

EXPLANATION**A By-law to amend the Zoning and Development By-law
re secondary suites**

After the public hearing on July 21, 2009, Council resolved to amend the Zoning and Development By-law to allow secondary suites in certain commercial and other districts. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
September 8, 2009

Secondary suites within apartments

BY-LAW NO. _____



A By-law to amend
Zoning and Development By-law No. 3575
regarding secondary suites within apartments

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

- ~~1. This By-law amends the indicated provisions of the Zoning and Development By-law.~~
2. To section 2, before the definition of "Rooming House", which is under the definition of "Dwelling Uses", Council adds:

"Principal Dwelling Unit combined with a Secondary Dwelling Unit, which means a dwelling unit which is a principal residence combined with one secondary dwelling unit which is smaller than the principal residence, and in respect of which the principal residence and secondary dwelling unit must have separate external access and shared internal access which the owner or occupant of the principal residence is able to lock off from the principal residence;"

3. To section 2, after the definition of "Rooming House", which is under the definition of "Dwelling Uses", Council adds:

"Secondary Dwelling Unit means a secondary dwelling unit referred to in the definition of "Principal Dwelling Unit combined with a Secondary Dwelling Unit";"

4. Council repeals section 10.21.2, and substitutes:

"The floor area of each:

(a) dwelling unit, except for a secondary dwelling unit, must be at least 37 m²; and

(b) secondary dwelling unit must be at least 26 m²;

measured from the inside of all outer walls, except that if the Director of Planning is satisfied that the design and location of the unit provides satisfactory living accommodation, having regard to the type of occupancy proposed, the Director of Planning may permit a floor area no less than:

(c) 29.7 m² for dwelling units except secondary dwelling units; and

(d) 19 m² for secondary dwelling units."

5. After section 10.34, Council adds:

“10.35 Secondary dwelling units

10.35.1 Each secondary dwelling unit must include at least one complete bathroom unit, comprising one water-closet, one hand wash-basin, and one bathtub or shower.

10.35.2 Each secondary dwelling unit must include no more than one kitchen.”

6. In section 3.2.DW of each of the C-2 District Schedule, C-2B District Schedule, C-2C District Schedule, and C-2C1 District Schedule, Council:

(a) after subsection (b) in the reference to “Multiple Conversion Dwelling” in the C-2 District Schedule and C-2B District Schedule;

(b) after subsection (c) in the reference to “Multiple Conversion Dwelling” in the C-2C District Schedule; and

(c) after the reference to “One-Family Dwelling” in the C-2C1 District Schedule;

adds:

“Principal Dwelling Unit combined with a Secondary Dwelling Unit in conjunction with any of the uses listed in this schedule, except that no portion of the first storey of a building to a depth of 10.7 m from the front wall of the building and extending across its full width may be used for residential purposes unless the purpose is for entrances to the residential portion.”

7. In section 3.2.DW of the C-3A District Schedule, Council, after subsection (b) in the reference to “Multiple Conversion Dwelling” in the C-3A District Schedule, adds:

“Principal Dwelling Unit combined with a Secondary Dwelling Unit in conjunction with any of the uses listed in this schedule, except that no portion of the first storey of a building to a depth of 10.7 m from the front wall of the building and extending across its full width may be used for residential purposes unless the purpose is for entrances to the residential portion, and, with respect only to the C-3A District Schedule, the Development Permit Board, before making a decision, considers the design and livability of the dwelling units.”

8. After the reference, in each district schedule referred to in section 6 or 7, except for the C-2C District Schedule and C-2C1 District Schedule, to “Principal Dwelling Unit combined with a Secondary Dwelling Unit”, Council adds:

“Principal Dwelling Unit combined with a Secondary Dwelling Unit in a Multiple Dwelling if the Development Permit Board is of the opinion that the site is suitable for residential use.”

9. After the reference, in the C-2C1 District Schedule, to “Principal Dwelling Unit combined with a Secondary Dwelling Unit”, Council adds:

“Principal Dwelling Unit combined with a Secondary Dwelling Unit in a Multiple Dwelling.”

10. A decision by a court that any part of this By-law is illegal, void, or unenforceable is not to affect the balance of the By-law.

11. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____ 2009

Mayor

City Clerk

EXPLANATION**A By-law to amend the
Southeast False Creek Official Development Plan By-law
re secondary suites**

After the public hearing on July 21, 2009, Council resolved to amend the SEFC ODP By-law to allow secondary suites in Southeast False Creek. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
September 8, 2009

Southeast False Creek
Secondary suites within apartments

BY-LAW NO. _____

B

**A By-law to amend Southeast False Creek
Official Development Plan By-law No. 9073**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. In section 4.3.1 of Schedule A to the Southeast False Creek Official Development Plan By-law, Council:

- (a) from subsection (j), strikes out “and”;
- (b) from subsection (k), strikes out the period, and substitutes “; and”; and
- (c) after subsection (k), adds:

“(l) the city encourages housing forms designed with the flexibility to incorporate defined space for potential rental accommodation within a single dwelling unit in order to contribute to a wider range of housing options.”

2. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

3. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

EXPLANATION**A By-law to amend the Parking By-law
regarding secondary suites in apartments**

After the public hearing on July 21, 2009, Council resolved to amend the Parking By-law to allow secondary suites in dwelling units in certain mixed use districts. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
September 8, 2009

Secondary suites in apartments

BY-LAW NO. _____



A By-law to amend Parking By-law No. 6059 with regard to parking requirements for secondary suites in apartments

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of the Parking By-law.
2. After the first paragraph in Column 1 of section 4.2.1.13 of Table 4.2.1, Council adds:
“Principal Dwelling Unit combined with a Secondary Dwelling Unit in the C-2, C-2B, C-2C, C-2C1, and C-3A Districts.”
3. After the second paragraph in Column 2 of section 4.2.1.13 of Table 4.2.1, Council adds:
“The principal dwelling unit combined with a secondary dwelling unit, including the floor area of the secondary dwelling unit, is subject to the parking requirement otherwise specified in section 4.2.1.13, and there is no additional requirement for a secondary dwelling unit. However, for the purpose of calculating visitor parking and car-sharing vehicle parking space requirements, Council deems a secondary dwelling unit to be a separate dwelling unit.”
4. From section 6.2.1.1, Council strikes out “and 6.2.1.4”, and substitutes “, 6.2.1.4, and 6.2.1.6”.
5. After section 6.2.1.5 in Column 1 of Table 6.2.1, Council adds, as section 6.2.1.6:
“Principal Dwelling Unit combined with a Secondary Dwelling Unit in the C-2, C-2B, C-2C, C-2C1, and C-3A Districts.”
6. After section 6.2.1.5, in Column 2 - Class A of Table 6.2.1, Council adds, as section 6.2.1.6:
“For a principal dwelling unit combined with a secondary dwelling unit, a minimum of 1.25 spaces for each principal dwelling unit and a minimum of 0.75 spaces for each secondary dwelling unit.”
7. After section 6.2.1.5, in Column 2 - Class B of Table 6.2.1, Council adds, as section 6.2.1.6:
“No requirement for a secondary dwelling unit.”

8. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

9. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

EXPLANATION**A By-law to amend the Zoning and Development By-law
re C-2C and C-2C1 District Schedules**

After the public hearing on July 21, 2009, Council resolved to amend the Zoning and Development By-law to revise height and yard regulations. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
September 8, 2009

C-2C and C-2C1 District Schedules

BY-LAW NO. _____



**A By-law to amend
Zoning and Development By-law No. 3575
regarding C-2C and C-2C1 District Schedules**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of each of the C-2C District Schedule and C-2C1 District Schedule of the Zoning and Development By-law.
2. In section 4.3.2, Council:
 - (a) in the first paragraph strikes out “12.2 m”, and substitutes “13.8 m and 4 storeys”; and
 - (b) in subsection (a), after “bulk”, adds “scale,”.
3. Council re-numbers sections 4.4.1 and 4.4.2 as sections 4.4.2 and 4.4.3 respectively.
4. Council adds the following immediately before the new section 4.4.2:

“4.4.1 The depth of the front yard must be 0.6 m.”
5. From the new section 4.4.2, Council strikes out “a front yard shall not be permitted and”.
6. After section 5.4, Council adds:

“5.5 Despite section 4.4.1, the Director of Planning or Development Permit Board, as the case may be, in the event of unnecessary hardship, may permit a reduced or increased front yard, having regard to the intent of this Schedule and all applicable policies and guidelines adopted by Council.”
7. A decision by a court that any part of this By-law is illegal, void, or unenforceable is not to affect the balance of the By-law.

8. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of 2009

Mayor

City Clerk

EXPLANATION**Authorization to enter into a
Heritage Revitalization Agreement
with the owner of 3589 Commercial Street**

At a public hearing on July 21, 2009, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 3589 Commercial Street pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
September 8, 2009

3589 Commercial Street

BY-LAW NO. _____



**A By-law to authorize Council entering into a
Heritage Revitalization Agreement
with the Owner of Heritage Property**

PREAMBLE

Council has authority under the *Vancouver Charter* to enter into a heritage revitalization agreement with the owner of heritage property including terms and conditions to which Council and the owner may agree.

Certain properties bearing the civic address of 3589 Commercial Street, and the following legal description:

Parcel Identifier: 006-572-405

Lot 53

Parcel Identifier: 006-572-472

Lot 54

Both of:

District Lot 751

Plan 1201

contains a heritage building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the properties have agreed to facilitate such conservation by agreeing to the terms and conditions set out in the attached heritage revitalization agreement.

NOW THEREFORE THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a heritage revitalization agreement with the owner in substantially the form and substance of the heritage revitalization agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2009

Mayor

City Clerk

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

Page 1 of 13 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)	(LEGAL DESCRIPTION)
006-572-405	Lot 53 District Lot 751 Plan 1201
006-572-472	Lot 54 District Lot 751 Plan 1201

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
SEE SCHEDULE		

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms D.F. No.
(b) Express Charge Terms Annexed as Part 2
(c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

VALDES HOLDINGS LTD., (Inc. No.BC0547728)
ROYAL BANK OF CANADA, (as to priority)

6. TRANSFEREE(S):* (including postal address(es) and postal code(s))*

CITY OF VANCOUVER, 453 West 12th Avenue, Vancouver, B.C., V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
<hr/> (Solicitor) (as to both signatures)	09			VALDES HOLDINGS LTD. by its authorized signatories: <hr/> Print Name: <hr/> Print Name:
<hr/> Bruce T. Quayle Lawyer 453 West 12 th Avenue Vancouver, BC, V5Y 1V4 Tel: 604-871-6545	09			CITY OF VANCOUVER by its authorized signatory: <hr/> Frances J. Connell / Graham P. Johnsen

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
<hr/> (Solicitor) (as to both signatures)	Y	M	D	ROYAL BANK OF CANADA, by its authorized signatory(ies) <hr/> Print Name: <hr/> Print Name:
	09			

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM E
SCHEDULE**

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. NATURE OF INTEREST:

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Section 219 Covenant	Pages 7 - 9, Article 2	Transferee
Priority Agreement granting the above Section 219 Covenant priority over Mortgage BB767585 and Assignment of Rents BB767586	Page 13	Transferee
Statutory Right of Way	Page 10 - 11, Article 4	Transferee
Priority Agreement granting the above Statutory Right of Way priority over Mortgage BB767585 and Assignment of Rents BB767586	Page 13	Transferee
Equitable Charge	Page 11, Article 5	Transferee
Priority Agreement granting the above Equitable Charge priority over Mortgage BB767585 and Assignment of Rents BB767586	Page 13	Transferee

TERMS OF INSTRUMENT - PART 2

Heritage Revitalization Agreement 3589 Commercial Street

WHEREAS:

A. The Owner (as hereinafter defined) is the registered owner of the lands and premises located at 3589 Commercial Street in the City of Vancouver, with the legal description:

PID: 006-572-405
Lot 53 District Lot 751 Plan 1201, and

PID: 006-572-472
Lot 54 District Lot 751 Plan 1201

(the "Lands");

B. There is a building situated on the Lands, at the civic address 3589 Commercial Drive, called "The Gow Block", that is considered to be of heritage value (the "Heritage Building").

C. Pursuant to its development permit applications to the City numbered DE412682 and DE412639 (the "DP Applications"), the Owner proposes to redevelop the Lands by:

- 1) consolidating them and then subdividing them into two parcels;
- 2) keeping and rehabilitating the Heritage Building on one of the two new parcels; and
- 3) constructing a new five unit townhouse building on the other of the two new parcels.

D. Pursuant to Section 592 of the *Vancouver Charter* S.B.C. 1953, c.55 (the "*Charter*"), the City may enter into a heritage revitalization agreement with an owner of heritage property, and a heritage revitalization agreement may include provisions regarding the commencement and completion of actions required by the agreement, may vary or supplement, among other things, provisions of a subdivision by-law and a zoning by-law and may include such other terms and conditions as the City's Council and the Owner may agree.

