

OPERATING AGREEMENT

Between:

(the “Operator”)

And:

CITY OF VANCOUVER
(the “City”)

Regarding:

FIRE HALL # 5 AFFORDABLE HOUSING

*Please Note that this draft operator agreement is a sample document only.
The form of operator agreement to be used in respect of this project,
ultimately, will be determined on the basis of the nature of the proposal
accepted by the City, if any, and negotiations with a successful proponent,
if any.*

REQUEST FOR PROPOSAL NO. PS20130493
OPERATOR SELECTION FOR AFFORDABLE HOUSING ASSOCIATED WITH FIRE HALL No. 5
DRAFT OPERATING AGREEMENT (SAMPLE)

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OPERATING AGREEMENT

WHEREAS:

1. Pursuant to the Lease (as defined herein), the City has leased the Premises (as defined herein) to the Operator for a term of 60 years to use and operate them on a not-for-profit basis as a non-market rental housing facility to provide affordable rental housing for persons qualify for it as set forth in this Agreement.
2. This Agreement supplements the Lease by setting forth details of the agreed day-to-day and long-term operational requirements for the Facility (as defined herein).

THEREFORE, the parties agree as follows:

3. The Operator will use and operate the Premises at all times during the Term (as defined herein) on a not-for-profit basis as a non-market rental housing facility in accordance with this Agreement.
4. The common goal shared by the City and the Operator in making this Agreement is to provide safe, secure, well managed and fairly priced rental housing for persons eligible therefor as set out in this Agreement.
5. All of the Schedules attached to this Agreement are an integral part of it.
6. This Agreement and the Lease constitute all of the agreements in their entirety between the parties with respect to the subject matter of this Agreement.
7. 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 Operator and the City have executed this Agreement effective as of the Commencement Date:

Per its authorized signatory

Signature

Date Signed

Print Name and Title

CITY OF VANCOUVER

Per its authorized signatory

Signature

Date Signed

Print Name and Title

SCHEDULE A - GENERAL PROVISIONS AND SCHEDULES

A. DEFINITIONS

1. **“Alterations”** means all alterations, changes, replacements, substitutes, additions and improvements to the Premises.
2. **“Assets”** of an Occupant (where “Occupant” includes all persons for whom the Residential Unit serves as the principal residence) means all tangible personal and real property of a potential income earning nature and includes without limitation, accounts in banks, trust companies, etc; stocks and bonds; real estate; equity in a business; Registered Retirement Savings Plans, Registered Retirement Income Plans; and cash.
3. **“Below Market Occupant”** means a Household comprised of one adult or two or more cohabiting adults, with or without co-habiting children, residing in a Residential Unit whose collective income is such that the Market Rent payable for the Residential Unit proposed to be occupied by such Household exceeds a level set by the City, which, as of the Commencement Date, is 30% of such Household’s collective Income. This level will be reviewed periodically by the City and may be increased.
4. **“Below Market Occupant Rent Contribution”** means the amount an Occupant is obliged to contribute monthly to the Operator for a Residential Unit based on the Rent Scale.
5. **“Capital Maintenance Reserve”** means a reserve to be established, funded and managed by the Operator of not less than of \$60 per Residential Unit per month, as more particularly described in *Schedule B, Clause C.1.*
6. **“City Personnel”** means each of the elected officials, officers, employees, contractors and agents of the City, and their respective heirs, executors, administrators, personal representatives, successors and assigns.
7. **“Commencement Date”** means the date as of which this Agreement and the Lease have both been executed by all parties, and the Lease has been registered in the Land Title Office.
8. **“Consumer Price Index”** means the consumer price index published by Statistics Canada (or by a successor or other governmental agency, including a provincial agency, if Statistics Canada stops to publish such data), in respect of the historical cost of the construction of apartment buildings in the Vancouver metropolitan area, or if such consumer price index is no longer published, an index published in substitution for the consumer price index or a replacement index designated by the City, or if no comparative calculation can reasonably be made by reference to any such consumer price index, then by reference to such other analysis which, in the City’s opinion, most accurately indicates the changes in the cost of the construction of apartment buildings in the Vancouver metropolitan area during the period in question.
9. **“Declaration of Income and Assets”** means the declaration to be completed by an Occupant as evidence of the Income and Assets of that Occupant as required for the Rent assessment.
10. **“Operator Operating Reserve”** means a reserve to be established, funded and managed by the Operator from operating surpluses, in an amount equivalent to:
 - a. in the first year of the Term, the annual Operating Budget for that year (exclusive of Leasehold Mortgage costs, if any, and Capital Maintenance Reserve contributions); and
 - b. thereafter, the total operating costs for the Fiscal Year most recently completed based on the Operator’s audited financial statements (exclusive of Leasehold Mortgage costs, if any, and Capital Maintenance Reserve contributions), as more particularly described in *Schedule B, Clause C.2.*
11. **“Operator Personnel”** means each of the directors, officers, employees, contractors and agents of the Operator, and their respective heirs, executors, administrators, personal representatives, successors and assigns.
12. **“Event of Default”** has the meaning set out in this *Schedule A, Clause I.*

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13. when due, which may result from delays in achieving full occupancy and one time start-up costs, as more particularly described in *Schedule B, Clause B.1.a.*
14. "Fiscal Year" means the fiscal year of the Operator, to be determined in accordance with *Schedule A, Clause E.1.*
15. "Household" means all persons who together are entitled to reside and who do reside in a Residential Unit pursuant to an Occupancy Agreement.
16. "Household Income Limits" or "HILS" formerly known as Core Need Income Threshold (or CNIT), means the housing income limits (or HILs) for Vancouver published by BC Housing which is the maximum gross household income an applicant may have in order to be eligible for subsidized housing in Vancouver.
17. "Income of the Occupant" means the total annual income before income tax from all sources of the Occupant, calculated as of the date when the Occupant becomes a resident of the Premises, and includes without limitation, all income from earnings, including commissions and tips; all income from all public and private pension plans, Old Age Security and Guaranteed Income Supplement; all income received under the *Employment and Assistance Act*, the *Employment and Assistance for Persons with Disabilities Act*, or successor legislation; Disabled Veteran's Allowance; alimony; child support; workers' compensation benefits; employment insurance; and actual income from assets; but excludes, the items listed in *Schedule G, Clause B.*
18. "Income Assistance" means income received under the *Employment and Assistance Act*, the *Employment and Assistance for Persons with Disabilities Act*, or successor legislation.
19. "Lease" means the lease agreement entered into concurrently with this Agreement by the City and the Operator, pursuant to which the City agreed to lease the Premises to the Operator for 60 years.(Lease term to be confirmed)
20. "Leasehold Mortgage" (if applicable) means the mortgage of the Operator's interest (as sub-lessee) in the Premises pursuant to the Lease, and includes all financing agreements entered into by the Operator with the mortgagee related thereto.
21. "Maintenance Plan" means the maintenance standards and practices required to preserve the Premises, both short-term and long-term, in form and contents pre-approved by the City (see also *Schedule A, Clause B.15* and *Schedule B, Clauses B.13.h, B.15 and C.1.*)
22. "Market Occupant" means a Household that pays the Market Rent for a Residential Unit.
23. "Market Rent" means the rates charged for a Residential Unit that reflects the prevailing market rent for comparable units.
24. "Occupancy Agreement" means an Agreement, lease, license or other right of an Occupant to occupy a Residential Unit that complies with the *Schedule E.*
25. "Occupancy Guidelines" means the guidelines for household sizes of a Below Market Occupant relative to the number of bedrooms in a Residential Unit. Unless otherwise agreed in writing by the City, the following guidelines apply:
 - a. no more than two and no less than one person per bedroom;
 - b. spouses and couples may share a bedroom;
 - c. parents do not share a bedroom with their children;
 - d. dependents aged 18 or over do not share a bedroom; and
 - e. dependents of the opposite sex age five or over do not share a bedroom.
26. "Occupant" means the person or persons legally entitled to reside in a Residential Unit pursuant to an Occupancy Agreement, including any person residing in a Residential Unit who is not named in the Occupancy Agreement.
27. "Operator" means _____.
28. "Operator Personnel" means each of the directors, officers, employees, contractors and agents of The Operator, and their respective heirs, executors, administrators, personal representatives, successors and assigns.
29. "Operating Budget" means the annual budget for the Premises prepared by the Operator in accordance with *Schedule B, Clause A.*
30. "Operating Expenses" means all sums, costs, expenses, outgoings and other amounts, other than Basic Rent (as defined in the Lease), payable in respect of the Premises, including, without limitation, Realty Taxes, payments in lieu of Realty Taxes, Utilities,

