

**APPENDIX B**

**INDEPENDENT LIVING BC PROGRAM**

**NON-PROFIT SOCIETY OPERATING AGREEMENT**

**THIS OPERATING AGREEMENT** dated for reference the (Date).

**BETWEEN:**

**(SPONSOR LEGAL NAME)**  
(Sponsor Mailing Address), British Columbia (Postal Code)  
  
(the "Society")

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**AND:**

**BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION**  
Suite #601 - 4555 Kingsway, Burnaby, British Columbia V5H 4V8  
  
("BC Housing")

with respect to a housing development at (Civic Address, Municipality), British Columbia.

**BACKGROUND**

- A. The Society will operate the Development under Independent Living BC, a housing program funded by the Government of British Columbia acting through its agent, BC Housing.
- B. 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 personal care. Independent Living BC offers a middle option between home care and residential care.
- C. The common goal of the parties in making this agreement is to provide stable, affordable and well-managed non-market 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. For this purpose, the Society will own and operate the Development, and BC Housing will provide Shelter Subsidies under the terms of Independent Living BC.
- D. Under a separate agreement with the Society (the "Health Agreement"), the Health Authority will select and refer Tenants for the 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 SOCIETY

- 1.1 **Role of the Society.** The Society will operate, maintain and manage the Development in a proper, efficient and timely manner as would a prudent owner of similar property and in accordance with the following Operating Standards.

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#### Operating Standards

- 1.2 **Corporate Organization.** The Society will establish a well organized corporate structure, and policies and procedures that ensure that the Development is well managed, and in particular will:
- 1.2.1 recruit and maintain its board of directors and its membership in such a way as to ensure continuing ability to manage effectively;
  - 1.2.2 conduct business in an ethical manner that does not permit personal gain, directly or indirectly, by any director, officer, member or employee of the Society or any of their associates or family members;
  - 1.2.3 meet all statutory and corporate obligations, including obligations under all contracts the Society enters into in connection with the Development and the requirements of any insurer of the Development;
  - 1.2.4 comply with the Society's lease for the Land, if any; and
  - 1.2.5 maintain accurate and complete records of all aspects of its operations.
- 1.3 **Maintenance.** The Society 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 establish maintenance procedures to maintain the value of the Development and prolong the life of the Improvements;
  - 1.3.2 ensure that the necessary skills and tools are available to clean and maintain the Development adequately;
  - 1.3.3 ensure that the Development complies with all applicable statutory health and safety standards;
  - 1.3.4 ensure that fire regulations are observed and that fire inspections are carried out regularly by the appropriate authorities; and
  - 1.3.5 obtain sufficient insurance on the Development in accordance with Section 1.7.

- 1.4 **Finances**. The Society will establish policies and procedures for effective control of finances for the Development, and in particular will:
- 1.4.1 prepare an Operating Budget for the Development for each Fiscal Year and regularly review the financial affairs of the Development in accordance with Part 5; and
  - 1.4.2 ensure that sound financial operating policies and procedures are in place, including:
    - 1.4.2.1 clearly defined spending authority;
    - 1.4.2.2 record keeping in accordance with generally accepted accounting principles; and
    - 1.4.2.3 policies and procedures for arrears, purchasing and investment of reserve funds.
- 1.5 **The Tenants**. The Society will establish policies and procedures to:
- 1.5.1 select Tenants in an open, fair, consistent and non-discriminatory way and in accordance with the Health Agreement;
  - 1.5.2 serve Tenants promptly and courteously, with clear and informative communication;
  - 1.5.3 provide each Tenant with access to information concerning that Tenant and protect the privacy of Tenants.

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## PART 2 ROLES AND RESPONSIBILITIES OF BC HOUSING

- 2.1 **Pay Shelter Subsidy**. BC Housing will pay the Shelter Subsidy to the Society in a timely manner in accordance with Part 6 for a term not to exceed 35 years unless otherwise agreed by BC Housing.
- 2.2 **Limit**. Except for the Shelter Subsidy, BC Housing will not be required to pay any operating subsidy, any operating deficit, or make any other payments to the Society.
- 2.3 **Monitor Operations**. BC Housing will monitor the operation of the Development and the use by the Society of the Shelter Subsidy in accordance with this agreement, to ensure that the Operating Standards and the objectives of Independent Living BC are met.
- 2.4 **Provide Information**. BC Housing will provide the information required by the Society to enable the Society to carry out its responsibilities under this agreement, and will provide that information in a timely manner.

### PART 3 ONGOING PROVISION OF NON-MARKET HOUSING

- 3.1 **Society's Acknowledgements**. The Society confirms as follows:
- 3.1.1 the Society is entering into this agreement to own and operate the Development for the Specific Purpose in accordance with this agreement and that its fundamental purpose in doing so is to benefit the public interest; and
  - 3.1.2 BC Housing's rights and remedies under this agreement are not to be construed as a penalty or forfeiture.
- 3.2 **Restrictions on Disposition**. The Society will not transfer or encumber all or part of the Development, or enter into any agreement to transfer or encumber all or part of the Development except with the approval of BC Housing. Such approval may be arbitrarily withheld.
- 3.3 **Society Restrictions**. During the Term, the Society will remain a corporation in good standing under the applicable statute in British Columbia and will:
- 3.3.1 have as a main purpose and activity the provision of housing for low income or low and moderate income households;
  - 3.3.2 operate as a non-profit entity;
  - 3.3.3 have directors and officers who serve without payment or benefit, direct or indirect, except for payment of reasonable expenses incurred in carrying out their duties;
  - 3.3.4 use substantially all its income, gains and accretions to promote its main purposes and activities; and
  - 3.3.5 on dissolution, distribute its remaining assets to one or more corporations which meet the restrictions of this Section 3.3 and are approved by BC Housing.
- 3.3 **Constating Documents**. The Society will not alter its Constating Documents in any way that would make them inconsistent with the terms of this agreement or that would render the Society unable to fulfil its obligations under this agreement.