THEREFORE in consideration of the sum of ten dollars (\$10.00) now paid by the City to the Owner and for other good and valuable consideration passing from the City to the Owner (the receipt and sufficiency of which the Owner hereby acknowledges) the parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions. Except where otherwise explicitly and specifically provided for in this agreement, the terms defined here have the following meanings throughout this agreement:

- (a) "*Charter*" means the *Vancouver Charter*, SBC 1953 c. 55;

- (b) **“City”** means the City of Vancouver as a municipal corporation continued pursuant to *Charter*;
- (c) **“City of Vancouver”** means the City’s geographic location and area;
- (d) **“conserve” “conservation”** mean all actions or processes aimed at safeguarding the character defining elements of a heritage building or other heritage structure or feature so as to preserve its heritage characteristics and value and extend its physical life, including, without limitation, actions or processes aimed at preservation, maintenance, rehabilitation and/or restoration thereof;
- (e) **“Conservation Plan”** a written plan and guidelines prepared by or under the supervision of a Heritage Consultant for the rehabilitation and/or conservation of the Heritage Building, including all modifications to the plan;
- (f) **“Development Permit”** means the City development permit(s) to be issued pursuant to the DP Applications;
- (g) **“DP Applications”** has the meaning given in Recital C above;
- (h) **“Effective Date”** means the date that this agreement is duly executed by the City;
- (i) **“Floor Space”** means the size of a real property development or a portion of a real property development measured in floor space area, calculated in accordance with the Zoning and Development By-laws;
- (j) **“Heritage Building”** means the Heritage Building as described and defined in Recital B above and includes, without limitation, all permitted replacements therefor and additions thereto and therein;
- (k) **“Heritage Consultant”** means an independent, heritage building conservation consultant who is knowledgeable and experienced in heritage building conservation planning and procedures and otherwise duly qualified to plan and supervise the conservation of heritage buildings;
- (l) **“Heritage Lands”** means that portion of the Lands that, after the proposed subdivision as described above, will contain the Heritage Building and which will have the civic address 3589 Commercial Street;
- (m) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250, as amended from time to time and any and all replacements thereof or any statute enacted in substitution thereof and all regulations applicable thereto and any amendments, replacements and substitutions thereof;
- (n) **“Lands”** means the lands described in Recital A above and includes, without limitation, any and all parcels into which they are consolidated and/or in any way subdivided;

- (o) **“Non-Heritage Lands”** means that portion of the Lands that, after the proposed subdivision as described above, will contain the new five unit townhouse complex to be constructed on the Lands pursuant to the DP Applications and which will have the civic address 1769 East 20th Avenue;
- (p) **“Owner”** means the registered owner of the Lands and all of his, her or its assigns, successors and successors in title to the Lands or any part of them;
- (q) **“rehabilitate” “rehabilitation”** means all actions and processes aimed at restoring, upgrading and/or improving a heritage building or other heritage structure or feature so as to preserve its heritage characteristics and value and extend its physical life;
- (r) **“Zoning and Development By-laws”** means those of the by-laws of the City that from time to time regulate the use and development of land in the City of Vancouver, including, without limitation, with respect to allowable density and floor space ratios, and are applicable to the Lands and to every part into which the Lands may be subdivided, including, without limitation, the City’s Zoning and Development By-Law No. 3575.

1.2 **Headings.** The division of this Agreement into Articles, Sections and Paragraphs and the insertion of headings is for the convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Recitals, Articles, Sections or Paragraphs are to Recitals, Articles, Sections or Paragraphs of this Agreement.

1.3 **Number.** Words importing the singular number only will include the plural and vice versa, words importing the masculine gender will include the feminine and neuter genders and vice versa and words importing persons will include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

1.4 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein.

ARTICLE 2 REHABILITATION OF HERITAGE BUILDING

2.1 Pursuant to Section 219 of the *Land Title Act* RSBC 1996 c. 250 and Section 592 of the *Charter*, the Owner covenants to and agrees with the City that:

- (a) the Owner, at its expense, and to the City’s satisfaction, within a period of 24 months from the Effective Date, will rehabilitate the Heritage Building in accordance with in accordance with a Conservation Plan, which, in all respects,

the City has explicitly in writing approved, and in accordance with the Development Permit;

- (b) the Owner, at its expense, will ensure that in all respects a Heritage Consultant plans and supervises the rehabilitation of the Heritage Building pursuant to this agreement, including, without limitation, preparation of and obtaining the City's explicit prior written approval of a Conservation Plan;
- (c) the Owner, at its expense, and to the City's satisfaction, will secure the Heritage Building from vandalism and occupation by squatters at all times during its rehabilitation under this agreement;
- (d) the Owner, at its expense, and to the City's satisfaction, at all times during and after the rehabilitation of the Heritage Building pursuant to this agreement, will obtain and keep insurance for the Heritage Building so that it is insured to full replacement value against all perils, including, without limitation, earthquake;
- (e) once the rehabilitation of the Heritage Building as required hereby is complete, the Owner, at its expense, will deliver to the City a signed statement from a Heritage Consultant confirming explicitly, to the City's satisfaction, that the rehabilitation of the Heritage Building as required hereby has been fully completed;
- (f) at all times after completion of the rehabilitation of the Heritage Building as required by this agreement, the Owner, at its expense, in accordance with a Conservation Plan, which, in all respects, the City has explicitly in writing approved, will conserve the Heritage Building as rehabilitated and, in any event, in good condition in all respects as would a reasonable and prudent owner;
- (g) the Owner will not in any way alter the exterior of, make structural changes to or in any way renovate or reconfigure the Heritage Building after its rehabilitation pursuant to this agreement is complete, except as may be permitted by this agreement, the Development Permit or a heritage alteration permit issued by the City;
- (h) the Owner will refrain from doing anything at any time to obscure, deface or remove any commemorative plaque the City may affix to the Heritage Building pursuant to the statutory right of way granted to the City herein;
- (i) if the Heritage Building is ever damaged in any way, the Owner, at its expense, will repair and restore it as necessary to put it back into the condition and appearance it was in prior to the damage, unless it is unlawful or uneconomical to do so, in which case the Owner will not be obligated to repair the Heritage Building but will be restricted to building in the location of the Heritage Building, a building of similar form, appearance, massing, quality of materials, detailing and height of the damaged Heritage Building after rehabilitation thereof pursuant to this agreement, and the City, at the Owner's expense, will execute and deliver an

amendment to and, to the extent applicable, a partial discharge of this agreement to reflect such change in circumstances;

- (j) in any determination as to whether it is uneconomical to repair the Heritage Building if it is ever damaged in any way, only building repair construction costs, as compared to building replacement construction costs, and the heritage incentives that have been granted in respect of the Heritage Building will be taken into consideration; and
- (k) if the Heritage Building is ever damaged in any way, and the Owner and the City cannot agree on whether it is uneconomical to make repairs thereto, the matter will be determined by arbitration as follows: within thirty (30) days following written notice of the dispute by either party to the other, such dispute will be referred to a single arbitrator to be chosen by the Owner and the City or, if the Owner and the City do not agree as to the choice of a single arbitrator, then by three (3) arbitrators, one (1) of whom will be chosen by the Owner, one (1) of whom will be chosen by the City and the third by the two (2) so arbitrators chosen, and the third arbitrator so chosen will be the chairman, in which case decisions in arbitration hereunder will be made by the majority of the arbitrators. Except as to matters otherwise provided herein, the provisions of the *Commercial Arbitration Act* (British Columbia), as amended or re-enacted from time to time, will apply.

2.2 If the Owner fails to carry out the rehabilitation and conservation of the Heritage Building as required hereby, subject to the provisions of this agreement, the City may do so on the Owner's behalf, in which case the Owner will be obligated to pay the City the cost to it of carrying out those obligations, plus an amount, for overhead, equal to 20% of that amount and interest on those amounts at the Bank of Montreal's prime lending rate plus 3%.

ARTICLE 3 BY-LAW VARIATIONS

3.1 Pursuant to Section 592 of the *Charter*, the MC-1 District Schedule to the City's *Zoning and Development By-Law No. 3575* is hereby varied in respect of the Heritage Lands and the Non-Heritage Lands as follows:

Heritage Lands

<u>Item</u>	<u>Applicable bylaw provision</u>	<u>With variances</u>
Rear Yard & Setback	Section 4.6 of MC-1 District Schedule	exempt
Horizontal Angle of Daylight	Section 4.10 MC-1 District Schedule	exempt
Acoustics	Section 4.15 of MC-1 District Schedule	exempt

Non-Heritage Lands

<u>Item</u>	<u>Applicable bylaw provision</u>	<u>With variances</u>
Front Yard & Setback	Section 4.4 of MC-1 District Schedule	exempt
Side Yard & Setback	Section 4.5 of MC-1 District Schedule	exempt

Rear Yard & Setback	Section 4.6 of MC-1 District Schedule	exempt
Floor Space (square footage)	Section 4.7.1 of MC-1 District Schedule	7,132 sq. ft.
Horizontal Angle of Daylight	Section 4.10 of MC-1 District Schedule	exempt
Conditional Approval Uses	Section 3 of MC-1 District Schedule	Includes Accessory Uses customarily ancillary to principal uses on the Heritage Lands, for so long as the Non-Heritage Lands remain undeveloped

3.2 The by-law variations effected by and the other benefits granted to the Owner in relation to this agreement are full and fair compensation for the obligations and restrictions placed upon the Owner by this agreement and any heritage designation made of the Heritage Buildings under the *Charter*, and the Owner hereby waives and renounces all claims for further or other compensation by reason of this agreement.

ARTICLE 4 STATUTORY RIGHT OF WAY

4.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City a statutory right of way to enter and be upon the Lands and to install upon the exterior of the Heritage Building a commemorative plaque regarding the Heritage Building's historical significance and, if the City chooses, in the event the Owner fails to carry out its obligations hereunder to rehabilitate and conserve the Heritage Building, to carry out any rehabilitation or conservation work on the Heritage Building as the City, in its discretion, considers to be necessary in order to rehabilitate and/or conserve it in accordance with this agreement.

4.2 Notwithstanding the foregoing, nothing herein in any way obligates the City to carry out in whole or in part any rehabilitation work on the Heritage Building.

4.3 In the event that the City enters upon the Lands pursuant to this agreement to conduct all, or any part, of the rehabilitation and/or conservation of the Heritage Building or any other work contemplated by this agreement:

- (a) there will be no express or implied warranties as to the quality of such rehabilitation work or any other work contemplated hereby or the suitability of the materials for the purposes for which they are put; and
- (b) the Owner will pay to the City the costs incurred by the City in undertaking such rehabilitation work or any part thereof, and any other work contemplated by hereby, plus twenty percent (20%) of such costs as fair compensation for the City's

administrative costs and interest at the Bank of Montreal's prime lending rate plus 3%.

4.4 The statutory right of way set out in this Article 4 is necessary for the operation and maintenance of the City's undertaking.

ARTICLE 5 EQUITABLE CHARGE

5.1 The Owner grants to the City an equitable charge over the Lands, which charge will run with, charge and bind the Lands, for the payment of all sums (including all interest thereon) which may at any time be payable by the Owner to the City under the terms of this agreement or otherwise at law. This equitable charge may be enforced by the appointment of a receiver for the sale of the Lands.

ARTICLE 6 RELEASE AND INDEMNITY

6.1 The Owner hereby releases the City and its officials, councillors, employees, contractors, agents and licensees (each, a "City Party" for the purposes of this Section 6.1) and will indemnify them for and save them harmless from and against all liabilities, actions, statutory or other proceedings, judgements, investigations, claims, losses, loss of profit, injuries, damages, consequential damages, fines, penalties, costs and, on an actual cost basis, legal costs the City, any City Party, the Owner or any other person or entity may suffer, incur or experience as a result of or in any way connected with:

- (a) the City conducting all or any portion of the rehabilitation and/or conservation of the Heritage Building or any other work contemplated by this agreement;
- (b) the City withholding any permits (including, without limitation, an occupancy permit) under this agreement, until the Owner has fully complied with all requirements of this agreement and otherwise applicable to the Lands;
- (c) this agreement, except to the extent the same arises directly and solely from a default of the City or a City Party hereunder;
- (d) any release of this agreement or the loss of any of the rights granted hereunder;
- (e) the non-compliance, if any, of the Lands, the Heritage Building or any part thereof with any City by-law; and
- (f) the issuance of any development permit in respect of the Lands.

6.2 The release and indemnity set out in this Article 6 will survive the expiration or earlier termination of this Agreement and will survive any modification, release or partial release of any of the covenants created by this Agreement. The release and indemnity in this Article 6 will be both personal covenants of the Owner and an integral part of the Section 219 covenant granted in this agreement.

**ARTICLE 7
GENERAL**

7.1 If the registered owner of the Lands will be more than one party, such parties will be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this agreement.

7.2 Time is of the essence in all respects in relation to this agreement and any instance of waiver of that requirement will not be a waiver for all or any other purpose hereunder.

7.3 The Owner, at his, her or its expense, after execution of this agreement, will do or cause to be done all things and acts necessary to ensure that this agreement is registered against title to the Lands with priority over all other financial encumbrances except financial encumbrances in favour of the City.

7.4 In any action to enforce this agreement the City will be entitled to court costs on an actual cost basis. In addition to any other rights the City may have pursuant to this agreement or at law or in equity, the City may enforce this agreement by mandatory and prohibitory injunctions.

7.5 If the Land Title Office refuses to register this agreement, the Owner agrees to modify or re-execute this agreement to the City's satisfaction so as to enable registration.

7.6 This agreement will charge and run with the Lands and all parcels of land into which the Lands may be consolidated or subdivided and will enure to the benefit of and be binding upon the Owner and its successors and trustees and the Owner's successors in title to the Lands and their respective trustees and successors and all parties claiming through such owners.

7.7 Nothing contained or implied in this agreement will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

7.8 Once the rehabilitation of the Heritage Building has been completed as required hereby, to the City's satisfaction, the City, at the Owner's expense and request, within a reasonable time after the Owner makes the request, will discharge this agreement from title to the Non-Heritage Lands.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C which is a part hereof.

CONSENT AND PRIORITY INSTRUMENT

In this consent and priority instrument:

- (a) "Existing Charge" means the Mortgage and Assignment of Rents registered under numbers BB767585 and BB767586;
- (b) "Existing Chargeholder" means the Royal Bank of Canada;
- (c) "New Charge" means the Heritage Revitalization Agreement contained in the attached Terms of Instrument - Part 2; and
- (d) words capitalized in this instrument, not otherwise defined herein, have the meaning ascribed to them in the attached Terms of Instrument - Part 2.

