

APPENDIX E
BC HOUSING OPERATING AGREEMENT
RENT SUPPLEMENT
PRIVATE LANDLORD OPERATING AGREEMENT
HEALTH AUTHORITY SELECTS OCCUPANTS

THIS OPERATING AGREEMENT dated for reference the

BETWEEN:

(the "Landlord")

AND:

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION
Suite #601 - 4555 Kingsway, Burnaby, British Columbia V5H 4V8

("BC Housing")

with respect to a housing development at _____, British Columbia (the "Development").

BACKGROUND

- A. Independent Living BC encompasses two types of housing: independent housing with some support services and assisted living for those who need a greater level of care. Independent Living BC offers a middle option between home care and institutional care. Independent Living BC provides subsidized housing and a range of other services, to low and moderate income Tenants that are Seniors or Persons with a Disability, in order to facilitate such Tenants to remain independent for as long as they are able.
- B. The Landlord owns and/or operates the Development and wishes to receive Rent Supplement payments in return for providing Independent Living BC units to low and moderate income Seniors or Persons with a Disability.
- C. BC Housing wishes to provide Rent Supplement payments to the Landlord in order to assist low or moderate income Seniors or Persons with a Disability obtain Independent Living BC accommodation.
- D. Under a separate agreement with the Landlord, (the "Health Agreement"), the Health Authority will select and provide Tenants for the Designated Units and will also provide for personal care services to the Tenants.

AGREEMENT

The parties agree as follows for the Term of this Agreement:

PART 1 ROLES AND RESPONSIBILITIES OF THE LANDLORD

- 1.1 **Role of the Landlord.** The Landlord will manage the Development and the Rent Supplements in a proper, efficient and timely manner.
- 1.2 **Management Organization.** The Landlord will establish a well organized management structure, policies and procedures that ensure that the Rent Supplements are well managed and will ensure all relevant staff are fully aware of such policies and procedures and the terms of this Agreement.
- 1.3 **Maintenance.** The Landlord will maintain the Development in a state of good repair for the benefit of the Tenants and the community in which the Development is located, and in particular will:
 - 1.3.1 ensure that the Development complies with all applicable statutory health and safety standards; and
 - 1.3.2 ensure that fire regulations are observed and that fire inspections are carried out regularly by the appropriate authorities.
- 1.4 **Tenants.** The Landlord will:
 - 1.4.1 serve Tenants promptly and courteously, with clear and informative communication;
 - 1.4.2 provide each Tenant with access to information concerning that Tenant and protect the privacy of Tenants; and
 - 1.4.3 treat the Tenants in the same manner and afford them the same facilities and privileges as are afforded all other persons living in the Development.

PART 2 ROLES AND RESPONSIBILITIES OF BC HOUSING

- 2.1 **Rent Supplement.** BC Housing will pay the Rent Supplement to the Landlord in a timely manner in accordance with this Agreement for the Term.
- 2.2 **Monitor Operations.** BC Housing will monitor the operation of the Development and the Landlord's use of the Rent Supplement in accordance with this Agreement.

PART 3 UNIT SELECTION AND TENANTS

- 3.1 **Unit Selection.** During the Term, the Landlord will ensure that XX Units in the Development are occupied by, or are available to be occupied by, Tenants selected by the Health Authority pursuant to the Health Agreement (the "Designated Units").
- 3.2 **Proof of Annual Income for Calculation Purposes.** Unless otherwise directed by BC Housing, the Landlord will obtain a declaration (an "Application Form") and supporting documentation as evidence of the Annual Income for Calculation Purposes of that Tenant, from each Tenant at the time of initial occupancy, and from each Tenant receiving Rent Supplement at least annually, or as required by BC Housing, which declaration will be in a form approved by BC Housing as amended from time to time.
- 3.3 **Tenant Rent Contribution.** The Landlord will review each Tenant's Application Form together with any documentation in support, and use that information to determine the amount a Tenant will contribute towards the Agreed Rent for a Unit (the "Tenant Rent Contribution"), as follows:
- 3.3.1 the Tenant Rent Contribution will be based on the application of the Independent Living Rent Scale attached as Schedule B;
- 3.3.2 if the Tenant Rent Contribution exceeds the total of the Agreed Rent and the personal care services charge as established by the Health Authority, then the tenant will pay no more than the total of the Agreed Rent and the personal care services charge; and
- 3.3.3 if the Tenant Rent Contribution is at or greater than the Agreed Rent, the Tenant and Designated Unit are not eligible for a rent subsidy under this Agreement and the total Rent Supplement will be reduced as set out in Section 4.1. For clarity, if the Health Authority and the Landlord agree to select another Unit as a Designated Unit, then no reduction in Designated Units will apply.
- 3.4 **Landlord and Occupant Relationship.** The Landlord will enter into its standard Residency Agreement for the Agreed Rent with a Tenant. The full normal relationship of landlord and tenant exists between Landlord and Tenant. BC Housing is not liable to the Landlord for any breach by a Tenant of a Residency Agreement including the covenant to pay rent.
- 3.5 **Cleaning and Damages.** BC Housing is not responsible for any cleaning, damages, rent arrears or other such similar claims to/for a Designated Unit. The Landlord is responsible for pursuing the Tenant for any claims for cleaning, damages, arrears or other such similar claims.

