



Agreement Number	
Charged to	

# PROJECT DEVELOPMENT AGREEMENT

THIS AGREEMENT is made the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**BETWEEN:**

*Vancouver Island Health Authority*

("VIHA", "we", "us", or "our" as applicable) at the following address:

**1952 Bay Street,  
Victoria, B.C. V8R 1J8**

Phone: **(250)** \_\_\_\_\_  
Fax: **(250)** \_\_\_\_\_

**AND:**

\_\_\_\_\_

(the "Owner", the Operator, "you", or "your" as applicable) at the following address:

\_\_\_\_\_, B.C. \_\_\_\_

Phone: **(250)** \_\_\_\_\_  
Fax: **(250)** \_\_\_\_\_

**WHEREAS:**

- A. The Vancouver Island Health Authority (VIHA) issued a Request for Proposal (the "RFP") dated the \_\_\_\_\_, for the development of Residential Care Facilities and the Operator submitted a proposal dated \_\_\_\_\_ (the "Proposal") to VIHA in response to the RFP; and
- B. The Operator has agreed to develop the Project on the terms and conditions set forth in the Proposal and this Agreement.

NOW THEREFORE in consideration of the mutual covenants, promises and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

**ARTICLE 1  
DEFINITIONS AND HEADINGS**

**1.1 Definitions**

In this Agreement, the following terms have the meanings set out below:

**"Agreement"** means this agreement including any preamble and Schedules to this Agreement, as amended, supplemented or re-stated from time to time.

**"Applicable Law"** means all present and future laws, statutes, ordinances, regulations, municipal by-laws, treaties, judgements and decrees applicable to any Person, property or event, whether or not having the force of law, all official directives, rules, consents, approvals, authorizations, guidelines, orders and policies of any governmental authority having or purporting to have authority over that Person, property or event and all general principles of common law and equity.

**"Business Day"** means a day other than a Saturday, Sunday or statutory holiday in British Columbia.

**"BLA"** means the *Builders Lien Act*, RSBC 1997, chapter 45 as the same may be amended or re-enacted from time to time.

**"Community Care and Assisted Living Act"** means the Community Care Facility Act, RSBC 1996 c. 60, and the successor legislation, the Community Care and Assisted Living Act, SBC 2002 C75, as the same may be amended or re-enacted from time to time and regulations thereunder.

**"Complex Care"** refers to serving persons requiring complex care as defined from time to time by the Ministry of Health, Government of British Columbia.

**"Confidential Information"** has the meaning set forth in Section 5.1(1).

**"Construction"** has the meaning set forth Section 2.3.

**"Construction Plans"** means preliminary sketch plans, working drawings and specifications, and any revisions to the foregoing, relating to the Project.

**"Controlling Shareholder"** of a corporation means a shareholder who or which holds (or another Person who or which holds for the benefit of such shareholder), other than by way of security only, voting securities of such corporation carrying more than 50% of the votes for the election of directors, provided that the votes carried by such securities are sufficient, if exercised, to elect a majority of the board of directors of such corporation.

**"Design Guidelines"** means the Multi Level Design Guidelines (1992) and Multi Level Design Guidelines Review (1994) as distributed by the BC Ministry of Health.

**"Environmental Laws"** means any government laws, rules, ordinances, regulation, orders, or other edicts having the force of law relating to the environment or any Hazardous Substance (including without limitation the use, manufacture, handling, transportation, production, disposal, discharge, storage, or emission of any

Hazardous Substance or the terms of any permit used for it) or the environmental conditions on, under, or about the Site and "Environmental Law" means any of them.

**"Facility"** means collectively, the Units, other buildings or structures supporting the Units and the Site for the delivery of Complex Care services.

**"Force Majeure"** has the meaning set forth in Section 8.5.

**"Functional Completion"** means that the Project has reached substantial completion and is fully furnished and the entire Facility is ready to be opened for use as a Residential Care Facility and is ready for Occupancy by all initial residents, all as determined by VIHA under the terms of this Agreement.

**"Hazardous Substance"** means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the natural environment, injure or damage property, plant or animal life or harm or impair the health of any individual.

**"Letter of Approval"** has the meaning set forth in Section 3.3(a).

**"Lien"** means a mortgage, charge, pledge, lien (statutory or otherwise), security interest or other encumbrance or adverse claim of any nature or kind whatsoever.

**"Ministry"** means the British Columbia Ministry of Health or such other Ministry as may be responsible for residential care.

**"Occupancy"** means the physical admission of the first Person as a resident of the Facility.

**"Operating Agreement"** means the "Residential Care Service Agreement" to be entered into with the Operator for the Facility to commence following Functional Completion, a draft template of which is attached hereto as Schedule "G".

**"Operator's Personnel"** means the employees, agents or other representatives of the Operator. For the purposes of Article 7 only, "Operator's Personnel" shall, in addition to the foregoing, include the contractors and subcontractors for the Construction and their respective shareholders, directors, officers, employees, agents or other representatives.

**"Permitted Encumbrances"** means the charges and encumbrances registered against title to the Site, listed on Schedule D.

**"Person"** is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, a joint venture, an unincorporated organization, an association, the government of a country or any political subdivision thereof, or any agency or

department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.

**"Project"** means the development and Construction and all other work to be performed and steps to be taken by or on behalf of the Operator to complete the Facility (including the furnishing and decoration thereof) and develop the Units.

**"Project Consultation Committee"** means the committee identified in Section 2.4(3).

**"Project Documents"** means the documents and reports referred to in Sections 2.4.

**"Project Schedule"** has the meaning set forth in Section 2.7(1).

**"Proposal"** has the meaning set forth in Section 2.1(a).

**"RFP"** has the meaning set forth in Recital A.

**"Schedule of Commitments"** has the meaning set forth in Section 2.1(a)(ii).

**"Schedules"** means the Schedules listed in Section 9.1.

**"Site"** means the property owned by the Owner at \_\_\_\_\_, (City), British Columbia, which is legally described as Parcel Identified \_\_\_\_\_ Lot \_\_\_\_\_, District Lot \_\_\_\_\_, \_\_\_\_\_ District, Plan \_\_\_\_\_.

**"Units"** means, collectively, the \_\_\_ Complex Care beds and all space and infrastructure to support such beds, to be developed by the Operator pursuant to this Agreement.

**"VIHA"** means the Vancouver Island Health Authority or any successor.

## 1.2 **Headings and Division**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only, and are not intended to affect the construction or interpretation of this Agreement.

## 1.3 **Calculation of Time**

Unless otherwise specified, time periods within or following which any payment is to be made or any act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends.

#### 1.4 Reasonableness

Notwithstanding anything to the contrary contained herein, whenever a party hereto is to provide its consent or exercise its discretion or conduct any act, it shall do so acting reasonably and with due dispatch.

