

CITY OF BURNABY

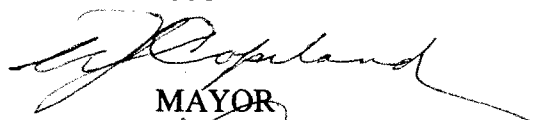

BYLAW NO. 10242

A BYLAW to authorize a Housing Agreement with Legends  
Housing Co-operative and British Columbia  
Buildings Corporation

The Council of the City of Burnaby ENACTS as follows:

1. This Bylaw may be cited as BURNABY HOUSING AGREEMENT AUTHORIZATION BYLAW NO. 1, 1995.
2. The City of Burnaby is hereby authorized and empowered to enter into a Housing Agreement with Legends Housing Co-operative and British Columbia Buildings Corporation relating to property legally described as Lot A, District Lot 94, Group 1, New Westminster District, Plan LMP17944 in the form of agreement attached hereto as Schedule "A" (hereinafter called the "said agreement").
3. The City Clerk is hereby authorized and empowered to execute the said agreement, signing the same and affixing the corporate seal thereto.

Read a first time this	day of	1995
Read a second time this	day of	1995
Read a third time this	day of	1995
Reconsidered and adopted this	day of	1995

  
MAYOR  
  
CLERK

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 1995.

BETWEEN:

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

(hereinafter called the "City")

OF THE FIRST PART

AND:

**BRITISH COLUMBIA BUILDINGS CORPORATION**  
4720 Kingsway  
Burnaby, B.C.

(hereinafter called the "Owner")

OF THE SECOND PART

AND:

**LEGENDS HOUSING CO-OPERATIVE**  
2250 Commercial Drive  
Vancouver, B.C. V5N 5P9

(hereinafter called the "Lessee")

OF THE THIRD PART

**WHEREAS** the Owner is the registered owner of the following lands in Burnaby, British Columbia:

**P.I.D. 018 855 695**

**Lot A, District Lot 94, Group 1, New Westminster  
District, Plan LMP17944**

(hereinafter called the "Lands");

**AND WHEREAS** the Owner has leased the Lands to the Lessee for a term of sixty (60) years commencing the \_\_\_\_\_ day of \_\_\_\_\_, 1995 pursuant to a written lease made the \_\_\_\_\_ day of \_\_\_\_\_, 1995 (hereinafter called the "Lease");

**AND WHEREAS** the Owner and the Lessee wish to develop the Lands as a 36 unit limited equity non-profit co-operative housing project for occupation by seniors and the City wishes to ensure that the Lands will be developed and continue to be used for the purpose of providing housing for seniors on a non-profit basis;

**AND WHEREAS** Section 963.2 of the *Municipal Act* permits the City, by bylaw, to enter into a housing agreement regarding the occupancy of housing units;

**NOW THIS AGREEMENT WITNESSETH** that in consideration of the payment of the sum of \$1.00 now paid by the City to each of the Owner and the Lessee and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) the parties covenant and agree with each other as follows, as a housing agreement under Section 963.2 of the *Municipal Act*, and as a contract and a deed under seal between the parties:

## **SECTION 1 - DEFINITIONS**

- 1.1 (a) "Building" means the 36 unit residential building constructed or to be constructed on the Lands;
- (b) "Co-operative" means a co-operative association incorporated under the *Co-operative Association Act*, R.S.B.C. 1979, ch. 66;

- (c) "CPI" means the Consumer Price Index for Vancouver under the heading "All Items" as published by Statistics Canada or its successor;
- (d) "Member" means a member of the Lessee or of any other Co-operative which owns, leases or otherwise holds possession of the Project;
- (e) "Occupant" means a person who is ordinarily resident in a Unit;
- (f) "Project" means the Lands, the Building and any other improvements on the Lands;
- (g) "Project Records" means the books of account, ledgers, receipts, financial statements, balance sheets and rent rolls relating to the Project and, in the case of the Lessee or any other Co-operative owning, leasing or holding possession of the Project, includes its corporate registers and records required to be maintained under the *Co-operative Association Act*;
- (h) "Qualified Co-operative" means a Co-operative which by its memorandum of association and rules restricts:
  - (i) its business to providing housing on a co-operative basis to Seniors;
  - (ii) its membership to Seniors and persons who become associate members under the terms of its memorandum of association and rules;
  - (iii) the occupation of the Units to its members and their spouses, other than on a temporary basis;