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insurance, salaries and benefits paid to staff engaged in providing services to the Premises or an Occupant pursuant to this Agreement or the Lease, principal, interest and fees payable pursuant to the Mortgage (if any), amounts payable by the Lessee under Permitted Encumbrances (each as defined in the Lease

31. **"Operating Income"** means all gross income, revenue, sums and other amounts, directly or indirectly, collected by or credited to the Operator pursuant to this Agreement or the Lease, including, without limitation, Rents, Utilities, parking fees, laundry machine revenue and other fees and charges payable by Occupants for use of the Premises, amounts payable to the City (other than in its regulatory capacity as a municipal corporation) under Permitted Encumbrances (as defined in the Lease) which by the terms of this Lease are payable to the Lessee instead.
32. **"Operating Surplus"** means any surplus Operating Income remaining after payment of all Operating Expenses as more particularly described in *Schedule B, Clause D*.
33. **"Performance Standards"** means those required practices and standards of performance that the Operator must meet in accordance with this Agreement.
34. **"Premises"** means the three storey, multiple unit residential structure attached to and above the City's Fire Hall No. 5 located at 3090 East 54th Avenue in the City of Vancouver and includes, without limitation, all Alterations and repairs from time to time constructed upon or affixed or appurtenant thereto.
35. **"Realty Taxes"** means all assessments for taxes, rates, duties (including school taxes, local improvement rates and other charges levied pursuant to the *Hospital District Finance Act* (British Columbia), the *Municipal Finance Authority Act* (British Columbia) or otherwise, including by or for Translink, BC Assessment and Metro Vancouver) and all other charges for services used in or supplied to the Premises (including penalties and interest) that now are or will or may be levied, rated, charged or assessed against the Premises, and all other structures, machinery, equipment, facilities and other property of any nature whatsoever located thereon or therein, charged by any municipal, parliamentary, legislative, regional, school or other authority during the Term.
36. **Rent**" means the charge, determined and assessed by the Operator from time to time, payable monthly by an Occupant pursuant to an Occupancy Agreement for the right to occupy a Residential Unit.
37. **"Rent Scale"** means the Rent scale attached as *Schedule G* as amended pursuant to this Agreement from time to time.
38. **"Residential Unit"** means a self-contained residential dwelling within the Premises.
39. **"Term"** means the 60 year period from the Commencement Date.
39. **"Utilities"** means all charges, rates and levies on account of utilities, including for heat, electricity, gas, telephone, television, internet and other costs and expenses of a similar nature, and, if not included in Realty Taxes, for water and garbage collection.
40. **"WorkSafeBC"** means the Workers' Compensation Board of British Columbia, an agency created in 1917 to promote workplace safety, and is that agency's familiar name.

B. RESPONSIBILITIES OF THE OPERATOR AND The Operator

1. **Operator's Acknowledgements.** The Operator acknowledges that it is entering into this Agreement to manage and operate the Premises, that it will do so in a proper, efficient and timely manner as would a prudent owner/Operator of similar property and that its purpose in managing and operating the Premises is to benefit the public interest.
2. **The Operator's Acknowledgements.** The Operator acknowledges that it is entering into this Agreement for the purpose of acquiring the rights granted to it hereunder, and agrees to perform its obligations hereunder and to use its reasonable best efforts to cause the Operator to strictly comply with its obligations and agreements contained in this Agreement, the Lease and the Leasehold Mortgage.
3. **Corporate Organization.** The Operator will each establish a well-organized corporate structure, and, in particular, will each:
 - a. conduct business in accordance with its constating documents and in a manner that does not permit personal gain, directly or indirectly, by any director, officer,

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- member or employee of the Operator or The Operator or any of their associates or family members; and
- b. maintain accurate and complete records of all aspects of its operations under this Agreement.
4. **City Lease.** The Operator acknowledges that its rights and obligations hereunder are subject to the Lease.
5. **Leasehold Mortgage (if applicable).** The Operator will strictly comply with its obligations in the Leasehold Mortgage and not effect or agree to any amendment of the Leasehold Mortgage without the prior written consent of the City.
6. **Operator Restrictions.** During the Term, the Operator and The Operator will each remain in good standing under all applicable legislation in British Columbia and Canada and will use substantially all its income, gains and accretions to promote its main purposes and activities.
7. **Restrictions on Authority.** The Operator must not commit or otherwise obligate the City in any manner whatsoever, except to the extent specifically provided in this Agreement or the Lease, or as specifically authorized in writing by the City and in particular, without limiting the generality of the foregoing, the Operator must not take any action, expend any sum, make any decision, give any consent, approval or authorization or incur any obligation with respect to any of the following matters except with the prior written approval of the City:
- a. charging or allowing any encumbrance to charge title to all or any part of the Premises; and
- b. executing any lease or any other arrangement involving the rental, use or occupancy of all or part of the Premises other than an Occupancy Agreement in accordance with this Agreement.
8. **Agency.** This Agreement shall not be construed as creating any partnership or agency between the City and the Operator or between the City and The Operator, and no party shall be deemed to be the legal representative of any other party for the purposes of this Agreement. None of the City, The Operator or the Operator shall have, and shall not represent itself as having, any authority to act for, to undertake any obligation on behalf of any other party, except as expressly provided in this Agreement or the Lease.
9. **Use of Premises.** The Operator and The Operator will not use the Premises for any purpose that is not authorized by this Agreement.
10. **Conflict of Interest.** The Operator and The Operator will not, during the Term, perform a service for or provide advice to any person or entity where the performance of such service or the provisions of the advice may, in the reasonable opinion of the City, give rise to a conflict of interest between the obligations of the Operator or The Operator to the City under this Agreement or the Lease, as applicable, and the obligations of the Operator or The Operator to such other person or entity. In addition, the Operator covenants with the City that:
- a. it will not pay directly or indirectly to any of its directors or their relatives by blood or marriage (including common-law marriage) any money obtained from the operation of the Premises, or from the operation of other premises leased from the City, or otherwise received from the City, without the express written consent of the City;
- b. it will not, by contract or otherwise, pay to any of its former directors or their relatives by blood or marriage (including common-law marriage), pursuant to any contract or arrangement made when the former director was a director of the Operator, money obtained from the operation of the Premises, or from the operation of other premises leased from the City, or otherwise received from the City, without the express written consent of the City;
- c. subject to sub-paragraphs (a) and (b) immediately above, the Operator may enter into bona fide arm's length contracts with occupants of the Premises for the provision of services in furtherance of the good management of the Premises; and