For \$10.00 and other good and valuable consideration, the receipt and sufficiency of which the Existing Chargeholder acknowledges, the Existing Chargeholder:

- (i) consents to the Owner granting the New Charge to the City; and
- (ii) agrees with the City that the New Charge charges the Land in priority to the Existing Charge in the same manner and to the same effect as if the Owner had granted the New Charge, and it had been registered against title to the Lands, prior to the grant or registration of the Existing Charge or the advance of any money under the Existing Charge.

To witness this consent and priority instrument, the Existing Chargeholder has caused its duly authorized signatories to sign the attached General Instrument - Part 1.

END OF DOCUMENT

EXPLANATION**Heritage Designation By-law re 3589 Commercial Street**

At a public hearing on July 21, 2009, Council approved a recommendation to designate a building at 3589 Commercial Street as protected heritage property. Enactment of the attached by-law will achieve the designation.

Director of Legal Services
September 8, 2009

3589 Commercial Street
The Gow Block



BY-LAW NO. _____

**A By-law to designate certain real property
as protected heritage property**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council considers that the real property described as:

Structure and
exterior envelope of
the improvements
and exterior
building materials

3589 Commercial Street

Parcel Identifier: 006-572-405
Lot 53
Parcel Identifier: 006-572-472
Lot 54
Both of:
District Lot 751
Plan 1201

has heritage value or heritage character, and that its designation as protected heritage property is necessary or desirable for its conservation.

2. Council designates the real property described in section 1 of this By-law as protected heritage property under Section 593 of the *Vancouver Charter*.

3. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

EXPLANATION**Authorization to enter into a housing agreement
re 4875 Heather Street**

On October 28, 2008, Council approved a recommendation to approve a housing agreement for 4875 Heather Street re assisted living. Enactment of the attached by-law will implement that resolution, and authorize Council to enter into a housing agreement with the land owner.

.....
Director of Legal Services
September 8, 2009

4875 Heather Street

BY-LAW NO. _____



**A By-law to enact a Housing Agreement
for 4875 Heather Street**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council authorizes the City to enter into a housing agreement with the owner of certain lands described as PID: 007-755-414, Block 1170 District Lot 526 Plan 14699, in substantially the form and substance of the housing agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.
2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2009

Mayor

City Clerk

HOUSING AGREEMENT
SECTION 565.2 of VANCOUVER CHARTER, SBC 1953, C.55

HONORIA CONWAY ASSISTED LIVING PROJECT
4875 Heather St. (749 West 33rd Avenue)

THIS AGREEMENT dated for reference the 1st day of June, 2009

BETWEEN:

.....
PROVIDENCE HEALTH CARE SOCIETY
St. Paul's Hospital
Room 582 Burrard Building
1081 Burrard St.
Vancouver, British Columbia
V6Z 1Y6

(the "Operator")

AND:

CITY OF VANCOUVER,
453 West 12th Avenue,
Vancouver, British Columbia
V5Y 1V4

(the "City")

WHEREAS:

A. The Catholic Charities of the Archdiocese of Vancouver, Inc. No. 27108-S (the "Owner") owns the lands and premises located at 4875 Heather St. (749 West 33rd Avenue) in the City of Vancouver, with the legal description:

PID: 007-755-414
Block 1170 District Lot 526 Plan 14699

(the "Lands")

B. The Operator is a non-profit, reporting company (society) incorporated under the laws of British Columbia under incorporation no. S-0041359.

C. Pursuant to a lease agreement registered on title to the Lands under no. BA313676 (the "Lease"), the Owner has leased to the Operator a portion of the Lands for the operation and use thereof as rental accommodation for seniors and disabled persons in need of supportive or assisted living accommodation. A copy of the Lease is annexed hereto as Appendix "A".

D. The part of the Lands that are the subject matter of the Lease (the "Premises"), with some funding from the British Columbia Housing Management Commission ("B.C. Housing"), through its Independent Living B.C. program ("ILBC"), was redeveloped recently by the construction of a 68 unit residential development intended and designed for supportive and assisted living for seniors and disabled persons.

E. The Operator, pursuant to an operating agreement between it and B.C. Housing, dated for reference July 1, 2006, a copy of which is annexed hereto as Appendix "B" (the "Operating Agreement"), is to operate the Premises as rental accommodation for seniors and disabled persons in need of supportive or assisting living accommodation.

F. During the course of the redevelopment of the Lands as described above, the Operator, as lessee of the Premises paid to the City, pursuant to the provisions of the Vancouver Charter SBC 1953, c.55 (the "Charter") and the City's Vancouver Development Cost Levy Bylaw 9755 (the "DCL Bylaw"), a Development Cost Levy in the amount of \$102,338.00 (the "DCL").

G. Ordinarily, under the provisions of the *Charter* and the DCL Bylaw, if the Operator's interest in the Premises had been made subject to, among other possibilities, a Housing Agreement under Section 565.2 of the *Charter*, the Premises would have been entitled to relief from payment of the DCL.

H. By way of a Council resolution made October 28, 2008, the City has decided to reimburse the DCL to the Operator, provided the Operator first enters into with the City a Housing Agreement under Section 565.2 of the Charter to be noted on title to the Lands, as against the Operator's leasehold interest in the Premises, to assure the City that at all times while the Lease is in effect the Premises will be operated as "social housing", as that term is defined in the DCL By-law.

THEREFORE in consideration of payment of the sum of Ten Dollars (\$10.00), now paid by the City to the Operator, and for other good and valuable consideration (the receipt and sufficiency of which the Operator hereby acknowledges), the Operator and the City, pursuant to Section 565.2 of the Vancouver Charter, agree as follows:

1. The Premises, in their entirety, at all times during the period beginning the date this agreement is duly executed by all parties to it and ending March 30, 2075 or for the useful life of the Premises, whichever of those two periods expires first, will be used as rental housing for seniors and disabled persons in need of supportive or assisted living, in accordance with Operating Agreement and the covenant registered on title to the Lands, as to the Lease, under number BA555969.

2. The term "Operator" as used in this agreement includes within its meaning the Operator as defined above in this agreement and any other person or entity that at any time while this agreement is in effect takes possession and control of the Premises pursuant to the Lease.
3. The Operator at all times while this agreement is in effect will be:
 - (a) a non-profit society incorporated, maintained and designated as a reporting society under the laws of British Columbia;
 - (b) an agency or other entity controlled and/or owned by the Province of British Columbia operating the Premises on a not-for-profit basis; or
 - (c) the Province of British Columbia directly operating the Premises on a not-for-profit basis.
4. The Operator will make available to the City for its inspection from time to time at anytime while this agreement is in effect, as the City may request and within a reasonable time of any such request, the Operator's records relating to its operation of the Premises pursuant to this agreement and the Operating Agreement.
5. The City, on reasonable notice to the Operator, may inspect the Premises from time to time at any time while this agreement is in effect.
6. The Operator will keep a true copy of this agreement at its head office, and, upon request, the Operator will provide a true copy of this agreement to any resident or prospective resident of the Premises.
7. If a court of competent jurisdiction finds that any part of this agreement is invalid, illegal or in any other way unenforceable, then, so long as such finding prevails, such part of this agreement will not be of force or effect, but nevertheless the rest of this agreement will remain in force unaffected by that holding.
8. Notice of this agreement will be filed in the Land Title Office pursuant to Section 565.2 of the Charter as against the Operator's leasehold interest in the Premises under the Lease.
9. This agreement may be enforced by injunction, and in any action to enforce this agreement, if the City is entitled to court costs, it will be entitled to court costs on an actual cost basis.
10. The Operator hereby releases and will indemnify the City and its officials, officers, employees and agents and save them harmless for and from any liability, claim, demand, complaint, judgment or order for any injury, loss, damage or expense suffered, incurred or experienced by any person or entity in connection with this agreement.
11. This agreement will enure to the benefit of and be binding upon the City and its successors and assigns and this agreement will enure to the benefit of and be binding upon the Operator and its successors and assigns.

12. The Operator, at its expense, after full execution hereof, will do or cause to be done all things and acts necessary to ensure that this agreement is noted on title to the Lands, as against the Operator's leasehold interest therein under the Lease, as a housing agreement pursuant to Section 565.2 of the *Charter*.

13. This agreement will run with and bind the Operator's leasehold interest in the Premises under the Lease and will attach thereto and run with each and every part into which the same leasehold interest may be subdivided or consolidated.

14. All notices, demands or requests of any kind which a party may be required or permitted to serve on another in connection with this Agreement must be in writing and will be served on the other party by registered mail, fax or by personal service to the following address for each party:

- (a) City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia
V5Y 1V4

Attention: Managing Director, Social Development Department

- (b) Providence Health Care Society
St. Paul's Hospital
Room 582 Burrard Building
1081 Burrard St.
Vancouver, British Columbia
V6Z 1Y6

and service of any such notice, demand or request will be deemed complete:

- (c) if made by registered mail, seven days after the day of mailing except when there is a postal service disruption during such period in which case service should be deemed to be completed upon actual delivery of the notice, demand or request;
- (d) if made by facsimile transmission, on the third business day after the day when the facsimile transmission was transmitted; and
- (e) if delivered, two days after the day of delivery.
- (f) Any party from time to time, by notice in writing served upon the other party, may designate a different address or additional persons to which all notices, demands or requests are to be addressed.

IN WITNESS WHEREOF the parties hereto by their authorized signatories have signed this agreement as set out hereunder:

Execution Date
Y M D

Officer:

Parties:

PROVIDENCE HEALTH CARE SOCIETY
by its authorized signatories:

Print Name:
(as to both signatures)

Print Name:

Print Name:

CITY OF VANCOUVER by its authorized
signatory:

Bruce T. Quayle
Lawyer
City of Vancouver, Law Dept.
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Frances J. Connell/Graham P. Johnsen

Authorized by By-law No. _____

AND, FOR CONSENT UNDER SECTION 3.2 OF THE OPERATING AGREEMENT, AS DEFINED HEREIN:

Execution Date
Y M D

Officer:

Party:

BRITISH COLUMBIA HOUSING
MANAGEMENT COMMISSION
by its authorized signatory:

Print Name:
(as to both signatures)

Print Name:

Print Name:

AND, FOR CONSENT AND TO GIVE PRIORITY HERETO IN RESPECT OF OPTION TO LEASE NO.
BA555971:

Execution Date
Y M D

Officer:

Party:

PROVINCIAL RENTAL HOUSING
CORPORATION, INCORPORATION NO.
52129 by its authorized signatory:

Print Name:
(as to both signatures)

Print Name:

Print Name:

APPENDIX "A"
LEASE AGREEMENT

7

#118287v5

#118287v5

LAND TITLE ACT
FORM C
(Section 233)

28 AUG 2006 13 05

BA313676

Province of
British Columbia

GENERAL INSTRUMENT - PART 1 (This area for Land Title Office Use)

PAGE 1 of 34 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)
BULL, HOUSSER & TUPPER LLP, Barristers & Solicitors, 3000 - 1055 West Georgia Street, Vancouver,
British Columbia, V6E 3R3 604. 687.6575 (LTO File No. 11299) (File No. 04-1803) (Lease/Assisted Living
Premises)

[Handwritten signature]

Per: LARRY R. SANDRIN

**POWELL RESEARCH
CLIENT NO. 010306**

SURVEY DPT.

PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:
(PID) (LEGAL DESCRIPTION)
007-755-414 Block 1170, District Lot 526, Plan 14699

NATURE OF INTEREST:

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Lease over that portion included within Reference Plan BCP <u>25628</u>	Entire Lease	Transferee 10 06/08/28 13:00:26 02 LM 726271 CHARGE 165.20

4. TERMS: Part 2 of this instrument consists of (select one only):

- (a) Filed Standard Charge Terms D.F. Number:
- (b) Express Charge Terms Annexed as Part 2
- (c) Release There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharged as a charge on the land described in Item 2.

5. TRANSFEROR(S):

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF VANCOUVER, Incorporated under the *Society Act* under No. S-27108, with an office at 150 Robson Street, Vancouver, B.C. V6B 2A7

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

PROVIDENCE HEALTH CARE SOCIETY, a society incorporated under the *Society Act* under Number S-41359, Administrative Offices, 1081 Burrard Street, Vancouver, B.C. V6Z 1Y6

7. ADDITIONAL OR MODIFIED TERMS:

N/A

4


GENERAL INSTRUMENT

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges, or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

EXECUTION DATE

Party(ies) Signature(s)


Name: **JAMES D. LEITH**
BARRISTER & SOLICITOR
2000 - 595 BURRARD ST.
VANCOUVER, B.C. V7X 1R7

Y	M	D
06	8	24

TRANSFEROR:
**CATHOLIC CHARITIES OF THE
ARCHDIOCESE OF VANCOUVER** by its
authorized signatory:


Name:
Very Reverend Mark Hagemoen
Vicar General

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

- * If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.
- ** If space insufficient, continue executions on additional page(s) in Form D.