PART 4 RENT SUPPLEMENT

- 4.1 **Rent Supplements from BC Housing.** The Rent Supplement will begin once the Health Authority first places a Tenant eligible for subsidy in a Designated Unit. Until all Designated Units have been initially occupied by a Tenant, BC Housing will pay to the Landlord as Rent Supplement \$XX per month for each Designated Unit occupied by a Tenant. Once all Designated Units have been occupied by a Tenant, and provided thereafter the number of Designated Units identified in Section 3.1 continues during the Term, BC Housing will pay to the Landlord the amount of \$XX monthly. Should the number of Designated Units be reduced for any reason, the amount of Rent Supplement paid will be reduced by \$XX per month for each reduction in the number of Designated Units.
- 4.2 **Vacancy.** The Landlord will report to BC Housing any Designated Unit that is vacant for 3 months or longer. BC Housing will not pay a Rent Supplement on a Designated Unit that is vacant for longer than 3 months and may, at its sole discretion, deem such Units no longer Designated Units and the number of Designated Units set out in Section 3.1, and the total Rent Supplement paid to the Landlord, may be reduced accordingly.
- 4.3 **Rent Supplement.** BC Housing will pay the Rent Supplement to the Landlord monthly in advance.
- 4.4 **Annual Activity Report.** The Landlord will, within 3 months after the end of each Fiscal Year, provide BC Housing, in a format approved by BC Housing, a summary of activity pursuant to this Agreement for the preceding Fiscal Year. Such report will include, but not be limited to: a monthly list of Tenants and Designated Units occupied, Agreed Rent, Tenant Rent Contribution for each Tenant, vacant Designated Units, date of occupancy, date of departure.
- 4.5 **Suspension, Reduction or Cancellation.** BC Housing may reduce, suspend or cancel the Rent Supplement for a Tenant if there is a breach of this Agreement or of any requirements of BC Housing relating to a Tenant's Application Form or proof of income or to a BC Housing audit of a Tenant's Application Form, proof of income and subsequent findings. In such an event, the amount of Rent Supplement set out in Section 4.1 may be reduced. The suspension, reduction or cancellation of the Rent Supplement for a specific Tenant will not affect the payment of Rent Supplement to the remainder of the Tenants.
- 4.6 **Adjustment to Rent Supplement.** After reviewing the annual activity report, BC Housing will adjust Rent Supplement payments, or ask the Landlord for an adjustment re-payment for:
- 4.6.1 overpayment on vacant Units (i.e. vacant for longer than 3 months);
- 4.6.2 where Designated Units are occupied by Tenants ineligible for subsidy per Section 3.3.3. or Section 4.5.

- 4.7 **Failure to Pay Tenant Rent Contribution.** In order to continue to receive Rent Supplement, the Tenant must continue to pay the Tenant Rent Contribution. The Landlord is responsible to ensure the Tenant pays the Tenant Rent Contribution in a timely manner, however, should the Tenant be more than 30 days in arrears in paying the Tenant Rent Contribution then the Landlord will notify BC Housing.

PART 5 GENERAL OPERATIONS

- 5.1 **Operational Review.** The Landlord will permit BC Housing to inspect the Development, Designated Units and Tenant records held by the Landlord at any reasonable time, and may make extracts from and take photocopies of those records. The review will include, but not be limited to, the following:
- 5.1.1 the Landlord's conformance with statutory requirements and the terms of this Agreement; and
 - 5.1.2 inspection of buildings and/or Designated Units.
- 5.2 **Records.** The Landlord will maintain adequate operational records for the Development and the following will apply:
- 5.2.1 the Landlord will retain all documents, vouchers, records and accounts that pertain to the Tenants for not less than 7 years following the date of receipt or production of those records; and
 - 5.2.2 the Landlord agrees that applicant and Tenant information will be collected, used and disclosed in accordance with the *Freedom of Information and Protection of Privacy Act*. The Landlord will ensure that persons with access to the Landlord's records on the Development will collect, use and disclose applicant and Tenant information in accordance with that Act.
- 5.3 **Statistical Information.** The Landlord will supply to BC Housing for statistical purposes, in a format requested by BC Housing, information concerning the Rent Supplements, Tenants or other matters dealt with in this Agreement that BC Housing may request from time to time.
- 5.4 **Redecoration.** The Landlord will, without charge to a Tenant or BC Housing, repaint the Designated Units at least once every eight years and clean the carpets and clean the drapes/blinds on a cyclical basis but not less frequently than every two years.

