



1. Application

Doak Shirreff Lawyers LLP
Barristers and Solicitors
200 - 537 Leon Avenue
Kelowna BC V1Y 2A9
250.763.4323

2. Description of Land

PID/Plan Number	Legal Description
030-401-577	LOT 1 DISTRICT LOT 139 OSOYOOS DIVISION YALE DISTRICT PLAN EPP78052

3. Nature of Interest

Type	Number	Additional Information
LEASE		

4. Terms

Part 2 of this Instrument consists of:
(b) Express Charge Terms Annexed as Part 2

5. Transferor(s)

CITY OF KELOWNA

6. Transferee(s)

PATHWAYS ABILITIES SOCIETY	S0004315
123 FRANKLYN ROAD	
KELOWNA BC V1X 6A9	

7. Additional or Modified Terms



8. Execution(s)

This instrument creates, assigns, modifies, enlarges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

YYYY-MM-DD

City of Kelowna
By their Authorized Signatory

Print Name:

Print Name:

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Witnessing Officer Signature

Execution Date

Transferor / Transferee / Party Signature(s)

ALISON J. McLEOD
Barrister & Solicitor
Doak Shirreff LLP
#200 - 537 Leon Avenue
Kelowna, BC V1Y 2A9

YYYY-MM-DD
2023-03-27 AM 2:48

Pathways Abilities Society
By their Authorized Signatory

Print Name: Charisse Daley

Officer Certification

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

Electronic Signature

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

TERMS OF INSTRUMENT - PART 2

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WHEREAS:

- A. The Lessee wishes to provide housing for persons with special housing requirements and/or limited income and agrees to lease the Lands for this purpose.
- B. The Commission, a representative of the Province, has agreed to provide financial assistance in connection with the foregoing.
- C. The Lessor is the owner of the Lands and has agreed to lease to the Lessee the Lands for the Term upon the terms, conditions and provisos herein so that the Lessee may renovate or construct the Building and otherwise use, occupy and enjoy the Lands.

WITNESS that in consideration of the rents reserved and the covenants and agreements set forth below, the parties agree as follows:

THE LESSOR HEREBY DEMISES AND LEASES UNTO THE LESSEE AND THE LESSEE DOES HEREBY TAKE AND RENT THE LANDS, TO HAVE AND TO HOLD THE LANDS UNTO THE LESSEE FOR AND DURING THE TERM AS HEREIN PROVIDED.

IN CONSIDERATION OF THE SUM OF TEN DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION PAID AND PROVIDED BY THE COMMISSION TO BOTH THE LESSOR AND THE LESSEE, BOTH THE LESSOR AND THE LESSEE COVENANT AND AGREE WITH THE COMMISSION THAT THE COMMISSION WILL HOLD AND ENJOY THE RIGHTS, BENEFITS, PRIVILEGES, AUTHORITY AND DISCRETIONS GRANTED TO THE COMMISSION IN THIS LEASE.

ARTICLE 1
DEFINITIONS AND INTERPRETATION

- 1.1 Capitalized terms used in this Lease have the meanings specified in this section 1.1, unless otherwise provided in this Lease:
 - (a) "Additional Rent" means all sums, costs, expenses and other amounts, if any, payable by the Lessee to the Lessor pursuant to this Lease, including, without limitation, Realty Taxes, payments in lieu of Realty Taxes, Utilities and all sums payable by way of indemnity under this Lease, but excluding Basic Rent;
 - (b) "Alterations" means all alterations, changes, replacements, substitutes, additions and improvements to the Building;
 - (c) "Approved Lender" means any Mortgagee approved by Canada Mortgage and Housing Corporation for the purpose of making loans under the *National Housing Act* (Canada);
 - (d) "Architect" means the architect qualified as such pursuant to the laws of the province of British Columbia who is supervising the design, construction, repair, renovation and/or reconstruction of the Building;
 - (e) "Basic Rent" means ten dollars (\$10.00);

- (f) "Building" means the building(s) and all other structures to be constructed on the Lands, together with all Alterations or repairs thereto and all improvements from time to time constructed upon or affixed or appurtenant to the Lands;
- (g) "City" means the City of Kelowna;
- (h) "Commencement of Construction" means the later of the date when the first building permit for the Building is issued to the Lessee by the City and the date when the Lessee's contractor commences any work on the Lands related to construction of the Building;
- (i) "Commission" means British Columbia Housing Management Commission or its successors in function;
- (j) "Corporation" means Canada Mortgage and Housing Corporation or its successors in function, or the Commission;
- (k) "Eligible Occupant" means a person who, during the time that such person is an occupant in the Building, meets the criteria prescribed in an Operating Agreement or prescribed in a separate document provided by the Commission and delivered to the Lessee from time to time; the parties acknowledge that as of the date hereof, "Eligible Occupant" means a person who, as of the date of commencement of residency, has Low and Moderate Income;
- (l) "General Instrument" means the Form C - *Land Title (Transfer Forms) Regulation* pursuant to the *Land Title Act* (British Columbia), and all schedules and addenda to the Form C;
- (m) "Insured Loan" means a loan in respect of which an insurance policy has been issued under the *National Housing Act* (Canada) and is in force;
- (n) "Interest Adjustment Date" means the date from which the principal amount of the Insured Loan together with interest thereon becomes payable by regular instalments;
- (o) "Lands" means all of the Lessor's interest in the land described in the General Instrument, including every incidental right, benefit or privilege attaching to that land or running with it;
- (p) "Lease" means this Lease;
- (q) "Lease Commencement Date" means the date this Lease is registered at the Land Title Office;
- (r) "Lessee" means Pathways Abilities Society;
- (s) "Lessor" means the City of Kelowna;

