

ATTACHMENT A

SHORT TERM FACILITY LICENSE

THIS AGREEMENT made as of the 5th day of May, 2020

BETWEEN:

CITY OF NANAIMO
411 Dunsmuir Street
Nanaimo, B.C. V94 0E4

(the "Licensor")

AND:

PROVINCIAL RENTAL HOUSING CORPORATION
1701 - 4555 Kingsway,
Burnaby, B.C. V5H 4V8

(the "Licensee")

WHEREAS:

- A. The Licensee, as a representative of the Province of British Columbia wishes, in response to the COVID-19 pandemic, to license the Licensed Area from the Licensor for the Permitted Use; and
- B. The Licensor has agreed to license the Licensed Area to the Licensee for the Term, as the same may be extended, so that the Licensee may use the Licensed Area for the Permitted Use.

WITNESS that in consideration of the covenants and agreements herein set out, the Licensor and the Licensee covenant and agree as follows:

1. INTERPRETATION

1.1 **Definitions.** In this Agreement the following terms shall have the following meanings:

- (a) "Access Areas" means those lobbies, hallways, access and egress routes, stairways, elevators, and exterior walkways used for access to and egress from the Licensed Area;
- (b) "Commencement Date" means June 1, 2020 or such earlier date as mutually agreed to by the parties;
- (c) "Guests" means individuals assessed prior to selection by the Licensee, the Licensee's non-profit operator, Island Crisis Care Society or Island Health for vulnerability, suitability and compatibility for residency at the Facility, including the dependent children of Guests;
- (d) "Facility" means the building and facility operating under the name 'Community Services Building' situated on the Lands and containing the Licensed Area;

- (e) "Included Amenities" means those concessions and amenities to be provided by the Licensor in the Licensed Area during the Term, as extended, all as more particularly listed in Schedule "B" hereto;
- (f) "Lands" means those lands situated in the City of Nanaimo civically known as 285 Prideaux Street, Nanaimo, BC, V9R 2N2 and legally described as PID: 031-027-962 Lot B Section 1 Nanaimo District Plan EPP95349;
- (g) "Licensed Area" means that portion of the Facility more particularly described and/or shown in Schedule "A" hereto;
- (h) "Permitted Use" means the use of Licensed Area for the temporary housing of Guests, the dependent children of Guests, and the pets of Guests
- (i) "Term" means the term of this Agreement, being four (4) months commencing on the Commencement Date, unless earlier terminated pursuant to section 12 or extended pursuant to section 4.2.

1.2 **Schedule.** The following schedules are attached to and form part of this Agreement:

Schedule "A"	Licensed Area
Schedule "B"	Included Amenities

2. LICENSEE'S CONDITIONS

2.1 **Conditions Precedent.** This Agreement is subject to the following conditions being satisfied on or before the 14th day of May, 2020:

- (a) the entering into this Agreement by the Licensee being approved by the Licensee's board of directors; and
- (b) the entering into this Agreement by the Licensee being approved by the Provincial Ministry of Finance.

2.2 **Licensee's Sole Benefit** The foregoing conditions precedent are for the sole benefit of the Licensee and must be declared satisfied by written notice from the Licensee to the Licensor on or before the date set above, otherwise this Agreement will be terminated and of no force and effect. In consideration of the payment by the Licensee to the Licensor of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which the Licensor hereby acknowledges, the Licensor agrees that it will not revoke its acceptance of the terms of this Agreement prior to the fulfilment of the forgoing Licensee conditions precedent.

3. LICENSOR'S CONDITIONS

3.1 **Condition Precedent.** This Agreement is subject to the condition that the entering into this Agreement by the Licensor is approved by the Licensor's city council, which such condition is to be satisfied on or before the 26th day of May, 2020.