LRS/1421273.07

LAND TITLE ACT
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)



Name:

LARRY R. SANDRIN
BARRISTER & SOLICITOR
BULL, HOUSER & TUPPER LLP
#3000, 1058 WEST GEORGIA
VANCOUVER, B.C. V6E 3R8
(604) 641-4873

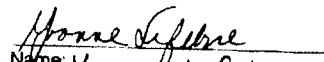
EXECUTION DATE

Y	M	D
08	8	24

Party(ies) Signature(s)

TRANSFeree:

PROVIDENCE HEALTH CARE
SOCIETY by its authorized signatory:


Name: Yvonne Lefebvre

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c. 124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

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TERMS OF INSTRUMENT - PART 2

THIS LEASE, executed in quadruplicate and dated for reference August 23, 2006,

BETWEEN:

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF VANCOUVER, incorporated under the *Society Act* under No. S-27108, having its administrative office at 150 Robson Street, Vancouver, British Columbia, V6B 2A7,

(the "Lessor")

OF THE FIRST PART

AND:

PROVIDENCE HEALTH CARE SOCIETY, a society incorporated under the *Society Act* under Number S-41359, having its administrative offices at 1081 Burrard Street, Vancouver, British Columbia; V6Z 1Y6,

(the "Lessee")

OF THE SECOND PART

WITNESSES that in consideration of the rents reserved and the covenants and agreements set forth below, the Lessee agrees with the Lessor as follows:

ARTICLE 1 - GRANT OF LEASE

- 1.1 The Lessor demises and leases to the Lessee that portion (the "**Premises**"), shown in heavy outline on the Reference Plan described in Section 3, Part 1 of this General Instrument (a photo-reduced copy of which is attached hereto as Schedule A), of those certain lands and premises situate in the City of Vancouver, in the Province of British Columbia, being more particularly described as follows:

Parcel Identifier 007-755-414
Block 1170, District Lot 526, Plan 14699

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including all erections, buildings, fixtures and underground services of whatsoever kind or description erected, affixed or placed thereon during the Term (herein defined).

ARTICLE 2 - TERM

2.1 TO HAVE AND TO HOLD the Premises unto the Lessee for a term (the "Term") commencing on August 28, 2006 (the "Commencement Date") and expiring on March 30, 2075.

ARTICLE 3 - RENT

3.1 YIELDING AND PAYING THEREFOR for the Term, a rental of \$1.00, payable by the Lessee in advance on the Commencement Date (the receipt and sufficiency of which are hereby acknowledged by the Lessor).

ARTICLE 4 - NET LEASE

4.1 The Lessee covenants that this Lease shall be a completely carefree absolutely net lease for the Lessor and the Lessor shall not be responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever, arising from or connected with or relating to the Premises or the contents thereof.

The Lessee shall pay in the manner more particularly described in this Lease, all charges, impositions and costs of every nature and kind relating to or connected with the Premises whether or not referred to in the Lease and whether or not of a kind now existing or contemplated by the parties.

ARTICLE 5 - COVENANTS OF THE LESSEE

5.1 The Lessee covenants with the Lessor:

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- (a) Rent. to pay rent to the Lessor when due at 150 Robson Street, Vancouver, British Columbia, V6B 2A7, or at such other place as the Lessor may specify by notice in writing;
- (b) Taxes. to pay and discharge when due all taxes, rates, levies, duties, permit fees, licence fees, charges and assessments now or hereafter assessed, levied or charged by any competent governmental authority upon the Premises or any part thereof, including furniture, equipment or other personal property, or in respect of the use or occupancy thereof by the Lessee (collectively, "**Realty Taxes**") and if the Lessee defaults in the payment of any such sums, the Lessor may pay and discharge the same and the amounts so paid shall be added to the rent herein reserved and will be due and payable to the Lessor immediately on demand; PROVIDED THAT the Lessee may contest the validity or the amount of any tax, rate, assessment or other public charge (if meanwhile such contestation will involve no forfeiture, foreclosure, escheat, sale or termination of the Lessor's title to the Premises or any part thereof), but upon a final determination of any such contest the Lessee shall immediately pay and satisfy the amount of any such tax, rate, assessment or other public charge declared or found to be due, together with all property costs, penalties, interest or other charges payable in connection therewith; and upon being provided with suitable indemnity or security satisfactory to it, in relation to any costs, charges, rates, assessment, or expenses which it may incur, or be likely to incur, the Lessor agrees to join in any such contest if the Lessee shall require and if its presence is reasonably necessary to perfect the proceedings in relation thereto, but the Lessor shall not be responsible for the conduct or carriage of such proceedings, nor incur any liability whatsoever by reason of having joined therein and the Lessee shall indemnify the Lessor against any such liability;
- (c) Utilities. to provide, and to pay and discharge when due all charges for, electricity, gas, water, telephone, cable, sewer and other utilities required by the Lessee to be supplied to the Premises;

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- (d) Comply with Laws. to observe, abide by and comply with all laws, by-laws, orders, directions, ordinances and regulations of any competent governmental authority in any way affecting the Premises and improvements, equipment and facilities situate thereon, or their use and occupation; PROVIDED THAT in the event of a default of the Lessee under the foregoing provision of this subsection 5.1(d), the Lessor may itself comply with any such requirements as aforesaid and any amounts expended by the Lessor in so doing shall be added to the rent herein reserved and shall be due and payable to the Lessor on demand; and further PROVIDED THAT if the Lessee contests the validity or applicability of such laws, by-laws, orders, directions, ordinances or regulations, the Lessee shall indemnify and save harmless the Lessor from all loss, damage, cost and expense suffered by the Lessor by reason of the Lessee contesting their validity and shall furnish the Lessor with such security as may be required by the Lessor;
- (e) Keep Premises Clean. to keep the Premises in a safe, clean and sanitary condition satisfactory to the Lessor, and on written notice from the Lessor, to remove any improvements and make safe, clean and sanitary any portion of the Premises or any improvement that, in the reasonable opinion of the Lessor, contravenes the provisions of this covenant;
- (f) Repairs. to repair and maintain the Premises, only excepting reasonable wear and tear including any damage to or breakage of glass (including all exterior windows), moldings, signs, doors, locks, hardware, lighting, wiring, improvements, partitions, walls, utilities connections, elevators, sidewalks, landscaping, sprinkler systems, heating, ventilation and air condition systems, water, steam, gas and electric pipes, conduits and plumbing, water and sewer mains and connections, security systems, fixtures, thresholds, roof, roof membrane, foundations, structure and all fixtures and furnishings in or for the Premises and maintain in good condition the interior of the Premises, any appurtenances thereto, any improvements now or hereafter erected or installed therein and any apparatus or equipment of the Lessee therein or thereof. The Lessee shall permit the Lessor and its representatives at all reasonable times to

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enter upon and view the Premises and the state of repair and shall make such reasonably needed repairs as the Lessor may specify in writing. If the Lessee fails to repair or otherwise comply with this Subsection 5.1(f) within thirty (30) days of receipt of written notice to repair from the Lessor, or such longer period reasonably required, the Lessor may make such repairs without liability to the Lessee for any loss or damage that may occur to the Lessee's fixtures or other property or to the Lessee's business by reason thereof, save for any negligence or wilful acts of the Lessor, its employees and those persons authorized by the Lessor to be on the Premises, and upon completion thereof the costs for making such repairs shall be added to the rent herein reserved and shall be due and payable to the Lessor immediately on demand;

- (g) Waste. subject to the provisions of Subsections 7.1(g) and (h), not to commit or suffer any wilful or voluntary waste, spoil or destruction on the Premises or do or suffer to be done thereon anything that may be or become a nuisance;
- (h) Use. to use and occupy the Premises solely for the purposes, on a non-profit basis, of constructing, operating and maintaining assisted living facilities for the reception and care of elders and/or young adults suffering from illnesses, disabilities and other conditions which require health care and/or assistance in residential accommodation, together with all related education, research and health activities, all of which are to be carried on in accordance with the teachings and practice of the Roman Catholic Church in all matters relating to the respect of human life and the principles outlined in the Health Care Ethics Guide as approved from time to time by the Canadian Conference of Catholic Bishops, as may be interpreted by the natural person, who is, at the relevant time, the Roman Catholic Archbishop of Vancouver, and generally under a name including the words "St. Vincent's";
- (i) Insurance. that all times during the Term at the Lessee's expense, to obtain and maintain in good standing liability and property coverage in amounts and on such terms as the Lessor may, from time to time reasonably require, including:

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- (i) all risks property coverage, including leakage from fire protective equipment, with respect to any building on the Premises and the contents of the Premises;
- (ii) comprehensive general liability coverage with respect to the Lessee's use and occupancy of the Premises, for claims for personal injury, death, or property damage; PROVIDED THAT:
 - A. the Lessee's insurance will provide insurance coverage for the benefit of the Lessee substantively in accordance with, (but not less beneficial to the Lessee than) the coverage described in the Certificates issued under the British Columbia Health Care Protection Program, copies of which are attached as Schedule C to this Lease; and
 - B. the Lessor confirms that the Lessee shall be in compliance with the provisions of this Section 5.1(i)(ii) if, throughout the Term, it maintains the coverage described in Section 5.1(i)(ii) A above or such other similar but equivalent coverage as may be arranged for the Premises by the Lessee;
 - C. on request by the Lessor from time to time, the Lessee will deliver to the Lessor a certificate or certificates evidencing such coverage;
 - D. all coverage as required hereunto shall name the Lessor as an additional interest; and
 - E. all coverage agreements shall contain an undertaking by the coverage program/insurer to notify the Lessor in writing not less than thirty (30) days prior to any material change, cancellation or termination thereof;

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- (j) Premiums. to pay all premiums and monies necessary to maintain all policies of insurance required to be maintained by the Lessee herein as the same become due; PROVIDED THAT if the Lessee defaults in the payment of any of the premiums or sums of money, the Lessor may (but will be under no obligation to) pay the same and the amounts so paid will be added to the rent herein reserved and will be payable to the Lessor immediately on demand;
- (k) Deliver Policies. to deliver to the Lessor initially and from time to time, upon demand, certified copies of all current policies of insurance required to be maintained by the Lessee hereunder;
- (l) Pay Accounts. to pay all accounts and expenses as they become due for labour or services performed on or materials supplied to the Premises, save and except for money that the Lessee is required to hold back under the RSBC 1997, c. 45 (the "*Builders Lien Act*");
- (m) Discharge Builders Liens. if any claim of lien over the Premises is made under the *Builders Lien Act*, to immediately take all steps necessary to have the lien discharged, unless the claim of lien is being contested in good faith by the Lessee and the Lessee has taken the steps necessary to ensure that the claim of lien will not subject the Premises or any of the interests of the Lessee under this agreement to sale or forfeiture;
- (n) Notice of Interest. not to commence any improvement on the Premises until, in accordance with the *Builders Lien Act*, there has been registered against title to the Premises in the Land Title Office a "notice of interest" to warn other persons that the Lessor's interest in the Premises is not bound by a lien claimed under the *Builders Lien Act* in respect of an improvement on the Premises unless that improvement is undertaken at the express request of the Lessor, and the Lessor authorizes the Lessee to register such a "notice of interest" as agent for the Lessor;

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- (o) Surrender Possession. on the expiration or earlier termination of this Lease, to peaceably quit and deliver possession of the Premises to the Lessor in a safe, clean and sanitary condition and all right, interest and estate of the Lessee in the Premises will cease and vest in the Lessor at that time and, to the extent necessary, this covenant will survive the expiration or earlier termination of this Lease;
- (p) Improvements. (subject to Section 48 of the British Columbia *Hospital Act*, to the extent applicable) all improvements, additions, alterations, leasehold improvements, permanent fixtures and other similar renovations installed, built or erected by the Lessor before or during the Term or installed, built or erected by the Lessee during the Term shall at the expiration or earlier termination of the Lease, revert to and belong to the Lessor at no cost or expense to the Lessor; PROVIDED THAT the Lessee may, (subject to Section 48 of the British Columbia *Hospital Act*, to the extent applicable) at the expiration of this Lease, if it shall not then be in default hereunder, remove from the Premises all the Lessee's furniture, equipment and chattels, but shall in such removal do no damage to the Premises, or shall promptly make good any damage which may be occasioned thereto and restore them to their condition prior to such removal. The Lessee shall further leave the Premises neat, clean and free and clear of all waste material, debris and rubbish, all to the satisfaction of the Lessor;
- (q) Discharge Liens. at its expense, to discharge all claims of lien or other charge or encumbrance against the Premises that are not authorized by the Lessor and that arise, directly or indirectly, from any activity, request or direction of the Lessee or with the privity or consent of the Lessee or for the direct benefit of the Lessee, its servants or agents unless the claim of lien is being contested in good faith by the Lessee and the Lessee has taken the steps necessary to ensure that the claim of lien will not subject the Premises or any of the interests of the Lessee under this agreement to sale or forfeiture;

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- (r) Observe Terms of Lease. to observe and perform all terms and provisions of this Lease and not to do or suffer to be done anything contrary to any term or provision of this Lease;
- (s) Snow Removal and Janitorial Services and Supplies. to keep the sidewalks, entrances, driveways and parking lot clear of snow, to attend to garbage removal as required and to provide janitorial services and supplies to keep the Premises in a neat, clear and tidy condition;
- (t) Landscaping, Fences and Exterior Grounds. not to alter substantially any of the landscaping works attached to the Premises including grass, trees, shrubs, hedges, fences or any other exterior facilities and improvements without (except as to any alterations required by law or for safety reasons, for which the consent of the Lessor will not be required) the written consent of the Lessor, such consent not to be unreasonably withheld; and
- (u) Assignment and Subletting. (without limiting the rights of the Lessee to grant rights of residential occupation for the purposes permitted under Subsection 5.1(h) hereof, in respect of which no further consent of the Lessor will be required) not to sublet, assign or transfer this Lease, or the Premises hereby demised, without the consent in writing of the Lessor first obtained and such consent not to be unreasonably withheld; PROVIDED THAT the Lessor acknowledges and agrees that the Lessee may, from time to time during the Term, assign or sublet its interests under this Lease as security for the benefit of one or more lenders providing financing to the Lessee in respect of the development, construction or operation of the Lessee's improvements to the Premises, and in connection therewith, the Lessor agrees that the Lessor will, upon the reasonable request of any such lender from time to time, execute documentation confirming, *inter alia*, that:

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- (i) the Lessor consents to the mortgaging, charging and granting of security interests in all assets and personal property of the Lessee arising from or used in connection with the Premises;
- (ii) the Lessor will (without incurring liability therefor) promise to give any such lender, reasonably promptly, a copy of any material written notice delivered under this Lease by the Lessor to the Lessee;
- (iii) the Lessor will not amend this Lease in any material respect or accept any surrender of this Lease without the prior written consent of such lender; and
- (iv) prior to terminating this Lease or exercising any distraint or any other right or claim against the assets of the Lessee by reason of the occurrence of any default on the part of the Lessee, the Lessor will (without incurring liability therefor) promise to give any such lender written notice of any such default and provide to such lender a period of not less than 30 days following the giving of the notice to elect to remedy any such default and to complete remedying of any such default within 180 days, from its receipt of the Lessor's notice, PROVIDED THAT if such period is insufficient for the default to be remedied, then such period will be extended for so long as the Lender continues to use reasonable diligence towards remedying such default.

