CITY OF BURNABY

BYLAW NO. 14848

A BYLAW to authorize the execution of a Housing Agreement for the non-market rental housing development at 4538 Dawson Street

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as **BURNABY HOUSING AGREEMENT (4538 DAWSON STREET) BYLAW 2026**.

2. The City is hereby authorized to enter into a housing agreement with Anthem Alpha One Developments Ltd., 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 032-056-958
Lot 1 District Lot 124 Group 1 New Westminster District Plan EPP124675.

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

FIRST READING this 25th day of August, 2026

SECOND READING this 25th day of August, 2026

THIRD READING this 25th day of August, 2026

RECONSIDERED AND ADOPTED this 22nd day of September, 2026

MAYOR

Signed Original Bylaw on file.

DEPUTY CORPORATE OFFICER

Schedule "A"
HOUSING AGREEMENT
(Section 483 *Local Government Act*)

[TOWER 1B]

THIS AGREEMENT is dated for reference_____, 2026,

BETWEEN:

ANTHEM ALPHA ONE DEVELOPMENTS LTD.
Incorporation No. BC1375230
Suite 1100 – 1055 Dunsmuir Street
Vancouver, B.C. V7X 1K8

(the "**Owner**")

AND:

CITY OF BURNABY
4949 Canada Way
Burnaby, B.C. V5G 1M2

(the "**City**")

WHEREAS:

A. Section 483 of the *Local Government Act* permits the City to enter into and, by legal notation on title, note on title to lands, housing agreements which may include, without limitation, conditions with respect to the form of tenure of housing units;

B. The Owner is the registered owner of the Lands (as hereinafter defined) and is currently constructing the Development on the Lands;

C. The Owner intends to subdivide the Lands by Air Space Plan to create the Rental Air Space Parcel containing all the Required Inclusionary Units; and

D. The Owner and the City wish to enter into this Agreement (as hereinafter defined) to provide the Required Inclusionary Units (as hereinafter defined) as affordable housing on the terms and conditions set out in this Agreement.

NOW THEREFORE in consideration of ten dollars ($10.00) and other good and valuable consideration (the receipt and sufficiency of which are 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) "**Air Space Plan"** means an air space subdivision plan of the Lands, or any portion thereof, pursuant to the *Land Title Act*;

(c) "**BC Housing**" means the British Columbia Housing Management Commission;

(d) "**Business Day**" means a day which is not a Saturday, Sunday or statutory holiday (as defined in the *Employment Standards Act* (British Columbia)) in British Columbia;

(e) "**CD Plan**" means the comprehensive development plan for, *inter alia*, the Lands entitled "The Grove Phase One" prepared by IBI Group Architects (Canada) Inc. and filed with the City's General Manager Planning and Development;

(f) "**City**" and "**City of Burnaby**" means the City of Burnaby and is called the "City" when referring to the corporate entity and "City of Burnaby" when referring to the geographic location;

(g) "**CMHC**" means the Canada Mortgage and Housing Corporation;

(h) "**CMHC Market Median Rent**" means the median residential apartment rent applicable to areas within the City of Burnaby (being North Burnaby CMHC Market Rental survey zone in the case of the Required Inclusionary Units under this Agreement), based on rental market data collected by CMHC, and if such rental market data is no longer published by CMHC, then such other methodology established by the City at its discretion;

(i) "**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;

(j) "**Development**" means the development on the Lands of 2 high-rise residential towers, with 36 and 43 storeys, respectively, of market strata lots and non-market rental apartments, each above a 2 storey commercial podium fronting Dawson Street, all with underground parking, constructed on the Lands as shown in the CD Plan;

(k) "**Effective Date**" has the meaning ascribed to it in section 11.2;

(l) "**Eligible Tenant**" means a Household with a gross household income that does not exceed the Housing Income Limits (HILs) for the applicable unit type (or such other income threshold approved by the City at its discretion), 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 Required Inclusionary Units pursuant to sections 5.1(d) or 5.1(e), such third party, any directors, officers and employees of such third party, as applicable, and their respective direct family members;