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- d. notwithstanding the foregoing, the Operator may reimburse its directors or occupants of the Premises for out-of-pocket expenses incurred for the proper management of the Premises but only upon the proof of such expenditure by the production of bona fide receipts.
11. **Constating Documents.** The Operator and The Operator will not alter its constating documents in any way that would render the Operator or The Operator unable to fulfill its obligations under this Agreement or the Lease, as applicable.
12. **Management of the Premises.** The Operator will manage and operate the Premises in a proper, efficient and timely manner as would a prudent owner/Operator of similar property and will:
- a. meet all statutory and corporate obligations applicable to the Operator in performing its obligations under this Agreement, including but not limited to, the requirements of the *Personal Information Protection Act*, *Freedom of Information and Protection of Privacy Act*, *Workers Compensation Act*, *Tobacco Control Act*, *Human Rights Code*, and associated regulations, and obligations under all contracts the Operator enters into in connection with the Premises and the requirements of any insurer of the Premises;
 - b.
 - c. ensure that the Premises complies with all applicable statutory health and safety standards to ensure the health and safety of persons at or near the workplace;
 - d. abide by the terms and conditions of all Schedules hereto;
 - e. ensure that employees and contractors who carry out repairs and maintenance on behalf of the Operator do so in compliance with all WorkSafeBC and other statutory requirements, acquiring environmental or other building assessments by accessing known inventories or through hazmat surveys prior to renovation/repair work;
 - f. conduct risk assessments prior to commencing work and make reasonable best efforts to ensure that employees and/or contractors follow safe work procedures which control any hazards to the health and safety of persons at the Premises;
 - g. use its reasonable best efforts to maintain full occupancy of the Residential Units and select Occupants as set out in *Schedule D*;
 - h. implement the recapitalization/life cycle replacement of building systems, including equipment, structures, surfaces or fixtures installed in the Premises, that have reached or exceed their life expectancy, have failed, or have become a maintenance liability, and perform major repairs, major inspections and overhauls on a cycle of three years or greater, all in accordance with the Maintenance Plan and Operating Budget pre-approved by the City (see also *Schedule B, Clause A.2 and Schedule B, Clauses B.13.h, B.15 and C.1*);
 - i. manage the Premises and Premises systems and equipment in an efficient and effective manner to ensure that these elements meet or exceed their anticipated life expectancy;
 - j. perform inspections and servicing and implement a formal preventive maintenance program of systems and equipment in accordance with manufacturer recommendations and industry best practices;
 - k. repair Premises systems, equipment and surfaces to restore them to functional operation, as and when needed; and
 - l. not enter into a contract for the management of all or part of the Premises by any person or organization, unless approved by the City acting reasonably. In this context, the City acknowledges that the Operator might subcontract certain management functions qualified agencies.
13. **Communication with the City.** The Operator as soon as reasonably possible will:
- a. provide the City with details on all incidents that are significant enough to threaten the continuous operation of the Premises as contemplated by this Agreement and the Lease, including but not limited to, fire, flood, outbreaks of infectious diseases and/or the death of Occupants and staff on site;

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- b. notify the City before making any changes that could diminish the Operator’s ability to fulfill its obligations under this Agreement, the Lease or the Leasehold Mortgage; and
 - c. submit for review by the City all material policy changes related to the Premises.
 - 14. **Maintenance and Capital Repair and Replacement.** The Operator, utilizing qualified professionals, will meet the Performance Standards, and will:
 - a. maintain the Premises in a satisfactory state of repair and fit for habitation and perform all maintenance and repair work including that maintenance and repair work described in the Maintenance Plan;
 - b. establish one and five year plans within the Maintenance Plan and maintenance procedures, to be pre-approved by the City before implementation, that are updated and revised prior to expiry, to maintain the value of the Premises, prolong the life of the Premises, reduce replacement costs and eliminate/reduce safety hazards;
 - c. establish a Capital Maintenance Reserve that must be maintained and used only for the purposes identified in the Maintenance Plan or otherwise approved in writing by the City;
 - d. advise the City immediately if it becomes aware of any structural deficiency in the Premises, which requires the intervention of the City; and
 - e. ensure that all work and services provided by third parties is competitively priced and represents best value for the Premises, and the City as the owner thereof, including using requests for proposals or invitations to tender to obtain multiple competitive proposals or bids for comparison purposes where considered appropriate. Written records of proposals and bids so obtained must be retained for not less than seven years and made available to the City upon reasonable request.
 - 15. **Preservation of Assets.** The Operator will ensure that all buildings, Premises related equipment and other Premises related chattels belonging to the City, or acquired by the Operator on behalf of the City during the Term, are maintained in good repair throughout the Term. At the end of the Term, the Operator will return all Premises related equipment and other Premises related chattels to the City in the same condition as at the start of this Agreement, normal wear and tear excepted.
 - 16. **Promotion of Smoke-Free Housing.** Noting the social, environmental and general health benefits of smoke-free housing, the Operator is encouraged to manage the Premises throughout the Term in a manner which includes “smoke-free housing” areas within the Premises, though eligible Occupants will include both smokers and non-smokers.
 - 17. **Insurance.** The Operator will comply at all times during the Term with the insurance and other requirements set forth in *Schedule H - Insurance*.
- C. **RIGHTS AND RESPONSIBILITIES OF THE CITY**
- 1. **Responsibilities.** The City will:
 - a. assign a person to act as liaison with the Operator;
 - b. provide advice and guidance to the Operator in managing the Premises to meet the objectives and provisions in this Agreement;
 - c. monitor the operation of the Premises to ensure that the standards, objectives and expectations in this Agreement are met;
 - d. provide timely responses to issues raised by the Operator to ensure the Operator receives adequate support; and
 - e. except in the event of an emergency which in the City’s reasonable opinion requires entry without waiting for expiry of the below notice period in order to prevent potential loss or damage including loss of life, the City will give the Operator 48 hours notification of its intent to enter the Premises.
 - 2. **Naming Rights.** Without limiting the other rights of the City as set forth elsewhere in this Agreement, the City hereby expressly retains all rights in respect of naming the Premises or any portion(s) thereof, with the exception of the Operator’s name, and the placing of plaques, signs or other means of displaying such names or other means of recognition, as

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well as all financial and other benefits that may derive directly or indirectly from those rights. The Operator is expressly prohibited from displaying, or allowing to be displayed, any signs, plaques or other means of identifying or advertising any goods or services on or in the Premises, without the prior express written consent of the City. The Operator may display signs identifying the Operator by name, location, number, etc. with the permission of the City.

