

**CHILD CARE CAPITAL FUNDING PROGRAM
MAJOR CAPITAL FUNDING FOR CREATION OF NEW CHILD CARE
SPACES**

FUNDING AGREEMENT

THIS AGREEMENT made the ____ day of _____, _____.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**, represented by
the Minister of Children and Family Development
(the “Province”)

OF THE FIRST PART

AND:

«Host_Organization», «SocietyIncorporation_Number»
«Address»«Address_», «City» BC «PC»
(the Recipient)

OF THE SECOND PART

WHEREAS:

- A. The Recipient has requested funding from the Province, for the Project (hereafter defined), in an amount up to an aggregate of «Total_Grant_Award»;
- B. Both parties acknowledge and agree that the funding provided under this Agreement is conditional funding to which the provisions of the *Child Care BC Act* apply; and
- C. It is a condition of the Province agreeing to provide assistance to the Recipient that the Recipient agrees to the terms in this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

DEFINITIONS

1.01 In this Agreement:

- (a) “Advance” means any disbursement of the money to the Recipient under this Agreement;
- (b) “Application” means the application of the Recipient for the Funding and includes all documents submitted, including Stage Two Submissions, and all representations made in connection with it;
- (c) “Appropriation” has the meaning given to it under section 1 of the *Financial Administration Act*;
- (d) “Budget” means a detailed estimate of the costs to complete the Project, determined where necessary by cost estimates by certified contractors, engineers, architects or other qualified parties, in accordance with the Plans and Specifications, provided to the Province for the purposes of this Agreement;
- (e) “Child Care Facility” means the physical building, facility, or area and the land on which the Project will occur or has occurred and which the Recipient will ensure is occupied and used, for the purpose of a Child Care Operation and which is located at ; ; «Facility_Address» and which is legally described as «FacilityProject_Name»
- (f) “Child Care Operation” means the provision of child care in a Child Care Facility licensed under the *Community Care and Assisted Living Act* at «FacilityProject_Name»;
- (g) “Completion” means the Project has been completed in accordance with the approved Plans and Specifications and Budget, or in accordance with any changes to Plans and Specifications or Budget that have been approved by the Province, and is capable of being licensed under the *Community Care and Assisted Living Act*.
- (h) “Event of Default” means any of the events described in paragraph 5.01;
- (i) “Final Advance” means the last disbursement of a portion of the Funding to the Recipient pursuant to this Agreement;
- (j) “*Financial Administration Act*” means the *Financial Administration Act*, R.S.B.C. 1996, c.138 as amended;
- (k) “Funding” means the aggregate of all Advances made from time to time by the Province to the Recipient under this Agreement in accordance with Schedule A;
- (l) “Good Financial Standing” means the Recipient does not have an outstanding debt owing to the Province respecting a program of the Ministry of Children and Family Development for which no Province-approved payment plan has been established and, where a Province-approved payment plan has been established, the Recipient is not in breach of the plan.

CHILD CARE CAPITAL FUNDING PROGRAM

- (m) "Initial Advance" means the first disbursement of a portion of the Funding to the Recipient pursuant to this Agreement;
- (n) "Necessary Government Approval" means the issuance by any government (including the Province) or municipality or any department, branch, official or agency thereof of all consents, tenures, permits, licenses or approvals required for the Recipient to commence and carry out the Project;
- (o) "Plans and Specifications" means all detailed plans, drawings and specifications for the works required to carry out and complete the Project or to acquire the assets for use in the Project;
 - a. "Project" means the project as described and agreed to by the Province in the Stage Two Submission; the creation of a new child care facility and equipment funded through a 5 year agreement. The project will create 20 licensed group child care spaces (20 Group School Age)
- (r) "Project Costs" means all amounts paid by the Recipient to any person, firm, corporation or other organization dealing at arm's length with the Recipient, for construction of the Project or acquisition of its components and which, in the opinion of the Province, have been necessarily and properly incurred under this Agreement and includes but is not limited to, if the Project includes acquiring land, the actual cost of the land, and does not include any property consisting of operational or replaceable assets, assets acquired prior to approval of the Recipient's application, or other ineligible items regardless of whether said items are related to the Project;
- (s) "Project Schedule" means a detailed timetable and schedule of construction or preparation of the Project and the time period within which each part or aspect of the Project, as described in the Plans and Specifications, is proposed to be commenced, carried out and completed;
- (t) "Stage Two Submission" means the forms submitted in stage two including all relevant supporting documentation submitted during this stage of the intake.
- (u) "Third Party Financing" means a donation, loan, credit facility or any other sum of money in an amount that, in addition to the maximum amount of the Funding and the amount to be funded by the Recipient, is sufficient, in the opinion of the Province, to pay the total costs set out in the Budget and that is committed to the Recipient by any organization or entity approved by the Province.

REPRESENTATIONS AND WARRANTIES

CORPORATE CAPACITY AND POWER AND REGISTERED TITLE

2.01 The Recipient represents and warrants to the Province that:

- (a) it has the legal capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement and all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Recipient and this Agreement

CHILD CARE CAPITAL FUNDING PROGRAM

- has been legally and properly executed by the Recipient and is legally binding upon and enforceable against the Recipient;
- (b) it has the legal right to carry out the Project at the site specified in the Application, including respecting local zoning as it may impact the ability to obtain a licence under the *Community Care and Assisted Living Act*;
 - (c) all information, financial statements, documents and reports furnished or submitted by the Recipient to the date of this Agreement in connection with its Application are true and correct;
 - (d) the completion of the transactions contemplated herein will not constitute a breach by the Recipient of any statute, bylaw or regulation or of its constating documents which would result in the creation of any lien, encumbrance or other charge on any of the assets;
 - (e) if the Recipient is a corporation or society, it is registered and in good standing with BC Corporate Registry, and if it is a sole proprietor or a partnership, it is registered and in good standing with BC Corporate Registry;
 - (f) if the Recipient receives other Ministry of Children and Family Development child care funding, including Child Care Operating Funding, Child Care Minor Capital funding and Child Care Subsidy payments on behalf of parents, the recipient is in Good Financial Standing;
 - (g) no insolvency event has occurred or is expected to occur with respect to the Recipient or any real or personal property involved in the Project. For the purposes of this provision, an insolvency event shall mean any events listed in subsections 5.01(e) to and including 5.01(h);
 - (h) There are no liens, encumbrances, charges or other rights or interests affecting or otherwise impacting any real or personal property related to the Project that have not been otherwise disclosed in the Application and approved by the Province.

RELIANCE AND CONTINUATION

- 2.02 All representations, warranties, covenants and agreements made herein and all certificates or other documents delivered by or on behalf of the Recipient to the Province are material to this Agreement and shall conclusively be deemed to have been relied upon by the Province; notwithstanding any prior or subsequent investigation by the Province and they shall survive the payment of the Funding and the fulfilment of all other transactions and deliveries contemplated under this Agreement and will continue in full force and effect during the continuation of this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

FURTHER REPRESENTATION

- 2.03 All statements contained in any certificate, the Application or other document delivered by or on behalf of the Recipient to the Province under this Agreement or in connection with any of the transactions contemplated hereby shall be deemed to be representations and warranties by the Recipient under this Agreement.

RECIPIENT'S COVENANTS

PROJECT COVENANTS

- 3.01 On entering into this Agreement, and as soon as the Budget, Project Schedule and Plans and Specifications are approved by the Province, the Recipient will proceed diligently and complete the Project substantially in accordance with the approved Budget, the approved Project Schedule and the approved Plans and Specifications.
- 3.02 Upon proceeding with the Project in accordance with paragraph 3.01 above, the Recipient will ensure that Funding is applied exclusively toward the Project for the Child Care Facility in accordance with the Budget, Project Schedule and Plans and Specifications, all as approved by the Province, and that all undisputed Project Costs are paid when due. In the event of a disputed Project Cost with a party engaged to assist with the Project, the Recipient will use its best efforts to resolve the dispute as soon as possible.
- 3.03 If the Recipient does not proceed diligently with the Project in accordance with section 3.01, 3.02 and the approved Project Schedule, the Recipient will immediately contact the Province to request changes to the Project Schedule, and will provide at that time a complete explanation as to the reasons for the delay and an estimate of the additional time required to commence the Project. Failure to request changes to the Project Schedule under these circumstances will result in an Event of Default under paragraph 5.01(a) of this Agreement.
- 3.04 If the Province, following a request made under paragraph 3.02 by the Recipient, refuses to approve a change to the Project Schedule, then the Recipient's failure to comply with the requirements of paragraph 3.01 and the approved Project Schedule will constitute an Event of Default under paragraph 5.01(a) of this Agreement.
- 3.05 The Recipient will not, without the prior written approval of the Province, make any material change in or to the Project or the Budget, Plans and Specifications or Project Schedule.
- 3.06 If the Recipient makes a change to the Project or the approved Budget, the approved Plans and Specifications or the approved Project Schedule, including changes to the number or type of child care spaces to be created, without written approval from the Province, this will constitute an Event of Default under paragraph 5.01(a) of this Agreement.

COMPLETION

- 3.07 Forthwith after Completion, the Recipient will submit to the Province written notification of Completion of the Project which is accompanied by:

CHILD CARE CAPITAL FUNDING PROGRAM

- (a) a detailed statement prepared by an independent, arm's length certified Chartered Professional Accountant, prepared in accordance with current financial reporting standards in Canada, listing all Project Costs including copies of invoices and receipts or proof of payment for all Project Costs up to the date of Completion;
- (b) a copy of all current licences issued under the *Community Care and Assisted Living Act* for the Child Care Facility and contemplated under this Agreement; and
- (c) a completed financial reconciliation form, and a financial expenditure form, both in the form required by the Province within 60 days of Completion.

OVERRUNS

- 3.08 If at any time it appears or becomes evident to either the Province or the Recipient that the Project Costs may exceed the approved Budget, the Recipient will forthwith provide the Province with full and complete particulars of such excess and the Recipient will be liable for any and all such costs.

CONTINUATION OF CHILD CARE OPERATION

- 3.09 Forthwith after Completion, the Recipient will ensure the Child Care Operation commences or continues, and thereafter, the Recipient will ensure that the Child Care Operation continues for a minimum of «Years_of_Commitment» years from the date the Child Care Facility commences or continues as a Child Care Operation.
- 3.10 The Recipient will advise the Province in writing immediately of any decision to cease the Child Care Operation.

OVERPAYMENT & REPAYMENT

- 3.11 If Funding, or a portion of Funding, is paid under this Agreement in an amount to which the Recipient was not eligible under the terms of this Agreement, including but not limited to any overpayments made as the result of clerical or administrative error or miscalculation on the part of the Province, or miscalculation on the part of the Recipient, or incorrect information supplied to the Province by the Recipient, then the Recipient will repay the full amount of any such overpayment to the Province.
- 3.12 The Province will not, under any circumstances, be required to pay to the Recipient under this Agreement, more than \$«Total_Grant_Award».
- 3.13 If, upon Completion, it is determined that the Project Costs to Completion were less than the total costs set out in the Budget approved by the Province, then the Recipient will repay to the Province the Province-approved funding percentage of the difference between the Project Costs to Completion and the total costs set out in the Budget approved by the Province. For illustrative purposes, if the Province has agreed to fund 50% of a Project based on the approved Budget of \$500,000 (i.e. Province advances \$250,000) but the Project Costs to Completion are later determined to be only \$400,000, then the Recipient would be required to repay the Province the sum of \$50,000.

CHILD CARE CAPITAL FUNDING PROGRAM

- 3.14 Without limiting the generality of paragraph 5.02(b), if the Recipient breaches paragraph 3.09, then the Recipient will repay to the Province a pro-rated amount of all Funding paid to it under this Agreement, based on the ratio between the length of time the Child Care Operation has operated and the length of time it is required to operate under this Agreement.
- 3.15 Pursuant to s.7(2) of the *Child Care BC Act*, the amount of any overpayment or repayment referred to in paragraph 3.11, 3.13 or 3.14 is a debt due to the Province and may be recovered by the Province in a court of competent jurisdiction or deducted by the Province from any subsequent child care funding program, except Child Care Subsidy, administered by the Province.
- 3.16 If the Recipient does not make the repayment referred to in paragraph 3.13, within 30 days of receipt of the demand for repayment from the Province, then the Province may, at its discretion, refuse to make any Advance otherwise payable to the Recipient under this Agreement, or terminate or suspend payments otherwise payable to the Recipient under this or any other child care funding program, except Child Care Subsidy, administered by the Province.
- 3.17 Despite any other provisions in this Agreement, the Province may, at the Province's discretion, withhold some or all of the Funding advances that would otherwise be payable under this Agreement to offset some or all of any repayment owing by the Recipient under this Agreement.

GENERAL COVENANTS

- 3.18 So long as this Agreement remains in force, the Recipient will:
- (a) observe and comply with any statute, rule or regulation of any government or branch or agency thereof applicable to the Recipient or the Project;
 - (b) if requested by the Province, provide evidence satisfactory to the Province that the representations and warranties set forth in paragraph 2.01 are true and correct;
 - (c) maintain its corporate existence and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles applied on a consistent basis;
 - (d) ensure that the Child Care Operation is carried on in a proper business-like manner in accordance with good business practice and the *Community Care and Assisted Living Act* and the Child Care Licensing Regulation;
 - (e) ensure that access to the completed Project and related facilities is provided to parents receiving benefits under the *Child Care Subsidy Act*;
 - (f) without limiting the requirement in paragraph 3.07, within thirty days of the delivery of a written request from the Province, provide the Province with any information and documents, including Financial Statements prepared by an independent, arm's length, certified Chartered professional Accountant, that meet current financial reporting standards in Canada, with respect to the affairs of the Recipient or the Project, that the Province considers necessary to determine the status of the Project toward Completion and to ensure that the Recipient is complying with its obligations under this Agreement;

CHILD CARE CAPITAL FUNDING PROGRAM

- (g) the recipient must provide the following report, commencing on the anniversary date of the *Community Care and Assisted living Act* licence and continuing every 12 months of the Child Care Operation for the duration of the «Years_of_Commitment» year period referenced in section 3.09 of the Agreement;
- a. Number of child care spaces
 - b. Location
 - c. Number of days open per month; and
 - d. Number of months open per year

The report referred to in the above section will be submitted in a form determined by the Province.

- (h) notify the Province in writing immediately of any actual or potential Event of Default under this Agreement, including providing particulars of such event. Additionally, the Recipient will immediately notify the Province in writing of details of any actual or potential issues or changes involving its Third Party Financing arrangements that could materially impact the Project;
- (i) grant to the Province, its servants, agents and employees access to the Child Care Facility location contemplated in this Agreement or any other location for the purpose of inspecting any aspect of the Project, including without limitation any building, assets, books and records of the Recipient at all reasonable times for the purpose of inspections;
- (j) apply for and maintain in good standing all Necessary Government Approvals and submit to the Province satisfactory evidence thereof when so requested by the Province;
- (k) expend all Funding only for Project Costs in relation to the Child Care Facility;
- (l) punctually pay all taxes, rates and assessments required to be paid by it; and
- (m) generally, perform each of its obligations under this Agreement.

INSURANCE AND INDEMNITY

3.19 The Recipient shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances with insurers licensed in Canada and in forms and amounts acceptable to the Province:

- (a) during the construction phase of any Project, insurance such as course of construction and wrap-up liability in amounts that a prudent owner of a similar construction project would carry in British Columbia to ensure the Project is completed and third party liabilities are insured. Such insurance shall include, as applicable, the Province as an additional insured or loss payee as its interest may appear, and a waiver of the insurer's rights of subrogation against the Province.

CHILD CARE CAPITAL FUNDING PROGRAM

- (b) at all other times during the term of this Agreement, other insurance(s) specific to the operations of the Recipient that ensure the Child Care Facility remains operational including insurance to protect the Recipient against loss arising from damage to the Child Care Facility, and loss of revenue derived from Child Care Facility operations, in amounts that a prudent operator in British Columbia would carry to cover the related risks. Where applicable, liability policies shall include the Province as additional insured, and property policies shall include the Province as loss payee as its interests may appear and a waiver of the insurer's rights of subrogation against the Province.

All insurance carried by the Recipient shall be primary and not require the sharing of any loss by the Province.

- 3.20 Within ten business days of being asked to do so by the Province, the Recipient shall provide the Province with evidence of all insurance covering the Project or related to this Agreement. Such evidence of insurance shall be in the form of a completed and signed Province of British Columbia Fin 173 - Certificate of Insurance.
- 3.21 The Recipient hereby waives any right of recourse it may have or obtain against the Province, its employees or agents, with regard to loss or damage to its property located in, on or about the Child Care Facility. The Recipient shall be responsible for any deductible amounts under the policies.
- 3.22 The Recipient will indemnify and save harmless the Province, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Province may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this agreement, when the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Recipient or any agent, contractor or employee of the Recipient pursuant to this Agreement or the Recipient's operations.

ADVANCES

GENERAL CONDITIONS PRECEDENT TO ADVANCES

- 4.01 The Province is not obligated to make any Advance as set out in Schedule A:
- (a) if, in the opinion of the Province, there has been any material adverse change in the business or financial condition of the Recipient;
 - (b) unless there is an Appropriation with respect to or applicable to the Project and there remain sufficient funds available and uncommitted in that Appropriation to make the Advance requested;
 - (c) if Treasury Board, as defined in the *Financial Administration Act*, has controlled or limited expenditure under the said Appropriation;
 - (d) if there has occurred or is continuing an Event of Default which has not been remedied to the satisfaction of the Province;

CHILD CARE CAPITAL FUNDING PROGRAM

- (e) unless the Province has received and is satisfied with evidence that all Necessary Government Approvals have been obtained and are in good standing and that the representations and warranties contained in this Agreement are true and correct.