### PART 4 RESIDENTS

- 4.1 **Selection Procedures**. The Health Authority will select and provide Tenants for the Development under the terms of the Health Agreement. Throughout the term of this agreement, the Society, in cooperation with the Health Authority, will use its best efforts to ensure Tenants selected for the Units have low or moderate incomes.
- 4.2 **Occupancy Standards**. Units in the Development will be occupied by Tenants with household sizes suitable for the Unit as set out in the Occupancy Standards in ScheduleB.

- 4.3 **Discrimination**. The Society will not discriminate against any applicant or Tenant by reason of race, colour, ancestry, place of origin, religion, marital status, gender, sexual orientation or age of that applicant or Tenant or for any reason otherwise prohibited by statute. The prohibition against discrimination by reason of age does not apply to a Unit in a building or part of a building reserved for Seniors. The Society will comply with the laws of British Columbia and Canada relating to human rights.
- 4.4 **Membership in Society**. The Society will not require a Tenant to be a member of the Society.
- 4.5 **Residency Agreements**. The Society will enter into an Residency Agreement with each Tenant. The Residency Agreement will contain additional provisions as set out in Schedule C as amended by BC Housing from time to time after consultation with the Society.
- 4.6 **Landlord and Tenant Relationship**. Except for payment of the Shelter Subsidy, the full normal relationship of landlord and tenant exists between Society and Tenant. BC Housing is not liable to the Society for any breach by a Tenant of a Residency Agreement.

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## PART 5 FINANCIAL OPERATIONS

- 5.1 **Proof of Income**. The Society will obtain a declaration (an "Application Form") and supporting documentation as evidence of the Income of that Tenant, from each Tenant at the time of initial occupancy, and from each Tenant at least annually, or as may be otherwise directed by BC Housing, which declaration will be in a form approved by BC Housing as amended from time to time. The following apply:
- 5.1.1 the Society will keep on file a copy of each Application Form, signed by each Tenant and other occupants as required;
  - 5.1.2 the Society will assist each Tenant in completing the Application Form in an accurate manner; and
  - 5.1.3 if there is an error either by omission or commission in the Application Form, the Society will take such action as required to recover from the Tenant any amount credited from the Shelter Subsidy to which that Tenant was not entitled, or at BC Housing's option, will assist BC Housing to recover from the Tenant any amount credited to that Tenant to which that Tenant was not entitled.
- 5.2 **Tenant Rent Contribution Calculation**. The Society will review each Tenant's Application Form together with any documentation in support, and use that information to determine the amount a Tenant will pay as the Tenant Rent Contribution for a Unit, as follows:
- 5.2.1 the Tenant Rent Contribution will be based on the application of the Independent Living Rent Scale; and

- 5.2.2 the Tenant Rent Contribution will not exceed the Maximum Rent, but may exceed the actual cost of shelter, hospitality and personal care services for the Unit.

The Society will submit copies of the Application Form to BC Housing who will confirm the amount of Tenant Rent Contribution. The Society will submit other records in support of the Application Form to BC Housing as requested by BC Housing.

- 5.3 **Operating Budget.** The Society will prepare an Operating Budget in a form acceptable to BC Housing and will send the Operating Budget to BC Housing for its review and approval according to the following schedule:

- 5.3.1 12 months prior to the Start Date;
- 5.3.2 3 months prior to the end of the first Fiscal Year after the Start Date that represents 12 full months of operations;
- 5.3.3 3 months prior to the end of each Fiscal Year ending on the 5<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 20<sup>th</sup>, 25<sup>th</sup>, and 30<sup>th</sup> anniversary of the first Fiscal Year after the Start Date.

In its review BC Housing will take into account the operating realities of the Development and standards across the Independent Living BC portfolio. BC Housing and the Health Authority will consult with the Society before approving and/or revising the Operating Budget. The Society will operate within the approved Operating Budget.

- 5.4 **Renewal of Loan.** The Shelter Subsidy will be recalculated on the renewal of a Loan to take into account the new payments for the Loan.
- 5.5 **Shelter Subsidies from BC Housing.** Subject to Part 6, BC Housing will pay to the Society a Shelter Subsidy amount of \_\_\_\_\_ per unit per month for each eligible Unit in the Development. For each Fiscal Year identified in Section 5.3, BC Housing will determine a revised per unit per month Shelter Subsidy amount following its approval of the Operating Budget.
- 5.6 **Changes in Shelter Subsidy.** For the purpose of determining the per unit per month Shelter Subsidy for any Fiscal Year, occurring at least 12 months after the Start Date and other than those identified in Section 5.3, the Shelter Subsidy will be adjusted annually at the end of such Fiscal Year by the change in the Consumer Price Index for British Columbia for All Items as published from time to time by Statistics Canada or a successor organization, for the most recently published 12 month period prior to the end of the applicable Fiscal Year.
- 5.7 **Accumulated Operating Surplus.** The Society may retain funds (the "Accumulated Operating Surplus") from operating surplus of the Development for each Fiscal Year, and the following apply:
- 5.7.1 the Society will use the Accumulated Operating Surplus to remedy any deficit for a previous Fiscal Year;