(m) "**Funding Agreement**" means an agreement entered into or to be entered into between a Funding Provider and the Owner with respect to the management of the Required Inclusionary Units, as the same may be amended, amended and restated, supplemented or modified from time to time;

(n) "**Funding Provider**" means BC Housing, CMHC or another organization providing funding with respect to the development or operation, or both, of the Required Inclusionary Units;

(o) "**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;

(p) "**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 Burnaby Housing Agreement (4538 Dawson Street) Bylaw 2026 (Bylaw No. 14848) and noted on the title to the Lands, as such Housing Agreement may be amended or replaced from time to time;

(q) "**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 numbers CB_____ and CB_____, as it may be amended or replaced from time to time;

(r) "**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;

(s) "***Interpretation Act***" means the *Interpretation Act,* R.S.B.C. 1996, Chapter 238 together with all amendments thereto and replacements thereof;

(t) "***Land Title Act***" means the *Land Title Act*, R.S.B.C. 1996, Chapter 250 together with all amendments thereto and replacements thereof;

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

> Parcel Identifier: 032-056-958, Lot 1 District Lot 124 Group 1
> New Westminster District Plan EPP124675;

(v) "***Local Government Act***" means the *Local Government Act*, R.S.B.C. 2015, Chapter 1, together with all amendments thereto and replacements thereof;

(w) "**LTO**" means the New Westminster Land Title Office or its successor;

(x) "**Owner**" means the party described on page 1 of this Agreement as the Owner and any subsequent owner of the Lands or any part thereof;

(y) "**Personal Information**" has the meaning set out in the *Personal Information Protection Act*;

(z) "***Personal Information Protection Act***" means the *Personal Information Protection Act,* S.B.C. 2003, Chapter 63, together with all amendments thereto and replacements thereof;

(aa) "**Public Utility**" means any utility or service provider that is regulated by the British Columbia Utilities Commission, or its successor in function;

(bb) "**Purchaser**" has the meaning ascribed to it in section 11.2;

(cc) "**Rental Air Space Parcel**" means an air space parcel created by subdivision of the Lands, or any portion thereof, by Air Space Plan, which air space parcel contains all the Required Inclusionary Units;

(dd) "**Rental Use Zoning Policy**" means the City's Finalized Rental Use Zoning Policy approved by City Council on March 9, 2020;

(ee) "**Replacement Required Inclusionary Units**" has the meaning set out in section 8.2;

(ff) "**Required Inclusionary Rental Rate**" means an amount not exceeding 20% below the CMHC Market Median Rent, for the unit size and type (meaning, for greater certainty, number of bedrooms) of the Required Inclusionary Unit as of the date the Owner and Eligible Tenant enter into a Tenancy Agreement, together with any annual increases permitted in accordance with the *Residential Tenancy Act*;

(gg) "**Required Inclusionary Units**" means the forty-three (43) residential units within the Rental Air Space Parcel, and "**Required Inclusionary Unit**" means any such residential unit;

(hh) "***Residential Tenancy Act***" means the *Residential Tenancy Act*, S.B.C. 2002, Chapter 78 together with all amendments thereto and replacements thereof;

(ii) "**Tenancy Agreement**" means a tenancy agreement, lease, license or other agreement granting rights to occupy a Required Inclusionary Unit on a month-to-month basis or for a fixed term not exceeding twelve (12) months;

(jj) "**Term**" has the meaning set out in section 2.1;

(kk) "**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;

(ll) "**VanIAC**" means the Vancouver International Arbitration Centre; and

(mm) "**Zoning Bylaw**" means the *Burnaby Zoning Bylaw, 1965*, and amendments thereto and re-enactments thereof.

1.2 In this Agreement:

(a) reference to the singular includes a reference to the plural, and *vice versa*, unless the context requires otherwise;

(b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;

(c) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;

(d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;

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

(f) the provisions of section 25 of the *Interpretation Act* with respect to the calculation of time apply;

(g) time is of the essence;

(h) all provisions are to be interpreted as always speaking;

(i) reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers;

(j) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and

(k) where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

ARTICLE 2
TERM

2.1 The parties agree that this Agreement will commence on the date of adoption of the Housing Agreement Bylaw and expire on the later of:

(a) the end of the natural life of the original Development, as determined by the City's Chief Building Inspector;

(b) 99 years following the date of adoption of the Housing Agreement Bylaw; and

(c) in the event of the complete or substantially complete destruction of the Required Inclusionary Units, as contemplated by section 8.2, 99 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 Required Inclusionary Units and the date the final certificate of occupancy is issued in respect of the Replacement Required Inclusionary Units,

(the "**Term**").