### ARTICLE 2 DEVELOPMENT OF FACILITY

#### 2.1 Development of Facility

The Operator shall develop the Facility at the sole cost of the Operator in accordance with the Design Guidelines and the Project Documents on the terms and conditions set forth in this Agreement and in accordance with the following:

- (a) the Operator's Proposal identified in Schedule "A", together with:
  - (i) any and all written revisions to such Proposal as may be agreed to in writing by the Owner and VIHA.  
(collectively, the "Proposal")
  - (ii) those terms and conditions set forth in Schedule "B" attached thereto (the "Schedule of Commitments").

#### 2.2 Site

- (1) Approval of Site. VIHA acknowledges and agrees that, subject to the terms of this Agreement, it has approved the Site and the Construction of the Units on the Site.
- (2) Zoning. The Operator represents and warrants to VIHA that the zoning of the Site shall, from and at all times after commencement of the Construction, permit the Site to be used for a Complex Care Facility.

#### 2.3 Construction

The Operator shall cause the development and construction of the Facility on the Site to be undertaken at the sole cost of the Operator in a good and workmanlike manner in accordance with the standard practice of a prudent developer (the "Construction").

The Operator shall not commence the Construction unless and until it has obtained all development and building permits required by Applicable Law and has submitted a copy of such development and building permits to VIHA.

The Operator shall request inspections of the Facility from time to time by regulatory authorities which are required to obtain documents necessary to permit lawful Occupancy of the Facility for the purposes of the Project.

The Operator shall be responsible for the care, maintenance and protection of the Project at all times, including during an event of shutdown.

## 2.4 Review and Approval of Facility Plans

(1) The Operator will prepare the documents and reports identified below as the Project Documents in accordance with the Design Guidelines and otherwise in accordance with the terms of this Agreement, the RFP and the Proposal. As applicable, the Operator will seek all regulatory and other approvals required in connection with the Project Documents, including without limitation the approvals described in Section 2.4(2), and will submit all such approvals to VIHA.

VIHA will review the Schematic Design Report to confirm compliance with the Design Guidelines, this Agreement, the RFP and the Operator's Proposal, and when approved, will provide the Operator with written approval to proceed with the Project. The intent of the review by VIHA is to ensure compliance with the Design Guidelines and to suggest possible revisions as may better suit the clientele and improve operating efficiencies.

The Operator will not implement the Schematic Design Report until receipt of all necessary approvals including written approval by VIHA. Any revisions requested by VIHA to better suit clientele or improve operating efficiencies will not be required to be made by the Operator without the Operator's consent, not to be unreasonably withheld. It will not be unreasonable for the Operator to withhold consent in respect of any revisions that would increase costs to the Operator or substantially delay Construction.

The Project Documents comprise the following:

- Project Schedule - a detailed Project Schedule including details of the following phases of the Project:
  - the schematic design
  - detailed design
  - tender or contract for construction
  - Construction
  - facility commissioning
  - programs start-up;
- Schematic Design Report - including details of building design (i.e., schematic design drawings), site plan and other details as may be required for assessment of the Facility by municipal, *Community Care and Assisted Living Act* licensing officers, and VIHA in order to grant approval for the development of the Project;
- Construction Plans – including all working drawings; and

(2) The Project Documents will be submitted for information and specifically for VIHA approval of the Schematic Design Report, and after VIHA approval, for approval by any regulatory agency requiring the Project Documents in order to issue development, building and occupancy permits.

(3) In order to facilitate consultation between the parties, a Project Consultation Committee will be struck composed of an equal number of VIHA and Operator representatives. The Project Consultation Committee will meet at least once per month until the Project is totally completed. The Operator will advise the Project Consultation Committee of the status of the Project including all change orders, the Project Documents, progress reports under Section 2.7(2) and all other documents, materials or information affecting the Project or requested by the Project Consultation Committee. The existence of the Project Consultation Committee will not affect the control of the Operator over the management of the Project and is struck solely in order to facilitate communication between the Parties.

## 2.5 Compliance

- (1) General. All aspects of the Construction shall be carried out in accordance with, and the Facility, once completed, shall comply with, all Applicable Law (including the Community Care and Assisted Living Act, all Environmental Laws, the British Columbia Building Code, the British Columbia Fire Code, and all bylaws of the \_\_\_\_\_(City), the Project Documents, the Design Guidelines, the Proposal and this Agreement; provided that in the event that there are any inconsistencies, conflicts or ambiguities between the terms of the Proposal, this Agreement or the Project Documents and any Applicable Law, the Applicable Law shall prevail over the terms of the Proposal, this Agreement or the Project Documents.
- (2) Occupational Health and Safety. Without limiting the generality of Section 2.5(1), the Operator shall be responsible for ensuring that the Construction is carried out in compliance with all Applicable Law relating to health and safety (including the *Worker's Compensation Act* of British Columbia, (the "WCA")). The Operator shall ensure that the general contractor and any subcontractors act in accordance with the WCA.

## 2.6 Inspection During Construction

VIHA shall be entitled, without notice to the Operator, during regular business hours and in accordance with all safety and other regulations of governmental authorities from time to time on any Business Day (or on any day in the event of an emergency) before the Project has been completed, to enter upon the Site and inspect the Site, the Facility and the progress of the Project; provided that VIHA shall not unduly interfere with or cause the delay of the Construction during the course of any such inspection.

## 2.7 Timing

- (1) Project Schedule. An estimated schedule (the "Project Schedule") for completion of the Project is attached as Schedule "C". The Operator shall use its reasonable efforts to carry out and complete the Project in accordance

with the Project Schedule and in any event, shall take all reasonable steps to ensure that Functional Completion has been attained on or before the deadline for Functional Completion set forth in the Project Schedule.

- (2) Progress Reports. The Operator shall submit to VIHA monthly progress reports, in a form acceptable to VIHA and the Operator.
- (3) Delays.
  - (a) Notification. The Operator shall promptly notify VIHA in writing if the submission of any Project Documents or work on the Project is behind the Project Schedule or upon the Operator becoming aware of any actual or threatened occurrence or condition which would reasonably be expected to cause a delay in meeting the deadlines set forth in the Project Schedule for (i) submission of any of the Project Documents, or (ii) Functional Completion.
  - (b) Responsibility. In the event of a delay, the Operator will use its reasonable efforts to perform its obligations under this Agreement and to overcome or minimize the effects of such delay (including rearranging and rescheduling the work on the Project so as to minimize the ultimate delay in completion of the Project) in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if the same are reasonably available.
  - (c) Project Documents. Subject to Section 8.6, if a delay in meeting the deadlines set forth in Schedule "C" for submission of any of the Project Documents is expected to be more than 90 days, VIHA may, in VIHA's sole and absolute determination, terminate this Agreement in accordance with Section 8.2.
  - (d) Functional Completion.
    - (i) If in the determination of VIHA, Functional Completion is not met or is not reasonably expected to be met as a result of an event of Force Majeure then the provisions of Section 8.2(1)(d) apply;
    - (ii) If in the determination of VIHA, Functional Completion is not met or is not reasonably expected to be met and the Operator is taking reasonable steps in the circumstances to achieve Functional Completion, then VIHA shall extend the date for Functional Completion to a reasonable future date but in no event shall VIHA be required to extend for a period longer than 6 months from the date upon which the determination is made by VIHA that Functional Completion is not met or is not reasonably expected to be met.

