

HOMES BC PROGRAM

COOPERATIVE OPERATING AGREEMENT

between

_____ HOUSING CO-OPERATIVE

and

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

with respect to a Housing Development at
_____, British Columbia

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COOPERATIVE OPERATING AGREEMENT

THIS OPERATING AGREEMENT dated for reference the ____th day of _____, 20____.

BETWEEN:

_____ **HOUSING CO-OPERATIVE**
_____, British Columbia _____
(the "Cooperative")

AND:

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION
Suite #1701 - 4330 Kingsway, Burnaby, British Columbia V5H 4S9
(the "Commission")

with respect to a housing development at _____,
British Columbia.

BACKGROUND

The Cooperative has acquired the Development under HOMES BC, a housing program funded by the Government of British Columbia acting through its agent, the Commission.

The common goal of the parties in making this agreement is to provide stable, affordable and well-managed non-market housing for low and moderate income members. For this purpose, the Cooperative will own and operate the Development, and the Commission will provide occupancy charge subsidies and repayable assistance, under the terms of HOMES BC.

The HOMES BC program provides for:

- A. affordable housing, primarily for families and person with a disability but in certain circumstances for seniors;
- B. housing that is well-managed;
- C. housing for members with a mix of incomes, some of whom pay occupancy charges geared to income and others paying occupancy charges at or near rents prevailing in the local market;

- D. payment of an occupancy charge subsidy to the Cooperative on behalf of members paying occupancy charges geared to income to fill the gap between the occupancy charge contributions for their units and the cost of operating those units; and
- E. payment of repayable assistance to the Cooperative on behalf of the members paying occupancy charges at or near market rents to fill the gap between the occupancy charges for their units and the cost of operating those units.

The parties to this agreement recognize the particular characteristics and goals of the cooperative housing sector in owning and operating affordable housing communities. Among these are:

- incorporation under the *Cooperative Associations Act* for the purpose of providing housing on a non-profit basis for its members;
- purchase of shares in the development to signify long-term personal investment in the housing community;
- adherence to the internationally-recognized principles of cooperation, which include democratic control by members and education for self-reliance;
- commitment to working together to develop communities in which members share responsibility for the success of the enterprise; and
- commitment to providing security of tenure for members.

This agreement is supplemented by an explanatory *Guide to the HOMES BC Operating Agreement* that expands and clarifies the terms of this agreement and sets out the manner in which this agreement will be administered by the Commission. In particular, the *Guide* sets out in more detail the Operating Standards of HOMES BC in order to clarify the expectations of good management that are integral to the program. The *Guide* may be changed by the Commission from time to time after consultation with representatives of the non-profit and cooperative housing sectors.

AGREEMENT

The parties agree as follows for the Term of this agreement:

PART 1 ROLES AND RESPONSIBILITIES OF THE COOPERATIVE

- 1.1 **Role of the Cooperative.** The Cooperative will operate, maintain and manage the Development in a proper, efficient and timely manner as would a prudent owner of similar property, and in accordance with Operating Standards of HOMES BC.

Operating Standards of HOMES BC

- 1.2 **Corporate Organization.** The Cooperative will establish a well organized corporate structure, and policies and procedures that ensure that the Development is well managed, and in particular will:

- 1.2.1 recruit and maintain its board of directors and its membership in such a way as to ensure continuing ability to manage effectively;
 - 1.2.2 conduct business in an ethical manner that does not permit personal gain, directly or indirectly, by any director, officer, member or employee of the Cooperative or any of their associates or family members;
 - 1.2.3 meet all statutory and corporate obligations, including obligations under all contracts the Cooperative enters into in connection with the Development and the requirements of any insurer of the Development;
 - 1.2.4 comply with the Cooperative's lease for the Land, if any; and
 - 1.2.5 maintain accurate and complete records of all aspects of its operations.
- 1.3 **Maintenance.** The Cooperative will maintain the Development in a state of good repair for the benefit of the Members and the community in which the Development is located, and in particular will:
- 1.3.1 establish maintenance procedures to maintain the value of the Development and prolong the life of the Improvements;
 - 1.3.2 ensure that the necessary skills and tools are available to clean and maintain the Development adequately;
 - 1.3.3 ensure that the Development complies with all applicable statutory health and safety standards;
 - 1.3.4 ensure that fire regulations are observed and that fire inspections are carried out regularly by the appropriate authorities; and
 - 1.3.5 obtain sufficient insurance on the Development in accordance with Section 8.5.
- 1.4 **Finances.** The Cooperative will establish policies and procedures for effective control of finances for the Development, and in particular will:
- 1.4.1 prepare an Operating Budget for the Development for each Fiscal Year and regularly review the financial affairs of the Development in accordance with Part 5; and
 - 1.4.2 ensure that sound financial operating policies and procedures are in place, including:
 - 1.4.2.1 clearly defined spending authority;
 - 1.4.2.2 record keeping in accordance with generally accepted accounting practice; and

1.4.2.3 policies and procedures for arrears, purchasing and investment of reserve funds.

1.5 **The Members.** The Cooperative will establish policies and procedures to:

- 1.5.1 select Members in an open, fair, consistent and non-discriminatory way;
- 1.5.2 serve Members promptly and courteously, with clear and informative communication;
- 1.5.3 develop opportunities for Member participation in decision making in the Development; and
- 1.5.4 provide each Member with access to information concerning that Member and protect the privacy of Members.

PART 2 ROLES AND RESPONSIBILITIES OF THE COMMISSION

- 2.1 **Role of the Commission.** The Commission's role is to support and assist the Cooperative in operating the Development to meet their common goal. To this end, the Commission will work cooperatively with the Cooperative, taking into account the operational realities of the Development and recognizing the Cooperative's need for adequate financial and organizational resources to meet its obligation of providing affordable, well-managed housing for low and moderate income Members.
- 2.2 **Pay Occupancy Charge Subsidy and Repayable Assistance.** The Commission will pay the Occupancy Charge Subsidy and the Repayable Assistance to the Cooperative in a timely manner in accordance with Part 6 and 7 for a term not to exceed 35 years unless otherwise agreed by the Commission.
- 2.3 **Monitor Operations.** The Commission will monitor the operation of the Development and the use by the Cooperative of the Occupancy Charge Subsidy and Repayable Assistance, in accordance with this agreement, to ensure that the Operating Standards and the objectives of HOMES BC are met.
- 2.4 **Provide Information.** The Commission will provide the information required by the Cooperative to enable the Cooperative to carry out its responsibilities under this agreement, and will provide that information in a timely manner.

PART 3

ONGOING PROVISION OF NON-MARKET HOUSING

- 3.1 **Cooperative's Acknowledgements.** The Cooperative confirms as follows:
- 3.1.1 the Cooperative is entering into this agreement to own and operate the Development for the Specific Purpose in accordance with the HOMES BC program and that its fundamental purpose in doing so is to benefit the public interest; and
 - 3.1.2 the Commission's rights and remedies under this agreement are not to be construed as a penalty or forfeiture.
- 3.2 **Restrictions on Disposition.** The Cooperative will not transfer or encumber all or part of the Development, or enter into any agreement to transfer or encumber all or part of the Development except with the approval of the Commission. Such approval may be arbitrarily withheld.
- 3.3 **Cooperative Restrictions.** During the Term, the Cooperative will remain a corporation in good standing under the applicable statute in British Columbia and will continue to comply with the requirements of the *National Housing Act*, as follows:
- 3.3.1 have as a main purpose and activity the provision of housing for low or low and moderate income households;
 - 3.3.2 operate as a non-profit entity;
 - 3.3.3 have directors and officers who serve without payment or benefit, direct or indirect, except for payment of reasonable expenses incurred in carrying out their duties;
 - 3.3.4 use substantially all its income, gains and accretions to promote its main purposes and activities; and
 - 3.3.5 on dissolution, distribute its remaining assets to one or more corporations which meet the restrictions of this Section 3.3 and are approved by the Commission.
- 3.4 **Constating Documents.** The Cooperative will not alter its Constating Documents in any way that would make them inconsistent with the terms of this agreement or that would render the Cooperative unable to fulfil its obligations under this agreement.