- (iv) the amount which a Unitowner is entitled to receive or realize on a sale or other disposition of a Unit, or the Shares which entitle the Unitowner to occupy a Unit, to the lesser of:
  - (A) the market value of the Unit or Shares as of the date of disposition; or
  - (B) the amount paid by the Unitowner for the Unit or Shares plus the product resulting when such amount is multiplied by the percentage increase in the CPI for the period commencing on the date the Unitowner acquired the Unit or Shares and ending on the date of disposition;
  
- (i) "Senior" means a natural person fifty-five (55) years of age or older;
  
- (j) "Shares" mean shares in the Lessee or any other Co-operative which owns, leases or holds possession of the Project;
  
- (k) "Unit" means a dwelling unit in the Project";
  
- (l) "Unitowner" means the Owner of a Unit or of Shares which entitle the holder to occupy a Unit.

## **SECTION 2 - USE**

- 2.1 The Lands shall be used only for the purpose of constructing, maintaining and operating a 36 Unit non-profit housing project for Seniors.
  
- 2.2 At least one Occupant of each Unit must be a Senior.

- 2.3 The Owner shall not sell, transfer, lease or otherwise part with possession of the Project or any part thereof except to a Qualified Co-operative or except by way of the rental of individual Units to Seniors. Where the Owner leases or otherwise parts with possession of the Project or any part thereof to a Qualified Co-operative the Owner shall procure from such Qualified Co-operative as a condition of granting the lease or giving possession a covenant in favour of both the Owner and the City to observe and perform all of the terms of this Agreement as if it were named as Lessee in this Agreement and had executed this Agreement as such.
- 2.4 The Lessee represents to the City that it is now a Qualified Co-operative and covenants and agrees with the City to remain a Qualified Co-operative for so long as it continues to lease or otherwise hold possession of the Project or any part thereof and to strictly enforce at all times its memorandum of association and rules as they relate to these matters set out in Section 1.1(h).
- 2.5 The Lessee shall not amend its memorandum of association or rules without the prior written consent of the City, such approval not to be unreasonably withheld unless the proposed changes relate to any of the matters set out in Section 1.1(h).

### **SECTION 3 - RENTING AND LEASING**

- 3.1 No Unit may be rented or leased without the prior written consent of the City as to both the renting or leasing and the amount of rent to be charged.
- 3.2 Where the City agrees to the renting or leasing of a Unit, Sections 3.3 and 3.4 shall be complied with.
- 3.3 Rent increases shall be subject to all applicable British Columbia legislation. In addition, the maximum allowable annual percentage increase of the rent payable by

a particular tenant for a Unit will be equal to the annual percentage increase, during the year immediately preceding the date that notice of the increase is given to the Tenant of the Unit, in the CPI plus 5% per annum on a non-cumulative basis. The most currently published CPI at the time of giving notice of a rent increase to the Tenant will be used in establishing the maximum allowable annual percentage in the rent for the Unit.

- 3.4 Where a tenancy is terminated the Unit may not be relet without the consent of the City pursuant to Section 3.1.
- 3.5 This Section 3 shall not apply to the lease of a Unit to its Unitowner.

#### **SECTION 4 - ACCESS**

- 4.1 The City and its servants and agents shall be entitled at all reasonable times to enter onto the Project and into the Building to inspect the same, to monitor performance of the terms of this Agreement and to inspect the Project Records, which shall at all times be maintained at the Project.

