

[NTD: ADD SCHEDULE TO FORM C TO INCLUDE "IN FAVOUR OF BCHMC AS TO THE SECTION 219 COVENANT PAGE # SECTION 3"]

*[NTD: ADD SCHEDULE TO FORM C TO INCLUDE "IN FAVOUR OF PRHC AS TO THE OPTION TO PURCHASE PAGE # SECTION 4"]***EXPRESS CHARGE TERMS
TERMS OF INSTRUMENT – PART 2**

WHEREAS:

- A. The Commission, on behalf of Her Majesty the Queen in Right of the Province of British Columbia, provides, or assists in providing, housing for persons with limited incomes and/or for persons with special housing requirements;
- B. PRHC, on behalf of the Commission, acquires, leases, disposes of, and otherwise deals with land which is required for the purposes set out in Paragraph A;
- C. The Transferor wishes to develop the Improvements on the Land for the Specific Purpose, and wishes to obtain the Commission's assistance in carrying out the Specific Purpose;
- D. The Transferor has acknowledged to the Commission that:
 - (i) the Transferor is entering into this Agreement to benefit the public interest;
 - (ii) the Transferor will use the Property for the Specific Purpose or, if it is unable or unwilling to do so, it will allow the Commission, or such Person as the Commission may designate, to use the Property for the Specific Purpose in accordance with the terms of the Operating Agreement;
 - (iii) the provision of housing, in accordance with the Specific Purpose, is in the public interest and is more important than the fact that the Property may be kept out of commerce;
 - (iv) the Transferor is willing to give to the Commission whatever covenants, restrictions, assurances, rights, and remedies as are agreed to by both parties to ensure that the foregoing objectives are carried out and the Property is used for the Specific Purpose; and
 - (v) the rights and remedies of the Commission hereunder or under any contract pertaining to the Property to which the Commission is a party, are fair and reasonable and ought never to be construed as containing terms which are considered a penalty or forfeiture;
- E. Section 219 of the *Land Title Act* of British Columbia provides, amongst other things, that a covenant, whether of a negative or positive nature, in respect of the use of land or the use of a building on or to be erected on land, in favour of a Crown agency, may be registered as a charge against title to that land;
- F. PRHC and the Commission are Crown agencies pursuant to Section 10 of the *Ministry of Lands, Parks and Housing Act* of British Columbia but may on behalf of the Government

of the Province of British Columbia carry out their duties and functions in their own names; and

- G. The Transferor has agreed to enter into this Agreement to ensure that the Property is used only for the Specific Purpose and that the objectives stated in paragraph D of these recitals are carried out.

THEREFORE in consideration of the premises and of the mutual covenants contained herein, and in further consideration of the sum of \$1.00 now paid by each party to the other, the receipt and sufficiency of which each party hereby acknowledges.

SECTION 1.

INTERPRETATION

1.1 **Definitions.** In this Agreement:

- (a) “Agreement” means the General Instrument Part 1 and these Express Charge Terms under Part 2;
- (b) “Business Day” means any day other than Saturday, Sunday or a statutory holiday in the Province of British Columbia;
- (c) “Closing Date” means the 30th day after the Notice Date, or the first day thereafter that the LTO is open for business to the public;
- (d) “Commission” means the British Columbia Housing Management Commission, or its successors in function;
- (e) “Covenant” means the Section 219 Covenant set out in Section 3 herein;
- (f) “Day” means a calendar day;
- (g) “Eligible Occupant” means an individual who meets the eligibility criteria prescribed in the Operating Agreement;
- (h) “Environmental Law” means any applicable federal, provincial, municipal or local law, statutes, ordinance, codes, by-law, regulation, rule, order, directive, decision, policy, instruction, guideline or decree regulating, relating to or imposing liability or standards of conduct concerning any environmental matter, occupational health and safety or the manufacture, processing, distribution, use, treatment, storage, disposal, packaging, transport, handling, containment, clean-up or other remediation or corrective action of Hazardous Substances including, but not limited to, matters related to air pollution, water pollution, noise control, or hazardous material and any similar, replacement, amendment or supplemental act and all regulations, orders or decrees, now or hereafter made pursuant to any of the foregoing;

