

THE CORPORATION OF THE DISTRICT OF BURNABY

BYLAW NO. 9757

A BYLAW to authorize the granting of a lease of certain municipally owned property to Cariboo Heights Housing Co-operative.

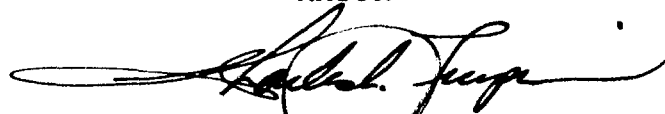
The Council of The Corporation of the District of Burnaby ENACTS as follows:

1. This Bylaw may be cited as BURNABY LEASE AUTHORIZATION BYLAW NO. 7, 1992.
2. The Council is hereby authorized and empowered to lease unto Cariboo Heights Housing Co-operative upon the terms, covenants and conditions more particularly set forth in the form of lease hereunto annexed (hereinafter called the "said lease") municipally owned property in enclave 6a of the Cariboo Heights Community Plan legally described as Lot 1, District Lots 13 and 14, Group 1, New Westminster District, Plan LMP4236.
3. The Municipal Clerk is hereby authorized and empowered to execute the said lease, signing the same and affixing the corporate seal thereto.

Read a first time this	13th	day of	JULY	1992
Read a second time this	13th	day of	JULY	1992
Read a third time this	13th	day of	JULY	1992

RECONSIDERED AND ADOPTED THIS 27th DAY OF JULY 1992


MAYOR



1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Signature of applicant, applicant's
solicitor or agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:
(PID) (Legal Description)

017 808 391 Lot 1, D.L. 13 & 14, Gp. 1, NWD, Plan LMP4236

3. NATURE OF INTEREST:

Description	Document Reference (page and paragraph)	Person Entitled to Interest
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Lease	Entire Document	Transferee
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4. TERMS: Part 2 of this instrument consists of (select one only)

- | | | |
|---------------------------------|-------------------------------------|--|
| (a) Filed standard charge terms | <input type="checkbox"/> | D.F. NO. |
| (b) Express charge terms | <input checked="" type="checkbox"/> | Annexed as Part 2 |
| (c) Release | <input type="checkbox"/> | There is no Part 2 of
this instrument |

5. TRANSFEROR(S):

THE CORPORATION OF THE DISTRICT OF BURNABY

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

CARIBOO HEIGHTS HOUSING CO-OPERATIVE (C1648)
202-2250 Commercial Drive, Vancouver, B.C. V5N 5P9

7. ADDITIONAL OR MODIFIED TERMS: None

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Party(ies) Signature(s)

Y	M	D

THE CORPORATION OF THE DISTRICT OF
BURNABY by its authorized signatory:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1979, c.116, to take affidavits for use in British Columbia and certifies the matter set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

EXECUTIONS CONTINUED

Officer Signature(s)	Execution Date			Transferor/Borrower/Party Signature(s)
	Y	M	D	
<hr/>				CARIBOO HEIGHTS HOUSING CO-OPERATIVE by its authorized signatory(ies): <hr/> <hr/>

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1979, c. 116, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

"TERMS OF INSTRUMENT - PART 2"

THIS LEASE dated for reference the day of
1992.

BETWEEN:

THE CORPORATION OF THE DISTRICT OF BURNABY
4949 Canada Way
Burnaby, B.C. V5G 1M2

(hereinafter called the "Lessor")

OF THE FIRST PART

AND:

CARIBOO HEIGHTS HOUSING CO-OPERATIVE
(Incorporation No. CP-1648)
c/o Columbia Housing Advisory Association
202-2250 Commercial Drive
Vancouver, B.C. V5N 5P9

(hereinafter called the "Lessee")

OF THE SECOND PART

WHEREAS:

A. The Lessee wishes to provide housing for its members including persons of limited income and requires the Land (as hereinafter defined) for this purpose.

B. The Governments of Canada and the Province of British Columbia have agreed to provide financial assistance to the Lessee under the Federal Co-operative Housing Program and the Rent Supplement Program for the Housing Project (as hereinafter defined).

C. The Lessor has agreed with the Lessee to grant a lease of Land on the terms set out herein to permit the construction of the Housing Project and its operation as a housing co-operative.