- 3.2 **Licensor's Sole Benefit** The foregoing condition precedent is for the sole benefit of the Licensor and must be declared satisfied by written notice from the Licensor to the Licensee on or before the date set above, otherwise this Agreement will be terminated and of no force and effect. In consideration of the payment by the Licensor to the Licensee of \$10.00, and other good and valuable consideration, the receipt and sufficiency of which the Licensee hereby acknowledges, the Licensee agrees that it will not revoke its acceptance of the terms of this Agreement prior to the fulfilment of the forgoing Licensor conditions precedent.

4. LICENSES AND TERM

- 4.1 **Licenses.** The Licensor hereby grants the Licensee an exclusive license to occupy and use the Licensed Area for the Permitted Use during the Term, as extended, and a non-exclusive access and egress license over and through the Access Areas during the Term, as extended, all on the terms and conditions set out in this Agreement.
- 4.2 **Extension.** Upon the delivery of written notice from the Licensee to the Licensor not less than fourteen (14) days prior to the end of the then current Term, and subject to the mutual agreement of the parties hereto, the Licensee shall be permitted to extend the Term for four (4) additional terms of one month each, all on the same terms and conditions as contained herein.
- 4.3 **Residential Tenancy Act does not apply.** Each party acknowledges and agrees that this Agreement is an agreement which is excluded from the *Residential Tenancy Act* (British Columbia) pursuant to section 4 thereof. In the event that any court or tribunal (including the British Columbia Residential Tenancy Branch) finds that the Licensee or any occupant of any of the Licensed Area is a Licensee benefitting from the *Residential Tenancy Act* (British Columbia), then the Licensee will enter into a Mutual Agreement to End a Tenancy (#RTB-8) with the Licensor, in which the Licensee and the Licensor will agree to end the term of any such tenancy at the end of the Term, as extended.

5. FEE AND COSTS

- 5.1 **Fee.** The Licensor acknowledges and agrees that there will be no fee, rent or other such amount payable by the Licensee to the Licensor in connection with this Agreement during the Term, as extended.
- 5.2 **Costs** Save and except for the Licensor's legal and professional fees and costs, and the Licensor's insurance costs, the Licensee acknowledges and agrees that it will be responsible for all costs, charges, expenses or outlays directly connected with its use of the License Area and the Access Routes pursuant to the terms of this Agreement during the Term, as extended, and except as set out above, otherwise agreed to between the parties, or set out herein, the Licensor will not be responsible for any costs, charges, expenses or outlays directly connected with the Licensee's use of the License Area and the Access Routes pursuant to the terms of this Agreement during the Term, as extended.

6. USE

- 6.1 **Permitted Uses.** During the Term, as extended, the Licensee will use the Licensed Area for the Permitted Use.
- 6.2 **Operation.** The Licensor acknowledges and agrees that although the Licensee is the named Licensee hereunder, the Licensee may engage Island Health and/or a non-profit operator selected by the Licensee to manage the use of Licensed Area by Guests during the Term, as extended.

7. COVENANTS OF THE LICENSEE

- 7.1 **Covenants.** The Licensee covenants and agrees with the Licensor to:
- (a) promptly pay, when due, or upon receipt of invoices for same from the Licensor, such costs that it is required to pay pursuant to section 5.2;
 - (b) pay for the cost of any modifications or improvements made to the Licensed Area;
 - (c) provide on-site security to the Licensed Area at all times during the Term, as extended, 24 hours per day, 7 days a week, at its sole cost;
 - (d) provide to and post in conspicuous areas around the Licensed Area, a no visitors policy applicable to all Guests and to take commercially reasonable efforts to enforce such policy;
 - (e) to provide sanitary conditions according to Island Health standards required to control the COVID-19 epidemic;
 - (f) to provide adequate on-site staff to support the physical and mental health needs of the Guests;
 - (g) install, operate, and remove, at its sole expense, temporary showers and washrooms for use by Guests; and
 - (h) co-operate with the Landlord's efforts to relocate existing tenants leasing space in the Licensed Area, with the reasonable costs of the Landlord incurred in such relocation efforts to be paid by the Tenant, at a maximum of \$10,000.
- 7.2 **Nuisance.** The Licensee will not carry on, or suffer or permit to be carried on, upon the Licensed Area anything which would constitute a nuisance to the Licensor or to any neighbouring properties or their owners or occupants provided, however, that the lawful occupation of the Licensed Area by the Guests in accordance with the terms of this License shall not, in and of itself, constitute a nuisance.