- 5.7.2 the Society may make other payments out of the Accumulated Operating Surplus as follows:
- 5.7.2.1 payments for capital renovations or improvements within the design standards for Independent Living BC; and
  - 5.7.2.2 other payments approved by BC Housing.
- 5.8 **Loans.** The Society will make payments on the Loan on the due dates and notify BC Housing immediately if the Society cannot make any payment, and:
- 5.8.1 the Society will not reduce the amortization period of the Loan or prepay a Loan without BC Housing approval; and
  - 5.8.2 the Society will, on the expiry of the term of the Loan, enter into further security agreements required to secure the outstanding balance of the Loan in accordance with BC Housing's requirements.
- 5.9 **Reserve Fund.** The Society will also create a reserve (the "Reserve Fund") for capital repairs, replacements and improvements in accordance with the Schedule of Capital Items attached as Schedule C as may be amended from time to time by BC Housing, and the following apply:
- 5.9.1 the Society will fund the Reserve Fund in the amount of \_\_\_\_\_ per unit per annum, or such other amount as the Society may be directed by BC Housing from time to time, at least annually and credit all interest earned on money in the Reserve Fund to the Reserve Fund; and
  - 5.9.2 the Society will use or dispose of the Reserve Fund only for capital repairs and replacements to the Improvements on the Land in accordance with the Schedule of Capital Items;
  - 5.9.3 if the Society must replace items listed in the Schedule of Capital Items more than 2 years prior to the estimated life as set out in the Schedule of Capital Items, then the Society will notify BC Housing, identifying the cause; and
  - 5.9.4 the Reserve Fund may not be used for repair or replacement of items not listed in the Schedule of Capital Items, including for example: dining room furniture, serving and eating utensils, cooking utensils, table linens, furniture, bed linens, housekeeping equipment, etc.
- 5.10 **Investment of Funds.** The Society will deposit and keep the Reserve Fund and the Accumulated Operating Surplus and accumulated interest in accounts or instruments as follows:
- 5.10.1 in an account insured by the Canadian Deposit Insurance Corporation or by the Credit Union Deposit Insurance Corporation;
  - 5.10.2 in an investment in accordance with the Society Act or the Local Government Act;

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- 5.10.3 in an investment guaranteed by a Canadian government; or
- 5.10.4 in other investment instruments as BC Housing approves.
- 5.11 **Non-Shelter Support.** Where non subsidized hospitality or other non-shelter services are provided to Tenants for a mandatory fee, the Society must ensure that such fees do not pose a barrier to occupancy for applicants that meet all other occupancy criteria.
- 5.12 Auditor. The Society will appoint an auditor of the Society in compliance with Section 42 of the Society Act. The auditor will be in good standing in the Province of British Columbia and will not be a member of the Society. The Society will cause the auditor to:
- 5.1.2.1 audit the financial statements of the Society and the following apply:
- 5.12.1.1 financial statements will be prepared in accordance with Generally Accepted Accounting Principles (GAAP), unless otherwise stipulated herein or from time to time by BC Housing;
- 5.12.1.2 the statements will include a Statement of Financial Position, Statement of Operations and Changes in Fund Balances, Statement of Cash Flow, Statement of Changes in Replacement Reserve Fund, Schedule of Shelter Operations for each building, Schedule of Surplus Accounts; and
- 5.12.1.3 capital assets will be amortized over the economic life of the asset unless BC Housing stipulates otherwise;
- 5.12.2 provide a letter or notes with the financial statements indicating that:
- 5.12.2.1 the Tenant Rent Contributions are or are not being correctly charged to the Tenants; that assessment may be done on a sample basis;
- 5.12.2.2 Accumulated Operating Surplus is being spent and accounted for as provided in this agreement; and
- 5.12.2.3 the Society has properly funded and maintained the Reserve Fund, and that all interest accruing to the Reserve Fund has been recorded.
- 5.13 **Audited Financial Statements to be Submitted.** The Society will submit audited financial statements, the letter or notes referred to in Section 5.12.2 and a copy of the related auditor's management letter, if any, to BC Housing within 4 months after the end of each Fiscal Year.
- 5.14 **Unauthorized Expenditures and Acts.** With regard to its ownership and operation of the Development, the Society will not, without the approval of BC Housing:
- 5.14.1 borrow money other than the Loan;
- 5.14.2 guarantee or underwrite the repayment of any obligation assumed by a third party;

- 5.14.3 pay to a person or organization any amount for the purpose of supporting activities the objective of which is to make representations to any government body on any subject matter not directly related to the operation of the Development. This provision does not apply to annual membership fees to sector organizations; or
- 5.14.4 release, compromise, assign or transfer any claim, right or benefit of the Society in connection with or arising out of the Society's interest in the Development.

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## PART 6 SHELTER SUBSIDY

- 6.1 **Payment of Shelter Subsidy.** BC Housing will pay the Shelter Subsidy to the Society, on behalf of the Tenants, monthly in advance starting on the Start Date.
- 6.2 **Overpayment or Underpayment of Shelter Subsidy.** If BC Housing in any Fiscal Year pays the Society more or less than what BC Housing subsequently establishes is payable to the Society as the Shelter Subsidy for that Fiscal Year, the Society will repay any overpayment to BC Housing or BC Housing will pay the underpayment to the Society. (For greater clarity, this refers to calculation of the Shelter Subsidy only, not to any operating surplus or deficit of the Society).