- (i) “Event of Insolvency” means:
- (i) if the Transferor files a voluntary petition in bankruptcy, or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the *Bankruptcy and Insolvency Act* of Canada or any present or future applicable federal, provincial, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, or seeks or consents to, or acquiesces in, the appointment of any trustee, receiver, receiver manager, conservator, or liquidator of the Transferor of all or any substantial part of its property or its Interest in the Property (the term “acquiesce” includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within 30 days after the appointment);
 - (ii) if a court of competent jurisdiction grants an order, judgment, or decree approving a petition filed against the Transferor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the *Bankruptcy and Insolvency Act* of Canada or any present or future applicable federal, provincial, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, or, if a court appoints a receiver or receiver manager of the Transferor, the Transferor acquiesces in the entry of such order, judgment, or decree (the term “acquiesce” includes the failure to file a petition or motion to vacate or discharge such order, judgment or decree within 30 days after the entry of the order, judgment or decree), or such order, judgment, or decree remains unvacated and unstayed for an aggregate of 90 days (whether or not consecutive) from the date of entry thereof or any trustee, receiver, receiver-manager, conservator, or liquidator of the Transferor, of all or any substantial part of its property or its Interest in the Property, is appointed without the consent or acquiescence of the Transferor and such appointment remains unvacated and unstayed for an aggregate of 60 days (whether or not consecutive);
 - (iii) if the Transferor admits in writing its inability to pay its debts as they mature;
 - (iv) if the Transferor gives notice to any Statutory Authority of insolvency, or pending insolvency, or suspension, or pending suspension, of operations;
 - (v) if the Transferor makes an assignment for the benefit of creditors or takes any similar action for the protection or benefit of creditors under the *Bankruptcy and Insolvency Act* of Canada or any present or future applicable federal, provincial, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors; or
 - (vi) if the Interest in the Property is seized or taken in execution or attachment by a creditor of the Transferor;

- (j) “General Instrument Part 1” means Part 1 of the General Instrument as prescribed by the Land Title (Transfer Forms) Regulation, as amended;
- (k) “Hazardous Substances” collectively means, without limitation, contaminants, pollutants or other substances, products, materials or goods which are hazardous or dangerous to human, animal or plant health or life or the environment, and, in particular, includes substances, products, materials, or goods which are defined as hazardous substances or special waste in or pursuant to any law, regulation or order of any Statutory Authority;
- (l) “Improvements” means those improvements, structures, buildings, fixtures, equipment and systems which now exist, or which are constructed on the Land from time to time including heating, ventilating, air-conditioning, plumbing, electrical and mechanical systems and equipment;
- (m) “Interest in the Property” means the Transferor’s registered and beneficial right, title and estate in and to the Property;
- (n) “Land” means that certain parcel or those certain parcels of land, or any part thereof, described in Item 2 of the General Instrument Part 1;
- (o) “Landlord” means the landlord named in the Lease if the Interest in the Property is a leasehold interest;
- (p) “Lease” means the lease of the Property granted to the Transferor by the Landlord if the Interest in the Property is a leasehold interest;
- (q) “LTO” means the land title office for the jurisdiction in which the Land is situate;
- (r) “Month” means a calendar month;
- (s) “Notice” means the written notice which PRHC delivers to the Transferor, pursuant to Section 4.3, exercising the Option;
- (t) “Notice Date” means that day upon which the Transferor is deemed, pursuant to Section 7.1, to have received the Notice;
- (u) “Operating Agreement” means the agreement entered into by the Transferor and the Commission, a copy of which can be obtained from the Commission, which provides, amongst other things, for the roles and responsibilities of the Transferor with reference to the operation of the Property;
- (v) “Option” means the option to purchase the Interest in the Property, which the Transferor is granting to PRHC under Section 4.1;
- (w) “Permitted Encumbrances” means those charges or encumbrances set forth in Schedule “A” and any other encumbrances from time to time approved in writing by the Commission;