8. COVENANTS OF THE LICENSOR

- 8.1 **Included Amenities.** The Licensor covenants and agrees that the Included Amenities will be available to Guests, the Licensee, the Licensee's non-profit operator, Island Crisis Care Society and Island Health throughout the Term, as extended, to the satisfaction of the Licensee, acting reasonably, and in accordance with the terms of this Agreement.
- 8.2 **Quiet Enjoyment.** The Licensor covenants and agrees that if the Licensee observes and performs its obligations under this Agreement, Guests will be entitled during the Term, as extended, to peaceably hold and enjoy the

Licensed Area without interference or interruption by the Licensor or any person claiming under the Licensor. The Licensee acknowledges that the property adjacent to the Facility is being redeveloped.

- 8.3 **Co-Operation.** The Licensor and the Licensee covenant and agree to work collaboratively and co-operate in good faith and acting reasonably to address any unexpected issues that arise as a result of the housing of Guests in Licensed Area during the Term, as extended, as well as the changing nature of the COVID-19 pandemic as it impacts the housing of Guests in Licensed Area during the Term, as extended.
- 8.4 **Confidentiality.** During the Term, as extended, and thereafter the Licensor shall keep all information received from the Licensee in connection with this Agreement, including the terms hereof, strictly confidential and shall not disclose same unless so directed by the Licensee. The Licensee acknowledges that a copy of this License will be presented to the Licensor's city council for approval in an open council meeting, as per the condition precedent stipulated in section 3.1.

9. INSURANCE

- 9.1 **Licensor's Policy.** The Licensor will, prior to the Commencement Date, add the Licensee and the British Columbia Housing Management Commission as additional insureds under the Licensor's insurance policy for the Facility, which policy will be to the satisfaction of the Licensee, and the Licensor covenants and agrees to promptly make such reasonable modifications to such insurance policy as are required by the Licensee in connection with the Licensee's use of the Facility pursuant to this Agreement.
- 9.2 **Provision and Maintenance of Licensor's Policy.** On or prior to the Commencement Date the Licensor will provide the Licensee with a copy of its insurance policy for the Facility showing that the Licensee and the British Columbia Housing Management Commission have been added thereto as additional insureds, and will maintain its insurance throughout the Term, as extended, all to the satisfaction of the Licensee.
- 9.3 **Licensee to Insure Use.** The Licensor acknowledges that the Licensee will insure all or part of its risks in connection with this Agreement under its self insurance program, and will be under no obligation to have in place additional insurance during the Term, as extend

10. INDEMNITY

- 10.1 **Licensee Indemnity.** Save and except for when the same is caused by the negligence or wilful acts of the Licensor's officers, directors, employees, agents, contractors and subcontractors and anyone else for whom the Licensor is responsible at law (collectively, the "**Licensor Parties**") the Licensee agrees to indemnify and hold the Licensor Parties forever harmless from, and against, any and all liability or claim of liability for any personal injury or property damage that occurs as a result of the use by Guests of the Licensed Area during the Term, as extended.

- 10.2 **Licensor Indemnity.** Save and except for when the same is caused by the negligence or wilful acts of the Licensee's officers, directors, employees, agents, contractors and subcontractors and anyone else for whom the Licensee is responsible at law (collectively, the "**Licensee Parties**") the Licensor agrees to indemnify and hold the Licensee Parties forever harmless from, and against, any and all liability or claim of liability that the Licensee Parties may incur or accrue for any personal injury or property damage that occurs as a result of the negligence or wilful acts of the Licensor Parties or any breach by the Licensor of its covenants and obligations hereunder.