PART 4 MEMBERS

4.1 **Income Mix.** The _____ Units in the Development will be occupied by Members with Incomes as follows:

- _____ Units with Member with Deep Need Income
- _____ Units with Member with Shallow Need Income
- _____ Units with Member with Non-RGI Income

The Cooperative will make every reasonable effort to maintain the Income mix set out in this Section 4.1 throughout the Term. The Income mix may be adjusted from time to time to reflect local market conditions with the approval of the Commission, taking into consideration the availability of subsidy funds.

4.2 **Occupancy Standards.** Units in the Development will be occupied by Members with household sizes suitable for the Unit as set out in the Occupancy Standards in Schedule B.

4.3 **Selection Procedures.** The Cooperative will maintain an applicant list for prospective Members for the Development. It will select Members from that list in accordance with the Operating Standards set out in Section 1.5. The following will apply:

4.3.1 eligible applicants for the Development are Families, Seniors and/or Persons with a Disability who meet the Income criteria set out in Section 4.1 and the Occupancy Standards set out in 4.2;

4.3.2 where the Cooperative is unable to allocate all the Units in the Development to Members meeting the criteria set out in Sections 4.1 and 4.2, the Cooperative will select Members in such a way as to ensure that the Income mix and Occupancy Standards are maintained in a manner consistent with the goals of HOMES BC; and

4.3.3 the Cooperative will send a copy of the method and priority criteria for selecting Members to the Commission 6 months before the Start Date and will inform the Commission of any subsequent change to the selection procedure 3 months before implementation.

4.4 **Discrimination.** The Cooperative will not discriminate against any applicant or Member by reason of race, colour, ancestry, place of origin, religion, marital status, gender, health status, sexual orientation or age of that applicant or Member or for any reason otherwise prohibited by statute. The prohibition against discrimination by reason of age does not apply to a Unit in a building or part of a building reserved for Seniors. The Cooperative will comply with the laws of British Columbia and Canada relating to human rights.

- 4.5 **Occupancy Agreements.** The Cooperative will enter into an Occupancy Agreement with each Member. The Occupancy Agreement will contain additional provisions as set out in Schedule C as amended by the Commission from time to time after consultation with the Cooperative.
- 4.6 **Cooperative and Member Relationship.** Except for payment of the Occupancy Charge Subsidy and the Repayable Assistance, the full normal relationship of cooperative and member exists between the Cooperative and the Member. The Commission is not liable to the Cooperative for any breach by a Member of an Occupancy Agreement.

PART 5 FINANCIAL OPERATIONS

- 5.1 **Purchase of Shares in the Cooperative.** With respect to the purchase of shares in the Cooperative, the Cooperative:
- 5.1.1 will determine the share purchase price payable by an applicant for membership; and
 - 5.1.2 will ensure that the requirement to purchase shares does not pose a barrier to occupancy for eligible Members, and to this end, the Cooperative may:
 - 5.1.2.1 enter into a hypothecation agreement in order to assist an applicant in purchasing shares in the Cooperative, notwithstanding Section 5.18.2; and
 - 5.1.2.2 reduce the cost of shares for RGI Members to an amount agreed between cooperative sector representatives and the Commission from time to time, in which case, Section 5.19 applies.
- 5.2 **Sale of Shares in the Cooperative.** With respect to the sale of shares in the Cooperative, the Cooperative:
- 5.2.1 may pay to a Member when an Occupancy Agreement is ended, as consideration for the Member's shares in the Cooperative, only the amount originally paid by the Member for those shares;
 - 5.2.2 may withhold repayment to a Member of part or all of the Member's share purchase price when an Occupancy Agreement is ended, firstly on account of arrears of Occupancy Charge or Occupancy Charge Contribution and secondly on account of the costs of repairing any damage (other than normal wear and tear), cleaning or redecoration of the Unit;

- 5.2.3 will not pay or permit a Member to receive any benefit, financial or otherwise, on the transfer or other disposition of a share in the Cooperative or of any right to occupy a Unit other than as allowed by this agreement; and
- 5.2.4 will include the following provisions in each Occupancy Agreement:
 - 5.2.4.1 that any transfer of any rights or benefits with respect to a share in the Cooperative or the right to occupy a Unit is void if any benefit is given to or for the benefit of a Member other than allowed by this agreement; and
 - 5.2.4.2 that the Cooperative will end an Occupancy Agreement if any Member or someone on behalf of the Member accepts or receives any benefit other than as allowed by this agreement.
- 5.3 **Occupancy Charge.** The Cooperative will determine the Market Rent for each Unit in accordance with the terms of appraisal set out in Schedule D before the Start Date but no earlier than 6 months before the Start Date and at the time of each Review Period, and the Cooperative will:
 - 5.3.1 set the Occupancy Charge for each Unit in the Development at a minimum of 90% of the Market Rent before the Start Date, but no earlier than 6 months before the Start Date; and
 - 5.3.2 maintain the Occupancy Charges at or near the Market Rent, but never less than 85% of the Market Rent, for the Term of this agreement.
- 5.4 **Proof of Income and Assets.** The Cooperative will obtain a declaration (a "Declaration of Income and Assets") and supporting documentation as evidence of the Income and assets of that Member, from each Member at the time of initial occupancy, and from each Member receiving Occupancy Charge Subsidy at least annually, which declaration will be in a form approved by the Commission as amended from time to time.
- 5.5 **Occupancy Charge Contribution.** The Cooperative will review each RGI Member's Declaration of Income and Assets together with any documentation in support, and use that information to determine the amount an RGI Member will contribute towards the Occupancy Charge for a Unit (the "Occupancy Charge Contribution"), as follows:
 - 5.5.1 the Occupancy Charge Contribution will be based on the application of the HOMES BC Occupancy Charge Scale;
 - 5.5.2 the Occupancy Charge Contribution will not exceed the Occupancy Charge for that Unit; and

- 5.5.3 if the Occupancy Charge Contribution exceeds the Economic Occupancy Charge for that Unit, the Member will pay the Occupancy Charge Contribution;

and the Cooperative will submit the Declaration of Income and Assets to the Commission, who will confirm the amount of that Occupancy Charge Contribution.

- 5.6 **Operating Budget and Economic Occupancy Charge.** The Cooperative will prepare an Operating Budget for the Development for each Fiscal Year. Subject to Section 5.7, the Cooperative will use the Operating Budget to set the Economic Occupancy Charge for each Unit for the Fiscal Year, and will inform the Commission of the Economic Occupancy Charges in the Development. The following apply:

- 5.6.1 the Economic Occupancy Charge will be the same for all Units of similar size; and
- 5.6.2 the Economic Occupancy Charge will be limited to an amount equal to only those costs that have been or will be incurred by the Cooperative in order to ensure proper management of the Shelter Component of the Development in accordance with this agreement, including debt service charges relating to the Loan, but exclusive of any expenditures for which other financial assistance has been received or is receivable by the Cooperative or the Member other than Occupancy Charge Subsidy or Repayable Assistance paid pursuant to this agreement.