- (x) “Person” means any association, society, corporation, individual, joint-stock company, joint venture, partnership, trustee, administrator, legal representative, unincorporated organization, or Statutory Authority;
- (y) “Personal Property” means all trade fixtures, machinery, equipment, kitchen ware, cabinetry, furniture, moveable partitions, carpets, rugs, drapes, appliances and other personal property necessary or desirable to carry out the Specific Purpose from time to time;
- (z) “PRHC” means Provincial Rental Housing Corporation, or its successors in function;
- (aa) “Property” means the Land, Improvements, and Personal Property;
- (bb) “Purchase Price” means the sum of Ten Dollars (\$10.00);

●OR IF EQUITY CONTRIBUTION:

“Purchase Price” means the lesser of:

- (i) ● percent (●%) of the Market Value of the Interest in the Property; and
- (ii) the Market Value of the Interest in the Property less the amounts outstanding on any mortgage registered against title to the Land;

but the Purchase Price shall not be a negative amount.

“Market Value of the Interest in the Property” means the most probable price, as determined by an Appraisal, which the Interest in the Property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably and assuming the price is not affected by undue stimulus and that:

- (i) the buyer and seller are typically motivated;
- (ii) both parties are well informed and well advised and acting in what they consider their best interests;
- (iii) a reasonable time is allowed for exposure to the open market; and
- (iv) payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto;

and taking into account the charges and encumbrances registered against title to the Land or the Interest in the Property and the terms of this Agreement (but without deducting the amount outstanding on any mortgage registered against title to the Property).

PRHC will enclose with the Notice a copy of the Appraisal, and the Market Value determined in the Appraisal will be conclusive and binding on the Transferor and PRHC;

- (cc) “Specific Purpose” means the provision of housing for Eligible Occupants on the Property;
 - (dd) “Statutory Authority” means any federal, provincial, regional, municipal, or other government or authorized agency, department or ministry thereof, which has jurisdiction with respect to any matter referred to in this Agreement;
 - (ee) “Transaction” means the transfer of the Interest in the Property from the Transferor to PRHC;
 - (ff) “Transfer” means:
 - (i) if the Interest in the Property is a freehold interest, a freehold transfer in a statutorily prescribed form and otherwise in form and substance satisfactory to PRHC; and
 - (ii) if the Interest in the Property is an interest pursuant to a Lease, a leasehold transfer in a statutorily prescribed form and otherwise in form and substance reasonably satisfactory to PRHC;

by which the Transferor transfers or assigns its Interest in the Property to PRHC;
 - (gg) “Transferor” means the Person named in the General Instrument Part 1 as Transferor.
- 1.2 **Time.** Time will be 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. If a time is specified in this Agreement for observing or performing any obligation, such time will be then local Vancouver, British Columbia time.
- 1.3 **Governing Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of British Columbia, and the laws of Canada applicable therein.
- 1.4 **References.** In this Agreement, words importing the singular include the plural and vice versa, and words importing gender include all genders.
- 1.5 **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 contained in this Agreement. In all cases, the language in this Agreement will be construed simply, according to its fair meaning, and not strictly for or against either party.
- 1.6 **No Limitation.** The word “including” when following any general statement, term, or matter is not to be construed to limit such general statement, term, or matter to the specific items set forth immediately following such word or to similar items whether or not non-limiting language such as “without limitation” or “but not limited to” or words of similar import are used with reference thereto, but rather such 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 such general statement, term, or matter.

- 1.7 **Validity of Provisions.** If a Court of competent jurisdiction finds that any provision contained in this Agreement is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provision of this Agreement which will be construed as if such invalid, illegal, or unenforceable provision had never been contained therein and such other provisions will be enforceable to the fullest extent permitted at law or in equity.
- 1.8 **No Waiver.** Failure by either party to exercise any of its rights, powers or remedies hereunder, or its delay to do so, shall not constitute a waiver of those rights, powers or remedies unless such waiver is in writing. No waiver made with respect to a particular right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right.
- 1.9 **Statutes.** Any reference to a statute is to such statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect, and to any statute or regulation that may be passed that have the effect of supplementing or superceding such statute or regulation.
- 1.10 **Remedies.** Each party to this Agreement, in addition to its rights under this Agreement or at law, will be entitled to all equitable remedies including specific performance, injunction and/or declaratory relief, to enforce its rights under this Agreement. No reference to nor exercise of any specific right or remedy under this Agreement or at law or in equity by either party will prejudice, limit or preclude that party from exercising any other such right or remedy. No such right or remedy will be exclusive or dependent upon any other such right or remedy, but either party, from time to time, may exercise any one or more of such rights or remedies independently, successively, or in combination. The Transferor acknowledges that specific performance, injunctive relief (mandatory or otherwise), or other equitable relief may be the only adequate remedy for a default by the Transferor under this Agreement.
- 1.11 **Schedules.** The following schedule is attached to and forms part of this Agreement:
Schedule “A” Permitted Encumbrances