## PART 7 GENERAL OPERATIONS

- 7.1 **Operational Review.** In accordance with its obligation to monitor operations as set out in Part 2, BC Housing will from time to time, as determined by BC Housing, perform a full review of the Society's operation of the Development to determine conformance with the terms of this agreement. The Society will comply with all reasonable requests from BC Housing to enable BC Housing to complete the review, including providing access to the Development at any reasonable time.
- 7.2 **Non-Shelter Component.** The Society will use the Shelter Subsidy only for operating expenses for the Shelter Component.
- 7.3 **Records.** The Society will maintain adequate operational records for the Development as described in the Operating Standards and the following apply:
- 7.3.1 the Society will retain all documents, vouchers, records and accounts that pertain to the Development for not less than 7 years following the date of receipt or production of those records;
- 7.3.2 BC Housing or its agents may inspect all records maintained by the Society for the Development, after giving reasonable notice, at any time during regular business hours and may make extracts from and take photocopies of those records; and

- 7.3.3 in accordance with BC Housing's obligations pursuant to the *Freedom of Information and Protection of Privacy Act*, the Society will, upon request:
- 7.3.3.1 disclose to a Tenant the Society's file for the Tenant, subject to removing information to protect third parties according to the principles of that Act; and
  - 7.3.3.2 disclose to third parties only that information that BC Housing would be compelled to disclose according to the principles of that Act.
- 7.4 **Statistical Information**. The Society will supply to BC Housing for statistical purposes, in a format requested by BC Housing, information concerning the Development that BC Housing may request from time to time.
- 7.5 **Insurance**. The Society will, throughout the Term, obtain and maintain sufficient insurance on the Development as set out in Schedule F and the following apply:
- 7.5.1 if the Society at any time does not maintain those policies in good standing, BC Housing may, at the Society's expense, obtain and maintain insurance on terms, in amounts, with deductibles and for periods of time that BC Housing reasonably deems advisable; and
  - 7.5.2 if BC Housing does not terminate this agreement upon damage or destruction pursuant to Section 7.6, the Society, subject to any requirements of any mortgage lender or the landlord of the Land, if any, will repair or rebuild the Development. It will use and pay all insurance proceeds in accordance with BC Housing's requirements.
- 7.6 **Damage or Destruction**. If, in the opinion of a professional engineer or architect appointed by the Society or BC Housing, the Development is damaged or destroyed in excess of 25% of its insurable value, BC Housing may terminate this agreement by delivering written notice of termination to the Society within 30 days after the date of that damage or destruction.
- 7.7 **Publicity**. Where applicable, the Society will clearly identify in all books of account, public or distributed statements or other relevant material that the Canada-BC Housing Affordable Housing Agreement provided a capital contribution and BC Housing provide(d)s ongoing funding to the Development.

## PART 8 LIABILITY

- 8.1 **Indemnity**. The Society will indemnify and save harmless BC Housing 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 Society or its officers, directors, employees, agents, contractors or other persons for whom at law the Society is responsible, or the Society's ownership, lease, operation, management or financing of the Development, except to the extent that it is caused by the negligence of BC Housing or its employees, agents or contractors.

- 8.2 **Release**. The Society releases BC Housing 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 given to the Society by any of them, except to the extent that advice or direction is given negligently.
- 8.3 **Survival**. The obligations of the Society set out in Sections 8.1 and 8.2 survive termination of this agreement.

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## PART 9 GENERAL PROVISIONS

- 9.1 **Defaults, Intervention and Remedies**. If and whenever the Society is in Default the Intervention Procedure will apply. The Intervention Procedure and the rights and remedies BC Housing may exercise in these circumstances are set out in Schedule G.
- 9.2 **Determination by BC Housing Binding**. Wherever in this agreement BC Housing's approval is required for a decision or action of the Society, BC Housing's determination, designation or decision with regard to that approval is conclusive and binds the Society.
- 9.3 **Mediation**. Except as set out in Section 9.2, if BC Housing and the Society have a dispute arising out of or in connection with this agreement, or in respect of any defined legal relationship associated with it or from it, 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 Commercial Mediation Rules of the British Columbia International Commercial Arbitration Centre, in which case the appointing authority is the British Columbia International Commercial Arbitration Centre.
- 9.4 **Arbitration**. If BC Housing and the Society cannot or do not resolve their dispute through the mediation process referred to in Section 9.3 the parties will submit that dispute to arbitration, as set out in Schedule H.
- 9.5 **Termination of Shelter Subsidy**. Neither BC Housing nor the Provincial Government is obliged to pay Shelter Subsidy or to make any other financial contributions to the Society after the termination of this agreement.
- 9.6 **Notices**. All notices, demands or requests of any kind, which the Society 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:
- 9.6.1 if made by registered mail, 72 hours after the time of mailing, except where there is a postal service disruption during that period;
- 9.6.2 if made by telecopy, on the first business day after the date when that telecopy is transmitted; and
- 9.6.3 if made by personal service, upon that personal service being effected.

- 9.7 **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, Regional Operations.
- 9.8 **Assignment**. The Society will not assign its rights or obligations under this agreement without BC Housing's prior approval.
- 9.9 **Whole Agreement**. There are no warranties, representations, conditions or collateral agreements that pertain to this agreement, except as set forth in this agreement.
- 9.10 **Enuring Effect**. This agreement enures to the benefit of and binds each of BC Housing and the Society and their respective successors and permitted assigns.