## **ARTICLE 3 APPROVAL AND FUNDING**

### **3.1 Pre-Occupancy Review**

- (1) Timing. The Operator shall notify VIHA in writing 60 Business Days prior to the date on which the Operator reasonably expects Functional Completion to be attained. The Operator shall notify VIHA in writing at the time the Operator reasonably believes that Functional Completion has been attained. Once the Operator has notified VIHA in writing that the Operator reasonably believes that Functional Completion has been attained, VIHA shall arrange a time and date with the Operator for a pre-Occupancy review by VIHA, which shall be within ten Business Days following the date on which the Operator reasonably believes Functional Completion to have been attained. VIHA shall be entitled at the time and on the date set for the pre-Occupancy review to enter upon the Site (including the Facility) to conduct the pre-Occupancy review, including inspection of the Site and the Facility.
- (2) Postponement. If, upon commencement of the pre-Occupancy review, VIHA determines, acting reasonably, that Functional Completion has not been attained and that, in the determination of VIHA, a substantial amount of further work is required on the Project in order to attain Functional Completion, VIHA shall be entitled to terminate the pre-Occupancy review and to re-schedule the pre-Occupancy review in consultation with the Operator. In such event, VIHA shall notify the Operator that VIHA will not complete the pre-Occupancy review and the Operator shall perform such further work on the Project as is necessary in order to attain Functional Completion by the new time and date set by VIHA. VIHA shall provide general comments which explain why Functional Completion is not achieved, but VIHA shall not be obligated to advise the Operator of the detailed work necessary to be performed to attain Functional Completion.

### **3.2 Conditions**

VIHA shall be entitled to impose on the Operator conditions to the approval of the Facility for Occupancy requiring the Operator to repair, improve or modify any aspect of the Facility which does not comply with this Agreement, the Design Guidelines, the Proposal, the Project Documents approved by VIHA pursuant to Section 2.4(1) or any Applicable Law. The Operator shall complete all such repairs, improvements and/or modifications within the time period specified by VIHA. VIHA's approval of the Facility for Occupancy shall be conditional on completion of such repairs, improvements and/or modifications to the satisfaction of VIHA.

### **3.3 Occupancy Approval**

Within seven Business Days following completion of a pre-Occupancy review, VIHA shall notify the Operator, in writing, whether VIHA:

- (a) approves the Facility for Occupancy (in which case, such notice shall be referred to as the "Letter of Approval"), or
- (b) does not approve the Facility for Occupancy, together with the reasons for not approving the Facility. If VIHA does not approve the Facility for Occupancy (whether after the first or any subsequent pre-Occupancy review), the Operator shall satisfy any conditions to approval imposed by VIHA pursuant to Section 3.2 and address any other issues raised by VIHA in such notice to the satisfaction of VIHA. In such case, VIHA shall arrange and conduct one or more subsequent pre-Occupancy reviews in accordance with Section 3.1.

### 3.4 **Operation of Facility**

From and after the time Occupancy has occurred, the Operator shall operate the Units and the Facility in accordance with the Operating Agreement, the Schedule of Commitments and the Proposal, provided that the Operator must comply with all Applicable Law and meet the standards and criteria for the operation of a Complex Care Facility set out in the Operating Agreement. If there are any inconsistencies, conflicts or ambiguities between the terms of the Proposal and any Applicable Law or the Operating Agreement, the Applicable Law and the terms of the Operating Agreement shall prevail over the terms of the Proposal.

### 3.5 **Operating Agreement**

The Operator shall execute and deliver to VIHA the Operating Agreement, a draft template of which is attached hereto as Schedule G, within 5 business days of VIHA issuing a Letter of Approval pursuant to Section 3.3. The form of the Operating Agreement will be VIHA's standard form.

### 3.6 **Funding**

- (1) Funding Conditions. VIHA shall provide the Operator with funding for the Facility in accordance with the Operating Agreement. VIHA shall not be obligated to provide any funding to the Operator until the following conditions have been met:
  - (a) VIHA has issued a Letter of Approval to the Operator pursuant to Section 3.3;
  - (b) the Operator has obtained all documents and licenses necessary to allow for lawful occupancy and operation of the Facility;
  - (c) the Operator has executed and delivered the Operating Agreement to VIHA in accordance with Section 3.5; and
  - (d) Occupancy has occurred.

**ARTICLE 4  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

**4.1 Representations and Warranties**

The Operator hereby represents and warrants to VIHA as follows:

- (1) Status. The Operator is duly incorporated under the laws of British Columbia and is in good standing with respect to the filing of annual returns. The Operator has the necessary corporate power and authority to own its property and assets and to conduct its affairs in the Province of British Columbia. No act or proceeding has been taken by or against the Operator in connection with the dissolution, liquidation, winding-up, bankruptcy or reorganization of the Operator.
- (2) Due Authorization. The Operator has the full power and authority to enter into this Agreement and all other agreements and instruments to be executed by it as contemplated herein (including the Operating Agreement) and to carry out its obligations under this Agreement and such other agreements and instruments, and the Operator has taken all necessary action to authorize the execution, delivery and performance of its obligations under this Agreement and such other agreements and instruments.
- (3) Enforceability. The Operator holds all permits, licences, consents, intellectual property rights, registrations and authorizations required to carry on its business and to perform its obligations under this Agreement and such other agreements and instruments referred to in Section 4.1(2). This Agreement constitutes a legal, valid and binding obligation of the Operator enforceable against the Operator in accordance with its terms.
- (4) No Legal Bar. The execution, delivery and performance by the Operator of this Agreement and such other agreements and instruments referred to in Section 4.1(2):
  - (a) do not and will not conflict with, result in a breach or violation of or constitute a default under any Applicable Law or any agreement, instrument or other document to which the Operator is a party or by which the Operator or any of its property or assets are bound, except for violations which do not relate to the Site, the Facility or the Project or will not, in the aggregate, have a material adverse effect on the present or future business, operations, property, prospects or condition (financial or otherwise) of the Operator; and
  - (b) do not and will not conflict with, result in a breach or violation of, or constitute a default under, its constating documents or by-laws.
- (5) Interest in the Site.