11. DAMAGE

- 11.1 Usual wear and tear excepted, the Licensee covenants and agrees to repair and make good any damage caused to the Facility by Guests during the Term to a condition as close as possible to the condition that such damaged portions of the Facility were in prior to the Commencement Date. The Licensee acknowledges that the Facility was not designed for residential use and is not intended for such use and that the exception for usual wear and tear does not include usual wear and tear caused by the use of the Licensed Area for residential purposes.

12. TERMINATION

- 12.1 Notwithstanding any other provision of this Agreement, the Licensee shall have the right to terminate this Agreement after July 15, 2020 upon the provision of not less than fourteen (14) days' written notice to the Licensor (the "**Notice**"), and if the Licensee delivers the Notice to the Licensor this Agreement will terminate on the date set out in the Notice, following which date this Agreement shall be null and void and neither the Licensee or the Licensor will have any obligations to their counterpart hereunder, save and except for the Licensor's confidentiality obligations hereunder.
- 12.2 In the event of a default or failure to comply with any of the terms of this Agreement, the Licensee will have (14) days' time to cure the default. The Licensor shall have the right to terminate the Agreement with (14) days' written notice if such default is not cured. In the event of a default which may cause a health emergency to the Guests and surrounding community, the Licensee shall immediately relocate the Guests to an acceptable location to contain the hazard. In the event of such default, the Licensor shall have the right to have appoint an alternate operator and take such steps as necessary to contain the hazard.

13. GENERAL PROVISIONS

- 13.1 **Time.** Time is of the essence of this Agreement.
- 13.2 **Governing Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of British Columbia and the laws of Canada applicable therein.
- 13.3 **Construction.** The division of this Agreement into sections and the use of headings are for convenience of reference only and are not intended to

govern, limit, or aid in the construction of any provision contained in this Agreement. In all cases, the language in this Agreement will be construed simply, according to its fair meaning, and not strictly for or against either party.

- 13.4 **No Waiver.** Neither party will be deemed to have waived the exercise of any right under this Agreement unless such waiver is in writing. Failure by either party to exercise any of its rights, powers or remedies hereunder, or its delay in doing so, shall not constitute a waiver of those rights, powers or remedies.
- 13.5 **Relationship.** Nothing in this Agreement will create any relationship between the Licensors and Licensee except that of Licensors and Licensee.
- 13.6 **Notices.** Any demand or notice which may be given pursuant to this Agreement will be in writing and delivered or faxed and addressed to the other party as follows:

to the Licensors:

City of Nanaimo
411 Dunsmuir Street
Nanaimo B.C. V9R 0E4
Attention: Bill Corsan, Director, Community Development
Phone: 250-755-4426
Email: bill.corsan@nanaimo.ca

to the Licensee:

Provincial Rental Housing Corporation
1701 – 4555 Kingsway
Burnaby B.C. V5H 4V8
Attention: Patrick Murphy, Director, Real Estate Services
Phone: 604-439-4710
Email: pmurphy@bchousing.org

or at such other address or fax number as such party may specify in writing to the other party. The time of giving and receiving any such notice will be deemed to be on the day of delivery or transmittal.

- 13.7 **Overholding.** If the Licensee remains in possession of the Licensed Area after the expiry of the Term, the Licensee will be deemed to be occupying the Licensed Area on a month to month license and the provisions of this Agreement will continue to bind the Licensors and the Licensee to the extent that they apply to a month to month license.
- 13.8 **Enuring effect.** This Agreement will enure to the benefit of and be binding upon the successors and assigns of the Licensors and the successors and permitted assigns of the Licensee.
- 13.9 **Modification or Amendment.** Except as expressly provided in this Agreement no amendment, supplement, restatement or termination of any provision of this Agreement is binding unless it is in writing and signed by the Licensors and the Licensee.

13.10 **Further Assurances.** The parties will forthwith from time to time execute and do or cause to be executed and done all further deeds, documents, acts and things which in the reasonable opinion of the legal advisors of the Licensor or Licensee are necessary or advisable for the clarification or performance of the terms and conditions of this Agreement.

