

BL10566, BL10674, BL11457, BL10974, BL11854 & BL11912 amended SCHEDULE "B":

**SCHEDULE "B"**  
**Revitalization Tax Exemption Agreement**

THIS AGREEMENT dated for reference the 15<sup>th</sup> day of JUNE, 2020 is

**BETWEEN:**

COLUMBIAN CENTENNIAL HOUSING SOCIETY, Inc. no. sS-16825  
270 Highway 33west  
Kelowna, B.C. V1X1X7

(the "Owner")

**AND:**

CITY OF KELOWNA  
1435 Water Street,  
Kelowna, B.C.  
V1Y 1J4

(the "City")

**GIVEN THAT:**

- A. The Owner is the registered owner in fee simple of lands in the City of Kelowna at **1165 Sutherland Avenue, Kelowna, B.C.** legally described as **Strata Lots #6 - #41 (inclusive, 36 strata lots total) of the proposed subdivision of Lot A, DL 137, ODYD, Plan EPP88875** (the "Parcel");
- B. Council has established a revitalization tax exemption program and has included within the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561 the designation of areas which include the Parcel as a revitalization area; and
- C. The Owner proposes to construct new improvements on the Parcel as described in Appendix "A" attached to and forming part of this agreement (the "Project") and has applied to the City to take part in the revitalization tax exemption program in respect of the Project and the City has agreed to accept the Project under the program;

THIS AGREEMENT is evidence that in consideration of the promises exchanged below, the Owner and the City covenant and agree each with the other as follows:

1. **The Project** – the Owner will use its best efforts to ensure that the Project is constructed, maintained, operated and used in a fashion that will be consistent with and will foster the objectives of the revitalization tax exemption program, as outlined in the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561. Without limiting the generality of the foregoing, the Owner covenants to use its best efforts to ensure that the Project will:
  - a. Ensure the revitalization of the parcel with newly constructed rental accommodation.
  - b. Provide 36 affordable rental suites.
  - c. Be operated, maintained and offered to the public by the Owner on a "not for profit" basis.

2. **Operation and Maintenance of the Project** – throughout the term of this agreement, the Owner shall operate, repair and maintain the Project and will keep the Project in a state of good repair as a prudent owner would do.
3. **Revitalization Amount** – In this agreement, "Revitalization Amount" means the municipal portion of property tax calculated in relation to the increase in the assessed value of improvements on the Parcel resulting from the construction of the Project as described in section 1;
4. **Revitalization Tax Exemption** – subject to fulfilment of the conditions set out in this agreement and in "City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561", the City shall issue a revitalization tax exemption certificate (the "Tax Exemption Certificate") to the British Columbia Assessment Authority entitling the Owner to a property tax exemption in respect of the property taxes due (not including local service taxes) in relation to the Revitalization Amount on the Parcel (the "Tax Exemption") for the calendar year(s) set out in the Tax Exemption Certificate .
5. **Conditions** – the following conditions shall be fulfilled before the City will issue a Tax Exemption Certificate to the Owner in respect of the Project:
  - a. The Owner must complete or cause to be completed construction of the Project in a good and workmanlike fashion and in strict compliance with the building permit and the plans and specifications attached hereto as Appendix "A";
  - b. The completed Project must substantially satisfy the performance criteria set out in Appendix "B" hereto, as determined by the City's Development Planning Manager or designate, in their sole discretion, acting reasonably; and
  - c. The Owner must submit a copy of the Occupancy Permit and Title Certificate to the City of Kelowna's Revenue Branch within 48 months from the date the Agreement is executed by Council.
6. **Calculation of Revitalization Tax Exemption** – the amount of the Tax Exemption shall be equal to;
  - a) For Purpose-Built Rental Housing Projects within the Core Area, Glenmore Valley Village Centre and University South Village Centre as defined by the OCP, 100% of the Revitalization Amount on the parcel, for projects that are subject to a Housing Agreement (for a minimum of 10 years) and where the proposed project is in compliance with the OCP Future Land Use designation at the time of Revitalization Tax Exemption application.
7. **Term of Tax Exemption** – provided the requirements of this agreement, and of the City of Kelowna Revitalization Tax Exemption Program Bylaw No. 9561, are met the Tax Exemption shall be for 10 years after the BC Assessment Authority validates the Tax Exemption Certificate issued by the City of Kelowna's Revenue Branch.,
8. **Compliance with Laws** – the Owner shall construct the Project and, at all times during the term of the Tax Exemption or any renewal term, use and occupy the Parcel and the Project in compliance with all statutes, laws, regulations and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or bylaws, including all the rules regulations policies guidelines criteria or the like made under or pursuant to any such laws.

9. **Effect of Stratification** – if the Owner stratifies the Parcel under the Strata Property Act, then the Tax Exemption shall be prorated among the strata lots in accordance with the unit entitlement of each strata lot for:

- a. the current and each subsequent tax year during the currency of this agreement if the strata plan is accepted for registration at the Land Title Office before May 1; or
- b. for the next calendar year and each subsequent tax year during the currency of this agreement if the strata plan is accepted for registration at the Land Title Office after May 1;

so long as, if the Project is the subject of an operating agreement between the Owner and the Provincial Rental Housing Corporation, the Owner is in compliance with the operating agreement. The Owner agrees to provide written confirmation to the City regarding the Owner's compliance with the said operating agreement, satisfactory to the City, upon the City's reasonable inquiry.

10. **Termination of the agreement** - the revitalization tax exemption agreement will be valid for 48 months from the date the agreement is executed by Council. If the conditions for issuance of a Tax Exemption Certificate have not been met during this term, the owner may request a renewal term to this agreement or the agreement will be terminated.