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## PART 10 INTERPRETATION

- 10.1 **Definitions**. The meanings of terms used in this agreement are set out in Schedule A.
- 10.2 **Schedules**. Attached to this agreement are Schedules A through H. The Schedules are an integral part of the agreement.
- 10.3 **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.
- 10.4 **Governing Law**. This agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia.
- 10.5 **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.
- 10.6 **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.
- 10.7 **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.
- 10.8 **Document Written in Present Tense**. The word "will" where the subject is either or both of the parties denotes a present obligation.

- 10.9 **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.
- 10.10 **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.
- 10.11 **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:
- 10.11.1 it will be obtained before any action is taken on it;
  - 10.11.2 it will be requested and responded to in writing; and
  - 10.11.3 it will not be unreasonably withheld, except if this agreement otherwise expressly stipulates, or delayed.
- 10.12 **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.
- 10.13 **Financial Terms.** All accounting terms not otherwise defined in this agreement have the meanings assigned to them, and all calculations to be made under this agreement are to be made in accordance with Canadian generally accepted accounting principles consistently applied.

10.14 **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 Society and BC Housing have executed this agreement effective as of the reference date of this agreement.

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(SPONSOR'S LEGAL NAME)

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION**

Per: \_\_\_\_\_  
Authorized Signatory

Per: \_\_\_\_\_  
Authorized Signatory

**SCHEDULE A**  
**OPERATING AGREEMENT**  
**INDEPENDENT LIVING BC PROGRAM**

**DEFINITIONS**

1. "Abandoned Unit" means a Unit abandoned by the Tenant or a Unit where, despite the timely payment of Tenant Rent Contribution, the Tenant is absent for 3 consecutive months or longer without the Society's prior written approval.
2. "Accumulated Operating Surplus" means the balance of retained funds from operating surplus of the Development.
3. "Annual Income for Calculation Purposes" means an amount determined in accordance with Schedule D, The Independent Living Rent Scale.
4. "Application Form" means the declaration to be completed by a Tenant as evidence of the Income and assets of that Tenant.
5. "Constituting Documents" means the constitution and bylaws of a society or memorandum and articles of a public housing corporation or the memorandum and rules of association of a co-operative as approved by BC Housing as of the date of this agreement.
6. "Default" means default by the Society as defined in Schedule G.
7. "Development" means the \_\_\_ Units eligible for Shelter Subsidy at (Development Civic Address, Municipality) on the Land, including all ancillary space included in the definition of Shelter Component.
8. "Extraordinary Circumstances" means a Default allowing BC Housing to intervene at any level of the Intervention Procedure as set out in Schedule G.
9. "Fiscal Year" means the fiscal year of the Society as of the reference date of this agreement, as revised after agreement between BC Housing and the Society.
10. "Health Agreement" means an agreement between the Society and the Health Authority as set out in Section D of the Background.
11. "Health Authority" means (Health Authority).
12. "Improvements" means those improvements, structures, buildings, fixtures and systems which exist on the Land from time to time including the heating, ventilating, air-conditioning, plumbing, electrical and mechanical systems and equipment.
13. "Independent Living Rent Scale" means the rent scale attached as Schedule D as amended by BC Housing from time to time.
14. "Intervention Procedure" means the intervention procedure in the event of a Default by the Society as set out in Schedule G.

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15. "Land" means those lands and premises situated in (Development's Civic Address, Municipality), British Columbia and legally described as PID (legal civic address).
16. "Loan" means a mortgage loan insured pursuant to the *National Housing Act* of Canada, obtained by or on behalf of the Society from time to time, with BC Housing's prior written approval, to finance the capital cost of acquiring, developing or renovating the Development, or any other loan with respect to the Development for which the Society has obtained BC Housing's prior written approval.
17. "Maximum Rent" is the maximum monthly amount that can be charged as a Tenant Rent Contribution as may be determined from time to time by BC Housing.
18. "Non-Shelter Component" means the commercial, or non-residential space within the Development, if any, including all space or facilities not expressly included in the definition of "Shelter Component".
19. "Occupancy Standards" means the standards for household sizes of a Tenant relative to the number of bedrooms in a Unit set out in Schedule B.
20. "Operating Budget" means the annual budget for the Development prepared by the Society, in accordance with Section 5.3.
21. "Operating Standards" means those standards for operation of the Development set out in Sections 1.2 to 1.5.
22. "Person with a Disability" means a person who, in the written opinion of a medical doctor or registered psychologist, has a significant permanent disability that cannot be significantly improved by medical treatment, and that produces a loss or impairment of physical or mental ability.
23. "Provincial Government" means Her Majesty the Queen in Right of the Province of British Columbia.
24. "Receiver" means a receiver or receiver-manager.
25. "Reserve Fund" means the amounts the Society is required to hold in reserve in accordance with Section 5.9.
26. "Residency Agreement" means an agreement, tenancy agreement, lease, license or other right of a Tenant to occupy a Unit.
27. "Tenant" means the person or persons legally entitled to reside in a Unit pursuant to a Residency Agreement, including any person residing in a Unit who is not named in the Residency Agreement.
28. "Tenant Rent Contribution" means the monthly amount a Tenant must contribute towards the Maximum Rent as set out in Section 5.2.
29. "Term" means the period of 35 years from and including the Start Date.