ARTICLE 6 - COVENANTS OF THE LESSOR

- 6.1 The Lessor covenants with the Lessee for quiet enjoyment.

ARTICLE 7 - PROVISOS

- 7.1 PROVIDED ALWAYS and it is hereby agreed as follows:

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- (a) Holding Over. if after the expiration or earlier termination of this Lease the Lessor permits the Lessee to remain in possession of the Premises and accepts rent in respect thereof, a tenancy from year to year shall not be created by implication of law and the Lessee shall be deemed to be a periodic tenant for six month periods only, subject to all terms and conditions of this Lease, except as to duration in the absence of a written agreement to the contrary;
- (b) Damage to Premises. In the event of damage to the improvements on the Premises or in the event of destruction of any buildings on the Premises by fire, lightning or tempest, or resulting from structural defect or from other similar casualty, the Lessee shall, subject to the provisions of Section 7.1(c) hereof, proceed to repair or replace the improvements with reasonable diligence to the reasonable satisfaction of the Lessor;
- (c) Approval of Repair or Reconstruction. the Lessee shall, prior to commencing substantial repairs, reconstruction or replacements of the Premises or any part thereof, deliver to the Lessor a copy of the plans for the same and shall not proceed with such repairs, reconstruction or replacements (other than required by law or for safety reasons) until the consent in writing thereto by the Lessor has been obtained by the Lessee, such consent not to be unreasonably withheld or delayed; if the Lessor fails to provide its consent, or fails to refuse to provide its consent, in writing, within two weeks of the date upon which the Lessee requests the Lessor's required consent in writing, then the Lessee may proceed with such repairs, reconstruction or replacement;
- (d) Health Care Services. the Lessee shall be entirely responsible and shall assume all legal liability for the provision of any health care or assisted living services at the Premises from and after the Commencement Date;
- (e) Remedy Defaults. the Lessor shall be under no obligation to remedy any default of the Lessee and save for the negligence or wilful acts of the Lessor, its employees and those persons authorized by the Lessor to be on the Premises,

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the Lessor shall not incur any liability to the Lessee for any act or omission in the course of its curing or attempting to cure any such default or in the event of its entering upon the Premises to undertake any examination thereof or any work therein or in the case of any emergency;

(f) Lessor Disclaimer and Indemnification by Lessee. save for the negligence or wilful acts of the Lessor, its employees and those persons authorized by the Lessor to be on the Premises, the Lessor shall not be liable for, and the Lessee agrees to and does hereby indemnify, defend and save the Lessor in respect of any claims for bodily injury or death, property damage or any other loss or damage, arising howsoever, out of the use or occupation of the Premises or from the conduct of any work by or any act or omission of the Lessee or any assignee, subtenant, agent, employee, contractor, invitee, or licensee of the Lessee or anyone else for whom the Lessee may be responsible including:

- (i) any consequential injury, economic or financial loss or damage relating thereto;
- (ii) any injury or damage of any nature whatsoever to any persons or property caused by the failure by reason of a breakdown or other cause, either directly or indirectly, to supply adequate drainage, snow or ice removal or by reason of the interruption of any public utility or other service, or in the event of gas, steam, water, rain, snow, ice or other substances leaking into, issuing or flowing from the water, steam, sprinkler or drainage pipes or plumbing of the Premises or from any other place or quarter into any part of the Premises, or from any loss or damage caused by or attributable to the condition or arrangement of any electric or other wiring or for any damage caused by anything done or omitted to be done by any other person;

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- (iii) loss or damage, however caused, to money, securities, negotiable instruments, papers or other valuables of the Lessee, including any consequential loss or damage resulting therefrom;
- (iv) loss or damage to any automobiles or their contents; and
- (v) loss or damage caused by any of the perils against which the Lessee shall have insured or which, pursuant to this Lease, the Lessee is obligated to insure,

and in respect of all costs, expenses and liabilities incurred by the Lessor in connection with or arising out of all such claims, including the expenses of any action or proceeding pertaining thereto and in respect of any loss, cost, expense or damage suffered or incurred by the Lessor arising from any breach or non-performance by the Lessee of any of its covenants or obligations under this Lease. Without limiting the foregoing, the Lessee expressly releases the Lessor from any claims, damages, judgments, losses or awards caused by or arising from perils insured against or required to be insured against by the Lessee under this Lease;

- (g) Construction of/Alterations to Improvements. without limiting the approvals heretofore granted by the Lessor to the Lessee, the Lessee shall develop and construct improvements upon the Premises substantially in accordance with the plans and specifications described in Schedule B hereto. Following the completion of construction of any such improvements, the Lessee, when not in default of performance of any of its obligations hereunder, shall have the right from time to time during the Term to make, at its own expense, such changes, alterations, renovations, additions and improvements (collectively "Improvements") to the Premises as the Lessee may deem advisable, but subject to the following conditions (which the Lessee covenants to observe and perform):

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- (i) no substantial Improvement shall be commenced until the Lessee shall have obtained all building and other permits required by lawful authority; PROVIDED THAT if the Lessee is in default of such covenant it shall indemnify the Lessor for all loss and damages;
- (ii) no substantial Improvements which involve substantial changes, alterations, additions and renovations shall be commenced until detailed plans and specifications have first been submitted to and approved by the Lessor in writing, such approval not to be unreasonably withheld or delayed;
- (iii) every substantial Improvement shall be constructed in good and workmanlike manner, in substantial compliance with the detailed plans and specifications, if required, approved by the Lessor, and in compliance with all applicable municipal by-laws and other laws, regulations and requirements of all authorities having jurisdiction;
- (iv) the Lessee shall maintain insurance during the construction of every substantial Improvement protecting both the Lessor and the Lessee against claims for personal injuries, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Premises and from any cause, including the risks occasioned by the construction of the improvements and protecting the Lessor and the Lessee from loss or damage to the Premises and all fixtures, equipment, improvements and building materials on the Premises from time to time, against fire, and other perils from time to time customarily included in the usual extended coverage and endorsements upon insurance policies applicable to similar properties during construction and effected by prudent owners; and

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- (v) the parties acknowledge that Improvements may be subject to the provisions of Section 48 of the British Columbia *Hospital Act*, as applicable.
- (h) Demolition. if it shall be determined at any time during the Term that all or any part of the buildings or other improvements located upon the Premises are to be demolished, the Lessee shall, subject to having obtained the prior consent of the Lessor, which will not be unreasonably withheld or delayed, carry out such demolition at its sole cost;
- (i) Acceptance of the Premises "As Is". the Tenant accepts the Premises "as is" knowing the condition thereof, and agreeing that the Lessor has made no representation, warranty, or agreement with respect thereto, except as may be otherwise expressly provided in this Lease; and
- (j) Access to Information. the parties will co-operate reasonably with each other and will, on request by the other party not more than once per calendar year (or more often if the requesting party is then in negotiations with the Province of British Columbia with respect to any financial assistance for which application is made to any governmental authority in connection with the development, construction and operation of assisted living or other health care facilities upon the Premises, and at the expense of the requesting party, provide the other party with such information and documents as may be in their possession from time to time regarding the amount of financial assistance provided by the Province of British Columbia toward the planning, constructing, reconstructing, purchasing and equipping of any improvements to the Premises during the Term.

ARTICLE 8 - ENVIRONMENTAL MATTERS

8.1 In this Article 8:

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- (a) **"Environmental Laws"** means any laws, statutes, regulations, orders, bylaws, permits or lawful requirements of any governmental authority with respect to environmental protection, or regulating, controlling, licensing, or prohibiting Hazardous Substances;
- (b) **"Hazardous Substance"** includes any contaminants, pollutants, dangerous substances, liquid wastes, industrial wastes, hauled liquid wastes, toxic substances, hazardous wastes, hazardous materials or any hazardous substances as defined in or pursuant to any Environmental Law including any "waste" as that term is defined in the *Environmental Management Act*, S.B.C. 2003, Ch.53.

8.2 Throughout the Term the Lessee shall:

- (a) Comply with all Environmental Laws, including those pertaining to the handling, use, and/or storage of Hazardous Substances;
- (b) Not cause or permit any Hazardous Substance to be brought upon, kept or used in or about the Premises other than in accordance with Environmental Laws, without the prior written consent of the Lessor, which consent may be arbitrarily withheld;
- (c) notify the Lessor in writing of any of the following which occur after the Commencement Date:
 - (i) any enforcement, clean-up, removal, litigation, or other governmental, regulatory, judicial, or administrative action instituted, contemplated, or threatened against the Lessee or the Premises pursuant to any Environmental Laws;
 - (ii) all claims, actions, orders, or investigations instituted, contemplated, or threatened by any third party against the Lessee or the Premises relating

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to damage, contribution, cost recovery, compensation, loss or injuries resulting from any Hazardous Substances or any breach of Environmental Laws;

- (iii) the discovery of any Hazardous Substances or any occurrence or condition on the Premises or any real property adjoining or in the vicinity of the Premises which could subject the Lessee or the Premises to any fines, penalties, orders, or proceedings under any Environmental Laws;
- (d) on the expiry or earlier termination of this Lease, or at any time if reasonably requested by the Lessor or required by any governmental authority under Environmental Laws, to remove from the Premises all Hazardous Substances and to remediate any contamination of the Premises or any adjacent property resulting from Hazardous Substances, in either case brought onto, used at, or released from the Premises by the Lessee or any person for whom it is in law responsible. The Lessee shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Hazardous Substances shall remain the property of the Lessee, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding the degree of their affixation to the Premises;
- (e) indemnify the Lessor and its directors, officers, employees, agents, successors and assigns from any and all liabilities, actions, damages, claims, losses, costs, fines, penalties, and expenses whatsoever (including all legal and consultants' fees and expenses and the cost of remediation of the Premises and any adjacent property) arising from or in connection with:
 - (i) any breach of or non-compliance with the provisions of this Article by the Lessee; or
 - (ii) any release or alleged release of any Hazardous Substance at or from the Premises related to or as a result of the use and occupation of the

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Premises or any act or omission of the Lessee or any person from whom it is in law responsible;

- (f) promptly provide to the Lessor a copy of any environmental site assessment, audit, report, or test results relating to the Premises conducted by or for the Lessee at any time; and
- (g) waive the requirement, if any, for the Lessor to provide a site profile for the Premises under the *Environmental Management Act* or any regulations pursuant thereto.

8.3 The Lessee acknowledges that the Lessor has made no representations or warranties to the Lessee with respect to the environmental condition of the Premises.

ARTICLE 9 - EVENTS OF DEFAULT

9.1 PROVIDED ALSO THAT this Lease and the Term and estate hereby granted are subject to the limitation that:

- (a) if the Lessee shall default in the payment of rent, or the payment of any other sum payable hereunder, and such default shall continue for 6 months after the giving of written notice by the Lessor to the Lessee;
- (b) if the Lessee shall fail to perform or observe any of the covenants, agreements, provisions, conditions or provisos contained in this Lease on the part of the Lessee to be performed or observed (other than the payment of rent or other sums of money) and such failure shall continue for, or shall not be remedied within, the period of 6 months next after the giving of written notice by the Lessor to the Lessee of the nature of such failure;
- (c) if the Lessee shall make a general assignment for the benefit of creditors;

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- (d) if the Lessee shall institute proceedings to be adjudicated bankrupt or insolvent or shall consent to the institution of bankruptcy or insolvency proceedings against the Lessee or shall file an application or petition or answer or consent seeking re-organization or re-adjustment of the indebtedness of the Tenant under the *Bankruptcy and Insolvency Act*, Canada or the *Companies' Creditors Arrangement Act*, Canada or any other law of Canada or any province thereof relating to bankruptcy or insolvency, or shall consent to the filing of any such application or petition, or shall consent to the appointment of a receiver or receiver-manager;
- (e) if a receiver, interim receiver, receiver-manager, trustee, liquidator, or custodian of all or substantially all of the property of the Lessee or of the Lessee's leasehold interest in the Premises shall be appointed or applied for by the Lessee or appointed pursuant to an instrument or by order of a court;
- (f) if a judgment, decree or order shall be entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Bankruptcy and Insolvency Act*, Canada or determining that proceedings for re-organization, arrangement, adjustment, composition, liquidation, or any similar relief under the *Bankruptcy and Insolvency Act*, Canada or the *Companies' Creditors Arrangement Act*, Canada or any other law of Canada or any province thereof relating to bankruptcy or insolvency have been properly instituted otherwise than by the Lessee; PROVIDED THAT such judgment, decree or order is not in good faith contested by the Lessee;
- (g) if any application or petition or certificate or order is made or granted for the winding-up or dissolution of the Lessee, voluntary or otherwise; or
- (h) the Lessee converts to a company under Section 74 of the *Society Act* without the prior written consent of the Lessor,

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it shall then be lawful for the Lessor to enter upon the Premises or any part thereof in the name of the whole, and this Lease shall at the option of the Lessor, and with or without entry, terminate, and all the rights of the Lessee with respect to the Premises shall be absolutely forfeited and shall lapse. If the condition complained of (other than the payment of rent or other sums of money) reasonably requires more time to cure than six months, the Lessee shall be deemed to have complied with the remedying thereof if the Lessee shall have commenced remedying or curing the condition within the six months period and diligently thereafter completes the same.