NOW THIS AGREEMENT WITNESSETH that in consideration of the rents reserved and the covenants and agreements set forth

below, the parties agree as follows:

1. DEFINITIONS

1.1 In this Lease:

- 1.1.1 "BCHMC" means the British Columbia Housing Management Commission or its successor or successors;
- 1.1.2 "CMHC" means Canada Mortgage and Housing Corporation or its successor or successors;
- 1.1.3 "Commencement Date" means July 1, 1992;
- 1.1.4 "Development Plan" means the plans and specifications of development for the Housing Project which are delivered to and approved by the Lessor in the manner provided in Clause 12;
- 1.1.5 "Eligible Occupant" means a person who meets income or housing needs criteria, which may be prescribed in writing by BCHMC, CMHC and the Lessor and delivered to the Lessee from time to time, or, where an Operating Agreement is in effect, as prescribed in the Operating Agreement;
- 1.1.6 "Event of Destruction" means damage to or destruction of the Housing Project from any cause whatsoever;
- 1.1.7 "Housing Project" means a group of multiple unit residential buildings to be constructed on the

Land, and any replacement of the said building to be constructed on the Land;

- 1.1.8 "Land" means that parcel of land situate in the Municipality of Burnaby and legally known and described as:

P.I.D. No. 017 808 391

**Lot 1, District Lots 13 and 14, Grp. 1, N.W.D.,
Plan LMP4236**

- 1.1.9 "Land Title Office" means the Land Title Office established under the Land Title Act in which title to the Land is registered;
- 1.1.10 "Leasehold Mortgage" means a mortgage of the Lessee's leasehold estate in the Land, granted pursuant to Clause 13;
- 1.1.11 "Leasehold Mortgagee" means the mortgagee under the Leasehold Mortgage;
- 1.1.12 "Members" means shareholders of the Lessee;
- 1.1.13 "Operating Agreement" means an agreement, the form of which is attached hereto as Schedule "A", entered into between the Lessee and CMHC;
- 1.1.14 "Rent Supplement Agreement" means an agreement, the form of which is attached hereto as Schedule "B", entered into between the Lessee and BCHMC as representative of Her Majesty the Queen in Right of the Province of British Columbia which provides for payment of financial contributions to the Lessee in respect of the costs of operation of the Housing

Project, as amended from time to time;

1.1.15 "Real Property Taxes" means all taxes, rates, levies, duties, charges and assessments now or hereafter assessed, levied or charged by any competent governmental authority upon the Land or any improvements thereon;

1.1.16 "Term" means the term of this Lease defined in Clause 3.1.

2. GRANT OF LEASE

2.1 The Lessor hereby demises and leases the Land to the Lessee.

3. TERM

3.1 TO HAVE AND TO HOLD the Land unto the Lessee for a term of fifty (50) years commencing on the Commencement Date.

4. RENT

4.1 YIELDING AND PAYING THEREFOR as rent for the Term the sum of ONE MILLION FOUR HUNDRED FORTY-SEVEN THOUSAND EIGHT HUNDRED SEVENTY-FIVE (\$1,447,875.00) DOLLARS payable in full on the earlier of:

(a) thirty (30) days following the delivery of the Certificate of Substantial Completion referred to in clause 5.1.9.2; or

(b) one (1) year following the Commencement Date.

The rent required to be paid hereunder shall be paid without any deduction, abatement or set-off whatsoever, it being

the intention of this Lease that all costs, expenses and outgoings shall be borne by the Lessee and the rent shall be absolutely net to the Lessor.

5. COVENANTS OF THE LESSEE

5.1 The Lessee covenants with the Lessor

- 5.1.1 To pay rent when due at the address of the Lessor first above written or at such other place as the Lessor may specify by notice in writing;
- 5.1.2 To pay and discharge Real Property Taxes when due. If, during the Term, the Lands and any improvements thereon are exempt from taxation in whole or in part by reason of the Lessor's ownership of the Lands and they would otherwise have been subject to Real Property Taxes, then the Lessee shall pay to the Lessor an amount equal to the amount that but for such exemption would have been payable for Real Property Taxes;
- 5.1.3 To pay and satisfy all payments when due under any Leasehold Mortgage;
- 5.1.4 To pay and discharge when due all charges for electricity, gas, water and other utilities supplied to the Land and improvements thereon;
- 5.1.5 To observe, abide by and comply with all laws, bylaws (including Burnaby Zoning Bylaw 1965, Number 4742, as amended from time to time), orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Land and improvements thereon, or their use and occupation;

- 5.1.6 To keep the Land in a safe, clean and sanitary condition satisfactory to the Lessor, and on written notice from the Lessor, to make safe, clean and sanitary any portion of the Land or any improvement that, in the opinion of the Lessor, contravenes the provisions of this covenant. In addition, to keep and maintain the landscaping of the Land to a reasonable community standard acceptable to the Lessor;
- 5.1.7 Not to commit or suffer any wilful or voluntary waste, spoil or destruction on the Land or do or suffer to be done thereon anything that may be or become a nuisance or annoyance to the owners or occupiers of adjoining land, and for the purpose of this covenant, the permitted use of the Land in compliance with this Lease shall be deemed not to constitute a nuisance or annoyance;
- 5.1.8 To use and develop the Land for the purpose of constructing and maintaining a Housing Project in compliance with the Development Plan;
- 5.1.9 To complete construction of the Housing Project within one (1) year of the Commencement Date and to deliver to the Lessor the following within thirty (30) days of completing such construction:
- 5.1.9.1 a statutory declaration of a duly authorized officer of the Lessee confirming completion of development of the Housing Project in compliance with the Development Plan;
 - 5.1.9.2 a Certificate of Substantial Completion signed by the Lessee's architect confirming

completion of development of the Housing Project in accordance with the Development Plan;