ARTICLE 3
SIZE AND MIX OF REQUIRED INCLUSIONARY UNITS

3.1 The Owner will construct and maintain on the Lands the Required Inclusionary Units in the following mix of unit sizes and types:

(a) twenty-eight (28) studio units;

(b) three (3) one-bedroom and den units;

(c) four (4) two-bedroom units;

(d) six (6) two-bedroom and den units; and

(e) two (2) three-bedroom units.

3.2 The Owner will not change the mix of size and type of the Required Inclusionary Units set out in sections 3.1(a) to 3.1(e) without the prior written consent of the City.

ARTICLE 4
USE AND OCCUPANCY OF REQUIRED INCLUSIONARY UNITS

4.1 The Owner acknowledges and agrees that each Required Inclusionary Unit is intended to be made available to a Household in need of affordable rental housing that qualifies as an Eligible Tenant for a Required Inclusionary Unit.

4.2 The Owner will rent the Required Inclusionary Units at Required Inclusionary Rental Rates to an Eligible Tenant.

4.3 The Owner agrees and will include in each Tenancy Agreement a covenant requiring that the applicable Required Inclusionary Unit will only be used and occupied as the permanent residence of the applicable Eligible Tenant in accordance with this Agreement and any permits issued by the City with respect to the Development and the CD Plan. For the purposes of this Article 4, "permanent residence" means that the Required Inclusionary Unit is used as the usual, main, regular, habitual, principal residence, abode or home of the Eligible Tenant.

4.4 The Owner will not rent, lease, license or otherwise permit occupancy of any Required Inclusionary Unit except in accordance with the following conditions:

(a) the Required Inclusionary Units will only be used or occupied as a permanent residence by an Eligible Tenant pursuant to a Tenancy Agreement and not be made available for short term rental;

(b) the monthly rent payable for Required Inclusionary Units will not exceed the Required Inclusionary Rental Rate;

(c) the Owner:

(i) will not require the Eligible Tenant or any permitted occupant to pay any extra charges or fees for sanitary sewer, storm sewer, water, or other municipal utilities or for property or similar taxes, except as expressly permitted elsewhere in this section 4.4(c);

(ii) may, to the extent each Required Inclusionary Unit is individually metered for electricity and/or gas usage, require the Eligible Tenant or any permitted occupant to pay directly to the Public Utility, the cost of such utilities or services;

(iii) will not form a private utility to service the Required Inclusionary 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;

(iv) may require the Eligible Tenant to provide a refundable security deposit when reserving the use of any amenity space or facility within the Rental Air Space Parcel (or amenity spaces or facilities located in other areas of

the Lands to which the occupants of the Rental Air Space Parcel have access), which can be applied towards any damage caused to such amenity space or facility and in the absence of any damage, returned to the Eligible Tenant;

(v) may charge the Eligible Tenant or any permitted occupants of a Required Inclusionary Unit on a per use basis, extra charges or fees for reasonable cost recovery related to the cleaning and maintenance of amenity areas and/or facilities in the Rental Air Space Parcel (or amenity spaces or facilities located in other areas of the Lands to which the occupants of the Rental Air Space Parcel have access) except for the use of outdoor amenity spaces, required bicycle storage, lobby and elevator, for which no fee can be charged;

(vi) may charge the Eligible Tenant or any permitted occupants of a Required Inclusionary Unit for reasonable cost recovery related to the repair of damage caused by such Eligible Tenant or occupant, 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 or permitted occupants of a Required Inclusionary Unit, including recoveries under any warranties and recoveries under any insurance policies maintained by the Owner; and

(vii) will not require any Eligible Tenant or permitted occupant of a Required Inclusionary Unit to pay any unreasonable move-in or move-out charges;