CONDITIONS PRECEDENT TO INITIAL ADVANCE

- 4.02 The Province will not be obligated to make an Initial Advance as set out in Schedule A unless the Province has received and approved:
- (a) the Budget;
 - (b) the Project Schedule;
 - (c) the Plans and Specifications for the Project;
 - (d) evidence that any Third Party Financing has been obtained and is committed to the Recipient;
 - (e) if the Project consists of renovating an existing building or the purchase of equipment, evidence that it holds a valid group child care licence under the *Community Care and Assisted Living Act* and regulations and it is not in contravention of any requirements of that licence;
 - (f) evidence, satisfactory to the Province, of the taking of all proceedings by the directors of the Recipient necessary to the authorization of the execution and delivery of this Agreement and the performance of their respective provisions.

CONDITIONS PRECEDENT TO FINAL ADVANCE

- 4.03 Prior to any Final Advance set out in Schedule A, the Recipient must submit to the Province all items and information required pursuant to paragraph 3.07 (**Completion**) of this Agreement. Provided the Recipient is in compliance with this provision and all other provisions of this Agreement, and provided the Province has no questions or concerns arising from the items and information that the Recipient submits pursuant to this provision, then the Province will provide the Recipient with the Final Advance set out in Schedule A.

DEFAULT AND TERMINATION

EVENTS OF DEFAULT

- 5.01 Any of the following events will constitute an Event of Default, whether any such event be voluntary, involuntary or result from the operation of law or any judgment or order of any court or administrative or government body:

CHILD CARE CAPITAL FUNDING PROGRAM

- (a) the Recipient fails to observe, perform or comply with any provision of this Agreement or of any other agreement for child care funding to which the Recipient is a party with the Province, and has not rectified such failure within any time limit set by the Province or is not, in the reasonable opinion of the Province, diligently proceeding to rectify such failure;
- (b) any representation or warranty made by the Recipient in this Agreement is untrue or incorrect;
- (c) the Application or any other information, document, certificate or report provided or submitted by the Recipient to the Province pursuant to this Agreement is untrue or incorrect;
- (d) there is any action or proceeding, pending or threatened, or any completed successful application against the Recipient including any action or proceeding arising from the Recipient's Third Party Financing, which would, in the opinion of the Province, if successful, have a material adverse effect upon the ability of the Recipient to perform its obligations under this Agreement or any agreement entered into or charge granted in furtherance of this Agreement;
- (e) an order is made or a resolution passed for the liquidation or winding up of the Recipient or if a petition is filed for the liquidation or winding up of the Recipient;
- (f) the Recipient becomes insolvent or makes an unauthorized assignment or bulk sale of its assets or if a bankruptcy petition is filed or presented against it or if the Recipient shall be subject to the provisions of the *Bankruptcy Act* (Canada) or any other Act for the benefit of its creditors or otherwise acknowledges its insolvency;
- (g) a receiver or receiver-manager of any property of the Recipient is appointed;
- (h) a change occurs with respect to any of the properties, assets, condition (financial or otherwise), business or operations of the Recipient which, in the opinion of the Province, materially adversely affects the ability of the Recipient to fulfil any of its obligations under this Agreement;
- (i) if the Recipient is a corporation or society, it ceases to be registered and in good standing with BC Corporate Registry, and if it is a sole proprietor or a partnership, it ceases to be registered and in good standing with BC Corporate Registry;
- (i) the Recipient commits an act of default under its Third Party Financing arrangements;
- (j) the Recipient has an outstanding debt owing to the Province respecting child care funding for which no payment plan has been established and agreed to by the Province or the Recipient is in breach of any such payment plan that has been established and agreed to by the Province;
- (k) in the opinion of the Province, the Recipient has failed to ensure the commencement or continue the Child Care Operation.

CHILD CARE CAPITAL FUNDING PROGRAM

TERMINATION

- 5.02 Upon the occurrence of any Event of Default and at any time thereafter the Province may, notwithstanding any other provision of this Agreement, at its discretion exercisable by written notice to the Recipient:
- (a) from and after the date of said notice, withhold an Advance for such period of time as the Province in its sole discretion determines is reasonable to permit the Recipient to remedy the default; or
 - (b) terminate the Agreement, and declare the aggregate of all Advances paid hereunder to be due and be repayable by the Recipient to the Province and such monies will immediately become due and payable without presentment, demand, protest or other notice of any kind to the Recipient, all of which are hereby expressly waived.

REMEDIES NON-INCLUSIVE

- 5.03 The rights, powers and remedies conferred on the Province under this Agreement or any statute or law are not intended to be exclusive and each remedy shall be cumulative and in addition to and not in substitution for every other remedy existing or available to the Province.
- 5.04 The exercise of any one or more remedies available to the Province will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

DELAY

- 5.05 No failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure shall continue, will constitute a waiver by such party of its rights hereunder.

CHILD CARE CAPITAL FUNDING PROGRAM

NOTICE

Delivery of notices

- 6.01 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- a) by courier to the addressee's address specified below, in which case it will be deemed to be received on the day of its delivery; or
 - b) by prepaid post to the addressee's address specified below, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing; or
 - c) by email to the addressee's email address specified below, in which case it will be deemed to be received on the day and time it was sent.

to the Province:

Child Care Programs and Services Branch
Ministry of Children and Family Development
Mailing Address:
PO Box 9953, Stn. Prov. Govt.
Victoria BC V8W 9R3
Email Address:
MCF.CCCF@gov.bc.ca

and to the Recipient:

«Host_Organization»
«Address»
«City», B.C. «PC»
«Email»

- 6.02 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of each party and that executed copy being delivered to the party by a method provided for in section 6.01 or any other method agreed to by the parties.

RECEIPT

- 6.03 Any such notice, document, statement, report, demand or payment so mailed will be deemed to be given to and received by the addressee on the fifth business day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed to be given to and received by the addressee when actually delivered to the particular address set out above.

CHILD CARE CAPITAL FUNDING PROGRAM

CHANGES

- 6.04 Within 30 business days of a change to its address or email address, a party must provide written notice of the change to the other party.

MISCELLANEOUS

PUBLIC ANNOUNCEMENT

- 7.01 The Province may engage in such communications, advertising or media interviews regarding the Funding or the Project as it deems appropriate.
- 7.02 The Recipient will provide at least 14 business days advance notice to the Province of any planned communication, advertising or media interviews in relation to the Funding or the Project, and will not proceed with its plans without the written approval of the Province.

INTERPRETATION

GOVERNING LAW

- 8.01 This Agreement will be constructed in accordance with the laws of the Province of British Columbia.
- 8.02 Nothing in this Agreement is or operates as a consent, permit, approval or authorization by the government of the Province of British Columbia or any ministry, office, branch or agency thereof to or for anything related to the Project that, by statute, the Recipient is required to obtain unless it is expressly stated herein to be such a consent, permit, approval or authorization.

TIME

- 8.03 Time will be of the essence of this Agreement.

REFERENCES

- 8.04 A reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes all amendments to it, the regulations made under it and any enactment passed in substitution therefore or replacement thereof.
- 8.05 Unless the context otherwise indicates, any reference to “this Agreement” means this instrument and all of the schedules attached to it and any reference to any paragraph or subparagraph by number is a reference to the appropriate paragraph or subparagraph in this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

HEADINGS

- 8.06 The headings or captions in this Agreement are inserted for convenience only and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.

NO OTHER AGREEMENTS

- 8.07 There is no representation, warranty, guarantee, indemnity, condition or agreement or any collateral representation, warranty, guarantee, indemnity, condition or agreement applicable to, binding upon or enforceable against one party by the other except for those expressed in this Agreement, the Application submitted by the Recipient and any agreement or approval made or security to be granted pursuant to this Agreement.

SEVERABILITY

- 8.08 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.

ASSIGNMENT

- 8.09 The Recipient must not assign any of the Recipient's rights or obligations under this Agreement without the Province's prior written approval. Upon providing written notice to the Recipient, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the *Financial Administration Act*, any of the Province's obligations under this Agreement.

ENUREMENT

- 8.10 This Agreement will enure to the benefit of and be binding upon the Province and its assigns and the Recipient and its successors and permitted assigns.

WAIVER

- 8.11 No consent or waiver, expressed or implied by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent of waiver to or of any other breach or default in the performance by such party hereunder.

NO PARTNERSHIP

- 8.12 Nothing contained in this Agreement will create or be deemed to create, as between the Province, on the one hand, and the Recipient, on the other hand, a partnership, joint venture or agency relationship.

SCHEDULE A

**Child Care Capital Funding Program
Major Capital Funding for Creation of New Child Care Spaces**

Funding Agreement “Category A”

1. The Province will provide funding to the Recipient to a maximum of \$«Total_Grant_Award». Advances will be made, subject to the terms of this Agreement, as follows:
 - a. the Initial Advance of 90% in the amount of \$«Initial_Pmt» to be paid within 30 days of execution of the Agreement;
 - b. the remaining balance of 10% of the final payment in the amount of \$«Final_Pmt» to be paid within 30 days of the Province’s receipt and approval of the items and information described in paragraph 3.07 (*Completion*) of this Agreement.

AGREEMENT Number: «Agreement_No»

**CHILD CARE CAPITAL FUNDING PROGRAM
MAJOR CAPITAL FUNDING FOR CREATION OF NEW CHILD CARE
SPACES**

**FUNDING AGREEMENT
FOR HUMAN RESOURCE FACILITY ACT (HRFA)
PROJECTS \$50,000 to \$200,000**

THIS AGREEMENT made the ____ day of _____, _____.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**, represented by
the Minister of Children and Family Development
(the “Province”)

OF THE FIRST PART

AND:

«Host_Organization», «SocietyIncorporation_Number»
«Address»«Address_», «City» BC «PC»
(the Recipient)

OF THE SECOND PART

WHEREAS:

- A. The Recipient has requested funding from the Province, for the Project (hereafter defined), in an amount up to an aggregate of «Total_Grant_Award»;
- B. Both parties acknowledge and agree that the funding provided under this Agreement is conditional funding to which the provisions of the *Child Care BC Act* apply; and
- C. It is a condition of the Province agreeing to provide assistance to the Recipient that the Recipient agrees to the terms in this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

DEFINITIONS

1.01 In this Agreement:

- (a) “Advance” means any disbursement of the money to the Recipient under this Agreement;
- (b) “Application” means the application of the Recipient for the Funding and includes all documents submitted, including Stage Two Submissions, and all representations made in connection with it;
- (c) “Appropriation” has the meaning given to it under section 1 of the *Financial Administration Act*;
- (d) “Budget” means a detailed estimate of the costs to complete the Project, determined where necessary by cost estimates by certified contractors, engineers, architects or other qualified parties, in accordance with the Plans and Specifications, provided to the Province for the purposes of this Agreement;
- (e) “Child Care Facility” means the physical building, facility, or area and the land on which the Project will occur or has occurred and which the Recipient will ensure is occupied and used, for the purpose of a Child Care Operation and which is located at; «Facility_Address» and which is legally described as «FacilityProject_Name»
- (f) “Child Care Operation” means the provision of child care in a Child Care Facility licensed under the *Community Care and Assisted Living Act* at «FacilityProject_Name»;
- (g) “Completion” means the Project has been completed in accordance with the approved Plans and Specifications and Budget, or in accordance with any changes to Plans and Specifications or Budget that have been approved by the Province, and is capable of being licensed under the *Community Care and Assisted Living Act*.
- (h) “Event of Default” means any of the events described in paragraph 5.01;
- (i) “Final Advance” means the last disbursement of a portion of the Funding to the Recipient pursuant to this Agreement;
- (j) “*Financial Administration Act*” means the *Financial Administration Act*, R.S.B.C. 1996, c.138 as amended;
- (k) “Funding” means the aggregate of all Advances made from time to time by the Province to the Recipient under this Agreement in accordance with Schedule A;
- (l) “Good Financial Standing” means the Recipient does not have an outstanding debt owing to the Province respecting a program of the Ministry of Children and Family Development for which no Province-approved payment plan has been established and, where a Province-approved payment plan has been established, the Recipient is not in breach of the plan.

CHILD CARE CAPITAL FUNDING PROGRAM

- (m) “HRFA” means the *Human Resource Facility Act, R.S.B.C. 1996, c.209*;
- (n) “Human Resource Purpose” means a facility for the care of children;
- (o) “Initial Advance” means the first disbursement of a portion of the Funding to the Recipient pursuant to this Agreement;
- (p) “Necessary Government Approval” means the issuance by any government (including the Province) or municipality or any department, branch, official or agency thereof of all consents, tenures, permits, licenses or approvals required for the Recipient to commence and carry out the Project;
- (q) “Plans and Specifications” means all detailed plans, drawings and specifications for the works required to carry out and complete the Project or to acquire the assets for use in the Project;
- (r) “Project” means the project as described and agreed to by the Province in the Stage Two Submission; «Project_Description»
- (r) “Project Costs” means all amounts paid by the Recipient to any person, firm, corporation or other organization dealing at arm’s length with the Recipient, for construction of the Project or acquisition of its components and which, in the opinion of the Province, have been necessarily and properly incurred under this Agreement and includes but is not limited to, if the Project includes acquiring land, the actual cost of the land, and does not include any property consisting of operational or replaceable assets, assets acquired prior to approval of the Recipient’s application, or other ineligible items regardless of whether said items are related to the Project;
- (s) “Project Schedule” means a detailed timetable and schedule of construction or preparation of the Project and the time period within which each part or aspect of the Project, as described in the Plans and Specifications, is proposed to be commenced, carried out and completed;
- (t) “Stage Two Submission” means the forms submitted in stage two including all relevant supporting documentation submitted during this stage of the intake.
- (u) “Third Party Financing” means a donation, loan, credit facility or any other sum of money in an amount that, in addition to the maximum amount of the Funding and the amount to be funded by the Recipient, is sufficient, in the opinion of the Province, to pay the total costs set out in the Budget and that is committed to the Recipient by any organization or entity approved by the Province.

REPRESENTATIONS AND WARRANTIES

CORPORATE CAPACITY AND POWER AND REGISTERED TITLE

2.01 The Recipient represents and warrants to the Province that:

- (a) it has the legal capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement and all necessary proceedings have been taken and done to

CHILD CARE CAPITAL FUNDING PROGRAM

- authorize the execution and delivery of this Agreement by the Recipient and this Agreement has been legally and properly executed by the Recipient and is legally binding upon and enforceable against the Recipient;
- (b) it has the legal right to carry out the Project at the site specified in the Application, including respecting local zoning as it may impact the ability to obtain a licence under the *Community Care and Assisted Living Act*;
 - (c) all information, financial statements, documents and reports furnished or submitted by the Recipient to the date of this Agreement in connection with its Application are true and correct;
 - (d) the completion of the transactions contemplated herein will not constitute a breach by the Recipient of any statute, bylaw or regulation or of its constating documents which would result in the creation of any lien, encumbrance or other charge on any of the assets;
 - (e) if the Recipient is a corporation or society, it is registered and in good standing with BC Corporate Registry, and if it is a sole proprietor or a partnership, it is registered and in good standing with BC Corporate Registry;
 - (f) if the Recipient receives other Ministry of Children and Family Development child care funding, including Child Care Operating Funding, Child Care Minor Capital funding and Child Care Subsidy payments on behalf of parents, the recipient is in Good Financial Standing;
 - (g) no insolvency event has occurred or is expected to occur with respect to the Recipient or any real or personal property involved in the Project. For the purposes of this provision, an insolvency event shall mean any events listed in subsections 5.01(e) to and including 5.01(h);
 - (h) There are no liens, encumbrances, charges or other rights or interests affecting or otherwise impacting any real or personal property related to the Project that have not been otherwise disclosed in the Application and approved by the Province.

RELIANCE AND CONTINUATION

- 2.02 All representations, warranties, covenants and agreements made herein and all certificates or other documents delivered by or on behalf of the Recipient to the Province are material to this Agreement and shall conclusively be deemed to have been relied upon by the Province, notwithstanding any prior or subsequent investigation by the Province and they shall survive the payment of the Funding and the fulfilment of all other transactions and deliveries contemplated under this Agreement and will continue in full force and effect during the continuation of this Agreement.

FURTHER REPRESENTATION

- 2.03 All statements contained in any certificate, the Application or other document delivered by or on behalf of the Recipient to the Province under this Agreement or in connection with any of the transactions contemplated hereby shall be deemed to be representations and warranties by the Recipient under this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

RECIPIENT'S COVENANTS

PROJECT COVENANTS

- 3.01 On entering into this Agreement, and as soon as the Budget, Project Schedule and Plans and Specifications are approved by the Province, the Recipient will proceed diligently and complete the Project substantially in accordance with the approved Budget, the approved Project Schedule and the approved Plans and Specifications.
- 3.02 Upon proceeding with the Project in accordance with paragraph 3.01 above, the Recipient will ensure that Funding is applied exclusively toward the Project for the Child Care Facility in accordance with the Budget, Project Schedule and Plans and Specifications, all as approved by the Province, and that all undisputed Project Costs are paid when due. In the event of a disputed Project Cost with a party engaged to assist with the Project, the Recipient will use its best efforts to resolve the dispute as soon as possible.
- 3.03 If the Recipient does not proceed diligently with the Project in accordance with section 3.01, 3.02 and the approved Project Schedule, the Recipient will immediately contact the Province to request changes to the Project Schedule, and will provide at that time a complete explanation as to the reasons for the delay and an estimate of the additional time required to commence the Project. Failure to request changes to the Project Schedule under these circumstances will result in an Event of Default under paragraph 5.01(a) of this Agreement.
- 3.04 If the Province, following a request made under paragraph 3.02 by the Recipient, refuses to approve a change to the Project Schedule, then the Recipient's failure to comply with the requirements of paragraph 3.01 and the approved Project Schedule will constitute an Event of Default under paragraph 5.01(a) of this Agreement.
- 3.05 The Recipient will not, without the prior written approval of the Province, make any material change in or to the Project or the Budget, Plans and Specifications or Project Schedule.
- 3.06 If the Recipient makes a change to the Project or the approved Budget, the approved Plans and Specifications or the approved Project Schedule, including changes to the number or type of child care spaces to be created, without written approval from the Province, this will constitute an Event of Default under paragraph 5.01(a) of this Agreement.