11. **Cancellation** – the City may in its sole discretion cancel the Tax Exemption Certificate at any time:

- a. on the written request of the Owner; or
- b. effective immediately upon delivery of a notice of cancellation to the Owner if at any time any of the conditions in the Tax Exemption Certificate are not met.
- c. If the Owner is subject to an operating agreement with the Provincial Rental Housing Corporation and is not in compliance with the operating agreement.

If such cancellation occurs, the Owner of the Parcel for which the Tax Exemption Certificate was issued will remit to the City an amount equal to the value of any Tax Exemption received after the cancellation of the Tax Exemption Certificate.

12. **No Refund** – for greater certainty, under no circumstances will the Owner be entitled under the City's revitalization tax exemption program to any cash credit, any carry forward tax exemption credit or any refund for any property taxes paid.

13. **Notices** – any notice or other writing required or permitted to be given hereunder or for the purposes hereof to any party shall be sufficiently given if delivered by hand or posted on the Parcel, or if sent by prepaid registered mail (Express Post) or if transmitted by facsimile to such party:

- a. in the case of a notice to the City, at:

THE CITY OF KELOWNA  
1435 Water Street,  
Kelowna, B.C.  
V1Y 1J4

Attention:  
Phone: Email:

b. in the case of a notice to the Owner, at:

COLUMBIAN CENTENNIAL HOUSING SOCIETY  
270 Highway 33 west, Kelowna, B.C. V1X 1X7

Attention: Keith Beppe , Executive Director  
Phone: 250-862-3206  
Email: cchkeith@shaw.ca

Or at such other address as the party to whom such notice or other writing is to be given shall have last notified the party giving the same.

14. **No Assignment** – the Owner shall not assign its interest in this agreement except to a subsequent owner in fee simple of the Parcel.
15. **Severance** – if any portion of this agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this agreement.
16. **Interpretation** – wherever the singular or masculine is used in this agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties thereto so require.
17. **Further Assurances** – the parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this agreement.
18. **Waiver** – waiver by the City of a default by the Owner shall be in writing and shall not be deemed to be a waiver of any subsequent or other default.
19. **Powers Preserved** – this agreement does not:
  - a. Affect or limit the discretion, rights or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Parcel;
  - b. Affect or limit any enactment relating to the use or subdivision of the Parcel; or
  - c. Relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Parcel and without limitation shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or other rates, levies or charges payable under any bylaw of the City.
20. **Reference** – every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows.
21. **Enurement** – this agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.
22. Any construction of a new improvement or alteration of an existing improvement as of this bylaw undertaken prior to the application for a Revitalization Tax Exemption will not be eligible for consideration
23. The maximum Revitalization Tax Exemption authorized under this Bylaw must not exceed the Revitalization Amount on the Property between:

- a. the calendar year before the construction or alteration began, as outlined under Section 1 of this agreement; and
  - a. the calendar year in which the construction or alteration, as outlined under Section 1 of this agreement, is completed.
24. The Property's assessed value of improvements must not be reduced below the amount assessed in the calendar year prior to construction or alteration, as a result of the Revitalization Tax Exemption.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

Executed by the CITY OF KELOWNA by  
Its authorized signatories:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

Executed by COLUMBIAN CENTENNIAL HOUSING SOCIETY - by its Authorized signatories:

KEITH BEPPE

Name: \_\_\_\_\_  


Name:  
Appendix "A": Plans and Specifications  
Appendix "B": Performance Criteria

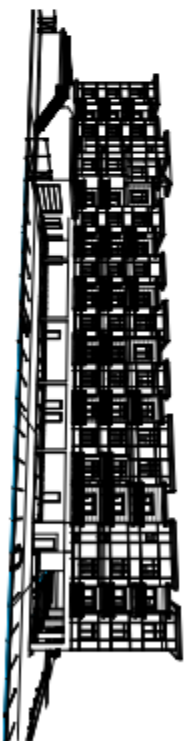
**COLUMBUS CENTRE  
1165 SUTHERLAND AVE. KELOWNA, B.C.  
MIXED COMMERCIAL / RESIDENTIAL (48 UNITS)**



**Richard Hawter**  
ARCHITECT INC.  
500 - 133 SEYMOUR ST  
KAMLOOPS, B.C. V2C 2C7  
PHONE 250.372.8845  
info@rhhawterarchitect.com



**FRONT PERSPECTIVE**  
SCALE: 3/32" = 1'-0"



**REAR VIEW PERSPECTIVE**  
SCALE: 1/8" = 1'-0"

- ARCHITECTURAL DRAWING LIST**
- A000 TITLE SHEET
  - A001 SITE PLAN
  - A100 PARKADE
  - A101 FIRST FLOOR PLAN
  - A102 SECOND FLOOR PLAN
  - A103 THIRD FLOOR PLAN
  - A104 FOURTH FLOOR PLAN
  - A105 ROOF PLAN
  - A200 SUITE LAYOUTS
  - A300 ELEVATIONS
  - A301 ELEVATIONS

TITLE SHEET	
DATE	12-11-12
DRAWN BY	RLH/MLH
CHECKED BY	RLH
SCALE	AS SHOWN
SHEET NO.	A00
TOTAL SHEETS	1

2/19

COLUMBUS CENTRE

1165 SUTHERLAND AVE.  
KELOWNA, BC

RTE20-0001  
Appendix "B"

**PURPOSE-BUILT RENTAL HOUSING AGREEMENT**

THIS AGREEMENT dated for reference \_\_\_\_\_ affects:

**LEGAL DESCRIPTION OF PROPERTY SUBJECT TO THE AGREEMENT:**

Proposed Strata Lots #6 to #41 ( inclusive ) of the subdivision of:

Lot "A" , District Lot 137, Osoyoos Division Yale District, Plan EPP88875

("Land")

And is

**BETWEEN:** CULOS DEVELOPMENT (1996) INC.  
#106 - 1449 St. Paul Street,  
Kelowna, B.C. V1Y2E5

("Owner")

**AND:**

**CITY OF KELOWNA**, a local government incorporated pursuant to the *Community Charter* and having its offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

("City")

**GIVEN THAT:**

- A. The Owner has applied to the City for rezoning of the Lands to permit the construction of a housing complex that will include purpose-built rental housing units, as defined in this Agreement, on certain lands more particularly described in this Agreement;
- B. The City may, pursuant to section 483 of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure, and availability of the housing units on the land or construction on land;
- C. The Owner and the City wish to enter into this Agreement to provide for purpose-built rental housing on the terms and conditions set out in this Agreement, and agree that this Agreement is a housing agreement under s. 483 of the *Local Government Act*; and
- D. The City has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement;

This Agreement is evidence that in consideration of \$1.00 paid by the City to the Owner (the receipt of which is acknowledged by the Owner) and in consideration of the promises exchanged below, the City and Owner agree, as a housing agreement between the Owner and the City under s. 483 of the *Local Government Act*, as follows:

## ARTICLE 1 INTERPRETATION

### 1.1 Definitions -

"Caregiver" means an individual who provides assistance with the performance of the personal functions and activities necessary for daily living that a person is unable to perform efficiently for himself or herself;

"City" means the City of Kelowna;

"Dwelling Unit" means accommodation providing sleeping rooms, washrooms, and no more than one kitchen, intended for domestic use, and used or intended to be used permanently or semi-permanently for a Household. This use does not include a room in a hotel or a motel.

"Household" means

- (a) a person;
- (b) two or more persons related by blood, marriage, or adoption; or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities;
- (c) a group of not more than five persons, including boarders, who are not related by blood, marriage, or adoption, or associated through foster care, all living together in one dwelling unit as a single household using common cooking facilities; or
- (d) a combination of (b) and (c), provided that the combined total does not include more than 3 persons unrelated by blood, marriage or adoption or associated through foster care; all living together in one dwelling unit as a single household using common cooking facilities.

In addition, a household may also include up to one Caregiver or nanny;

"Land" means the land described herein;

"LTO" means the Kamloops Land Title Office or its successor;

"Official Community Plan" means the City of Kelowna Official Community Plan Bylaw No. 10500, or its successor bylaw;

"Owner" means the registered owner of the Lands from time to time and any parcels into which the Lands are subdivided;

"Purpose-Built Rental Housing" means a Dwelling Unit that is intended to be used for rental housing; and

"Tenancy Agreement" means a tenancy agreement as defined in, and subject to, the *Residential Tenancy Act*.



**1.2 Interpretation** - In this Agreement:

- (a) reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
- (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- (c) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this Agreement;
- (d) if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- (e) the word "enactment" has the meaning given in the *Interpretation Act* on the reference date of this Agreement;
- (f) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- (g) reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- (h) the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- (i) time is of the essence;
- (j) all provisions are to be interpreted as always speaking;
- (k) reference to a "party" is a reference to a party to this Agreement and to their respective successors, assigns, trustees, administrators and receivers;
- (l) reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided;
- (m) the definitions given in the City of Kelowna Zoning Bylaw No. 8000, or its successor bylaw, and the Official Community Plan apply for the purposes of this Agreement; and
- (n) any act, decision, determination, consideration, consent or exercise of discretion by a party, or other person, as provided in this Agreement will be performed, made or exercised acting reasonably.

**1.3 Purpose of Agreement** - The Owner and the City agree that:

- (a) this Agreement is intended to serve the public interest by providing for occupancy of a certain number of Dwelling Units, of the kinds provided for in this Agreement, that are in demand in the City of Kelowna but that are not readily available;

- (b) damages are not an adequate remedy to the City in respect of any breach of this Agreement by the Owner, such that the Owner agrees the City should be entitled to an order for specific performance, injunction or other specific relief respecting any breach of this Agreement by the Owner.

**ARTICLE 2  
HOUSING AGREEMENT AND LAND USE RESTRICTIONS**

**2.1 Land Use Restrictions** - The Owner and the City hereby covenant and agree as follows:

- (a) The Land will be used only in accordance with this Agreement;
- (b) The Owner will design, construct and maintain one or more buildings providing **36** Dwelling Units as Purpose-Built Rental Housing
- (c) The Owner acknowledges that the City will not support applications to stratify the building(s) on the Land, thereby allowing the identified Purpose-Built Rental Housing Dwelling Units to be sold independently of each other, for a period of ten (10) years from the date of this Agreement.

**ARTICLE 3  
HOUSING AGREEMENT AND TRANSFER RESTRICTIONS**

**3.1 Purchaser Qualifications** - The City and the Owner agree as follows:

- (a) the Owner will not sell or transfer, or agree to sell or transfer, any interest in any building containing Purpose-Built Rental Housing Dwelling Units on the Land other than a full interest in the fee simple title to an agency or individual that will continue to ensure that the Purpose-Built Rental Housing Dwelling Units are available in accordance with this Agreement.