30. "Schedule of Capital Items" means the schedule setting out approved capital maintenance and replacement items and expected life in use as set out in Schedule E.
31. "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.
32. "Shelter Component" means space or facilities in the Development comprising residential accommodation used for living, sleeping, private eating, food preparation and sanitation, either shared or otherwise, together with parking, laundry rooms, amenity space, office space required for services to the Tenants, common eating areas, or food preparation areas or a proportionate amount of it shared with other Tenants of the building.
33. "Shelter Subsidy" means the amount paid by BC Housing to the Society as described in Section 5.5.
34. "Specific Purpose" means the operation of:
- 34.1 the Development to provide residential accommodation for eligible Tenants who are Seniors or Persons with a Disability in accordance with this agreement; and
  - 34.2 only that Non-Shelter Component as is approved by BC Housing as ancillary to the Shelter Component.
35. "Start Date" means the first day of the month following the date upon which the project architect or engineer certifies that construction of the Improvements on the Land is substantially complete.
36. "Unit" means a dwelling unit within the Shelter Component of the Development.

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**SCHEDULE B**  
**OPERATING AGREEMENT**  
**INDEPENDENT LIVING BC PROGRAM**  
**OCCUPANCY STANDARDS**

Draft

Tenants will be accommodated in Units suitable to their household size in accordance with the following guidelines unless otherwise agreed by BC Housing:

1. No more than 2 and no fewer than 1 person per bedroom.
2. Spouses and couples share a bedroom.
3. For medical reasons (supported by a medical doctor), spouses and couples may have separate bedrooms.
4. Persons sharing living quarters in a non-spousal relationship may have separate bedrooms.

**SCHEDULE C**  
**OPERATING AGREEMENT**  
**INDEPENDENT LIVING BC PROGRAM**  
**RESIDENCY AGREEMENTS**

The following provisions will be included in the Residency Agreement between the Society and the Tenant:

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1. The occupancy is on a month-to-month basis and not for a fixed term.
2. The Tenant Rent Contribution will change if the Tenant's Income changes.
3. Only the persons named in the Residency Agreement have a right to occupy the Unit as a Tenant.
4. The income of any person occupying a Unit as his or her principal residence, regardless of whether or not that person is named in the Residency Agreement, will be included for the purpose of determining the Tenant's Income.
5. Assignment of the Residency Agreement or subletting or otherwise parting with possession of the whole or part of the Unit for the whole or any part of the term of the Residency Agreement is prohibited.
6. The Tenant consents to BC Housing verifying personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, which consent is required by that Act to enable BC Housing to carry out its audit function.
7. The Tenant agrees to provide such information as is requested by the Landlord and/or BC Housing for calculation of the Tenant Rent Contribution and for auditing purposes. If the Tenant fails to disclose or misrepresents any information requested in the Application Form, BC Housing may withhold the Shelter Subsidy and such failure to disclose or misrepresentation will be deemed to be a material breach of the Residency Agreement and the following will apply:
  - 7.1 BC Housing is entitled to recover from the Tenant in contract or otherwise the Shelter Subsidies paid by BC Housing under or in connection with the Residency Agreement to which the Tenant would not otherwise have been entitled and this remedy is not exclusive and may be exercised by BC Housing in addition to any other remedies available to BC Housing in law or equity and in addition to any remedies of the Landlord as set out in the Residency Agreement;
  - 7.2 money owing by the Tenant to the Landlord and/or BC Housing 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 judgement; and
  - 7.3 such failure to disclose or misrepresentation of Income or assets by a Tenant entitles the Landlord to end the Residency Agreement.

**SCHEDULE D**

**OPERATING AGREEMENT  
INDEPENDENT LIVING BC PROGRAM**

**INDEPENDENT LIVING RENT SCALE**

Draft

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 Residency Agreement and the following will apply:

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);

a minimum Tenant Rent Contribution is applied based on applicable household size and age of the Tenant; and

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 E**  
**OPERATING AGREEMENT**  
**INDEPENDENT LIVING BC PROGRAM**  
**SCHEDULE OF CAPITAL ITEMS**  
**SAMPLE FORMAT**

Category	Item	Life in Years
APPLIANCES	Commercial Dishwasher	15
	Commercial Fridge	20
	Commercial Stove	20
	Apartment Fridge	17
	Apartment Stoves	15
	Microwave	15
	Apartment Stove Top	15
	Commercial Washer	20
	Commercial Dryer	20
	Standard Washer	16
	Standard Dryer	16
	FLOORING	Carpet Suite
Carpet - Common Areas		10
Linoleum		20
HEATING	Furnace	16
	Boiler	20
	Electric Heat	20
	Hot Water Tanks	10
	Water/ Oil Pumps	20
INTERIOR STRUCTURE	Air Conditioning	14
	Central Air Conditioning – Common Areas	20
	Countertops	20
PAINTING	Exterior Paint	8
	Exterior Trim Painting	8
	Interior Painting – Common Areas	7
	Interior Painting	7
PAVING	Driveways Paving	15
ROOFING	Roof	22
WINDOW COVERINGS	Blinds	11
	Drapes	10
	Awning	7
EXTERIOR STRUCTURE	Balcony Coverings	15
	Deck and Deck Coverings	10
	Fencing	10
	Security Gate	20
OTHER	Fresh Water Pump	12
	Sewage/ Pressure/ Relay	20

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**SCHEDULE F**  
**OPERATING AGREEMENT**  
**INDEPENDENT LIVING BC PROGRAM**