D. FINANCIAL MANAGEMENT

1. **Finances.** The Operator will establish written policies and procedures for effective control of finances for the Premises and, in particular, will:
 - a. establish and maintain books of account and retain invoices, receipts and vouchers for all expenses incurred in form and content satisfactory to the City, to be used as the basis for the calculation of the payment as set out in *Schedule B*;
 - b. prepare an Operating Budget in advance of each Fiscal Year and regularly review the financial affairs in accordance with *Schedule B*;
 - c. ensure that sound written financial operating policies and procedures are in place, including record keeping and financial statements in accordance with Generally Accepted Accounting Principles (GAAP); and
 - d. provide annual financial statements indicating that the Operator has properly funded and maintained the Capital Maintenance Reserve and other reserves, as applicable, and that all interest accruing to the Capital Maintenance Reserve and other reserves, as applicable, has been recorded.
2. **Auditor.** The Operator will appoint an auditor of the Operator in compliance with the *Cooperative Association Act* who will be in good standing in accordance with the laws of the Province of British Columbia and will not be a member of the Operator. The Operator will cause the auditor to audit the financial statements of the Operator. The City reserves the right to decrease these requirements at its sole discretion.
3. **Audited Financial Statements to be submitted.** The Operator will submit audited financial statements to the City within four months after the end of each Fiscal Year.

E. BOOKS AND ACCOUNTS

1. **Fiscal Year.** The Operator's Fiscal Year end will be.
2. **Operating Income.** All Operating Income received by the Operator from whatever source with respect to the Premises will be collected by the Operator, held by the Operator and used by the Operator solely for the purpose of and to the extent authorized by this Agreement.
3. **City Audit.** The City reserves the right to audit the books, records and accounts of the Operator pertaining to its operation of the Premises at any reasonable time.

F. RECORDS

1. **Records, Retention and Access.** The Operator will maintain adequate operational records for the Premises and the following apply:
 - a. the Operator will retain all documents, vouchers, records and accounts that pertain to the Premises for not less than seven years following the date of receipt or production of those records;
 - b. the City or its agents may inspect all records maintained by the Operator for the Premises after giving reasonable notice, at any reasonable time, and may make extracts from and take photocopies of those records; and
 - c. upon reasonable notice, in accordance with the City's obligations pursuant to the *Freedom of Information and Protection of Privacy Act*, the Operator will, upon request:
 - i. disclose to an Occupant the Operator's file for the Occupant; and
 - ii. cooperate with the City if the City has a request to disclose third party information under the *Freedom of Information and Protection of Privacy Act*,

subject to the Operator's compliance with its obligations under that *Act* and any other applicable legislation.

2. **Information Management.** The Operator will:
 - a. collect information and, if applicable, create and retain records in relation to Occupants during the Term of this Agreement, as required by this Agreement, all in accordance with the requirements of the *Personal Information Protection Act* as applicable;
 - b. notify the City immediately upon becoming aware of any breach of security involving the unauthorized collection, use, disclosure or destruction of information relating to the Premises;
 - c. treat as confidential all information or material provided to the Operator by the City, by Occupants, or by third parties if the information concerns Occupants and is relevant to this Agreement;
 - d. keep all documents and records produced or received by the Operator in relation to this Agreement segregated from other documents to the extent it is practical to do so; and
 - e. safeguard records and not permit their disposition or destruction without the prior written consent of the City, except as required by applicable law, including the *Document Disposal Act*.

G. LIABILITY

1. **Indemnity of the City.** The Operator will indemnify and save harmless the City and City Personnel, from all claims and costs incurred by the City or City Personnel to the extent the same arise from a breach of this Agreement by, or the negligence of, the Operator or Operator Personnel or other persons for whom at law the Operator is responsible, as applicable.
2. **Indemnity of the Operator.** The City will indemnify and save harmless the Operator and Operator Personnel, from all claims and costs incurred by the Operator or Operator Personnel to the extent the same arise from a breach of this Agreement by, or the negligence of, the City or City Personnel or other persons for whom at law the City is responsible, as applicable.
3. **Survival.** The indemnities set out in *Schedule A, Clause G.1* and *G.2* survive termination of this Agreement.
4. **Assignment and Subcontracting.**
 - a. The Operator will not assign, either directly or indirectly, this Agreement or any right or obligation of the Operator, respectively, under this Agreement, without the prior written consent of the City;
 - b. no subcontract entered into by the Operator will relieve the Operator of any of its obligations under this Agreement or impose upon the City any obligation or liability arising from any such subcontract. The Operator must ensure that any subcontractor fully complies with this Agreement in performing the subcontracted services; and
 - c. this Agreement will be binding upon the City and its assigns and the Operator and The Operator and their respective successors, and permitted assigns.
 - d. The City will provide 90 days notice of intent to assign or subcontract its responsibilities under this Agreement; provided, however, that the City will not assign its responsibilities under the Guarantee or in respect of the operating reserves comprised of the First Year Contingency Fund and the Five Year Contingency Fund without the prior written consent of the mortgagee under the Leasehold Mortgage.
 - e. The Operator will provide 90 days' notice of intent to assign or subcontract its responsibilities under this Agreement.

H. GENERAL PROVISIONS AND INTERPRETATION

1. **Reasonableness.** Wherever in any provision of this Agreement the City is required or empowered to give its consent or approval or exercise its discretion, the City agrees not to

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withhold such consent or approval nor exercise such discretion unreasonably or arbitrarily, unless the contrary intent is specifically expressed in such provision.

2. **Determination by the City Binding.** Wherever in this Agreement the City's approval is required for a decision or action of the Operator, the City's determination, designation or decision, acting reasonably, with regard to that approval is conclusive and binds the Operator.
3. **Notices.** All notices, demands or requests of any kind, which any party may be required or permitted to serve on another party in connection with this Agreement, will be in writing and may be served on the parties by mail, by telecopied transmission, or by personal service, addressed as follows:

If to The Operator:

Vancouver, British Columbia
Attention: , Executive Director

If to the City:

The City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia V5Y 1V4
Attention: City Clerk
cc: Managing Director Social Premises
Community Services Group,
And: Director of Real Estate Services

or at such other address as the parties may from time to time advise by notice in writing. The date of receipt of any such notice, approval or request will be deemed to be the date of delivery of such notice, approval or request if served personally or, on the fifth business day next following the date of such mailing if mailed as aforesaid, provided that if mailed should there be, between mailing and the actual receipt of such notice, approval or request, a mail strike, slowdown or other labour dispute which might affect the delivery of such notice, approval or request, such notice, approval or request will only be effected if actually delivered. This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors, administrators and permitted assigns

4. **Whole Agreement.** There are no warranties, representations, conditions or collateral Agreements that pertain to this Agreement, except as set forth in this Agreement.
5. **Enuring Effect.** This Agreement enures to the benefit of and binds each of the City and the Operator and their respective successors and permitted assigns.
6. **Definitions.** The meanings of terms used in this Agreement are set out in *Schedule A, Clause A*
7. **Time.** Time is of the essence of this Agreement. If any party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other parties. Any time specified in this Agreement for observing or performing an obligation is local time in Vancouver, British Columbia.
8. **Governing Law.** This Agreement is to be governed by and construed and enforced in accordance with the laws of the Province of British Columbia.
9. **References.** If the singular, masculine, feminine or neutral is used in this Agreement, the reference is to the plural, masculine, feminine or body corporate according to the context in which it is used.
10. **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 any party.