13.11 **Counterparts.** This Agreement may be executed and delivered by the parties in one or more counterparts, each of which when so executed will be deemed to be an original, and each of which may be delivered by facsimile, email or other functionally equivalent electronic means of transmission, and such counterparts together will constitute one and the same instrument.

IN WITNESS WHEREOF the Licensor and Licensee have executed this Agreement as of the dates set forth below.

CITY OF NANAIMO

Per: _____
(Authorized Signatory)

(Name & Title)

Date: _____

PROVINCIAL RENTAL HOUSING CORPORATION

Per: _____
(Authorized Signatory)

Patrick Murphy
Director of Real Estate Services
(Name & Title) **Development and Asset Strategies**

Date: May 12, 2020

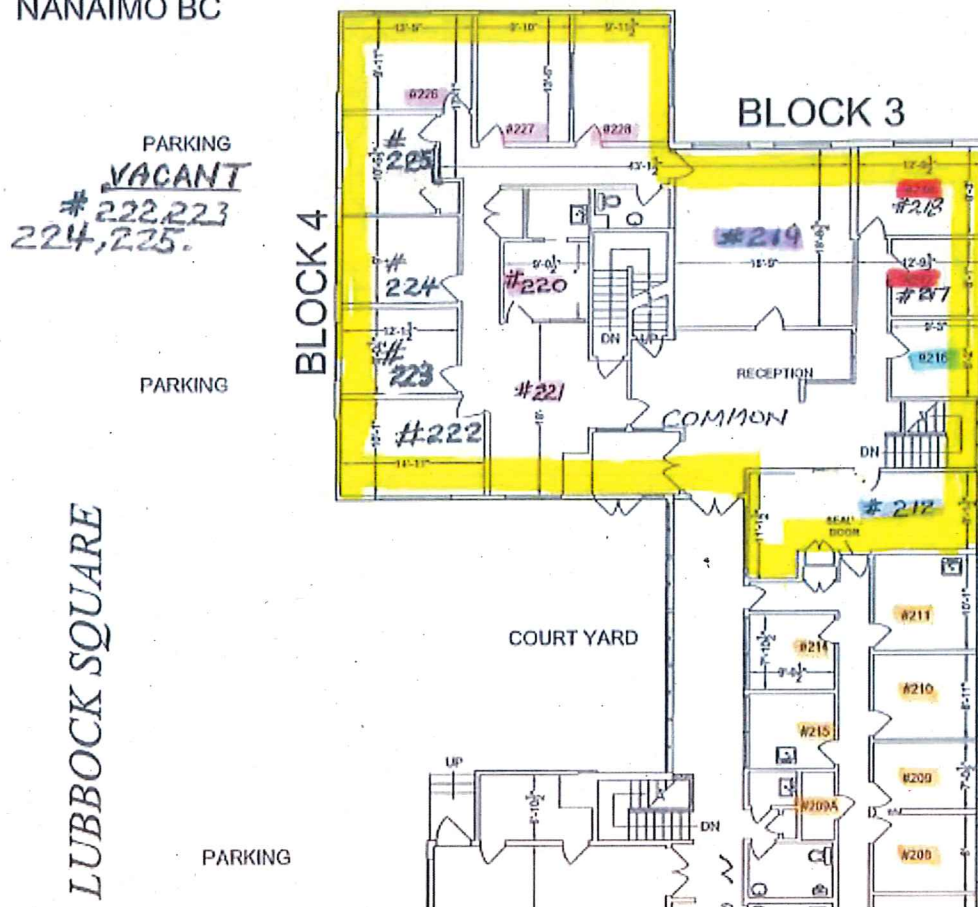
SCHEDULE "A"