(d) the Owner will include in each Tenancy Agreement, to the extent permitted by the *Residential Tenancy Act,* a clause entitling the Owner to terminate the Tenancy Agreement if:

(i) the Required Inclusionary Unit is occupied by a person or persons other than an Eligible Tenant in the Eligible Tenant's absence;

(ii) the Required Inclusionary Unit remains vacant for three consecutive months or longer, notwithstanding the timely payment of rent;

(iii) subject to section 4.7, the Eligible Tenant subleases the Required Inclusionary Unit or assigns the Tenancy Agreement in whole or in part; and/or

(iv) the gross annual income of the Household exceeds the Housing Income Limits (HILs) for the unit size of the Required Inclusionary 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 subsection 4.4(d), 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 subsection 4.4(d), or such longer period as the Owner considers to be fair and reasonable given the circumstances of the termination;

(e) the Tenancy Agreement will identify all permanent occupants of the Required Inclusionary Unit and will stipulate that any individual over the age of 18 not identified in the Tenancy Agreement will be prohibited from residing at the Required Inclusionary Unit for more than 30 consecutive days or more than 45 days total in any calendar year;

(f) the Owner will include in each Tenancy Agreement for a Required Inclusionary Unit a clause, whereby each applicable tenant consents to the disclosure of the tenant's Personal Information to the City as is necessary for the Owner to comply with the Owner's reporting obligations pursuant to this Agreement, including, without limitation, providing a copy of the Tenancy Agreement to the City and disclosing the tenant's name, address, income details and rent payable; and

(g) the Owner will forthwith deliver a certified true copy of the Tenancy Agreement for a Required Inclusionary Unit to the City as soon as practicable upon demand by the City, subject to any requirements the Owner must comply with under the *Personal Information Protection Act* in respect of the collection, use, retention, and disclosure of the information of any person contained therein.

4.5 Where the Owner has terminated the Tenancy Agreement, the Owner will use reasonable commercial efforts to cause the Eligible Tenant and all other persons that may be in occupation of the Required Inclusionary Unit to vacate the Required Inclusionary Unit on or before the effective date of termination.

4.6 The Owner will comply with all laws, regulations, bylaws and orders with respect to the construction, maintenance, repair, operation and use of the Required Inclusionary Units.

4.7 The Owner agrees to restrict subletting or assignment of a Required Inclusionary Unit, to the extent permitted by the *Residential Tenancy Act,* except that the Owner may permit an Eligible Tenant to sublet or assign their Required Inclusionary Unit provided the sublessee or assignee qualifies as an Eligible Tenant for a Required Inclusionary Unit.

4.8 For greater certainty, if a Required Inclusionary Unit is rented to a Household that qualifies as an Eligible Tenant at the commencement of such tenancy but such Household subsequently ceases to qualify as an Eligible Tenant due to an increase in the gross

household income of such Household, then the Owner will not be in breach of any requirement hereunder so long as the Owner complies with section 4.4(d).

4.9 The Owner acknowledges and agrees that Required Inclusionary Rental Rates apply to Required Inclusionary Units during the Term. When an Eligible Tenant moves out of a Required Inclusionary Unit, the Owner may adjust the Required Inclusionary Rental Rate for such unit to the applicable rate for the unit size and type as of the date the Owner and new Eligible Tenant enter into a Tenancy Agreement for the Required Inclusionary Unit.

4.10 The City agrees that, notwithstanding the obligations and covenants of the Owner under this Agreement, if the performance or observance of any of the Owner's obligations or covenants under this Agreement would be contrary to any provisions of the *Residential Tenancy Act*, the *Human Rights Code* (British Columbia) or any other applicable law, as determined to be contrary by a ruling or decision of any judicial body having jurisdiction, then the Owner will not be in breach of this Agreement for failure to perform or observe such obligation or covenant to the extent the Owner's performance or observance of such obligation would be contrary to any provision of such applicable laws.