#### **SECTION 5 - CONSTRUCTION AND DEMOLITION**

- 5.1 At the time of completion of its initial construction the Project must meet or exceed the construction standards of the appropriate municipal, provincial and federal authorities.
- 5.2 The Project will not be demolished unless
  - (a) it is no longer reasonable or practicable to repair or replace any structural component of the Project; or

- (b) the Project is damaged or destroyed, other than by a wilful act or omission of the Owner, or its employees or agents, or of the Lessee, or its employees or agents, to the extent of 60% or more of its value above its foundations, as determined by the City;

and a demolition permit is issued for the Project by the City and the Project is demolished under that permit.

## **SECTION 6 - ANTI-DISCRIMINATION**

- 6.1 Neither the Owner nor the Lessee shall discriminate against any person in applying for membership in the Lessee or applying to rent a Unit by reason of race, national or ethnic origin, colour, religion, sex, marital status or any other cause prohibited by applicable human rights legislation.

## **SECTION 7 - DEFAULT**

- 7.1 The City shall be entitled to exercise any and all remedies available to it in law and in equity, including specific performance, injunction and declaratory relief to enforce this Agreement.
- 7.2 The Owner and the Lessee acknowledge and agree that in the case of a breach of this Agreement which is not fully remediable by the mere payment of money and promptly so remedied, the harm sustained by the City and to the public interest will be irreparable and not susceptible of adequate monetary compensation.
- 7.3 The Owner and the Lessee acknowledge and agree that they are entering into this Agreement to benefit the public interest in providing housing for Seniors, and that the City's rights and remedies under this Agreement are necessary to ensure that



this purpose is carried out, and that the City's rights and remedies under this Agreement are fair and reasonable and ought not to be construed as a penalty or forfeiture.

- 7.4 No reference to nor exercise of any specific right or remedy under this Agreement or at law or in equity by any party will prejudice, limit or preclude that party from exercising any other right or remedy. No right or remedy will be exclusive or dependent upon any other right or remedy, but any party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination. The Owner and the Lessee acknowledge that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner or the Lessee under this Agreement.
- 7.5 In the event of a default by the Owner or the Lessee hereunder the defaulting party shall pay to the City on demand all of the City's costs of exercising its rights or remedies under this Agreement on a full indemnity basis.
- 7.6 The City acknowledges that for so long as the Lease remains in force, the Lessee will have the possession, use and enjoyment of the Project and that the Owners right to control the use will be limited. The City therefore agrees that it shall in the first instance look to the Lessee for the performance and observance of the terms of this Agreement and in the event of a default under this Agreement the City shall only seek to have the Owner remedy the default if and to the extent that the Lessee has failed or is unable to remedy the default.

## **SECTION 8 - LIABILITY**

- 8.1 Except for the negligence of the City or its employees, agents or contractors, the

Owner will indemnify and save harmless the City and its elected officials, officers, directors, employees 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 shall or may be liable for or suffer or incur or be put to by reason of or arising out of any act or omission by the Owner, or its officers, directors, employees, agents, contractors, or other persons for whom at law the Owner is responsible or the Owner's ownership, lease, operation, management or financing of the Project.

- 8.2 Except for the negligence of the City or its employees, agents or contractors, the Lessee will indemnify and save harmless the City and its elected officials, officers, directors, employees 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 shall or may be liable for or suffer or incur or be put to by reason of or arising out of any act or omission by the Lessee, or its officers, directors, employees, agents, contractors, or other persons for whom at law the Lessee is responsible or the Lessee's lease, operation, management or financing of the Project.

## **SECTION 9 - GENERAL PROVISIONS**

- 9.1 Nothing in this Agreement:

- (a) affects or limits any discretion, rights, powers, duties or obligations of the City under any enactment or at common law, including in relation to the use or subdivision of land;
- (b) affects or limits any enactment relating to the use or subdivision of the Land; or

- (c) relieves the Owner or the Lessee from complying with any enactment, including the City's bylaws in relation to the use or subdivision of land.

9.2 The Owner, the Lessee 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, the Lessee, any tenant, or any future owner, lessee, occupier or user of the Project or any portion of it including any Unit; and
- (c) the City may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so.