**3.2 Use and Occupancy of Purpose-Built Rental Housing Dwelling Unit** - The Owner agrees with the City as follows:

- (a) the Owner will rent or lease each Purpose-Built Rental Housing Dwelling Unit on the Land in accordance with the *Residential Tenancy Act*, and in no event may the Owner itself occupy a Purpose-Built Rental Housing Dwelling Unit or use the Purpose-Built Rental Housing Dwelling Unit for short-term vacation accommodation; and
- (b) the Owner will deliver a copy of the Tenancy Agreement for each Purpose-Built Rental Housing Dwelling Unit to the City upon demand.

**ARTICLE 4  
GENERAL**

**4.1 Notice of Housing Agreement** - For clarity, the Owner acknowledges and agrees that:

- (a) this Agreement constitutes a housing agreement entered into under s. 483 of the *Local Government Act*;
- (b) the City is requiring the Owner to file a notice of housing agreement in the LTO against title to the Land;
- (c) once such a notice is filed, this Agreement binds all persons who acquire an interest in the Land;
- (d) in the event the parties agree to release this Agreement from the title of the Land, which may not occur before the tenth (10<sup>th</sup>) anniversary of the date of this Agreement, the Owner will repay the City for 100% of the amount of the rental grant received from the City. Such repaid funds will be directed to the City's Housing Opportunities Reserve Fund.

**4.2 No Effect On Laws or Powers** - This Agreement does not

- (a) affect or limit the discretion, rights, duties or powers of the City under any enactment or at common law, including in relation to the use or subdivision of land,
- (b) impose on the City any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement,
- (c) affect or limit any enactment relating to the use or subdivision of land, or
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of land.

**4.3 Management** – The Owner covenants and agrees that it will furnish good and efficient management of the Dwelling Units and will permit representatives of the City to inspect the Dwelling Units at any reasonable time, subject to the notice provisions of the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Dwelling Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land. Notwithstanding the foregoing, the Owner acknowledges and agrees that the City, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Dwelling Units.

**4.4 Notice** - Any notice which may be or is required to be given under this Agreement will be in writing and either be delivered or sent by facsimile transmission. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery. Any notice which is sent by fax transmission is to be considered to have been given on the first business day after it is sent. If a party changes its address or facsimile number, or both, it will promptly give notice of its new address or facsimile number, or both, to the other party as provided in this section.

**4.5 Agreement Runs With the Land** - Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the City in respect of the Land and this Agreement burdens the Land and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including by subdivision or by strata plan under the *Strata Property Act*.

- 4.6 Limitation on Owner's Obligations** - The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Land.
- 4.7 Release** – The Owner by this Agreement releases and forever discharges the City and each of its elected officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors, and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or the Dwelling Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them. This clause will survive the termination of this Agreement.
- 4.8 Joint Venture** – Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the City or give the Owner any authority to bind the City in any way.
- 4.9 Waiver** - An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.
- 4.10 Further Acts** - The Owner will do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.
- 4.11 Severance** - If any part of this Agreement is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.
- 4.12 Equitable Remedies** – The Owner acknowledges and agrees that damages would be an inadequate remedy for the City for breach of this Agreement and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement.
- 4.13 No Other Agreements** - This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.
- 4.14 Amendment** - This Agreement may be discharged, amended or affected only by an instrument duly executed by both the Owner and the City.
- 4.15 Enurement** - This Agreement binds the parties to it and their respective successors, heirs, executors and administrators. Reference in this Agreement to the "City" is a reference also to the elected and appointed officials, employees and agents of the City.
- 4.16 Deed and Contract** - By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

IN WITNESS WHEREOF the parties hereunto have executed this Agreement on the date and year first above written.

SIGNED, SEALED & DELIVERED in )  
the presence of: )

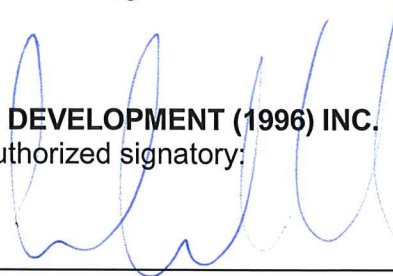
\_\_\_\_\_  
Signature of Witness )

\_\_\_\_\_  
Print Name )

\_\_\_\_\_  
Address )

\_\_\_\_\_  
Occupation )

**CULOS DEVELOPMENT (1996) INC.**  
by its authorized signatory:



*Michael A Culos*

\_\_\_\_\_  
Print Name: Michael A. Culos  
President

SIGNED, SEALED & DELIVERED in )  
the presence of: )

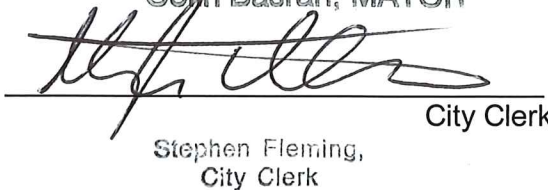
*Fiona Dawn Hands*  
\_\_\_\_\_  
Signature of Witness )

FIONA DAWN HANDS  
A COMMISSIONER FOR TAKING  
AFFIDAVITS FOR BRITISH COLUMBIA  
\_\_\_\_\_  
Print Name  
1435 WATER STREET, KELOWNA, BC V1Y 1J4

Order No. 2019-1289  
Expiry Date: 2022-08-31

\_\_\_\_\_  
Address )

**CITY OF KELOWNA**  
by its authorized signatories:

  
\_\_\_\_\_  
Colin Basran, MAYOR Mayor  
\_\_\_\_\_  
Stephen Fleming,  
City Clerk



**PROVINCIAL RENTAL SUPPLY  
OPERATING AGREEMENT**

THIS AGREEMENT is dated for reference: June 20, 2019

BCH File # 94407-02 / 7951

BETWEEN

**COLUMBIAN CENTENNIAL HOUSING SOCIETY**  
2-1920 Richter Street, Kelowna, British Columbia V1Y 2N2

(the "Provider")