ARTICLE 10 - NOTICES

- 10.1 Notices. Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be given in writing by personal delivery or sent by registered mail, postage prepaid, or by telecopy, and shall be addressed to the parties at their respective address as follows:

If to the Lessor:

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF VANCOUVER
150 Robson Street
Vancouver, B.C.
V6B 2A7

Attention: Vicar General for Health
Fax: (604) 683-4288

If to the Lessee:

PROVIDENCE HEALTH CARE SOCIETY
1081 Burrard Street
Vancouver, B.C.
V6Z 1Y6

Attention: The President and Chief Executive Officer
Fax: (604) 631-5811

or at such other address as the Lessor or Lessee may specify by written notice given to the other party. Any such notice, demand, request or consent shall be conclusively deemed to

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have been given or made, if sent by registered mail on the date of acknowledged receipt in writing by or on behalf of the addressee, or if sent by telecopy upon the date of receipt by the sender (before 3:00 o'clock p.m. local time of the recipient) of electronic confirmation of the transmission showing the correct answer back or other similar identification of the addressee, or if given by personal delivery on the date of actual delivery; PROVIDED THAT in the case of interruption in the ordinary postal service, any notice, demand, request or consent given hereunder, shall be given either by telecopy or personal delivery and not by mail.

ARTICLE 11 - MISCELLANEOUS

- 11.1 No term, condition, covenant or other provision herein shall be considered to have been waived by the Lessor unless such waiver is expressed in writing by the Lessor. The waiver by the Lessor of any breach by the Lessee of any term, condition, covenant or other provision herein shall not be construed as or constitute a waiver of any further or other breach of the same or any other term, condition, covenant or other provision and the consent or approval of the Lessor shall not be considered to waive or render unnecessary such consents or approvals to any subsequent same or similar act by the Lessee.
- 11.2 No remedy conferred upon or reserved to the Lessor is exclusive of any other remedy herein or provided by law, but such remedy shall be cumulative and shall be in addition to any other remedy herein or hereafter existing at law, in equity, or by statute.
- 11.3 The terms and provisions of this Lease shall extend to, be binding upon and enure to the benefit of the parties hereto and their successors and permitted assigns.
- 11.4 Time is of the essence of this Lease.
- 11.5 This Lease constitutes the entire agreement between the parties and no understanding or agreement, oral or otherwise, exists between the parties with respect to the subject matter of this Lease except as expressly set out in this Lease and this Lease may not be modified except by subsequent agreement in writing.

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- 11.6 Each of the parties will, upon the reasonable request of the other, make, do, execute or cause to be made, done or executed all further and other lawful acts, deeds, things, devices, documents, instruments and assurances whatever for the better or more perfect and absolute performance of the terms and conditions of this Lease.
- 11.7 All provisions of this Lease in favour of the Lessor and all rights and remedies of the Lessor, either at law or in equity, will survive the expiration or earlier termination of this Lease.
- 11.8 All amounts payable by the Lessee under this Lease shall be deemed to be rent and recoverable as rent and the Lessor shall have all the rights and remedies against the Lessee for default in payment of any such amount as the Lessor has for default in payment of rent.

ARTICLE 12 - INTERPRETATION

- 12.1 In this Lease, unless the context otherwise requires, the singular includes the plural and the masculine includes the feminine gender and a corporation, the word "or" is not exclusive and the word "including" is not limiting (whether or not non-limiting language, such as "without limitation" or "but not limited to" or words of similar import, is used with reference thereof;
- 12.2 All references in this Lease to a designated "Article", "Section", "Subsection" or other subdivision or to a Schedule is to be the designated Article, Section, Subsection or other subdivision of, or Schedule to, this Agreement;
- 12.3 In this Lease the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section, Subsection or other subdivision or Schedule;

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- 12.4 The captions and headings contained in this Lease are for convenience only and are not to be construed as defining or in any way limiting the scope or intent of the provisions hereof.
- 12.5 Where this Lease contains the forms of words contained in Column I of Schedule 4 of the *Land Transfer Form Act*, those words shall have the same effect and be construed as if the appropriate forms of words contained in Column II of that Schedule were contained herein in their place, unless the context requires another construction of those words.
- 12.6 This Lease shall be interpreted according to the laws of the Province of British Columbia.
- 12.7 Where there is a reference to an enactment of the Province of British Columbia in this Lease, that reference shall include a reference to any subsequent enactment of the Province of British Columbia of like effect, and unless the context otherwise requires, all statutes referred to herein are enactments of the Province of British Columbia.
- 12.8 If any Section of this Lease or any part of a Section is found to be illegal or unenforceable, that part or Section, as the case may be, shall be considered separate and severable and the remaining parts or Sections, as the case may be, shall not be affected thereby and shall be enforceable to the fullest extent permitted by law.

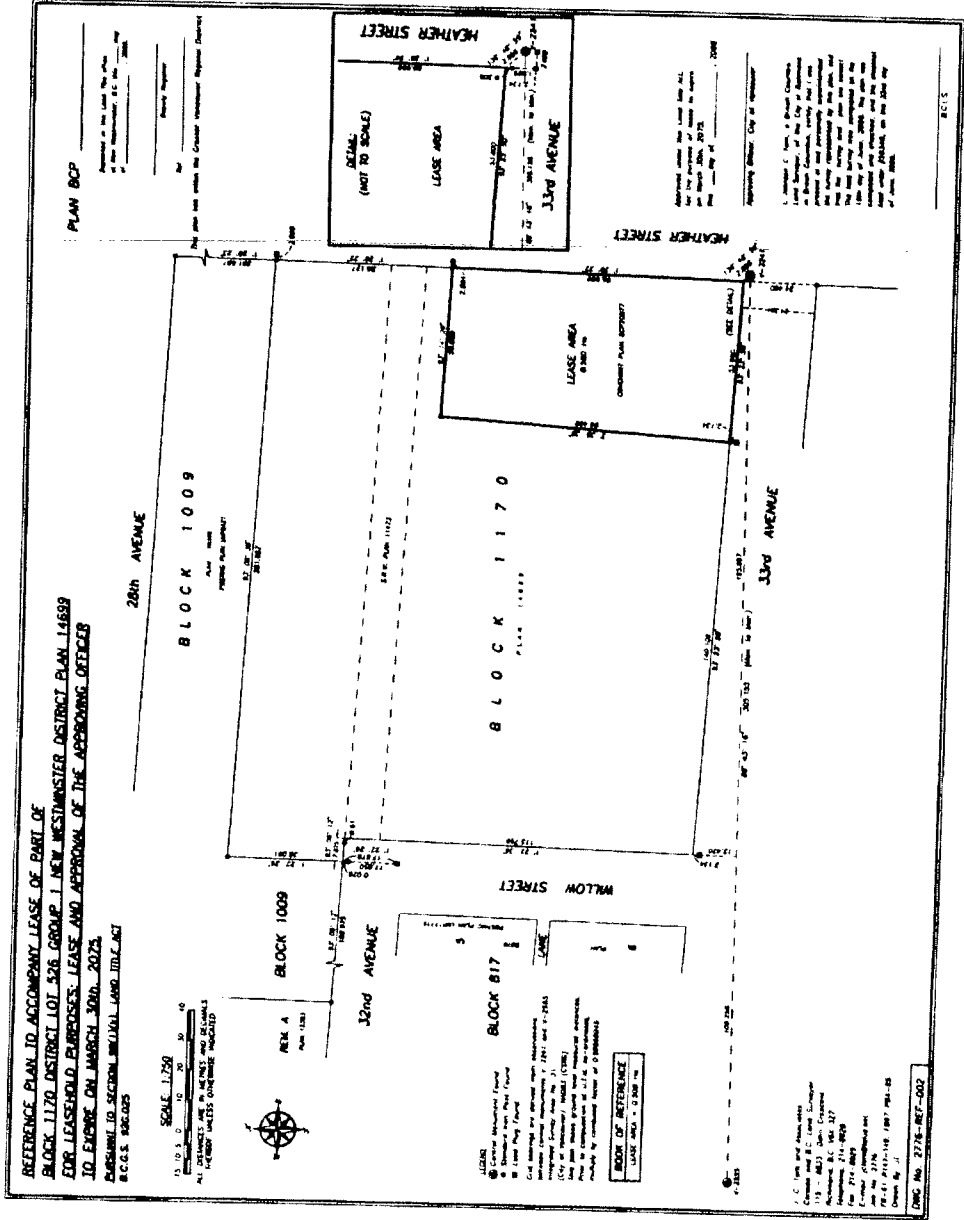
ATTACHMENTS:

SCHEDULE A	PHOTO-REDUCED COPY OF REFERENCE PLAN BCP <u>25628</u>
SCHEDULE B	DESCRIPTION OF APPROVED PLANS AND SPECIFICATIONS FOR ASSISTED LIVING PROJECT UPON THE PREMISES
SCHEDULE C	COPIES OF HCPP INSURANCE CERTIFICATES IN EFFECT AS OF THE COMMENCEMENT DATE

APPROVED UNDER THE *LAND TITLE ACT* FOR THE PURPOSE OF A LEASE TO EXPIRE ON MARCH 30, 2075.

Rick Smith AUGUST 25, 2006
APPROVING OFFICER, CITY OF VANCOUVER

SCHEDULE "A"



SCHEDULE B**ST. VINCENT'S HEATHER ASSISTED LIVING BUILDING
- APPROVED PLANS AND SPECIFICATIONS**

The Assisted Living Building is a four (4) storey, wood-framed structure of approximately 6,180 m². It consists of 60 one-bedroom dwelling units for seniors capable of directing their own care but requiring assistance with daily living. There are in addition, 8 dwelling units designed for disabled persons capable of living independently. Ancillary, support and common amenity facilities are also provided. These Approved Plans and Specifications conform to (and the improvements contemplated herein shall be constructed substantially as referenced in) City of Vancouver Development Permit DE409878 and Building Permit BU434821.

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SCHEDULE C

COPIES OF HCPP INSURANCE CERTIFICATES
IN EFFECT AS OF THE COMMENCEMENT DATE

HEALTH CARE PROTECTION PROGRAM

CERTIFICATE OF COVERAGE

This is to Certify that	The Health Care Protection Program (HCPP), funded by the Province of British Columbia and administered by the BC Health Care Risk Management Society, covers the Certificate Holder in accordance with the definitions, conditions, limitations and exclusions as set out in the terms of coverage for the Health Care Comprehensive Liability Agreement.
Certificate Holder	Providence Health Care Society
Covered Operations	All operations of the Certificate Holder
Coverage Effective	12:01 AM Pacific Standard Time March 31, 2006 (Continuous Until Cancelled)
Liability Coverage	Personal Injury, Property Damage and Advertising Liability; Legal Liability for Fire Fighting Expenses; Health Care Professional Liability; Employee Benefits Liability; Directors' and Officers' Liability; Voluntary Compensation for Volunteer Workers; Non-Owned Automobile; Excess Automobile Liability
Limits	\$50,000,000 applicable to any one occurrence (except as specified for Voluntary Compensation as set out in the Health Care Comprehensive Liability Agreement)
Deductible	\$1,000 each claim for Employee Benefits Liability \$1,000 each claim for Directors' and Officers' Liability \$1,000 franchise deductible for Property Damage Liability only

The coverage described above is subject to the definitions, conditions, limitations, and exclusions contained in the Health Care Comprehensive Liability Agreement.

Authorized Representative

BC HEALTH CARE RISK
MANAGEMENT SOCIETY
#118 - 1175 Cook St.
Victoria, British Columbia V8V 4A1
(250) 952-8123 Fax: (250) 389-1859

SCHEDULE C (continued)

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HEALTH CARE PROTECTION PROGRAM

CERTIFICATE OF COVERAGE

This is to Certify that	The Health Care Protection Program (HCPP), funded by the Province of British Columbia and administered by the BC Health Care Risk Management Society, covers the Certificate Holder for Loss of Property in accordance with the definitions, conditions, limitations and exclusions as set out in the Health Care Property Agreement.
Certificate Holder	Providence Health Care Society
Property Covered	All real and personal property of every kind and description, owned or leased, by the Certificate Holder, or for which the Certificate Holder has agreed to provide coverage, unless otherwise excluded, situated anywhere in Canada or the United States of America (including while in transit therein) and Automobile Physical Damage, Extra Expense, Rental Income Liability, and Boiler and Machinery.
Coverage Effective	12:01 AM Pacific Standard Time March 31, 2000 (Continues Until Cancelled)
Perils Covered	"All Risks" of direct physical loss or damage, except as may be set out in the Health Care Property Agreement.
Deductible	\$3,000 each and every loss

The coverage described above is subject to the definitions, conditions, limitations, and exclusions contained in the Health Care Property Agreement.

[Signature]
Authorized Representative

BC HEALTH CARE RISK
MANAGEMENT SOCIETY
#318 - 1175 Cook St.
Victoria, British Columbia V8V 4A1
(250) 953-8123 Fax: (250) 380-7859

LRS/1421273.07

SCHEDULE C (continued)

PAGE 31



HEALTH CARE PROTECTION PROGRAM

CERTIFICATE OF COVERAGE

This is to Certify that The Health Care Protection Program (HCPP), funded by the Province of British Columbia and administered by the BC Health Care Risk Management Society, covers the Certificate Holder in accordance with the definitions, conditions, limitations and exclusions as set out in the terms of coverage for the Health Care Crime Agreement.

Certificate Holder Providence Health Care Society

Covered Operations All operations of the Certificate Holder

Coverage Effective 12:01 AM Pacific Standard Time March 31, 2000
(Continuous Until Cancelled)

Crime Coverage	Limits
Employer Dishonesty	\$5,000,000
Employee Dishonesty - Third Party Cover	\$100,000
Loss Inside the Premises	\$100,000
Loss Outside the Premises	\$100,000
Money Orders and Counterfeit Paper Currency	\$25,000
Depositor's Forgery	\$1,000,000
Credit Card Forgery	\$5,000
Misappropriation of Transportation Tickets	\$5,000

Deductible \$3,000 each and every loss

The coverage described above is subject to the definitions, conditions, limitations, and exclusions contained in the Health Care Crime Agreement.