9.3 This Agreement burdens and runs with the Lands including the Project and any part into which any of them may be subdivided or consolidated, by strata plan or otherwise. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its successors and assigns, the Lessee for itself, its successors and assigns, and all persons who acquire an interest the Land after the date of this Agreement.

9.4 The Owner will, at its expense, do or cause to be done all acts reasonably necessary to grant priority to this Agreement over all charges and encumbrances which may have been registered against the title to the Lands in the New Westminster/Vancouver Land Title Office save and except those specifically approved in writing by the City or in favour of the City.

9.5 The City, the Owner and the Lessee each intend by execution and delivery of this Agreement to create both a contract and a deed under seal.

- 9.6 An alleged waiver by a party of any breach by another party of its obligations under this Agreement will be effective only if it is an express waiver of the breach in writing. No waiver of a breach of this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.
- 9.7 Time is of the essence in this Agreement. If any party waives this requirement, that party may reinstate it by delivering notice to another party.
- 9.8 If a Court of competent jurisdiction finds that any part of this Agreement is invalid, illegal, or unenforceable, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 9.9 Every obligation of a party which is set out in this Agreement will extend throughout the duration of this Agreement and, to the extent that any obligation ought to have been observed or performed prior to or upon the expiry or earlier termination of this Agreement, such obligation will survive the expiry or earlier termination of this Agreement until it has been observed or performed.
- 9.10 All notices, demands, or requests of any kind, which a party may be required or permitted to serve on another in connection with this Agreement, must be in writing and may be served on the other parties by registered mail, by facsimile transmission, or by personal service, to the following address for each party:

City:

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

Attention: City Clerk

Facsimile Number: 294-7537

Owner:

British Columbia Building Corporation  
4720 Kingsway  
Burnaby, B.C.

Attention:

Facsimile Number:

Lessee:

Service of any such notice, demand, or request will be deemed complete, if made by registered mail, 72 hours after the date and hour of mailing, except where there is a postal service disruption during such period, in which case service will be deemed to be complete only upon actual delivery of the notice, demand or request; if made by facsimile transmission, on the first business day after the date when the facsimile transmission was transmitted; and if made by personal service, upon personal service being effected. Any party, from time to time, by notice in writing served upon the other parties, may designate a different address or different or additional persons to which all notices, demands, or requests are to be addressed.

- 9.11 Upon request by the City, the Owner and the Lessee will promptly do such acts and execute such documents as may be reasonably necessary, in the opinion of the City, to give effect to this Agreement.
- 9.12 This Agreement will enure to the benefit of and be binding upon each of the parties and their successors and permitted assigns.

## **SECTION 10 - INTERPRETATION**

- 10.1 Gender specific terms include both genders and include corporations. Words in the singular include the plural, and words in the plural include the singular.
- 10.2 The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this Agreement is to be construed simply according to its fair meaning, and not strictly for or against either party.
- 10.3 The word "including" when following any general statement or term is not to be construed to limit the general statement or term to the specific items which immediately follow the general statement or term to similar items whether or not words such as "without limitation" or "but not limited to" are used, but rather the general statement or term is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of the general statement or term.
- 10.4 The words "must" and "shall" are to be construed as imperative.
- 10.5 Any reference in this Agreement to any statute or bylaw includes any subsequent amendment, re-enactment or replacement of that statute or bylaw.
- 10.6 This Agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia.

IN WITNESS WHEREOF each of the City, the Owner and the Lessee have executed this Agreement under seal by their duly authorized officers as of the reference date of this Agreement.

THE CORPORATE SEAL OF THE CITY  
OF BURNABY WAS HEREUNTO AFFIXED  
IN THE PRESENCE OF:

\_\_\_\_\_  
City Clerk-Authorized Signatory

THE CORPORATE SEAL OF BRITISH  
COLUMBIA BUILDINGS CORPORATION  
WAS HEREUNTO AFFIXED IN THE  
PRESENCE OF:

\_\_\_\_\_  
Authorized Signatory

THE CORPORATE SEAL OF LEGENDS  
HOUSING CO-OPERATIVE WAS HEREUNTO  
AFFIXED IN THE PRESENCE OF:

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_