Provided however that in the event that the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in the completion of construction of the Housing Project by reason of delays occasioned by strikes, shortage of materials, lockouts, fire, extreme weather or other causes which are reasonably beyond the control of the Lessee, the time period for completion of construction shall be extended by a period of time equal to that of such delay or prevention;

5.1.10 To use and occupy the Land and improvements solely for self-contained residential accommodation for Members and Eligible Occupants save and except that the Land and improvements may be used for a community use purpose, subject to the prior written approval of the Lessor;

5.1.11 To use and maintain the Land and all improvements, equipment, machinery and other facilities at any time situated there or used in connection therewith, and to keep them at all times in good order and condition commensurate with similar rental housing premises; and to make all repairs, interior and exterior, structural and nonstructural, ordinary as well as extraordinary, foreseen as well as unforeseen, required to keep the building, and said equipment, machinery and other facilities in good order and conditions as aforesaid; such repairs to be in all respects substantially equal in quality and workmanship to the original work and materials in the building,

and to meet the requirements of all governmental authorities and fire insurance underwriters;

5.1.12 To pay interest to the Lessor on rent in arrears at the rate of three percent (3%) per annum above the variable Royal Bank of Canada prime per annum rate of interest calculated monthly from the date upon which the same became payable until the date the same are paid;

5.1.13 To effect and keep in force during the Term:

5.1.13.1 insurance protecting the Lessor and the Lessee (without any rights of cross-claim or subrogation against the Lessor) against claims for personal injury, death, property damage or third party or public liability claims arising from any accident or occurrence on the Land or improvements up to an amount not less than \$2,000,000.00 inclusive of any one occurrence; and

5.1.13.2 insurance upon the full insurable value of the improvements and fixtures on the Land in the joint names of the Lessor, Lessee and any Leasehold Mortgagee, as their interests may appear, and protecting all of them from all loss or damage caused by fire and other perils as may from time to time be included in the standard form insurance additional perils supplementary contract generally available in British Columbia.

- 5.1.14 To pay all premiums and moneys necessary to maintain all policies of insurance required to be maintained by the Lessee herein as the same become due, provided that if the Lessee defaults in the payment of any of the premiums or sums of money, the Lessor may (but will be under no obligation to) pay the same and the amounts so paid will be added to the rent herein reserved and will be payable to the Lessor immediately;
- 5.1.15 To deliver to the Lessor from time to time, upon demand, copies of all current policies of insurance required to be maintained by the Lessee hereunder; all policies shall provide that they cannot be cancelled, lapsed or materially changed without at least thirty (30) days notice to the Lessor by registered mail;
- 5.1.16 To deliver to the Lessor from time to time, upon demand, receipts or other evidence of payment of Real Property Taxes, insurance premiums, Leasehold Mortgage instalments or other monetary obligations of the Lessee required to be observed by the Lessee pursuant to this Lease;
- 5.1.17 To indemnify and save the Lessor harmless against all loss, damage, costs, actions and liabilities, including fees of solicitors and other professional advisors arising out of:
- 5.1.17.1 any breach, violation or non-performance of any covenant, condition or agreement in this Lease by the Lessee;
 - 5.1.17.2 any personal injury, death or property damage or third party or public liability

claims arising from any accident or occurrence on the Land or happening by virtue of the Lessee's occupation of the Land;

and the Lessor may add the amount of such loss, damage, costs, actions and liabilities to the rent herein reserved and the amount so added shall be payable to the Lessor immediately;

- 5.1.18 To pay all accounts and expenses as they become due for labour performed on, or material supplied to, the Land, save and except for moneys that the Lessee is required to retain or hold back under the Builders' Lien Act, and with respect to the amounts so retained or held back to pay and deal with the same in compliance with that Act or legislation and to place written notices immediately prior to the commencement of any construction on the Land, on at least two conspicuous places, pursuant to the Builders' Lien Act or other legislation of like effect in force from time to time, giving notice that the Lessor shall not be responsible for the cost of labour, services or materials performed on or supplied to the Land, and to permit the Lessor to enter on the Land for the purpose of placing such notices if the Lessee fails to do so;
- 5.1.19 On the expiration or earlier termination of the Term, to peaceably quit, surrender, yield up and deliver the Land and improvements to the Lessor in a state of good repair and in a safe, clean and sanitary condition satisfactory to the Lessor and all right, interest and estate of the Lessee in the Land shall cease and vest in the Lessor;