PART 6 LIABILITY

- 6.1 **Indemnity.** The Landlord will indemnify and save harmless BC Housing, the Provincial Rental Housing Corporation and the Provincial Government, and each of their ministers, board members, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from all claims and costs which they may be liable for or incur arising out of any act or omission of the Landlord or its officers, directors, employees, agents, contractors or other persons for whom at law the Landlord is responsible, or the Landlord's ownership, lease, operation, management or financing of the Development or Rent Supplements, except to the extent that it is caused by the negligence of BC Housing or its employees, agents or contractors.
- 6.2 **Release.** The Landlord releases BC Housing, the Provincial Rental Housing Corporation and the Provincial Government, and each of their ministers, board members, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from all claims arising out of advice or direction respecting the ownership, lease, operation or management of the Development or Rent Supplements given to the Landlord by any of them, except to the extent that advice or direction is given negligently.
- 6.3 **Survival.** The obligations of the Landlord set out in Sections 6.1 Indemnity and 6.2 Release survive termination of this Agreement.

PART 7 GENERAL PROVISIONS

- 7.1 **Default.** In the event the Landlord fails to maintain the Development or the Designated Units in a fit state for occupancy, or otherwise commits a breach of this Agreement and fails to take remedial actions as requested by BC Housing within 30 days of such request, then BC Housing may cancel this Agreement immediately without further obligation on the part of BC Housing.
- 7.2 **Health Agreement Breach.** A breach of the Health Agreement will be a breach of this Agreement.
- 7.3 **Determination by BC Housing Binding.** Wherever in this Agreement BC Housing's approval is required for a decision or action of the Landlord, BC Housing's determination, designation or decision with regard to that approval is conclusive and binds the Landlord.

- 7.4 **Rent Supplement Payment When Agreement Terminates.** Neither BC Housing nor the Provincial Government is obliged to pay Rent Supplement or to make any other financial contributions to the Landlord after the termination of this Agreement. At BC Housing's option, however, the Landlord agrees to permit the Tenants to continue occupancy under the same conditions as to the payment of Rent Supplements by BC Housing, and this Agreement will remain binding on both parties with respect to only those Tenants for whom BC Housing exercises its option under this Section as if it were still in force. Pursuant to this Section, when a Tenant moves out or their Annual Income for Calculation Purposes no longer makes them eligible for Rent Supplements, then the Rent Supplement will cease and cannot be transferred to another Tenant or applicant. Where BC Housing exercises this option, the amount of Rent Supplement will be an amount per Tenant, as negotiated by the parties, both acting reasonably. Pursuant to this Section, the Landlord must notify BC Housing immediately on learning that an *in situ* Tenant has vacated, or intends to vacate, a Designated Unit.
- 7.5 **Notices.** All notices, demands or requests of any kind, which the Landlord 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, by telecopied transmission or by personal service to the addresses set out on page one. Service of that notice, demand or request is deemed complete if made by:
- 7.5.1 registered mail, 72 hours after the time of mailing, except where there is a postal service disruption during that period;
- 7.5.2 telecopy, on the first business day after the date when that telecopy is transmitted; or
- 7.5.3 personal service, upon that personal service being effected.
- 7.6 **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. Any notice, demand or request made to BC Housing, to be effective, will be addressed to the Director, Housing Operations.
- 7.7 **Assignment.** The Landlord will not assign its rights or obligations under this Agreement without BC Housing's prior approval, which will not be unreasonably withheld.
- 7.8 **Whole Agreement.** There are no warranties, representations, conditions or collateral Agreements that pertain to this Agreement, except as set forth in this Agreement.

- 7.9 **Enuring Effect.** This Agreement enures to the benefit of and binds each of BC Housing and the Landlord and their respective successors and permitted assigns.
- 7.10 **Sale or Transfer.** The Landlord will promptly notify BC Housing both in advance and on completion of any transfer of the Development by sale, lease or otherwise, and, subject to Section 7.7, will ensure that all prospective transferees are aware of this Agreement and that any transferee agrees to be bound by this Agreement.
- 7.11 **Renewal.** This Agreement may, by agreement of both parties, be renewed at the end of the Term for a period of 5 years, or such other period as may be agreed upon, provided that both parties agree to the renewal at least 90 days prior to the end of the Term. Such renewal and any subsequent renewals will be upon the same terms and conditions as set out in this Agreement, or as otherwise agreed to by the parties.