- 5.7 **Approval of Operating Budget by Commission.** The Cooperative will send the Operating Budget for the next Fiscal Year to the Commission for its review and approval according to the following schedule:

- 5.7.1 3 months prior to the Start Date;
- 5.7.2 3 months prior to the end of the Fiscal Year occurring immediately after the second anniversary of the Start Date; and
- 5.7.3 3 months prior to the end of a Review Period.

In its review the Commission will take into account the operating realities of the Development and standards across the HOMES BC portfolio. If the Commission requires changes to the Operating Budget, it will consult with the Cooperative before approving a revised Operating Budget.

- 5.8 **Economic Occupancy Charge Set by Cooperative.** For Fiscal Years other than those Fiscal Years referred to in Section 5.7, the Cooperative will set the Economic Occupancy Charge for each Unit based on the Operating Budget.

- 5.9 **Renewal of Loan.** The Economic Occupancy Charge will be recalculated on the renewal of a Loan to take into account the new payments for the Loan.

5.10 **Occupancy Charge Subsidies and Repayable Assistance from Commission.** Subject to Parts 6 and 7, the Commission will pay to the Cooperative:

5.10.1 an amount (the "Occupancy Charge Subsidy") equal to the difference between the aggregate of the Economic Occupancy Charges for the Units occupied by RGI Members and the aggregate of the Occupancy Charge Contributions payable by the RGI Members; and

5.10.2 an amount (the "Repayable Assistance") equal to the difference between the aggregate of the Economic Occupancy Charges for the Units occupied by Non-RGI Members and the aggregate of the Occupancy Charges payable by Non-RGI Members.

5.11 **Calculation of Occupancy Charge Subsidy and Repayable Assistance.** For the purpose of calculating the Occupancy Charge Subsidy and Repayable Assistance payable to the Cooperative in any Fiscal Year other than for those Fiscal Years referred to in Section 5.7, the following apply:

5.11.1 the Economic Occupancy Charge will be deemed to be the amount determined in accordance with the following formula:

$$\left(\frac{\text{CPI}_2}{\text{CPI}_1} \times \text{Economic Occupancy Charge for previous Fiscal Year less debt service charges relating to a Loan} \right) + \text{debt service charges relating to a Loan}$$

5.11.2 the Occupancy Charge will be deemed to be the amount determined in accordance with the following formula:

$$\left(\frac{90}{100} \times \frac{(\text{CPI}_2 - 1)}{\text{CPI}_1} \right) \text{Occupancy Charge for previous Fiscal Year} + \text{Occupancy Charge for previous Fiscal Year}$$

where: CPI_2 = CPI for the most recently published annual period;

CPI_1 = CPI for the annual period ending 1 year prior to the annual period used for CPI_2

For greater certainty, the limitation on the amounts to be included in the Operating Budget, including the amount for the Occupancy Charge, in setting Economic Occupancy Charge in the Fiscal Years other than those referred to in Operating Budgets submitted to the Commission in accordance with Section 5.7 are only for the purpose of calculating the Occupancy Charge Subsidy and Repayable Assistance and do not affect the Cooperative's obligation to set the Occupancy Charge as set out in Section 5.3.

- 5.12 **Accumulated Operating Surplus.** The Cooperative may retain funds (the "Accumulated Operating Surplus") from operating surplus for the Shelter Component of the Development for each Fiscal Year during a Review Period, and the following apply:
- 5.12.1 the Cooperative will first pay from the Accumulated Operating Surplus an amount to remedy any deficit in an Operating Budget for a previous Fiscal Year;
 - 5.12.2 the Cooperative may make other payments out of the Accumulated Operating Surplus as follows:
 - 5.12.2.1 payments for capital renovations or improvements within the design standards for HOMES BC;
 - 5.12.2.2 payments for programs for the benefit of the Members where such programs are housing related programs consistent with the goals of HOMES BC;
 - 5.12.2.3 repayable payments to the credit of a Non-RGI Member whose Income falls below the Core Need Income Threshold; and
 - 5.12.2.4 other payments approved by the Commission;
 - 5.12.3 the Commission has the right, at an operational review, to adjust an Operating Budget if operating surpluses are found to be excessive; and
 - 5.12.4 after repayment of the Total Repayable Assistance and assumption of payment of the Occupancy Charge Subsidy by the Cooperative, the Commission may, at its option, redirect a portion of any surplus from the Development to developing or redeveloping non-market housing for low and moderate-income households that meets the goals of HOMES BC.
- 5.13 **Loans.** The Cooperative will make payments on a Loan on the due dates and notify the Commission immediately if the Cooperative cannot make any payment, and:
- 5.13.1 the Cooperative will not reduce the amortization period of a Loan or prepay a Loan without Commission approval; and
 - 5.13.2 the Cooperative will, on the expiry of the term of a Loan, enter into further security agreements required to secure the outstanding balance of the Loan in accordance with the Commission's requirements.

- 5.14 **Reserve Fund.** The Cooperative will prepare a schedule setting out projected capital repairs and improvements over a 20 year period (a "Schedule of Capital Repairs"), in the format set out in Schedule F, as part of the first Operating Budget. It will also create a reserve (the "Reserve Fund") for capital repairs and replacements to the Improvements on the Land in accordance with the Schedule of Capital Repairs as amended by the Cooperative with Commission agreement from time to time, and the following apply:
- 5.14.1 the Cooperative will fund the Reserve Fund at least annually; and
 - 5.14.2 the Cooperative will use or dispose of the Reserve Fund only for capital repairs and replacements to the Improvements on the Land in accordance with the Schedule of Capital Repairs.
- 5.15 **Investment of Funds.** The Cooperative will deposit and keep the Reserve Fund and the Accumulated Operating Surplus and accumulated interest in a separate bank account or in accounts or instruments as follows:
- 5.15.1 in an account insured by the Canadian Deposit Insurance Corporation or by the Credit Union Deposit Insurance Corporation;
 - 5.15.2 in an investment in accordance with the *Cooperative Association Act* or the *Municipal Act*;
 - 5.15.3 in an investment guaranteed by a Canadian government; or
 - 5.15.4 in other investment instruments as the Commission approves.
- 5.16 **Auditor.** The Cooperative will appoint an auditor of the Cooperative in compliance with Section 39 of the *Cooperative Association Act*. The auditor will be in good standing in the Province of British Columbia and will not be a member of the Cooperative. The Cooperative will cause the auditor to:
- 5.16.1 audit the financial statements of the Cooperative and the following apply:
 - 5.16.1.1 the statements will include a balance sheet, a statement of income and expenses for each of the Shelter Component and Non-Shelter Component, a statement of reserves, and a statement of change in cash position; and
 - 5.16.1.2 depreciation will be at the rate of principal reduction of the Loan unless the Commission stipulates otherwise;
 - 5.16.2 provide a statement with the financial statements indicating that:
 - 5.16.2.1 the Cooperative does or does not have on file verification for the Income and assets of all the Members; that assessment may be done on a sample basis;

5.16.2.2 the Occupancy Charge Contributions are or are not being correctly charged to the RGI Members; that assessment may be done on a sample basis;

5.16.2.3 Accumulated Operating Surplus is being spent and accounted for as provided in this agreement; and

5.16.2.4 the Cooperative has properly funded and maintained the Reserve Fund, and that all interest accruing to the Reserve Fund has been recorded.