AND

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

("BC Housing")

with respect to the Development at  
1165 Sutherland Avenue, Kelowna, British Columbia V1Y 5Y2

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**AGREEMENT SUMMARY**

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**PART 1 – SUMMARY**

1. The Provider has acquired the Development under the Housing Hub Provincial Rental Supply program, a housing program funded by the Government of British Columbia acting through its agent, BC Housing.
2. The goal of the program is to increase the supply of affordable and appropriate housing for Middle-income households across British Columbia.
3. The Site contains non-residential space and consists of the following:
  - a. thirty-six (36) Residential Units for Middle-income households owned and operated by the Provider. The Development is the specific subject matter of this Agreement; and
  - b. one (1) commercial space owned and operated by the Provider.
4. The parties acknowledge that the Development is part of a strata plan.
5. The parties agree to amend this Agreement when the strata plan and associated legal description are finalized and registered.

**PART 2 – SERVICE DESCRIPTION**

1. BC Housing and the Provider have agreed that the Provider will own and operate the Development and collect Rent from the Residents, on the terms and conditions of this Agreement.
2. The common goal of the parties in making this Agreement is to provide housing for Middle-income households.
3. The Provider is a fully independent self-governing entity registered under the *Societies Act* (British Columbia). Operation of the Provider is subject to its Constatting Documents and the *Societies Act* (British Columbia). The members of the Provider and its governing board are responsible for all affairs of the Provider related to both Provider operations in general and the ongoing management of the Development.
4. In entering this Agreement with the Provider, BC Housing recognizes that the Provider was established for the advancement of specific social purposes prior to its decision to participate in this particular Agreement.
5. BC Housing recognizes that the Provider brings both tangible and intangible assets to the Development. The Provider's board members serve on a voluntary basis, i.e., without recompense for their time and expertise. The Provider and the board bring resources, knowledge and expertise on such things as property management, Resident management and Resident support, and services which specifically relate to the Development and its location.
6. The Provider and board are expected to create an environment that is supportive of the needs of the Residents and provide a sense of community within the Development and to that purpose may provide Resident services and activities not funded by this Agreement.

**PART 3 – AGREEMENT**

1. TERM
  - a. The parties agree as follows for the Term of the Agreement which is for forty (40) years from the Commencement Date, unless earlier terminated in accordance with the provisions of this Agreement.
2. SCHEDULES
  - a. All of the Schedules attached to this Agreement are an integral part of this Agreement.

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



**BC Housing Operating Agreement – Agreement Summary**

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

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

**COLUMBIAN CENTENNIAL HOUSING SOCIETY**

Per its authorized signatories

**BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION**

Per its authorized signatories

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**SCHEDULE A – GENERAL PROVISIONS**

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**A. DEFINITIONS**

1. "**Capital Fund**" means an amount the Provider is required to hold in reserve for capital repairs, replacements and improvements pursuant to *Schedule B, Part C, Clause 1*.
2. "**Capital Plan**" means the plan outlining repairs, replacements and improvements at the Development, developed by the Provider and submitted to BC Housing in a format acceptable to BC Housing, pursuant to *Schedule B, Part C*.
3. "**Commencement Date**" means the day on which the Provider registers its fee simple interest in the Development at the Land Title Office.
4. "**Constating Documents**" means the constitution and bylaws of the Provider, together with any amendments, as registered with the appropriate registry.
5. "**Declaration of Income**" means the declaration to be completed by a Resident as evidence of the Income of that Resident.
6. "**Development**" means the housing development, acquired and operated by the Provider under Provincial Rental Supply, and located within the Site.
7. "**Fiscal Year**" means the Provider's Fiscal Year, ending on August 31 or as otherwise agreed by the parties.
8. "**Improvements**" means those improvements, structures, buildings, fixtures and systems which exist within the Development from time to time including the heating, ventilating, air-conditioning, plumbing, electrical and mechanical systems and equipment.
9. "**Income**" means total income before tax from all sources of a Resident.
10. "**Loan**" means the mortgage loan, arranged by BC Housing for the Provider, in order to finance the acquisition of the Development.
11. "**Middle-income**" represents the maximum income for eligibility to occupy a Residential Unit and means:
  - a. For Residential Units with less than two (2) bedrooms, a gross household Income that does not exceed the 75<sup>th</sup> income percentile for families without children, as determined by BC Housing from time to time. For 2019, this figure is \$112,410.00.
  - b. For Residential Units with two (2) or more bedrooms, a gross household Income that does not exceed the 75<sup>th</sup> income percentile for families with children, as determined by BC Housing from time to time. For 2019, this figure is \$155,510.00.
12. "**Occupancy Standards**" means the standards for household sizes of a Resident relative to the number of bedrooms in a Residential Unit. Unless otherwise agreed in writing by BC Housing, the following standards apply:
  - a. No more than two (2) and no less than one (1) person per bedroom.
  - b. Spouses and couples share a bedroom.
  - c. Parents do not share a bedroom with their children.
  - d. Dependents aged eighteen (18) or over do not share a bedroom.
  - e. Dependents of the opposite sex age five (5) or over do not share a bedroom
13. "**Provincial Rental Housing Corporation**" (PRHC) is incorporated under the *Business Corporations Act* (British Columbia). PRHC is the land holding corporation for provincially owned social housing. BC Housing administers PRHC, which buys, holds and disposes of properties, and leases residential properties to non-profit societies and co-operatives.
14. "**Record**" means accounts, books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by graphic, electronic, mechanical and other means, but does not include a computer program or any other mechanism that produces records.
15. "**Rent**" means the amount a Resident is obliged to contribute monthly to the Provider for a Residential Unit.
16. "**Residency Agreement**" means an agreement, lease, license or other right of a Resident to occupy a Residential Unit.