***[Additional terms will be inserted here to deal with the various tenure arrangements that are possible, including, without restricting the generality of the foregoing:***

- (a) ***where the Operator has entered into a lease for a VIHA owned Site;***
  - (b) ***where the Owner and the Operator are different arms-length legal entities;***
  - (c) ***where the Operator has a leasehold tenure for the Site from a Landlord other than VIHA;]***
  
- (6) Environmental Matters. On and as of the later of:
  - (a) the date of this Agreement, and
  - (b) the date on which the Operator acquires its interest in the Site, to the best of the Operator's knowledge based upon reasonable inquiry, (i) no Hazardous Material is now or was formerly (including the period prior to the Operator's acquisition of the Site) used, stored, generated, manufactured, installed, disposed of or otherwise present at or about the Site or any property adjacent to the Site, other than in accordance with Environmental Laws, (ii) all permits, licenses, approvals and filings required with respect to the Site by Environmental Laws have been obtained, (iii) the use, operation and condition of the Site does not and will not violate any Environmental Laws, (iv) the Operator has not violated any Environmental Laws in the conduct of its business (including business not relating to the Site or the Project), and (v) no civil, criminal or administrative action, suit, claim, hearing, investigation or proceeding has been brought, nor have any settlements been reached by or with any party or any Liens imposed, concerning Hazardous Materials or Environmental Laws in connection with the Site or any other real property owned or leased by the Operator, or otherwise on or against the Operator.
  
- (7) Full Disclosure. All written statements made or furnished by or on behalf of the Operator to VIHA in the Proposal during the RFP process (including during the interview of the Operator conducted by VIHA and in any information provided by the Operator to VIHA in response to questions or a request for clarification or further information by VIHA) or otherwise in connection with the transactions contemplated by this Agreement, were, as of the time such statements were made, true in all material respects and remain true in all material respects on the date of execution of this Agreement by the Operator, and such statements individually or taken as a whole do not contain any untrue statement of a material fact or omit a material fact necessary to make such statements not misleading. All expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful inquiry by the Operator (and any other Person who furnished such material). There is no fact which the Operator has not disclosed to VIHA in writing which materially adversely affects, or so far as the Operator can now reasonably foresee, will affect its business, operations, property, prospects, liabilities or condition (financial or

otherwise), or its ability to perform its obligations under this Agreement or to operate the Units and the Facility in accordance with the RFP, the Proposal, the Schedule of Commitments and the Operating Agreement.

- (8) Expertise. The Operator has the expertise and financial capacity to develop, complete and operate the Project in accordance with the terms of this Agreement and the Proposal.

#### 4.2 Covenants

In addition to any other covenants and Agreements of the Owner in this Agreement or in the Proposal, the Operator agrees and covenants with VIHA as follows:

- (1) No Change. Following the date of this Agreement and throughout the term of this Agreement, the Operator shall not remove or substitute any of the following key individuals from their roles and responsibilities relating to the Project, unless any such person is terminated as a contractor or employee for just cause or voluntarily leaves the employ of the Operator, in which case the Operator will use reasonable efforts to replace such person with a comparable employee or contractor:
  - Architect \_\_\_\_\_,
  - Mechanical, \_\_\_\_\_,
  - Site Administrator \_\_\_\_\_, and
  - Construction Management \_\_\_\_\_.
- (2) Material Documents. Unless the Operator obtains the prior written consent of VIHA, the Operator shall not terminate, unless for just cause, the contract with the general contractor for the Construction or any agreements, documents or instruments forming part of the Project Documents, and shall not amend, supplement or replace such contract with the general contractor in a manner that may materially adversely affect the Project, and
- (3) No Change in Site. The Operator shall not develop the Facility at any location other than the Site. The Operator and the Owner shall not sell, assign, mortgage, charge, encumber, convey or otherwise dispose of the Site without the prior written consent of VIHA, except that no such consent is required for the Permitted Encumbrances or for any future financial encumbrances to be granted by the Owner or Operator in connection with any financing required to construct the Project or for on-going operations provided that the Owner and Operator provide VIHA with prior written notice of such financing including the terms thereof.
- (4) Construction. The Owner shall complete the Construction of the Project in accordance with the terms of this Agreement, the Proposal and in compliance with the Schedule of Commitments and Project Schedule.

#### 4.3 Insurance

- (1) General. The Operator shall protect itself, by obtaining and maintaining insurance in accordance with this Section 4.3 from and against all claims that

might arise from anything done or omitted to be done by the Operator, the Operator's Personnel or the Operator's contractors and their personnel under this Agreement, and more specifically all claims that might arise from anything done or omitted to be done under this Agreement in which bodily injury (including personal injury), death or property damage, including loss of use thereof, is or may be caused.

- (2) Specific Insurance. The Operator shall, at its own expense, maintain in full force and effect during the currency of this Agreement and for a period of two years following Functional Completion with financially sound and reputable insurance companies licensed to do business in BC:
- (a) wrap-up liability insurance providing coverage with a limit of not less than \$5,000,000 for each occurrence of a claim of bodily injury (including personal injury), death or property damage, Including loss of use thereof, that may arise directly or indirectly from the acts or omissions of the Operator or the Operator's Personnel;
  - (b) all-risk property insurance in respect of the Facility and any contents thereof providing coverage with a limit not less than the full replacement value thereof; and
- (3) Required Clauses. The insurance policies referred to in Section 4.3(2) shall be in form and substance acceptable to VIHA and such policies (other than business interruption insurance) shall include the following terms:
- (a) a clause that names VIHA, and their employees, independent contractors, subcontractors, agents, and assigns as additional insured's;
  - (b) Premises and Operations Liability
  - (c) Owner's and Contractor's Protective Liability
  - (d) Products and Completed Operations Liability
  - (e) Blanket Contractual Liability
  - (f) Cross Liability Clause
  - (g) Employer's Liability
  - (h) Personal Injury Liability
  - (i) Occurrence" basis coverage for Bodily Injury and Property Damage
  - (j) "Broad Form" Property Damage coverage, including "Broad Form" Completed Operations for a term of 24 months
  - (k) "Broad Form" Loss of use of Property coverage
  - (l) Coverage for shoring, blasting, excavating on the surface of the Site; coverage for shoring, blasting, excavating the underpinning,

demolition, pile driving, caisson work, grading, tunnelling, and all work below ground as applicable;

- (m) Non-owned Automobile Liability Insurance, including coverage for hired vehicles.
- (4) Workers Compensation. The Operator will comply with all workers compensation laws and ensure that all contractors hired by the Operator also comply with all workers compensation laws.
- (5) Other Insurance Requirements. To the extent that any Applicable Law, the nature of the Operator's business or any other factor requires the Operator to maintain any particular type of insurance (in addition to the insurance expressly required by this Agreement) with respect to the Site, the Facility, or any contents thereof, the Operator shall comply with all such requirements.
- (6) Proof of Insurance. The Operator shall submit to VIHA a Certificate of Insurance in the form attached as Schedule "E" completed and signed by its insurance broker.