5.17 **Audited Financial Statements to be Submitted.** The Cooperative will submit audited financial statements to the Commission within 4 months after the end of each Fiscal Year.

5.18 **Unauthorized Expenditures and Acts.** With regard to its ownership and operation of the Development, the Cooperative will not, without the approval of the Commission:

5.18.1 borrow money other than the Loan;

5.18.2 guarantee or underwrite the repayment of any obligation assumed by a third party;

5.18.3 pay to a person or organization any amount for the purpose of supporting activities the objective of which is to make representations to any government body on any subject matter not directly related to the operation of the Development. This provision does not apply to annual membership fees to sector organizations;

5.18.4 release, compromise, assign or transfer any claim, right or benefit of the Cooperative in connection with or arising out of the Cooperative's interest in the Development; or

5.18.5 confess a judgement against it.

5.19 **Reimbursement from Commission for Damage.** If the Cooperative has reduced the cost of shares for a RGI Member pursuant to Section 5.1.2.2, then the following apply:

5.19.1 if a balance remains owing to the Cooperative on account of the costs of repairing damage (other than normal wear and tear), cleaning or redecoration of the Unit after withholding all of the share purchase price paid by the RGI Member, the Cooperative may request reimbursement from the Commission and the following will apply:

5.19.1.1 that reimbursement will be limited to the lesser of:

- 5.19.1.1.1 50% of the share purchase price currently payable by a Non-RGI Member for the same size Unit as the Unit that has been damaged; and
 - 5.19.1.1.2 the difference between the amount paid as share purchase price by the RGI Member and the share purchase price currently payable by a Non-RGI Member for the same size Unit as the Unit that has been damaged;
- 5.19.1.2 the Cooperative will, within 30 days of the RGI Member's departure:
- 5.19.1.2.1 give notice to the Commission of the amount of the claim and permit the Commission to inspect the Unit to verify its condition; and
 - 5.19.1.2.2 provide to the Commission the original condition report for the Unit, which report will be in sufficient detail to allow the damage caused by the RGI Member to be clearly identified;
- 5.19.2 the Commission will, within 30 days following receipt of the notice of the claim for reimbursement, pay to the Cooperative the amount of the claim as limited in accordance with Section 5.19.1.1; and
- 5.19.3 the Commission will not be liable to reimburse the Cooperative for arrears of Occupancy Charge Contributions.

PART 6 OCCUPANCY CHARGE SUBSIDY - RGI MEMBERS

- 6.1 **Occupancy Charge Subsidy.** The Commission will pay the Occupancy Charge Subsidy to the Cooperative on behalf of the RGI Members. Any operating surplus from the Non-RGI Members after repayment in full of the Total Repayable Assistance will be applied to reduce the Occupancy Charge Subsidy payable by the Commission for the RGI Members.
- 6.2 **Payment of Occupancy Charge Subsidy.** The Commission will pay the Occupancy Charge Subsidy to the Cooperative monthly in advance starting on the Start Date.

- 6.3 **Excess or Deficit of Occupancy Charge Subsidy.** If the Commission in any Fiscal Year pays the Cooperative more or less than what the Commission subsequently establishes is payable to the Cooperative as the Occupancy Charge Subsidy for that Fiscal Year, the Cooperative will repay any excess to the Commission or the Commission will pay the deficit to the Cooperative.

PART 7 REPAYABLE ASSISTANCE - NON-RGI MEMBERS

- 7.1 **Repayable Assistance.** The Commission will loan the Repayable Assistance to the Cooperative for each Fiscal Year until the Repayment Date.
- 7.2 **Payment of Repayable Assistance.** The Commission will pay the Repayable Assistance, if any, to the Cooperative monthly in advance starting on the Start Date.
- 7.3 **Resetting of Repayable Assistance.** At the end of each Review Period, Repayable Assistance will be reset based on a current appraisal of the Market Rent and as if Occupancy Charges were set at 90% of the Market Rent.
- 7.4 **Repayment Date.** The Commission is no longer required to pay the Repayable Assistance and the Cooperative is required to start repaying the Total Repayable Assistance on the first day (the "Repayment Date") of the Fiscal Year following the Fiscal Year in which the aggregate of the Occupancy Charges payable by Non-RGI Members exceeds the aggregate of the Economic Occupancy Charges for the Units occupied by Non-RGI Members as shown in the Operating Budget for that Fiscal Year.
- 7.5 **Interest.** The Cooperative will pay interest on the Repayable Assistance from and after the Repayment Date:
- 7.5.1 at the Prime Rate in effect on the Repayment Date, which rate will be adjusted annually on each anniversary of the Repayment Date; and
 - 7.5.2 calculated monthly, compounded semi-annually.
- 7.6 **Assistance Repayment.** The Cooperative will pay to the Commission every month, starting on the Repayment Date, the amount agreed annually between the parties (the "Assistance Repayment") based on one-twelfth of the amount by which the aggregate of the Occupancy Charge payable by the Non-RGI Members for the previous year exceeds the aggregate of the Economic Occupancy Charge for the Units occupied by the Non-RGI Members for that year, and the following will apply:

- 7.6.1 the Assistance Repayment is to be applied firstly on account of interest due and secondly on account of the outstanding Repayable Assistance. At the end of each interest calculation period, unpaid accrued interest is to be added to Total Repayable Assistance then outstanding and bears interest at the Prime Rate;
- 7.6.2 subject to Section 7.6.3, the Cooperative will pay the Assistance Repayment to the Commission on the first day of every month after that until the Total Repayable Assistance has been paid in full. The Commission may, at its option, reduce the Occupancy Charge Subsidy payable to the Cooperative by the amount of the Assistance Repayment due to the Commission; and
- 7.6.3 on expiry of the Term, if the Cooperative's interest in the Land is pursuant to a lease from a landlord and such leasehold interest terminates and the Cooperative no longer has any interest in the Land or the Development then, provided the Cooperative is not in default with respect to payment of the Assistance Payment, the Total Repayable Assistance then outstanding will be deemed to have been paid in full.

PART 8 GENERAL OPERATIONS

- 8.1 **Operational Review.** In accordance with its obligation to monitor operations as set out in Part 2, the Commission will perform a full review of the Cooperative's operation of the Development once every Review Period to determine conformance with the terms of this agreement. The review will include, but not be limited to, the following:
 - 8.1.1 the calculation of Operating Budget and Economic Occupancy Charges;
 - 8.1.2 the relationship of Occupancy Charges to Market Rents, for purposes of re-setting the level of Repayable Assistance;
 - 8.1.3 the amount of any Accumulated Operating Surplus and Reserve Fund and the use to which those funds are being put;
 - 8.1.4 the Cooperative's conformance with statutory requirements and the terms of this agreement;
 - 8.1.5 the maintenance of the Development and the progress of necessary repairs and replacements; and
 - 8.1.6 in general, the degree to which the Operating Standards of HOMES BC are being met.