LICENSED AREA

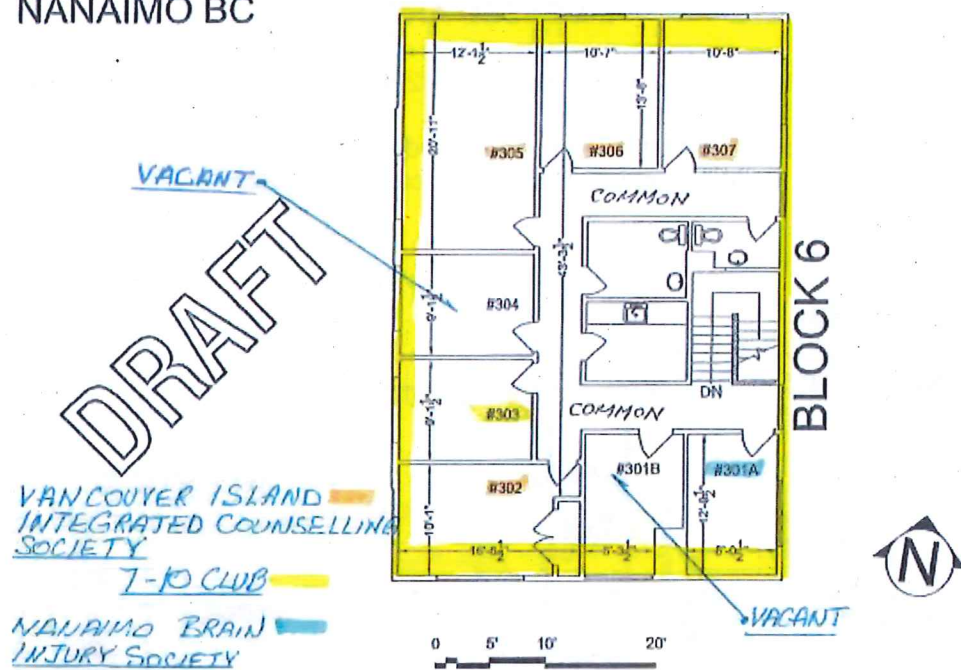
From June 1, 2020 to July 31, 2020: Units 212, 216 – 228, 301 – 307 + additional common space

From August 1, 2020 to the end of the Term, as extended: Units 101 – 107, 116, 212, 216 – 228, 301 – 307 and additional common space