## **ARTICLE 5 CONFIDENTIALITY**

### **5.1 General**

- (1) Duty of Confidentiality. During the currency of this Agreement and after the termination or expiry of this Agreement, the Operator shall:
  - (a) treat as confidential any data, information (whether oral, written, in computer readable format or otherwise) or any other item in any form (including any data, information or other items derived from any data) relating to VIHA, the RFP process, this Agreement or the Operating Agreement which the Operator or the Operator's Personnel may have acquired or learned in the course of, or incidental to, the performance of this Agreement, the RFP process, or otherwise, which was labelled or otherwise identified by or on behalf of VIHA as confidential (the "Confidential Information");
  - (b) use Confidential Information only with the prior written consent of VIHA or as required for the performance of this Agreement; and
  - (c) not directly or indirectly disclose to any Person any Confidential Information without the prior written consent of VIHA.
- (2) Exceptions. Confidential Information does not include information that:
  - (a) is known to the public at the time such information is made available to the Operator other than through a breach of this Agreement;
  - (b) becomes known to the public after the time such information is made available to the Operator other than through a breach of this Agreement; or

- (c) is required to be disclosed by the Operator by Applicable Law, but prior to such disclosure, and to the extent feasible, VIHA shall be consulted as to the proposed form and nature of the disclosure and the Operator shall cooperate with and assist VIHA if VIHA wishes to take reasonable action to challenge the requirement to disclose.

## 5.2 Freedom of Information Legislation

VIHA agrees to treat as confidential all information provided to VIHA by the Operator pursuant to this Agreement and which is marked confidential, except where an order of the Information and Privacy Commissioner or a court under the *Freedom of Information and Protection of Privacy Act*, RSBC, and the regulations thereunder requires VIHA to do otherwise.

## 5.3 Operator's Personnel

- (1) Confidentiality. The Operator shall not disclose Confidential Information to any of the Operator's Personnel not having a need to know such information in connection with the performance of this Agreement. The Operator shall advise the Operator's Personnel of the requirements of Sections 5.1 and 5.2 and shall take appropriate action to ensure compliance by the Operator's Personnel with the terms of Sections 5.1 and 5.2 as if such sections applied directly to them.
- (2) Liability. In addition to any other liabilities the Operator may have under this Agreement, the Operator shall be liable for all damages (including incidental, indirect and consequential damages), costs, expenses, losses, claims or actions arising from any non-compliance by the Operator's Personnel with Sections 5.1, 5.2, and 5.3(1).

## 5.4 Return of Information

Following termination or expiry of this Agreement and at the request of VIHA, the Operator shall (and shall cause each of the Operator's Personnel to) deliver forthwith to VIHA all copies of any tangible items (other than this Agreement), if any, which are or which contain Confidential Information. No copy or duplicate of any such items shall be retained by the Operator without the prior written consent of VIHA. The Operator shall not destroy any such items without the prior written consent of VIHA.

## 5.5 Disclosure by VIHA

The Operator acknowledges and agrees that, notwithstanding anything to the contrary in the RFP, VIHA may, at any time and from time to time, disclose to the public or to any Person the Schedule of Commitments.

# ARTICLE 6 CONFLICT OF INTEREST

## 6.1 General

The Operator shall not, and shall cause the Operator's Personnel not to, engage in any activity which creates a conflict of interest (actually or potentially in the determination of VIHA) in connection with the transactions contemplated by this Agreement. The Operator acknowledges and agrees that it shall be a conflict of interest for it or any of the Operator's Personnel to use Confidential Information of Her Majesty the Queen in Right of the Province of British Columbia (including the Confidential Information) relevant to the development of Units, unless VIHA has specifically authorized such use.

## **6.2 Disclosure**

The Operator shall disclose to VIHA without delay any actual or potential situation that may be reasonably interpreted as being either a conflict of interest or a potential conflict of interest on the part of the Operator or any of the Operator's Personnel.

## **6.3 Use of Information**

Except as contemplated by the funding provisions of this Agreement, the Operator shall not, and shall cause the Operator's Personnel not to, directly or indirectly use for personal or any other type of gain any information obtained in connection with the transactions contemplated by this Agreement.

## **6.4 Operator's Personnel**

The Operator shall make all reasonable efforts to ensure that the Operator's Personnel do not violate this Article 6. Such efforts shall include, but shall not be limited to, bringing the prohibitions under this Article to the attention of all Operator's Personnel.

# **ARTICLE 7 LIABILITY AND INDEMNIFICATION**

## **7.1 Limitation of Liability**

VIHA and its officers, employees, volunteers, agents and other representatives and successors and assigns shall not be liable to the Operator or the Operator's Personnel for any losses, expenses, costs, claims, damages (including incidental, indirect and consequential damages) or liabilities arising in connection with or as a result of:

- (a) anything done or omitted to be done by the Operator or the Operator's Personnel in carrying out the Project or otherwise in the performance of this Agreement;
- (b) the selection of the Site; the Construction of the Facility, the contract with the general contractor for the Construction or any of the Project Documents, notwithstanding any consent to or approval of any of the foregoing by VIHA;
- (c) termination of this Agreement pursuant to Section 8.2 or Section 9.8;  
or

- (d) any approvals or consents granted by VIHA or any refusal or delay by VIHA in granting such approvals or consents.

## 7.2 Indemnification by Operator and Owner

The Operator and Owner shall jointly and severally indemnify and hold VIHA, its directors, officers, employees, agents and authorized contracted service personnel (collectively, "VIHA Representatives") harmless of, from and against all claims, liabilities, losses, damages, demands, expenses (including legal expenses calculated as between a solicitor and his or her own client), costs, obligations, actions and causes of action of every kind and nature whatsoever that may be asserted, made or brought against or incurred, suffered or sustained by VIHA or VIHA Representatives for and in respect of injury to or the death of any person whomsoever, and for or in respect of damage to or loss or destruction of any property (including, without limitation, VIHA's property, the property of any VIHA Representatives or any patient of VIHA) arising directly or indirectly from the Operator or its employees' or agents' acts or omissions in the performance of this Agreement or breaches in the performance of this Agreement. This indemnity will survive completion of this Agreement.

## 7.3 Limitation of Liability

Any claim for contractual damages or consequential damages advanced by VIHA in connection with a failure by the Operator to attain Functional Completion by the deadline as set out in the Project Schedule (as such may be extended under this Agreement) shall, unless it is an "insured claim" be limited to the sum of \$5,000,000. Insured claim means a claim that is substantially covered by insurance held or required to be held by the Operator under the terms of this Agreement.

# ARTICLE 8 TERM AND TERMINATION

8.1 **Term:** The term of this agreement will commence on \_\_\_\_\_, 200\_\_ and, subject to earlier termination pursuant to Section 8.2 or 8.3, continue until VIHA has issued a Letter of Approval to the Operator, pursuant to Section 3.3.