COMPLETION

- 3.07 Forthwith after Completion, the Recipient will submit to the Province written notification of Completion of the Project which is accompanied by:
- (a) a detailed statement prepared by an independent, arm's length certified Chartered Professional Accountant, prepared in accordance with current financial reporting standards in Canada, listing all Project Costs including copies of invoices and receipts or proof of payment for all Project Costs up to the date of Completion;
 - (b) a copy of all current licences issued under the *Community Care and Assisted Living Act* for the Child Care Facility and contemplated under this Agreement; and

CHILD CARE CAPITAL FUNDING PROGRAM

- (c) a completed financial reconciliation form, and a financial expenditure form, both in the form required by the Province within 60 days of Completion.

OVERRUNS

- 3.08 If at any time it appears or becomes evident to either the Province or the Recipient that the Project Costs may exceed the approved Budget, the Recipient will forthwith provide the Province with full and complete particulars of such excess and the Recipient will be liable for any and all such costs.

CONTINUATION OF CHILD CARE OPERATION

- 3.09 Forthwith after Completion, the Recipient will ensure the Child Care Operation commences or continues, and thereafter, the Recipient will ensure that the Child Care Operation continues for a minimum of «Years_of_Commitment» years from the date the Child Care Facility commences or continues as a Child Care Operation.
- 3.10 The Recipient will advise the Province in writing immediately of any decision to cease the Child Care Operation.

OVERPAYMENT & REPAYMENT

- 3.11 If Funding, or a portion of Funding, is paid under this Agreement in an amount to which the Recipient was not eligible under the terms of this Agreement, including but not limited to any overpayments made as the result of clerical or administrative error or miscalculation on the part of the Province, or miscalculation on the part of the Recipient, or incorrect information supplied to the Province by the Recipient, then the Recipient will repay the full amount of any such overpayment to the Province.
- 3.12 The Province will not, under any circumstances, be required to pay to the Recipient under this Agreement, more than «Total_Grant_Award».
- 3.13 If, upon Completion, it is determined that the Project Costs to Completion were less than the total costs set out in the Budget approved by the Province, then the Recipient will repay to the Province the Province-approved funding percentage of the difference between the Project Costs to Completion and the total costs set out in the Budget approved by the Province. For illustrative purposes, if the Province has agreed to fund 50% of a Project based on the approved Budget of \$500,000 (i.e. Province advances \$250,000) but the Project Costs to Completion are later determined to be only \$400,000, then the Recipient would be required to repay the Province the sum of \$50,000.
- 3.14 Without limiting the generality of paragraph 5.02(b), if the Recipient breaches paragraph 3.09, then the Recipient will repay to the Province a pro-rated amount of all Funding paid to it under this Agreement, based on the ratio between the length of time the Child Care Operation has operated and the length of time it is required to operate under this Agreement.
- 3.15 Pursuant to s.7(2) of the *Child Care BC Act*, the amount of any overpayment or repayment referred to in paragraph 3.11, 3.13 or 3.14 is a debt due to the Province and may be recovered by

CHILD CARE CAPITAL FUNDING PROGRAM

the Province in a court of competent jurisdiction or deducted by the Province from any subsequent child care funding program, except Child Care Subsidy, administered by the Province.

- 3.16 If the Recipient does not make the repayment referred to in paragraph 3.13, within 30 days of receipt of the demand for repayment from the Province, then the Province may, at its discretion, refuse to make any Advance otherwise payable to the Recipient under this Agreement, or terminate or suspend payments otherwise payable to the Recipient under this or any other child care funding program, except Child Care Subsidy, administered by the Province.
- 3.17 Despite any other provisions in this Agreement, the Province may, at the Province's discretion, withhold some or all of the Funding advances that would otherwise be payable under this Agreement to offset some or all of any repayment owing by the Recipient under this Agreement.

GENERAL COVENANTS

- 3.18 So long as this Agreement remains in force, the Recipient will:
- (a) observe and comply with any statute, rule or regulation of any government or branch or agency thereof applicable to the Recipient or the Project;
 - (b) if requested by the Province, provide evidence satisfactory to the Province that the representations and warranties set forth in paragraph 2.01 are true and correct;
 - (c) maintain its corporate existence and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles applied on a consistent basis;
 - (d) ensure that the Child Care Operation is carried on in a proper business-like manner in accordance with good business practice and the *Community Care and Assisted Living Act* and the Child Care Licensing Regulation;
 - (e) ensure that access to the completed Project and related facilities is provided to parents receiving benefits under the *Child Care Subsidy Act*;
 - (f) without limiting the requirement in paragraph 3.07, within thirty days of the delivery of a written request from the Province, provide the Province with any information and documents, including Financial Statements prepared by an independent, arm's length, certified Chartered professional Accountant, that meet current financial reporting standards in Canada, with respect to the affairs of the Recipient or the Project, that the Province considers necessary to determine the status of the Project toward Completion and to ensure that the Recipient is complying with its obligations under this Agreement;
 - (g) the recipient must provide the following report, commencing on the anniversary date of the *Community Care and Assisted living Act* licence and continuing every 12 months of the Child Care Operation for the duration of the «Years_of_Commitment» year period referenced in section 3.09 of the Agreement;
 - a. Number of child care spaces
 - b. Location
 - c. Number of days open per month; and
 - d. Number of months open per year

CHILD CARE CAPITAL FUNDING PROGRAM

The report referred to in the above section will be submitted in a form determined by the Province.

- (h) notify the Province in writing immediately of any actual or potential Event of Default under this Agreement, including providing particulars of such event. Additionally, the Recipient will immediately notify the Province in writing of details of any actual or potential issues or changes involving its Third Party Financing arrangements that could materially impact the Project;
- (i) grant to the Province, its servants, agents and employees access to the Child Care Facility location contemplated in this Agreement or any other location for the purpose of inspecting any aspect of the Project, including without limitation any building, assets, books and records of the Recipient at all reasonable times for the purpose of inspections;
- (j) apply for and maintain in good standing all Necessary Government Approvals and submit to the Province satisfactory evidence thereof when so requested by the Province;
- (k) expend all Funding only for Project Costs in relation to the Child Care Facility;
- (l) punctually pay all taxes, rates and assessments required to be paid by it; and
- (m) generally, perform each of its obligations under this Agreement.

INSURANCE AND INDEMNITY

- 3.19 The Recipient shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances with insurers licensed in Canada and in forms and amounts acceptable to the Province:
- (a) during the construction phase of any Project, insurance such as course of construction and wrap-up liability in amounts that a prudent owner of a similar construction project would carry in British Columbia to ensure the Project is completed and third party liabilities are insured. Such insurance shall include, as applicable, the Province as an additional insured or loss payee as its interest may appear, and a waiver of the insurer's rights of subrogation against the Province.
 - (b) at all other times during the term of this Agreement, other insurance(s) specific to the operations of the Recipient that ensure the Child Care Facility remains operational including insurance to protect the Recipient against loss arising from damage to the Child Care Facility, and loss of revenue derived from Child Care Facility operations, in amounts that a prudent operator in British Columbia would carry to cover the related risks. Where applicable, liability policies shall include the Province as additional insured, and property policies shall include the Province as loss payee as its interests may appear and a waiver of the insurer's rights of subrogation against the Province.

All insurance carried by the Recipient shall be primary and not require the sharing of any loss by the Province.

- 3.20 Within ten business days of being asked to do so by the Province, the Recipient shall provide the Province with evidence of all insurance covering the Project or related to this Agreement. Such

CHILD CARE CAPITAL FUNDING PROGRAM

evidence of insurance shall be in the form of a completed and signed Province of British Columbia Fin 173 - Certificate of Insurance.

- 3.21 The Recipient hereby waives any right of recourse it may have or obtain against the Province, its employees or agents, with regard to loss or damage to its property located in, on or about the Child Care Facility. The Recipient shall be responsible for any deductible amounts under the policies.
- 3.22 The Recipient will indemnify and save harmless the Province, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Province may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this agreement, when the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Recipient or any agent, contractor or employee of the Recipient pursuant to this Agreement or the Recipient's operations.

HUMAN RESOURCE FACILITY ACT ACKNOWLEDGEMENT

- 3.23 The Recipient acknowledges that:
- a) the Funding is advanced to the Recipient under the *Child Care BC Act* and pursuant to provisions of the HRFA and this Agreement is considered to be the 'human resource facility agreement' between the Recipient and the Province in relation to which the Recipient is receiving the Funding;
 - b) the Child Care Facility is also a "human resource facility", as defined in the HRFA;
 - c) the Province will, once the Agreement has been entered into, and regardless of whether any Advance has been made under this Agreement, file a written notice in the land title office pursuant to the HRFA including the legal description of the land of the Child Care Facility and a statement that it is subject to a human resource facility agreement that includes a restriction that the Human Resource Facility will be used only for the Human Resource Purpose;
 - d) pursuant to the HRFA, on filing by the Province of the notice referred to in (c) above;
 - (i) the Child Care Facility will be subject to a restriction that it may be used only for the Human Resource Purpose; and
 - (ii) unless the written consent of the Province is filed in the land title office, the Recipient must not transfer, mortgage, lease or otherwise dispose of its interest in the Lands and the registrar of the land titles office must not register a transfer or other disposition of the Lands.
 - e) when the Recipient has fulfilled its service commitment as set out in article 3.09, or if this Agreement is terminated in accordance with this Agreement and any monies owed to the Province are repaid by the Recipient, the Province will file a written notice in the land title office informing the registrar of land titles that the lands of the Child Care Facility are no longer subject to a human resource facility agreement and as such the restriction on land title must be removed.

CHILD CARE CAPITAL FUNDING PROGRAM

ADVANCES

GENERAL CONDITIONS PRECEDENT TO ADVANCES

- 4.01 The Province is not obligated to make any Advance as set out in Schedule A:
- (a) if, in the opinion of the Province, there has been any material adverse change in the business or financial condition of the Recipient;
 - (b) unless there is an Appropriation with respect to or applicable to the Project and there remain sufficient funds available and uncommitted in that Appropriation to make the Advance requested;
 - (c) if Treasury Board, as defined in the *Financial Administration Act*, has controlled or limited expenditure under the said Appropriation;
 - (d) if there has occurred or is continuing an Event of Default which has not been remedied to the satisfaction of the Province;
 - (e) unless the Province has received and is satisfied with evidence that all Necessary Government Approvals have been obtained and are in good standing and that the representations and warranties contained in this Agreement are true and correct.

CONDITIONS PRECEDENT TO INITIAL ADVANCE

- 4.02 The Province will not be obligated to make an Initial Advance as set out in Schedule A unless the Province has received and approved:
- (a) the Budget;
 - (b) the Project Schedule;
 - (c) the Plans and Specifications for the Project;
 - (d) evidence that any Third Party Financing has been obtained and is committed to the Recipient;
 - (e) if the Project consists of renovating an existing building or the purchase of equipment, evidence that it holds a valid group child care licence under the *Community Care and Assisted Living Act* and regulations and it is not in contravention of any requirements of that licence;
 - (f) evidence, satisfactory to the Province, of the taking of all proceedings by the directors of the Recipient necessary to the authorization of the execution and delivery of this Agreement and the performance of their respective provisions.

CHILD CARE CAPITAL FUNDING PROGRAM

CONDITIONS PRECEDENT TO FINAL ADVANCE

- 4.03 Prior to any Final Advance set out in Schedule A, the Recipient must submit to the Province all items and information required pursuant to paragraph 3.07 (**Completion**) of this Agreement. Provided the Recipient is in compliance with this provision and all other provisions of this Agreement, and provided the Province has no questions or concerns arising from the items and information that the Recipient submits pursuant to this provision, then the Province will provide the Recipient with the Final Advance set out in Schedule A.

DEFAULT AND TERMINATION

EVENTS OF DEFAULT

- 5.01 Any of the following events will constitute an Event of Default, whether any such event be voluntary, involuntary or result from the operation of law or any judgment or order of any court or administrative or government body:
- (a) the Recipient fails to observe, perform or comply with any provision of this Agreement or of any other agreement for child care funding to which the Recipient is a party with the Province, and has not rectified such failure within any time limit set by the Province or is not, in the reasonable opinion of the Province, diligently proceeding to rectify such failure;
 - (b) any representation or warranty made by the Recipient in this Agreement is untrue or incorrect;
 - (c) the Application or any other information, document, certificate or report provided or submitted by the Recipient to the Province pursuant to this Agreement is untrue or incorrect;
 - (d) there is any action or proceeding, pending or threatened, or any completed successful application against the Recipient including any action or proceeding arising from the Recipient's Third Party Financing, which would, in the opinion of the Province, if successful, have a material adverse effect upon the ability of the Recipient to perform its obligations under this Agreement or any agreement entered into or charge granted in furtherance of this Agreement;
 - (e) an order is made or a resolution passed for the liquidation or winding up of the Recipient or if a petition is filed for the liquidation or winding up of the Recipient;
 - (f) the Recipient becomes insolvent or makes an unauthorized assignment or bulk sale of its assets or if a bankruptcy petition is filed or presented against it or if the Recipient shall be subject to the provisions of the *Bankruptcy Act* (Canada) or any other Act for the benefit of its creditors or otherwise acknowledges its insolvency;
 - (g) a receiver or receiver-manager of any property of the Recipient is appointed;
 - (h) a change occurs with respect to any of the properties, assets, condition (financial or otherwise), business or operations of the Recipient which, in the opinion of the Province,

CHILD CARE CAPITAL FUNDING PROGRAM

materially adversely affects the ability of the Recipient to fulfil any of its obligations under this Agreement;

- (i) if the Recipient is a corporation or society, it ceases to be registered and in good standing with BC Corporate Registry, and if it is a sole proprietor or a partnership, it ceases to be registered and in good standing with BC Corporate Registry;
- (i) the Recipient commits an act of default under its Third Party Financing arrangements;
- (j) the Recipient has an outstanding debt owing to the Province respecting child care funding for which no payment plan has been established and agreed to by the Province or the Recipient is in breach of any such payment plan that has been established and agreed to by the Province;
- (k) in the opinion of the Province, the Recipient has failed to ensure the commencement or continue the Child Care Operation.

TERMINATION

5.02 Upon the occurrence of any Event of Default and at any time thereafter the Province may, notwithstanding any other provision of this Agreement, at its discretion exercisable by written notice to the Recipient:

- (a) from and after the date of said notice, withhold an Advance for such period of time as the Province in its sole discretion determines is reasonable to permit the Recipient to remedy the default; or
- (b) terminate the Agreement, and declare the aggregate of all Advances paid hereunder to be due and be repayable by the Recipient to the Province and such monies will immediately become due and payable without presentment, demand, protest or other notice of any kind to the Recipient, all of which are hereby expressly waived.

REMEDIES NON-INCLUSIVE

5.03 The rights, powers and remedies conferred on the Province under this Agreement or any statute or law are not intended to be exclusive and each remedy shall be cumulative and in addition to and not in substitution for every other remedy existing or available to the Province.

5.04 The exercise of any one or more remedies available to the Province will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

DELAY

5.05 No failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure shall continue, will constitute a waiver by such party of its rights hereunder.

CHILD CARE CAPITAL FUNDING PROGRAM

NOTICE

Delivery of notices

- 6.01 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- a) by courier to the addressee's address specified below, in which case it will be deemed to be received on the day of its delivery; or
 - b) by prepaid post to the addressee's address specified below, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing; or
 - c) by email to the addressee's email address specified below, in which case it will be deemed to be received on the day and time it was sent.

to the Province:

Child Care Programs and Services Branch
Ministry of Children and Family Development
Mailing Address:
PO Box 9953, Stn. Prov. Govt.
Victoria BC V8W 9R3
Email Address:
MCF.CCCF@gov.bc.ca

and to the Recipient:

«Host_Organization»
«Address»
«City», B.C. «PC»
«Email»

- 6.02 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of each party and that executed copy being delivered to the party by a method provided for in section 6.01 or any other method agreed to by the parties.

RECEIPT

- 6.03 Any such notice, document, statement, report, demand or payment so mailed will be deemed to be given to and received by the addressee on the fifth business day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed to be given to and received by the addressee when actually delivered to the particular address set out above.

CHILD CARE CAPITAL FUNDING PROGRAM

CHANGES

- 6.04 Within 30 business days of a change to its address or email address, a party must provide written notice of the change to the other party.