J. Gault
Authorized Representative

BC HEALTH CARE RISK
MANAGEMENT SOCIETY
#318 - 1178 Cook St.,
Vancouver, British Columbia V6V 4A1
(250) 953-8123 Fax: (250) 380-1839

LRS/1421273.07



HEALTH CARE PROTECTION PROGRAM
Risk Management

Certificate of Liability

No. L130_2006

This certifies to:

Catholic Charities of the Archdiocese of Vancouver,
Incorporated under the Society Act under No. S-27108, with an
office at 130 Robson Street, Vancouver, BC V6B 2A7

that coverage as herein described has been arranged for the institution named below and is in
force as this date

Providence Health Care Society,
Incorporated under the Society Act under No. S-41359,
with administrative offices at 1081 Burrard Street,
Vancouver, BC V6Z 1Y6

Coverage:

- Comprehensive General Liability for bodily injury, personal injury and property damage including broad form property damage, products, completed operations, intentional acts to protect persons or property, contractual liability, non-owned automobile, tenant's legal liability, owner's and contractor's protective, contingent employers liability and errors liability as provided under the Health Care Comprehensive Liability Agreement sponsored by the Province of British Columbia.

Limit of Liability Coverage:

\$50,000,000

Expiry:

Continuous until cancelled

Additional Interest:

Catholic Charities of the Archdiocese of Vancouver has been added as additional interest under the above noted coverage for liability which arises out of the negligence of the Named Insured for lease of land at the St. Vincent's Health Hospital site (Parcel Identifier 097-738-414, Block 1178, District Lot 306, Plan 14699). The Health Care Protection Program shall provide thirty (30) days prior written notice of cancellation or material alteration in coverage to the Additional Interest.

Conditions:

Coverage as used herein means the indemnification provided under the Health Care Comprehensive Liability Agreement

SCHEDULE C (continued)

PAGE 33

Certificate of Liability (L130_2005)
Catholic Charities of the Archdiocese of Vancouver
July 11, 2006

Page 2

The coverage above is subject to the terms, conditions, and
exclusions contained in the Health Care Comprehensive
Liability Agreement

This certificate is executed and issued on the 11th day of July, 2006.

Health Care Protection Program


Authorized Representative

Service Request 19474

LRS/1421273.07

SCHEDULE C (continued)

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**HEALTH CARE PROTECTION PROGRAM**
Risk Management

July 10, 2006

To: Zula Sachdev
Vice President, Human Resources and General Counsel
Providence Health Care Society
1081 Burrard Street
Victoria, BC V6Z 1Y6

Subject: General Liability Coverage for Providence Health Care Society - St. Vincent's Heather Hospital site

Please accept this letter in lieu of the standard Certificate of Insurance.

The Province has arranged for coverage to be provided for Health Authorities and other designated health care facilities in British Columbia. Coverage is currently in force and is continuous until formally cancelled by the Province.

Providence Health Care Society is participating in the Health Care Protection Program, which is a self insurance program with the financial support of the Province of B.C.

The limit of Comprehensive General Liability coverage provided to the Providence Health Care Society is \$50,000,000.00 each occurrence and includes employees of the Providence Health Care Society.

If you require further information on this coverage please contact me at your convenience.

Yours truly,
HEALTH CARE PROTECTION PROGRAM

Per:



Justice Butler
Director

SRQ 19474

PO Box 3586, Victoria BC V8W 3W6 Telephone: (250) 982-0846 Regular Fax: (250) 953-5987 Claims Fax: (250) 953-1461
TOTAL P. 02

END OF DOCUMENT

LRS/1421273.07

APPENDIX "B"
OPERATING AGREEMENT

8

#118287v5

#118287v5

File: 090924-02/ 3925

**INDEPENDENT LIVING BC
NON-PROFIT SOCIETY OPERATING AGREEMENT**

between

PROVIDENCE HEALTH CARE SOCIETY

and

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

with respect to a Housing Development at

~~700 West 30th Avenue~~, British Columbia
4875 Heather Street, Vancouver,

AG103 RS=T
May 10, 2005

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May 10, 2005

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INDEPENDENT LIVING BC PROGRAM

NON-PROFIT SOCIETY OPERATING AGREEMENT

THIS OPERATING AGREEMENT dated for reference July 1, 2006.

BETWEEN:

PROVIDENCE HEALTH CARE SOCIETY

St. Paul's Hospital, 1081 Burrard Street, Vancouver,
British Columbia V6Z 1Y6

(the "Society")

AND:

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

("BC Housing")

with respect to a housing development at ~~1081 Burrard Street~~ 4875 Heather Street, Vancouver,
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 all Tenants for the Units and will also provide for some non-shelter 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.

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 the requirements of the *Personal Information Protection Act* and associated Regulations and 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 6.5.
- 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 ensure Tenants are selected 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; and
 - 1.5.3 provide each Tenant with access to information concerning that Tenant and protect the privacy of Tenants.

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 Section 5.9 during the Term of this agreement.
- 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 Society's use 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.
- 3.4 **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 TENANTS

- 4.1 **Selection Procedures.** The Health Authority will select and refer all 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 **Change in Health Selection.** If at any time during the Term the Health Authority declines to continue to select Tenants for any or all Units in the Development, then the Society will select Tenants in accordance with the selection criteria set out in Schedule J.
- 4.3 **Occupancy Standards.** Units in the Development will be occupied by Tenants with household sizes suitable for the Units as set out in the Occupancy Standards in Schedule B.
- 4.4 **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.
- 4.5 **Membership in Society.** The Society will not require a Tenant to be a member of the Society.
- 4.6 **Residency Agreements.** The Society will enter into a 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.
- 4.7 **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.

PART 5 FINANCIAL OPERATIONS

- 5.1 **Proof of Income.** The Society will obtain an Application Form and supporting documentation as evidence of the Income and the Annual Income for Calculation Purposes 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 for each Tenant the Society will keep on file a copy of supporting documentation and 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 and Tenant Shelter Contribution.** The Society will review each Tenant's Application Form together with any documentation in support, and use that information to determine: (a) the amount a Tenant will pay as the Tenant Rent Contribution for a Unit; and (b) the amount of Tenant Shelter Contribution for a Unit. The following apply:
- 5.2.1 the Tenant Rent Contribution will be based on the application of the Independent Living Rent Scale, and is the actual amount the Society is required to collect from the Tenant;
 - 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;
 - 5.2.3 the Tenant Shelter Contribution will be based on the application of the Independent Living Shelter Contribution Scale and is that portion of the Tenant Rent Contribution used to determine the amount of Shelter Subsidy, and
 - 5.2.4 the Tenant Shelter Contribution will not exceed 50% of the Maximum Rent, but may exceed the Economic Shelter Cost.

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

5.3 **Change in Health Participation.** The Independent Living Rent Scale only applies to Units for which the Health Authority provides support. If at any time during the Term the Health Authority declines to continue to select Tenants for some, but not all, Units in the Development and declines to participate in providing support for such Units, then the Tenants in such Units will pay a rent contribution as set out in the BC Rent Scale (with necessary wording changes to effect this agreement) as determined by BC Housing from time to time. Tenants in such Units will be completely responsible for payment for any additional services supplied by the Society. BC Housing may require a different form of declaration of income than that described in Section 5.1.

5.4 **Operating Budget.** The Society will prepare an Operating Budget in a form acceptable to BC Housing. The Operating Budget will list expenses and revenues separately for the Shelter Component, Non-Shelter Component and Support Services Component, plus a combined amount. The Society will send the Operating Budget to BC Housing for its review and approval according to the following schedule:

5.4.1 12 months prior to the Start Date;

5.4.2 3 months prior to the end of the first Fiscal Year after the Start Date that represents 12 full months of operations;

5.4.3 3 months prior to the end of each Fiscal Year ending on the 5th, 10th, 15th, 20th, 25th, and 30th 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 will consult with the Society before approving and/or revising the Shelter Component portion of the Operating Budget, but BC Housing's decision is conclusive and binds the Society. The Society will operate within the approved Shelter Component portion of the Operating Budget. The Shelter Component of the Operating Budget will be limited to an amount equal to only those costs that have been or will be incurred by the Society in order to ensure proper management of the Shelter Component of the Development in accordance with this agreement, including debt service charges relating to the Loan, but exclusive of any expenditures for which other financial assistance has been received or is receivable by the Society or the Tenant other than the Shelter Subsidy paid pursuant to this agreement. For greater clarity the following apply:

5.4.4 the Shelter Component of the Operating Budget will not include costs related to the Support Services Component;

- 5.4.5 where there is a Non-Shelter Component or the Development is part of a larger building complex, common costs and revenues not clearly attributable to the Shelter Component, Non-Shelter Component, or remainder of the building complex will be received or expensed to the applicable component according to a schedule in the format set out in Schedule I, as agreed by the parties from time to time, both acting reasonably. The first such schedule must be completed and agreed upon not less than 12 months prior to the Start Date.
- 5.5 **Economic Shelter Cost.** Once the Shelter Component portion of the Operating Budget is approved, BC Housing will set the Economic Shelter Cost for each Unit for the Fiscal Year and the Economic Shelter Cost will be the same for all Units of similar size.
- 5.6 **Calculation of Economic Shelter Cost Between Review Years.** For the purpose of calculating the Economic Shelter Cost in any Fiscal Year other than for those Fiscal Years referred to in Section 5.4, the following apply:
- 5.6.1 the Economic Shelter Cost will be deemed to be the amount determined in accordance with the following formula:
- ((CPI₂/CPI₁) multiplied by the (Economic Shelter Cost for previous Fiscal Year less any debt service charges relating to the Loan)), plus debt service charges related to the Loan.
- where
 CPI₂ = CPI for the most recently published annual period;
 CPI₁ = CPI for the annual period ending 1 year prior to the annual period used for CPI₂
- 5.7 **Renewal of Loan.** The Economic Shelter Cost will be recalculated on the renewal of a Loan to take into account the new payments for the Loan.
- 5.8 **Shelter Subsidies from BC Housing.** Subject to Section 5.9, BC Housing will pay to the Society a Shelter Subsidy equal to the difference between the aggregate of the Economic Shelter Costs for the Units and the aggregate of the Tenant Shelter Contribution for the Tenants.
- 5.9 **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.
- 5.10 **Limit of Obligation.** BC Housing's payment to the Society pursuant to this agreement is limited to payment of the Shelter Subsidy. Any funding required by the Society to augment the difference between the Tenant Rent Contribution less Tenant Shelter Contribution, and the cost of providing support services to the Tenant, is the responsibility of the Society and/or the Health Authority pursuant to the Health Agreement.

- 5.11 **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).
- 5.12 **Accumulated Operating Surplus.** The Society may retain the Accumulated Operating Surplus from any operating surplus for the Shelter Component portion of the Development for each Fiscal Year, and the following apply:
- 5.12.1 the Society will first pay from the Accumulated Operating Surplus an amount to remedy any deficit in the Shelter Component operations for a previous Fiscal Year;
- 5.12.2 the Society may make other payments out of the Accumulated Operating Surplus as follows:
- 5.12.2.1 payments for capital renovations or improvements within the design standards for Independent Living BC; and
- 5.12.2.2 other payments approved by BC Housing.
- 5.13 **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:
- 5.13.1 the Society will not reduce the amortization period of the Loan or prepay a Loan without BC Housing approval; and
- 5.13.2 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.
- 5.14 **Reserve Fund.** The Society will create a Reserve Fund for capital repairs, replacements and improvements based on the items and life in years set out in the Schedule of Capital Items attached as Schedule E as may be amended from time to time by BC Housing, and the following apply:
- 5.14.1 the Society will fund the Reserve Fund in the amount of \$720.00 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
- 5.14.2 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;

- 5.14.3 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
- 5.14.4 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. Only items provided at the time of completion of construction/ renovation and/or approved by BC Housing may be covered by the Schedule of Capital Items.
- 5.15 **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:
 - 5.15.1 in an account insured by the Canadian Deposit Insurance Corporation or by the Credit Union Deposit Insurance Corporation;
 - 5.15.2 in an investment in accordance with the Society Act or the Local Government Act;
 - 5.15.3 in an investment guaranteed by a Canadian government; or
 - 5.15.4 in other investment instruments as BC Housing approves.
- 5.16 **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.
- 5.17 **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:
 - 5.17.1 audit the financial statements of the Society and the following apply:
 - 5.17.1.1 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;
 - 5.17.1.2 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

- 5.17.1.3 capital assets will be amortized over the economic life of the asset unless BC Housing stipulates otherwise;
- 5.17.2 provide a letter or notes with the financial statements indicating that:
 - 5.17.2.1 the Tenant Rent Contributions are or are not being correctly charged to the Tenants; that assessment may be done on a sample basis;
 - 5.17.2.2 Accumulated Operating Surplus is being spent and accounted for as provided in this agreement; and
 - 5.17.2.3 the Society has properly funded and maintained the Reserve Fund, and that all interest accruing to the Reserve Fund has been recorded.
- 5.17.3 provide a report in a form approved by BC Housing, as may be revised from time to time by BC Housing, summarizing the Shelter Component portion of the financial statements according to the revenue and expense item cost descriptions, replacement reserve and surplus items prescribed by BC Housing from time to time.
- 5.18 **Audited Financial Statements to be Submitted**. The Society will submit audited financial statements, the letter or notes referred to in Section 5.17.2 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.
- 5.19 **Unauthorized Expenditures and Acts**. With regard to its ownership and operation of the Development, the Society will not, without the approval of BC Housing:
 - 5.19.1 borrow money other than the Loan;
 - 5.19.2 guarantee or underwrite the repayment of any obligation assumed by a third party;
 - 5.19.3 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
 - 5.19.4 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.

