

CITY OF SURREY

BY-LAW NO. 13964

A by-law to authorize the City of Surrey to enter into a housing agreement
.....

WHEREAS the City of Surrey has received an application to enter into a housing agreement;

AND WHEREAS Section 905 of the Municipal Act, R.S.B.C. 1996 c. 323, as amended (the "*Municipal Act*"), empowers the Council or the City of Surrey to enter into a housing agreement;

NOW, THEREFORE, the Council of the City of Surrey, in open meeting assembled, ENACTS AS FOLLOWS:

1. The City of Surrey is hereby authorized and empowered to enter into a housing agreement in the form attached hereto as Schedule A and forming part of this By-law (the "Housing Agreement") with the following parties:

BURNABY LAKE GREENHOUSES LTD.
17250 - 80 Avenue
Surrey, B.C.
V3S 5X7

WILLEM JACOB TIMMER and HERMIJNTJE TIMMER
9069 - 160 Street
Surrey, B.C.
V3R 4N4

ELIM MANAGEMENT CORPORATION
213 - 12837 - 76 Avenue
Surrey, B.C.
V3W 2V3

ELIM HOUSING SOCIETY
200 - 17619 - 96 Avenue
Surrey, B.C.
V4N 4A9

and with respect to the following real property:

ALL AND SINGULAR that certain parcel of tract of lands and premises, situate lying and being in the City of Surrey, in the Province of British Columbia and being more particularly known and described as:

Parcel Identifier No. 009-556-281
Lot 1, Section 35, Township 2, New Westminster District Plan 76723;
(9055 - 160 Street)

Parcel Identifier No. 003-468-640
Lot 8, Except: Parcel A (Explanatory Plan 9771). Block 2, Section 35, Township 2, New
Westminster District, Plan 5281
(8987 - 160 Street)

Parcel Identifier No. 009-556-290
Lot 2, Section 35, Township 2, New Westminster District, Plan 76723
(9069 - 160 Street)

(the "Lands")

2. The Mayor and Clerk are hereby empowered to execute the Housing Agreement on behalf of the City of Surrey.

3. The City of Surrey shall file in the Land Title Office a notice against the Lands in accordance with Section 905 of the *Municipal Act*, that the Lands are subject to the Housing Agreement.

4. This By-law shall be cited for all purposes as "Elim Housing Agreement, Authorization By-law, 2000, No. 13964."

PASSED THREE READINGS ON THE 28th day of February, 2000.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the 29th day of May, 2000.

_____ MAYOR

_____ CLERK

LAND TITLE ACT
(Sec. 219.81)

FORM C
Province of British Columbia
GENERAL INSTRUMENT - PART 1

Page 1 of 10

1. **APPLICATION:** Mamy Erickson, c/o SAUER MOGAN DE JAGER & VOLKENANT,
Barristers & Solicitors #1600 - 1185 West Georgia Street, Vancouver, B.C., V6E 4E6
(689-8000)

Mamy Erickson-Authorized Agent

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

009 556 281	Lot 1 Sec 35 Tp 2 NWD Plan 76723
003 468 640	Lot 8 Except: Parcel A (Explanatory Plan 9771)
	Bl 2 Sec 35 Tp 2 NWD Plan 5281
009 556 290	Lot 2 Sec 35 Tp 2 NWD Plan 76723

3. **NATURE OF INTEREST:***

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Housing Agreement	Entire Instrument Pages 4 - 10	Transferee

4. **TERMS:** Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms D.F. No.
(b) Express Charge Terms Annexed as Part 2
(c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2

5. **TRANSFEROR(S):** BURNABY LAKE GREENHOUSES LTD. (Inc. #48984) and WILLEM JACOB TIMMER, Retired, and HERMIJNTJE TIMMER, Retired, 9069 - 160th Street, Surrey, BC, V3R 4N4, and ELIM MANAGEMENT CORPORATION (Inc. #504143) and ELIM HOUSING SOCIETY (Inc. #5-34405) both of 200 - 17619 - 96th Avenue, Surrey, BC, V4N 4A9 AS COVENANTORS

6. TRANSFEREE(S): CITY OF SURREY a city under the "Municipal Act" of the Province of British Columbia, and having its City Offices as 14245 - 56th Avenue, in the City of Surrey, in the Province of British Columbia V3X 3A2