- (t) "Losses" means liabilities, actions, judgments, claims, losses, damages, fines, penalties, expenses, professional and other fees and disbursements, and costs;
- (u) "Low and Moderate Income" represents the maximum income for eligibility to occupy a residential unit within the Building and means:
 - (i) For residential units with less than two (2) bedrooms, a gross household income that does not exceed the median income for families without children, as determined by the Commission from time to time (for 2023, this figure is \$82,310.00); and
 - (ii) For residential units with two (2) or more bedrooms, a gross household income that does not exceed the median income for families with children, as determined by the Commission from time to time (for 2023, this figure is \$120,990.00);
- (v) "Mortgage" means a registered mortgage or registered mortgages granted by the Lessee in accordance with section 16.1 upon or in respect of the interest of the Lessee in the Lands and the Building or any part thereof and includes any deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (w) "Mortgagee" means a mortgagee or mortgagees under a Mortgage and includes any trustee for bondholders or debenture holders under a deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (x) "Operator" means a non-profit organization with which the Commission has entered into an Operating Agreement;
- (y) "Operating Agreement" means an agreement or agreements entered into or to be entered into between the Commission and an Operator that relate to the management of the Building and the provision of housing to Eligible Occupants;
- (z) "Permitted Encumbrances" means the charges and encumbrances, if any, registered on title on the Lease Commencement Date and any other charges specifically approved in writing by both the Commission and the Lessor;
- (aa) "Personnel" of a party means, as applicable, the elected officials and directors, officers, employees, servants and agents of that party;
- (bb) "Province" means Her Majesty the Queen in Right of the Province of British Columbia;
- (cc) "PRHC" means the Provincial Rental Housing Corporation;
- (dd) "Prime Rate" means the floating annual percentage rate of interest established from time to time by the main branch of the Bank of Montreal located in Vancouver, British Columbia, or its successor, as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to

customers in Canada and designated by the Bank of Montreal as its “prime rate”;

- (ee) “Realty Taxes” means all assessments for taxes, rates, duties (including school taxes, local improvement rates and other charges levied pursuant to the *Hospital District Finance Act* (British Columbia), the *Municipal Finance Authority Act* (British Columbia) or otherwise and all other charges for services used in or supplied to the Lands and the Building (including penalties and interest) that now are or will or may be levied, rated, charged or assessed against the Lands, the Building, and all other structures, machinery, equipment, facilities and other property of any nature whatsoever located thereon or therein, charged by any municipal, parliamentary, legislative, regional, school or other authority;
- (ff) “Review Date” means the date on which the constitution and bylaws of the Lessee are approved in writing by the Commission;
- (gg) “Term” means sixty (60) years commencing on the Lease Commencement Date;
- (hh) “Trustee” means a trust company duly authorized to carry on business in the Province of British Columbia and appointed by the Corporation, or the Lessor if the Corporation has no interest in the Lands and the Building, for the purposes of Article 9 of this Lease; and
- (ii) “Utilities” means all charges, rates and levies on account of utilities, including for heat, electricity, gas, telephone, television, internet and other costs and expenses of a similar nature, and, if not included in Realty Taxes, for water and garbage collection.

1.2 Any reference in this Lease to legislation will be deemed to include all regulations thereto, all amendments and re-enactments thereof and all successor legislation.

ARTICLE 2 PAYMENT OF RENT

2.1 Basic Rent

The Lessee covenants and agrees with the Lessor to pay to the Lessor as rent the Basic Rent for the Term on the Lease Commencement Date.

2.2 Net Lease

All Basic Rent and Additional Rent required to be paid by the Lessee hereunder will be paid at such location as the Lessor may stipulate from time to time without any deduction, abatement or set-off whatsoever, it being the intention of this Lease that:

- (a) all expenses, costs, payments and outgoings incurred in respect of the Lands, the Building and any other improvements on the Lands or for any other matter or thing affecting the Lands, will, unless otherwise expressly stipulated herein to the contrary, be borne by the Lessee; and

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Ground Lease - 555 Fuller Ave, Kelowna BC

- (b) the Basic Rent and Additional Rent payable under this Lease will be absolutely net to the Lessor and free of all abatements, set-off or deduction of any costs, payments and outgoing of every nature arising from or related to the Lands, the Building, or any other improvements on the Lands, and the Lessee will pay or cause to be paid all such costs, payments and outgoings.

