;

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