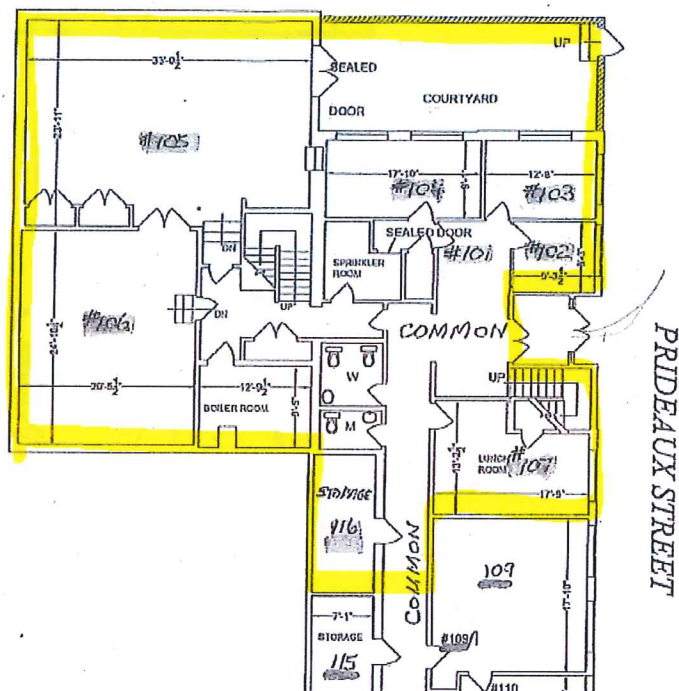
MAIN LEVEL
285 PRIDEAUX ST
NANAIMO BC



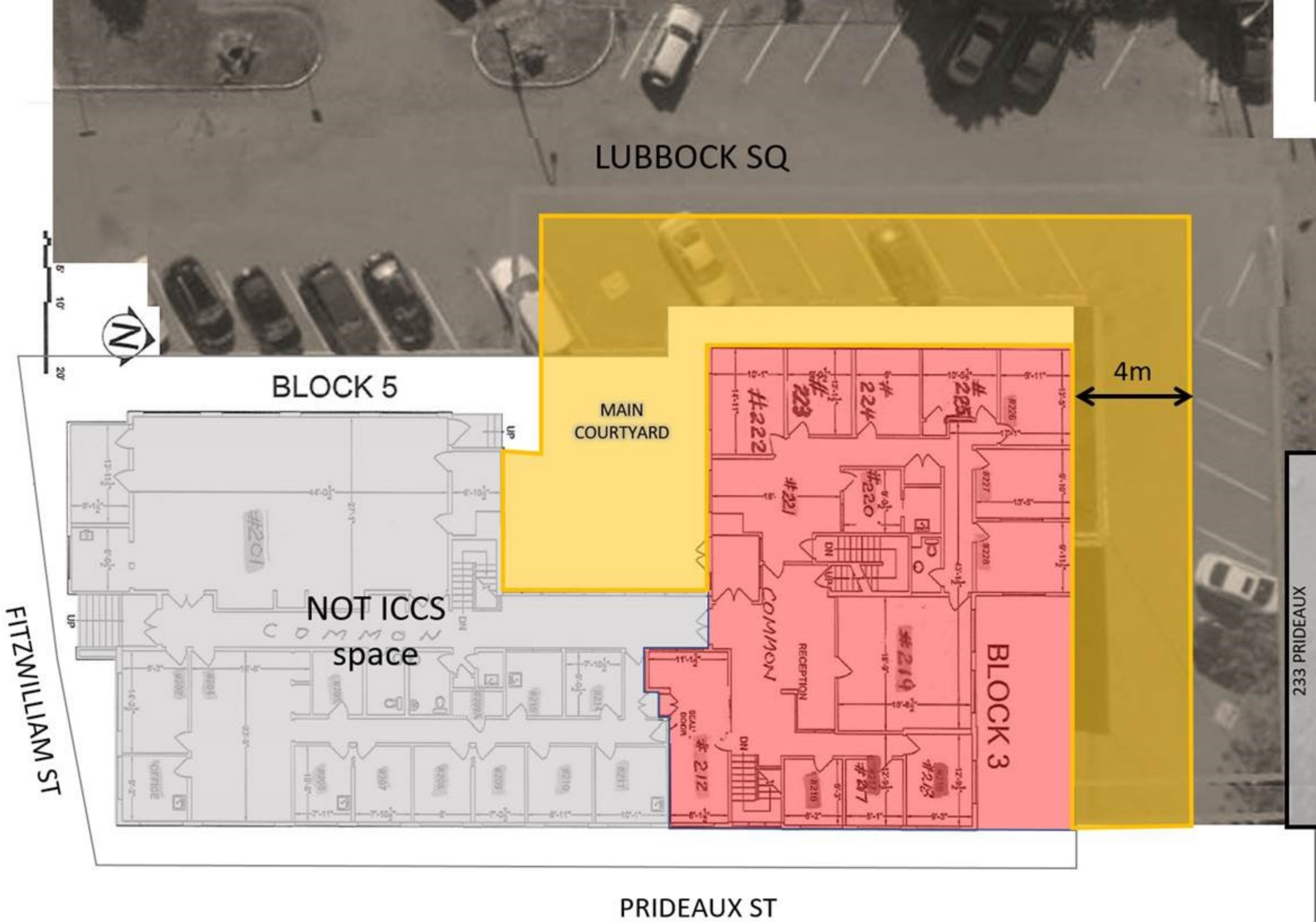
UPPER LEVEL
285 PRIDEAUX ST
NANAIMO BC



LOWER LEVEL
285 PRIDEAUX ST
NANAIMO BC



SITE PLAN



SCHEDULE "B"

**INCLUDED
AMENITIES**

- None included