MISCELLANEOUS

PUBLIC ANNOUNCEMENT

- 7.01 The Province may engage in such communications, advertising or media interviews regarding the Funding or the Project as it deems appropriate.
- 7.02 The Recipient will provide at least 14 business days advance notice to the Province of any planned communication, advertising or media interviews in relation to the Funding or the Project, and will not proceed with its plans without the written approval of the Province.

INTERPRETATION

GOVERNING LAW

- 8.01 This Agreement will be constructed in accordance with the laws of the Province of British Columbia.
- 8.02 Nothing in this Agreement is or operates as a consent, permit, approval or authorization by the government of the Province of British Columbia or any ministry, office, branch or agency thereof to or for anything related to the Project that, by statute, the Recipient is required to obtain unless it is expressly stated herein to be such a consent, permit, approval or authorization.

TIME

- 8.03 Time will be of the essence of this Agreement.

REFERENCES

- 8.04 A reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes all amendments to it, the regulations made under it and any enactment passed in substitution therefore or replacement thereof.
- 8.05 Unless the context otherwise indicates, any reference to “this Agreement” means this instrument and all of the schedules attached to it and any reference to any paragraph or subparagraph by number is a reference to the appropriate paragraph or subparagraph in this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

HEADINGS

- 8.06 The headings or captions in this Agreement are inserted for convenience only and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.

NO OTHER AGREEMENTS

- 8.07 There is no representation, warranty, guarantee, indemnity, condition or agreement or any collateral representation, warranty, guarantee, indemnity, condition or agreement applicable to, binding upon or enforceable against one party by the other except for those expressed in this Agreement, the Application submitted by the Recipient and any agreement or approval made or security to be granted pursuant to this Agreement.

SEVERABILITY

- 8.08 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.

ASSIGNMENT

- 8.09 The Recipient must not assign any of the Recipient's rights or obligations under this Agreement without the Province's prior written approval. Upon providing written notice to the Recipient, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the *Financial Administration Act*, any of the Province's obligations under this Agreement.

ENUREMENT

- 8.10 This Agreement will enure to the benefit of and be binding upon the Province and its assigns and the Recipient and its successors and permitted assigns.

WAIVER

- 8.11 No consent or waiver, expressed or implied by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such party hereunder.

NO PARTNERSHIP

- 8.12 Nothing contained in this Agreement will create or be deemed to create, as between the Province, on the one hand, and the Recipient, on the other hand, a partnership, joint venture or agency relationship.

SCHEDULE A

**Child Care Capital Funding Program
Major Capital Funding for Creation of New Child Care Spaces**

Funding Agreement “Category A”

1. The Province will provide funding to the Recipient to a maximum of \$«Total_Grant_Award». Advances will be made, subject to the terms of this Agreement, as follows:
 - a. the Initial Advance of 90% in the amount of \$«Initial_Pmt» to be paid within 30 days of execution of the Agreement;
 - b. the remaining balance of 10% of the final payment in the amount of \$«Final_Pmt» to be paid within 30 days of the Province’s receipt and approval of the items and information described in paragraph 3.07 (*Completion*) of this Agreement.

**CHILD CARE CAPITAL FUNDING PROGRAM
MAJOR CAPITAL FUNDING FOR CREATION OF NEW CHILD CARE
SPACES**

FUNDING AGREEMENT

THIS AGREEMENT made the ____ day of _____, _____.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**, represented by
the Minister of Children and Family Development
(the “Province”)

OF THE FIRST PART

AND:

«Host_Organization», «SocietyIncorporation_Number»
«Address», «City» BC «PC»
(the Recipient)

OF THE SECOND PART

WHEREAS:

- A. The Recipient has requested funding from the Province, for the Project (hereafter defined), in an amount up to an aggregate of \$«Total_Grant_Award»;
- B. Both parties acknowledge and agree that the funding provided under this Agreement is conditional funding to which the provisions of the *Child Care BC Act* apply; and
- C. It is a condition of the Province agreeing to provide assistance to the Recipient that the Recipient agrees to the terms in this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

DEFINITIONS

1.01 In this Agreement:

- (a) “Advance” means any disbursement of the money to the Recipient under this Agreement;
- (b) “Application” means the application of the Recipient for the Funding and includes all documents submitted, including Stage Two Submissions, and all representations made in connection with it;
- (c) “Appropriation” has the meaning given to it under section 1 of the *Financial Administration Act*;
- (d) “Budget” means a detailed estimate of the costs to complete the Project, determined where necessary by cost estimates by certified contractors, engineers, architects or other qualified parties, in accordance with the Plans and Specifications, provided to the Province for the purposes of this Agreement;
- (e) “Child Care Facility” means the physical building, facility, or area and the land on which the Project will occur or has occurred and which the Recipient will ensure is occupied and used, for the purpose of a Child Care Operation and which is located at; «Facility_Address» and which is legally described as «FacilityProject__Name»
- (f) “Child Care Operation” means the provision of child care in a Child Care Facility licensed under the *Community Care and Assisted Living Act* at «FacilityProject__Name»;
- (g) “Completion” means the Project has been completed in accordance with the approved Plans and Specifications and Budget, or in accordance with any changes to Plans and Specifications or Budget that have been approved by the Province, and is capable of being licensed under the *Community Care and Assisted Living Act*.
- (h) “Event of Default” means any of the events described in paragraph 5.01;
- (i) “Final Advance” means the last disbursement of a portion of the Funding to the Recipient pursuant to this Agreement;
- (j) “*Financial Administration Act*” means the *Financial Administration Act*, R.S.B.C. 1996, c.138 as amended;
- (k) “Funding” means the aggregate of all Advances made from time to time by the Province to the Recipient under this Agreement in accordance with Schedule A;
- (l) “Good Financial Standing” means the Recipient does not have an outstanding debt owing to the Province respecting a program of the Ministry of Children and Family Development for which no Province-approved payment plan has been established and, where a Province-approved payment plan has been established, the Recipient is not in breach of the plan.

CHILD CARE CAPITAL FUNDING PROGRAM

- (m) "Initial Advance" means the first disbursement of a portion of the Funding to the Recipient pursuant to this Agreement;
- (n) "Necessary Government Approval" means the issuance by any government (including the Province) or municipality or any department, branch, official or agency thereof of all consents, tenures, permits, licenses or approvals required for the Recipient to commence and carry out the Project;
- (o) "Plans and Specifications" means all detailed plans, drawings and specifications for the works required to carry out and complete the Project or to acquire the assets for use in the Project;
- (p) "Project" means the project as described and agreed to by the Province in the Stage Two Submission; «Project_Description»
- (r) "Project Costs" means all amounts paid by the Recipient to any person, firm, corporation or other organization dealing at arm's length with the Recipient, for construction of the Project or acquisition of its components and which, in the opinion of the Province, have been necessarily and properly incurred under this Agreement and includes but is not limited to, if the Project includes acquiring land, the actual cost of the land, and does not include any property consisting of operational or replaceable assets, assets acquired prior to approval of the Recipient's application, or other ineligible items regardless of whether said items are related to the Project;
- (s) "Project Schedule" means a detailed timetable and schedule of construction or preparation of the Project and the time period within which each part or aspect of the Project, as described in the Plans and Specifications, is proposed to be commenced, carried out and completed;
- (t) "Stage Two Submission" means the forms submitted in stage two including all relevant supporting documentation submitted during this stage of the intake.
- (u) "Third Party Financing" means a donation, loan, credit facility or any other sum of money in an amount that, in addition to the maximum amount of the Funding and the amount to be funded by the Recipient, is sufficient, in the opinion of the Province, to pay the total costs set out in the Budget and that is committed to the Recipient by any organization or entity approved by the Province.

REPRESENTATIONS AND WARRANTIES

CORPORATE CAPACITY AND POWER AND REGISTERED TITLE

2.01 The Recipient represents and warrants to the Province that:

- (a) it has the legal capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement and all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Recipient and this Agreement has been legally and properly executed by the Recipient and is legally binding upon and enforceable against the Recipient;

CHILD CARE CAPITAL FUNDING PROGRAM

- (b) it has the legal right to carry out the Project at the site specified in the Application, including respecting local zoning as it may impact the ability to obtain a licence under the *Community Care and Assisted Living Act*;
- (c) all information, financial statements, documents and reports furnished or submitted by the Recipient to the date of this Agreement in connection with its Application are true and correct;
- (d) the completion of the transactions contemplated herein will not constitute a breach by the Recipient of any statute, bylaw or regulation or of its constating documents which would result in the creation of any lien, encumbrance or other charge on any of the assets;
- (e) if the Recipient is a corporation or society, it is registered and in good standing with BC Corporate Registry, and if it is a sole proprietor or a partnership, it is registered and in good standing with BC Corporate Registry;
- (f) if the Recipient receives other Ministry of Children and Family Development child care funding, including Child Care Operating Funding, Child Care Minor Capital funding and Child Care Subsidy payments on behalf of parents, the recipient is in Good Financial Standing;
- (g) no insolvency event has occurred or is expected to occur with respect to the Recipient or any real or personal property involved in the Project. For the purposes of this provision, an insolvency event shall mean any events listed in subsections 5.01(e) to and including 5.01(h);
- (h) There are no liens, encumbrances, charges or other rights or interests affecting or otherwise impacting any real or personal property related to the Project that have not been otherwise disclosed in the Application and approved by the Province.

RELIANCE AND CONTINUATION

- 2.02 All representations, warranties, covenants and agreements made herein and all certificates or other documents delivered by or on behalf of the Recipient to the Province are material to this Agreement and shall conclusively be deemed to have been relied upon by the Province; notwithstanding any prior or subsequent investigation by the Province and they shall survive the payment of the Funding and the fulfilment of all other transactions and deliveries contemplated under this Agreement and will continue in full force and effect during the continuation of this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

FURTHER REPRESENTATION

- 2.03 All statements contained in any certificate, the Application or other document delivered by or on behalf of the Recipient to the Province under this Agreement or in connection with any of the transactions contemplated hereby shall be deemed to be representations and warranties by the Recipient under this Agreement.

RECIPIENT'S COVENANTS

PROJECT COVENANTS

- 3.01 On entering into this Agreement, and as soon as the Budget, Project Schedule and Plans and Specifications are approved by the Province, the Recipient will proceed diligently and complete the Project substantially in accordance with the approved Budget, the approved Project Schedule and the approved Plans and Specifications.
- 3.02 Upon proceeding with the Project in accordance with paragraph 3.01 above, the Recipient will ensure that Funding is applied exclusively toward the Project for the Child Care Facility in accordance with the Budget, Project Schedule and Plans and Specifications, all as approved by the Province, and that all undisputed Project Costs are paid when due. In the event of a disputed Project Cost with a party engaged to assist with the Project, the Recipient will use its best efforts to resolve the dispute as soon as possible.
- 3.03 If the Recipient does not proceed diligently with the Project in accordance with section 3.01, 3.02 and the approved Project Schedule, the Recipient will immediately contact the Province to request changes to the Project Schedule, and will provide at that time a complete explanation as to the reasons for the delay and an estimate of the additional time required to commence the Project. Failure to request changes to the Project Schedule under these circumstances will result in an Event of Default under paragraph 5.01(a) of this Agreement.
- 3.04 If the Province, following a request made under paragraph 3.02 by the Recipient, refuses to approve a change to the Project Schedule, then the Recipient's failure to comply with the requirements of paragraph 3.01 and the approved Project Schedule will constitute an Event of Default under paragraph 5.01(a) of this Agreement.
- 3.05 The Recipient will not, without the prior written approval of the Province, make any material change in or to the Project or the Budget, Plans and Specifications or Project Schedule.
- 3.06 If the Recipient makes a change to the Project or the approved Budget, the approved Plans and Specifications or the approved Project Schedule, including changes to the number or type of child care spaces to be created, without written approval from the Province, this will constitute an Event of Default under paragraph 5.01(a) of this Agreement.

COMPLETION

- 3.07 Forthwith after Completion, the Recipient will submit to the Province written notification of Completion of the Project which is accompanied by:

CHILD CARE CAPITAL FUNDING PROGRAM

- (a) a detailed statement prepared by an independent, arm's length certified Chartered Professional Accountant, prepared in accordance with current financial reporting standards in Canada, listing all Project Costs including copies of invoices and receipts or proof of payment for all Project Costs up to the date of Completion;
- (b) a copy of all current licences issued under the *Community Care and Assisted Living Act* for the Child Care Facility and contemplated under this Agreement; and
- (c) a completed financial reconciliation form, and a financial expenditure form, both in the form required by the Province within 60 days of Completion.

OVERRUNS

- 3.08 If at any time it appears or becomes evident to either the Province or the Recipient that the Project Costs may exceed the approved Budget, the Recipient will forthwith provide the Province with full and complete particulars of such excess and the Recipient will be liable for any and all such costs.

CONTINUATION OF CHILD CARE OPERATION

- 3.09 Forthwith after Completion, the Recipient will ensure the Child Care Operation commences or continues, and thereafter, the Recipient will ensure that the Child Care Operation continues for a minimum of «Years_of_Commitment» years from the date the Child Care Facility commences or continues as a Child Care Operation.
- 3.10 The Recipient will advise the Province in writing immediately of any decision to cease the Child Care Operation.

OVERPAYMENT & REPAYMENT

- 3.11 If Funding, or a portion of Funding, is paid under this Agreement in an amount to which the Recipient was not eligible under the terms of this Agreement, including but not limited to any overpayments made as the result of clerical or administrative error or miscalculation on the part of the Province, or miscalculation on the part of the Recipient, or incorrect information supplied to the Province by the Recipient, then the Recipient will repay the full amount of any such overpayment to the Province.
- 3.12 The Province will not, under any circumstances, be required to pay to the Recipient under this Agreement, more than \$«Total_Grant_Award».
- 3.13 If, upon Completion, it is determined that the Project Costs to Completion were less than the total costs set out in the Budget approved by the Province, then the Recipient will repay to the Province the Province-approved funding percentage of the difference between the Project Costs to Completion and the total costs set out in the Budget approved by the Province. For illustrative purposes, if the Province has agreed to fund 50% of a Project based on the approved Budget of \$500,000 (i.e. Province advances \$250,000) but the Project Costs to Completion are later determined to be only \$400,000, then the Recipient would be required to repay the Province the sum of \$50,000.

CHILD CARE CAPITAL FUNDING PROGRAM

- 3.14 Without limiting the generality of paragraph 5.02(b), if the Recipient breaches paragraph 3.09, then the Recipient will repay to the Province a pro-rated amount of all Funding paid to it under this Agreement, based on the ratio between the length of time the Child Care Operation has operated and the length of time it is required to operate under this Agreement.
- 3.15 Pursuant to s.7(2) of the *Child Care BC Act*, the amount of any overpayment or repayment referred to in paragraph 3.11, 3.13 or 3.14 is a debt due to the Province and may be recovered by the Province in a court of competent jurisdiction or deducted by the Province from any subsequent child care funding program, except Child Care Subsidy, administered by the Province.
- 3.16 If the Recipient does not make the repayment referred to in paragraph 3.13, within 30 days of receipt of the demand for repayment from the Province, then the Province may, at its discretion, refuse to make any Advance otherwise payable to the Recipient under this Agreement, or terminate or suspend payments otherwise payable to the Recipient under this or any other child care funding program, except Child Care Subsidy, administered by the Province.
- 3.17 Despite any other provisions in this Agreement, the Province may, at the Province's discretion, withhold some or all of the Funding advances that would otherwise be payable under this Agreement to offset some or all of any repayment owing by the Recipient under this Agreement.

GENERAL COVENANTS

- 3.18 So long as this Agreement remains in force, the Recipient will:
- (a) observe and comply with any statute, rule or regulation of any government or branch or agency thereof applicable to the Recipient or the Project;
 - (b) if requested by the Province, provide evidence satisfactory to the Province that the representations and warranties set forth in paragraph 2.01 are true and correct;
 - (c) maintain its corporate existence and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles applied on a consistent basis;
 - (d) ensure that the Child Care Operation is carried on in a proper business-like manner in accordance with good business practice and the *Community Care and Assisted Living Act* and the Child Care Licensing Regulation;
 - (e) ensure that access to the completed Project and related facilities is provided to parents receiving benefits under the *Child Care Subsidy Act*;
 - (f) without limiting the requirement in paragraph 3.07, within thirty days of the delivery of a written request from the Province, provide the Province with any information and documents, including Financial Statements prepared by an independent, arm's length, certified Chartered professional Accountant, that meet current financial reporting standards in Canada, with respect to the affairs of the Recipient or the Project, that the Province considers necessary to determine the status of the Project toward Completion and to ensure that the Recipient is complying with its obligations under this Agreement;

CHILD CARE CAPITAL FUNDING PROGRAM

- (g) the recipient must provide the following report, commencing on the anniversary date of the *Community Care and Assisted living Act* licence and continuing every 12 months of the Child Care Operation for the duration of the «Years_of_Commitment» year period referenced in section 3.09 of the Agreement;
- a. Number of child care spaces
 - b. Location
 - c. Number of days open per month; and
 - d. Number of months open per year

The report referred to in the above section will be submitted in a form determined by the Province.

- (h) notify the Province in writing immediately of any actual or potential Event of Default under this Agreement, including providing particulars of such event. Additionally, the Recipient will immediately notify the Province in writing of details of any actual or potential issues or changes involving its Third Party Financing arrangements that could materially impact the Project;
- (i) grant to the Province, its servants, agents and employees access to the Child Care Facility location contemplated in this Agreement or any other location for the purpose of inspecting any aspect of the Project, including without limitation any building, assets, books and records of the Recipient at all reasonable times for the purpose of inspections;
- (j) apply for and maintain in good standing all Necessary Government Approvals and submit to the Province satisfactory evidence thereof when so requested by the Province;
- (k) expend all Funding only for Project Costs in relation to the Child Care Facility;
- (l) punctually pay all taxes, rates and assessments required to be paid by it; and
- (m) generally, perform each of its obligations under this Agreement.

