



SAMPLE AGREEMENT

CAPITAL RENEWAL FUNDING OPERATING AGREEMENT

THIS AGREEMENT is dated for reference <◆DATE>

BCH File XXXXX-02 / XXXX

BETWEEN

<◆PROVIDER TBD>

<◆PROVIDER'S ADDRESS>

(the "Provider")

AND

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

("BC Housing")

with respect to the Development at

<◆DEVELOPMENT ADDRESS>

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AGREEMENT SUMMARY

PART 1 – SUMMARY

1. The Provider owns the Development and operates it for affordable housing purposes.
2. The Capital Renewal Funding (“CRF”) is a program funded by the Government of British Columbia acting through its agent, British Columbia Housing Management Commission (BC Housing).
3. The goal of CRF with regard to renovation and retrofit of social housing is:
 - a. to repair and protect existing social housing by addressing capital needs, fire safety, seismic upgrades and energy performance; and
 - b. to reduce the number of households in need by improving access to affordable housing that is sound, suitable and sustainable.
4. The Provider has received CRF funding for renovation and/or retrofit of the Development in the form of a forgivable mortgage loan.

PART 2 – SERVICE DESCRIPTION

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

PART 3 – AGREEMENT

1. **TERM.**
 - a. The parties agree as follows for the Term of the Agreement which will commence the day after all Existing Operating Agreements have either:
 - i. expired without renewal or replacement; or
 - ii. have otherwise been lawfully terminated.
 - b. This Agreement will continue until the earlier occurrence of:
 - i. the Expiry Date; or
 - ii. the date of any earlier lawful termination of this Agreement.
2. **SCHEDULES.** All of the Schedules attached to this Agreement are an integral part of this Agreement.

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

BC Housing CRF Operating Agreement – Agreement Summary SAMPLE - Operating Agreement

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

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

<◆PROVIDER TBD>

Per its authorized signatories

Signature Date Signed

Print Name and Title

Signature Date Signed

Print Name and Title

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

Per its authorized signatories

Signature Date Signed

Print Name and Title

Signature Date Signed

Print Name and Title

SCHEDULE A – GENERAL PROVISIONS

A. DEFINITIONS

1. **"Accumulated Operating Revenue"** means any revenue accumulated in the course of the Provider's operation of the Development in any year.
2. **"Affordable Market Rent"** means the average market rent, as determined by BC Housing from time to time based on the most recent, applicable Canada Mortgage and Housing Corporation rental market or housing report.
3. **"Capital Fund"** means an amount the Provider is required to hold in reserve for capital repairs, replacements and improvements pursuant to *Schedule B, Part C, Clause 2*.
4. **"Capital Plan"** means the plan outlining repairs, replacements and improvements at the Development, developed by the Provider and submitted to BC Housing in a format acceptable to BC Housing, pursuant to *Schedule B, Part C*.
5. **"Commencement Date"** means the first day of the Term of this Agreement, as outlined in the *Agreement Summary, Part 3, Clause 1*.
6. **"Constituting Documents"** means the constitution and bylaws of the Provider, together with any amendments, as registered with a Canadian corporate registry.
7. **"Declaration of Income"** means the declaration to be completed by a Resident as evidence of the Income of that Resident.
8. **"Development"** means the housing development owned and operated by the Provider under CRF, located at <◆development address> and legally described as PID <◆PID and legal description>.
9. **"Existing Operating Agreement"** means the <insert agreement name>, between BC Housing and the Provider.
10. **"Expiry Date"** means 10 years after the date of registration of the Loan.
11. **"Fiscal Year"** means the Provider's fiscal year, ending on <◆Provider's fiscal year end>, or as otherwise agreed by the parties.
12. **"Income"** of a Resident means the total Income before income tax from all sources of the Resident.
13. **"Loan"** means the CRF grant advanced by BC Housing to fund the renovation and retrofit of the Development and secured by a forgivable loan registered against the Development.
14. **"Low and Moderate Income"** represents the maximum income for eligibility to occupy a Residential Unit and means:
 - a. For Residential Units with less than two (2) bedrooms, a gross household Income that does not exceed the median income for families without children, as determined by BC Housing from time to time. For 2018, this figure is \$71,200.00.
 - b. For Residential Units with two (2) or more bedrooms, a gross household Income that does not exceed the median income for families with children, as determined by BC Housing from time to time. For 2018, this figure is \$104,440.00.
15. **"Occupancy Standards"** means the standards for household sizes of a Resident relative to the number of bedrooms in a Residential Unit. Unless otherwise agreed in writing by BC Housing, the following standards apply:
 - c. No more than two (2) and no less than one (1) person per bedroom.
 - d. Spouses and couples share a bedroom.
 - e. Parents do not share a bedroom with their children.
 - f. Dependents aged eighteen (18) or over do not share a bedroom.
 - g. Dependents of the opposite sex age five (5) or over do not share a bedroom.
16. **"Operational Review"** means the onsite review of the Development operations, as conducted by BC Housing from time to time, in accordance with *Schedule A, Part D*.
17. **"Provincial Rental Housing Corporation" (PRHC)** is incorporated under the *Business Corporations Act* (British Columbia). PRHC is the land holding corporation for provincially owned social housing. BC Housing administers PRHC, which buys,

BC Housing CRF Operating Agreement – Schedule A

holds and disposes of properties, and leases residential properties to non-profit societies and co-operatives.