ARTICLE 3 PAYMENT OF TAXES

3.1 Payment of Realty Taxes if Lands Not Exempt

Save as otherwise provided in section 3.2, the Lessee will, during the Term, no later than the day immediately preceding the date or dates on which the Realty Taxes become due and payable, pay and discharge or cause to be paid and discharged the Realty Taxes and, if requested by the Lessor, will deliver to the Lessor for inspection receipts for payments of the Realty Taxes within fourteen (14) days of such payment. Not later than thirty (30) days following receipt of any tax assessment or notice the Lessor will deliver a copy of such assessment or notice to the Lessee.

3.2 Payment in Lieu of Realty Taxes if Lands Exempt

The Lessee covenants and agrees with the Lessor that if during the Term all or any part of the Lands, Building, structures, machinery, equipment and facilities thereon and therein and any other property of any nature whatsoever thereon and therein are exempt from Realty Taxes in whole or in part, then the Lessee will, in each and every year during the Term that such exemption occurs, pay to the Lessor as Additional Rent, at the same time as Realty Taxes would be payable if such exemption were not available, an amount equal to the amount that would be payable as Realty Taxes if such exemption were not available.

3.3 Right to Appeal Assessment

The Lessee will have the right from time to time to appeal, in its own or the Lessor's name, any assessment of the Lands or Building or any Realty Taxes referred to in sections 3.1 and 3.2, provided that such appeal will be at the sole expense of the Lessee.

3.4 Business Tax and License Fees

The Lessee covenants with the Lessor to pay or cause to be paid during the Term when due every tax and permit and license fee (including penalties and interest) in respect of any and every business carried on, in or upon the Lands or Building or in respect of the use or occupancy of the Lands or Building by the Lessee (and any and every sublessee, permittee and licensee), other than such taxes as corporate income, profits or excess profit taxes assessed upon the income of the Lessee (or such sublessee, permittee and licensee), whether such taxes or permit and license fees are charged by any municipal, parliamentary, legislative, regional or other authority.

3.5 Other Taxes

The Lessee will pay when due all goods and services taxes, value-added taxes, sales taxes and consumption based taxes, rates, levies and assessments, including penalties and interest, that are from time to time payable by the Lessee as a result of its rights and obligations contained in this Lease, including but without derogating from the generality of the foregoing, such taxes, rates, levies and assessments payable as a result of any payment obligations herein of the Lessee to the Lessor.

3.6 Pro-rating Obligations

In the first and last years of the Term, the Lessee's obligations under sections 3.1 and 3.2 will be pro-rated according to the portion of the year included in the Term, such pro-rating to be on a per diem basis.

3.7 Application of Sections 3.1 and 3.2

Sections 3.1 and 3.2 will not apply during such time as the Building is used or is intended to be used to house Eligible Occupants, it being the intent of the parties that the Lands and Building will be exempt from Realty Taxes or payments in lieu of Realty Taxes if the Building is intended to be used to house Eligible Occupants.

ARTICLE 4
CONSTRUCTION OF BUILDING

4.1 Lessee to Construct Building

The Lessee will construct the Building, together with other facilities ancillary thereto and connected therewith, on the Lands in substantial accordance with the drawings, specifications (including materials to be used), elevations, location on the Lands and exterior decoration and design and all other documents and information upon which the issuance of the building permits by the City are based and that have been approved by the Lessor and the Commission. No changes will be made to such drawings, specifications, elevations, location, exterior decoration and design, other documents or information, or to the requirements of such building permits without the approval of the Lessor and the Commission, provided that the Commission may approve minor changes allowed by the building permit(s) for the Building without the approval of the Lessor.

4.2 Substantial Completion of Building

For the purposes of this Article 4, the Building will be deemed to have been substantially completed when the Architect has certified to, or otherwise satisfied, the Lessor and the Commission that, with respect to the Building:

- (a) all work of a structural nature has been properly completed;
- (b) all building equipment and services, including elevators (if any), heating systems and air-conditioning systems (if any), and utilities have been completed, are operating properly and are available for use by tenants of the

Lessee, and all lobbies, stairwells and other areas intended for the common use of tenants of the Lessee are completed except for work of a superficial nature, which is both minor in character and of a type that, owing to the likelihood of damage, may reasonably be deferred until the Building is partially or substantially occupied by tenants of the Lessee;

- (c) all building bylaws and regulations of the City have been complied with by the Lessee;
- (d) all rentable space is completed for occupancy except for work of a superficial nature that is dependent upon unascertained requirements of individual tenants of the Lessee, and work that is reasonably and customarily performed by tenants of the Lessee;
- (e) all areas are clean and all surplus building material and rubbish have been removed;
- (f) the Building is in a condition in which it can be occupied by tenants of the Lessee, and any work that is still unfinished can be completed promptly and is work the incompleteness of which will not be objectionable to a tenant of the Lessee acting reasonably;
- (g) the Building has been constructed in all respects in a good and workmanlike manner and in accordance with the drawings and specifications, location on the Lands and the exterior decoration and design approved in writing by the Lessor, and in compliance with all building permits issued by the City; and
- (h) a certificate of completion has been issued in respect of the Building pursuant to the *Builders Lien Act* (British Columbia).