INSURANCE AND INDEMNITY

- 3.19 The Recipient shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances with insurers licensed in Canada and in forms and amounts acceptable to the Province:
- (a) during the construction phase of any Project, insurance such as course of construction and wrap-up liability in amounts that a prudent owner of a similar construction project would carry in British Columbia to ensure the Project is completed and third party liabilities are insured. Such insurance shall include, as applicable, the Province as an additional insured or loss payee as its interest may appear, and a waiver of the insurer's rights of subrogation against the Province.

CHILD CARE CAPITAL FUNDING PROGRAM

- (b) at all other times during the term of this Agreement, other insurance(s) specific to the operations of the Recipient that ensure the Child Care Facility remains operational including insurance to protect the Recipient against loss arising from damage to the Child Care Facility, and loss of revenue derived from Child Care Facility operations, in amounts that a prudent operator in British Columbia would carry to cover the related risks. Where applicable, liability policies shall include the Province as additional insured, and property policies shall include the Province as loss payee as its interests may appear and a waiver of the insurer's rights of subrogation against the Province.

All insurance carried by the Recipient shall be primary and not require the sharing of any loss by the Province.

- 3.20 Within ten business days of being asked to do so by the Province, the Recipient shall provide the Province with evidence of all insurance covering the Project or related to this Agreement. Such evidence of insurance shall be in the form of a completed and signed Province of British Columbia Fin 173 - Certificate of Insurance.
- 3.21 The Recipient hereby waives any right of recourse it may have or obtain against the Province, its employees or agents, with regard to loss or damage to its property located in, on or about the Child Care Facility. The Recipient shall be responsible for any deductible amounts under the policies.
- 3.22 The Recipient will indemnify and save harmless the Province, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Province may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this agreement, when the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Recipient or any agent, contractor or employee of the Recipient pursuant to this Agreement or the Recipient's operations.

ADVANCES

GENERAL CONDITIONS PRECEDENT TO ADVANCES

- 4.01 The Province is not obligated to make any Advance as set out in Schedule A:
- (a) if, in the opinion of the Province, there has been any material adverse change in the business or financial condition of the Recipient;
 - (b) unless there is an Appropriation with respect to or applicable to the Project and there remain sufficient funds available and uncommitted in that Appropriation to make the Advance requested;
 - (c) if Treasury Board, as defined in the *Financial Administration Act*, has controlled or limited expenditure under the said Appropriation;
 - (d) if there has occurred or is continuing an Event of Default which has not been remedied to the satisfaction of the Province;

CHILD CARE CAPITAL FUNDING PROGRAM

- (e) unless the Province has received and is satisfied with evidence that all Necessary Government Approvals have been obtained and are in good standing and that the representations and warranties contained in this Agreement are true and correct.

CONDITIONS PRECEDENT TO INITIAL ADVANCE

- 4.02 The Province will not be obligated to make an Initial Advance as set out in Schedule A unless the Province has received and approved:
- (a) the Budget;
 - (b) the Project Schedule;
 - (c) the Plans and Specifications for the Project;
 - (d) evidence that any Third Party Financing has been obtained and is committed to the Recipient;
 - (e) if the Project consists of renovating an existing building or the purchase of equipment, evidence that it holds a valid group child care licence under the *Community Care and Assisted Living Act* and regulations and it is not in contravention of any requirements of that licence;
 - (f) evidence, satisfactory to the Province, of the taking of all proceedings by the directors of the Recipient necessary to the authorization of the execution and delivery of this Agreement and the performance of their respective provisions.

CONDITIONS PRECEDENT TO FINAL ADVANCE

- 4.03 Prior to any Final Advance set out in Schedule A, the Recipient must submit to the Province all items and information required pursuant to paragraph 3.07 (**Completion**) of this Agreement. Provided the Recipient is in compliance with this provision and all other provisions of this Agreement, and provided the Province has no questions or concerns arising from the items and information that the Recipient submits pursuant to this provision, then the Province will provide the Recipient with the Final Advance set out in Schedule A.

DEFAULT AND TERMINATION

EVENTS OF DEFAULT

- 5.01 Any of the following events will constitute an Event of Default, whether any such event be voluntary, involuntary or result from the operation of law or any judgment or order of any court or administrative or government body:

CHILD CARE CAPITAL FUNDING PROGRAM

- (a) the Recipient fails to observe, perform or comply with any provision of this Agreement or of any other agreement for child care funding to which the Recipient is a party with the Province, and has not rectified such failure within any time limit set by the Province or is not, in the reasonable opinion of the Province, diligently proceeding to rectify such failure;
- (b) any representation or warranty made by the Recipient in this Agreement is untrue or incorrect;
- (c) the Application or any other information, document, certificate or report provided or submitted by the Recipient to the Province pursuant to this Agreement is untrue or incorrect;
- (d) there is any action or proceeding, pending or threatened, or any completed successful application against the Recipient including any action or proceeding arising from the Recipient's Third Party Financing, which would, in the opinion of the Province, if successful, have a material adverse effect upon the ability of the Recipient to perform its obligations under this Agreement or any agreement entered into or charge granted in furtherance of this Agreement;
- (e) an order is made or a resolution passed for the liquidation or winding up of the Recipient or if a petition is filed for the liquidation or winding up of the Recipient;
- (f) the Recipient becomes insolvent or makes an unauthorized assignment or bulk sale of its assets or if a bankruptcy petition is filed or presented against it or if the Recipient shall be subject to the provisions of the *Bankruptcy Act* (Canada) or any other Act for the benefit of its creditors or otherwise acknowledges its insolvency;
- (g) a receiver or receiver-manager of any property of the Recipient is appointed;
- (h) a change occurs with respect to any of the properties, assets, condition (financial or otherwise), business or operations of the Recipient which, in the opinion of the Province, materially adversely affects the ability of the Recipient to fulfil any of its obligations under this Agreement;
- (i) if the Recipient is a corporation or society, it ceases to be registered and in good standing with BC Corporate Registry, and if it is a sole proprietor or a partnership, it ceases to be registered and in good standing with BC Corporate Registry;
- (i) the Recipient commits an act of default under its Third Party Financing arrangements;
- (j) the Recipient has an outstanding debt owing to the Province respecting child care funding for which no payment plan has been established and agreed to by the Province or the Recipient is in breach of any such payment plan that has been established and agreed to by the Province;
- (k) in the opinion of the Province, the Recipient has failed to ensure the commencement or continue the Child Care Operation.

CHILD CARE CAPITAL FUNDING PROGRAM

TERMINATION

- 5.02 Upon the occurrence of any Event of Default and at any time thereafter the Province may, notwithstanding any other provision of this Agreement, at its discretion exercisable by written notice to the Recipient:
- (a) from and after the date of said notice, withhold an Advance for such period of time as the Province in its sole discretion determines is reasonable to permit the Recipient to remedy the default; or
 - (b) terminate the Agreement, and declare the aggregate of all Advances paid hereunder to be due and be repayable by the Recipient to the Province and such monies will immediately become due and payable without presentment, demand, protest or other notice of any kind to the Recipient, all of which are hereby expressly waived.

REMEDIES NON-INCLUSIVE

- 5.03 The rights, powers and remedies conferred on the Province under this Agreement or any statute or law are not intended to be exclusive and each remedy shall be cumulative and in addition to and not in substitution for every other remedy existing or available to the Province.
- 5.04 The exercise of any one or more remedies available to the Province will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

DELAY

- 5.05 No failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure shall continue, will constitute a waiver by such party of its rights hereunder.

CHILD CARE CAPITAL FUNDING PROGRAM

NOTICE

Delivery of notices

- 6.01 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- a) by courier to the addressee's address specified below, in which case it will be deemed to be received on the day of its delivery; or
 - b) by prepaid post to the addressee's address specified below, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing; or
 - c) by email to the addressee's email address specified below, in which case it will be deemed to be received on the day and time it was sent.

to the Province:

Child Care Programs and Services Branch
Ministry of Children and Family Development
Mailing Address:
PO Box 9953, Stn. Prov. Govt.
Victoria BC V8W 9R3
Email Address:
MCF.CCCF@gov.bc.ca

and to the Recipient:

«Host_Organization»
«Address»
«City», B.C. «PC»
«Email»

- 6.02 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of each party and that executed copy being delivered to the party by a method provided for in section 6.01 or any other method agreed to by the parties.

RECEIPT

- 6.03 Any such notice, document, statement, report, demand or payment so mailed will be deemed to be given to and received by the addressee on the fifth business day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed to be given to and received by the addressee when actually delivered to the particular address set out above.

CHILD CARE CAPITAL FUNDING PROGRAM

CHANGES

- 6.04 Within 30 business days of a change to its address or email address, a party must provide written notice of the change to the other party.

MISCELLANEOUS

PUBLIC ANNOUNCEMENT

- 7.01 The Province may engage in such communications, advertising or media interviews regarding the Funding or the Project as it deems appropriate.
- 7.02 The Recipient will provide at least 14 business days advance notice to the Province of any planned communication, advertising or media interviews in relation to the Funding or the Project, and will not proceed with its plans without the written approval of the Province.

INTERPRETATION

GOVERNING LAW

- 8.01 This Agreement will be constructed in accordance with the laws of the Province of British Columbia.
- 8.02 Nothing in this Agreement is or operates as a consent, permit, approval or authorization by the government of the Province of British Columbia or any ministry, office, branch or agency thereof to or for anything related to the Project that, by statute, the Recipient is required to obtain unless it is expressly stated herein to be such a consent, permit, approval or authorization.

TIME

- 8.03 Time will be of the essence of this Agreement.

REFERENCES

- 8.04 A reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes all amendments to it, the regulations made under it and any enactment passed in substitution therefore or replacement thereof.
- 8.05 Unless the context otherwise indicates, any reference to “this Agreement” means this instrument and all of the schedules attached to it and any reference to any paragraph or subparagraph by number is a reference to the appropriate paragraph or subparagraph in this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

HEADINGS

- 8.06 The headings or captions in this Agreement are inserted for convenience only and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.

NO OTHER AGREEMENTS

- 8.07 There is no representation, warranty, guarantee, indemnity, condition or agreement or any collateral representation, warranty, guarantee, indemnity, condition or agreement applicable to, binding upon or enforceable against one party by the other except for those expressed in this Agreement, the Application submitted by the Recipient and any agreement or approval made or security to be granted pursuant to this Agreement.

SEVERABILITY

- 8.08 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.

ASSIGNMENT

- 8.09 The Recipient must not assign any of the Recipient's rights or obligations under this Agreement without the Province's prior written approval. Upon providing written notice to the Recipient, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the *Financial Administration Act*, any of the Province's obligations under this Agreement.

ENUREMENT

- 8.10 This Agreement will enure to the benefit of and be binding upon the Province and its assigns and the Recipient and its successors and permitted assigns.

WAIVER

- 8.11 No consent or waiver, expressed or implied by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent of waiver to or of any other breach or default in the performance by such party hereunder.

NO PARTNERSHIP

- 8.12 Nothing contained in this Agreement will create or be deemed to create, as between the Province, on the one hand, and the Recipient, on the other hand, a partnership, joint venture or agency relationship.

SCHEDULE A

Child Care Capital Funding Program Major Capital Funding for Creation of New Child Care Spaces

Funding Agreement “Category A”

1. The Province will provide funding to the Recipient to a maximum of \$«Total_Grant_Award». Advances will be made, subject to the terms of this Agreement, as follows:
 - a. the Initial Advance of 90% in the amount of \$«Initial_Pmt» to be paid within 30 days of execution of the Agreement;
 - b. the remaining balance of 10% of the final payment in the amount of \$«Final_Pmt» to be paid within 30 days of the Province’s receipt and approval of the items and information described in paragraph 3.07 (*Completion*) of this Agreement.

AGREEMENT Number: «Agreement_No»

**CHILD CARE CAPITAL FUNDING PROGRAM
MAJOR CAPITAL FUNDING FOR CREATION OF NEW CHILD CARE
SPACES**

**FUNDING AGREEMENT
FOR HUMAN RESOURCE FACILITY ACT (HRFA)
PROJECTS \$200,000 to \$500,000**

THIS AGREEMENT made the ____ day of _____, _____.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**, represented by
the Minister of Children and Family Development
(the "Province")

OF THE FIRST PART

AND:

«Host_Organization», «SocietyIncorporation_Number»
«Address», «City» BC «PC»
(the Recipient)

OF THE SECOND PART

WHEREAS:

- A. The Recipient has requested funding from the Province, for the Project (hereafter defined), in an amount up to an aggregate of «Total_Grant_Award»;
- B. Both parties acknowledge and agree that the funding provided under this Agreement is conditional funding to which the provisions of the *Child Care BC Act* apply; and
- C. It is a condition of the Province agreeing to provide assistance to the Recipient that the Recipient agrees to the terms in this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

CHILD CARE CAPITAL FUNDING PROGRAM

DEFINITIONS

1.01 In this Agreement:

- (a) “Advance” means any disbursement of the money to the Recipient under this Agreement;
- (b) “Application” means the application of the Recipient for the Funding and includes all documents submitted, including Stage Two Submissions, and all representations made in connection with it;
- (c) “Appropriation” has the meaning given to it under section 1 of the *Financial Administration Act*;
- (d) “Budget” means a detailed estimate of the costs to complete the Project, determined where necessary by cost estimates by certified contractors, engineers, architects or other qualified parties, in accordance with the Plans and Specifications, provided to the Province for the purposes of this Agreement;
- (e) “Child Care Facility” means the physical building, facility, or area and the land on which the Project will occur or has occurred and which the Recipient will ensure is occupied and used, for the purpose of a Child Care Operation and which is located at; «Facility_Address» and which is legally described as «FacilityProject_Name»
- (f) “Child Care Operation” means the provision of child care in a Child Care Facility licensed under the *Community Care and Assisted Living Act* at «FacilityProject_Name»;
- (g) “Completion” means the Project has been completed in accordance with the approved Plans and Specifications and Budget, or in accordance with any changes to Plans and Specifications or Budget that have been approved by the Province, and is capable of being licensed under the *Community Care and Assisted Living Act*.
- (h) “Event of Default” means any of the events described in paragraph 5.01;
- (i) “Final Advance” means the last disbursement of a portion of the Funding to the Recipient pursuant to this Agreement;
- (j) “*Financial Administration Act*” means the *Financial Administration Act*, R.S.B.C. 1996, c.138 as amended;
- (k) “Funding” means the aggregate of all Advances made from time to time by the Province to the Recipient under this Agreement in accordance with Schedule A;
- (l) “Good Financial Standing” means the Recipient does not have an outstanding debt owing to the Province respecting a program of the Ministry of Children and Family Development for which no Province-approved payment plan has been established and, where a Province-approved payment plan has been established, the Recipient is not in breach of the plan.
- (m) HRFA” means the *Human Resource Facility Act*, R.S.B.C. 1996, c.209;
- (n) “Human Resource Purpose” means a facility for the care of children;

CHILD CARE CAPITAL FUNDING PROGRAM

- (o) "Initial Advance" means the first disbursement of a portion of the Funding to the Recipient pursuant to this Agreement;
- (p) "Lock-up", where the Project involves new construction of a building or a significant renovation to an existing building that includes an addition to the building, means the stage of the Project construction when the walls, roof, doors and windows are in place and the structure is capable of being locked and secured;
- (q) "Necessary Government Approval" means the issuance by any government (including the Province) or municipality or any department, branch, official or agency thereof of all consents, tenures, permits, licenses or approvals required for the Recipient to commence and carry out the Project;
- (r) "Plans and Specifications" means all detailed plans, drawings and specifications for the works required to carry out and complete the Project or to acquire the assets for use in the Project;
- (s) "Project" means the project as described and agreed to by the Province in the Stage Two Submission;
- (r) "Project Costs" means all amounts paid by the Recipient to any person, firm, corporation or other organization dealing at arm's length with the Recipient, for construction of the Project or acquisition of its components and which, in the opinion of the Province, have been necessarily and properly incurred under this Agreement and includes but is not limited to, if the Project includes acquiring land, the actual cost of the land, and does not include any property consisting of operational or replaceable assets, assets acquired prior to approval of the Recipient's application, or other ineligible items regardless of whether said items are related to the Project;
- (s) "Project Schedule" means a detailed timetable and schedule of construction or preparation of the Project and the time period within which each part or aspect of the Project, as described in the Plans and Specifications, is proposed to be commenced, carried out and completed;
- (t) "Stage Two Submission" means the forms submitted in stage two including all relevant supporting documentation submitted during this stage of the intake.
- (u) "Third Party Financing" means a donation, loan, credit facility or any other sum of money in an amount that, in addition to the maximum amount of the Funding and the amount to be funded by the Recipient, is sufficient, in the opinion of the Province, to pay the total costs set out in the Budget and that is committed to the Recipient by any organization or entity approved by the Province.