- 5.1.20 To permit the Lessor, its servants and agents, at all reasonable times to enter on and inspect the Land and any improvements thereon;
- 5.1.21 Except as required by CMHC, not to amend or permit the Memorandum or Rules of the Lessee to be amended or varied in any way from the Memorandum and Rules as filed in the Registrar of Companies' Office on October 30, 1991 without the prior written consent of the Lessor;
- 5.1.22 To pay any professional fees and any disbursements including disbursements which may be payable under the Land Title Act for registration of this Lease;
- 5.1.23 Upon request by the Lessor, CMHC or BCHMC to execute the Operating Agreement covering operation of the Housing Project and to execute a Rent Supplement Agreement with the Province of British Columbia;
- 5.1.24 To observe and perform any obligations under any easements, statutory rights of way, restrictive covenants or other charges which may be registered against the title to the Land;
- 5.1.25 To provide to the Lessor every year on the anniversary of the date of execution of this Lease, in a form satisfactory to the Lessor, written confirmation of the use and purpose of the Lands and Buildings;
- 5.1.26 To observe, at all times, the terms and conditions of the Operating Agreement and in the event that the Lessee commits a breach of the Operating

Agreement, or the Lessee terminates the Operating Agreement, whichever first occurs, the Lessor shall have the option, subject to clause 13, at any time thereafter to terminate this Lease;

5.1.27 To operate the Lands and Housing Project as a non-profit co-operative throughout the Term, except that in the event that CMHC holds leasehold title clause 13.6 shall apply.

6. ASSIGNMENT AND SUBLETTING

6.1 The Lessee shall not assign, sublet or transfer this Lease except as may be expressly permitted herein.

6.2 The Lessee may sublet or grant licences or other rights to occupy or use any part of the Land to:

6.2.1 Members,

6.2.2 Eligible Occupants,

6.2.3 staff and other personnel authorized by the Lessor, required to operate and maintain the Land and improvements thereon for the purposes of this Lease and who are bona fide employees of the Lessee;

6.3 A Leasehold Mortgagee may assign this Lease as provided in clause 13.

7. COVENANTS OF THE LESSOR

7.1 The Lessor covenants with the Lessee for quiet enjoyment.

7.2 The Lessor covenants with the Lessee that if and when at any time there is no longer an Operating Agreement in effect and the Lessor should elect to revise the criteria prescribed for Eligible Occupants pursuant to paragraph 1.1.5, the Lessor will give the Lessee no less than six months notice of the revised criteria before the same shall take effect.

8. PROVISOS

8.1 PROVIDED always and it is hereby agreed as follows:

8.1.1 If after the termination by the passage of time of this Lease or any extension thereof the Lessor permits the Lessee to remain in possession of the Land and accepts rent in respect thereof, a tenancy from year to year shall not be created by implication of law and the Lessee shall be deemed to be a monthly tenant only subject to all terms and conditons of this Lease, except as to duration in the absence of a written agreement to the contrary;

8.1.2 Title to and ownership of all buildings, structures and other improvements now or hereafter constructed on the Land shall be vested in the Lessor on termination of this Lease and the Lessee shall neither remove nor permit the removal of them

from the Land except as expressly permitted or required by this Lease;

8.1.3 Notwithstanding clause 5.1.13.1, the Lessor may from time to time notify the Lessee that the amount of insurance maintained by the Lessee pursuant to that clause be changed in keeping with the amount of such insurance customarily maintained from time to time by owners or tenants of lands and premises of similar character and usage and the Lessee shall, within sixty (60) days of receiving such notice, cause the amount of insurance posted pursuant to clause 5.1.13.1 to be changed to the amount specified in the notice and deliver to the Lessor written confirmation of the change.

9. DAMAGE OR DESTRUCTION OF HOUSING PROJECT - NO MORTGAGE

9.1 There shall be no abatement of rent following an Event of Destruction and the Lessee shall repair, replace, rebuild or restore the Housing Project in accordance with the Development Plan with all reasonable diligence; PROVIDED that if the Housing Project is damaged or destroyed in excess of 25% of its insurable value, the Lessee may, within thirty (30) days of an Event of Destruction, give written notice to the Lessor electing not to repair, replace, rebuild or restore the Housing Project.