4.3 Termination of Lease on Failure to Construct

Subject to sections 4.6 and 18.2 and Article 23, if Commencement of Construction has not taken place within one hundred and eighty (180) days of the Lease Commencement Date, or if construction of the Building is not substantially completed in accordance with the requirements of section 4.1 within one hundred and eighty (180) days after the second anniversary of the Lease Commencement Date, the Lessor will have the option at any time thereafter to terminate this Lease, and in such event this Lease will terminate and be of no further force or effect and without any reimbursement or compensation to the Lessee, unless the Lessor consents in writing to extend the deadline for Commencement of Construction, such consent not to be unreasonably withheld.

4.4 Landscaping

Within one hundred and eighty (180) days of substantial completion of the Building, the Lessee will landscape the Lands and thereafter maintain the landscaping in accordance with landscaping plans that have been approved by the Commission and the Lessor.

4.5 Alterations After Substantial Completion

After substantial completion of the Building, the Lessee will not make or permit to be made any Alterations affecting the structure of the Building or the exterior appearance of the Building without the written approval of the Lessor and the Commission, which approval the Lessor and the Commission will not unreasonably withhold. No Alterations involving an estimated cost of more than thirty thousand dollars (\$30,000.00) (in 2022 dollars) will be undertaken until the Lessee has submitted or caused to be submitted to the Lessor and the Commission such drawings, specifications (including the materials to be used), elevations (where applicable), locations (where applicable), exterior decoration and design and such other documentation and information as the Lessor and the Commission may request in connection with the proposed Alterations, and until all of the same have been approved in writing by the Lessor and the Commission, which approval the Lessor and the Commission will not unreasonably withhold. The Lessee covenants and agrees with the Lessor and the Commission that, subject to section 4.6, all Alterations undertaken by or for the Lessee once begun will be prosecuted with due diligence to completion.

4.6 Unavoidable Delays

If, by reason of strike, lock-out or other labour dispute, material or labour shortage not within the control of the Lessee, fire, explosion, flood, wind, water, earthquake, act of God or other similar circumstances beyond the reasonable control of the Lessee and not avoidable by the exercise of reasonable effort or foresight by the Lessee, the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in achieving Commencement of Construction or substantial completion of the Building in accordance with section 4.2 or the repair of the Building or any part or parts of the Building which under the terms of this Lease the Lessee is required to do by a specified date or within a specified time, the date or period of time within which such work was to have been completed will be extended by the Lessor by a reasonable period of time at least equal to that of such prevention or delay, and the Lessee will not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Lease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Lessor, the Lessee and the Commission.

ARTICLE 5 BUILDERS LIENS

5.1 Builders Liens

In connection with all labour performed on or materials supplied to the Lands, including but not limited to the construction of the Building, the Lessee will comply with, and will cause any contractor hired by it to comply with, the provisions of the *Builders Lien Act* (British Columbia), and with all other statutes applicable in connection therewith and in force from time to time, including any provision or statute requiring or permitting the retention of portions of any sums payable by way of holdbacks.

5.2 Discharge of Builders Liens

If and whenever any builders lien, or other lien or claim arises or is filed against the Lessor's interest in the Lands in connection with work, labour, services or materials supplied to or for the Lessee or for the cost of which the Lessee may in any way be liable, the Lessee will, within fifteen (15) days after receipt of notice of such lien or claim, procure the discharge thereof, and the discharge of any certificate of pending litigation registered in respect of any such lien or claim, by payment or giving security or in such other manner as may be required or permitted by law; provided, however, that in the event of a bona fide dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee will not be bound by the foregoing, but will be entitled to defend against the same in any proceedings brought in respect thereof after first paying into a court of competent jurisdiction the amount claimed or sufficient security therefor, and such costs as the court may direct. The Lessor may pay and discharge any lien claim if, in its reasonable judgement, the Lands or the Lessor's interest in the Lands becomes liable to forfeiture or sale, or is otherwise in jeopardy. The Lessee will reimburse to the Lessor any amount paid by the Lessor in discharging a lien claim and the Lessor's reasonable expenses in connection therewith.

5.3 Notice by Lessor

Pursuant to section 3(2) of the *Builders Lien Act*, the Lessor may file in the Land Title Office notice of its fee simple interest in the Lands and for all purposes of this Lease the construction of the Building by the Lessee will be deemed not to be done at the request of the Lessor.