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11. **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.
12. **Document Written in Present Tense.** The word "will", where the subject is either or both of the parties, denotes a present obligation.
13. **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.
14. **Waiver.** No consent or waiver, expressed or implied, by a party of any default by another 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 any party to complain of any act or failure to act by another party or to declare such 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.
15. **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:
 - a. it will be obtained before any action is taken on it;
 - b. it will be requested and responded to in writing; and
 - c. it will not be unreasonably withheld, except if this Agreement otherwise expressly stipulates, or delayed.
16. **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 and release, survives the expiry or earlier termination of the Term until it has been observed or performed.
17. **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.
18. **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.

I. **DEFAULT, INTERVENTION AND REMEDIES**

1. **Event of Default by the Operator.** Any of the following events will constitute an Event of Default by The Operator under this Agreement:
 - a. failure to materially meet the provisions of this Agreement that are the responsibility of The Operator;
 - b. The Operator fails to remain in good standing under the XXXXX Act, or becomes insolvent or otherwise acknowledges its insolvency, or commits an act of bankruptcy, or makes an assignment for the benefit of its creditors, or an order is made or a resolution is passed, or a petition is filed for the liquidation or winding up of the Operator, or a receiver is appointed to manage any of the assets of the Operator, or the Operator ceases, in the opinion of the City, to operate;
 - c. The Operator is in breach of or fails to comply with any law, by-law or regulation applicable to the performance of its obligations hereunder;
 - d. any material representation or warranty made by The Operator in accepting this Agreement is found to be untrue or incorrect; and
 - e. if The Operator knew or ought to have known any significant information,

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statement, certificate, report or other document furnished or submitted by, or on behalf of, The Operator pursuant to, or as a result of, this Agreement is untrue or incorrect.

- f. The Operator is in breach of the Lease;
 - g. The Operator is in breach of the Leasehold Mortgage (*if applicable*);
 - h. failure to materially meet the Performance Standards or any other material provision of this Agreement.
2. **Event of Default by the City.** Any of the following events will constitute an Event of Default by the City under this Agreement:
- a. failure to materially perform the provisions of this Agreement that are the responsibility of the City;
 - b. the City is in breach of or fails to comply with any law, by-law or regulation applicable to the performance of its obligations hereunder;
 - c. any material representation or warranty made by the City in accepting this Agreement is found to be untrue or incorrect; and
 - d. if the City knew or ought to have known any significant information, statement, certificate, report or other document furnished or submitted by, or on behalf of, the City pursuant to, or as a result of, this Agreement is untrue or incorrect.
3. Subject to *Clause J.1* below, the following is the procedure for intervention by the City upon the occurrence of an Event of Default by the Operator or The Operator (subject to the provisions of the Lease or the Leasehold Mortgage, as applicable, where the Event of Default arises from a breach of either of those agreements):
- a. **Communication.** The City will give the Operator and The Operator written notice of the Event of Default, which notice will provide for a reasonable time for the Operator or The Operator, as applicable, to respond to the notice of Event of Default by providing further information concerning the Event of Default.
 - b. **Action Plan.** The City, the Operator and The Operator will agree on an action plan to cure the Event of Default, including a schedule for implementation of the action plan, identification of the resources available to the Operator and The Operator to implement the action plan, and the dates on which the City will review progress on implementation of the action plan.
 - c. **On Watch.** If the Operator or The Operator, as applicable, does not cure the Event of Default within a reasonable time, the City may place the Operator or CH FBC, as applicable, "On Watch", which means that:
 - i. this is a warning that the City will intervene further if the Event of Default is not cured;
 - ii. the City will monitor the operation of the Premises and the performance of obligations under this Agreement by the Operator or The Operator, as applicable, more often and in more depth, including a management audit before the end of a Review Period; and
 - iii. if the Operator or The Operator, as applicable, makes progress in curing the Event of Default, the City will lessen its monitoring and the On Watch status may be withdrawn.
 - d. **Co-management.** The City may appoint a manager to work with and supervise the Operator, in operating the Premises and in curing the Event of Default, in order to:
 - i. improve the Operator's, management of the Premises and return operation of the Premises to the Operator, as applicable, at some future date; and
 - ii. provide education, training and other necessary resources to the Operator to cure the Event of Default.
4. **Mediation.** If the parties 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 (other than the Lease or the Leasehold Mortgage), 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.

5. **Dispute Resolution.** If the process of mediation above fails, 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 will submit the dispute to arbitration; and
 - c. the remaining issues in dispute will be determined by arbitration under the *Commercial Arbitration Act*, 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.

J. TERMINATION

1. **Early Termination by the City.** Notwithstanding anything stated to the contrary in this Agreement, the parties agree that the City will have the right at any time, by giving 24 hours written notice to the Operator and The Operator, to terminate this Agreement in any of the following events, unless the parties otherwise agree in writing:
 - a. upon the bankruptcy and/or receivership of the Operator;
 - b. upon termination of the Lease, except upon the City's default;
 - c. upon an Event of Default by the Operator having occurred (see Clause I.2 above);
 - d. upon the Operator ceasing to carry out its operations without profit to itself or its members;
 - e. upon the failure by the Operator to maintain its corporate status and remain in good standing under the applicable laws of the Province of British Columbia;
 - f. upon the failure by the Operator to restrict its activities and undertakings to those authorized or permitted under its constating documents; or
 - g. upon the failure of the Operator without adequate justification, to comply with the requirements of any applicable law, regulations, bylaw or other directive having the force of law and enacted or promulgated by or under the authority of the Government of Canada and/or the Province of British Columbia.
2. **Early Termination by the Operator.** Notwithstanding anything stated to the contrary in this Agreement, the parties agree that the Operator will each have the right at any time, by giving 24 hours written notice to the City, to terminate this Agreement in any of the following events, unless the parties otherwise agree in writing:
 - a. upon termination of the Lease, except upon the Operator's default;
 - b. upon an Event of Default by the City having occurred without curing following ten days' notice of default by the Operator;
 - c. upon the failure of the City, without adequate justification, to comply with the requirements of any applicable law, regulations by-law or other directive having the force of law and enacted or promulgated by or under the authority of the Government of Canada and/or the Province of British Columbia.
3. **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. Such adjustments will include, without limitation:
 - a. the delivery or transfer by the Operator to the City, effective as of the termination date, of the Capital Maintenance Reserve and the Operator Operating Reserve, in each case including all accumulated interest; after payment of any Operator expenses or liabilities contemplated by this Agreement; and
 - b. use or division of any unexpended surplus accrued pursuant to *Schedule B, Clause D.1.c*, including all accumulated interest, in accordance with *Schedule B, Clause C.3.b.i or C.3.b.ii*, as applicable.

4. **Costs Resulting From Termination.** All Premises resident relocation costs, if any, resulting from termination of this Agreement will be borne by the Operator, unless otherwise specified in this Agreement or the Lease.