17. **"Resident"** means the person or persons legally entitled to reside in a Residential Unit pursuant to a Residency Agreement.
18. **"Residential Unit"** means a self-contained residential dwelling within the Development operated under this Agreement.
19. **"Site"** means all lands and improvements, including the Development, situated at 1165 Sutherland Avenue, Kelowna, British Columbia V1Y 5Y2, and legally described as PID: 030-700-990 Lot A District Lot 137 Osoyoos Division Yale District Plan EPP88875.
20. **"Specific Purpose"** means the operation of the Development to provide affordable housing for persons who, at the date of commencement of the residency, have Middle Incomes.
21. **"Term"** means the period of this Agreement as outlined in *Agreement Summary, Part 3, Clause 1*.

## B. RESPONSIBILITY OF THE PROVIDER

1. **Role of the Provider.** The Provider:
  - a. will fulfill its obligations under this Agreement in a proper, efficient and timely manner as would a prudent provider of similar services, and in accordance with this Agreement; and
  - b. agrees and understands that it is solely responsible for all its obligations under this Agreement, including but not limited to its obligations arising as a result of any relationships between the Provider and the applicants, Residents and other occupants of the Development, and any and all relationships with third parties, volunteers, or other invitees.
2. **Corporate Organization.** The Provider will maintain a well-organized corporate structure and in particular will:
  - a. operate as a non-profit entity;
  - b. remain in good standing with the appropriate registry;
  - c. have a purpose that includes the provision of affordable housing and is consistent with the Specific Purpose;
  - d. not permit any director, officer, or member of the Provider to be remunerated except for reimbursement of any expenses necessarily and reasonably incurred by the director, officer, or member while engaged in the affairs of the Provider. Reasonable wages or salary paid to an employee of the Provider who is not an officer or director of the Provider are exempt from this section;
  - e. provide for the disposition of assets to an organization with a similar charitable purpose in the event of dissolution or wind up of the Provider;
  - f. not alter its Constatng Documents in any way that would make them inconsistent with the terms of this Agreement or that would render the Provider unable to fulfill its obligations under this Agreement;
  - g. provide BC Housing with a copy of the Provider's Constatng Documents and any amendments thereto, as requested by BC Housing from time to time; and
  - h. maintain written policies and procedures regarding the Provider's operations, including safety and security, human resource management and tenant management.
3. **Compliance.** The Provider will remain in compliance with all applicable laws, bylaws, regulations, codes and corporate or contractual obligations and is responsible for obtaining and complying with all necessary approvals, licenses and permits relating to the Provider's obligations under this Agreement.
4. **Conflict of Interest.** The Provider will:
  - a. conduct its operations in accordance with the Provider's by-laws and in a manner such that no part of the operations, finances and other assets or resources of the Provider under this Agreement, are used directly or indirectly for the provision of any gain or benefit to any officer, director, employee, or member of the Provider or any entity or individual associated with, or related to them, without the prior written approval of BC Housing;

- b. not, during the Term, enter into a contractual relationship with a third party, conduct business with, perform or receive a service for or provide advice to or receive advice from any entity or individual where such activity may, directly or indirectly, cause an actual or perceived conflict of interest, without the prior written approval of BC Housing; and
  - c. disclose any actual or perceived conflict of interest to the Provider and BC Housing in advance, and all such disclosure and any prior written approval from BC Housing will be recorded in the minutes of the meetings of the directors and/or the relevant committee of the Provider.
5. **Communication.** The Provider will notify BC Housing as soon as possible of any significant changes or incidents that may impact the Provider's obligations under this Agreement.
6. **Agency.** This Agreement will not be construed as creating any partnership or agency between BC Housing and the Provider and neither party will be deemed to be the legal representative of any other party for the purposes of this Agreement. Neither BC Housing nor the Provider will have, and will not represent itself as having, any authority to act for, to undertake any obligation on behalf of the other party, except as expressly provided in this Agreement.
7. **Restrictions on Disposition and Encumbrance.** The Provider will not transfer, encumber or sell or agree to transfer, encumber or sell or otherwise change or agree to change the legal or beneficial interests of the Development or any part of the Development without the prior written approval of BC Housing, in its sole discretion.
8. **Restrictions on Authority.** The Provider will not commit or otherwise bind BC Housing to any agreements in any manner whatsoever, except to the extent specifically provided in this Agreement and in particular, without limiting the generality of the foregoing, the Provider will not take any action, expend any sum, make any decision, give any consent, approval or authorization or incur any obligation with respect to any lease or any other arrangement involving the rental, use or occupancy of all or part of the Development other than a Residency Agreement in accordance with this Agreement, except with the prior written approval of BC Housing, in its sole discretion.
9. **Maintenance.** The Provider will maintain the Development and all Development related equipment in a state of safe and good repair for the benefit of the Residents and the community in which the Development is located by carrying out, or arranging for the carrying out of tasks that include but are not limited to the following:
- a. all routine maintenance and repair work;
  - b. routine inspections to ensure safety hazards are identified and corrected;
  - c. regular fire inspections, drills, testing, maintenance, training and maintaining records in respect of the same; and
  - d. routine waste management services.
10. **Inspection.** The Provider will permit BC Housing to inspect the Development or other premises used by the Provider pursuant to this Agreement at any time.