- 8.2 **Non-Shelter Component.** The Cooperative will use the Occupancy Charge Subsidy and Repayable Assistance only for operating expenses for the Shelter Component.
- 8.3 **Records.** The Cooperative will maintain adequate operational records for the Development as described in the Operating Standards and the following apply:
- 8.3.1 the Cooperative will retain all documents, vouchers, records and accounts that pertain to the Development for not less than 7 years following the date of receipt or production of those records;
 - 8.3.2 the Commission or its agents may inspect all records maintained by the Cooperative for the Development, after giving reasonable notice, at any time during regular business hours and may make extracts from and take photocopies of those records; and
 - 8.3.3 in accordance with the Commission's obligations pursuant to the *Freedom of Information and Protection of Privacy Act*, the Cooperative will, upon request:
 - 8.3.3.1 disclose to a Member the Cooperative's file for the Member, subject to removing information to protect third parties according to the principles of that Act; and
 - 8.3.3.2 disclose to third parties only that information that the Commission would be compelled to disclose according to the principles of that Act.
- 8.4 **Statistical Information.** The Cooperative will supply to the Commission for statistical purposes, in a format requested by the Commission, information concerning the Development that the Commission may request from time to time.
- 8.5 **Insurance.** The Cooperative will, throughout the Term, obtain and maintain sufficient insurance on the Development as set out in Schedule G and the following apply:
- 8.5.1 if the Cooperative at any time does not maintain those policies in good standing, the Commission may, at the Cooperative's expense, obtain and maintain insurance on terms, in amounts, with deductibles and for periods of time that the Commission reasonably deems advisable; and
 - 8.5.2 if the Commission does not terminate this agreement upon damage or destruction pursuant to Section 8.6, the Cooperative, subject to any requirements of any mortgage lender or the landlord of the Land, if any, will repair or rebuild the Development. It will use and pay all insurance proceeds in accordance with the Commission's requirements.

- 8.6 **Damage or Destruction.** If, in the opinion of a professional engineer or architect appointed by the Cooperative or the Commission, the Development is damaged or destroyed in excess of 25% of its insurable value, the Commission may terminate this agreement by delivering written notice of termination to the Cooperative within 30 days after the date of that damage or destruction.

PART 9 LIABILITY

- 9.1 **Indemnity.** The Cooperative will indemnify and save harmless the Commission and the Provincial Government, and each of their ministers, board members, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from all claims and costs which they may be liable for or incur arising out of any act or omission of the Cooperative or its officers, directors, employees, agents, contractors or other persons for whom at law the Cooperative is responsible, or the Cooperative's ownership, lease, operation, management or financing of the Development, except to the extent that it is caused by the negligence of the Commission or its employees, agents or contractors.
- 9.2 **Release.** The Cooperative releases the Commission and the Provincial Government, and each of their ministers, board members, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from all claims arising out of advice or direction respecting the ownership, lease, operation or management of the Development given to the Cooperative by any of them, except to the extent that advice or direction is given negligently.
- 9.3 **Survival.** The obligations of the Cooperative set out in Sections 9.1 and 9.2 survive termination of this agreement.

PART 10 GENERAL PROVISIONS

- 10.1 **Defaults, Intervention and Remedies.** If and whenever the Cooperative is in Default the Intervention Procedure will apply. The Intervention Procedure and the rights and remedies the Commission may exercise in these circumstances are set out in Schedule H.
- 10.2 **Determination by Commission Binding.** Wherever in this agreement the Commission's approval is required for a decision or action of the Cooperative, the Commission's determination, designation or decision with regard to that approval is conclusive and binds the Cooperative.

- 10.3 **Mediation.** Except as set out in Section 10.2, if the Commission and the Cooperative have a dispute arising out of or in connection with this agreement, or in respect of any defined legal relationship associated with it or from it, the parties agree to try to resolve the dispute by participating in a structured negotiation conference with a mediator agreed upon by the parties or, failing agreement, under the commercial Mediation Rules of the British Columbia International Commercial Arbitration Centre, in which case the appointing authority is the British Columbia International Commercial Arbitration Centre.
- 10.4 **Arbitration.** If the Commission and the Cooperative cannot or do not resolve their dispute through the mediation process referred to in Section 10.3, the parties will submit that dispute to arbitration, as set out in Schedule I.
- 10.5 **Termination of Occupancy Charge and Repayable Assistance.** Neither the Commission nor the Provincial Government is obliged to pay Occupancy Charge Subsidy or Repayable Assistance or to make any other financial contributions to the Cooperative after the termination of this agreement.
- 10.6 **Notices.** All notices, demands or requests of any kind, which the Cooperative or Commission may be required or permitted to serve on the other in connection with this agreement, will be in writing and may be served on the parties by registered mail, by telecopied transmission, or by personal service, to the addresses set out on page one. Service of that notice, demand or request is deemed complete:
- 10.6.1 if made by registered mail, 72 hours after the time of mailing, except where there is a postal service disruption during that period;
 - 10.6.2 if made by telecopy, on the first business day after the date when that telecopy is transmitted; and
 - 10.6.3 if made by personal service, upon that personal service being effected.
- 10.7 **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. Any notice, demand or request made to the Commission, to be effective, will be addressed to the Director, Regional Operations.
- 10.8 **Assignment.** The Cooperative will not assign its rights or obligations under this agreement without the Commission's prior approval.
- 10.9 **Whole Agreement.** There are no warranties, representations, conditions or collateral agreements that pertain to this agreement, except as set forth in this agreement.
- 10.10 **Enuring Effect.** This agreement enures to the benefit of and binds each of the Commission and the Cooperative and their respective successors and permitted assigns.

PART 11 INTERPRETATION

- 11.1 **Definitions.** The meanings of terms used in this agreement are set out in Schedule A.
- 11.2 **Schedules.** Attached to this agreement are Schedules A through I. The Schedules are an integral part of the agreement.
- 11.3 **Time.** Time is of the essence of this agreement. If either party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party. Any time specified in this agreement for observing or performing an obligation is local time in Vancouver, British Columbia.
- 11.4 **Governing Law.** This agreement is to be governed by and construed and enforced in accordance with the laws of British Columbia.
- 11.5 **References.** If the singular, masculine, feminine or neuter is used in this agreement, the reference is to the plural, masculine, feminine or body corporate according to the context in which it is used.
- 11.6 **Construction.** The division of this agreement into sections and the use of headings are for convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this agreement is to be construed simply, according to its fair meaning and not strictly for or against either party.
- 11.7 **No Limitation.** The word "including" when following any general statement, term or matter is not to be construed to limit that general statement, term or matter to the specific items set forth immediately following that word or to similar items. That general statement, term or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of that general statement, term or matter.
- 11.8 **Document Written in Present Tense.** The word "will" where the subject is either or both of the parties denotes a present obligation.
- 11.9 **Validity of Provisions.** If a Court of competent jurisdiction finds that any part of this agreement is invalid, illegal or unenforceable, that invalidity, illegality or unenforceability does not affect any other provisions of this agreement. The balance of the agreement is to be construed as if that invalid, illegal or unenforceable provision had never been included and is enforceable to the fullest extent permitted at law or at equity.