7. ADDITIONAL OR MODIFIED TERMS: n/a

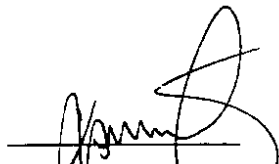
8. EXECUTION(S):** This instrument creates, assigns, modified, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge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

Execution Date

Y M D

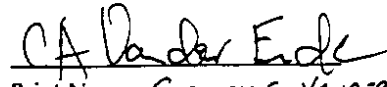
Officer Signature(s)

Party(ies) Signature(s)


KENNETH H. VOLKENANT
Barrister & Solicitor
1600 - 1185 West Georgia Street
Vancouver, B.C. V6E 4E6
Tel: 689-8000

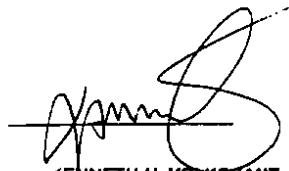
2000 2 4

BURNABY LAKE GREENHOUSES LTD. by its authorized signatories:

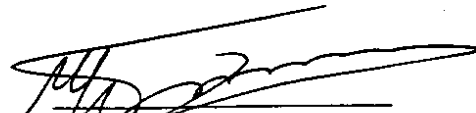
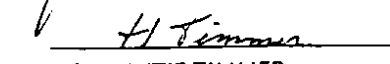

Print Name: CORNELIUS VANDERENDE

Print Name:

(as to all signatures)


KENNETH H. VOLKENANT
Barrister & Solicitor
600 - 1185 West Georgia Street
Vancouver, B.C. V6E 4E6
Tel: 689-8000

2000 2 4


WILLEM JACOB TIMMER

HERMIJNTJE TIMMER

(as to all signatures)

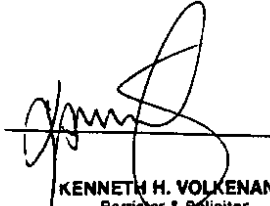
OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

- * If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
- ** If space insufficient, continue executions on additional page(s) in Form D.

Execution Date

Y M D

Officer Signature(s)




KENNETH H. VOLKENANT
Barrister & Solicitor
1600 - 1185 West Georgia Street
Vancouver, B.C. V6E 4E8
Tel: 689-8000

2000 2 4

(as to all signatures)

Transferor(s) Signature(s)

ELIM MANAGEMENT CORPORATION
by its duly authorized signatories:



Print Name: **E.P.P. TALSTRA**



Print Name: **MARTEN VAN HUIZEN**
(AS COVENANTOR)

ELIM HOUSING SOCIETY

by its duly authorized signatories:



Print Name: **E.P.P. TALSTRA**



Print Name: **J.B. VUGTEVEEN**
(AS COVENANTOR)



KENNETH H. VOLKENANT
Barrister & Solicitor
1600 - 1185 West Georgia Street
Vancouver, B.C. V6E 4E8
Tel: 689-8000

2000 2 4

(as to all signatures)

CITY OF SURREY

by its duly authorized signatories:

2000 1

Print Name:

Print Name:

(as to all signatures)

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. 1996, c. 124, 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.

- If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
- ** If space insufficient, continue executions on additional page(s) in Form D.

AND:

ELIM HOUSING SOCIETY, a society duly incorporated under the Society Act of the Province of British Columbia, having an office at 200 - 17619 - 96th Avenue, Surrey, BC, V4N 4A9

(hereinafter called the "Society")

OF THE FIFTH PART

WHEREAS:

- A. Burnaby Lake is the registered owner of those certain lands and premises located at 9055 - 160th Street, in the City of Surrey, in the Province of British Columbia, and legally described as:

Parcel Identifier No. 009-556-281
Lot 1, Section 35, Township 2
New Westminster District
Plan 76723; and

Parcel Identifier No. 003 468 640
Lot 8 Except: Parcel A (Explanatory Plan 9771)
Block 2, Section 35, Township 2
New Westminster District
Plan 5281

- B. Timmer is the registered owner of that certain parcel or tract of land and premises located at 9069 - 160th Street, in the City of Surrey, in the Province of British Columbia, legally described as:

Parcel Identifier 009-556-290
Lot 2 Section 35 Township 2
New Westminster District
Plan 76723