ARTICLE 5
MANAGEMENT OF REQUIRED INCLUSIONARY UNITS

5.1 The Owner covenants and agrees, at its cost and expense, to:

(a) furnish good and efficient management of the Required Inclusionary Units to the satisfaction of the City;

(b) permit representatives of the City to inspect the Required Inclusionary Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*;

(c) maintain the Required Inclusionary Units in a good state of repair and fit for habitation and to comply with all laws, including health and safety standards applicable to the Lands to the satisfaction of the City;

(d) ensure active management and administration of the Required Inclusionary Units and 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:

(i) manage the Required Inclusionary Units in accordance with this Agreement;

(ii) maintain the Required Inclusionary Units in a good state of repair and fit for habitation and to comply with all laws, including health and safety standards applicable to the Lands;

(iii) select tenants for Required Inclusionary Units in accordance with the eligibility criteria for Eligible Tenants for Required Inclusionary Rental Units; and

(iv) conduct on an annual basis a review of the gross income for a Household occupying a Required Inclusionary Unit to ensure that such Household continues to qualify as an Eligible Tenant for a Required Inclusionary 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 Required Inclusionary Units pursuant to this section 5.1(d);

(e) to hire a person or company with the skill and expertise to manage the Required Inclusionary Units in accordance with section 5.1(d) to the satisfaction of the City, if so required by the City pursuant to section 5.2;

(f) 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 4.4(d) of this Agreement, to the satisfaction of the City; and

(g) advise any prospective tenant of a Required Inclusionary Unit that the Required Inclusionary Units are subject to this Agreement and provide a copy of this Agreement to a tenant or prospective tenant upon request.

5.2 Notwithstanding the Owner's right to itself undertake the management and administration of the Required Inclusionary Units pursuant to section 5.1(d), if the Owner is in default of its obligations to manage the Required Inclusionary Units in accordance with section 5.1(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 Required Inclusionary Units to the satisfaction of the City.

ARTICLE 6
REPORTING

6.1 Within 30 days after receiving notice from the City, limited to not more than 2 notices per calendar year, the Owner will, in respect of each Required Inclusionary 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, a copy of the Owner's or, if the Owner has contracted a third party pursuant to sections 5.1(d) or 5.1(e), 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.

6.2 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 7
INSURANCE

7.1 The Owner will insure, or cause to be insured, the Required Inclusionary Units and all buildings and structures within the Rental Air Space Parcel 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 Required Inclusionary 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 Required Inclusionary 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 Required Inclusionary Units prior to the expiry of this Agreement, 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 Required Inclusionary Units with new Required Inclusionary Units in a manner comparable to the Required Inclusionary Units being replaced immediately prior to the event of damage or destruction within three years (the "**Replacement Required Inclusionary Units**"). This Agreement and the Housing Covenant will apply to the Replacement Required Inclusionary Units, to the same extent and in the same manner as such agreements apply to the original Required Inclusionary 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 Required Inclusionary 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 Required Inclusionary Unit is used or occupied in breach of this Agreement or the Housing Covenant, or if 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 also constitutes 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 VanIAC, in which case the appointing authority is VanIAC; 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 **Funding Agreement**

The Owner covenants and agrees that should the Owner wish to enter into a Funding Agreement for the Required Inclusionary Units, the Owner will ensure that such Funding Agreement does not conflict with the terms of this Agreement. For greater clarity, any requirements contained in a Funding Agreement that exceed the requirements contained in this Agreement will not be considered a conflict.

11.2 **Sale, Transfer or Disposition**

The Owner agrees that it will not sell, transfer or otherwise dispose of the whole or any part of the Rental Air Space Parcel to any person, trust, corporation, partnership or other entity (in this section 11.2, 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 11.2, 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 shall 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).

11.3 **Housing Agreement**

The Owner acknowledges and agrees that:

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

(b) the City may file notice of this Agreement in the LTO against the title to the Lands; and

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

11.4 **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.

11.5 **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.