- 11.10 **Waiver.** No consent or waiver, expressed or implied, by a party of any default by the other party in observing or performing its obligations under this agreement is effective unless given in writing, nor is it a consent or waiver of any other default. Failure on the part of either party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long that failure continues, is not a waiver by that party of its rights under this agreement or at law or at equity.
- 11.11 **Consents and Approvals.** Except as otherwise expressly set out in this agreement, where this agreement provides for any approval, consent or agreement with respect to any matter:
- 11.11.1 it will be obtained before any action is taken on it;
 - 11.11.2 it will be requested and responded to in writing; and
 - 11.11.3 it will not be unreasonably withheld, except if this agreement otherwise expressly stipulates, or delayed.
- 11.12 **Extent of Obligations and Costs.** Every obligation of each party in this agreement extends throughout the Term. To the extent an obligation ought to have been observed or performed before or upon the expiry or earlier termination of the Term, that obligation, including any indemnity, survives the expiry or earlier termination of the Term until it has been observed or performed.
- 11.13 **Financial Terms.** All accounting terms not otherwise defined in this agreement have the meanings assigned to them, and all calculations to be made under this agreement are to be made in accordance with Canadian generally accepted accounting principles consistently applied.

11.14 **Statutes.** Any reference in this agreement to a provincial or federal statute includes the statute as it exists on the reference date of this agreement and any subsequent amendments or replacements.

IN WITNESS OF WHICH the duly authorized signatories of each of the Cooperative and the Commission have executed this agreement effective as of the reference date of this agreement.

_____ **HOUSING CO-OPERATIVE**

Per:
Authorized Signatory

Per: _____
Authorized Signatory

HOUSING MANAGEMENT COMMISSION

Per:

Per:
Authorized Signatory

11.14 **Statutes.** Any reference in this agreement to a provincial or federal statute includes the statute as it exists on the reference date of this agreement and any subsequent amendments or replacements.

IN WITNESS OF WHICH the duly authorized signatories of each of the Cooperative and the Commission have executed this agreement effective as of the reference date of this agreement.

_____ **HOUSING CO-OPERATIVE**

Authorized Signatory _____

Per _____
Authorized Signatory

BRITISH COLUMBIA HOUSING MANAGEMENT COMMISSION

Per: _____
Authorized Signatory

Per: _____
Authorized Signatory

SCHEDULE B
OPERATING AGREEMENT
HOMES BC PROGRAM

OCCUPANCY STANDARDS

Members will be accommodated in Units suitable to their household size in accordance with the following guidelines unless otherwise agreed by the Commission:

1. No more than 2 and no fewer than 1 person per bedroom.
2. Spouses and couples share a bedroom.
3. Parents do not share a bedroom with their children.
4. Dependents aged 18 or over do not share a bedroom.
5. Dependents of the opposite sex age 5 or over do not share a bedroom.

SCHEDULE C

OPERATING AGREEMENT HOMES BC PROGRAM

OCCUPANCY AGREEMENTS

The following provisions will be included in the Occupancy Agreement between the Cooperative and the Member:

1. The right to occupy is not for a fixed term.
2. The Occupancy Charge Contribution will change if the Member's Income or assets have changed.
3. Only the persons named in the Occupancy Agreement have a right to occupy the Unit.
4. The income of any person occupying a Unit as his or her principal residence, regardless of whether or not that person is named in the Occupancy Agreement, will be included for the purpose of determining the Member's Income.
5. Assignment of the Occupancy Agreement or subletting or otherwise parting with possession of the whole or part of the Unit for the whole or any part of the term of the Occupancy Agreement is prohibited.
6. The Occupancy Agreement is ended, unless otherwise agreed by the Commission, if:
 - 6.1 the number of persons occupying the Unit is fewer than the number of persons prescribed for the Unit in accordance with the Occupancy Standards; or
 - 6.2 the Unit becomes an Abandoned Unit.
7. The Member consents to the Commission verifying personal information, as defined in the *Freedom of Information and Protection of Privacy Act*, which consent is required by that Act to enable the Commission to carry out its audit function.
8. The Member agrees to provide such information as is requested by the Cooperative and/or the Commission for calculation of the Occupancy Charge Subsidy and for auditing purposes. If the Member fails to disclose or misrepresents any information requested in the Declaration of Income and Assets, the Commission may withhold the Occupancy Charge Subsidy and such failure to disclose or misrepresentation will be deemed to be a material breach of the Occupancy Agreement and the following will apply:
 - 8.1 the Commission is entitled to recover from the Member in contract or otherwise the Occupancy Charge Subsidy paid by the Commission under or in connection with the Occupancy Agreement to which the Member would not otherwise have been entitled and this remedy is not exclusive and may be exercised by the Commission in addition to any other remedies available to the Commission in law or equity and in addition to any remedies of the Cooperative as set out in the Occupancy Agreement;

- 8.2 money owing by the Member to the Cooperative and/or the Commission under the Occupancy Agreement pursuant to a court order or arbitrator's order or otherwise will bear interest at the prime rate of the Royal Bank of Canada from and including the time such money becomes payable, calculated and payable monthly until repayment both before and after judgement; and
- 8.3 such failure to disclose or misrepresentation of Income or assets by a Member entitles the Cooperative to end the Occupancy Agreement.

SCHEDULE D

OPERATING AGREEMENT HOMES BC PROGRAM

TERMS OF APPRAISAL FOR MARKET RENT

Market Rent is to be determined by an appraiser accredited with the Appraisal Institute of Canada.

The appraisal report is to be a complete, self-contained appraisal, prepared in conformity with the Code of Professional Ethics and the Standard of Professional Practice of the Appraisal Institute of Canada. The appraisal is to be addressed to both the Cooperative and the Commission. Cost of the appraisal completed before the Start Date will be charged to the development account for the Development. Cost of any subsequent appraisal will be charged to the Operating Budget for the Development.

The Cooperative will require that the appraiser submit an estimate of Market Rent in the Development in accordance with the following criteria:

1. Market Rent means the amount that would be paid as monthly rent for each Unit in the Development if rented as a rental unit in the private market on a month to month tenancy in the open market by a willing landlord to a willing tenant.
2. The Market Rent will include those utilities and services that will be provided to both the RGI Member and the Non-RGI Member.
3. The Market Rent is to be determined on the assumption that there are no restrictions as to the type of tenant eligible to rent the Unit and irrespective of the form of ownership or restrictions on ownership of the Development. Subsidized rental buildings must not be used as comparables.
4. The Market Rent is to be determined on the assumption that the construction of the Development is complete.

For the appraisal completed before the Start Date, the Market Rent is to be determined for each Unit.

For subsequent appraisals, at its option, the Cooperative may require the appraiser provide an estimate of the average Market Rent for all units of a particular type in the Development, rather than an estimate of the actual Market Rent for every individual unit. For example, the appraiser may be requested to provide an estimate of the average Market Rent for every "Type A 2-bedroom" unit. The Cooperative can then apply the appraiser's estimate equally to all units of that type, or make its own estimate of how market rents for each unit of that type should vary according to location within the Development. When the Cooperative varies Market Rent according to location, the overall average must reflect the appraised average Market Rent for the unit type.

SCHEDULE E
OPERATING AGREEMENT
HOMES BC PROGRAM

HOMES BC OCCUPANCY CHARGE SCALE

Occupancy Charge Contribution/Income

1. The Occupancy Charge Contribution shall not exceed a set percentage¹, as determined from time to time by the Commission, of the Income of the Member, including any person residing in a Unit who is not named in the Occupancy Agreement and the following will apply:
 - 1.1 Income includes, without limitation, all income from earnings, including commissions and tips; all income from public and private pension plans, Old Age Security and Guaranteed Income Supplement; all income received under the *BC Benefits (Income Assistance) Act* or successor legislation ("Income Assistance"); Disabled Veteran's Allowance; alimony; child support; workers' compensation benefits; unemployment insurance; and an imputed income from assets;
 - 1.2 a minimum Occupancy Charge Contribution is applied based on applicable household size and age of the Member; and
 - 1.3 the Occupancy Charge Contribution of a Member in receipt of Income Assistance will be fixed at an amount determined from time to time by the Commission.