PART 8 INTERPRETATION

- 8.1 **Definitions.** The meanings of terms used in this Agreement are set out in Schedule A.
- 8.2 **Schedules.** Attached to this Agreement are Schedules A, B and C. These Schedules are an integral part of this Agreement.
- 8.3 **Time.** Time is of the essence of this Agreement. If either party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party. Any time specified in this Agreement for observing or performing an obligation is local time in Vancouver, British Columbia.
- 8.4 **Governing Law.** This Agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia.
- 8.5 **References.** If the singular, masculine, feminine or neuter is used in this Agreement, the reference is to the plural, masculine, feminine or body corporate according to the context in which it is used.
- 8.6 **Construction.** The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this Agreement is to be construed simply, according to its fair meaning and not strictly for or against either party.

- 8.7 **No Limitation.** The word "including", when following any general statement, term or matter, is not to be construed to limit that general statement, term or matter to the specific items set forth immediately following that word or to similar items. That general statement, term or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of that general statement, term or matter.
- 8.8 **Document Written in Present Tense.** The word "will", where the subject is either or both of the parties, denotes a present obligation.
- 8.9 **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.
- 8.10 **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.
- 8.11 **Consents and Approvals.** Except as otherwise expressly set out in this Agreement, where this Agreement provides for any approval, consent or Agreement with respect to any matter:
- 8.11.1 it will be obtained before any action is taken on it;
 - 8.11.2 it will be requested and responded to in writing; and
 - 8.11.3 it will not be unreasonably withheld, except if this Agreement otherwise expressly stipulates, or delayed.
- 8.12 **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.

8.13 **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.

IN WITNESS OF WHICH the duly authorized signatories of each of the Landlord and BC Housing have executed this Agreement effective as of the reference date of this Agreement.

COMPANY ABC

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

SCHEDULE A OPERATING AGREEMENT

DEFINITIONS

1. "Agreed Rent" means the monthly per Unit amount by Unit size as set out in Schedule C, and is exclusive of any amounts for personal care and any personal services agreed to independently between the Landlord and Tenant.
2. "Annual Income for Calculation Purposes" means an amount determined in accordance with Schedule B, the Independent Living Rent Scale.
3. "Application Form" means the form, completed by the Tenant or a legal representative, declaring the Tenant's income and used to determine the Tenant Rent Contribution as described in Section 3.2.
4. "Development" means the land and improvements at
5. "Designated Unit" means a Unit in the Development where a Tenant is placed by the Health Authority, pursuant to the Health Agreement, as set out in Section 3.1.
6. "Health Agreement" means an agreement between the Health Authority and the Landlord that provides for the selection of applicants for the Designated Units and as set out in Preamble D of the Background.
7. "Health Authority" means XX Health Authority.
8. "Person with a Disability" means a person who meets any criteria of the Health Authority regarding disability.
9. "Provincial Government" means Her Majesty the Queen in Right of the Province of British Columbia.
10. "Rent Supplement" means the amount paid by BC Housing to the Landlord.
11. "Residency Agreement" means a tenancy agreement, lease, license or other right of a Tenant to occupy a Unit.
12. "Senior" means a person who is at least 55 years of age, and includes a person who resides with a person who is at least 55 years of age.
13. "Start Date" means the first day of the month for which Rent Supplement was first paid to the Landlord pursuant to this Agreement.
14. "Tenant" means the person or persons placed by the Health Authority in a Designated Unit pursuant to the Health Agreement, and legally occupying the Designated Unit pursuant to a Residency Agreement, including any person residing in a Designated Unit not named in the Residency Agreement.

15. "Tenant Rent Contribution" means the monthly amount a Tenant must contribute towards the Agreed Rent as set out in Section 3.3.
16. "Term" means the earlier of the termination of the Health Agreement, or a period of X years from and including the Start Date.
17. "Unit" means a dwelling unit in the Development.

**SCHEDULE B
OPERATING AGREEMENT**

INDEPENDENT LIVING RENT SCALE

The Tenant Rent Contribution will not exceed a set percentage, as determined from time to time by BC Housing (currently 70%) of one twelfth of the Annual Income for Calculation Purposes of the Tenants, including any person residing in a Unit who is not named in the Tenancy Agreement and the following will apply:

1. "Annual Income for Calculation Purposes" means the annual amount of net income (currently line 236), less income tax paid (currently line 435), as set out in the Canada Customs and Revenue Agency personal income tax return (T1);
2. a minimum Tenant Rent Contribution is applied based on applicable household size and age of the Tenant; and
3. if the Tenant declares no income or is receiving income assistance under the *Employment and Assistance Act*, the *Employment and Assistance for Persons with Disabilities Act*, or successor legislation, the Tenant Rent Contribution will be set at an amount as determined by BC Housing from time to time.

BC Housing may change all or part of this scale at any time at its sole discretion.

**SCHEDULE C
OPERATING AGREEMENT**

AGREED RENT

<u>No. of Units</u>	<u>Unit Size</u>	<u>Agreed Rent (Single Occupancy)</u>	<u>Agreed Rent (Double Occupancy)</u>
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