CHILD CARE CAPITAL FUNDING PROGRAM

REPRESENTATIONS AND WARRANTIES

CORPORATE CAPACITY AND POWER AND REGISTERED TITLE

- 2.01 The Recipient represents and warrants to the Province that:
- (a) it has the legal capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement and all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Recipient and this Agreement has been legally and properly executed by the Recipient and is legally binding upon and enforceable against the Recipient;
 - (b) it has the legal right to carry out the Project at the site specified in the Application, including respecting local zoning as it may impact the ability to obtain a licence under the *Community Care and Assisted Living Act*;
 - (c) all information, financial statements, documents and reports furnished or submitted by the Recipient to the date of this Agreement in connection with its Application are true and correct;
 - (d) the completion of the transactions contemplated herein will not constitute a breach by the Recipient of any statute, bylaw or regulation or of its constating documents which would result in the creation of any lien, encumbrance or other charge on any of the assets;
 - (e) if the Recipient is a corporation or society, it is registered and in good standing with BC Corporate Registry, and if it is a sole proprietor or a partnership, it is registered and in good standing with BC Corporate Registry;
 - (f) if the Recipient receives other Ministry of Children and Family Development child care funding, including Child Care Operating Funding, Child Care Minor Capital funding and Child Care Subsidy payments on behalf of parents, the recipient is in Good Financial Standing;
 - (g) no insolvency event has occurred or is expected to occur with respect to the Recipient or any real or personal property involved in the Project. For the purposes of this provision, an insolvency event shall mean any events listed in subsections 5.01(e) to and including 5.01(h);
 - (h) There are no liens, encumbrances, charges or other rights or interests affecting or otherwise impacting any real or personal property related to the Project that have not been otherwise disclosed in the Application and approved by the Province.

RELIANCE AND CONTINUATION

- 2.02 All representations, warranties, covenants and agreements made herein and all certificates or other documents delivered by or on behalf of the Recipient to the Province are material to this Agreement and shall conclusively be deemed to have been relied upon by the Province; notwithstanding any prior or subsequent investigation by the Province and they shall survive the payment of the Funding and the fulfilment of all other transactions and deliveries contemplated

CHILD CARE CAPITAL FUNDING PROGRAM

under this Agreement and will continue in full force and effect during the continuation of this Agreement.

FURTHER REPRESENTATION

- 2.03 All statements contained in any certificate, the Application or other document delivered by or on behalf of the Recipient to the Province under this Agreement or in connection with any of the transactions contemplated hereby shall be deemed to be representations and warranties by the Recipient under this Agreement.

RECIPIENT'S COVENANTS

PROJECT COVENANTS

- 3.01 On entering into this Agreement, and as soon as the Budget, Project Schedule and Plans and Specifications are approved by the Province, the Recipient will proceed diligently and complete the Project substantially in accordance with the approved Budget, the approved Project Schedule and the approved Plans and Specifications.
- 3.02 Upon proceeding with the Project in accordance with paragraph 3.01 above, the Recipient will ensure that Funding is applied exclusively toward the Project for the Child Care Facility in accordance with the Budget, Project Schedule and Plans and Specifications, all as approved by the Province, and that all undisputed Project Costs are paid when due. In the event of a disputed Project Cost with a party engaged to assist with the Project, the Recipient will use its best efforts to resolve the dispute as soon as possible.
- 3.03 If the Recipient does not proceed diligently with the Project in accordance with section 3.01, 3.02 and the approved Project Schedule, the Recipient will immediately contact the Province to request changes to the Project Schedule, and will provide at that time a complete explanation as to the reasons for the delay and an estimate of the additional time required to commence the Project. Failure to request changes to the Project Schedule under these circumstances will result in an Event of Default under paragraph 5.01(a) of this Agreement.
- 3.04 If the Province, following a request made under paragraph 3.02 by the Recipient, refuses to approve a change to the Project Schedule, then the Recipient's failure to comply with the requirements of paragraph 3.01 and the approved Project Schedule will constitute an Event of Default under paragraph 5.01(a) of this Agreement.
- 3.05 The Recipient will not, without the prior written approval of the Province, make any material change in or to the Project or the Budget, Plans and Specifications or Project Schedule.
- 3.06 If the Recipient makes a change to the Project or the approved Budget, the approved Plans and Specifications or the approved Project Schedule, including changes to the number or type of child care spaces to be created, without written approval from the Province, this will constitute an Event of Default under paragraph 5.01(a) of this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

COMPLETION

- 3.07 Forthwith after Completion, the Recipient will submit to the Province written notification of Completion of the Project which is accompanied by:
- (a) a detailed statement prepared by an independent, arm's length certified Chartered Professional Accountant, prepared in accordance with current financial reporting standards in Canada, listing all Project Costs including copies of invoices and receipts or proof of payment for all Project Costs up to the date of Completion;
 - (b) a copy of all current licences issued under the *Community Care and Assisted Living Act* for the Child Care Facility and contemplated under this Agreement; and
 - (c) a completed financial reconciliation form, and a financial expenditure form, both in the form required by the Province within 60 days of Completion.

OVERRUNS

- 3.08 If at any time it appears or becomes evident to either the Province or the Recipient that the Project Costs may exceed the approved Budget, the Recipient will forthwith provide the Province with full and complete particulars of such excess and the Recipient will be liable for any and all such costs.

CONTINUATION OF CHILD CARE OPERATION

- 3.09 Forthwith after Completion, the Recipient will ensure the Child Care Operation commences or continues, and thereafter, the Recipient will ensure that the Child Care Operation continues for a minimum of <<commitment>> years from the date the Child Care Facility commences or continues as a Child Care Operation.
- 3.10 The Recipient will advise the Province in writing immediately of any decision to cease the Child Care Operation.

OVERPAYMENT & REPAYMENT

- 3.11 If Funding, or a portion of Funding, is paid under this Agreement in an amount to which the Recipient was not eligible under the terms of this Agreement, including but not limited to any overpayments made as the result of clerical or administrative error or miscalculation on the part of the Province, or miscalculation on the part of the Recipient, or incorrect information supplied to the Province by the Recipient, then the Recipient will repay the full amount of any such overpayment to the Province.
- 3.12 The Province will not, under any circumstances, be required to pay to the Recipient under this Agreement, more than <<Total Award Amount>>.
- 3.13 If, upon Completion, it is determined that the Project Costs to Completion were less than the total costs set out in the Budget approved by the Province, then the Recipient will repay to the Province the Province-approved funding percentage of the difference between the Project Costs

CHILD CARE CAPITAL FUNDING PROGRAM

to Completion and the total costs set out in the Budget approved by the Province. For illustrative purposes, if the Province has agreed to fund 50% of a Project based on the approved Budget of \$500,000 (i.e. Province advances \$250,000) but the Project Costs to Completion are later determined to be only \$400,000, then the Recipient would be required to repay the Province the sum of \$50,000.

- 3.14 Without limiting the generality of paragraph 5.02(b), if the Recipient breaches paragraph 3.09, then the Recipient will repay to the Province a pro-rated amount of all Funding paid to it under this Agreement, based on the ratio between the length of time the Child Care Operation has operated and the length of time it is required to operate under this Agreement.
- 3.15 Pursuant to s.7(2) of the *Child Care BC Act*, the amount of any overpayment or repayment referred to in paragraph 3.11, 3.13 or 3.14 is a debt due to the Province and may be recovered by the Province in a court of competent jurisdiction or deducted by the Province from any subsequent child care funding program, except Child Care Subsidy, administered by the Province.
- 3.16 If the Recipient does not make the repayment referred to in paragraph 3.13, within 30 days of receipt of the demand for repayment from the Province, then the Province may, at its discretion, refuse to make any Advance otherwise payable to the Recipient under this Agreement, or terminate or suspend payments otherwise payable to Recipient under this or any other child care funding program, except Child Care Subsidy, administered by the Province.
- 3.17 Despite any other provisions in this Agreement, the Province may, at the Province's discretion, withhold some or all of the Funding advances that would otherwise be payable under this Agreement to offset some or all of any repayment owing by the Recipient under this Agreement.

GENERAL COVENANTS

- 3.18 So long as this Agreement remains in force, the Recipient will:
- (a) observe and comply with any statute, rule or regulation of any government or branch or agency thereof applicable to the Recipient or the Project;
 - (b) if requested by the Province, provide evidence satisfactory to the Province that the representations and warranties set forth in paragraph 2.01 are true and correct;
 - (c) maintain its corporate existence and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles applied on a consistent basis;
 - (d) ensure that the Child Care Operation is carried on in a proper business-like manner in accordance with good business practice and the *Community Care and Assisted Living Act* and the Child Care Licensing Regulation;
 - (e) ensure that access to the completed Project and related facilities is provided to parents receiving benefits under the *Child Care Subsidy Act*;
 - (f) without limiting the requirement in paragraph 3.07, within thirty days of the delivery of a written request from the Province, provide the Province with any information and documents, including Financial Statements prepared by an independent, arm's length, certified Chartered professional Accountant, that meet current financial reporting standards in Canada, with

CHILD CARE CAPITAL FUNDING PROGRAM

respect to the affairs of the Recipient or the Project, that the Province considers necessary to determine the status of the Project toward Completion and to ensure that the Recipient is complying with its obligations under this Agreement;

- (g) the recipient must provide the following report, commencing on the anniversary date of the *Community Care and Assisted living Act* licence and continuing every 12 months of the Child Care Operation for the duration of the <<commitment>> year period referenced in section 3.09 of the Agreement;
 - a. Number of child care spaces
 - b. Location
 - c. Number of days open per month; and
 - d. Number of months open per year

The report referred to in the above section will be submitted in a form determined by the Province.

- (h) notify the Province in writing immediately of any actual or potential Event of Default under this Agreement, including providing particulars of such event. Additionally, the Recipient will immediately notify the Province in writing of details of any actual or potential issues or changes involving its Third Party Financing arrangements that could materially impact the Project.;
- (i) grant to the Province, its servants, agents and employees access to the Child Care Facility location contemplated in this Agreement or any other location for the purpose of inspecting any aspect of the Project, including without limitation any building, assets, books and records of the Recipient at all reasonable times for the purpose of inspections;
- (j) apply for and maintain in good standing all Necessary Government Approvals and submit to the Province satisfactory evidence thereof when so requested by the Province;
- (k) expend all Funding only for Project Costs in relation to the Child Care Facility;
- (l) punctually pay all taxes, rates and assessments required to be paid by it; and
- (m) generally, perform each of its obligations under this Agreement.

INSURANCE AND INDEMNITY

- 3.19 The Recipient shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances with insurers licensed in Canada and in forms and amounts acceptable to the Province:
- (a) during the construction phase of any Project, insurance such as course of construction and wrap-up liability in amounts that a prudent owner of a similar construction project would carry in British Columbia to ensure the Project is completed and third party liabilities are insured. Such insurance shall include, as applicable, the Province as an additional insured or loss payee as its interest may appear, and a waiver of the insurer's rights of subrogation against the Province.

CHILD CARE CAPITAL FUNDING PROGRAM

- (b) at all other times during the term of this Agreement, other insurance(s) specific to the operations of the Recipient that ensure the Child Care Facility remains operational including insurance to protect the Recipient against loss arising from damage to the Child Care Facility, and loss of revenue derived from Child Care Facility operations, in amounts that a prudent operator in British Columbia would carry to cover the related risks. Where applicable, liability policies shall include the Province as additional insured, and property policies shall include the Province as loss payee as its interests may appear and a waiver of the insurer's rights of subrogation against the Province.

All insurance carried by the Recipient shall be primary and not require the sharing of any loss by the Province.

- 3.20 Within ten business days of being asked to do so by the Province, the Recipient shall provide the Province with evidence of all insurance covering the Project or related to this Agreement. Such evidence of insurance shall be in the form of a completed and signed Province of British Columbia Fin 173 - Certificate of Insurance.
- 3.21 The Recipient hereby waives any right of recourse it may have or obtain against the Province, its employees or agents, with regard to loss or damage to its property located in, on or about the Child Care Facility. The Recipient shall be responsible for any deductible amounts under the policies.
- 3.22 The Recipient will indemnify and save harmless the Province, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Province may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this agreement, when the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Recipient or any agent, contractor or employee of the Recipient pursuant to this Agreement or the Recipient's operations.

HUMAN RESOURCE FACILITY ACT ACKNOWLEDGEMENT

- 3.10 The Recipient acknowledges that:
- (a) the Funding is advanced to the Recipient under the Child Care BC Act and pursuant to provisions of the HRFA and this Agreement is considered to be the 'human resource facility agreement' between the Recipient and the Province in relation to which the Recipient is receiving the Funding;
- (b) the Child Care Facility is also a "human resource facility", as defined in the HRFA;
- (c) the Province will, once the Agreement has been entered into, and regardless of whether any Advance has been made under this Agreement, file a written notice in the land title office pursuant to the HRFA including the legal description of the land of the Child Care Facility and a statement that it is subject to a human resource facility agreement that includes a restriction that the Human Resource Facility will be used only for the Human Resource Purpose;

CHILD CARE CAPITAL FUNDING PROGRAM

- (d) pursuant to the HRFA, on filing by the Province of the notice referred to in (c) above;
 - i. the Child Care Facility will be subject to a restriction that it may be used only for the Human Resource Purpose; and
 - ii. unless the written consent of the Province is filed in the land title office, the Recipient must not transfer, mortgage, lease or otherwise dispose of its interest in the Lands and the registrar of the land titles office must not register a transfer or other disposition of the Lands.
- (e) when the Recipient has fulfilled its service commitment as set out in article 3.08, or if this Agreement is terminated in accordance with this Agreement and any monies owed to the Province are repaid by the Recipient, the Province will file a written notice in the land title office informing the registrar of land titles that the lands of the Child Care Facility are no longer subject to a human resource facility agreement and as such the restriction on land title must be removed.

ADVANCES

GENERAL CONDITIONS PRECEDENT TO ADVANCES

4.01 The Province is not obligated to make any Advance as set out in Schedule A:

- (a) if, in the opinion of the Province, there has been any material adverse change in the business or financial condition of the Recipient;
- (b) unless there is an Appropriation with respect to or applicable to the Project and there remain sufficient funds available and uncommitted in that Appropriation to make the Advance requested;
- (c) if Treasury Board, as defined in the *Financial Administration Act*, has controlled or limited expenditure under the said Appropriation;
- (d) if there has occurred or is continuing an Event of Default which has not been remedied to the satisfaction of the Province;
- (e) unless the Province has received and is satisfied with evidence that all Necessary Government Approvals have been obtained and are in good standing and that the representations and warranties contained in this Agreement are true and correct.

CONDITIONS PRECEDENT TO INITIAL ADVANCE

4.02 The Province will not be obligated to make an Initial Advance as set out in Schedule A unless the Province has received and approved:

- (a) the Budget;
- (b) the Project Schedule;
- (c) the Plans and Specifications for the Project;

CHILD CARE CAPITAL FUNDING PROGRAM

- (d) evidence that any Third Party Financing has been obtained and is committed to the Recipient;
- (e) if the Project consists of renovating an existing building or the purchase of equipment, evidence that it holds a valid group child care licence under the *Community Care and Assisted Living Act* and regulations and it is not in contravention of any requirements of that licence;
- (f) evidence, satisfactory to the Province, of the taking of all proceedings by the directors of the Recipient necessary to the authorization of the execution and delivery of this Agreement and the performance of their respective provisions.

CONDITIONS PRECEDENT TO FINAL ADVANCE

- 4.03 Prior to any Final Advance set out in Schedule A, the Recipient must submit to the Province all items and information required pursuant to paragraph 3.07 (**Completion**) of this Agreement. Provided the Recipient is in compliance with this provision and all other provisions of this Agreement, and provided the Province has no questions or concerns arising from the items and information that the Recipient submits pursuant to this provision, then the Province will provide the Recipient with the Final Advance set out in Schedule A.

DEFAULT AND TERMINATION

EVENTS OF DEFAULT

- 5.01 Any of the following events will constitute an Event of Default, whether any such event be voluntary, involuntary or result from the operation of law or any judgment or order of any court or administrative or government body:
- (a) the Recipient fails to observe, perform or comply with any provision of this Agreement or of any other agreement for child care funding to which the Recipient is a party with the Province, and has not rectified such failure within any time limit set by the Province or is not, in the reasonable opinion of the Province, diligently proceeding to rectify such failure;
 - (b) any representation or warranty made by the Recipient in this Agreement is untrue or incorrect;
 - (c) the Application or any other information, document, certificate or report provided or submitted by the Recipient to the Province pursuant to this Agreement is untrue or incorrect;
 - (d) there is any action or proceeding, pending or threatened, or any completed successful application against the Recipient including any action or proceeding arising from the Recipient's Third Party Financing, which would, in the opinion of the Province, if successful, have a material adverse effect upon the ability of the Recipient to perform its obligations under this Agreement or any agreement entered into or charge granted in furtherance of this Agreement;

CHILD CARE CAPITAL FUNDING PROGRAM

- (e) an order is made or a resolution passed for the liquidation or winding up of the Recipient or if a petition is filed for the liquidation or winding up of the Recipient;
- (f) the Recipient becomes insolvent or makes an unauthorized assignment or bulk sale of its assets or if a bankruptcy petition is filed or presented against it or if the Recipient shall be subject to the provisions of the *Bankruptcy Act* (Canada) or any other Act for the benefit of its creditors or otherwise acknowledges its insolvency;
- (g) a receiver or receiver-manager of any property of the Recipient is appointed;
- (h) a change occurs with respect to any of the properties, assets, condition (financial or otherwise), business or operations of the Recipient which, in the opinion of the Province, materially adversely affects the ability of the Recipient to fulfil any of its obligations under this Agreement;
- (i) if the Recipient is a corporation or society, it ceases to be registered and in good standing with BC Corporate Registry, and if it is a sole proprietor or a partnership, it ceases to be registered and in good standing with BC Corporate Registry;
- (j) the Recipient commits an act of default under its Third Party Financing arrangements;
- (k) the Recipient has an outstanding debt owing to the Province respecting child care funding for which no payment plan has been established and agreed to by the Province or the Recipient is in breach of any such payment plan that has been established and agreed to by the Province;
- (l) in the opinion of the Province, the Recipient has failed to ensure the commencement or continue the Child Care Operation.