- C. Elim has entered into an agreement to acquire the lands described in recitals A and B above (which lands are in this agreement together called the "Lands");
- D. Elim intends to transfer the Lands to the Society for the development of the Lands into a planned community for seniors;

- E. Elim has requested the City to enact Surrey Zoning By-law, 1993, No. 12000, Amendment By-law, 1999, No. 13757 (the "CD By-law") changing the zoning of the Lands to a comprehensive development zone and it is a condition of the CD By-law that the parties enter into this agreement in order to restrict the occupancy of the dwelling units to be constructed on the Lands as provided in this agreement; and
- F. Section 905 of the *Municipal Act* R.S.B.C. 1996, Chapter 323, as amended, (the "Municipal Act") authorizes the City, by by-law, to enter into a housing agreement.

WITNESSETH THAT in consideration of the premises and their respective covenants and agreements hereinafter set out, the parties hereto respectively covenant and agree each with the other as follows:

I DEFINED TERMS AND SCHEDULES

- 1.1 In and for the purposes of this Agreement, the following terms shall have the following respective meanings:
 - (a) "Care-giver" means a person, other than a Spouse of a Qualified Occupant, who resides in a Housing Unit primarily for the purpose of providing ongoing living assistance and care to a Qualified Occupant and "Care-givers" means all persons who qualify as a Care-giver;
 - (b) "Housing Unit" means any single dwelling unit constructed by Elim upon the Lands but does not include a Resident Manager's Housing Unit;
 - (c) "Qualified Occupant" means any person sixty (60) years of age or older or any person who is certified in writing by a duly qualified medical practitioner, or is determined by a Court of competent jurisdiction, to be in need of special care as the result of the onset of premature geriatric conditions and "Qualified Occupants" means all persons who qualify as a Qualified Occupant;
 - (d) "Registered Owner of the Lands" means, at any given time, the then registered owner, or if more than one registered owner the then registered owners of the Lands;
 - (e) "Resident Manager" means a person employed by the Registered Owner of the Lands, Elim or the Society to manage the Housing Units who resides in a Resident Manager's Housing Unit and his or her spouse and children;

- (f) "Resident Manager's Housing Unit" means a Housing Unit occupied by a person employed by the Registered Owner of the Lands, Elim or the Society to manage the Housing Units and his or her spouse and children;
 - (g) "Spouse of a Qualified Occupant" means a person living in a spousal relationship with a Qualified Occupant and includes a person who was the spouse of a Qualified Occupant who resided in a Housing Unit at the time of the Qualified Occupant's death and "Spouses of a Qualified Occupants" means all persons who qualify as a Spouse of a Qualified Occupant;
 - (h) "Term" shall mean the period commencing on the date of this agreement and continuing in full force and effect in perpetuity; and
 - (i) "this Agreement" means this housing agreement and any amendments or modifications of same.
- 1.2 The captions, section numbers and article numbers appearing in this Agreement are inserted for convenience of reference and shall in no way define, limit, construe or describe the scope or intent of this Agreement or in any way affect this Agreement.
- 1.3 Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and words importing persons shall include firms and corporations and vice versa.
- 1.4 Unless otherwise stated, a reference in this Agreement to a numbered or lettered article, section, paragraph or clause refers to the article, section, paragraph or clause bearing that number or letter in this Agreement.
- 1.5 The words "hereof", "herein", "hereunder", and similar expressions used in any section, paragraph or clause of this Agreement shall relate to the whole of this Agreement and not to that section, paragraph or clause only unless otherwise expressly provided

II OCCUPANCY OF UNITS RESTRICTED TO QUALIFIED OCCUPANTS

- 2.1 During the Term no Housing Unit other than a Resident Manager's Housing Unit may be occupied by any person who is not a Qualified Occupant, a Spouse of a Qualified Occupant or a Care-giver. The City may from time to time request the Registered Owner of the Lands, Elim and/or the Society to provide written proof of compliance with this paragraph and the Registered Owner of the Lands, Elim and the Society agree to provide the City with such proof in a form reasonably satisfactory to the City.

- 2.2 If the Registered Owner of the Lands, or Elim or the Society, fail to enforce compliance with the terms and conditions of paragraph 2.1 then it is specifically understood and agreed that the City shall be entitled, but shall not be obliged, to enforce the terms and conditions of Section 2.1. For the purposes of this Agreement, the Registered Owner of the Lands, Elim and the Society, without the need of further authorization, writings or documents, hereby irrevocably appoint the City as its or their agent with respect to the enforcement of this Agreement and with respect to exercising all remedies set out in this Agreement and all other remedies available at law to the Registered Owner of the Lands, Elim or the Society.
- 2.3 Without in any way limiting the provisions of paragraph 2.2 above, the City shall be entitled to charge, and the Registered Owner of the Lands, Elim and the Society, jointly and severally, agree to pay, for each Housing Unit, a monthly penalty equal to the average monthly fair market rental rate for dwelling units of similar size in the City of Surrey as determined from time to time by the British Columbia Housing Corporation, for each month or portion thereof during which a Housing Unit is occupied by a person other than a person or persons qualified to occupy a Housing Unit under the terms of this Agreement.

III LIABILITY

- 3.1 The Registered Owner of the Lands, Elim, the Society, Qualified Occupants, Spouses of Qualified Occupants, Care-givers and Resident Managers will indemnify and save harmless the City and each of its elected officials, board members, officers, directors, employees and agents and their respective administrators, successors and assigns, of and from all claims, demands, actions, loans, damages, 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 failure of any person to comply with the terms and conditions of this Agreement.
- 3.2 Provided the City is in compliance with the terms and conditions of this Agreement, the Registered Owner of the Lands, Elim, the Society, Qualified Occupants, Spouses of Qualified Occupants, Care-givers and Resident Managers hereby release and forever discharge the City and each of its elected officials, board members, officers, directors, employees and agents and their respective administrators, successors and assigns, of and from any and all claims, demands, loans, damages, economic loss, costs and liabilities which any of them now has or hereafter may have with respect to or by reason of or arising out of the fact that the Lands are encumbered by and affected by this Agreement.

IV NOTICES

4.1 Any notices or other documents to be given or delivered pursuant to this Agreement will be addressed to the proper party as follows:

As to the City:

14245 - 56th Avenue
Surrey, British Columbia V3X 3A2

Attention: General Manager of Planning and Development Department

As to all of Burnaby Lake, Timmer, Elim and the Society:

Elim Housing Society
c/o 200 - 17619 - 96th Avenue
Surrey, British Columbia V4N 4A9

With a copy to:

1600-1185 West Georgis Street
Vancouver, British Columbia V6E 4E6

or such other address in the Greater Vancouver area as the such party may direct by five (5) business days notice in writing to the other parties. Any notice or other document to be given or delivered pursuant to this Agreement will be sufficiently given or delivered if delivered to the particular party at its address set out or determined in accordance with this paragraph.

It is specifically agreed that for any notice or document to be validly given or delivered pursuant to this Agreement such document or notice shall be delivered and not mailed.

V GENERAL

5.1 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; or

(b) relieves the Registered Owner of the Lands, Elim, the Society Qualified Occupants, Spouses of Qualified Occupants, Care-givers and Resident Managers from complying with any enactment, including the City's bylaws, in relation to the use or subdivision of the Lands.

- 5.2 This Agreement burdens and runs with the Lands. All of the covenants and agreements contained in this Agreement are made by the parties for themselves, their successors and assigns and all other persons who acquire an interest in the Lands or any portion thereof after the date of this Agreement.
- 5.3 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 if this Agreement is deemed or construed to be a consent or waiver of any other breach of this Agreement.
- 5.4 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.
- 5.5 This Agreement shall be construed in accordance with and governed by the laws of the Province of British Columbia.
- 5.6 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.
- 5.7 Upon request by the City, the Registered Owner of the Lands, Elim, the Society Qualified Occupants, Spouses of Qualified Occupants, Care-givers or Resident Managers (as the case may be) will promptly do such acts and execute such documents as the City may reasonably require, in the opinion of the City, to give effect to this Agreement.
- 5.8 This is the entire Agreement between the parties concerning the subject matter of this Agreement and there are no warranties, representations, conditions or collateral agreements relating to this Agreement, except as included in this Agreement.
- 5.9 This Agreement will enure to the benefit of and be binding upon each of the parties hereto and their respective administrators, successors and assigns.

IN WITNESS WHEREOF each of the parties have executed this Agreement under seal by their duly authorized officers as at the date and year first above written.