18. **"Record"** means accounts, books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical and other means, but does not include a computer program or any other mechanism that produces records.
19. **"Rent"** means the amount a Resident is obligated to contribute monthly to the Provider for a Residential Unit.
20. **"Residency Agreement"** means an agreement, lease, license or other right of a Resident to occupy a Residential Unit.
21. **"Resident"** means the person or persons legally entitled to reside in a Residential Unit pursuant to a Residency Agreement.
22. **"Residential Unit"** means a self-contained residential dwelling within the Development.
23. **"Specific Purpose"** means the operation of the Development to provide affordable housing for persons who have Low and Moderate Incomes.
24. **"Term"** means the period of this Agreement as outlined in *Agreement Summary, Part 3, Clause 1*.

B. RESPONSIBILITY OF THE PROVIDER

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

BC Housing CRF Operating Agreement – Schedule A

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

C. RESPONSIBILITY OF BC HOUSING

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

BC Housing CRF Operating Agreement – Schedule A**D. OPERATIONAL REVIEW**

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

E. RECORDS

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

F. LIABILITY

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

BC Housing CRF Operating Agreement – Schedule A

the case may be, by any of them, except to the extent that such advice or direction is determined by a court of competent jurisdiction to have been negligent.

3. **Survival.** The obligations set out in *Schedule A, Part F, Clauses 1 and 2* survive termination of this Agreement.

G. DISPUTE RESOLUTION

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

H. DEFAULT AND TERMINATION

1. **Event of Default.** Any of the following events will constitute an event of default by the Provider under this Agreement:
 - a. the Provider fails to comply with any provision of this Agreement;
 - b. the Provider fails to remain in good standing with the appropriate registry;
 - c. the Provider is in breach of or fails to comply with any applicable law, regulation, license or permit;
 - d. any representation or warranty made by the Provider under this Agreement is found to be untrue or incorrect; or
 - e. if the Provider knew or ought to have known any information, statement, certificate, report or other document furnished or submitted by, or on behalf of, the Provider pursuant to, or as a result of, this Agreement is untrue or incorrect.
2. **Default.** Upon the occurrence of any event of default set out in *Schedule A, Part H, Clause 1*, BC Housing will provide written notice to the Provider which sets out the breach and the date by which the breach must be rectified. The Provider will be given thirty (30) days to rectify the breach or such longer period as determined solely by BC Housing.
3. **Termination on Continued Default.** If the Provider fails to comply with a written notice given in accordance with this Agreement within the specified period of time, BC Housing, in its sole discretion, may immediately terminate this Agreement or appoint a receiver.
4. **Additional Remedies.** Upon the occurrence of any event of default set out in *Schedule A, Part H, Clause 1*, BC Housing may, in addition to and without prejudice to BC Housing obtaining any other remedy, reduce or suspend any payment that would otherwise be payable by BC Housing to the Provider pursuant to this Agreement.
5. **Appointment of Receiver.** As an alternative to exercising any right of termination provided under this Agreement, BC Housing may elect to appoint, or request a court of competent jurisdiction to appoint, a receiver, with or without bond as BC Housing or the court may determine, and, from time to time, may remove any receiver so appointed and appoint another in its place, or request the court to do so. A receiver