11.6 **Indemnity**

The Owner will indemnify and save harmless the City and each of its elected officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates

from and against all claims, demands, actions, loss, damage, costs (including legal fees on a solicitor-client basis) and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:

(a) any negligent act or omission of the Owner, or its officers, directors, employees, agents, contractors or other persons for whom at law the Owner is responsible relating to this Agreement;

(b) any requirements or obligations hereunder with respect to the construction, maintenance, repair, ownership, lease, license, operation, or management of the Rental Air Space Parcel or any Required Inclusionary Unit under this Agreement, or the enforcement of any Tenancy Agreement; and/or

(c) without limitation, any legal or equitable wrong on the part of the Owner or any breach of this Agreement by the Owner.

11.7 **Release**

The Owner hereby releases and forever discharges the City and each of its elected officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of or which would or could not occur but for:

(a) any requirements or obligations hereunder with respect to the construction, maintenance, repair, ownership, lease, license, operation or management of the Rental Air Space Parcel or any Required Inclusionary Unit under this Agreement; and/or

(b) the exercise by the City of any of its rights under this Agreement or an enactment.

11.8 **Survival**

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

11.9 **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.

11.10 **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.

11.11 **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 Rental Air Space Parcel or any portion thereof, including any Required Inclusionary 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.

11.12 **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.

11.13 **Notice**

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

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

Attention: Corporate Officer, 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.

11.14 **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.

11.15 **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.

11.16 **Waiver**

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

11.17 **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 Required Inclusionary 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.

11.18 **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.

11.19 **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.

11.20 **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.

11.21 **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.

11.22 **Applicable Law and Jurisdiction**

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

11.23 **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.

11.24 **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.

11.25 **No Liability**

The parties agree that neither the Owner, nor any successor in title to the Lands, or portions thereof, will be liable for breaches of or non-observance or non-performance of covenants contained in this Agreement occurring after the date that the Owner or its successor in title, as the case may be, ceases to be the registered or beneficial owner of the Lands or any portion thereof; provided, however, the Owner or its successors in title, as the case may be, will remain liable after ceasing to be the registered or beneficial owner of the Lands for all breaches of and non-observance and non-performance of covenants in this Agreement if the breach, non-observance or non-performance occurred prior to the Owner or any successor in title, as the case may be, ceasing to be the registered or beneficial owner the

Lands.

(Remainder of page intentionally left blank. Signature page to follow)

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

ANTHEM ALPHA ONE DEVELOPMENTS LTD.,
by its authorized signatory(ies):

Per: _____
Name:
Title:

Per: _____
Name:
Title:

CITY OF BURNABY,
by its authorized signatory:

Per: _____
Name:
Title:

APPENDIX A

STATUTORY DECLARATION

CANADA	)	**IN THE MATTER OF A**
	)	**HOUSING AGREEMENT WITH**
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:

1. I am an authorized signatory of the Owner of the Required Inclusionary 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 Required Inclusionary Units.

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

   [Addresses and incomes of Eligible Tenants occupying Required Inclusionary Units]

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

   [Type of Required Inclusionary Unit, Unit Size, Occupancy Status, Tenancy Start Date and Rents for each Required Inclusionary Unit]

5. The number of Required Inclusionary Units that were rented to existing Burnaby residents were: _____

6. Unless the Owner, or the third party contracted to manage the Required Inclusionary 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 Required Inclusionary Units, together with a summary of their experience managing rental properties.

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

8. 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 Required Inclusionary 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 Required Inclusionary 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 Rental Air Space Parcel (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 Anthem Alpha One Developments Ltd. (the "**Owner**") with respect to the lands and premises legally known and described as:

Parcel Identifier: 032-056-958
Lot 1 District Lot 124 Group 1 New Westminster District Plan EPP124675

(the "**Lands**")

Aviva Insurance Company of Canada (Incorporation No. A140077) (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 under numbers CB715473 and CB715474, respectively, (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.

AVIVA INSURANCE COMPANY OF CANADA
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 Anthem Alpha One Developments Ltd. (the "**Owner**") with respect to the lands and premises legally known and described as:

Parcel Identifier: 032-056-958
Lot 1 District Lot 124 Group 1 New Westminster District Plan EPP124675

(the "**Lands**")

Royal Bank of Canada (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 under numbers CB999961 and CB999962, respectively, (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.

ROYAL BANK OF CANADA
by its authorized signatory(ies):

Per: _____
Name:

Per: _____
Name: