



SAMPLE AGREEMENT – SUBJECT TO CHANGE

**BUILDING BC: INDIGENOUS HOUSING FUND
OPERATING AGREEMENT**

THIS AGREEMENT is dated for reference: <◆DATE>

BCH File # <◆File #>-02 /<◆Project reference #>

BETWEEN

<◆PROVIDER NAME>
<◆Provider's Address>

(the "Provider")

AND

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION
Suite #1701 - 4555 Kingsway, Burnaby, British Columbia V5H 4V8

("BC Housing")

with respect to the Development at

<◆Development Address>

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AGREEMENT SUMMARY

PART 1 – SUMMARY

1. The Indigenous Housing Fund (“IHF”) is a housing program funded by the Government of British Columbia acting through its agent, British Columbia Housing Management Commission (BC Housing).
2. The goal of IHF is to increase the supply and range of affordable and appropriate rental housing for Indigenous households with Incomes at or below the Housing Income Limits (“HILs”) across British Columbia
3. The Provider has entered into a <◆# of year Lease Agreement, lease start and end dates: ◆ <Lease start date> and <◆ Lease end date> with < ◆ Registered owner/Lessor> for the use of <◆ Land / Development, confirm with the lease document>. This Lease Agreement commences on <◆ Lease start date>.
4. The Provider has <◆ constructed/acquired /redeveloped> the Development with the assistance of funding under IHF and will operate the Development as outlined in this IHF Operating Agreement.
5. The Development is owned and operated by the Provider and consists of <◆ #> Residential Units for Indigenous households who, at the commencement of residency, have Incomes at or below HILs.

PART 2 – SERVICE DESCRIPTION

1. BC Housing and the Provider have agreed that the Provider will own and operate the Development and collect Rent from the Residents, on the terms and conditions of this Agreement.
2. The common goal of the parties in making this Agreement is to provide housing for households who, at the date of commencement of the residency, have Incomes at or below HILs.
3. The Provider is a fully independent self-governing entity registered under the *Societies Act* (British Columbia). Operation of the Provider is subject to its Constating Documents and the *Societies Act* (British Columbia). The members of the Provider and its governing board are responsible for all affairs of the Provider related to both Provider operations in general and the ongoing management of the Development.
4. In entering this Agreement with the Provider, BC Housing recognizes that the Provider was established for the advancement of specific social purposes prior to its decision to participate in this particular Agreement.
5. BC Housing recognizes that the Provider brings both tangible and intangible assets to the Development. The Provider’s board members serve on a voluntary basis, i.e., without recompense for their time and expertise. The Provider and the board bring resources, knowledge and expertise on such things as property management, Resident management and Resident support, and services which specifically relate to the Development and its location.
6. The Provider and board are expected to create an environment that is supportive of the needs of the Residents and provide a sense of community within the Development and to that purpose may provide Resident services and activities not funded by this Agreement.

PART 3 – AGREEMENT

1. TERM
 - a. The parties agree as follows for the Term of the Agreement which is for sixty (60) years from the Commencement Date, unless earlier terminated in accordance with the provisions of this Agreement.

2. RELATED AGREEMENTS – In no circumstances will this Agreement survive the expiry or earlier termination of the Lease Agreement.
3. PAYMENT - The Operating Subsidy will be based on an annual budget approved by BC Housing and will be provided directly to the Provider as set out in *Schedule B*.
4. SCHEDULES
 - a. All of the Schedules attached to this Agreement are an integral part of this Agreement.

SAMPLE

BC Housing IHF Operating Agreement – Agreement Summary

This Agreement contains the entire agreement between the parties and supersedes all previous expectations, understandings, communications, representations and agreements, whether verbal or written, between the parties with respect to the subject matter hereof.

No amendment or modification to this Agreement will be effective unless it is in writing and duly executed by the parties except where this Agreement allows for otherwise.

IN WITNESS of which the duly authorized signatories of each of the Provider and BC Housing have executed this Agreement effective as of the Commencement Date of this Agreement:

<◆ PROVIDER NAME >

Per its authorized signatories

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

Per its authorized signatories

SAMPLE

SCHEDULE A – GENERAL PROVISIONS

A. DEFINITIONS

1. "**Capital Fund**" means an amount the Provider is required to hold in reserve for capital repairs, replacements and improvements pursuant to *Schedule B, Part F, Clause 2*.
2. "**Capital Plan**" means the schedule of capital repairs approved by BC Housing pursuant to *Schedule B, Part F, Clause 1*.
3. "**Commencement Date**" means the day on which the <◆ Occupancy Permit is issued for the Development or Provider registers its <◆ fee simple/or leasehold> interest in the Development>.
4. "**Constating Documents**" means the constitution and bylaws of the Provider, together with any amendments, as registered with the appropriate registry.
5. "**Database**" means the computer application provided by BC Housing to meet the operational and informational needs of the Provider and BC Housing.
6. "**Declaration of Income**" means the declaration to be completed by a Resident as evidence of the Income and Assets of that Resident in a form approved by BC Housing, as may be amended from time to time.
7. "**Development**" means the housing development, <◆ constructed/acquired/re-developed> and operated by the Provider under IHF, situated at ◆ Development address>, and legally described as PID <◆ legal description, PID>.
8. "**Fiscal Year**" means the Provider's Fiscal Year, ending on <◆ Fiscal year end> or as otherwise agreed by the parties.
9. "**Housing Income Limits**" (HILs) represents the maximum income for eligibility to be a Resident. This maximum will be established by BC Housing from time to time.
10. "**Improvements**" means those improvements, structures, buildings, fixtures and systems which exist within the Development from time to time including the heating, ventilating, air-conditioning, plumbing, electrical and mechanical systems and equipment.
11. "**Income**" means total income before tax from all sources of a Resident.
12. "**Lease Agreement**" means the <◆ # of year lease>, lease starts <◆ lease start date> , lease ends <◆ lease end date>, entered into between <◆ registered owner or lessor> and the Provider regarding the <◆ Land / Development / Site>, as registered in the Land Title Office under registration number <◆ #>.
13. "**Loan**" means:
 - a. the grant advanced by BC Housing to the Provider under IHF in order to finance the <◆ construction/acquisition/re-development> of the Development and secured by a forgivable loan registered against the Development; and
 - b. the repayable mortgage loan, arranged by BC Housing for the Provider, in order to finance the <◆ construction/acquisition/re-development> of the Development.
14. "**Manageable Costs**" means costs that the Provider, or a prudent operator of similar property, is reasonably expected to control or manage, including salaries, benefits, maintenance and administration.
15. "**Non-Manageable Costs**" means costs that the Provider, or a prudent operator of similar property, is not reasonably expected to control or manage, including insurance, property tax and utilities.
16. "**Occupancy Permit**" is a certificate that must be obtained prior to occupancy that is issued if all required inspections have been carried out and the building or structure is deemed substantially complete and fit for occupancy.
17. "**Operating Budget**" means the annual budget for the Development approved by BC Housing. The Operating Budget will include a staffing schedule, but not include any expenses for the Development paid for directly by BC Housing as set out in this Agreement.
18. "**Operating Deficit**" means the shortfall of revenue compared to expenses as dictated by the approved Operating Budget and/or approved by BC Housing.
19. "**Operating Reserve**" means reserve funds held by the Provider for costs related to operating the Development, such that the balance does not exceed 10% of annual operating expenses.
20. "**Operating Subsidy**" has the meaning ascribed to it in *Schedule B*.

BC Housing IHF Operating Agreement – Schedule A

21. "**Operating Surplus**" means the excess of revenue over expenses as dictated by the approved Operating Budget and/or approved by BC Housing.
22. "**Provincial Rental Housing Corporation**" (PRHC) is incorporated under the *Business Corporations Act* (British Columbia). PRHC is the land holding corporation for provincially owned social housing. BC Housing administers PRHC, which buys, holds and disposes of properties, and leases residential properties to non-profit societies and co-operatives.
23. "**Record**" means accounts, books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical and other means, but does not include a computer program or any other mechanism that produces records.
24. "**Rent**" means the amount a Resident is obliged to contribute monthly to the Provider for a Residential Unit.
25. "**Rent Scale**" means the rent scale attached as *Schedule F* as amended by BC Housing from time to time.
26. "**Residency Agreement**" means an agreement, lease, license or other right of a Resident to occupy a Residential Unit.
27. "**Resident**" means the person or persons legally entitled to reside in a Residential Unit pursuant to a Residency Agreement.
28. "**Residential Revenue**" means all other net revenues received by the Provider from the Development or activities directly related to the Development including parking fees, laundry machines, vending machines, meal tickets, satellite dishes etc.
29. "**Residential Unit**" means a self-contained residential dwelling within the Development operated under this Agreement.
30. "**Specific Purpose**" means the operation of the Development to provide affordable housing for Indigenous households with Incomes at or below HILs.
31. "**Term**" means the period of this Agreement as outlined in *Agreement Summary, Part 3, Clause 1*.

B. RESPONSIBILITY OF THE PROVIDER

1. **Role of the Provider.** The Provider:
 - a. will fulfill its obligations under this Agreement in a proper, efficient and timely manner as would a prudent provider of similar services, and in accordance with this Agreement; and
 - b. agrees and understands that it is solely responsible for all its obligations under this Agreement, including but not limited to its obligations arising as a result of any relationships between the Provider and the applicants, Residents and other occupants of the Development, and any and all relationships with third parties, volunteers, or other invitees.
2. **Corporate Organization.** The Provider will maintain a well organized corporate structure and in particular will:
 - a. operate as a non-profit entity;
 - b. remain in good standing with the appropriate registry;
 - c. have a purpose that includes the provision of affordable housing and is consistent with the Specific Purpose;
 - d. not permit any officer, director, or member of the Provider to be remunerated except for reimbursement of any expenses necessarily and reasonably incurred by the director, officer, or member while engaged in the affairs of the Provider. Reasonable wages or salary paid to an employee of the Provider who is not an officer or director of the Provider are exempt from this section;
 - e. provide for the disposition of assets to an organization with a similar charitable purpose in the event of dissolution or wind up of the Provider;
 - f. not alter its Constatng Documents in any way that would make them inconsistent with the terms of this Agreement or that would render the Provider unable to fulfill its obligations under this Agreement;
 - g. provide BC Housing with a copy of the Provider's Constatng Documents as requested by BC Housing from time to time; and
 - h. maintain written policies and procedures regarding the Provider's operations, including safety and security, human resource management and tenant management.

3. **Compliance.** The Provider will remain in compliance with all applicable laws, bylaws, regulations, codes and corporate or contractual obligations and is responsible for obtaining and complying with all necessary approvals, licenses and permits relating to the Provider's obligations under this Agreement.
4. **Conflict of Interest.** The Provider will
 - a. conduct its operations in accordance with the Provider's by-laws and in a manner such that no part of the operations, finances and other assets or resources of the Provider under this Agreement, are used directly or indirectly for the provision of any gain or benefit to any officer, director, employee, or member of the Provider or any entity or individual associated with, or related to them, without the prior written approval of BC Housing;
 - b. not, during the Term, enter into a contractual relationship with a third party, conduct business with, perform or receive a service for or provide advice to or receive advice from any entity or individual where such activity may, directly or indirectly, cause an actual or perceived conflict of interest, without the prior written approval of BC Housing; and
 - c. disclose any actual or perceived conflict of interest to the Provider and BC Housing in advance, and all such disclosure and any prior written approval from BC Housing will be recorded in the minutes of the meetings of the directors and/or the relevant committee of the Provider.
5. **Communication.** The Provider will notify BC Housing as soon as possible of any significant changes or incidents that could impact the Provider's obligations under this Agreement.
6. **Agency.** This Agreement will not be construed as creating any partnership or agency between BC Housing and the Provider and neither party will be deemed to be the legal representative of any other party for the purposes of this Agreement. Neither BC Housing nor the Provider will have, and will not represent itself as having, any authority to act for, to undertake any obligation on behalf of the other party, except as expressly provided in this Agreement.
7. **Restrictions on Disposition and Encumbrance.** The Provider will not transfer, encumber or sell or agree to transfer, encumber or sell or otherwise change or agree to change the legal or beneficial interests of the Development or any part of the Development without the prior written approval of BC Housing, in its sole discretion.
8. **Restrictions on Authority.** The Provider will not commit or otherwise bind BC Housing to any agreements in any manner whatsoever, except to the extent specifically provided in this Agreement and in particular, without limiting the generality of the foregoing, the Provider will not take any action, expend any sum, make any decision, give any consent, approval or authorization or incur any obligation with respect to any lease or any other arrangement involving the rental, use or occupancy of all or part of the Development other than a Residency Agreement in accordance with this Agreement, except with the prior written approval of BC Housing, in its sole discretion.
9. **Maintenance.** The Provider will maintain the Development and all Development related equipment in a state of safe and good repair for the benefit of the Residents and the community in which the Development is located by carrying out, or arranging for the carrying out of tasks that include but are not limited to the following:
 - a. all routine maintenance and repair work;
 - b. routine inspections to ensure safety hazards are identified and corrected;
 - c. regular fire inspection, drills, testing, maintenance, training and maintaining records in respect of the same; and
 - d. routine waste management services.
10. **Inspection.** The Provider will permit BC Housing to inspect the Development or other premises used by the Provider pursuant to this Agreement at any time.

C. RESPONSIBILITY OF BC HOUSING

1. **Role of BC Housing.** BC Housing's role is to support the Provider in operating the Development to meet their common goal of providing affordable housing to households who have Incomes at or below HILs.
2. **Provide Information.** BC Housing will provide the information required by the Provider to enable the Provider to carry out its responsibilities under this Agreement, and will provide that information in a timely manner.

D. OPERATIONAL REVIEW

1. From time to time, BC Housing may conduct an onsite operational review to determine compliance with the terms of this Agreement and any other agreements between the Provider and BC Housing.
2. BC Housing will provide the Provider with thirty (30) days' written notice of an operational review.

E. RECORDS

1. **Information Management.** The Provider will comply with all applicable privacy legislation and will maintain accurate and complete operational Records, policies and practices necessary for its obligations under this Agreement.
2. **Procedures and Processes.** The Provider will:
 - a. notify BC Housing in writing immediately upon becoming aware of any breach of privacy or security involving the unauthorized access, collection, use, disclosure or disposal of information relating to its obligations under this Agreement;
 - b. if the *Information Management Act* (British Columbia) applies to the destruction of Records, notify BC Housing for consultation prior to the destruction; and
 - c. cooperate with BC Housing when BC Housing has a request under the *Freedom of Information and Protection of Privacy Act* (British Columbia) to which Records in the Provider's custody apply, by locating and disclosing the relevant Records as directed by BC Housing upon notice and without delay.
3. **Record Retention.** The Provider will retain all Records that pertain to its obligations under this Agreement for the retention period required under applicable provincial and federal laws, but for not less than seven (7) years following the date of receipt or production of those Records.
4. **Audits.** BC Housing and its agents have the right to inspect all Records related to, arising from, or maintained by the Provider to deliver the Provider's obligations, including the right of BC Housing and its agents to enter any premises used by the Provider to deliver the Provider's obligations or used to keep or store Records pertaining to the Provider's obligations under this Agreement, at any time after the delivery of notice to the Provider, and have the immediate right to make extracts from and take copies of those Records. The Provider acknowledges that disclosure to BC Housing and its agents, without consent from the individual the Record is about, for audit purposes, is permitted under information and privacy legislation.

F. LIABILITY

1. **Indemnity.** The Provider will indemnify and save harmless BC Housing, the Provincial Rental Housing Corporation, His Majesty the King in Right of the Province of British Columbia, and each of their ministers, board members, officers, directors, employees, contractors and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from all claims and costs arising directly or indirectly under this Agreement which they or any of them may be liable for or incur, whether before or after this Agreement ends, arising out of any act or omission of the Provider or its officers, directors, employees, agents, contractors or other persons for whom at law the Provider is responsible, related to the Provider's operation and management under this Agreement, including with respect to any Residency Agreement, except to the extent that such claims or costs are caused solely by the negligence of BC Housing or its employees, agents or contractors.
2. **Release.** The Provider releases BC Housing, the Provincial Rental Housing Corporation, His Majesty the King in Right of the Province of British Columbia, and each of their ministers, board members, officers, directors, employees, contractors and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from all claims arising out of the advice or direction respecting the ownership, lease, operation or management given to the Provider, as the case may be, by any of them, except to the extent that such advice or direction is determined by a court of competent jurisdiction to have been negligent.
3. **Survival.** The obligations set out in *Schedule A, Part F, Clauses 1 and 2* survive termination of this Agreement.

G. DISPUTE RESOLUTION

1. If a dispute arises between the parties out of or in connection with this Agreement the parties agree that the following dispute resolution process will be used:
 - a. A meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
 - b. If, within fourteen (14) days after such meeting or such further period agreed to by the parties in writing, the parties have not succeeded in negotiating a resolution of the dispute, the parties agree to try to resolve the dispute by participating in a structured negotiation conference with a mediator agreed upon by the parties or, failing agreement, under the Mediation Rules of Procedure of the British Columbia International Commercial Arbitration Centre, in which case the appointing authority is the British Columbia International Commercial Arbitration Centre.
 - c. After dispute resolution attempts have been made under *Schedule A, Part G, Clauses 1.a-b*, any remaining issues in dispute will be determined by arbitration under the *Arbitration Act* (British Columbia), and the decision of the Arbitrator will be final and binding and will not be subject to appeal on a question of fact, law or mixed fact and law.

H. DEFAULT AND TERMINATION

1. **Event of Default.** Any of the following events will constitute an event of default by the Provider under this Agreement:
 - a. the Provider fails to comply with any provision of this Agreement;
 - b. the Provider fails to remain in good standing with the appropriate registry;
 - c. the Provider is in breach of or fails to comply with any applicable law, regulation, license or permit;
 - d. any representation or warranty made by the Provider under this Agreement is found to be untrue or incorrect; or
 - e. if the Provider knew or ought to have known any information, statement, certificate, report or other document furnished or submitted by, or on behalf of, the Provider pursuant to, or as a result of, this Agreement is untrue or incorrect.
2. **Default.** Upon the occurrence of any event of default set out in *Schedule A, Part H, Clause 1*, BC Housing will provide written notice to the Provider which sets out the breach and the date by which the breach must be rectified. The Provider will be given thirty (30) days to rectify the breach or such longer period as determined solely by BC Housing.
3. **Termination on Continued Default.** If the Provider fails to comply with a written notice given in accordance with this Agreement within the specified period of time, BC Housing, in its sole discretion, may immediately terminate this Agreement or appoint a receiver.
4. **Additional Remedies.** Upon the occurrence of any event of default set out in *Schedule A, Part H, Clause 1*, BC Housing may, in addition to and without prejudice to BC Housing obtaining any other remedy:
 - a. reduce or suspend any payment that would otherwise be payable by BC Housing to the Provider pursuant to this Agreement; and
 - b. exercise its rights and remedies under the Section 219 Covenant and Option to Purchase.
5. **Appointment of Receiver.** As an alternative to exercising any right of termination provided under this Agreement, BC Housing may elect to appoint, or request a court of competent jurisdiction to appoint, a receiver, with or without bond as BC Housing or the court may determine, and, from time to time, may remove any receiver so appointed and appoint another in its place, or request the court to do so. A receiver so appointed is not an officer or agent of BC Housing, and has all the necessary and exclusive power to deal with the obligations of this Agreement including the power to:
 - a. take control, possession and direction of the Development and the Provider's assets in connection with this Agreement, and carry on the business of the Provider in operating, managing and maintaining the assets in accordance with this Agreement;
 - b. demand and recover all the income of the Development by direct action, distress or otherwise, in the name of either the Provider or BC Housing;
 - c. observe or perform, on behalf of the Provider, all the Provider's obligations under this Agreement and any other contracts pertaining to the Development;

- d. give receipts, on behalf of the Provider, for any money received; and
 - e. carry out such other powers as the court may order.
6. **Application of Revenue.** The Provider acknowledges that the receiver will apply the gross revenue from the Development, which it recovers or receives from time to time, as follows:
- a. firstly, in payment of all costs, charges and expenses of or incidental to the appointment of the receiver and the exercise by it of all or any of its powers, including the reasonable remuneration of the receiver which is to be approved by BC Housing, and all outgoings properly payable by the receiver, together with all legal costs in respect thereof on a solicitor and client basis;
 - b. secondly, in payment of all operating expenses for the Development;
 - c. thirdly, if required by BC Housing, in repayment of any applicable subsidies and accumulated funds; and
 - d. lastly, to pay any balance to BC Housing.
7. **No Liability.** The Provider acknowledges and agrees that:
- a. BC Housing will be under no liability to the Provider for any act or omission of the receiver; and
 - b. the receiver will be under no liability to the Provider for any act or omission of the receiver.
8. **Early Termination.** Notwithstanding anything stated to the contrary in this Agreement, the parties agree that BC Housing, at its sole determination, will have the right at any time, by giving twenty-four (24) hours' written notice to the Provider, to terminate this Agreement in any of the following events:
- a. the Provider is in default under a Loan or otherwise fails to comply with any of the provisions of the Loan documentation;
 - b. upon the bankruptcy of the Provider or the appointment of a receiver in respect of the Provider;
 - c. upon the Provider ceasing to operate on a non-profit basis; and
 - d. upon the dissolution of the Provider.
9. **Termination arising from Damage or Destruction.** If, in the opinion of a professional engineer or architect appointed by the Provider or BC Housing, the Development is damaged or destroyed in excess of twenty-five percent (25%) of its insurable value, the Provider will promptly repair or replace the Development to restore it to a substantially similar condition as existed prior to the damage or destruction. BC Housing may specify a reasonable time period for the Provider to restore the Development and, in the event that the Provider elects not to restore the Development within the specified time period, BC Housing may terminate this Agreement by delivering written notice of immediate termination to the Provider.
10. **Adjustments on Termination.** Upon the termination of this Agreement, however effected, the parties will forthwith complete all necessary accounting and adjustments between them to effectively reconcile and finalize their obligations pursuant to this Agreement.

I. GENERAL PROVISIONS AND INTERPRETATION

- 1. **Headings.** The headings in this Agreement form no part of the Agreement and will be deemed to have been inserted for convenience only.
- 2. **Notices.** All notices, demands or requests of any kind, which the Provider or BC Housing may be required or permitted to serve on the other in connection with this Agreement, will be in writing and may be served on the parties by registered mail, personal service, fax or other electronic transmission, to the addresses set out on the cover page. Any notice, demand or request made to BC Housing, to be effective, will be addressed to the BC Housing representative assigned to this matter by BC Housing.
- 3. **Change of Address.** Either party from time to time, by notice in writing served upon the other party, may designate a different address or different or additional personnel to which all those notices, demands or requests are thereafter to be addressed.
- 4. **Time.** Time is of the essence of this Agreement. If either party expressly waives this requirement, that party may reinstate it by delivering notice to the other party. Any time specified pursuant to this Agreement for observing or performing an obligation is local time in Vancouver, British Columbia.
- 5. **Governing Law.** This Agreement is to be governed by and construed and enforced in accordance with the laws of the Province of British Columbia, which will be deemed to be the

proper law hereof and the courts of British Columbia will have the non-exclusive jurisdiction to determine all claims and disputes arising out of this Agreement and the validity, existence and enforceability hereof.

6. **Validity of Provisions.** If a court of competent jurisdiction finds that any part of this Agreement is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability does not affect any other provisions of this Agreement. The balance of the Agreement is to be construed as if that invalid, illegal or unenforceable provision had never been included and is enforceable to the fullest extent permitted at law or at equity.
7. **Waiver.** No consent or waiver, expressed or implied, by a party of any default by the other party in observing or performing its obligations under this Agreement is effective unless given in writing, nor is it a consent or waiver of any other default. Failure on the part of either party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long that failure continues, is not a waiver by that party of its rights under this Agreement or at law or at equity.
8. **Extent of Obligations and Costs.** Every obligation of each party in this Agreement extends throughout the Term. To the extent an obligation ought to have been observed or performed before or upon the expiry or earlier termination of the Term, that obligation, including any indemnity, survives the expiry or earlier termination of the Term until it has been observed or performed.
9. **Statutes.** Any reference in this Agreement to a provincial or federal statute includes the statute as it exists on the reference date of this Agreement and any subsequent amendments or replacements.
10. **Binding Effect.** This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties, as applicable.
11. **Counterparts.** This Agreement may be validly executed and delivered by the parties hereto in any number of counterparts and all counterparts, when executed and delivered, will together constitute one and the same instrument. Executed copies of the signature pages of this Agreement sent electronically will be treated as originals, fully binding and with full legal force and effect, and the parties hereto waive any rights they may have to object to such treatment, provided that this treatment will be without prejudice to the obligation of the parties hereto to exchange original signatures as soon as is reasonably practicable after execution of this Agreement, but failure to do so will not affect the validity, enforceability or binding effect of this Agreement.
12. **Assignment and Subcontracting.**
 - a. The Provider will not without the prior written consent of BC Housing:
 - i. assign, either directly or indirectly, this Agreement or any right of the Provider under this Agreement; or
 - ii. subcontract any obligation of the Provider under this Agreement.
 - b. No subcontract entered into by the Provider will relieve the Provider of any of its obligations under this Agreement or impose upon BC Housing any obligation or liability arising from any such subcontract. The Provider must ensure that any subcontractor fully complies with this Agreement in performing the subcontracted services.
13. **BC Housing Approval.** This Agreement is enforceable only in the event that BC Housing approves this project, in its sole discretion. In the event that this project fails to receive BC Housing's final approval, this Agreement is of no effect and will be deemed to have never commenced.

SCHEDULE B – FINANCIAL

A. FUNDING ASSISTANCE FROM BC HOUSING

1. **Funding.** BC Housing will provide funding in the form of forgivable and repayable Loans to facilitate the <◆ construction/acquisition/re-development> of the Development. The terms and conditions of the Loan are outlined separately in the Loan documents. This Agreement is not to be construed as a substitution for or derogation from the provisions of the Loan documents.
2. **Operating Subsidy.** BC Housing will provide a monthly Operating Subsidy as approved in the annual Operating Budget.

B. BUDGET SUBMISSION AND APPROVAL

1. **Budget Submission.**
 - a. At least four (4) months prior to the end of each Fiscal Year, the Provider will submit to BC Housing for approval their proposed budget for the upcoming Fiscal Year, in a format approved by BC Housing.
 - b. The Provider's annual budget submission will show the anticipated gross rentals and other Residential Revenues for the Development together with all anticipated operating expenses, including utilities, supplies, insurance, wages and administrative fees, replacement of capital items, and maintenance and repair costs.
2. **Budget Approval.**
 - a. BC Housing will approve the Operating Budget prior to the start of that Fiscal Year or within four (4) months of receiving the proposed budget, whichever is later.
3. **Budget Adjustments.** BC Housing may make budget adjustments as necessary from time to time, including the following:
 - a. yearly adjustments as part of the annual budget approval process outlined in *Schedule B, Part B, Clauses 1 and 2*; and
 - b. mid-year adjustments arising from an increase in Non-Manageable Costs, as outlined in *Schedule B, Part H, Clause 1*.

C. SUBSIDY PAYMENT

1. **Monthly Payment.** The Operating Subsidy will be paid to the Provider in advance on a monthly basis, and reconciled annually or mid-year. The Provider will maintain a bank account to facilitate electronic fund transfers.
2. **Limit.** Except as set out in *Schedule B*, BC Housing will not be required to pay any other payments to the Provider for the management and operation of the Development.

D. RESIDENT RENT CONTRIBUTION

1. **Rent Scale.** The Provider will calculate Rent based on the Rent Scale.
2. **Change in Household Composition.** The Provider will adjust the Rent to reflect changes in household composition whenever such change occurs.
3. **Online Rent Calculation.** The Provider will enter into an online rent calculation agreement with BC Housing, the Provider will use BC Housing's online rent calculation system to enter new or updated Resident information, Income and Rent information, including the Declaration of Income and Assets
4. **Proof of Income and Assets.** The Provider will follow BC Housing's rent calculation policies and procedures as may be changed from time to time. The Provider will obtain a declaration ("Declaration of Income") and supporting documentation as evidence of the Income and assets of that Resident at the time of the initial residency and annually thereafter to determine the Rent. The declaration will be in a form approved by BC Housing as may be amended from time to time. The Provider will maintain a copy of each Resident's proof of Income in a file available to BC Housing on request.

E. OPERATING BUDGET

1. **Revenues and Expenses.**
 - a. The Provider will be responsible for collecting all Rent and other Residential Revenue for the Development and the Provider will be responsible for paying out of such revenues all costs associated with the operation of the Development.
 - b. The Provider will make payments to contracted service providers within pre-established payment periods. Any fines, penalties, surcharges, incurred by the Provider or by BC Housing as an expense related to Provider error or negligence will be the responsibility of the Provider.
 - c. The Provider may generate revenue from sources such as vending machines etc., only with the written consent of BC Housing, such consent not to be unreasonably withheld. Revenue generating opportunities will be evaluated in terms of impact on resident service, feasibility of the physical plant etc.
2. **Loans.** The Provider will:
 - a. make payments on a Loan on the due dates and notify BC Housing immediately if the Provider cannot make any payment;
 - b. not reduce the amortization period of a Loan or prepay a Loan without BC Housing's approval; and
 - c. on the expiry of the term of a Loan, enter into further security agreements required to secure the outstanding balance of the Loan in accordance with BC Housing's requirements.
3. **Renewal of Loan.** The Operating Budget will be recalculated on the renewal of a Loan to take into account the new payments for the Loan.

F. CAPITAL FUND

1. **Capital Plan.** Resource allocations and practices regarding the protection of the Development throughout the Term are to be guided by a long term Capital Plan established by the Provider and geared to the expected life cycle of the Development.
2. **Capital Fund.** The Provider will establish a Capital Fund for capital repairs and replacements to the Development in accordance with the Capital Plan.
 - a. BC Housing will approve an annual contribution towards the Capital Fund as outlined in the Operating Budget. This contribution is subject to BC Housing's maximum provisions and is not intended to fully fund the Capital Plan. BC Housing will work with the Provider to address capital repair needs that cannot be met with the Capital Fund, including access to available capital repair funding or additional financing where applicable.
 - b. Within two (2) years of the Commencement Date the Provider will prepare a Capital Plan and submit it to BC Housing for review, in a format acceptable to BC Housing. The Provider will submit an updated Capital Plan to BC Housing at least every five (5) years.
3. **Capital Fund Expenditure.** Capital Funds may only be expended as follows:
 - a. to pay for capital repairs and replacements to the Development in accordance with the Capital Plan; or
 - b. to make other payments as may be approved by BC Housing from time to time.

G. SECURITY DEPOSITS

1. The Provider may collect and keep security deposits. All funds collected and held by the Provider as a security deposit must be handled in accordance with the *Residential Tenancy Act* (British Columbia).

H. OPERATING DEFICIT AND SURPLUS

1. **Operating Deficit.** The Provider is solely responsible for covering any Manageable Cost increases in any Fiscal Year. In the event that there is an operating deficit as a result of unanticipated changes in rent revenue or increases in Non-Manageable Costs that exceeds the Operating Reserve, BC Housing may cover the balance through:
 - a. a mid-year budget adjustment that increases the subsidy;
 - b. an extraordinary expense payment; or

- c. at annual financial review, if such an unanticipated expense results in an operating deficit for the Fiscal Year, BC Housing may retroactively adjust the Operating Subsidy required.
2. **Operating Surplus.** The Provider may retain the Operating Surplus and it may be used in order of priority as follows:
 - a. remedy an Operating Deficit incurred in a previous Fiscal Year;
 - b. establish and maintain the Operating Reserve;
 - c. transfer to the Capital Fund; or
 - d. any other purpose that is consistent with the provision of affordable housing, as approved by BC Housing.

I. FINANCIAL MANAGEMENT AND ADMINISTRATION

1. **Finances.** The Provider will establish written policies and procedures for effective control of finances for the Development and, in particular, will:
 - a. establish and maintain books of account and retain invoices, receipts and vouchers for all expenses incurred in form and content satisfactory to BC Housing, to be used as the basis for the calculation of the payment as set out in *Schedule B*
 - b. ensure that Operating Surpluses and accumulated interest are invested and managed in a separate account;
 - c. have sound financial operating written policies and procedures in place, including record keeping and financial statements in accordance with Canadian Accounting Standards;
 - d. establish policy and enforceable Resident chargeback and/or collection guidelines; fees for standard charges (e.g. lock changes, chargeable call-outs, or routine move-out charges);
 - e. collect 95% of established Rents with maximum of 5% arrears within twenty (20) working days;
 - f. establish corrective course of action on problematic accounts; and
 - g. establish purchasing guidelines including selection criteria for contracting service provisions to third parties.
2. **Auditor.** The Provider will appoint an auditor of the Provider who will be in good standing in accordance with the laws of the Province of British Columbia and will not be a member of the Provider. The Provider will cause the auditor to audit their financial statements in accordance with Canadian Generally Accepted Auditing Standards and express an opinion on those financial statements. BC Housing reserves the right to decrease these requirements at its sole discretion.
3. **Administration.** The Provider will:
 - a. maintain a company bank account to facilitate electronic fund transfers; and
 - b. collect audit arrears.

J. ANNUAL FINANCIAL REVIEW

1. BC Housing will conduct an annual financial review of the Provider. To facilitate the annual financial review, the Provider will:
2. submit audited financial statements, and a copy of the related auditor's management letter to BC Housing within four (4) months after the end of each Fiscal Year. Where the Provider provides services in addition to those provided under this Agreement (e.g., outreach, affordable housing, etc.), the audited financial statement will include a separate Schedule of Revenue and Expenditure for each service provided in a format approved by BC Housing from time to time;
3. include details of any funding received from another agency or organization and used by the Provider to co-fund the management of the Development;
4. provide an auditor's letter or notes with the financial statements indicating that any Operating Surplus is being spent and accounted for as provided in this Agreement; and
5. provide audited financial statements indicating that the Provider has properly funded and maintained the Capital Fund, and that all interest accruing to the Capital Fund has been recorded; and

6. submit other financial information requested by BC Housing in a format approved by BC Housing from time to time.

SAMPLE

SCHEDULE C – MONITORING AND REPORTING

A. REPORTING

1. Regular reporting allows BC Housing to identify occupancy and service trends, and to monitor the Provider's compliance with the requirements of this Agreement.
2. Where the Provider uses the Database provided by BC Housing as the source of applicants for available units in the Development and to submit tenant information. The Provider will enter into a concurrent database agreement with BC Housing which will specify other reporting requirements.
3. BC Housing acting reasonably, reserves the right to change the reporting requirements from time to time, with at least thirty (30) days' written notice to the Provider provided that, if there are additional costs to the Provider in complying with new requirements, BC Housing will adjust the Operating Budget to reflect the increased costs as agreed to by both parties.

SAMPLE

SCHEDULE D – RESIDENT SELECTION AND MANAGEMENT

A. RESIDENT SELECTION AND MANAGEMENT

1. **Landlord and Tenant Relationship.** The full normal relationship between landlord and tenant will exist between the Provider and the Resident. It is understood that BC Housing will not be responsible to the Provider for any breach or failure of the Resident to observe any of the terms of the Residency Agreement between the Resident and the Provider, including the covenant to pay Rent.
2. **Resident Selection.** The Provider will select Residents in accordance with the Specific Purpose. The Provider will use all reasonable efforts to maintain full occupancy of the Development with Residents who meet the Specific Purpose, but if there are no applicants for a vacant unit in accordance with the Specific Purpose then the Provider may accept applicants at any income level with the approval of BC Housing which will not be unreasonably withheld.
3. **Database.** The Provider will use the Database provided by BC Housing as the source of applicants for Resident selection in the Development. The Provider will enter into a concurrent Database Agreement with BC Housing which will govern the process of Resident selection as well as the reporting of changes in residency.
4. **Discrimination.** The Provider will select Residents without unlawful discrimination on the basis of race, religion, culture, sexual orientation, gender identity, social condition, or level of physical ability. Where restricted populations are targeted, consideration of and compliance with applicable anti-discrimination legislation must be documented and submitted to BC Housing on request.
5. **Full Occupancy.** The Provider will use all reasonable efforts to maintain full occupancy of the Development and will notify BC Housing of any extended vacancies.
6. **Approved Residents.** All Residents must be placed in a Residential Unit appropriate to their household size, as determined by BC Housing from time to time. The Provider will make all reasonable efforts to transfer Residents to an appropriately sized unit when changes to the household composition occur. Exceptions to Resident selection may be made for:
 - a. persons designated by mutual agreement between BC Housing and the Provider; or
 - b. staff or other authorized personnel required to operate and maintain the Development and who are bona fide employees of the Provider. The maximum income threshold/limitation does not apply to this type of residency.
7. **Membership in Provider.** The Provider will not require a Resident to be a member of the Provider.
8. **Residency Agreements.** The Provider will enter into a Residency Agreement with each Resident and all Residency Agreements will be in compliance with the *Residential Tenancy Act* (British Columbia).
9. **Resident Relations.** The Provider will establish policies and procedures to:
 - a. select Residents in an open, fair, consistent and non-discriminatory way;
 - b. serve Residents promptly and courteously, with clear and informative communication;
 - c. provide each Resident with access to information concerning that Resident and protect the privacy of Residents; and
 - d. develop an appeals process for Resident related issues. The process must be transparent and accessible for all applicants and Residents.

SCHEDULE E – RESIDENCY AGREEMENT

A. RESIDENCY AGREEMENTS

The intent of the following provisions will be included in the Residency Agreement between the Provider and the Resident:

1. The residency is on a month-to-month basis.
2. The Rent of a Resident will change when their Income or assets change.
3. Only the persons named in the Residency Agreement have a right to occupy the Residential Unit.
4. The Income of any person occupying a Residential Unit as his or her principal residence will be included for the purpose of determining the Resident's household Income.
5. Assignment of the Residency Agreement or subletting or otherwise parting with possession of the whole or part of the Residential Unit for the whole or any part of the term of the Residency Agreement is prohibited.
6. The Resident consents to BC Housing verifying personal information where required, as defined in the *Freedom of Information and Protection of Privacy Act* (British Columbia), which consent is required by that Act to enable BC Housing to carry out its audit function.
7. The Resident agrees to provide such information as is requested by the Provider and/or BC Housing for calculation of the Rent and for auditing purposes. If the Resident fails to disclose or misrepresents any information requested in the Declaration of Income, such failure to disclose or misrepresentation will be deemed to be a material breach of the Residency Agreement and the following will apply:
 - a. the Provider is entitled to recover from the Resident in contract or otherwise the difference between the Rent charged and the amount of the Rent that should have been charged had there been no failure to disclose or misrepresentation and this remedy is not exclusive and may be exercised by the Provider in addition to any other remedies available to the Provider in law or equity and in addition to any remedies of the Provider as set out in the Residency Agreement;
 - b. money owing by the Resident to the Provider under the Residency Agreement pursuant to a court order or arbitrator's order or otherwise will bear interest at the prime rate of the Royal Bank of Canada from and including the time such money becomes payable, calculated and payable monthly until repayment both before and after judgment; and
 - c. any failure by a Resident to disclose or misrepresent their Income or Assets entitles the Provider to end the Residency Agreement.

SCHEDULE F – RENT SCALE

A. RESIDENT INCOME

1. The Resident's Rent will not exceed a set percentage¹, as determined from time to time by BC Housing, of the Resident's Income, and the following will apply:
 - a. gross income is always used and will be based on either:
 - i. a review of the previous year's income tax return, plus a declaration of non-taxable income amounts; or
 - ii. an assessment of current income and assets.
 - b. a minimum Rent is applied based on applicable household size and age of the Resident; and
 - c. the Rent of a Resident in receipt of Income Assistance will be fixed at an amount as set out in *Schedule F, Part E*.

B. EXEMPTIONS FROM INCOME

1. The following are exempt from inclusion in Income:
 - a. Excluded Government Payments:
 - i. a payment, refund, or credit from the provincial or federal government, including income tax refund, Canada Child Benefit, or Child Care Subsidy received for dependent children;
 - ii. a child benefit received from the Canada Pension Plan (CPP);
 - iii. a survivor's death benefit received from Canada Pension Plan (one-time payment only);
 - iv. Income from foster parenting;
 - v. payments under the Child in Home of Relative and Extended Family Program;
 - vi. a special allowance for resettlement assistance; and
 - vii. payments received from the Shelter Aid For Elderly Renters (SAFER) program, Rental Assistance Program, or a rent supplement funded by BC Housing.
 - b. Excluded Employment Related Payments:
 - i. earnings of dependent children under the age of nineteen (19);
 - ii. earnings of dependent children aged nineteen (19) to twenty-four (24) who are full-time students;
 - iii. earnings of dependent children of any age who, because of mental or physical infirmity, is considered a dependent for income tax purposes;
 - iv. a one-time lump sum severance/settlement payment;
 - v. a business expense deduction from self-employed earnings (Not exempted: management fees, salaries or wages paid to any household members, business-use-of-home expenses, capital cost allowance and rent (if the business is being operated out of the home) and any other expense of a personal nature); and
 - vi. taxable benefits, including living out or travel allowances, medical coverage, uniform allowance, etc.
 - c. Excluded Income for Veterans and Victims of War:
 - i. a periodic or lump sum war reparation payment; and
 - ii. a benefit from War Veteran's Allowance and Disability Pension from Veteran's Affairs Canada, including special allowances under the Veterans Disability Pension Program.
 - d. Excluded Education or Training Payments:
 - i. student loans, equalization payments, student grants, scholarships, fellowships or bursaries received by a student aged nineteen (19) to twenty-four (24) in attendance at a post-secondary institution in British Columbia; and
 - ii. a payment received for board and lodging of a student attending secondary school off the reserve.

¹ Currently: 30% of income

- e. Other Excluded Payments:
 - i. extraordinary compensation payments, including Indian Residential School, Japanese Canadian Redress, Jericho Hill School for the Deaf, Missing Women Commission of Inquiry;
 - ii. child support paid by the non-custodial parent and government benefits intended for the benefit of children (CPP children's benefits, WorkSafe BC child benefits, Public Guardian and Trustee payment for children, Post-Adoption Assistance, etc.);
 - iii. a one-time donation from a religious, charitable, or benevolent organization;
 - iv. insurance settlements, inheritances, and disability awards in the year they are received (in subsequent years these are considered as assets); and
 - v. income of live-in caregivers where their sole income source is dependent on them living in the unit to provide care for a member of the income tested household.

C. ASSETS

- 1. Assets include:
 - a. cash;
 - b. accounts in financial institutions;
 - c. stocks, bonds and other investments;
 - d. real estate equity;
 - e. equity in a business;
 - f. non-discretionary trust funds; and
 - g. other items of a potential income earning nature.
- 2. Asset Exemptions include:
 - a. Registered Retirement Savings Plans (RRSPs);
 - b. Registered Education Savings Plans (RESPs);
 - c. Registered Disability Savings Plans (RDSPs);
 - d. assets derived from extraordinary compensatory packages from government (including, but not limited to payments related to: Indian Residential Schools, Japanese Canadian Redress, Jericho Hill School for the Deaf, Missing Women Commission of Inquiry);
 - e. BC Housing approved asset development savings accounts (for the period that the individual is participating in the asset development program); and
 - f. Discretionary Trusts or Trust Funds from settlements (ICBC, WorkSafe BC)

D. INCOME FROM ASSETS

- 1. Income from assets is determined by exempting the first \$10,000.00 from total assets and computing the balance at a percentage per annum² as may be set from time to time by BC Housing.

E. DETERMINATION OF RESIDENT'S RENT FOR RESIDENTS RECEIVING INCOME ASSISTANCE

- 1. The Provider will set the Resident's Rent for each Residential Unit where the Resident is in receipt of Income Assistance by applying a flat rate applicable to the appropriate household size, as determined by BC Housing.
- 2. If the flat rate charged for Resident's Rent changes, reasonable notice will be given to the Resident, as determined by BC Housing.

F. NOTES

- 1. BC Housing may change all or part of this scale at any time.
- 2. An adjustment for resident paid heating costs may be made in an amount as determined from time to time by BC Housing.

² At January 2020 1% per annum

SCHEDULE G – INSURANCE

A. INSURANCE BY PROVIDER

1. The Provider will, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurance with insurers licensed in Canada and in forms and amounts acceptable to BC Housing, in its sole discretion:
 - a. Commercial general liability in an amount not less than \$10,000,000.00 inclusive per occurrence, insuring against bodily injury, personal injury and property damage, and include liability assumed under this Agreement, a cross liability or severability of interests clause, British Columbia Housing Management Commission and Provincial Rental Housing Corporation as an additional insured, and an endorsement to provide thirty (30) days' advance written notice to the Provider of material change or cancellation.
 - b. The foregoing insurance will be primary and not require the sharing of any loss by any insurer of BC Housing.
 - c. The Provider will provide to BC Housing evidence of all required levels of insurance within thirty (30) days of the execution of this Agreement and within thirty (30) days of renewal of such written policies. When requested by BC Housing, the Provider will provide certified copies of such policies.
2. The Provider will add BC Housing and Provincial Rental Housing Corporation as additional named insured under any insurance policies obtained pursuant to this Agreement.
3. The Provider will promptly notify BC Housing of any circumstance known or which becomes known to the Provider which might materially affect the coverage under the Provider's insurance policies.
4. Any requirement or advice by BC Housing regarding the amount of coverage under any policy of insurance does not constitute a representation by BC Housing that the amount required is adequate.
5. The Provider will provide, maintain, and pay for, any additional insurance which the Provider is required by law to carry, or which the Provider considers necessary to cover risks not otherwise covered by insurance specified in this Schedule.
6. The Provider hereby waives all rights of recourse against BC Housing and Provincial Rental Housing Corporation with regard to any damage, theft or loss of the Provider's property and agrees to carry adequate insurance coverage against such damage, theft or loss of property.
7. The Provider will obtain and maintain, or cause to be obtained and maintained, workers compensation coverage in respect of all workers, employees and other persons engaged in any work in or upon the Development required by the *Workers Compensation Act* (British Columbia).