PART 6 GENERAL OPERATIONS

- 6.1 **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.
- 6.2 **Non-Shelter Component.** The Society will use the Shelter Subsidy only for operating expenses for the Shelter Component.
- 6.3 **Records.** The Society will maintain adequate operational records for the Development as described in the Operating Standards and the following apply:
- 6.3.1 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;
- 6.3.2 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
- 6.3.3 in accordance with BC Housing's obligations pursuant to the Freedom of Information and Protection of Privacy Act, the Society will, upon request:
- 6.3.3.1 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
- 6.3.3.2 disclose to third parties only that information that BC Housing would be compelled to disclose according to the principles of that Act.
- 6.4 **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.
- 6.5 **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:
- 6.5.1 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

- 6.5.2 if BC Housing does not terminate this agreement upon damage or destruction pursuant to Section 6.6, 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.
- 6.6 **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.
- 6.7 **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 provides ongoing funding to the Development.

PART 7 LIABILITY

- 7.1 **Indemnity.** The Society will indemnify and save harmless BC Housing, Provincial Rental Housing Corporation and the Provincial Government, and each of their ministers, board members, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from all claims and costs which they may be liable for or incur arising out of any act or omission of the 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.
- 7.2 **Release.** The Society releases BC Housing, Provincial Rental Housing Corporation and the Provincial Government, and each of their ministers, board members, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from all claims arising out of advice or direction respecting the ownership, lease, operation or management of the Development given to the Society by any of them, except to the extent that advice or direction is given negligently.
- 7.3 **Survival.** The obligations of the Society set out in Sections 7.1 and 7.2 survive termination of this agreement.

PART 8 GENERAL PROVISIONS

- 8.1 **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.

- 8.2 **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.
- 8.3 **Mediation**. Except as set out in Section 8.2, 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.
- 8.4 **Arbitration**. If BC Housing and the Society cannot or do not resolve their dispute through the mediation process referred to in Section 8.3, the parties will submit that dispute to arbitration, as set out in Schedule H.
- 8.5 **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.
- 8.6 **New Agreement**. Should this agreement terminate as a result of the termination of the Health Agreement, the parties agree in principle to enter into an agreement to provide ongoing shelter subsidies to the Tenants. Such agreement will be in substantially the same terms and conditions as BC Housing enters into with similar Developments that do not have a Health Agreement, and will not extend beyond 35 years from and including the Start Date.
- 8.7 **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:
- 8.7.1 if made by registered mail, 72 hours after the time of mailing, except where there is a postal service disruption during that period;
- 8.7.2 if made by telecopy, on the first business day after the date when that telecopy is transmitted; and
- 8.7.3 if made by personal service, upon that personal service being effected.
- 8.8 **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.

- 8.9 **Assignment.** The Society will not assign its rights or obligations under this agreement without BC Housing's prior approval.
- 8.10 **Whole Agreement.** There are no warranties, representations, conditions or collateral agreements that pertain to this agreement, except as set forth in this agreement.
- 8.11 **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.

PART 9 INTERPRETATION

- 9.1 **Definitions.** The meanings of terms used in this agreement are set out in Schedule A.
- 9.2 **Schedules.** Attached to this agreement are Schedules A through J. The Schedules are an integral part of this agreement.
- 9.3 **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.
- 9.4 **Governing Law.** This agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia.
- 9.5 **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.
- 9.6 **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.
- 9.7 **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.
- 9.8 **Document Written in Present Tense.** The word "will" where the subject is either or both of the parties denotes a present obligation.

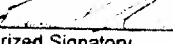
- 9.9 **Validity of Provisions.** If a court of competent jurisdiction finds that any part of this agreement is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability does not affect any other provisions of this agreement. The balance of the agreement is to be construed as if that invalid, illegal or unenforceable provision had never been included and is enforceable to the fullest extent permitted at law or at equity.
- 9.10 **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.
- 9.11 **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:
- 9.11.1 it will be obtained before any action is taken on it;
 - 9.11.2 it will be requested and responded to in writing; and
 - 9.11.3 it will not be unreasonably withheld, except if this agreement otherwise expressly stipulates, or delayed.
- 9.12 **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.
- 9.13 **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.
- 9.14 **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.

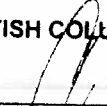
PROVIDENCE HEALTH CARE SOCIETY

PROVIDENCE HEALTH CARE SOCIETY

Per: 
Authorized Signatory **Kip Wainwright, Chair**

Per: 
Authorized Signatory **Carl Ray, President + CEO**

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

Per: 
Authorized Signatory **CRAIG CRAWFORD**

Per: 
Authorized Signatory **Dan Maxwell**

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, under the heading Tenant Rent Contribution.
4. "Application Form" means the declaration to be completed by a Tenant attesting to the Income and Annual Income for Calculation Purposes of that Tenant.
5. "BC Rent Scale" means a rent to income scale established by BC Housing from time to time at its sole discretion.
6. "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.
7. "CPI" means the Consumer Price Index for British Columbia for All Items, as prepared from time to time by Statistics Canada or a successor organization.
8. "Default" means default by the Society as defined in Schedule G.
9. "Development" means the 68 Units eligible for Shelter Subsidy at 4875 Heather Street on the Land, including all ancillary space included in the definition of Shelter Component.
10. "Economic Shelter Cost" means the estimated monthly amount, on a per Unit basis, that would be required to be charged in order that the revenues for the Shelter Component equal expenses for the Shelter Component as set out in Sections 5.4 and 5.5.
11. "Extraordinary Circumstances" means a Default allowing BC Housing to intervene at any level of the Intervention Procedure as set out in Schedule G.
12. "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.
13. "Health Agreement" means an agreement between the Society and the Health Authority as set out in Section D.
14. "Health Authority" means Vancouver Coastal Health Authority.

15. "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.
16. "Income" of a Tenant means an amount determined in accordance with Schedule D under the heading Tenant Shelter Contribution.
17. "Independent Living Rent Scale" means the rent scale attached as Schedule D as amended by BC Housing from time to time.
18. "Intervention Procedure" means the intervention procedure in the event of a Default by the Society as set out in Schedule G.
19. "Land" means those lands and premises situated in Vancouver, British Columbia and title to /the leasehold interest pursuant to Lease BA313676 registered against legally described as PID#: 007-755-414, Block 1170, DL 526, Plan 14699
20. "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.
21. "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.
22. "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".
23. "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.
24. "Operating Budget" means the budget for the Development prepared by the Society, in accordance with Section 5.14.
25. "Operating Standards" means those standards for operation of the Development set out in Sections 1.2 to 1.5.
26. "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.
27. "Provincial Government" means Her Majesty the Queen in Right of the Province of British Columbia.
28. "Receiver" means a receiver or receiver-manager.
29. "Reserve Fund" means the amounts the Society is required to hold in reserve in accordance with Section 5.14.
30. "Residency Agreement" means an agreement, tenancy agreement, lease, license or other right of a Tenant to occupy a Unit.

31. "Schedule of Capital Items" means the list of approved capital maintenance and replacement items and expected life in use as set out in Schedule E.
32. "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.
33. "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.
34. "Shelter Subsidy" means the amount paid by BC Housing to the Society as described in Section 5.8.
35. "Specific Purpose" means the operation of:
 - 35.1 the Development to provide residential accommodation for eligible Tenants who are Seniors or Persons with a Disability in accordance with this agreement; and
 - 35.2 only that Non-Shelter Component as is approved by BC Housing as ancillary to the Shelter Component.
36. "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.
37. "Support Services Component" means services provided by the Society for social or recreational services, services or facilities related to mental or physical health care, education, corrections, food services, social support of public recreation, housekeeping, laundry or other services that relate to the non-shelter support of a Tenant, or other similar costs that BC Housing determines is not related to the Society's operation of the Shelter Component.
38. "Tenant" means the person or persons residing in a Unit pursuant to a Residency Agreement, including any person residing in a Unit who is not named in the Residency Agreement.
39. "Tenant Rent Contribution" means the monthly amount a Tenant must contribute towards the Maximum Rent as set out in Section 5.2.
40. "Tenant Shelter Contribution" means that portion of the Tenant Rent Contribution allocated as the Tenant's contribution towards the Economic Shelter Cost.
41. "Term" means the earlier of the period of 35 years from and including the Start Date, or the period from and including the Start Date until the final date of termination of the Health Agreement (including any subsequent renewals of the Health Agreement).
42. "Unit" means a dwelling unit within the Shelter Component of the Development.

SCHEDULE B
OPERATING AGREEMENT
INDEPENDENT LIVING BC PROGRAM
OCCUPANCY STANDARDS

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 AGREEMENT

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

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.
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 judgment; 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

Tenant Rent Contribution

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:

1. Annual Income for Calculation Purposes means the annual amount of net income (currently line 236), less income tax paid (currently line 435), as set out in the Canada Revenue Agency personal income tax return (T1);
2. if the Tenant does not file a T1, declares no income, has an Income below a level set from time to time by BC Housing, or is receiving income assistance under the *Employment and Assistance Act*, the *Employment and Assistance for Persons with Disabilities Act*, or successor legislation; then the amount of Tenant Rent Contribution will be set at an amount determined from time to time by BC Housing.

Tenant Shelter Contribution

The amount of TRC contributed to the Shelter Component ("Tenant Shelter Contribution") will not exceed a set percentage, as determined from time to time by BC Housing, (currently 30%) of one twelfth of the Income of the Tenants, including any person residing in a Unit who is not named in the Residency Agreement and the following will apply:

1. Income means the annual amount of gross income (currently line 150), as set out in the Canada Revenue Agency personal income tax return (T1);
2. if the Tenant does not file a T1, declares no income, has an Income below a level set from time to time by BC Housing, or is receiving income assistance under the *Employment and Assistance Act*, the *Employment and Assistance for Persons with Disabilities Act*, or successor legislation; then the amount of Tenant Shelter Contribution will be set at an amount determined from time to time by BC Housing.

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

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	10
	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	Driveway 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

SCHEDULE F
OPERATING AGREEMENT
INDEPENDENT LIVING BC PROGRAM

INSURANCE

Insurance

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 such other 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 BC Housing notwithstanding any act, omission or negligence of the mortgage lender or BC Housing 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 BC Housing as additional insureds 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, a certificate of insurance providing evidence of the required insurance or, 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.

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

SCHEDULE G
OPERATING AGREEMENT
INDEPENDENT LIVING BC PROGRAM

DEFAULT, INTERVENTION PROCEDURE AND REMEDIES

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 is in default under the Health Agreement;
- 1.8 if the Society disposes of all or substantially all of its assets; and
- 1.9 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 6.1 of this agreement; 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 of this agreement;
 - 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
 - 3.6 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 2.5 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.

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

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

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 of this Schedule.
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 of this Schedule, 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.

SCHEDULE I
OPERATING AGREEMENT
INDEPENDENT LIVING BC PROGRAM

DIVISION OF REVENUE AND EXPENDITURES

Where revenue and expenditure items are directly attributable to the Shelter Component, Non-Shelter Component or remainder of the building complex, they will be received or expensed to each component accordingly. Where revenue and expenditure items are not directly attributable to the Shelter Component, Non-Shelter Component or remainder of the building complex, then they will be received or expensed to each component according to the following:

	Shelter Component	Non-Shelter or Other Component	Comments
REVENUE			
Rents	as received	as received	
Parking	100%	0%	
Other	of non attributable earnings	Separate PHC lot % of non attributable earnings	interest on funds to each component, credited accordingly
EXPENSES			
Taxes	96.4%	3.6%	sq. ft. basis as %
Insurance	96.4%	3.6%	
Utilities			
Heat	100.0%	0%	Separate meter
Electricity	100.0%	0%	Separate meter
Water/Sewer	96.4%	3.6%	sq. ft. basis as %
Garbage	96.4%	3.6%	sq. ft. basis as %
Maintenance			
Maintenance Staff	96.4%	3.6%	maximum budget amounts may apply to the Shelter Component
Ground	96.4%	3.6%	
Maintenance	96.4%	3.6%	
Building Repairs	96.4%	3.6%	
Supplies	96.4%	3.6%	
Elevator	100.0%	3.6%	
Service Contracts	96.4%	3.6%	
Administration			
Property Management	100.0%	0%	Administration of non residential space to be handled by PHC head office
Overhead	100.0%	0%	
Accounting	100.0%	0%	
Audit Legal	100.0%	0%	
Other			
Replacement Reserve	contribution as per budget expenditures as attributable to each components on a 96.4% basis	as attributable to each component (3.6% for common expenses)	common expenses such as roof (use sq. ft. basis as %)
Mortgage	95.6%	4.4%	

SCHEDULE J

**OPERATING AGREEMENT
INDEPENDENT LIVING BC PROGRAM**

**TENANT SELECTION PROCESS IF TENANTS NOT SELECTED
BY HEALTH AUTHORITY**

1. The Society will maintain an applicant list for prospective Tenants for the Development. It will select Tenants from that list in accordance with the Operating Standards set out in Section 1.5 of this agreement. The following will apply:
 - 1.1 the Society will send a copy of the method and priority criteria for selecting Tenants to BC Housing and will inform BC Housing of any subsequent change to the selection procedure 3 months before implementation.
 - 1.2 eligible applicants for the Development are Seniors or Persons with a Disability who have an income at or below the Core Need Income Threshold as set by BC Housing from time to time (or such other successor income criteria as set from time to time by BC Housing), and comply with the Occupancy Standards as set out in Section 4.3 and Schedule B of this agreement; and
 - 1.3 if the Society is unable to find Tenants that meet the above criteria, the Society will determine an appropriate selection method which must be approved by BC Housing.