TERMINATION

- 5.02 Upon the occurrence of any Event of Default and at any time thereafter the Province may, notwithstanding any other provision of this Agreement, at its discretion exercisable by written notice to the Recipient:
- (a) from and after the date of said notice, withhold an Advance for such period of time as the Province in its sole discretion determines is reasonable to permit the Recipient to remedy the default; or
 - (b) terminate the Agreement, and declare the aggregate of all Advances paid hereunder to be due and be repayable by the Recipient to the Province and such monies will immediately become due and payable without presentment, demand, protest or other notice of any kind to the Recipient, all of which are hereby expressly waived.

REMEDIES NON-INCLUSIVE

- 5.03 The rights, powers and remedies conferred on the Province under this Agreement or any statute or law are not intended to be exclusive and each remedy shall be cumulative and in addition to and not in substitution for every other remedy existing or available to the Province.

CHILD CARE CAPITAL FUNDING PROGRAM

- 5.04 The exercise of any one or more remedies available to the Province will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

DELAY

- 5.05 No failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure shall continue, will constitute a waiver by such party of its rights hereunder.

NOTICE

Delivery of notices

- 6.01 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- a) by courier to the addressee's address specified below, in which case it will be deemed to be received on the day of its delivery; or
 - b) by prepaid post to the addressee's address specified below, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing; or
 - c) by email to the addressee's email address specified below, in which case it will be deemed to be received on the day and time it was sent.

to the Province:

Child Care Programs and Services Branch
Ministry of Children and Family Development
Mailing Address:
PO Box 9953, Stn. Prov. Govt.
Victoria BC V8W 9R3
Email Address:
MCF.CCCF@gov.bc.ca

and to the Recipient:

«Host_Organization»
«Address_»
«City», B.C. «PC»
<<Email Address>>

CHILD CARE CAPITAL FUNDING PROGRAM

- 6.02 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of each party and that executed copy being delivered to the party by a method provided for in section 6.01 or any other method agreed to by the parties.

RECEIPT

- 6.03 Any such notice, document, statement, report, demand or payment so mailed will be deemed to be given to and received by the addressee on the fifth business day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed to be given to and received by the addressee when actually delivered to the particular address set out above.

CHANGES

- 6.04 Within 30 business days of a change to its address or email address, a party must provide written notice of the change to the other party.

MISCELLANEOUS

PUBLIC ANNOUNCEMENT

- 7.01 The Province may engage in such communications, advertising or media interviews regarding the Funding or the Project as it deems appropriate.
- 7.02 The Recipient will provide at least 14 business days advance notice to the Province of any planned communication, advertising or media interviews in relation to the Funding or the Project, and will not proceed with its plans without the written approval of the Province.

INTERPRETATION

GOVERNING LAW

- 8.01 This Agreement will be constructed in accordance with the laws of the Province of British Columbia.
- 8.02 Nothing in this Agreement is or operates as a consent, permit, approval or authorization by the government of the Province of British Columbia or any ministry, office, branch or agency thereof to or for anything related to the Project that, by statute, the Recipient is required to obtain unless it is expressly stated herein to be such a consent, permit, approval or authorization.

TIME

- 8.03 Time will be of the essence of this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

REFERENCES

- 8.04 A reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes all amendments to it, the regulations made under it and any enactment passed in substitution therefore or replacement thereof.
- 8.05 Unless the context otherwise indicates, any reference to “this Agreement” means this instrument and all of the schedules attached to it and any reference to any paragraph or subparagraph by number is a reference to the appropriate paragraph or subparagraph in this Agreement.

HEADINGS

- 8.06 The headings or captions in this Agreement are inserted for convenience only and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.

NO OTHER AGREEMENTS

- 8.07 There is no representation, warranty, guarantee, indemnity, condition or agreement or any collateral representation, warranty, guarantee, indemnity, condition or agreement applicable to, binding upon or enforceable against one party by the other except for those expressed in this Agreement, the Application submitted by the Recipient and any agreement or approval made or security to be granted pursuant to this Agreement.

SEVERABILITY

- 8.08 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.

ASSIGNMENT

- 8.09 The Recipient must not assign any of the Recipient’s rights or obligations under this Agreement without the Province’s prior written approval. Upon providing written notice to the Recipient, the Province may assign to any person any of the Province’s rights under this Agreement and may assign to any “government corporation”, as defined in the *Financial Administration Act*, any of the Province’s obligations under this Agreement.

ENUREMENT

- 8.10 This Agreement will enure to the benefit of and be binding upon the Province and its assigns and the Recipient and its successors and permitted assigns.

CHILD CARE CAPITAL FUNDING PROGRAM

WAIVER

- 8.11 No consent or waiver, expressed or implied by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent of waiver to or of any other breach or default in the performance by such party hereunder.

NO PARTNERSHIP

- 8.12 Nothing contained in this Agreement will create or be deemed to create, as between the Province, on the one hand, and the Recipient, on the other hand, a partnership, joint venture or agency relationship.

SCHEDULE A

Child Care Capital Funding Program Major Capital Funding for Creation of New Child Care Spaces

Funding Agreement “Category B”

1. The Province will provide funding to the Recipient to a maximum of \$«Total_Grant_Award». Advances will be made, subject to the terms of this Agreement, as follows:
 - a. the Initial Advance of 65% in the amount of \$«Initial_Pmt» to be paid within 30 days of execution of the Agreement;
 - b. a second advance of 25% in the amount of \$«Lock-up_Pmt» to be paid within 30 days of
 - i. receipt by the Province of evidence satisfactory to the Province that the Project is at Lock-up stage, or,
 - ii. for a Project to which the definition of Lock-up does not apply, receipt by the Province of evidence satisfactory to the Province that the Project is at a sufficiently advanced stage as to warrant payment of the second advance;
 - c. the remaining balance of 10% of the final payment in the amount of \$«Final_Pmt» to be paid within 30 days of the Province’s receipt and approval of the items and information described in paragraph 3.07 (*Completion*) of this Agreement.

AGREEMENT Number: «Agreement_No»

**CHILD CARE CAPITAL FUNDING PROGRAM
MAJOR CAPITAL FUNDING FOR CREATION OF NEW CHILD CARE
SPACES**

FUNDING AGREEMENT

THIS AGREEMENT made the ____ day of _____, _____.

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF BRITISH COLUMBIA**, represented by
the Minister of Children and Family Development
(the “Province”)

OF THE FIRST PART

AND:

«Host_Organization», «SocietyIncorporation_Number»
«Address», «City» BC «PC»
(the Recipient)

OF THE SECOND PART

WHEREAS:

- A. The Recipient has requested funding from the Province, for the Project (hereafter defined), in an amount up to an aggregate of \$«Total_Grant_Award»;
- B. Both parties acknowledge and agree that the funding provided under this Agreement is conditional funding to which the provisions of the *Child Care BC Act* apply; and
- C. It is a condition of the Province agreeing to provide assistance to the Recipient that the Recipient agrees to the terms in this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

DEFINITIONS

1.01 In this Agreement:

- (a) “Advance” means any disbursement of the money to the Recipient under this Agreement;
- (b) “Application” means the application of the Recipient for the Funding and includes all documents submitted, including Stage Two Submissions, and all representations made in connection with it;
- (c) “Appropriation” has the meaning given to it under section 1 of the *Financial Administration Act*;
- (d) “Budget” means a detailed estimate of the costs to complete the Project, determined where necessary by cost estimates by certified contractors, engineers, architects or other qualified parties, in accordance with the Plans and Specifications, provided to the Province for the purposes of this Agreement;
- (e) “Child Care Facility” means the physical building, facility, or area and the land on which the Project will occur or has occurred and which the Recipient will ensure is occupied and used, for the purpose of a Child Care Operation and which is located at; «Facility_Address» and which is legally described as «FacilityProject__Name»
- (f) “Child Care Operation” means the provision of child care in a Child Care Facility licensed under the *Community Care and Assisted Living Act* at «FacilityProject__Name»;
- (g) “Completion” means the Project has been completed in accordance with the approved Plans and Specifications and Budget, or in accordance with any changes to Plans and Specifications or Budget that have been approved by the Province, and is capable of being licensed under the *Community Care and Assisted Living Act*.
- (h) “Event of Default” means any of the events described in paragraph 5.01;
- (i) “Final Advance” means the last disbursement of a portion of the Funding to the Recipient pursuant to this Agreement;
- (j) “*Financial Administration Act*” means the *Financial Administration Act*, R.S.B.C. 1996, c.138 as amended;
- (k) “Funding” means the aggregate of all Advances made from time to time by the Province to the Recipient under this Agreement in accordance with Schedule A;
- (l) “Good Financial Standing” means the Recipient does not have an outstanding debt owing to the Province respecting a program of the Ministry of Children and Family Development for which no Province-approved payment plan has been established and, where a Province-approved payment plan has been established, the Recipient is not in breach of the plan.

CHILD CARE CAPITAL FUNDING PROGRAM

- (m) "Initial Advance" means the first disbursement of a portion of the Funding to the Recipient pursuant to this Agreement;
- (n) "Lock-up", where the Project involves new construction of a building or a significant renovation to an existing building that includes an addition to the building, means the stage of the Project construction when the walls, roof, doors and windows are in place and the structure is capable of being locked and secured;
- (o) "Necessary Government Approval" means the issuance by any government (including the Province) or municipality or any department, branch, official or agency thereof of all consents, tenures, permits, licenses or approvals required for the Recipient to commence and carry out the Project;
- (p) "Plans and Specifications" means all detailed plans, drawings and specifications for the works required to carry out and complete the Project or to acquire the assets for use in the Project;
- (q) "Project" means the project as described and agreed to by the Province in the Stage Two Submission; «Project_Description»
- (r) "Project Costs" means all amounts paid by the Recipient to any person, firm, corporation or other organization dealing at arm's length with the Recipient, for construction of the Project or acquisition of its components and which, in the opinion of the Province, have been necessarily and properly incurred under this Agreement and includes but is not limited to, if the Project includes acquiring land, the actual cost of the land, and does not include any property consisting of operational or replaceable assets, assets acquired prior to approval of the Recipient's application, or other ineligible items regardless of whether said items are related to the Project;
- (s) "Project Schedule" means a detailed timetable and schedule of construction or preparation of the Project and the time period within which each part or aspect of the Project, as described in the Plans and Specifications, is proposed to be commenced, carried out and completed;
- (t) "Stage Two Submission" means the forms submitted in stage two including all relevant supporting documentation submitted during this stage of the intake.
- (u) "Third Party Financing" means a donation, loan, credit facility or any other sum of money in an amount that, in addition to the maximum amount of the Funding and the amount to be funded by the Recipient, is sufficient, in the opinion of the Province, to pay the total costs set out in the Budget and that is committed to the Recipient by any organization or entity approved by the Province.

REPRESENTATIONS AND WARRANTIES

CORPORATE CAPACITY AND POWER AND REGISTERED TITLE

2.01 The Recipient represents and warrants to the Province that:

CHILD CARE CAPITAL FUNDING PROGRAM

- (a) it has the legal capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement and all necessary proceedings have been taken and done to authorize the execution and delivery of this Agreement by the Recipient and this Agreement has been legally and properly executed by the Recipient and is legally binding upon and enforceable against the Recipient;
- (b) it has the legal right to carry out the Project at the site specified in the Application, including respecting local zoning as it may impact the ability to obtain a licence under the *Community Care and Assisted Living Act*;
- (c) all information, financial statements, documents and reports furnished or submitted by the Recipient to the date of this Agreement in connection with its Application are true and correct;
- (d) the completion of the transactions contemplated herein will not constitute a breach by the Recipient of any statute, bylaw or regulation or of its constating documents which would result in the creation of any lien, encumbrance or other charge on any of the assets;
- (e) if the Recipient is a corporation or society, it is registered and in good standing with BC Corporate Registry, and if it is a sole proprietor or a partnership, it is registered and in good standing with BC Corporate Registry;
- (f) if the Recipient receives other Ministry of Children and Family Development child care funding, including Child Care Operating Funding, Child Care Minor Capital funding and Child Care Subsidy payments on behalf of parents, the recipient is in Good Financial Standing;
- (g) no insolvency event has occurred or is expected to occur with respect to the Recipient or any real or personal property involved in the Project. For the purposes of this provision, an insolvency event shall mean any events listed in subsections 5.01(e) to and including 5.01(h);
- (h) There are no liens, encumbrances, charges or other rights or interests affecting or otherwise impacting any real or personal property related to the Project that have not been otherwise disclosed in the Application and approved by the Province.

RELIANCE AND CONTINUATION

- 2.02 All representations, warranties, covenants and agreements made herein and all certificates or other documents delivered by or on behalf of the Recipient to the Province are material to this Agreement and shall conclusively be deemed to have been relied upon by the Province; notwithstanding any prior or subsequent investigation by the Province and they shall survive the payment of the Funding and the fulfilment of all other transactions and deliveries contemplated under this Agreement and will continue in full force and effect during the continuation of this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

FURTHER REPRESENTATION

- 2.03 All statements contained in any certificate, the Application or other document delivered by or on behalf of the Recipient to the Province under this Agreement or in connection with any of the transactions contemplated hereby shall be deemed to be representations and warranties by the Recipient under this Agreement.

RECIPIENT'S COVENANTS

PROJECT COVENANTS

- 3.01 On entering into this Agreement, and as soon as the Budget, Project Schedule and Plans and Specifications are approved by the Province, the Recipient will proceed diligently and complete the Project substantially in accordance with the approved Budget, the approved Project Schedule and the approved Plans and Specifications.
- 3.02 Upon proceeding with the Project in accordance with paragraph 3.01 above, the Recipient will ensure that Funding is applied exclusively toward the Project for the Child Care Facility in accordance with the Budget, Project Schedule and Plans and Specifications, all as approved by the Province, and that all undisputed Project Costs are paid when due. In the event of a disputed Project Cost with a party engaged to assist with the Project, the Recipient will use its best efforts to resolve the dispute as soon as possible.
- 3.03 If the Recipient does not proceed diligently with the Project in accordance with section 3.01, 3.02 and the approved Project Schedule, the Recipient will immediately contact the Province to request changes to the Project Schedule, and will provide at that time a complete explanation as to the reasons for the delay and an estimate of the additional time required to commence the Project. Failure to request changes to the Project Schedule under these circumstances will result in an Event of Default under paragraph 5.01(a) of this Agreement.
- 3.04 If the Province, following a request made under paragraph 3.02 by the Recipient, refuses to approve a change to the Project Schedule, then the Recipient's failure to comply with the requirements of paragraph 3.01 and the approved Project Schedule will constitute an Event of Default under paragraph 5.01(a) of this Agreement.
- 3.05 The Recipient will not, without the prior written approval of the Province, make any material change in or to the Project or the Budget, Plans and Specifications or Project Schedule.
- 3.06 If the Recipient makes a change to the Project or the approved Budget, the approved Plans and Specifications or the approved Project Schedule, including changes to the number or type of child care spaces to be created, without written approval from the Province, this will constitute an Event of Default under paragraph 5.01(a) of this Agreement.

COMPLETION

- 3.07 Forthwith after Completion, the Recipient will submit to the Province written notification of Completion of the Project which is accompanied by:

CHILD CARE CAPITAL FUNDING PROGRAM

- (a) a detailed statement prepared by an independent, arm's length certified Chartered Professional Accountant, prepared in accordance with current financial reporting standards in Canada, listing all Project Costs including copies of invoices and receipts or proof of payment for all Project Costs up to the date of Completion;
- (b) a copy of all current licences issued under the *Community Care and Assisted Living Act* for the Child Care Facility and contemplated under this Agreement; and
- (c) a completed financial reconciliation form, and a financial expenditure form, both in the form required by the Province within 60 days of Completion.

OVERRUNS

- 3.08 If at any time it appears or becomes evident to either the Province or the Recipient that the Project Costs may exceed the approved Budget, the Recipient will forthwith provide the Province with full and complete particulars of such excess and the Recipient will be liable for any and all such costs.

CONTINUATION OF CHILD CARE OPERATION

- 3.09 Forthwith after Completion, the Recipient will ensure the Child Care Operation commences or continues, and thereafter, the Recipient will ensure that the Child Care Operation continues for a minimum of «Years_of_Commitment» years from the date the Child Care Facility commences or continues as a Child Care Operation.
- 3.10 The Recipient will advise the Province in writing immediately of any decision to cease the Child Care Operation.

OVERPAYMENT & REPAYMENT

- 3.11 If Funding, or a portion of Funding, is paid under this Agreement in an amount to which the Recipient was not eligible under the terms of this Agreement, including but not limited to any overpayments made as the result of clerical or administrative error or miscalculation on the part of the Province, or miscalculation on the part of the Recipient, or incorrect information supplied to the Province by the Recipient, then the Recipient will repay the full amount of any such overpayment to the Province.
- 3.12 The Province will not, under any circumstances, be required to pay to the Recipient under this Agreement, more than \$«Total_Grant_Award».
- 3.13 If, upon Completion, it is determined that the Project Costs to Completion were less than the total costs set out in the Budget approved by the Province, then the Recipient will repay to the Province the Province-approved funding percentage of the difference between the Project Costs to Completion and the total costs set out in the Budget approved by the Province. For illustrative purposes, if the Province has agreed to fund 50% of a Project based on the approved Budget of \$500,000 (i.e. Province advances \$250,000) but the Project Costs to Completion are later determined to be only \$400,000, then the Recipient would be required to repay the Province the sum of \$50,000.