ARTICLE 6 RESTRICTIONS ON OPERATIONS AND USE

6.1 Use

Unless otherwise agreed to in writing by the Lessor and the Commission, during such time that an Operating Agreement is in place, the Lessee covenants and agrees with the Lessor and the Commission that neither the Lands nor Building nor any part of the Lands or Building will be used for any purpose except that of housing Eligible Occupants on a non-profit basis, subject always to the laws, bylaws, regulations and permits governing the use of the Lands and Building from time to time. In the event that, at any period during the Term, an Operating Agreement is not in place and the Commission has provided written confirmation to the Lessor that it does intend to find a replacement Operator or extend the Operating Agreement, then the Lessee covenants and agrees with the Lessor that neither the Lands nor Building nor any part of the Lands or Building will be used for any purpose except in accordance with the operating requirements attached hereto as Schedule 'A'. For greater certainty, the Lessee shall have no obligation to comply with the operating requirements attached hereto as Schedule 'A' for so long as an Operating Agreement is in place, and neither shall the Commission or an Approved Lender if either of the foregoing parties should attorn as tenant to the Lessor pursuant to the terms of this Lease.

Unless otherwise agreed to in writing by the Lessor and the Commission, the Lessee covenants and agrees with the Lessor and the Commission that neither the Lands nor

Building nor any part of the Lands or Building will be used for business, trade or manufacture without the written approval of the Lessor and the Commission, which approval the Lessor and the Commission may arbitrarily withhold. If, however, the Lessor and the Lessee determine that it is not practical or commercially reasonable to continue to carry on the use described in section 6.1, the Lessee may commence to use and occupy the Lands and Building for another use, including a commercial use that is approved by the Lessor, and if it elects to do so:

- (a) the Basic Rent will be adjusted, from time to time, to reflect the fair rental value of the Lands, without reference to the Building, given the use to which the Lands and Building are put, from time to time. If the parties cannot agree on the Basic Rent or the dates when the Basic Rent is to be adjusted, the Basic Rent and/or adjustment dates will be settled by arbitration pursuant to Article 20; and
- (b) the Lands and Building will not be exempt from Realty Taxes.

6.2 No Nuisance

The Lessee will not carry on, or suffer or permit to be carried on, upon the Lands anything which would constitute a nuisance to the Lessor or to any neighbouring properties or their owners or occupants provided, however, the occupation of the Lands and Building by Eligible Occupants in accordance with the terms of this Lease shall not constitute a nuisance.

6.3 No Subdivision

The Lessee covenants that it will not subdivide the Lands or the Building pursuant to the *Strata Property Act* (British Columbia).

6.4 Constitution

The Lessee agrees that without the prior written consent of the Commission, it will not amend or permit its constitution to be amended or varied in any way from the constitution filed in the British Columbia Corporate Registry as of the Review Date. If the Review Date is not established by the Commission, the Lease Commencement Date will be deemed to be the Review Date.

6.5 Restriction on Contracting

The Lessee covenants that:

- (a) it will not pay directly or indirectly to any of its directors or their relatives by blood or marriage (including common-law marriage) any money obtained from the operation of the Lands or the Building, or from the operation of other premises leased from the Lessor, or otherwise received from the Lessor, the Commission or the Province, without the express written consent of the Lessor, the Commission and/or the Province, as the case may be;

- (b) it will not, by contract or otherwise, pay to any of its former directors or their relatives by blood or marriage (including common-law marriage), pursuant to any contract or arrangement made when the former director was a director of the Lessee, money obtained from the operation of the Lands or the Building, or from the operation of other premises leased from the Lessor, or otherwise received from the Lessor, the Commission or the Province, without the express written consent of the Lessor, the Commission and/or the Province, as the case may be;
- (c) subject to sub-paragraphs (a) and (b), the Lessee may enter into bona fide arm's length contracts with occupants of the Building for the provision of services in furtherance of the good management of the Lands and the Building; and
- (d) notwithstanding the foregoing, the Lessee may reimburse its directors or occupants of the Building for out-of-pocket expenses incurred for the proper management of the Lands or the Building but only upon the proof of such expenditure by the production of bona fide receipts.

The Lessor may not terminate this Lease on account of a breach of this section 6.6 but such directors will forthwith and forever be disqualified from such directorship.

6.6 Permitted Encumbrances

During the Term, the Lessee, at its expense, will perform and observe all of the obligations of the Lessor and may enjoy all of the rights of the City as Lessor (but not those rights of the City in its regulatory capacity) set out in the Permitted Encumbrances. None of the Permitted Encumbrances will merge or be deemed to have merged with the Lessor's title to the Lands, and accordingly all Permitted Encumbrances will be deemed to be in full force and effect. The Lessor will execute such documents as might reasonably be requested by the Lessee to enable it to comply with its obligations and to enjoy its rights in respect of the Permitted Encumbrances. The Lessee further covenants and agrees with the Lessor that if the City exercises any of its rights in its regulatory capacity under the Permitted Encumbrances, such exercise will not be a breach of the Lessor's covenant for quiet enjoyment.

ARTICLE 7 REPAIRS AND MAINTENANCE

7.1 Lessor Not Obligated to Repair

The Lessor will not be obliged to furnish any services or facilities or to make repairs or Alterations in or to the Lands or the Building, and the Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Lands and the Building and all expenses related thereto.