9.2 Where the Lessee delivers a notice to the Lessor under clause 9.1, this Lease shall be deemed to have been terminated within (30) days after the

delivery of such notice and:

9.2.1 the Lessee shall forthwith

9.2.1.1 pay all sums due and owing to the Lessor under this Lease, and

9.2.1.2 immediately deliver up possession of the Land and Housing Project to the Lessor; and

9.2.2 the proceeds of insurance paid out under the policy referred to in clause 5.1.13.2 shall be applied as follows:

9.2.2.1 firstly, to pay the costs of restoring the Land to a safe, neat and level condition,

9.2.2.2 secondly, in payment of all moneys payable to the Lessor under this Lease, and

9.2.2.3 thirdly, to pay the balance to the Lessee.

Provided that if the Lessee is a Leasehold Mortgagee or CMHC who has acquired the leasehold interest of the Lessee pursuant to or following foreclosure proceedings on a Leasehold Mortgage, then the proceeds of insurance shall be applied in payment to the Leasehold Mortgagee or CMHC, as the case may be, of all moneys that were due and

payable under the Leasehold Mortgagee immediately prior to the granting of the final Court Order of Foreclosure after the payment of any costs payable under clause 9.2.2.1 but before the payment of any moneys payable under clauses 9.2.2.2 or 9.2.2.3.

9.3 If, on the happening of an Event of Destruction the Lessee does not give notice to the Lessor under clause 9.1, the Lessee shall cause all insurance money paid out under the policy referred to in clause 5.1.13.2 to be applied to the repair, replacement, rebuilding or restoration of the Housing Project.

10. DAMAGE OR DESTRUCTION OF HOUSING PROJECT - MORTGAGE

10.1 Notwithstanding clause 9, if on the happening of an Event of Destruction, the leasehold interest of the Lessee is encumbered by a Leasehold Mortgage there shall be no abatement of rent and the Lessee shall repair, replace, rebuild or restore the Housing Project in accordance with the Development Plan with all reasonable diligence; PROVIDED that if the Housing Project is damaged or destroyed in excess of twenty-five (25%) percent of its insurable value, and the Leasehold Mortgagee, within thirty (30) days of an Event of Destruction, gives written notice to the Lessor and Lessee directing that the Housing Project not be repaired, replaced, rebuilt or restored, and the right to so direct is reserved to the Leasehold Mortgagee under the Leasehold Mortgage, then the Lessee shall not be required to repair, replace, rebuild or restore the Housing Project, in which case the provisions of clause 10.2 shall apply.

10.2 Where a Leasehold Mortgagee delivers a notice to the Lessor and Lessee under clause 10.1, this Lease shall be deemed to have been terminated thirty (30) days after the delivery of such notice and,

10.2.1 the Lessee shall forthwith

10.2.1.1 pay all sums due and owing to the Lessor under this Lease, and

10.2.1.2 immediately deliver up possession of the Land and Housing Project to the Lessor; and

10.2.2 the proceeds of insurance paid out under the policy referred to in subparagraph 5.1.13.2 shall be applied as follows:

10.2.2.1 firstly, to pay the costs of restoring the Land to a safe, neat and level condition,

10.2.2.2 secondly, in payment of all claims of the Leasehold Mortgagee under the Leasehold Mortgage,

10.2.2.3 thirdly, in payment of all moneys payable to the Lessor under this Lease,

10.2.2.4 fourthly, to pay the balance to the Lessee.

10.3 If, on the happening of an Event of Destruction, the Leasehold Mortgagee does not give notice to the Lessor and Lessee under clause 10.1, the Lessee shall cause all insurance money paid out under the policy referred to in clause 5.1.13.2 to be applied to the repair, replacement, rebuilding or restoration of the Housing Project.

11. EVENTS OF DEFAULT

11.1 PROVIDED ALSO that this Lease and the term and estate hereby granted are subject to the limitation that

11.1.1 If the Lessee shall default in the payment of Rent or any amount deemed rent, or the payment of any other sum payable hereunder, and such default shall continue for thirty (30) days after the giving of written notice by the Lessor to the Lessee;

11.1.2 If the Lessee shall fail to perform or observe any of the covenants, agreements, provisions, conditions or provisos contained in this Lease on the part of the Lessee to be performed or observed (other than the payment of rent or other sums of money) and such failure shall continue for, or shall not be remedied within, the period of ninety (90) days next after the giving of written notice by the Lessor to the Lessee of the nature of such failure;

11.1.3 If the term hereby granted shall be taken in execution or attachment by any person or the Lessee commits an act of bankruptcy, becomes insolvent or is petitioned into bankruptcy or voluntarily enters into an arrangement with his creditor; or

11.1.4 If, in the opinion of the Lessor, the Lessee fails to make reasonable and diligent use of the Land for the purposes permitted herein, and such failure shall continue for a period of ninety (90) days next after the Lessor gives written notice of the failure to the Lessee,

it shall then be lawful for the Lessor to enter upon the Land or any part thereof in the name of the whole, and this Lease shall at the option of the Lessor, and with or without entry, terminate, and all the rights of the Lessee with respect to the Land shall be absolutely forfeited and shall lapse. If the condition complained of (other than the payment of rent or other sums of money) reasonably requires more time to cure than ninety (90) days, the Lessee shall be deemed to have complied with the remedying thereof if the Lessee shall have commenced remedying or curing the condition within the ninety (90) day period and diligently thereafter completes the same.