## 8.2 Termination by VIHA

- (1) Termination for Cause. VIHA, without liability, cost or penalty, may, in VIHA's determination and without prejudice to any other rights or remedies of VIHA under this Agreement or at law or in equity, terminate this Agreement immediately upon giving written notice to the Operator if any of the following events or conditions have occurred or exist:
  - (a) subject to Section 8.2(2), VIHA is of the opinion that there has been a material breach by the Operator of any term, warranty, representation, condition, covenant or other provision of this Agreement;
  - (b) subject to Section 8.2(2), an actual occurrence or condition is reasonably expected to cause a delay in meeting the deadlines set

forth in Schedule "C" for submission of any of the Project Documents by more than 90 days, as contemplated in Section 2.7(3)(c);

- (c) the date (or, if the date is extended under Section 2.7(3)(d)(i) or 2.7(3)(d)(ii)), the extended date for Functional Completion is not met ;
  - (d) an event of Force Majeure, as contemplated in Section 8.6, prevents or delays performance by the Operator of a material obligation under this Agreement, including without limitation, the date for Functional Completion, for more than 270 days,
  - (e) the Operator is adjudged bankrupt or is insolvent according to the provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and the regulations made thereunder, or any bankruptcy, reorganization, arrangement insolvency, liquidation or winding up proceedings or any other proceedings for the benefit of creditors generally are instituted by or against the Operator including an assignment, proposal, compromise or arrangement for the benefit of creditors;
  - (f) a receiver, a receiver manager, trustee or other official with similar powers is appointed for to manage the assets and operations of the Operator or all or a substantial part of the assets or operations of the Operator, or the Operator files for the appointment of any such official, prior to Occupancy;
  - (g) the indebtedness of the Operator under any financing arrangements for the Project has been declared due and payable by the creditor(s) thereunder prior to the date or dates on which such indebtedness would otherwise have been due thereunder;
  - (h) the financing arrangements made by the Operator for the Project are cancelled or no longer available to the Operator and have not been replaced in a timely manner by comparable financing arrangements, approved by VIHA;
  - (i) the Operator attempts to execute a bulk sale of its property, except with the prior written consent of VIHA, which consent shall not be unreasonably withheld; or
  - (j) the Operator ceases, or notifies VIHA of its intention to cease, carrying on business as presently carried on by it or any steps are taken to dissolve the Operator or the Operator is not, or ceases to be, qualified under Applicable Law to operate the Facility;
- (2) Cure Period. In the event that VIHA is of the opinion that there has been a material breach by the Operator of any term, warranty, representation, condition, covenant of this Agreement, and such breach is not remedied within 45 days (the "Cure Period") after the Operator receives from VIHA written notice of such breach setting out the particulars thereof, then, in any such event, in addition to VIHA's other rights and remedies under this

Agreement or at law or in equity VIHA shall have the right to terminate this Agreement immediately upon giving notice of termination to the Operator to that effect at the end of the Cure Period, provided, however, that if such breach is of such a nature that it cannot be completely cured or remedied within the Cure Period, or the Operator is not proceeding in a manner satisfactory to VIHA, VIHA shall have the right to terminate this Agreement prior to the end of the Cure Period immediately upon giving notice of termination to the Operator.

### 8.3 **Effective Date of Termination**

In the event of early termination of this Agreement, the effective date of the termination shall be the last day of the notice period, if any, and, in the case of an early termination by VIHA in circumstances in which no notice period is required, then immediately upon VIHA giving notice of termination to the Operator.

### 8.4 **Consequences of Termination**

In the event of early termination of this Agreement:

- (1) Proposal Rejection. The award for the development of Facility by the Operator shall be deemed to have been withdrawn by VIHA and there shall be no obligation on VIHA to provide to the Operator any funding under the Operating Agreement or otherwise.
- (2) Liabilities Upon Termination. Subject to section 9.6 and subject to VIHA maintaining its right to claim damages from the Operator, all rights and obligations of the Operator and VIHA under this Agreement shall cease upon any termination of this Agreement (including any obligation on VIHA to provide to the Operator any funding) and the Operating Agreement and any obligation to enter into such agreements shall concurrently terminate.

### 8.5 **Force Majeure**

If, as a result of an event of Force Majeure (as defined below), the Operator fails to perform or comply with any of its obligations under this Agreement, such failure shall not constitute a default or breach of this Agreement. Dates and times by which the Operator is required to perform under this Agreement shall be postponed automatically to the extent and for the period of time that the Operator is prevented from meeting them by causes beyond its control which are not avoidable by the exercise of reasonable foresight. Such causes (each such cause, an event of "Force Majeure") shall include but not be limited to acts of God, acts of war, riots, epidemics, fire, strikes, labour disruptions or lockouts and delays or difficulties in obtaining zoning or building permits (other than such as are caused by the actions or omissions of the Operator) which permits the Site to be used for a Residential Care Facility of the type that the Facility is proposed to be, but shall not include a failure to obtain sufficient funds to perform this Agreement. The Operator will use reasonable efforts to notify VIHA of any event of Force Majeure upon the Operator becoming aware of the same. The Operator must use its reasonable efforts to perform its obligations under this Agreement and to overcome or minimize the effects of such event of Force Majeure including rearranging and rescheduling the work on the

Project so as to minimize the ultimate delay in completion of the Project in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining comparable supplies or services from other sources if the same are reasonably available. Notwithstanding the foregoing, if performance of a material obligation is prevented or delayed for more than 270 days by reason of an event of Force Majeure, VIHA may on notice treat the delay as a material breach of a term of this Agreement and may terminate this Agreement in accordance with Section 8.2.

#### **8.6 Damages for Late Completion**

If Functional Completion has not been achieved by the date set in the Project Schedule for Functional Completion, and if the date so set has not been extended as provided herein, or if the date set for Functional Completion has been extended as provided herein and the date so extended has not been met, the Operator shall pay VIHA liquidated damages in the sum of \$\_\_\_\_\_ per day (this amount will vary depending upon project size from \$500 to \$2,000 per day) beyond which the Functional Completion date has not been achieved, as determined by VIHA, acting reasonably.

The damages payable hereunder are in addition to any other remedies available to VIHA hereunder, including termination. The Operator agrees that such damages shall be payable as liquidated damages without proof of specific loss or damage and are payable whether or not VIHA incurs or mitigates its damages.

The Operator acknowledges that such liquidated damages are not a penalty but represent a reasonable pre-estimate of the damages that VIHA will suffer as a result of the delay in achieving the date set for Functional Completion. The Operator has taken the possibility of these damages into account in the pricing of its Proposal and acknowledges that VIHA has relied on this opportunity to recover such damages in entering into this Agreement.