Exemptions from Income

2. The following are exempt from inclusion in Income:
 - 2.1 Child Tax Benefit;
 - 2.2 capital gains, such as insurance settlements, inheritances, disability awards and sale of effects in the year they are received (Note: in subsequent years these are considered as assets);
 - 2.3 the following deductions, provided that the combined maximum of the deductions may not exceed \$100 per person per month:
 - 2.3.1 up to \$100 per month for each person residing in a Unit receiving income from employment. Earnings of less than \$100 can be deducted up to the amount earned; and
 - 2.3.2 up to \$50 per month for a single person or up to \$100 per month for Families if alimony / child support / orphan's benefit payments are received;

¹ Currently: 30% of income

- 2.4 the earnings of a person 18 and under in full time attendance at a recognized institution of learning, including scholarships and tuition bursaries;
- 2.5 up to \$200 per month for a person 19 and over receiving income if the person is in full time attendance at a recognized institution of learning;
- 2.6 living out or travelling allowances;
- 2.7 Shelter Aid for Elderly Renters ("SAFER") payments received prior to moving into the Development (Note: Members where the HOMES BC Occupancy Charge Scale applies are not eligible for SAFER);
- 2.8 government provided daycare allowance; and
- 2.9 payments for foster children, or children in care of a relative.

Assets

3. Assets include:
 - 3.1 accounts in banks, trust companies, etc.;
 - 3.2 stocks and bonds;
 - 3.3 real estate;
 - 3.4 equity in a business;
 - 3.5 Registered Retirement Savings Plans; and
 - 3.6 cash and other items of a potential income earning nature;

Income from Assets

4. Income from assets is determined by exempting the first \$3,000 from total assets and computing the balance at a percentage per annum² as may be set from time to time by the Commission. Because income from assets is determined by an imputed amount, actual income from assets should not be declared.

Notes

- a) An adjustment for Member paid heating costs may be made in an amount as determined from time to time by the Commission.
- b) The Commission may change all or part of this scale at any time.

² January 1, 1996: 1% per annum

SCHEDULE F
OPERATING AGREEMENT
HOMES BC PROGRAM

SCHEDULE OF CAPITAL REPAIRS
SAMPLE FORMAT

Items may be added or deleted as agreed between the Cooperative and the Commission.

Item	Number	Unit Cost	Total Cost	Life in Years	Years Left	Year 1	Year 2	Year 3	Year 4	Continue to Year 20 . . .
Stoves										
Fridges										
Carpets										
Linoleum										
Drapes										
Blinds										
Hot Water Tanks										
Boilers										
Roof										
Air Conditioner										
Washers										
Dryers										
Furnace										
Interior Paint										
Exterior Paint										
Other:										

TOTAL										

SCHEDULE G
OPERATING AGREEMENT
HOMES BC PROGRAM

INSURANCE

Insurance

1. The Cooperative will, throughout the Term, obtain and maintain:
 - 1.1 insurance protecting the Cooperative, (including the Cooperative's employees and agents, without any rights of cross-claim or subrogation, against the Commission or its employees or agents) against claims for personal injury, death, property damage and loss or third party or other public liability claims arising from any accident or occurrence in, on or about the Development to an amount of at least \$3,000,000 inclusive for any one occurrence or a greater amount that the Commission, from time to time, reasonably so requires;
 - 1.2 insurance, calculated on a replacement cost basis, upon the full insurable value of the Improvements in the joint names of the Cooperative and any mortgage lender, as their interests may appear, and protecting all of them from loss or damage caused by fire and other perils, including earthquake and flood, as is from time to time included in the standard form "All Risks" insurance policy generally available in British Columbia. The policy must include bylaw insurance covering required material changes and demolition of any undamaged portion of the Improvements;
 - 1.3 if applicable, broad comprehensive boiler and machinery insurance, in the joint names of the Cooperative and any mortgage lender, as their interests may appear, covering all boilers and pressure vessels in the Development, and also covering loss or damage caused by rupture of steam pipes, in such amount as a prudent owner of a similar development would obtain or in a greater amount if the Commission, from time to time, reasonably so requires;
 - 1.4 if requested by the Commission, business interruption insurance, on terms that the Commission requires; and
 - 1.5 other insurance that the Commission reasonably requires from time to time or as any mortgage lender requires.

Insurance Requirements

2. The Cooperative will ensure that the following provisions will govern the insurance and will comply with them:
 - 2.1 the policies must provide that they cannot be cancelled, terminated or materially amended, except if the insurer delivers to the Commission at least 30 days' prior written notice;

- 2.2 the policies must insure the interests of and protect any mortgage lender and the Members notwithstanding any act, omission or negligence of the mortgage lender or a Member or any third party which is not within the knowledge or control of the insured, which might otherwise result in the forfeiture or invalidity of any of the policies;
- 2.3 all policies of public liability insurance will be written to cover the Cooperative and any mortgage lender and will provide that each person insured is insured in the same manner and to the same extent as if individual policies had been issued to each;
- 2.4 the policies must be written by insurers, and on terms reasonably satisfactory to the Commission;
- 2.5 the policies must be primary and not call into contribution or be in excess of any other insurance available to the named or additional named insured(s), and must not include a co-insurance clause;
- 2.6 the Cooperative will deliver to the Commission, on request, certified copies of the policies or renewals of them;
- 2.7 the Cooperative will notify the Commission immediately of any circumstance known to the Cooperative which might materially affect the coverage under the policies; and
- 2.8 the policies may provide that the amount payable in the event of any loss will be reduced by a deductible in an amount approved by the Commission. The Cooperative will be a co-insurer only to the extent of the amount so deducted from the insurance proceeds paid in the event of any loss.

Workers' Compensation

3. The Cooperative will obtain and maintain, or cause to be obtained and maintained, workers' compensation coverage in respect of all workers, employees and other persons engaged in any work in or upon the Development required by the *Workers' Compensation Act*.

No Representation

4. Any requirement or advice by the Commission as to the amount of coverage under any policy of insurance does not constitute a representation by the Commission that the amount required is adequate.

SCHEDULE H

OPERATING AGREEMENT HOMES BC PROGRAM

DEFAULT, INTERVENTION PROCEDURE AND REMEDIES

Events of Default

1. The following events shall constitute default by the Cooperative under this agreement:
 - 1.1 breach of any covenant on the part of the Cooperative under this agreement and in particular consistent failure to operate, maintain and manage the Development in accordance with the Operating Standards;
 - 1.2 if the Cooperative fails to pay its debts as they become due or becomes insolvent or commits an act of bankruptcy or if a Receiver should be appointed to manage any of the assets of the Cooperative;
 - 1.3 if the Cooperative fails to remain in good standing under the *Cooperative Association Act*;
 - 1.4 if the Cooperative is in default under a Loan;
 - 1.5 if the Cooperative is in breach of any agreement with the Commission or the Provincial Rental Housing Corporation in respect of the Development and/or the Land;
 - 1.6 if the Cooperative is in default under the lease for the Land, if any;
 - 1.7 if the Cooperative disposes of all or substantially all of its assets; and
 - 1.8 if the Cooperative is in breach of or fails to comply with any applicable law, bylaw or regulation.