11.2 The remedies of the Lessor in this section are in addition to all other remedies available to the Lessor at common law and statute and an exercise of the Lessor's remedies under this section shall not limit or restrict the right of the Lessor to

exercise any remedies available to the Lessor as aforesaid.

12. DEVELOPMENT PLAN

- 12.1 The Lessee shall deliver to the Lessor, prior to the commencement of construction, the plans and specifications for the Housing Project, and shall make application for a building permit.
- 12.2 If the Lessor and CMHC do not approve the Development Plan the Lessee shall promptly make any changes requested by the Lessor and CMHC.
- 12.3 The Lessee shall, in a diligent and workmanlike manner, develop the Land in accordance with the Development Plan and shall cause the same to be completed in compliance with it.
- 12.4 The Lessee shall adequately supervise the construction of all buildings and improvements on the Land and shall permit the Lessor and CMHC and their servants, agents and representatives to enter on the Land at all times to ensure that all development complies with the Development Plan.
- 12.5 Where the Lessee enters a construction contract or contracts with one or more builders for the construction of the Housing Project, clause 12.4 shall not apply, and any such construction contract(s) shall contain provisions which permit the Lessor, CMHC and their servants, agents and representatives to enter on the land at all times during the life of the contract to inspect to ensure that all development complies with the Development Plan.

12.6 The Lessee shall obtain, or require any builder who contracts with the Lessee for construction of the Housing Project to obtain, and provide to the Lessor before construction of the Housing Project commences, a performance bond and a labour and material payment bond, each to be in the amount of fifty (50%) percent of the value of the Housing Project. The bonds shall be provided on the forms "CCDC Document 221 (1979) - Performance Bond" and "CCDC Document 222 (1979) - Labour and Material Payment Bond".

12.7 The bonds required by section 12.6 shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the Province of British Columbia and shall be maintained in good standing until the building contract has been fulfilled.

13. MORTGAGE OF LEASE

13.1 The Lessee shall have the right to mortgage its leasehold estate in the Land to an approved lender under the National Housing Act.

13.2 A Leasehold Mortgagee may and the Lessee shall give written notice to the Lessor of any Leasehold Mortgage together with a copy of the instrument creating it within thirty (30) days after it is granted.

13.3 Providing the Lessor has received written notice of a Leasehold Mortgage under section 13.2, the Lessor shall

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13.3 Providing the Lessor has received written notice of a Leasehold Mortgage under section 13.2, the Lessor shall

13.3.1 in the case of a default described in clause 11.1.1, give forty-five (45) days written notice, or

13.3.2 in the case of any other default of the Lessee hereunder, give sixty (60) days written notice

to the Leasehold Mortgagee at its address specified in the Leasehold Mortgage and to CMHC at its B.C. Regional Office address, describing the nature of the default and stating that the Lessor intends to terminate this Lease if the default is not remedied.

13.4 The Leasehold Mortgagee may, within the period referred to in clause 13.3 remedy the default and so long as the Leasehold Mortgagee or CMHC remedies the default within the time specified in the notice referred to in clause 13.3 (or where the default is of a kind referred to in clause 13.3.2 and reasonably requires a longer period of time to remedy, the Leasehold Mortgagee or CMHC commences to cure it during that time period and thereafter diligently and continuously continues to cure the default) the Lessor shall not terminate this Lease.

13.5 If the Leasehold Mortgagee commences proceedings under the Leasehold Mortgage to enforce it by foreclosure or takes other measures to realize on its security, the rent reserved herein shall not abate but the Lessor shall not terminate this Lease so long as

13.5.1 the Leasehold Mortgagee has given written notice to the Lessor of the commencement

of the foreclosure proceeding or other measure to realize on its security; and

13.5.2 the Leasehold Mortgagee continues to prosecute the foreclosure proceeding or other measures diligently to a conclusion; and

13.5.3 the Leasehold Mortgagee remedies any default as provided in clause 13.4.