CHILD CARE CAPITAL FUNDING PROGRAM

- 3.14 Without limiting the generality of paragraph 5.02(b), if the Recipient breaches paragraph 3.09, then the Recipient will repay to the Province a pro-rated amount of all Funding paid to it under this Agreement, based on the ratio between the length of time the Child Care Operation has operated and the length of time it is required to operate under this Agreement.
- 3.15 Pursuant to s.7(2) of the *Child Care BC Act*, the amount of any overpayment or repayment referred to in paragraph 3.11, 3.13 or 3.14 is a debt due to the Province and may be recovered by the Province in a court of competent jurisdiction or deducted by the Province from any subsequent child care funding program, except Child Care Subsidy, administered by the Province.
- 3.16 If the Recipient does not make the repayment referred to in paragraph 3.13, within 30 days of receipt of the demand for repayment from the Province, then the Province may, at its discretion, refuse to make any Advance otherwise payable to the Recipient under this Agreement, or terminate or suspend payments otherwise payable to the Recipient under this or any other child care funding program, except Child Care Subsidy, administered by the Province.
- 3.17 Despite any other provisions in this Agreement, the Province may, at the Province's discretion, withhold some or all of the Funding advances that would otherwise be payable under this Agreement to offset some or all of any repayment owing by the Recipient under this Agreement.

GENERAL COVENANTS

- 3.18 So long as this Agreement remains in force, the Recipient will:
- (a) observe and comply with any statute, rule or regulation of any government or branch or agency thereof applicable to the Recipient or the Project;
 - (b) if requested by the Province, provide evidence satisfactory to the Province that the representations and warranties set forth in paragraph 2.01 are true and correct;
 - (c) maintain its corporate existence and keep or cause to be kept proper books of account in accordance with generally accepted accounting principles applied on a consistent basis;
 - (d) ensure that the Child Care Operation is carried on in a proper business-like manner in accordance with good business practice and the *Community Care and Assisted Living Act* and the Child Care Licensing Regulation;
 - (e) ensure that access to the completed Project and related facilities is provided to parents receiving benefits under the *Child Care Subsidy Act*;
 - (f) without limiting the requirement in paragraph 3.07, within thirty days of the delivery of a written request from the Province, provide the Province with any information and documents, including Financial Statements prepared by an independent, arm's length, certified Chartered professional Accountant, that meet current financial reporting standards in Canada, with respect to the affairs of the Recipient or the Project, that the Province considers necessary to determine the status of the Project toward Completion and to ensure that the Recipient is complying with its obligations under this Agreement;

CHILD CARE CAPITAL FUNDING PROGRAM

- (g) the recipient must provide the following report, commencing on the anniversary date of the *Community Care and Assisted living Act* licence and continuing every 12 months of the Child Care Operation for the duration of the «Years_of_Commitment» year period referenced in section 3.09 of the Agreement;
- a. Number of child care spaces
 - b. Location
 - c. Number of days open per month; and
 - d. Number of months open per year

The report referred to in the above section will be submitted in a form determined by the Province.

- (h) notify the Province in writing immediately of any actual or potential Event of Default under this Agreement, including providing particulars of such event. Additionally, the Recipient will immediately notify the Province in writing of details of any actual or potential issues or changes involving its Third Party Financing arrangements that could materially impact the Project.;
- (i) grant to the Province, its servants, agents and employees access to the Child Care Facility location contemplated in this Agreement or any other location for the purpose of inspecting any aspect of the Project, including without limitation any building, assets, books and records of the Recipient at all reasonable times for the purpose of inspections;
- (j) apply for and maintain in good standing all Necessary Government Approvals and submit to the Province satisfactory evidence thereof when so requested by the Province;
- (k) expend all Funding only for Project Costs in relation to the Child Care Facility;
- (l) punctually pay all taxes, rates and assessments required to be paid by it; and
- (m) generally, perform each of its obligations under this Agreement.

INSURANCE AND INDEMNITY

3.19 The Recipient shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances with insurers licensed in Canada and in forms and amounts acceptable to the Province:

- (a) during the construction phase of any Project, insurance such as course of construction and wrap-up liability in amounts that a prudent owner of a similar construction project would carry in British Columbia to ensure the Project is completed and third party liabilities are insured. Such insurance shall include, as applicable, the Province as an additional insured or loss payee as its interest may appear, and a waiver of the insurer's rights of subrogation against the Province.

CHILD CARE CAPITAL FUNDING PROGRAM

- (b) at all other times during the term of this Agreement, other insurance(s) specific to the operations of the Recipient that ensure the Child Care Facility remains operational including insurance to protect the Recipient against loss arising from damage to the Child Care Facility, and loss of revenue derived from Child Care Facility operations, in amounts that a prudent operator in British Columbia would carry to cover the related risks. Where applicable, liability policies shall include the Province as additional insured, and property policies shall include the Province as loss payee as its interests may appear and a waiver of the insurer's rights of subrogation against the Province.

All insurance carried by the Recipient shall be primary and not require the sharing of any loss by the Province.

- 3.20 Within ten business days of being asked to do so by the Province, the Recipient shall provide the Province with evidence of all insurance covering the Project or related to this Agreement. Such evidence of insurance shall be in the form of a completed and signed Province of British Columbia Fin 173 - Certificate of Insurance.
- 3.21 The Recipient hereby waives any right of recourse it may have or obtain against the Province, its employees or agents, with regard to loss or damage to its property located in, on or about the Child Care Facility. The Recipient shall be responsible for any deductible amounts under the policies.
- 3.22 The Recipient will indemnify and save harmless the Province, its employees and agents, from and against any and all losses, claims, damages, actions, causes of action, costs and expenses that the Province may sustain, incur, suffer or be put to at any time either before or after the expiration or termination of this agreement, when the same or any of them are based upon, arise out of or occur, directly or indirectly, by reason of any act or omission of the Recipient or any agent, contractor or employee of the Recipient pursuant to this Agreement or the Recipient's operations.

ADVANCES

GENERAL CONDITIONS PRECEDENT TO ADVANCES

- 4.01 The Province is not obligated to make any Advance as set out in Schedule A:
- (a) if, in the opinion of the Province, there has been any material adverse change in the business or financial condition of the Recipient;
 - (b) unless there is an Appropriation with respect to or applicable to the Project and there remain sufficient funds available and uncommitted in that Appropriation to make the Advance requested;
 - (c) if Treasury Board, as defined in the *Financial Administration Act*, has controlled or limited expenditure under the said Appropriation;
 - (d) if there has occurred or is continuing an Event of Default which has not been remedied to the satisfaction of the Province;

CHILD CARE CAPITAL FUNDING PROGRAM

- (e) unless the Province has received and is satisfied with evidence that all Necessary Government Approvals have been obtained and are in good standing and that the representations and warranties contained in this Agreement are true and correct.

CONDITIONS PRECEDENT TO INITIAL ADVANCE

- 4.02 The Province will not be obligated to make an Initial Advance as set out in Schedule A unless the Province has received and approved:
- (a) the Budget;
 - (b) the Project Schedule;
 - (c) the Plans and Specifications for the Project;
 - (d) evidence that any Third Party Financing has been obtained and is committed to the Recipient;
 - (e) if the Project consists of renovating an existing building or the purchase of equipment, evidence that it holds a valid group child care licence under the *Community Care and Assisted Living Act* and regulations and it is not in contravention of any requirements of that licence;
 - (f) evidence, satisfactory to the Province, of the taking of all proceedings by the directors of the Recipient necessary to the authorization of the execution and delivery of this Agreement and the performance of their respective provisions.

CONDITIONS PRECEDENT TO FINAL ADVANCE

- 4.03 Prior to any Final Advance set out in Schedule A, the Recipient must submit to the Province all items and information required pursuant to paragraph 3.07 (**Completion**) of this Agreement. Provided the Recipient is in compliance with this provision and all other provisions of this Agreement, and provided the Province has no questions or concerns arising from the items and information that the Recipient submits pursuant to this provision, then the Province will provide the Recipient with the Final Advance set out in Schedule A.

DEFAULT AND TERMINATION

EVENTS OF DEFAULT

- 5.01 Any of the following events will constitute an Event of Default, whether any such event be voluntary, involuntary or result from the operation of law or any judgment or order of any court or administrative or government body:

CHILD CARE CAPITAL FUNDING PROGRAM

- (a) the Recipient fails to observe, perform or comply with any provision of this Agreement or of any other agreement for child care funding to which the Recipient is a party with the Province, and has not rectified such failure within any time limit set by the Province or is not, in the reasonable opinion of the Province, diligently proceeding to rectify such failure;
- (b) any representation or warranty made by the Recipient in this Agreement is untrue or incorrect;
- (c) the Application or any other information, document, certificate or report provided or submitted by the Recipient to the Province pursuant to this Agreement is untrue or incorrect;
- (d) there is any action or proceeding, pending or threatened, or any completed successful application against the Recipient including any action or proceeding arising from the Recipient's Third Party Financing, which would, in the opinion of the Province, if successful, have a material adverse effect upon the ability of the Recipient to perform its obligations under this Agreement or any agreement entered into or charge granted in furtherance of this Agreement;
- (e) an order is made or a resolution passed for the liquidation or winding up of the Recipient or if a petition is filed for the liquidation or winding up of the Recipient;
- (f) the Recipient becomes insolvent or makes an unauthorized assignment or bulk sale of its assets or if a bankruptcy petition is filed or presented against it or if the Recipient shall be subject to the provisions of the *Bankruptcy Act* (Canada) or any other Act for the benefit of its creditors or otherwise acknowledges its insolvency;
- (g) a receiver or receiver-manager of any property of the Recipient is appointed;
- (h) a change occurs with respect to any of the properties, assets, condition (financial or otherwise), business or operations of the Recipient which, in the opinion of the Province, materially adversely affects the ability of the Recipient to fulfil any of its obligations under this Agreement;
- (i) if the Recipient is a corporation or society, it ceases to be registered and in good standing with BC Corporate Registry, and if it is a sole proprietor or a partnership, it ceases to be registered and in good standing with BC Corporate Registry;
- (j) the Recipient commits an act of default under its Third Party Financing arrangements;
- (k) the Recipient has an outstanding debt owing to the Province respecting child care funding for which no payment plan has been established and agreed to by the Province or the Recipient is in breach of any such payment plan that has been established and agreed to by the Province;
- (l) in the opinion of the Province, the Recipient has failed to ensure the commencement or continue the Child Care Operation.

CHILD CARE CAPITAL FUNDING PROGRAM

TERMINATION

- 5.02 Upon the occurrence of any Event of Default and at any time thereafter the Province may, notwithstanding any other provision of this Agreement, at its discretion exercisable by written notice to the Recipient:
- (a) from and after the date of said notice, withhold an Advance for such period of time as the Province in its sole discretion determines is reasonable to permit the Recipient to remedy the default; or
 - (b) terminate the Agreement, and declare the aggregate of all Advances paid hereunder to be due and be repayable by the Recipient to the Province and such monies will immediately become due and payable without presentment, demand, protest or other notice of any kind to the Recipient, all of which are hereby expressly waived.

REMEDIES NON-INCLUSIVE

- 5.03 The rights, powers and remedies conferred on the Province under this Agreement or any statute or law are not intended to be exclusive and each remedy shall be cumulative and in addition to and not in substitution for every other remedy existing or available to the Province.
- 5.04 The exercise of any one or more remedies available to the Province will not preclude the simultaneous or later exercise by the Province of any other right, power or remedy.

DELAY

- 5.05 No failure or delay on the part of either party to complain of an act or failure of the other party or to declare such other party in default, irrespective of how long such act or failure shall continue, will constitute a waiver by such party of its rights hereunder.

CHILD CARE CAPITAL FUNDING PROGRAM

NOTICE

Delivery of notices

- 6.01 Any notice contemplated by this Agreement, to be effective, must be in writing and delivered as follows:
- a) by courier to the addressee's address specified below, in which case it will be deemed to be received on the day of its delivery; or
 - b) by prepaid post to the addressee's address specified below, in which case if mailed during any period when normal postal services prevail, it will be deemed to be received on the fifth Business Day after its mailing; or
 - c) by email to the addressee's email address specified below, in which case it will be deemed to be received on the day and time it was sent.

to the Province:

Child Care Programs and Services Branch
Ministry of Children and Family Development
Mailing Address:
PO Box 9953, Stn. Prov. Govt.
Victoria BC V8W 9R3
Email Address:
MCF.CCCF@gov.bc.ca

and to the Recipient:

«Host_Organization»
«Address»
«City», B.C. «PC»
«Email»

- 6.02 This Agreement may be entered into by a separate copy of this Agreement being executed by, or on behalf of each party and that executed copy being delivered to the party by a method provided for in section 6.01 or any other method agreed to by the parties.

RECEIPT

- 6.03 Any such notice, document, statement, report, demand or payment so mailed will be deemed to be given to and received by the addressee on the fifth business day after the mailing of the same except in the event of disruption of postal services in Canada in which case any such notice, document, statement, report, demand or payment will be deemed to be given to and received by the addressee when actually delivered to the particular address set out above.

CHILD CARE CAPITAL FUNDING PROGRAM

CHANGES

- 6.04 Within 30 business days of a change to its address or email address, a party must provide written notice of the change to the other party.

MISCELLANEOUS

PUBLIC ANNOUNCEMENT

- 7.01 The Province may engage in such communications, advertising or media interviews regarding the Funding or the Project as it deems appropriate.
- 7.02 The Recipient will provide at least 14 business days advance notice to the Province of any planned communication, advertising or media interviews in relation to the Funding or the Project, and will not proceed with its plans without the written approval of the Province.

INTERPRETATION

GOVERNING LAW

- 8.01 This Agreement will be constructed in accordance with the laws of the Province of British Columbia.
- 8.02 Nothing in this Agreement is or operates as a consent, permit, approval or authorization by the government of the Province of British Columbia or any ministry, office, branch or agency thereof to or for anything related to the Project that, by statute, the Recipient is required to obtain unless it is expressly stated herein to be such a consent, permit, approval or authorization.

TIME

- 8.03 Time will be of the essence of this Agreement.

REFERENCES

- 8.04 A reference to a statute in this Agreement, whether or not that statute has been defined, means a statute of the Province of British Columbia unless otherwise stated and includes all amendments to it, the regulations made under it and any enactment passed in substitution therefore or replacement thereof.
- 8.05 Unless the context otherwise indicates, any reference to “this Agreement” means this instrument and all of the schedules attached to it and any reference to any paragraph or subparagraph by number is a reference to the appropriate paragraph or subparagraph in this Agreement.

CHILD CARE CAPITAL FUNDING PROGRAM

HEADINGS

- 8.06 The headings or captions in this Agreement are inserted for convenience only and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement.

NO OTHER AGREEMENTS

- 8.07 There is no representation, warranty, guarantee, indemnity, condition or agreement or any collateral representation, warranty, guarantee, indemnity, condition or agreement applicable to, binding upon or enforceable against one party by the other except for those expressed in this Agreement, the Application submitted by the Recipient and any agreement or approval made or security to be granted pursuant to this Agreement.

SEVERABILITY

- 8.08 If any provision of this Agreement or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to any other person or circumstance will not be affected or impaired thereby and will be enforceable to the extent permitted by law.

ASSIGNMENT

- 8.09 The Recipient must not assign any of the Recipient's rights or obligations under this Agreement without the Province's prior written approval. Upon providing written notice to the Recipient, the Province may assign to any person any of the Province's rights under this Agreement and may assign to any "government corporation", as defined in the *Financial Administration Act*, any of the Province's obligations under this Agreement.

ENUREMENT

- 8.10 This Agreement will enure to the benefit of and be binding upon the Province and its assigns and the Recipient and its successors and permitted assigns.

WAIVER

- 8.11 No consent or waiver, expressed or implied by either party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent of waiver to or of any other breach or default in the performance by such party hereunder.

NO PARTNERSHIP

- 8.12 Nothing contained in this Agreement will create or be deemed to create, as between the Province, on the one hand, and the Recipient, on the other hand, a partnership, joint venture or agency relationship.

SCHEDULE A

Child Care Capital Funding Program Major Capital Funding for Creation of New Child Care Spaces

Funding Agreement “Category B”

1. The Province will provide funding to the Recipient to a maximum of \$«Total_Grant_Award». Advances will be made, subject to the terms of this Agreement, as follows:
 - a. the Initial Advance of 65% in the amount of \$«Initial_Pmt» to be paid within 30 days of execution of the Agreement;
 - b. a second advance of 25% in the amount of \$«Lockup_Pmt» to be paid within 30 days of
 - i. receipt by the Province of evidence satisfactory to the Province that the Project is at Lock-up stage, or,
 - ii. for a Project to which the definition of Lock-up does not apply, receipt by the Province of evidence satisfactory to the Province that the Project is at a sufficiently advanced stage as to warrant payment of the second advance;
 - c. the remaining balance of 10% of the final payment in the amount of \$«Final_Pmt» to be paid within 30 days of the Province’s receipt and approval of the items and information described in paragraph 3.07 (**Completion**) of this Agreement.