BC Housing CRF Operating Agreement – Schedule A

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

BC Housing CRF Operating Agreement – Schedule A

I. GENERAL PROVISIONS AND INTERPRETATION

1. **Headings.** The headings in this Agreement form no part of the Agreement and will be deemed to have been inserted for convenience only.
2. **Notices.** All notices, demands or requests of any kind, which the Provider or BC Housing may be required or permitted to serve on the other in connection with this Agreement, will be in writing and may be served on the parties by registered mail, personal service, fax or other electronic transmission, to the addresses set out on the cover page. Any notice, demand or request made to BC Housing, to be effective, will be addressed to the BC Housing representative assigned to this matter by BC Housing.
3. **Change of Address.** Either party from time to time, by notice in writing served upon the other party, may designate a different address or different or additional personnel to which all those notices, demands or requests are thereafter to be addressed.
4. **Time.** Time is of the essence of this Agreement. If either party expressly 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.
5. **Governing Law.** This Agreement is to be governed by and construed and enforced in accordance with the laws of the Province of British Columbia, which will be deemed to be the proper law hereof and the courts of British Columbia will have the non-exclusive jurisdiction to determine all claims and disputes arising out of this Agreement and the validity, existence and enforceability hereof.
6. **Validity of Provisions.** If a court of competent jurisdiction finds that any part of this Agreement is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability does not affect any other provisions of this Agreement. The balance of the agreement is to be construed as if that invalid, illegal or unenforceable provision had never been included and is enforceable to the fullest extent permitted at law or at equity.
7. **Waiver.** No consent or waiver, expressed or implied, by a party of any default by the other party in observing or performing its obligations under this Agreement is effective unless given in writing, nor is it a consent or waiver of any other default. Failure on the part of either party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long that failure continues, is not a waiver by that party of its rights under this Agreement or at law or at equity.
8. **Extent of Obligations and Costs.** Every obligation of each party in this Agreement extends throughout the Term. To the extent an obligation ought to have been observed or performed before or upon the expiry or earlier termination of the Term, that obligation, including any indemnity, survives the expiry or earlier termination of the Term until it has been observed or performed.
9. **Statutes.** Any reference in this Agreement to a provincial or federal statute includes the statute as it exists on the reference date of this Agreement and any subsequent amendments or replacements
10. **Binding Effect.** This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties, as applicable.
11. **Counterparts.** This Agreement may be validly executed and delivered by the parties hereto in any number of counterparts and all counterparts, when executed and delivered, will together constitute one and the same instrument. Executed copies of the signature pages of this Agreement sent electronically will be treated as originals, fully binding and with full legal force and effect, and the parties hereto waive any rights they may have to object to such treatment, provided that this treatment will be without prejudice to the obligation of the parties hereto to exchange original signatures as soon as is reasonably practicable after execution of this Agreement, but failure to do so will not affect the validity, enforceability or binding effect of this Agreement.
12. **Assignment and Subcontracting.**

BC Housing CRF Operating Agreement – Schedule A

- a. The Provider will not without the prior written consent of BC Housing:
 - i. assign, either directly or indirectly, this Agreement or any right of the Provider under this Agreement; or
 - ii. subcontract any obligation of the Provider under this Agreement.
 - b. No subcontract entered into by the Provider will relieve the Provider of any of its obligations under this Agreement or impose upon BC Housing any obligation or liability arising from any such subcontract. The Provider must ensure that any subcontractor fully complies with this Agreement in performing the subcontracted services.
- 13. BC Housing Approval.** This Agreement is enforceable only in the event that BC Housing approves this project, in its sole discretion. In the event that this project fails to receive BC Housing's final approval, this Agreement is of no effect and will be deemed to have never commenced.

SCHEDULE B – FINANCIAL

A. FUNDING ASSISTANCE FROM BC HOUSING

1. **Funding.** BC Housing will provide funding in the form of a Loan to facilitate the renovation and retrofit of the Development. The terms and conditions of the Loan are outlined separately in the Loan documents. This Agreement is not to be construed as a substitution for or derogation from the provisions of the Loan documents.
2. **No other Assistance.** BC Housing is not committed or obliged to make any other financial contribution to the Provider or to subsidize the ongoing operation of the Development.

B. REVENUES AND EXPENSES

1. **Rent.** The Rent for all Residents of the Development will be set at or below the Affordable Market Rent.
2. **Revenues.** The Provider will be responsible for collecting all Rents and other revenue for the Development, and the Provider will be responsible for paying out of such revenues all costs associated with the operation of the Development.
3. **Deficit.** The Provider will be responsible for any operating shortfalls or extraordinary expenses. Any deficit will not be the responsibility of BC Housing.
4. **Accumulated Operating Revenue.** The Provider will retain the Accumulated Operating Revenue and may use the Accumulated Operating Revenue only on the following:
 - a. to increase the number of below Affordable Market Rent units in the Development; or
 - b. on costs relating directly to the Development.

C. CAPITAL FUND

1. **Capital Plan.** Resource allocations and practices regarding the protection of the Development throughout the Term are to be guided by a long term Capital Plan established by the Provider and geared to the expected life cycle of the Development.
2. **Capital Fund.** The Provider will create a Capital Fund to fund capital repairs and replacements to the Improvements within the Development in accordance with the Capital Plan.
 - a. Prior to the Commencement Date, the Provider will establish a monthly Capital Fund contribution amount.
 - b. Within two (2) years of the Commencement Date, the Provider will prepare a Capital Plan and submit it to BC Housing for review, in a format acceptable to BC Housing. The Provider will submit and updated Capital Plan to BC Housing at least every five (5) years.
3. **Capital Fund Expenditure.** Capital Funds may only be expended as follows:
 - a. to pay for capital repairs and replacements to the improvements on the land in accordance with the Capital Plan; or
 - b. to make other payment as approved by BC Housing from time to time.
4. **Investment of Funds.** The Provider will deposit and keep the Capital Fund and accumulated interest in securities authorized in accordance with the Provider's Constating Documents, the *Societies Act* (British Columbia), and the *Trustee Act* (British Columbia).