13.6 If the Leasehold Mortgagee has foreclosed out the interest of the Lessee in the Land, the Leasehold Mortgagee may assign its interest in this Lease to CMHC in which case CMHC shall have the right to assign or sublet the remainder of the Term to a non-profit housing operation or a non-profit corporation within the scope of the National Housing Act upon satisfaction of the conditions set out in clauses 13.8.1, 13.8.2 and 13.8.3 in the case of an assignment or the condition set out in clause 13.8.2 in the case of a sublease. If within six (6) months of the date of such assignment CMHC, despite having actively and diligently attempted to do so, has been unable to find such a non-profit housing operation or non-profit corporation which is willing to take an assignment or sublease of the remainder of the Term, then CMHC shall give the Lessor sixty (60) days written notice of its intention to assign or sublet free of clause 5.1.27 following which the Lessor may elect to terminate this Lease. If the Lessor elects to do so it shall pay to CMHC the total aggregate cost of the Leasehold Mortgage insurance settlement to CMHC.

If the Lessor elects not to terminate this Lease then CMHC may assign or sublet to any other person free of clause 5.1.27 provided that:

13.6.1 the Lessor has given its prior written approval to such assignment or sublease, which consent will not be unreasonably withheld;

13.6.2 the conditions set out in clauses 13.8.1, 13.8.2 and 13.8.3 are satisfied in the case of an assignment or the condition set out in clause 13.8.2 is satisfied in the case of a sublease; and

13.6.3 CMHC uses its best efforts to obtain the highest possible sale price, which shall not be less than the current market value, for the assignment of the Lease or the sub-lease to the third party, and if the proceeds of the assignment or sub-lease are greater than the total aggregate cost of the Leasehold Mortgage insurance settlement to CMHC, then CMHC shall pay the full amount of the excess to the Lessor.

13.7 If this Lease shall be subject to termination or forfeiture by reason of the bankruptcy or insolvency of the Lessee and the Leasehold Mortgagee or Lessee has filed with the Lessor a notice under clause 13.2, the Lessor shall give to the Leasehold Mortgagee notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to terminate or forfeit this Lease and stating the Lessor's intention to take such proceedings and the

Lessee's default shall be deemed to have been sufficiently cured if the Leasehold Mortgagee shall:

- 13.7.1 take possession and control of the Land or cause a receiver to be appointed under the terms of its Leasehold Mortgage or by a court of competent jurisdiction, who takes possession and control of the Land, and the Lessor hereby grants the Leasehold Mortgagee or such receiver access to the Land for that purpose;
 - 13.7.2 remedy any default as provided in clause 13.4;
 - 13.7.3 attorn as tenant to the Lessor and undertake to be bound by and to perform the covenants and agreements of this Lease until such Leasehold Mortgagee as Lessee assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee pursuant to clause 13.8.
- 13.8 The Lessor shall not refuse to consent to an assignment of this Lease by the Leasehold Mortgagee so long as
- 13.8.1 the assignee enters into an agreement with the Lessor to attorn as tenant to the Lessor and to observe and perform the Lessee's covenants and the other terms and conditions set out herein;

13.8.2 all money payable to the Lessor under this Lease, including all arrears of rent and interest payable on that money has been paid in full; and

13.8.3 the assignee has entered into an agreement with the Lessor to cure or remedy any continuing events of default under this Lease.

13.9 Where a Leasehold Mortgagee

13.9.1 has foreclosed out the interest of the Lessee in the Land; and

13.9.2 assigns this Lease to CMHC;

then so long as CMHC remains in possession of the Land it shall be deemed to be a Leasehold Mortgagee for the purpose of this clause 13.

13.10 Where the Leasehold Mortgagee performs an obligation of the Lessee under this Lease in order to avoid a forfeiture, the Lessor shall accept that performance as if the same had been performed by the Lessee.

13.11 In the event of default under the Leasehold Mortgage the Leasehold Mortgagee shall be entitled to take possession of the Land and any improvements thereon and to manage the same, including, inter alia, the collection of rents, in the manner and to the extent and when permitted by the Leasehold Mortgage.

13.12 In the event that CMHC has assumed the interest of

the Lessee in the Land, then for so long as CMHC assumes the status of the Lessee, and for so long as there is no assignment or subletting of the Lease, the Lessor waives the provisions of Clauses 5.1.13 and 5.1.15 of this Lease.

14. NOTICE

- 14.1 Any written notice to be served upon or given to either the Lessor or the Lessee pursuant to this Lease shall be sufficiently served and given if delivered or mailed, prepaid and registered, in the case of the Lessor, addressed to:

Legal Department
The Corporation of the District of Burnaby
4949 Canada Way
Burnaby, B.C.
V5G 1M2

and in the case of the Lessee, addressed to:

Cariboo Heights Housing Co-operative
c/o Columbia Housing Advisory Association
202-2250 Commercial Drive
Vancouver, B.C. V5N 5P9

and if the notice is mailed the date of receipt shall be deemed to be four (4) days after the day of mailing.