Intervention Procedure for Default

2. The following is the procedure for intervention by the Commission in the event of Default by the Cooperative:
 - 2.1 **Communication.** The Commission will give the Cooperative written notice of the Default, which notice will provide for a reasonable time for the Cooperative to respond to the notice of Default by providing further information concerning the Default.
 - 2.2 **Action Plan.** The Commission and the Cooperative will agree on an action plan to cure the Default, including a schedule for implementation of the action plan, identification of the resources available to the Cooperative to implement the action plan, and the dates on which the Commission will review progress on implementation of the action plan.

- 2.3 **On Watch.** If the Cooperative does not cure the Default within a reasonable time, the Commission may place the Cooperative "On Watch," which means that:
- 2.3.1 this is a warning that the Commission will intervene further if the Default is not cured;
 - 2.3.2 the Commission will monitor the operation of the Development by the Cooperative more often and in more depth, including a management audit before the end of a Review Period; and
 - 2.3.3 if the Cooperative makes progress in curing the Default, the Commission will lessen the monitoring of the Cooperative and the On Watch status may be withdrawn.
- 2.4 **Co-management.** The Commission may appoint a manager to work with and supervise the Cooperative in operating the Development and in curing the Default, in order to:
- 2.4.1 improve the Cooperative's management of the Development and return operation of the Development to the Cooperative at some future date; and
 - 2.4.2 provide education, training and other necessary resources to the Cooperative to cure the Default.
- 2.5 **Takeover.** The Commission may appoint a Receiver in accordance with Sections 7 to 9 of this Schedule or may require that the Cooperative assign its interest in the Development to the Commission or a nominee of the Commission.

Extraordinary Circumstances

3. Although the steps of the Intervention Procedure will normally be taken in sequence, the Commission, at its sole discretion, may intervene at any level of the Intervention Procedure in Extraordinary Circumstances, which are:
- 3.1 fraud or criminal behaviour of a representative of the Cooperative affecting the Development;
 - 3.2 breach of Part 3;
 - 3.3 danger to the health and safety of the Members;
 - 3.4 default under a Loan or on a charge in favour of the Commission or the Provincial Rental Housing Corporation registered on title to the Land and the Society fails to remedy such default on the terms and within the time allowed as set out in the conditions of the Loan or the conditions in the charge, as the case may be;
 - 3.5 consistent failure to participate in the Intervention Procedure;

and the determination by the Commission of an Extraordinary Circumstance is conclusive and binds the Cooperative.

Other Rights and Remedies

4. If the Commission elects to proceed under Section 2.5 of this Schedule, then in addition to any other rights or remedies available to the Commission at law or at equity, the Commission may exercise any one or more of the following rights or remedies, singly or in combination:
 - 4.1 terminate this agreement, in which case the Commission will deliver to the Cooperative written notice of termination;
 - 4.2 cease paying Occupancy Charge Subsidy or Repayable Assistance or reduce the amounts thereof, either permanently or for such period as the Commission may determine;
 - 4.3 demand payment from the Cooperative of all principal and interest in the Reserve Fund in partial satisfaction of repayment or overpayment of Occupancy Charge Subsidy or Repayable Assistance;
 - 4.4 demand payment from the Cooperative of all Repayable Assistance paid to the Cooperative pursuant to this agreement together with accrued interest at the Prime Rate from the date each payment of Repayable Assistance was made;
 - 4.5 take an assignment of the Cooperative's rights in every Occupancy Agreement and in all amounts payable to the Cooperative as Occupancy Charges or otherwise pursuant to an Occupancy Agreement, subject to any prior assignment to a mortgagee for a mortgage securing a Loan; and
 - 4.6 take whatever steps the Commission deems necessary to rectify any Default by the Cooperative.

Survival

5. The remedies set out in this Schedule survive termination of this agreement by the Commission.

Costs

6. The Commission may recover from the Cooperative on demand all its costs of exercising its rights or remedies under this agreement.

Appointment of Receiver

7. Upon the occurrence of any event of Default and in addition to any other rights or remedies of the Commission, the Commission may appoint, or request a Court of competent jurisdiction to appoint a Receiver, with or without bond as the Commission or the Court may determine, and, from time to time, may remove any Receiver so appointed and appoint another in its place, or request the Court to do so. A Receiver so appointed is an officer of the Cooperative, and not an officer or agent of the Commission, and has all the necessary and exclusive power to deal with the Development including the power to:
 - 7.1 take control, possession and direction of the Development and the Cooperative's assets in connection with the Development, and carry on the business of the Cooperative in operating, managing and maintaining the Development in accordance with the Operating Standards;
 - 7.2 demand and recover all the income of the Development by direct action, distress or otherwise, in the name of either the Cooperative or the Commission;
 - 7.3 observe or perform, on behalf of the Cooperative, all the Cooperative's obligations under this agreement and any other contracts pertaining to the Development;
 - 7.4 give receipts, on behalf of the Cooperative, for any money received; and
 - 7.5 carry out such other powers as the Court may authorize or instruct.

Application of Revenue

8. The Receiver has the right and duty to apply the gross revenue from the Development, which it recovers or receives from time to time, as follows:
 - 8.1 firstly, in payment of all costs, charges and expenses of or incidental to the appointment of the Receiver and the exercise by it of all or any of its powers, including the reasonable remuneration of the Receiver which is deemed to be an amount approved by the Commission, and all outgoings properly payable by the Receiver, together with all legal costs in respect thereof on a solicitor and client basis;
 - 8.2 secondly, in payment of all operating expenses under an Operating Budget;
 - 8.3 thirdly, if required by the Commission, in repayment of the Occupancy Charge Subsidy and Total Repayable Assistance; and
 - 8.4 lastly, to pay the balance to the Commission.

Commission's Liability to Receiver

9. The Commission will be under no liability to the Receiver for its remuneration, costs, charges, expenses or otherwise.

SCHEDULE I

OPERATING AGREEMENT HOMES BC PROGRAM

ARBITRATION PROCESS

1. Either party may deliver notice to the other party setting out in the nature of the dispute, and naming an arbitrator.
2. Within 10 days after receipt of that notice, the other party will deliver notice to the first party naming a second arbitrator.
3. Each party will instruct the arbitrator appointed by it to agree with the other arbitrator on a third arbitrator, and to appoint that third arbitrator, within 15 days after receipt by the first party of the notice referred to in Section 1.
4. The three arbitrators are governed by the *Commercial Arbitration Act* of British Columbia and, within 30 days after the date of appointment of the third arbitrator, will reach a decision on the dispute and will deliver notice of that decision to the Cooperative and the Commission.
5. If the second party does not appoint an arbitrator within the time limited by Section 2 of this Schedule, the arbitrator appointed pursuant to Section 1, within 30 days after the date of appointment, will reach a decision on the dispute and will deliver notice of that decision to the Cooperative and the Commission.
6. If the two arbitrators do not appoint a third arbitrator within the time limited by Section 3, each of the Cooperative and the Commission will dismiss the arbitrator appointed by it and will immediately submit the dispute to arbitration under the *Commercial Arbitration Act*.
7. Each of the Cooperative and the Commission will appoint an arbitrator who is at arm's length from it. They irrevocably authorize and instruct those arbitrators to reach a decision fairly and without bias toward or against either party.
8. The decision of the majority of the three arbitrators or any single arbitrator, as the case may be, is conclusive and binds the Cooperative and the Commission.
9. The Cooperative and the Commission will bear the costs of arbitration equally.