SECTION 2.

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE TRANSFEROR

- 2.1 **Representations and Warranties of the Transferor.** Regardless of any independent investigations that PRHC or the Commission may cause to be made, the Transferor represents and warrants to PRHC and the Commission as follows:
- (a) the Transferor has sufficient power, authority and capacity to enter into this Agreement and the execution and delivery of this Agreement has been duly and validly authorized by all necessary proceedings;
 - (b) the execution of this Agreement by the Transferor will not constitute a breach by the Transferor of any statute, regulation or its constating documents, or of any agreement to which it is a party, or by which it is bound;

- (c) the Transferor has good and marketable title to the Interest in the Property, free and clear of all liens, encumbrances, charges, encroachments, defects in title, equities or claims, except for Permitted Encumbrances;
- (d) to the best knowledge of the Transferor, having made due inquiries, the Property is free of Hazardous Substances and complies with all Environmental Laws, and there are no other environmental risks or liabilities in connection with the Property known to the Transferor;
- (e) the Transferor has no indebtedness to any Person or to any Statutory Authority which might by operation of law or otherwise now or hereafter constitute a lien, charge or encumbrance on the Interest in the Property or that could affect PRHC's right from and after the Closing Date to own and occupy and to obtain revenue from the Property, other than the Permitted Encumbrances;
- (f) the Improvements (if any) on the Land have been constructed, renovated and repaired pursuant to building permits, validly issued, and in compliance with all applicable building, zoning and other municipal by-laws and restrictions, and the Transferor has not received any notice alleging any such violation. Such Improvements do not encroach upon any lands not owned by the Transferor, or on which the Transferor does not have a leasehold interest;
- (g) the Transferor is a society duly organized, validly existing and in good standing under the laws of British Columbia, and has sufficient power, authority and capacity to carry out the Transaction, all of which will have been duly and validly authorized by all necessary proceedings;
- (h) the completion of the Transaction will not constitute a breach by the Transferor of any statute, bylaw or regulation or of its constating instruments or of any agreement to which it is a party or by which it is bound or which would result in the creation of any lien, encumbrance or other charge on the Interest in the Property or any of the assets comprising the Property;
- (i) the Transferor is not party to any collective bargaining agreement or other agreement with a trade union by which PRHC will be bound by virtue of acquiring the Interest in the Property, other than as approved in writing by PRHC;
- (j) the Transferor has no employees employed at the Property whose employment it cannot lawfully be terminated on or before the Closing Date other than those disclosed to PRHC in writing within 5 days of the Notice Date;
- (k) all municipal taxes, rates, levies and assessments in respect of the Property have been paid in full, and the Transferor has no present or future obligation to pay moneys to any Statutory Authority in connection with offsite roads, services, utilities or the like;
- (l) the Transferor is not a non-resident of Canada within the meaning of the *Income Tax Act* of Canada; and

- (m) if the Interest in the Land is a leasehold interest, the Lease is in good standing and the Transferor has observed or performed all its obligations under the Lease as required by the Lease.