7.2 Repairs by the Lessee

Reasonable wear and tear excepted, so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Building:

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- (a) the Lessee at the Lessee's cost and expense will put and keep in good order and condition, or cause to be put and kept in good order and condition, the Lands and Building (and any equipment located thereon and therein), both inside and outside, including but not limited to fixtures, walls, foundations, roofs, stairways, elevators (if any) and similar devices, heating and air conditioning equipment, sidewalks, yards and other like areas, water and sewer mains and connections, water, steam, gas and electric pipes and conduits, and all other fixtures and appurtenances to the Lands and the Building and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs and, subject to section 4.5, Alterations, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Building and any and all fixtures and equipment therein fully usable for the purposes for which the Building was constructed. Such repairs and Alterations will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Building, and will in each case be performed only in accordance with all applicable terms and conditions of the Permitted Encumbrances;
- (b) the Lessee will not commit or suffer waste to the Lands or the Building or any part thereof; and
- (c) if the Lessee does not fulfil its obligations set out in this Article 7, the Lessor or the Commission, through their agents, servants, contractors and subcontractors, may, but will not be obliged to, enter (without hindrance by the Lessee) upon the Lands and the Building as required for the purpose of making any repairs necessary to put the Lands and the Building in good order and condition, provided that the Lessor or the Commission will make such repairs only after giving the Lessee not less than fourteen (14) days written notice of its intention to do so, except in the case of an emergency when no notice will be required. Any costs and expenses (including overhead costs) incurred by the Lessor or the Commission in making such repairs to the Lands and Building will be reimbursed to the Lessor or the Commission, as the case may be, by the Lessee on demand, together with interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly, from the date incurred until the date paid.

7.3 Removal of Ice and Snow from Sidewalks

The Lessee covenants and agrees with the Lessor that if the Lessee at any time fails to keep the public sidewalk adjacent to the Lands reasonably clean from rubbish, ice and snow during the times and to the extent lawfully required of an owner, the Lessor, through its agents, servants, contractors and subcontractors, may remove such rubbish, ice and snow and the Lessor will not be required to give the Lessee any notice of its intention to do so. Any costs and expenses incurred by the Lessor in removing such ice and snow will be reimbursed to the Lessor by the Lessee on demand, together with interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly, from the date incurred until paid.

ARTICLE 8
ADDITIONAL RENT

8.1 All Defaults in Payment as Additional Rent

If the Lessee defaults in the payment of any sums required to be paid by it pursuant to the terms of this Lease, or fails to fulfil any of its obligations under this Lease, the Lessor may (but will be under no obligation to do so) pay such sums or fulfil such obligations on behalf of the Lessee, and any losses, costs, charges and expenses suffered by the Lessor as a result, including sums payable by way of indemnity, whether or not expressed in this Lease to be rent, may at the option of the Lessor be treated as and deemed to be Additional Rent, in which event the Lessor will have all remedies for the collection of such sums, costs, expenses or other amounts when in arrears as are available to the Lessor for the collection of rent in arrears.

ARTICLE 9
INSURANCE

9.1 Insurance During Construction of Building

Prior to the Commencement of Construction of the Building, and throughout the entire period of construction until substantial completion of the Building pursuant to section 4.2, the Lessee will effect or will cause its contractor or contractors to effect and maintain in full force the following insurance coverage:

- (a) wrap-up liability insurance with limits of not less than Five Million Dollars (\$10,000,000), or such other amount as the Lessor and the Commission may require from time to time, per occurrence, issued in the joint names of the Lessee, the Lessor, the Commission, the Lessee's contractors, any subcontractors and their respective Personnel, protecting them against claims for bodily injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands from any cause, including the risks occasioned by the construction of the Building; and
- (b) all-risk course of construction insurance issued in the joint names of the Lessee, the Lessor and the Commission, protecting them from all loss or damage of or to the Building and all fixtures, equipment, improvements and building materials on the Lands from time to time, both during and after construction (but which may be by different policies effected from time to time covering the risk during different phases of construction of the Building, provided that at no time will the Building be uninsured) against fire, earthquake, flood and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Lessor or the Commission may reasonably require to be insured against, to the full replacement value thereof at all times.

9.2 Commercial General Liability Insurance

The Lessee will effect and keep in force commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000), or such other amount as the Lessor and the Commission may require from time to time, per occurrence, against public liability claims for bodily injury, death and property damage (including loss of use) arising from the Lessee's use and occupancy of the Building and from any occurrence or accident on the Lands or Building. Such insurance will be written on an occurrence basis and will provide for blanket contractual liability, including liability assumed by the Lessee under this Lease. The policy will also contain a cross liability or severability of interests clause and will name the Lessor, the Commission and their respective Personnel as additional insureds with respect to third party claims arising out of the Lessee's operations pursuant to this Lease.