- 14.2 Either party may, by notice in writing to the other, specify another address for service of notices under this Lease, and where another address is specified under this clause, notices shall be mailed to that address as provided herein.
- 14.3 Notwithstanding clause 14.1, any written notice to be served or given by the Lessor to the Lessee

under this Lease shall be effectively given or served by posting the same on a conspicuous place on the Land.

15. MISCELLANEOUS

- 15.1 No term, condition, covenant or other provision herein shall be considered to have been waived by the Lessor unless such waiver is expressed in writing by the Lessor. The waiver by the Lessor of any breach by the Lessee of any term, condition, covenant, or other provision herein shall not be construed as, or constitute, a waiver of any further or other breach of the same or any other term, condition, covenant, or other provision and the consent or approval of the Lessor to any act by the Lessee requiring the consent or approval of the Lessor shall not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act by the Lessee.
- 15.2 No remedy conferred upon or reserved to the Lessor is exclusive of any other remedy herein or provided by law, but such remedy shall be cumulative and shall be in addition to any other remedy herein or hereafter existing at law, in equity, or by statute.
- 15.3 Any interference with the rights of the Lessee under this Lease by virtue of the operation of the Mineral Act, Petroleum and Natural Gas Act, Coal Act or Water Act or any certificate, lease, permit, or licence issued under those Acts shall not constitute a breach of the Lessor's covenant of quiet enjoyment.

- 15.4 The terms and provisions of this Lease shall extend to, be binding upon and enure to the benefit of the parties hereto and their successors and permitted assigns.
- 15.5 At the termination of this Lease all costs and expenses which are required to restore the Land and the Housing Project to the Lessor shall be borne by the Lessee. Without limiting the foregoing, the Lessee shall be solely responsible for payment of any compensation to tenants in order to secure vacant possession of the Housing Project.
- 15.6 This Lease represents the whole of the agreement between the parties and there are no representations, warranties, guarantees or promises other than as provided for herein.
- 15.7 The Lessee covenants that it shall not subdivide the Land pursuant to the Condominium Act, Chapter 61, R.S.B.C. 1979 and amendments thereto and re-enactments thereof.
- 15.8 The Lessee covenants that it shall not use, store or dispose of on, under or about the Land or any improvements thereon any hazardous or toxic substance or environmental contaminant which is or becomes prohibited or regulated by any federal, provincial or municipal law except as may be permitted by law. Provided however, that the Lessor shall assume responsibility for any such hazardous or toxic substances or environmental contaminants present on, under or about the Land at the Commencement Date and any site remediation required as a result thereof, and the Lessee shall

assume responsibility for any such hazardous or toxic substances or environmental contaminants that are introduced to the Land during the Term or while the Lessee is in possession of the Land and any site remediation required as a result thereof. The Lessor represents to the Lessee that as of the date hereof it is not aware of the existence of any such hazardous or toxic substance or environmental contaminants present on, under or about the Land that would make it unfit for use as a multiple residential housing site.

16. RENEWAL OPTION

- 16.1 If the Lessee pays the rent and observes and performs the covenants, provisos and agreements contained in this Lease to be paid, observed and performed, then the Lessee shall have the option, to be exercised by giving written notice to the Lessor not less than six (6) months prior to the expiry date of the Term, to renew this Lease for a further term of ten (10) years on the same terms and conditions as are contained in this Lease, save and except as to rent and this renewal option. The amount of the rent for the renewal term shall be determined by agreement between the Lessor and the Lessee not less than three (3) months prior to the expiry date of the Term, and failing such agreement within such time it shall be the fair market rent for the Land and the improvements thereon as determined by arbitration pursuant to the Commercial Arbitration Act.

17. INTERPRETATION

- 17.1 In this Lease, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation.
- 17.2 The captions and headings contained in this Lease are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of the provisions hereof.
- 17.3 This Lease shall be interpreted according to the laws of the Province of British Columbia.
- 17.4 Where there is a reference to an enactment of the Province of British Columbia in this Lease, that reference shall include a reference to any subsequent enactment of the Province of British Columbia of like effect, and unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.
- 17.5 If any section of this Lease or any part of a section is found to be illegal or unenforceable, that part or section, as the case may be, shall be considered separate and severable and the remaining parts or sections, as the case may be, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF the parties have executed this Lease

as of the day and year first above written.

THE CORPORATE SEAL OF THE CORPORATION
OF THE DISTRICT OF BURNABY WAS
HEREUNTO AFFIXED IN THE PRESENCE OF:

Municipal Clerk-Authorized Signatory

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

Authorized Signatory

Authorized Signatory