D. FINANCIAL MANAGEMENT AND ADMINISTRATION

1. **Finances.** The Provider will establish written policies and procedures for effective control of finances for the Development, including:
 - a. record keeping and financial statements in accordance with Canadian Accounting Standards;
 - b. clearly defined spending authority; and

BC Housing CRF Operating Agreement – Schedule B

- c. policies and procedures for arrears, purchasing and investment of Capital Funds and Accumulated Operating Revenue.
- 2. **Revenue.** All revenue received by the Provider from whatever source with respect to the Development will be collected by the Provider, held by the Provider and used by the Provider solely for the purpose of and to the extent authorized by this Agreement.
- 3. **Annual Review.**
 - a. Annually, the Provider will forward to BC Housing a copy of its audited financial statements from the preceding Fiscal Year and a report setting out:
 - i. current rent levels; and
 - ii. household Incomes at move-in.
 - b. BC Housing will:
 - i. review the Provider's annual report submitted pursuant to *Schedule B, Part D, Clause 3.a*;
 - ii. review the Provider's expenditures against the Capital Plan;
 - iii. review any Accumulated Operating Revenue or deficit; and
 - iv. review Capital Fund levels.
 - c. A meeting may be convened between the parties to discuss progress, learning and issues arising from the annual review.

SCHEDULE C – RESIDENT SELECTION AND RESIDENCY AGREEMENTS

A. RESIDENT SELECTION AND RESIDENCY AGREEMENTS

1. **Landlord and Tenant Relationship.** The full normal relationship between landlord and tenant will exist between the Provider and the Resident. It is understood that BC Housing will not be responsible to the Provider for any breach or failure of the Resident to observe any of the terms of the Residency Agreement between a Resident and the Provider, including the covenant to pay Rent.
2. **Resident Selection.**
 - a. The Provider will select Residents in accordance with the Specific Purpose. The Provider will use all reasonable efforts to maintain full occupancy of the Development with Residents who meet the Specific Purpose, but if there are no applicants for a vacant Residential Unit in accordance with the Specific Purpose then the Provider may accept applicants at any Income level with the approval of BC Housing which will not be unreasonably withheld.
 - b. The principle of Income blending is to be followed at the Development by selecting Residents with a range of Low and Moderate Incomes to ensure balanced Rent revenues are received.
3. **Discrimination.** The Provider will not unlawfully discriminate against any applicant or Resident by reason of race, colour, ancestry, place of origin, religion, marital status, gender, health status, sexual orientation, or age of that applicant or Resident or for any reason otherwise prohibited by statute. The Provider will comply with all anti-discrimination laws of British Columbia and Canada relating, including the *Canadian Human Rights Act*. Where restricted populations are targeted, the Provider must document its consideration of and compliance with applicable anti-discrimination legislation and submit that documentation to BC Housing on request.
4. **Full Occupancy.** The Provider will use all reasonable efforts to maintain full occupancy of the Development and will notify BC Housing of any extended vacancies.
5. **Approved Residents.** All Residents must be selected in accordance with the Specific Purpose and must be placed in a Residential Unit appropriate to their household size in accordance with the Occupancy Standards. Exceptions may be made for:
 - a. persons designated by mutual agreement between BC Housing and the Provider; or
 - b. staff or other authorized personnel required to operate and maintain the Development and who are bona fide employees of the Provider. The maximum Income threshold/limitation does not apply to this type of residency.
6. **Membership in Provider.** The Provider will not require a Resident to be a member of the Provider.
7. **Residency Agreements.** The Provider will enter into a Residency Agreement with each Resident and all Residency Agreements will be in compliance with the *Residential Tenancy Act*.
8. **Resident Relations.** The Provider will establish policies and procedures to:
 - a. select Residents in an open, fair, consistent and non-discriminatory way;
 - b. serve Residents promptly and courteously, with clear and informative communication;
 - c. provide each Resident with access to information concerning that Resident and protect the privacy of Residents; and
 - d. develop an appeals process for Resident related issues. The process must be transparent and accessible for all applicants and Residents.
9. **Proof of Income.** The Provider will obtain a Declaration of Income and supporting documentation as evidence of the Income of each Resident at the time of the initial

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occupancy. The declaration will be in a form approved by BC Housing as may be amended by BC Housing from time to time. The Provider will maintain a copy of each Resident's proof of Income in a file available to BC Housing on request.

SAMPLE

SCHEDULE D – INSURANCE

A. INSURANCE BY PROVIDER

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