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SCHEDULE B - FINANCIAL

A. OPERATING BUDGET

1. **Operating Budget:** Promptly after the Commencement Date and thereafter at least 3 months prior to the end of each Fiscal Year, the Operator will submit to the City for approval, having regard to the Performance Standards set out in Schedule F, an Operating Budget for the upcoming Fiscal Year, in a format approved by the City, showing the anticipated gross Operating Income for the Premises together with all anticipated Operating Expenses. The City will endeavour to approve the first Operating Budget prior to the Commencement Date, and then each subsequent Operating Budget at least two months prior to the end of the applicable Fiscal Year. The Operating Budget submission will follow the format agreed to by the City and may be amended by mutual consent.
2. **Budget Deviations:** The Operator will make reasonable efforts not to exceed the total approved Operating Budget without the prior authorization of the City.
3. **Income and Expenses.**
 - a. The Operator will be responsible for collecting all Operating Income for the Premises, and the Operator will be responsible for paying out of such Operating Income all Operating Expenses. Such Operating Expenses will include, but are not limited to, the following:
 - i. the insurance required by the Lease;
 - ii. sewer, water and garbage and recycling pickup;
 - iii. Utilities;
 - iv. staffing costs;
 - v. funding the Capital Maintenance Reserve;
 - vi. maintenance and repair of the structure, including the roof, roof membrane, bearing walls, foundations and floors of the buildings in the Premises, and seismic upgrades;
 - vii. maintenance and repair of the exterior of the buildings in the Premises;
 - viii. maintenance, repair and replacement of the fire alarm and safety systems;
 - ix. maintenance, repair and replacement of the heating, hot water, plumbing, electrical, sanitary and storm drainage systems;
 - x. maintenance, repair and replacement of capital items such as stoves, refrigerators, drapes, blinds, floor coverings, hot water tanks, washers, dryers and common area furniture and equipment;
 - xi. maintenance, repair and replacement of other capital items;
 - xii. maintenance and repair of all other components and parts of the Premises;
 - xiii. carpet cleaning, fumigation and pest control;
 - xiv. Realty Taxes and amounts payable in lieu of Realty Taxes pursuant to the Lease;
 - xv. administration costs, including accounting and legal fees; and
 - xvi. all equipment, materials and supplies required to perform any of the foregoing.
 - b. The Operator will ensure payments are made to contracted service providers within pre-established payment periods. Any fines, penalties, surcharges, incurred by the Operator or by the City as an expense related to Operator error or negligence will be the responsibility of the Operator.
 - c. The Operator may generate revenue from sources such laundry machines. Income generating opportunities will be reflected in the annual Operating Budget. The City reserves the right to review income generating opportunities in terms of impact on resident service, feasibility of the physical plant etc.

B. OPERATOR FUNDED MAINTENANCE AND OPERATING RESERVES

1. **Capital Maintenance Reserve.** The Operator, with the cooperation of the City, will prepare a Maintenance Plan setting out projected capital repairs and improvements over

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a 60 year period (*lease term to be confirmed*), in a format to be approved by the City. It will also create a reserve for capital repairs and replacements to the Premises based on the items and life in years as set out in the Maintenance Plan as amended by the City from time to time and the following apply:

- a. the Operator will deposit \$60 per unit per month, adjusted annually to reflect changes in the Consumer Price Index from the Commencement Date (subject to *Clause D.1.a* below), or such other amount as may be agreed to by the Operator and the City from time to time during the Term, in a Capital Maintenance Reserve fund; and
 - b. the Operator will use or dispose of the Capital Maintenance Reserve only for capital repairs and replacements to the Premises in accordance with the Maintenance Plan, or to pay for other payments as may be approved by the City.
2. **Operator Operating Reserve.** The Operator will also fund, as contemplated by *Clause D.1.b* below, and manage the Operator Operating Reserve.
 3. **Transfer of Reserves Upon Termination.** At the termination of this Agreement, regardless of cause, all funds in the Capital Maintenance Reserve and the Operator Operating Reserve, in each case including all accumulated interest, but after payment of any Operator expenses or liabilities contemplated by this Agreement, will be transferred to the City, and a reconciliation of the operating balance will be forwarded.

C. OPERATING SURPLUSES

1. Once the Capital Maintenance Reserve has been fully funded, any remaining operating surplus will be used as follows:
 - a. first, to top up the Capital Maintenance Reserve by an additional \$20 per unit per month, or by any additional amount determined to be required as a result of a future capital maintenance reserve study; and
 - b. second, to fund the Operator Operating Reserve, to a maximum of an amount equivalent:
 - i. in the first year of the Term, to the annual Operating Budget for that year (exclusive of Leasehold Mortgage costs (*if any*) and Capital Maintenance Reserve contributions); and
 - ii. thereafter, to the total operating costs for the Fiscal Year most recently completed based on the Operator's audited statements (exclusive of Leasehold Mortgage costs (*if any*) and Capital Maintenance Reserve contributions), with any balance remaining thereafter to be used as follows:
 - c. in accordance with a plan, to be agreed upon between the Operator and the City concurrent with the annual Operating Budget review and approval process, that balances the City's objective of increasing the percentage of units in the Premises occupied by Below Market Occupants and the operational and financial feasibility of the Operator implementing the plan. Any surplus funds available for use pursuant to this *Clause D.1.c*, not used for such purposes within twenty-four (24) months of the date when the plan approving use of the subject surplus was approved by the City, will be used in accordance with *Clause D.1.d* below; and
 - d. promptly following the end of such twenty-four (24) month period, any *Clause D.1.c* funds not by then used to increase Below Market housing units in the Premises, will be divided on a 50%/50% basis between the Operator and the City, with the Operator's portion to be used to create new non-market co-op housing in Vancouver.
2. **Transfer of Surpluses Upon Termination.** At the termination of this Agreement, regardless of cause, any unexpended surplus accrued pursuant to *Clause D.1.c* above, including all accumulated interest::

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- a. will be used to increase affordability in the Premises as contemplated by *Clause D.1.c* above, if the rights and obligations of the Operator hereunder are then assumed by another Operator or the City; or
- b. will be divided and used in accordance with *Clause D.1.d* above, if the City's objective of increasing the percentage of units in the Premises occupied by Below Market Occupants to 50% has already been met, or termination results from the Premises ceasing to be operated to provide housing to Occupants as contemplated by this Agreement.

D. INCOME AND RENT

- 1. **Occupant Mix.** The Occupant mix in the Premises will be as set forth and described in *Schedule D*.
- 2. **Proof of Income and Assets.** The Operator will establish policies and procedures for establishing rent and asset calculations and submit these to the City for approval. As part of this the Operator will obtain a declaration ("Declaration of Income and Assets") and supporting documentation as evidence of the Income and Assets of the Below Market Occupant at the time of the initial occupancy and annually thereafter. The Operator will obtain a declaration of income ("Declaration of Income") and supporting documentation as evidence of the Income of the Market Occupant at the time of the initial occupancy. The declaration will be in a form approved by the City as may be amended from time to time. The Operator will maintain a copy of each Occupant's documentation in a file available to the City on request.
- 3. **Rent.** The Rent for each Residential Unit payable by the first Occupants will be not less than the amounts set forth below, unless otherwise agreed to in writing by the City; provided, however, that in the case of Market Occupants, the rates charged should be based on actual market rates as and when the first Occupancy Agreements are entered into, with the objective of maximizing the income generated by the Premises.

Unit Type	Below Market Occupant Rent (maximum average per month)	Market Occupant Rent (average per month)
Studio		
1BR		
2BR		
3BR		

- 4. **Increases.** The Operator will increase the monthly Rents, parking and other fees charged by such amounts and at such times as applicable law and market circumstances allow, both when Occupancy changes and during the currency of an Occupancy Agreement, with the objective of maximizing the income generated by the Premises.
- 5. **Parking.** The Operator may rent, or impose other usage charges for the use of, the parking spaces within the Premises, other than those that are required by the City's Parking By-law to be set aside for visitors or reserved for use as Class A loading bays (*if any*), to such third parties and at such rates as the Operator may in its sole discretion decide.
- 6. **Application of Rents.** The Operator will collect Rents, parking usage fees and other fees and amounts payable by Occupants or third parties for use of the Premises, and apply this income to the cost of operating the Premises.
- 7. **City not Responsible.** It is understood that the City will not be responsible to the Operator for any breach or failure of the Occupant to observe any of the terms of the Occupancy Agreement between the Occupant and the Operator, including the covenant to pay the Rent. The same relationship will apply as between the Operator and renters/users of parking spaces in the Premises, and as between the Operator and the City in respect of the same.