### **ARTICLE 9 GENERAL PROVISIONS**

#### **9.1 Entire Agreement**

This Agreement and the Schedules listed below, together with the Proposal, constitute the entire Agreement between the parties hereto pertaining to the subject matter of this Agreement and supersede all prior Agreements and understandings, collateral, oral, or otherwise. There are no conditions, warranties, representations or other Agreements between the parties in connection with the subject matter of this Agreement (whether oral or written, expressed or implied, statutory or otherwise), except as specifically set forth or incorporated by reference in this Agreement or the Proposal. No modification of this Agreement shall be binding upon the parties to this Agreement unless in writing and executed by the designated representatives of the Operator and VIHA, as specified in Section 9.14.

The Schedules to this Agreement, which are incorporated into this Agreement by reference and are considered to be a part of this Agreement are as follows:

**Schedule "A" Proposal;**  
**Schedule "B" Schedule of Commitments;**  
**Schedule "C" Project Schedule;**  
**Schedule "D" Permitted Encumbrances; and**  
**Schedule "E" Certificate of Insurance.**  
**Schedule "F" Schematic Design Drawing and Report**  
**Schedule "G" Operating Agreement**

## 9.2 **Inconsistencies Between Contract Documents**

- (1) In the event that there are any inconsistencies, conflicts or ambiguities between the terms of this Agreement and the Proposal or any other document incorporated by reference herein, the terms of this Agreement shall prevail. For greater certainty, without limiting the generality of the foregoing, in the event that there are any inconsistencies, conflicts or ambiguities between the terms of the Proposal and the terms of the Schedule of Commitments, the terms of the Schedule of Commitments shall prevail; provided, however, that any terms contained in the Proposal which are not contained or contemplated in, or are in addition to the terms contained in, the Schedule of Commitments shall be binding on the Operator and shall not be construed as an inconsistency, conflict or ambiguity between the Schedule of Commitments and the Proposal.
- (2) In the event that there are any inconsistencies, conflicts or ambiguities between the terms of any Schedule to this Agreement and the terms of this Agreement (other than the Schedules), the terms of the Schedule shall prevail over the terms of this Agreement.
- (3) Notwithstanding Sections 9.2(1) and (2), any terms contained in the Schedule of Commitments which are not contained or contemplated in, or are in addition to the terms contained in this Agreement (other than the Schedule of Commitments), the Proposal or any other document incorporated by reference herein, shall be binding on the Operator and shall not be construed as an inconsistency, conflict or ambiguity between the Schedule of Commitments and such document.

## 9.3 **Currency**

All payments to be made by VIHA or the Operator under this Agreement shall be made in the lawful currency of Canada.

## 9.4 **Further Assurances**

The Operator agrees to promptly perform, make, execute, deliver, or cause to be performed, made, executed, or delivered, all such further acts and documents as VIHA may reasonably require for the purpose of giving effect to this Agreement.

## 9.5 **Independent Contractor**

The Operator and VIHA are independent contractors and neither of them shall be deemed to be the employee, agent, partner of, or in a joint venture with, the other.

The Operator's Personnel shall not be deemed to be the employees, agents, partners of, or in a joint venture with, VIHA.

**9.6 Survival of Certain Terms**

The representations, covenants, warranties, indemnities and limitations of liability set out in Section 4.1, Article 6, Article 8, Section 8.4 and Section 9.6 of this Agreement shall survive the termination or expiry of this Agreement, and shall bind the parties and their successors and assigns, indefinitely.

**9.7 Enurement**

This Agreement shall enure to the benefit of and be binding upon the respective successors and permitted assigns of each of the parties.

**9.8 Severability**

If any provision of this Agreement is invalid, illegal or unenforceable, such provision shall be severed from the balance of this Agreement and the remaining provisions of this Agreement shall continue in full force provided that such remaining provisions express the intent of the parties. If the intent of either party cannot be preserved, this Agreement shall be either renegotiated or terminated by either party, without liability, cost or penalty to the other party, upon 30 days prior written notice to the other party.

**9.9 Waiver**

No waiver of any breach of this Agreement shall operate as a waiver of any subsequent breach or of the breach of any other provision of this Agreement. No provision of this Agreement shall be deemed to be waived, and no breach excused, unless such waiver or the consent excusing the breach is in writing and signed by the party that is purported to have given such a waiver or consent. No delay or omission on the part of any party to this Agreement to avail itself of any right it may have under this Agreement shall operate as a waiver of any such right. No waiver or failure to enforce any of the provisions of this Agreement shall in any way affect the validity of this Agreement or any part hereof.

**9.10 Rights and Remedies Cumulative**

The rights and remedies of the parties to this Agreement are cumulative and are in addition to and not in substitution for any rights and remedies provided at law or in equity.

**9.11 Assignment**

Except with the prior consent of VIHA, such consent not to be unreasonably withheld, the Operator shall not assign, transfer, or pledge, directly or indirectly, any of its rights or obligations under this Agreement, other than to the Operator's lender in connection with financing of the Facility on terms acceptable to VIHA. Such consent shall be conditional upon the assignee, transferee or pledgee, as the case may be, executing an Agreement, in form and substance satisfactory to VIHA, whereby such assignee, transferee or pledgee, as the case may be, assumes all obligations and liabilities of the Operator hereunder, under the Operating Agreement,

service Agreements and any other Agreements between VIHA and the Operator which are in effect at the time of such assignment, transfer or pledge, as the case may be. Such consent may also be granted subject to such other terms and conditions as VIHA may require. For greater certainty, the Operator may retain contractors and subcontractors for any and all aspects of the Construction but the Operator shall at all times be held fully responsible for the acts and omissions of all of such contractors and subcontractors and their respective shareholders, directors, officers, employees, agents or other representatives, successors and assigns.

**9.12 Time of the Essence**

Time shall be of the essence of this Agreement in all respects.

**9.13 Publicity**

The Operator shall notify VIHA in advance of any proposed publicity or publications by or on behalf of the Operator relating to this Agreement (Including press releases and press conferences but excluding brochures, pamphlets, books or other marketing materials intended to promote or advertise the Units and the Facility) and shall use reasonable efforts to make such changes thereto reasonably requested by VIHA.

**9.14 Designated Representatives**

For purposes of this Agreement, the designated representatives are as follows:

- (a) the designated representative of VIHA is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, B.C.  
Phone: 250-\_\_\_\_\_  
Fax (250) \_\_\_\_\_

- (b) the designated representative of the Operator and Owner, who shall be an authorized signing officer of the Operator and Owner, is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, B.C.  
Phone: 250-\_\_\_\_\_  
Fax (250) \_\_\_\_\_

Any party may designate different representatives, addresses, telephone or facsimile numbers, or electronic addresses, by notifying the other party in accordance with Section 9.15.