2.2 **Covenants of the Transferor.** The Transferor covenants and agrees with PRHC and the Commission as follows:

- (a) The representations and warranties contained in Section 2.1 will be true and correct on the date of this Agreement and will remain true and correct throughout the term of this Agreement;
- (b) the Transferor shall maintain the Property in a state of good repair and maintenance, and in particular will:
 - (i) establish maintenance procedures to maintain the value of the Property and prolong the life of the Improvements and Personal Property on the Land;
 - (ii) ensure that the necessary skills and tools are available to adequately clean and maintain the Property;
 - (iii) ensure that the Improvements on the Land comply with all municipal requirements, and applicable statutory, health and safety standards at all times;
 - (iv) ensure that any construction, renovation or repairs carried out on the Property comply with all municipal requirements and will advise PRHC and the Commission in a timely manner as to the progress of such construction, renovation or repairs; and
 - (v) ensure that all applicable fire regulations are observed and that fire inspections are carried out regularly by the appropriate authorities;
- (c) the Transferor shall maintain in force adequate insurance coverage that a prudent owner of property similar to the Property would obtain, including without limitation, insurance in respect of claims for personal injury, death, property damage, and third party or public claims arising from any accident which may occur on or within the Property and such other insurance as PRHC and the Commission may reasonably require from time to time;
- (d) the Transferor shall pay to the appropriate Statutory Authority, as and when due, all municipal taxes, water taxes, school taxes and any other taxes, local improvements or similar rates, levies, charges and assessments whatsoever affecting the Property and shall submit to PRHC and the Commission, upon demand, proof of such payment;
- (e) the Transferor shall act reasonably and cooperate with PRHC and the Commission at all times and shall provide information reasonably required by PRHC and the Commission without delay;

- (f) the Transferor shall not vacate the Property or permit the Property to be used by any Person who is not entitled to use the Property;
- (g) the Transferor shall make reasonable and diligent use of the Property for the Specific Purpose;
- (h) the Transferor shall promptly observe, perform, execute and comply with all present and future laws, rules, requirements, orders, directions, ordinance and regulations of every Statutory Authority concerning the Property and further agrees at the sole cost and expense of the Transferor to do and perform all acts and things which may be required at any time hereafter by any such present or future laws, rules, requirements, orders, directions, ordinances and regulations;
- (i) if the Property now or any time hereafter comprises one or more strata lots:
 - (i) the Transferor will duly observe all of the provisions of the *Strata Property Act* R.S.B.C. 1998, c.43, as amended or as replaced and other similar statutes affecting the Property, the by-laws and the rules and regulations of the strata corporation;
 - (ii) in exercising its right to vote at any strata meetings, the Transferor shall at all times vote to ensure that the Transferor is able to continue to use the Property for the Specific Purpose and at PRHC or the Commission's written request, the Transferor shall assign to and confer on PRHC or the Commission its right to vote at any strata meetings; and
 - (iii) the Transferor will pay on or before the due dates thereof, the monthly maintenance fees and all assessments, contributions, or levies made against the Property by the said strata corporation; and
- (j) the Transferor shall not, without PRHC or the Commission's prior written consent, transfer, mortgage, charge or otherwise encumber the Property, except by the Permitted Encumbrances.

SECTION 3.

SECTION 219 COVENANT

3.1 **Restriction on Use.** The Transferor hereby covenants with the Commission, pursuant to Section 219 of the *Land Title Act* of British Columbia, with the intent that this Section 219 Covenant will be registered as a charge against the Interest in the Property and the burden of which will run with the Interest in the Property, and will also bind the Transferor contractually, during such time as the Transferor has an Interest in the Property, that:

- (a) the Property will be used only for the Specific Purpose;
- (b) the Property will be used only in accordance with the terms and conditions of the Operating Agreement in effect from time to time; and

- (c) the Interest in the Property will not be subdivided.

SECTION 4.