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E. INVESTMENT OF FUNDS

1. The Operator will deposit and keep the Capital Maintenance Reserve and the Operator Operating Reserve and accumulated interest in a separate bank account or in accounts or instruments as follow:
 - a. in an account insured by the Canadian Deposit Insurance Corporation or by the Credit Union Deposit Insurance Corporation;
 - b. in an investment in accordance with the *Cooperative Association Act* or the *Vancouver Charter*;
 - c. in an investment guaranteed by a Canadian government; or
 - d. in other investment instruments as the City approves.

F. UNAUTHORIZED EXPENDITURES AND ACTS.

1. With regard to its occupation and operation of the Premises, the Operator will not, without the approval of the City:
 - a. borrow money other than pursuant to the Leasehold Mortgage (*if any*), if it encumbers the Operator's leasehold interest in the Premises, it creates any liability for the City or, in the reasonable opinion of the City or the Mortgagee, it compromises the Operator's ability to strictly fulfill and perform its obligations under the Leasehold Mortgage;
 - b. guarantee or underwrite the repayment of any obligation assumed by a third party;
 - c. 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 Premises. This provision does not apply to annual membership fees to sector organizations;
 - d. release, compromise, assign or transfer any claim, right or benefit of the City in connection with or arising out of the City's interest in the Premises; or
 - e. confess a judgement against it.

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SCHEDULE C - MONITORING AND REPORTING

A. REGULAR REPORTING

1. The Operator will, on an annual basis except in the first year of the Term when this will apply after the first six months, make information related to its operation and management of the Premises available to the City, to assist the City in:
 - a. identifying occupancy and service trends;
 - b. monitoring income earned and expenses incurred; and
 - c. monitoring the Operator's compliance with the requirements of this Agreement and the Lease.
2. The City, acting reasonably, reserves the right to change the reporting requirements from time to time, with at least 30 days' written notice to the Operator provided that, if there are additional costs to the Operator in complying with new requirements, the City will adjust the Operating Budget to reflect the increased costs as agreed to by both parties.

B. ANNUAL REPORTING

1. The Operator will submit an annual Operator report to the City no later than four months after the Operator's Fiscal Year end in the format provided by the City. The Operator's report will include:
 - a. gas, electricity, and water consumption in the Premises;
 - b. copies of relevant licenses and inspection reports;
 - c. completed checklists as per the Maintenance Plan;
 - d. completed checklists related to quality assurance;
 - e. list and explanation of repair, maintenance and capital expenditures;
 - f. explanation for any variance in expenditure greater than 10% in completing the Maintenance Plan in respect of the year in question;
 - g. a short report on current operational challenges, issues and successes; and
 - h. rental mix, broken down between Market and Below Market Occupants and by unit type.

C. OPERATIONAL REVIEW

1. At least annually (as part of the annual Operating Budget review process), the City may conduct an onsite operational review of the Operator's compliance with statutory requirements and the terms of this Agreement.
2. The City will provide the Operator with at least 45 days written notice of such an operational review and will provide the Operator the requirements for such review (e.g., collecting relevant written policies and procedures, collecting licenses and inspection reports).

SCHEDULE D - OCCUPANT ELIGIBILITY

A. OCCUPANT SELECTION AND OCCUPANCY AGREEMENTS

1. **Occupant Mix.** The Operator will at all times during the Term, use its best efforts to ensure that
2. **Market Occupants.** In respect of the Residential Units set aside for occupancy by Market Occupants, the Operator will focus as much as possible on providing units to members whose work is in Vancouver..
3. **Below Market Occupants.** Unless otherwise agreed by the City, Below Market Occupants will be selected or from lists maintained by The Operator or by the Operator.
4. **Occupancy Agreements.** All Occupancy Agreements entered into by prospective Occupants will be, in compliance with the Residential Tenancy Act and will contain additional clauses as set out in *Schedule E*.
5. **Occupant Selection.** The Operator will use its best efforts to maintain full occupancy of the Premises.
6. **Below Market Occupants Household Size.** All Below Market Occupants must be placed in a Residential Unit appropriate to their Household size in accordance with the Occupancy Guidelines. Exceptions may be made for persons designated by mutual agreement between the City and the Operator.
7. **Selection Intent.** Where the Operator is unable to find Below Market Occupants for all the Residential Units agreed to be set aside for such Occupants, the Operator will work with the City to select Occupants in such a way as to maintain the intent of housing persons in need in such Units.

SCHEDULE E - OCCUPANCY AGREEMENT

A. OCCUPANCY AGREEMENTS

Occupancy Agreements between the Operator and the Occupant will be subject to the requirements of the Residential Tenancy Act. The Occupancy Agreement for the Premises will be provided to the City within a month of the execution of this Agreement. The City reserves the right to review subsequent Occupancy Agreements.

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SCHEDULE F - PERFORMANCE STANDARDS

The Operator is required to operate the Premises to a professional standard that is acceptable to the City. The City may request performance plans from the Operator on an annual basis or as deemed necessary if an Event of Default occurs in respect of the Operator and the City elects to intervene as contemplated by *Schedule A, Clause 1.3*, rather than to terminate this Agreement. The management areas to be included in the annual performance plan include but are not limited to:

- A. **RISK MANAGEMENT**
- B. **MAINTENANCE** (subject to any contrary agreement or obligation in the Reciprocal Easements Agreement), including:
 - 1. Grounds keeping and Landscaping (*if applicable*)
 - 2. Building Maintenance.
 - 3. Janitorial.
 - 4. Energy Management.
 - 5. Building Services.
- C. **HUMAN RESOURCES**
- D. **FINANCIAL MANAGEMENT AND ADMINISTRATION**
- E. **OCCUPANT MANAGEMENT**
- F. **MAINTAINING A LIST OF EQUIPMENT USED IN OPERATING THE PREMISES**

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SCHEDULE G - RENT SCALE

A. OCCUPANT INCOME

1. The Below Market Occupant Rent Contribution will not exceed a set percentage¹, as determined from time to time by the City, of the Income of the Occupant, including any person residing in a Residential Unit who is not named in the Occupancy Agreement and the following will apply:
 - a. "Income" is defined in *Schedule A, Clause A*;
 - b. a minimum Below Market Occupant Rent Contribution for the applicable family size will be set at:
 - i. the amount of the current maximum Provincial monthly shelter allowance calculated in accordance with Schedule A of the *Employment and Assistance Regulation* passed pursuant to the *Employment and Assistance Act*, as amended or replaced from time to time;
 - ii. minus an allowance for utility costs, the amount of which allowance will be determined by the Operator from time to time; and
 - c. the Below Market Occupant Rent Contribution of an Occupant in receipt of Income Assistance will be fixed at an amount as set out in part D below or as may be determined from time to time by the City.
2. The Rent payable by a Market Occupant will be based on the rental rates charged to market tenants for similar rental units in other similar Premises.