**9.15 Notice**

- (1) Form. Any notice, request, demand, consent, approval or authorization (each, a Notice) required, permitted or contemplated under this Agreement shall be in writing, whether or not such Notice is expressly stated herein to be

provided or made in writing (unless a provision of this Agreement expressly provides otherwise); under the signature of the respective designated representative as specified in Section 9.14; and delivered by courier, personal delivery or sent by facsimile or ordinary mail addressed to the designated representative of the party to whom it is intended as specified in Section 9.14.

- (2) Deemed Receipt. A Notice sent by facsimile or delivered by courier on a Business Day is deemed to be received by the addressee on the day that it is sent. If the Notice is so sent or delivered after the end of the Business Day, then it is deemed to be received by the addressee on the following Business Day. If the Notice is so sent or delivered on a day other than a Business Day, then it is deemed to be received by the addressee on the following Business Day. A Notice sent by ordinary mail is deemed to be received by the addressee to which it is delivered on the fourth Business Day following the date when it is so mailed; provided however that no such Notice will be mailed during any actual or apprehended disruption of postal services.

#### 9.16 **Approvals**

With respect to any matter which is subject to the approval or consent of VIHA pursuant to this Agreement, unless a time period for providing such approval or consent is expressly provided hereunder, VIHA shall use reasonable efforts to notify the Operator as to whether or not VIHA approves of or consents to such matter in a prompt and timely manner.

#### 9.17 **Governing Law**

This Agreement shall be governed by, subject to, and interpreted in accordance with the laws of the Province of British Columbia and the laws of Canada, and, the parties agree to submit to the jurisdiction of the courts of the Province of British Columbia.

**9.18 Joint and Several Liability**

In the event that the Operator is comprised of more than one party, each of such parties shall execute and deliver this Agreement and shall be jointly and severally liable in all respects under and in connection and in accordance with the terms of this Agreement.

**IN WITNESS WHEREOF** THE PARTIES HERETO HAVE EXECUTED THIS Agreement as of the date first written above.

**VANCOUVER ISLAND HEALTH AUTHORITY**

Per:

\_\_\_\_\_

Authorized Signatory

Per:

\_\_\_\_\_

Authorized Signatory

\_\_\_\_\_ **(OPERATOR)**

Per:

\_\_\_\_\_

Authorized Representative

## **SCHEDULE A**

### **PROPOSAL**

The Proposal is the Operator's Proposal submitted on or about \_\_\_\_\_ in response to VIHA's RFP:

The Proposal is collectively:

- (a) the Operator's Proposal submitted on or about \_\_\_\_\_ in response to VIHA's RFP, and
- (b) any and all written clarifications of such Proposal provided by the Operator to and upon request by VIHA:

## SCHEDULE B

### SCHEDULE OF COMMITMENTS

Pursuant to the terms of this Agreement, the following commitments constitute binding terms and conditions on the Operator:

1. The Operator will construct a Facility consisting of \_\_\_ Complex Care beds and all space required to support the beds to ensure the Facility meets or exceeds the 1992 and 1994 Ministry of Health Multilevel Care Design Guidelines. In addition to the guidelines noted above, it is a requirement that:
  - Every bed in the Facility be equipped with a ceiling-mounted patient lift system acceptable to VIHA (i.e., which meets or exceeds Workers' Compensation Board's requirements). The patient lift tracks must extend from above the patient bed into the ensuite washroom above the toilet;
  - Barrier free designs are incorporated. For example, each resident washroom is equipped with a wheelchair accessible shower;
  - Perimeter security be included to prevent vulnerable residents from leaving the Facility and allow access by family and visitors. Restricted access will be required to prevent access from intruders who pose a risk to residents, staff and visitors; and

The Facility would have to meet the licensing and code requirements of the *Community Care and Assisted Living Act*, the National Building Code, British Columbia Building Code and those authorities or municipalities having building codes and bylaws that take precedence over the Multilevel Care Design Guidelines.

2. The Operator will construct the Facility in a manner which permits Occupancy to occur on or before the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**SCHEDULE C**  
**PROJECT SCHEDULE**

<i>Activity/Objective</i>	<i>Anticipated Completion Date</i>
VIHA Response to Proponent	
Project Development Agreement Signed	
Land Acquisition (or confirmation of ownership)	
Confirm Zoning	
Schematic Design and Report	
VIHA Response to Schematic Design and Report	
Tender Issuance	
Construction Starts	
Functional Completion	
Occupancy	

**SCHEDULE D**  
**PERMITTED ENCUMBRANCES**

**Legal Notations:**

**Charges, Liens and Interests:**

## SCHEDULE E

### CERTIFICATE OF INSURANCE

**Health Care  
Protection Program**

**CERTIFICATE OF  
INSURANCE**

*Freedom of Information and Protection of Privacy Act  
The personal information requested on this form is  
collected under the authority of and used for the  
purposes of contract review.*

**To be completed by Agent or Broker**

CERTIFICATE IS ISSUED TO:					
CONTRACTOR NAME					
CONTRACTOR ADDRESS					
<i>And certifies that policies of insurance as herein described have been issued to the insured(s) named below and are in full force and effect as of the effective date of the agreement.</i>					
INSURED	NAME				
	ADDRESS				
OPERATIONS INSURED	PROVIDE DETAILS				
TYPE OF INSURANCE	COMPANY NAME AND POLICY NO.	EXPIRY DATE			LIMIT OF LIABILITY/AMOUNT
		Y	M	D	
COMPREHENSIVE/ COMMERCIAL GENERAL LIABILITY					INCLUSIVE LIMITS \$ _____
AUTOMOBILE LIABILITY (OWNED OR LEASED VEHICLES)					PRIMARY \$ _____ EXCESS \$ _____
UMBRELLA LIABILITY					LIMITS \$ _____ EXCESS OF \$ _____
PROFESSIONAL LIABILITY					LIMITS \$ _____
PROPERTY					DETAILS \$ _____ \$ _____
OTHER					DETAILS \$ _____ \$ _____
These policies comply with the insurance requirements of the governing contract, permit or licence with the Health Authority or other stand alone entity. It is understood and agreed that where required by the governing contract/permit or license, the Health Authority or other stand alone entity has been added as an additional insured and that thirty (30) days' notice of any material change or cancellation of any of the policies listed herein, either in part or in whole will be given by the insurers to the holder of this certificate.					
SIGNED BY THE CONTRACTOR/PERMITTEE/LICENSEE				DATE SIGNED	
				Y	M
SIGNED ON BEHALF OF THE CONTRACTOR'S/PERMITTEE'S/LICENSEE'S INSURERS				DATE SIGNED	
				Y	M

**SCHEDULE F**  
**SCHEMATIC DESIGN DRAWING AND REPORT**

To be agreed upon by both parties in accordance with Schedule C.

**SCHEDULE G**  
**VIHA OPERATING AGREEMENT**