OPTION TO PURCHASE

- 4.1 **Option to Purchase.** The Transferor hereby grants to PRHC the exclusive and irrevocable option to purchase the Interest in the Property in accordance with the terms and conditions set out in this Section 4.
- 4.2 **Right to Exercise.** PRHC may only exercise the Option if:
- (a) the Transferor defaults in observing or performing its obligation contained in this Agreement, and the Transferor fails to rectify such default within 30 days after PRHC delivers to the Transferor notice of the default;
 - (b) the Transferor defaults in observing or performing any of its obligations under the Operating Agreement in effect from time to time or any event occurs which would entitle the Commission to terminate the Operating Agreement and the Transferor fails to rectify such default or cure such event within the time limited therefor in the Operating Agreement;
 - (c) if the Interest in the Property is a leasehold interest, the Transferor defaults in observing or performing any of its obligations under the Lease, or any event occurs which would entitle the Landlord to terminate the Lease, and the Transferor fails to rectify such default or cure such event within the time limited therefor in the Lease;
 - (d) if the Interest in the Property is a leasehold interest, the Transferor attempts to surrender the Lease and its leasehold interest to the Landlord;
 - (e) an Event of Insolvency occurs;
 - (f) the affairs of the Transferor are dissolved or wound up;
 - (g) the Transferor sells, transfers, assigns, mortgages, charges or encumbers, or agrees to sell, transfer, assign, mortgage, charge or encumber, all or part of its Interest in the Property unless PRHC gives its prior written consent thereto, such consent not to be unreasonably withheld or delayed in the case of a sale, transfer or assignment of the Interest in the Property to a Person who meets all of the following criteria:
 - (i) the Person's constating instruments preclude it from operating for profit;
 - (ii) the Person, in PRHC's reasonable opinion, has the management skills necessary to carry out the Specific Purpose;
 - (iii) the Person has agreed with the Commission to assume the Transferor's obligations under the Operating Agreement in effect at the time of the transfer on terms and conditions satisfactory to PRHC; and

- (iv) that Person meets all standard requirements which the Commission may have regarding the qualifications of such Person to own or lease and operate the Property, including all standard requirements regarding that Person's constating instruments;
 - (h) the Property is vacated, or is used by any Person who is not entitled to use the Property; or
 - (i) in the opinion of PRHC, the Transferor fails to make reasonable and diligent use of the Property for the Specific Purpose and such failure continues for 60 days after PRHC delivers to the Transferor notice of that failure.
- 4.3 **Exercise of Option.** PRHC may exercise the Option by delivering Notice of such exercise to the Transferor.
- 4.4 **Effect of Exercise of Option.** From and after the Notice Date, this Agreement and the Notice will together constitute a binding and enforceable contract between the Transferor and PRHC for the purchase and sale of the Interest in the Property according to the terms and conditions of Section 5.

SECTION 5.

PURCHASE AND SALE UPON EXERCISE OF OPTION

- 5.1 **Purchase and Sale.** Subject to the terms and conditions of this Section 5 and relying on the warranties and representations herein set out, the Transferor agrees to sell and PRHC agrees to purchase the Interest in the Property on the Closing Date for the Purchase Price.
- 5.2 **Purchase Price.** PRHC will pay the Purchase Price subject to adjustment pursuant to Section 5.10 to the Transferor on the Closing Date.
- 5.3 **Repair and Maintenance.** From and after the Notice Date to the Closing Date, the Transferor will take good care of the Property as a prudent owner would do, will carry out all necessary repairs, maintenance, and replacements, will take reasonable care to protect and safeguard the Property, and will operate and otherwise deal with the Property in such a manner that the warranties and representations on the Transferor's part set forth herein remain true and correct.
- 5.4 **Insurance.** From and after the Notice Date to the Closing Date, the Transferor will maintain in force all policies of insurance previously maintained with respect to the Property.
- 5.5 **Risk.** The Property will be at the risk of the Transferor up to the time the Transfer is submitted for registration at the LTO on the Closing Date, and will be at the risk of PRHC from and after the time the Transfer is submitted for registration at the LTO.
- 5.6 **Damage.** If, prior to the time the Transfer is submitted for registration at the LTO on the Closing Date any damage occurs to the Property or any of the assets comprising the Property, PRHC, by notice to the Transferor, may elect to postpone the Closing Date for a period of not more than 30 days and may also elect:

- (a) not to acquire the Interest in the Property, in which case neither party will have any further obligation to the other under this Section 5 pertaining to that particular Notice; or
 - (b) that the Transferor assign to it the Transferor's right to obtain the insurance proceeds in respect of the damage and the proceeds, subject to any loss payee provision, in which case the Transferor will execute and deliver to PRHC an assignment in form and substance satisfactory to PRHC.
- 5.7 **Construction Warranties.** From and after the Closing Date, the Transferor will assign to PRHC all the Transferor's rights under all warranties, guarantees or contractual obligations against any contractor or supplier who was engaged in the construction, renovation, or repair of all or any part of the Improvements. PRHC's acceptance of such assignment will not be deemed to constitute a waiver by PRHC of the Transferor's covenants, agreements, representations and warranties herein set out.
- 5.8 **Transferor's Covenants.** The Transferor will:
- (a) take all proper actions and proceedings on its part to enable it to vest a good and marketable title to the Interest in the Property in PRHC, free and clear of all liens, encumbrances, charges, encroachments, defects in title, equities, or claims except for Permitted Encumbrances;
 - (b) deliver vacant possession of the Property to PRHC on the Closing Date, except for any tenants and occupants permitted to be in possession pursuant to the terms of the Operating Agreement in effect on the Closing Date;
 - (c) not, from and after the Notice Date to the Closing Date, sell, dispose of or transfer title or possession of any Personal Property, except in the normal course of operations; and
 - (d) both before and after the Closing Date do all such further things as PRHC may reasonably require for transferring to and vesting in PRHC title to the Interest in the Property as contemplated by this Section 5.
- 5.9 **Documents.** PRHC will prepare the documents necessary to complete the Transaction, which will be in a form and substance reasonably satisfactory to PRHC and its lawyers.
- 5.10 **Adjustments and Credits.** The Transferor and PRHC will adjust, as at the Closing Date, all usual adjustments for a property similar to the Property including rents, taxes, utility rates, principal, interest and other charges owing under any mortgage, except that any prepaid ground rent will not be adjusted. The Transferor will pay to PRHC, on the Closing Date, the aggregate of all money held in replacement, contingency and other reserve funds pertaining to the Property. *[NTD: if a subsidy is being provided add the words "...and any outstanding subsidy surplus pursuant to the Operating Agreement in effect on the Closing Date." Check budget in ExCom for mention of subsidy.]*
- 5.11 **Mortgage.** PRHC, from and after the Closing Date, will assume the Transferor's obligations under only those mortgages that are Permitted Encumbrances.

- 5.12 **Closing.** The Transferor and PRHC will complete the Transaction at 9:00 a.m. on the Closing Date at the offices of PRHC.
- 5.13 **Transferor's Closing Documents.** At the closing, the Transferor will deliver to PRHC the following duly executed documents:
- (a) the Transfer;
 - (b) a statutory declaration from a senior officer of the Transferor declaring which of the Transferor's representations and warranties set out in Section 2.1 are true and correct as at the Closing Date;
 - (c) the Transferor's statement of adjustments;
 - (d) a certified copy of a resolution of the Transferor's directors authorizing the Transaction;
 - (e) a bill of sale for the Personal Property and all other deeds, transfers, assignments, resolutions, consents, estoppels and other certificates and assurances as PRHC may reasonably require;
 - (f) a cheque for the amount payable to PRHC pursuant to Section 5.10, unless adjusted and paid pursuant to Section 5.14(c), if any;
 - (g) audited financial statements for the Property as at the Closing Date; and
 - (h) if the Interest in the Property is a leasehold interest, an estoppel certificate from the Landlord in a form acceptable to PRHC and its lawyers.
- 5.14 **PRHC's Closing Documents.** At the closing, PRHC will deliver to the Transferor:
- (a) PRHC's statement of adjustments;
 - (b) if the Interest in the Property is a leasehold interest, an agreement in favour of the Landlord in which PRHC covenants to be bound by and comply with all the terms and conditions of the Lease;
 - (c) a cheque for the Purchase Price, as adjusted pursuant to Section 5.10; and
 - (d) an assumption of mortgage if required pursuant to Section 5.11.
- 5.15 **Tabling.** Except for the Transfer, all documents and cheques will be tabled at the closing. PRHC will cause its lawyers, on the Closing Date, to conduct a pre-registration index search of the Land at the LTO. If that search indicates that no liens, charges or encumbrances have been registered or filed except for Permitted Encumbrances, the lawyers for PRHC, or their agents, shall submit the Transfer for registration, and then conduct a post-registration index search. If that search indicates that no liens, charges or encumbrances have been registered or filed since the pre-registration index search, all documents and cheques will be released to each of the Transferor and PRHC according to the entitlement of each of them.