B. EXEMPTIONS FROM INCOME

1. The following are exempt from inclusion in Income:
 - a. Child Tax Benefit;
 - b. capital gains, such as insurance settlements, inheritances, disability awards and sale of effects in the year they are received;
 - c. the earnings of a person aged 18 and under;
 - d. student loans, student loan equalization payments and student grants (Note: non-repayable training allowances, research fellowships or similar grants are not excluded);
 - e. living out or traveling allowances;
 - f. Shelter Aid for Elderly Renters ("SAFER") or Rental Assistance Program ("RAP") payments received prior to moving into the Premises (Note: Occupants where the Rent Scale applies are not eligible for SAFER or RAP);
 - g. Goods and Services Tax (GST) and Harmonized Sales Tax (HST) rebates;
 - h. government provided daycare allowance; and
 - i. payments for foster children, or Child in Home of Relative (CIHR) income under the *Employment and Assistance Act*, except for the housing allowance portion.

C. ASSETS

1. "Assets" is defined in *Schedule A, Clause A*.

D. DETERMINATION OF BELOW MARKET OCCUPANT RENT CONTRIBUTION FOR OCCUPANTS RECEIVING INCOME ASSISTANCE

1. The Below Market Occupant Rent Contribution for each Residential Unit where the Occupant is in receipt of Income Assistance for the applicable family size will be set at:
 - a. the amount of the current maximum Provincial monthly shelter allowance calculated in accordance with Schedule A of the *Employment and Assistance Regulation* passed pursuant to the *Employment and Assistance Act*, as amended or replaced from time to time;

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- b. minus an allowance for utility costs, the amount of which allowance will be determined by the Operator from time to time.
2. For greater clarity:
- a. only one allowance for utilities per Residential Unit can be used in calculation of the Below Market Occupant Rent Contribution;
 - b. if the Occupant is a single person, the Below Market Occupant Rent Contribution will be based on the Income Assistance shelter component for a single person;
 - c. if the Occupant consists of two related persons (e.g. married, common-law relationships), the Below Market Occupant Rent Contribution will be based on the Income Assistance shelter component provided for two related persons;
 - d. if the Occupant consists of two unrelated persons, the Below Market Occupant Rent Contribution will be based on two times the Income Assistance shelter component for single persons;
 - e. if the Occupant consists of more than two persons, the Below Market Occupant Rent Contribution will be calculated based on the number of Occupants and their relationship as per *Clauses E.4* and *E.5* above; and
 - f. if the maximum shelter component of Income Assistance changes, the Below Market Occupant Rent Contribution will be changed at the same time after reasonable notice to the Occupant.

SCHEDULE H

INSURANCE

A. INSURANCE

1. **Commercial General Liability Insurance.** At all times during the Term, the Operator will effect and keep in force commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000), or such other amount as the City may require from time to time, per occurrence, against public liability claims for bodily injury, death and property damage (including loss of use) arising from the Operator's use and occupancy of the Facility and from any occurrence or accident on the Facility. Such insurance will be written on an occurrence basis and will provide for blanket contractual liability, including liability assumed by the Operator under this Agreement. The policy will also contain a cross liability or severability of interests clause and will name the City and the City Personnel as additional insured with respect to third party claims arising out of the Operator's operations pursuant to this Agreement.
2. **All Risk Property, Pressure Vessel and Rental Income Insurance.** At all times thereafter during the Term, the Operator will effect and maintain property insurance in the name of the City to the full replacement value of the Facility and fixtures on the Lands, protecting it against "All Perils" of loss or damage including flood, sewer backup and earthquake, and will include:
 - a. rental income insurance in an amount equal to the maximum annual rental income of the Facility pursuant to this Agreement; and
 - b. boilers and pressure vessels, protecting against usual and unusual perils, including damage caused by rupture of steam pipes.

The policies described in this Clause 2 will contain a clause directing insurers to make losses payable to the Operator and the City as their interests may appear.

3. **Insurance - Additional Provisions.** The following provisions will apply to all policies of insurance which are referred to in this *Schedule G*:
 - a. the policies will be primary and non-contributing with respect to any policy or self-insured fund otherwise held or established on behalf of the City;
 - b. the stated amount of value insured under property policies will be of sufficient amount that neither the Operator nor the City will become co-insurers with respect to any loss claimed against the insurance;
 - c. each policy will be written on a form acceptable to the City and with insurers licensed to do business in the province of British Columbia and acceptable to the City;
 - d. any deductible amounts applying to a claim against a policy will be of an amount approved by the City;
 - e. each policy will contain a clause requiring that the insurers provide to the City a minimum of sixty (60) days prior written notice of any cancellation (except for cancellation resulting from non-payment of premiums, in which case applicable statutory provisions will apply); and

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- f. all premiums and deductibles required under said policies will be paid by the Operator to the insurers and proof of such payment will be submitted to the City forthwith.

In addition to the notification obligations of the insurers required by *Clause A.3(e)* above, the Operator will provide to the City a minimum of 60 days prior written notice of any cancellation, lapse or material change resulting in reduction of coverage, either in whole or in part, in respect of any of the policies of insurance which are referred to in this *Clause A*.

4. **Evidence of Insurance.** Prior to the Commencement Date the Operator must provide the City with evidence of all insurance required to be taken out pursuant to this Agreement, in the form of one or more detailed certificates of insurance, in such form(s) and contents as the City requests. Each certificate of insurance must identify this Agreement, the policy holder and the subject matter, and must not contain any disclaimer. Thereafter, and throughout the Term, forthwith upon request by the City, similar evidence of renewals, extensions or replacement of such insurance will be provided in the form of such certificate(s) of insurance. In addition, if requested by the City at any time, the Operator will forthwith deliver to the City a certified copy of each insurance policy requested.
5. **Workers Compensation Coverage.** At all times during the Term, the Operator will, and will cause its Personnel and all others engaged by it in or upon any work on the Facility to comply with the *Workers Compensation Act* (British Columbia) (the “WCA”) and the requirements and regulations of WorkSafeBC in respect of the Facility. Without limiting the generality of the foregoing, the Operator will, in respect of any such work require as a condition of any agreement made with respect to construction, repair or renovation of the Facility, whether with contractors, materialmen or otherwise, that there is full workers compensation insurance coverage in place in respect of all workmen, employees, servants and others engaged in or upon any work, and that all workmen, contractors or other workers require the same of their workmen and subcontractors. The Operator will immediately notify the City of any dispute involving third parties that arises in connection with obtaining and maintaining the workers compensation insurance coverage required hereby if such dispute results or may result in the required insurance coverage not being in place, and the Operator will take all reasonable steps to ensure resolution of such dispute forthwith. The Operator will further ensure that no amount payable pursuant to the WCA is left unpaid so as to create a lien on the Lands or the Facility. If the workers compensation insurance coverage required by this *Clause A.5* is not in place, the City will be entitled to have recourse to all remedies specified in this Agreement or at law or equity.
6. **Release of City from Liability for Insured Loss or Damage.** The Operator hereby releases the City and the City Personnel, whether or not the City and/or the City Personnel have been negligent, from any and all liability for loss or damage caused by any of the perils against which the Operator will have insured or is obligated to insure pursuant to the terms of this Agreement or any applicable law.