**C. RESPONSIBILITY OF BC HOUSING**

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

**D. OPERATIONAL REVIEW**

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

## E. RECORDS

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

## F. LIABILITY

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

## G. DISPUTE RESOLUTION

1. If a dispute arises between the parties out of or in connection with this Agreement the parties agree that the following dispute resolution process will be used:

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

#### H. DEFAULT AND TERMINATION

1. **Event of Default.** Any of the following events will constitute an event of default by the Provider under this Agreement:
  - a. the Provider fails to comply with any provision of this Agreement;
  - b. the Provider fails to remain in good standing with the appropriate registry;
  - c. the Provider is in breach of or fails to comply with any applicable law, regulation, license or permit;
  - d. any representation or warranty made by the Provider under this Agreement is found to be untrue or incorrect; or
  - e. if the Provider knew or ought to have known any information, statement, certificate, report or other document furnished or submitted by, or on behalf of, the Provider pursuant to, or as a result of, this Agreement is untrue or incorrect.
2. **Default.** Upon the occurrence of any event of default set out in *Schedule A, Part H, Clause 1*, BC Housing will provide written notice to the Provider which sets out the breach and the date by which the breach must be rectified. The Provider will be given thirty (30) days to rectify the breach or such longer period as determined solely by BC Housing.
3. **Termination on Continued Default.** If the Provider fails to comply with a written notice given in accordance with this Agreement within the specified period of time, BC Housing, in its sole discretion, may immediately terminate this Agreement or appoint a receiver.
4. **Additional Remedies.** Upon the occurrence of any event of default set out in *Schedule A, Part H, Clause 1*, BC Housing may, in addition to and without prejudice to BC Housing obtaining any other remedy:
  - a. reduce or suspend any payment that would otherwise be payable by BC Housing to the Provider pursuant to this Agreement; and
  - b. exercise its rights and remedies under the Section 219 Covenant.
5. **Appointment of Receiver.** As an alternative to exercising any right of termination provided under this Agreement, BC Housing may elect to appoint, or request a court of competent jurisdiction to appoint, a receiver, with or without bond as BC Housing or the court may determine, and, from time to time, may remove any receiver so appointed and appoint another in its place, or request the court to do so. A receiver so appointed is not an officer or agent of BC Housing, and has all the necessary and exclusive power to deal with the obligations of this Agreement including the power to:
  - a. take control, possession and direction of the Development and the Provider's assets in connection with this Agreement, and carry on the business of the Provider in operating, managing and maintaining the assets in accordance with this Agreement;
  - b. demand and recover all the income of the Development by direct action, distress or otherwise, in the name of either the Provider or BC Housing;

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

## I. GENERAL PROVISIONS AND INTERPRETATION

1. **Headings.** The headings in this Agreement form no part of the Agreement and will be deemed to have been inserted for convenience only.
2. **Notices.** All notices, demands or requests of any kind, which the Provider or BC Housing may be required or permitted to serve on the other in connection with this Agreement, will be in writing and may be served on the parties by registered mail, personal service, fax or other electronic transmission, to the addresses set out on the cover page. Any notice, demand or request made to BC Housing, to be effective, will be addressed to the BC Housing representative assigned to this matter by BC Housing.
3. **Change of Address.** Either party from time to time, by notice in writing served upon the other party, may designate a different address or different or additional personnel to which all those notices, demands or requests are thereafter to be addressed.

4. **Time.** Time is of the essence of this Agreement. If either party expressly waives this requirement, that party may reinstate it by delivering notice to the other party. Any time specified pursuant to this Agreement for observing or performing an obligation is local time in Vancouver, British Columbia.
5. **Governing Law.** This Agreement is to be governed by and construed and enforced in accordance with the laws of the Province of British Columbia, which will be deemed to be the proper law hereof and the courts of British Columbia will have the non-exclusive jurisdiction to determine all claims and disputes arising out of this Agreement and the validity, existence and enforceability hereof.
6. **Validity of Provisions.** If a court of competent jurisdiction finds that any part of this Agreement is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability does not affect any other provisions of this Agreement. The balance of the Agreement is to be construed as if that invalid, illegal or unenforceable provision had never been included and is enforceable to the fullest extent permitted at law or at equity.
7. **Waiver.** No consent or waiver, expressed or implied, by a party of any default by the other party in observing or performing its obligations under this Agreement is effective unless given in writing, nor is it a consent or waiver of any other default. Failure on the part of either party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long that failure continues, is not a waiver by that party of its rights under this Agreement or at law or at equity.
8. **Extent of Obligations and Costs.** Every obligation of each party in this Agreement extends throughout the Term. To the extent an obligation ought to have been observed or performed before or upon the expiry or earlier termination of the Term, that obligation, including any indemnity, survives the expiry or earlier termination of the Term until it has been observed or performed.
9. **Statutes.** Any reference in this Agreement to a provincial or federal statute includes the statute as it exists on the reference date of this Agreement and any subsequent amendments or replacements.
10. **Binding Effect.** This Agreement will enure to the benefit of and be binding upon the successors and permitted assigns of the parties, as applicable.
11. **Counterparts.** This Agreement may be validly executed and delivered by the parties hereto in any number of counterparts and all counterparts, when executed and delivered, will together constitute one and the same instrument. Executed copies of the signature pages of this Agreement sent electronically will be treated as originals, fully binding and with full legal force and effect, and the parties hereto waive any rights they may have to object to such treatment, provided that this treatment will be without prejudice to the obligation of the parties hereto to exchange original signatures as soon as is reasonably practicable after execution of this Agreement, but failure to do so will not affect the validity, enforceability or binding effect of this Agreement.
12. **Assignment and Subcontracting.**
  - a. The Provider will not without the prior written consent of BC Housing:
    - i. assign, either directly or indirectly, this Agreement or any right of the Provider under this Agreement; or
    - ii. subcontract any obligation of the Provider under this Agreement.
  - b. No subcontract entered into by the Provider will relieve the Provider of any of its obligations under this Agreement or impose upon BC Housing any obligation or liability arising from any such subcontract. The Provider must ensure that any subcontractor fully complies with this Agreement in performing the subcontracted services.
13. **BC Housing Approval.** This Agreement is enforceable only in the event that BC Housing approves this project, in its sole discretion. In the event that this project fails to receive BC Housing's final approval, this Agreement is of no effect and will be deemed to have never commenced.