- 5.16 **Survival.** All the representations, warranties, covenants and agreements of the Transferor and PRHC contained in this Agreement will survive the Closing Date, registration of documents, and the payment of the Purchase Price.

SECTION 6.

INDEMNITY

- 6.1 **Indemnity.** The Transferor will indemnify and save harmless PRHC, the Commission and the Government of the Province of British Columbia and each of their ministers, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, causes of action, damages, losses, deficiencies, costs, liabilities and expenses which may be made or brought against PRHC, the Commission or the Government of the Province of British Columbia, or which PRHC, the Commission or the Government of the Province of British Columbia may suffer or incur as a result of, in respect of, or arising out of:
- (a) any non-performance or non-fulfillment of any covenant on the part of the Transferor contained in this Agreement;
 - (b) any misrepresentation, inaccuracy or breach of any representation or warranty made by the Transferor contained in this Agreement;
 - (c) any other act or omission of the Transferor or its officers, directors, employees, agents, contractors or other persons for whom the Transferor is at law responsible;
or
 - (d) PRHC or the Commission remedying any default by the Transferor in observing or performing its obligations under this Agreement or enforcing the obligations of the Transferor under this Agreement.
- 6.2 **Release.** The Transferor releases PRHC, the Commission and the Government of the Province of British Columbia, and each of their ministers, officers, directors, employees and agents and their heirs, executors, administrators, personal representatives, successors and assigns absolutely and forever, from any claims the Transferor may have against all or any of them for costs, expenses, or damages the Transferor may suffer, incur, or be put to arising out of or in connection with the terms contained in this Agreement and, from all claims arising out of advice or direction respecting the use, development, operation or lease of the Property given to the Transferor by any of them.

SECTION 7.

GENERAL PROVISIONS

- 7.1 **Notices.** Unless otherwise specified, each notice to the Transferor must be given in writing and delivered, personally, or by courier to the Transferor as follows:



Attention: Director

or to any other address or person that the Transferor designates.

Unless otherwise specified, each notice to PRHC or the Commission must be given in writing and delivered personally or by courier to PRHC or the Commission, Attention: Manager Real Estate Services, at the address shown as the registered office of PRHC or the Commission in the records maintained by the British Columbia Registrar of Companies as of the date upon which the notice is sent, or to any other address or person that PRHC or the Commission designates.

Any notice, if delivered personally or by courier, will be deemed to have been given when actually received.

- 7.2 **Fees**. Each of the Transferor and the Commission will pay its own legal fees. PRHC will pay all fees in connection with registration of the Transfer.
- 7.3 **Enuring Effect**. This Agreement will enure to the benefit of and be binding upon the respective successors and permitted assigns of the Transferor and PRHC and the Commission.
- 7.4 **Discharge**. The Transferor may require that PRHC and the Commission execute and deliver to the Transferor a release in registrable form of the Covenant and the Option in the event that all Operating Agreements or agreements replacing the Operating Agreements are terminated, or if the terms of all Operating Agreements or agreements replacing the Operating Agreements expire.
- 7.5 **Modification or Amendment**. Except as expressly provided in this Agreement, no amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by each person that is a party to this Agreement at the time of the amendment, supplement, restatement or termination.
- 7.6 **Counterparts**. This Agreement and any amendment, supplement, restatement or termination of any provision of this Agreement may be executed and delivered in any number of counterparts, each of which, when executed and delivered is an original, but all of which taken together constitute one and the same instrument.

IN WITNESS WHEREOF the parties hereto acknowledge that the parties have duly executed this Agreement by signing on the Form C and Form D, constituting pages 1 and 2 hereof.

SCHEDULE "A"

PERMITTED ENCUMBRANCES

LEGAL NOTATIONS



CHARGES & ENCUMBRANCES - EXISTING



CHARGES & ENCUMBRANCES - FUTURE

PRHC consents to the registration of a Mortgage in favour of the Commission in the principal amount of \$◆, together with an Assignment of Rents relating thereto.