**INSURANCE**

**Insurance**

Draft

1. The Society will, throughout the Term, obtain and maintain:
  - 1.1 insurance protecting the Society, (including the Society's employees and agents, without any rights of cross-claim or subrogation, against BC Housing or its employees or agents) against claims for personal injury, death, property damage and loss or third party or other public liability claims arising from any accident or occurrence in, on or about the Development to an amount of at least \$3,000,000 inclusive for any one occurrence or a greater amount that BC Housing, from time to time, reasonably so requires;
  - 1.2 insurance, calculated on a replacement cost basis, upon the full insurable value of the Improvements in the joint names of the Society and any mortgage lender, as their interests may appear, and protecting all of them from loss or damage caused by fire and other perils, including earthquake and flood, as is from time to time included in the standard form "All Risks" insurance policy generally available in British Columbia. The policy must include bylaw insurance covering required material changes and demolition of any undamaged portion of the Improvements;
  - 1.3 if applicable, broad comprehensive boiler and machinery insurance, in the joint names of the Society and any mortgage lender, as their interests may appear, covering all boilers and pressure vessels in the Development, and also covering loss or damage caused by rupture of steam pipes, in such amount as a prudent owner of a similar development would obtain or in a greater amount if BC Housing, from time to time, reasonably so requires;
  - 1.4 if requested by BC Housing, business interruption insurance, on terms that BC Housing requires; and
  - 1.5 other insurance that BC Housing reasonably requires from time to time or as any mortgage lender requires.

## Insurance Requirements

2. The Society will ensure that the following provisions will govern the insurance and will comply with them:
  - 2.1 the policies must provide that they cannot be cancelled, terminated or materially amended, except if the insurer delivers to BC Housing at least 30 days' prior written notice;
  - 2.2 the policies must insure the interests of and protect any mortgage lender and the Tenants notwithstanding any act, omission or negligence of the mortgage lender or a Tenant or any third party which is not within the knowledge or control of the insured, which might otherwise result in the forfeiture or invalidity of any of the policies;
  - 2.3 policies of public liability insurance will be written to cover the Society and any mortgage lender and will provide that each person insured is insured in the same manner and to the same extent as if individual policies had been issued to each;
  - 2.4 the policies must be written by insurers, and on terms reasonably satisfactory to BC Housing;
  - 2.5 the policies must be primary and not call into contribution or be in excess of any other insurance available to the named or additional named insured(s), and must not include a co-insurance clause;
  - 2.6 the Society will deliver to BC Housing, on request, certified copies of the policies or renewals of them;
  - 2.7 the Society will notify BC Housing immediately of any circumstance known to the Society which might materially affect the coverage under the policies; and
  - 2.8 the policies may provide that the amount payable in the event of any loss will be reduced by a deductible in an amount approved by BC Housing. The Society will be a co-insurer only to the extent of the amount so deducted from the insurance proceeds paid in the event of any loss.

Draft

## Workers' Compensation

3. The Society 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*.

## No Representation

4. Any requirement or advice by BC Housing as to the amount of coverage under any policy of insurance does not constitute a representation by BC Housing that the amount required is adequate.

**SCHEDULE G**

**OPERATING AGREEMENT  
INDEPENDENT LIVING BC PROGRAM**

**DEFAULT, INTERVENTION PROCEDURE AND REMEDIES**

Draft

**Events of Default**

1. The following events shall constitute default by the Society under this agreement:
  - 1.1 breach of any covenant on the part of the Society under this agreement and in particular consistent failure to operate, maintain and manage the Development in accordance with the Operating Standards;
  - 1.2 if the Society fails to pay its debts as they become due or becomes insolvent or commits an act of bankruptcy or if a Receiver should be appointed to manage any of the assets of the Society;
  - 1.3 if the Society fails to remain in good standing under the *Society Act*;
  - 1.4 if the Society is in default under a Loan;
  - 1.5 if the Society is in breach of any agreement with BC Housing or the Provincial Rental Housing Corporation in respect of the Development and/or the Land;
  - 1.6 if the Society is in default under the lease for the Land, if any;
  - 1.7 if the Society disposes of all or substantially all of its assets; and
  - 1.8 if the Society is in breach of or fails to comply with any applicable law, bylaw or regulation.

**Intervention Procedure for Default**

2. The following is the procedure for intervention by BC Housing in the event of Default by the Society:
  - 2.1 **Communication**. BC Housing will give the Society written notice of the Default, which notice will provide for a reasonable time for the Society to respond to the notice of Default by providing further information concerning the Default.
  - 2.2 **Action Plan**. BC Housing and the Society will agree on an action plan to cure the Default, including a schedule for implementation of the action plan, identification of the resources available to the Society to implement the action plan, and the dates on which BC Housing will review progress on implementation of the action plan.

- 2.3 **On Watch**. If the Society does not cure the Default within a reasonable time, BC Housing may place the Society “On Watch”, which means that:
- 2.3.1 this is a warning that BC Housing will intervene further if the Default is not cured;
  - 2.3.2 BC Housing will monitor the operation of the Development by the Society more often and in more depth, including a management audit and increased operational reviews as set out in Section 7.1; and
  - 2.3.3 if the Society makes progress in curing the Default, BC Housing will lessen the monitoring of the Society and the On Watch status may be withdrawn.
- 2.4 **Co-management**. BC Housing may appoint a manager to work with and supervise the Society in operating the Development and in curing the Default, in order to:
- 2.4.1 improve the Society’s management of the Development and return operation of the Development to the Society at some future date; and
  - 2.4.2 provide education, training and other necessary resources to the Society to cure the Default.
- 2.5 **Take-over**. BC Housing may appoint a Receiver in accordance with Sections 7 to 9 of this Schedule or may require that the Society assign its interest in the Development to BC Housing or a nominee of BC Housing.