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**SCHEDULE B – FINANCIAL**

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**A. FUNDING ASSISTANCE FROM BC HOUSING**

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

**B. REVENUES AND EXPENSES**

1. **Rent.** The Rent for the Residents of the Development will be set at or below the market rent for that unit type in the community. Market rents will be determined based on a market rent survey for comparable sized units in the community. Over time, the Provider will make an effort to increase the number of units offered below market rent as operating costs and revenues permit.
2. **Revenues.** The Provider will be responsible for collecting all Rents and other revenue for the Development, and the Provider will be responsible for paying out of such revenues all costs associated with the operation of each Development.
3. **Deficit.** The Provider will be responsible for any operating shortfalls or extraordinary expenses. Any deficit will not be the responsibility of BC Housing.

**C. CAPITAL FUND**

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

**D. ACCUMULATED OPERATING SURPLUS**

1. **Accumulated Operating Surplus.** The Provider will retain the accumulated operating surplus. The Provider will use the accumulated operating surplus in order of priority as follows:
  - a. to increase the number of below market rent units in the Development;
  - b. on costs relating directly to the Development; or
  - c. any other purpose that is consistent with the provision of affordable housing.

**E. FINANCIAL MANAGEMENT AND ADMINISTRATION**

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

## BC Housing Operating Agreement – Schedule B

2. **Operating Budget.** The Provider will prepare an operating budget in advance of each Fiscal Year, in a format approved by BC Housing, and regularly review financial affairs in accordance with *Schedule B*.
3. **Revenue.** All revenue received by the Provider from whatever source with respect to the Development will be collected by the Provider, held by the Provider and used by the Provider solely for the purpose of and to the extent authorized by this Agreement.
4. **Reporting:** Every three (3) years, or as otherwise requested by BC Housing from time to time, the Provider will submit to BC Housing a report in a format approved by BC Housing. The report will include the following:
  - a. current financial statements;
  - b. current rent levels; and
  - c. household incomes at move-in.

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**SCHEDULE C – RESIDENT SELECTION AND RESIDENCY AGREEMENTS**

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**A. RESIDENT SELECTION AND RESIDENCY AGREEMENTS**

1. **Landlord and Tenant Relationship.** The full normal relationship between landlord and tenant will exist between the Provider and the Resident. It is understood that BC Housing will not be responsible to the Provider for any breach or failure of the Resident to observe any of the terms of the Residency Agreement between the Resident and the Provider, including the covenant to pay Rent.
2. **Resident Selection.** The Provider will select Residents in accordance with the Specific Purpose. The Provider will use all reasonable efforts to maintain full occupancy of the Development with Residents who meet the Specific Purpose, but if there are no applicants for a vacant unit in accordance with the Specific Purpose then the Provider may accept applicants at any income level with the approval of BC Housing which will not be unreasonably withheld. Over time, as operating surpluses permit, the Provider will increase the number of units being offered below market rent.
3. **Discrimination.** The Provider will select Residents without unlawful discrimination on the basis of race, religion, culture, sexual orientation, gender identity, social condition, or level of physical ability. Where restricted populations are targeted, consideration of and compliance with applicable anti-discrimination legislation must be documented and submitted to BC Housing on request.
4. **Full Occupancy.** The Provider will use all reasonable efforts to maintain full occupancy of the Development and will notify BC Housing of any extended vacancies.
5. **Approved Residents.** All Residents must be selected in accordance with the Specific Purpose and must be placed in a Residential Unit appropriate to their household size in accordance with the Occupancy Standards. Exceptions may be made for:
  - a. persons designated by mutual agreement between BC Housing and the Provider; or
  - b. staff or other authorized personnel required to operate and maintain the Development and who are bona fide employees of the Provider. The maximum income threshold/limitation does not apply to this type of residency.
6. **Membership in Provider.** The Provider will not require a Resident to be a member of the Provider.
7. **Residency Agreements.** The Provider will enter into a Residency Agreement with each Resident and all Residency Agreements will be in compliance with the *Residential Tenancy Act* (British Columbia).
8. **Resident Relations.** The Provider will establish policies and procedures to:
  - a. select Residents in an open, fair, consistent and non-discriminatory way;
  - b. serve Residents promptly and courteously, with clear and informative communication;
  - c. provide each Resident with access to information concerning that Resident and protect the privacy of Residents; and
  - d. develop an appeals process for Resident related issues. The process must be transparent and accessible for all applicants and Residents.
9. **Proof of Income.** The Provider will obtain a declaration ("Declaration of Income") and supporting documentation as evidence of the Income of that Resident at the time of the initial occupancy. The declaration will be in a form approved by BC Housing as may be amended by BC Housing from time to time. The Provider will maintain a copy of each Resident's proof of Income in a file available to BC Housing on request.

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**SCHEDULE D – INSURANCE**

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**A. INSURANCE BY PROVIDER**

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