### Extraordinary Circumstances

3. Although the steps of the Intervention Procedure will normally be taken in sequence, BC Housing, at its sole discretion, may intervene at any level of the Intervention Procedure in Extraordinary Circumstances, which are:
- 3.1 fraud or criminal behaviour of a representative of the Society affecting the Development;
  - 3.2 breach of Part 3;
  - 3.3 danger to the health and safety of the Tenants;
  - 3.4 default under a Loan or on a charge in favour of BC Housing or the Provincial Rental Housing Corporation registered on title to the Land and the Society fails to remedy such default on the terms and within the time allowed as set out in the conditions of the Loan or the conditions in the charge, as the case may be;
  - 3.5 consistent failure to participate in the Intervention Procedure;
- and the determination by BC Housing of an Extraordinary Circumstance is conclusive and binds the Society.

**Other Rights and Remedies**

4. If BC Housing elects to proceed under Section 2.2 of this Schedule, then in addition to any other rights or remedies available to BC Housing at law or at equity, BC Housing may exercise any one or more of the following rights or remedies, singly or in combination:
- 4.1 terminate this agreement, in which case BC Housing will deliver to the Society written notice of termination;
  - 4.2 cease paying Shelter Subsidy or reduce the amount thereof, either permanently or for such period as BC Housing may determine;
  - 4.3 demand payment from the Society of all principal and interest in the Reserve Fund in partial satisfaction of repayment or overpayment of Shelter Subsidy;
  - 4.4 take an assignment of the Society's rights in every Residency Agreement and in all amounts payable to the Society as Tenant Rent Contribution or otherwise pursuant to a Residency Agreement, subject to any prior assignment to a mortgagee for a mortgage securing a Loan; and
  - 4.5 take whatever steps BC Housing deems necessary to rectify any Default by the Society.

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**Survival**

5. The remedies set out in this Schedule survive termination of this agreement by BC Housing.

**Costs**

6. BC Housing may recover from the Society on demand all its costs of exercising its rights or remedies under this agreement.

**Appointment of Receiver**

7. Upon the occurrence of any event of Default and in addition to any other rights or remedies of BC Housing, BC Housing may 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 an officer of the Society, and not an officer or agent of BC Housing, and has all the necessary and exclusive power to deal with the Development including the power to:
- 7.1 take control, possession and direction of the Development and the Society's assets in connection with the Development, and carry on the business of the Society in operating, managing and maintaining the Development in accordance with the Operating Standards;
  - 7.2 demand and recover all the income of the Development by direct action, distress or otherwise, in the name of either the Society or BC Housing;

- 7.3 observe or perform, on behalf of the Society, all the Society's obligations under this agreement and any other contracts pertaining to the Development;
- 7.4 give receipts, on behalf of the Society, for any money received; and
- 7.5 carry out such other powers as the Court may authorize or instruct.

### **Application of Revenue**

Draft

8. The Receiver has the right and duty to apply the gross revenue from the Development, which it recovers or receives from time to time, as follows:
  - 8.1 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 deemed to be an amount 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;
  - 8.2 secondly, in payment of all operating expenses under an Operating Budget;
  - 8.3 thirdly, if required by BC Housing, in repayment of the Shelter Subsidy; and
  - 8.4 lastly, to pay the balance to BC Housing.

### **BC Housing's Liability to Receiver**

9. BC Housing will be under no liability to the Receiver for its remuneration, costs, charges, expenses or otherwise.

## SCHEDULE H

### OPERATING AGREEMENT INDEPENDENT LIVING BC PROGRAM

#### ARBITRATION PROCESS

Draft

1. Either party may deliver notice to the other party setting out the nature of the dispute, and naming an arbitrator.
2. Within 10 days after receipt of that notice, the other party will deliver notice to the first party naming a second arbitrator.
3. Each party will instruct the arbitrator appointed by it to agree with the other arbitrator on a third arbitrator, and to appoint that third arbitrator, within 15 days after receipt by the first party of the notice referred to in Section 1.
4. The three arbitrators are governed by the *Commercial Arbitration Act* of British Columbia and, within 30 days after the date of appointment of the third arbitrator, will reach a decision on the dispute and will deliver notice of that decision to the Society and BC Housing.
5. If the second party does not appoint an arbitrator within the time limited by Section 2 of this Schedule, the arbitrator appointed pursuant to Section 1, within 30 days after the date of appointment, will reach a decision on the dispute and will deliver notice of that decision to the Society and BC Housing.
6. If the two arbitrators do not appoint a third arbitrator within the time limited by Section 3, each of the Society and BC Housing will dismiss the arbitrator appointed by it and will immediately submit the dispute to arbitration under the *Commercial Arbitration Act*.
7. Each of the Society and BC Housing will appoint an arbitrator who is at arm's length from it. They irrevocably authorize and instruct those arbitrators to reach a decision fairly and without bias toward or against either party.
8. The decision of the majority of the three arbitrators or any single arbitrator, as the case may be, is conclusive and binds the Society and BC Housing.
9. The Society and BC Housing will bear the costs of arbitration equally.