9.3 All Risk Property and Pressure Vessel Insurance

Immediately following substantial completion of the Building and at all times thereafter during the Term, the Lessee will effect and maintain property insurance in the joint names of the Lessor, the Commission and the Mortgagee (if any) as their interests may appear, to the full replacement value of the Building and fixtures on the Lands, protecting them against "All Perils" of loss or damage including flood, sewer backup and earthquake, and will include boilers and pressure vessels, protecting against usual perils, including damage caused by rupture of steam pipes. The policies described in this section 9.3 will contain a clause directing insurers to make losses payable to the Lessee, the Lessor, the Commission and the Mortgagee as their interests may appear.

9.4 Insurance - Additional Provisions

The following provisions will apply to all policies of insurance which are referred to in this Article 9:

- (a) the policies will be primary and non-contributing with respect to any policy or self-insured fund otherwise held or established on behalf of the Lessor or the Commission;
- (b) the stated amount of value insured under property policies will be of sufficient amount that none of the Lessee, the Commission nor the Lessor will become co-insurers with respect to any loss claimed against the insurance;
- (c) each policy will be written on a form acceptable to the Lessor and the Commission and with insurers licensed to do business in the Province of British Columbia and acceptable to the Lessor and the Commission;
- (d) any deductible amounts applying to a claim against a policy will be of an amount approved by the Lessor and the Commission;
- (e) each policy will contain a clause requiring that the insurers provide to the Lessor and the Commission a minimum of sixty (60) days prior written notice of

any cancellation (except for cancellation resulting from non-payment of premiums, in which case applicable statutory provisions will apply); and

- (f) all premiums and deductibles required under said policies will be paid by the Lessee to the insurers and proof of such payment will be submitted to the Lessor and the Commission.

In addition to the notification obligations of the insurers required by section 9.4(e), the Lessee will provide to the Lessor and the Commission a minimum of sixty (60) days prior written notice of any cancellation, lapse or material change resulting in reduction of coverage, either in whole or in part, in respect of any of the policies of insurance which are referred to in this Article 9.

9.5 Evidence of Insurance

Prior to the Lease Commencement Date the Lessee will provide the Lessor and the Commission with evidence of all insurance required to be taken out pursuant to this Lease, in the form of one or more detailed certificates of insurance, in such form(s) and contents as the Lessor and the Commission requests. Each certificate of insurance must identify the Lease number, policy holder and subject matter, and must not contain any disclaimer. Thereafter, and throughout the Term, forthwith upon request by the Lessor or the Commission, similar evidence of renewals, extensions or replacement of such insurance will be provided in the form of such certificate(s) of insurance. In addition, if requested by the Lessor or the Commission at any time, the Lessee will forthwith deliver to the Lessor or the Commission, as applicable, a certified copy of each insurance policy requested.

9.6 Payment of Loss Under Insurance Policies

The insurance monies payable under the policies of insurance referred to in this Article 9, will, notwithstanding the terms of the policy or policies, be paid to the Trustee on behalf of the Lessee, the Lessor, the Commission and the Mortgagee. The Lessee, the Lessor and the Commission agree that the Trustee will, subject to section 10.5, pay for all restoration, reconstruction or replacement of the loss or damage in respect of which such insurance monies were paid to the Trustee out of such insurance monies in accordance with certificates of the Architect or such other person as the Lessee, the Lessor and the Commission may agree upon and who is in charge of such restoration, reconstruction or replacement, after receiving such other certificates, evidence or opinions as the Trustee will require for the purpose of being satisfied that such restoration, reconstruction or replacement is being properly carried out. If the Lessee fails to restore, reconstruct or replace the loss or damage in respect of which the insurance monies were paid to the Trustee within a reasonable time, the Lessor and the Commission will be entitled to effect such restoration, reconstruction or replacement and the Trustee will pay such insurance monies to the Lessor or the Commission in the same manner that the Trustee would have done had the Lessee effected such restoration, reconstruction or replacement.

9.7 Workers Compensation Coverage

At all times during the Term, the Lessee will, and will cause its Personnel and all others engaged in or upon any work on the Building or the Lands to, comply with the *Workers Compensation Act* (British Columbia) (the "WCA") and the requirements and regulations under the WCA in respect of the Building and the Lands. Without limiting the generality of the foregoing, the Lessee will:

- (a) require as a condition of any agreement made with respect to construction, repair, renovation or demolition of the Building, whether with contractors, materialmen or otherwise, that there is full workers compensation insurance coverage in place in respect of all workers, employees, servants and others engaged in or upon any work, and that all workers, contractors or other persons require the same of their workers and subcontractors. The Lessee will immediately notify the Lessor and the Commission of any dispute involving third parties that arises in connection with obtaining and maintaining the workers compensation insurance coverage required hereby if such dispute results or may result in the required insurance coverage not being in place, and the Lessee will take all reasonable steps to ensure resolution of such dispute forthwith. The Lessee will further ensure that no amount payable pursuant to the WCA is left unpaid so as to create a lien on the Lands or the Building. If the workers compensation insurance coverage required by this section 9.7 is not in place, the Lessor and the Commission will be entitled to have recourse to all remedies specified in this Lease or at law or equity; and
- (b) be deemed to be, and is hereby designated and appointed by the Lessor as, the "Prime Contractor" as that term is defined in section 118 of the WCA for the purposes of the WCA and related regulations, including the Occupational Health and Safety Regulation (the "OHS Regulation"), and the requirements and regulations of WorkSafeBC, and will in that capacity strictly comply with all requirements applicable to that designation, as they may be amended from time to time. Notwithstanding the foregoing, with the prior written consent of the Lessor, a contractor hired by the Lessee to perform work on the Lands on its behalf may be designated as the Prime Contractor instead of the Lessee.

9.8 Release of Lessor and Commission from Liability for Insured Loss or Damage

The Lessee hereby releases the Lessor and the Commission and their respective Personnel, whether or not the Lessor, the Commission and their respective Personnel have been negligent, from any and all liability for loss or damage caused by any of the perils against which the Lessee will have insured or is obligated to insure pursuant to the terms of this Lease or any applicable law, or self insures if it elects to do so under section 9.9, the intent being that the Lessee's policies of insurance will contain a waiver of subrogation in favour of the Lessor and the Commission or, if the Lessee elects to self insure under section 9.9, the Lessee will release the Lessor and the Commission from any and all liability for loss or damage caused by the perils referred to in sections 9.1(b) and 9.3 to the same extent as if the Lessee had taken out insurance.

9.9 Lessor May Insure

If the Lessee fails to insure as required under this Article 9, the Lessor may effect the missing insurance in the name and at the expense of the Lessee and the Lessee shall promptly repay the Lessor all costs incurred by the Lessor in doing so. For clarity, the Lessor has no obligation to effect such insurance.

9.10 Insurance Exemption for Corporation and PRHC

Notwithstanding anything contained in this Lease, if for any reason and at any time the Corporation or PRHC is the Lessee, the Corporation or PRHC, as the case may be, will not be under any obligation to take out and keep in force any of the insurance required to be taken out and kept in force under sections 9.1(b) and 9.3 of this Article.

ARTICLE 10
DAMAGE OR DESTRUCTION

10.1 Rent Not to Abate

Subject to the provisions of sections 10.5 and 10.6, the partial destruction or damage or complete destruction by fire or other casualty of the Building will not result in the termination of this Lease or entitle the Lessee to surrender possession of the Lands or the Building or to demand any abatement or reduction of the Basic Rent or Additional Rent or other charges payable under this Lease, any law or statute now or in the future to the contrary notwithstanding.

10.2 Lessee's Obligation When Building Partially Damaged or Destroyed

Subject to the provisions of sections 10.5 and 10.6, the Lessee covenants and agrees with the Lessor and the Commission that in the event of partial damage to or partial destruction of the Building, the Lessee will either:

- (a) replace any part of the Building damaged or destroyed with a new structure in accordance with any agreement which may be made by the Lessee with the Lessor and the Commission; or
- (b) in the absence of any such agreement, repair or replace such damage or destruction to a standard comparable to the standard of the structure being repaired or replaced.

10.3 Lessee's Obligations When Building Completely or Substantially Destroyed

Subject to the provisions of sections 10.5 and 10.6, the Lessee covenants and agrees with the Lessor and the Commission that in the event of complete or substantially complete destruction of the Building, the Lessee will either:

- (a) reconstruct or replace the Building with a new structure or structures in accordance with any agreement which may be made by the Lessee with the Lessor and the Commission; or

- (b) in the absence of any such agreement, replace the Building with a new structure or structures comparable to the structure or structures being replaced.

10.4 Replacement, Repair or Reconstruction

Any replacement, repair or reconstruction of the Building or any part thereof pursuant to the provisions of section 10.2 or 10.3 will be made or done in compliance with section 4.5 and Article 7.

10.5 Special Provisions Where Approved Lender or Corporation is Mortgagee

- (a) If the Building is damaged or destroyed to the extent of at least twenty-five percent (25%) of the full replacement cost of the Building, and at the time of such damage or destruction the Mortgagee is an Approved Lender, and such Mortgagee notifies the parties that the insurance monies made available by reason of the casualty causing such damage or destruction will not be applied in repairing, reconstructing or replacing the Building, and the right to so elect is reserved to the Mortgagee under the terms of the Mortgage, then the Lessee may decline to repair, reconstruct or replace the Building and instead elect to terminate this Lease, provided that the Lessee makes such election within sixty (60) days after the date on which the Building was so damaged or destroyed and notifies the Lessor and the Commission of its election forthwith after making it. If the Lessee does not elect to so terminate this Lease, then the Lessee will repair, reconstruct or replace the Building or any part thereof damaged or destroyed in accordance with section 10.2 or section 10.3, as the case may be, and section 10.4;
- (b) If the Mortgagee is the Corporation and it attorns to the Lessor as tenant and undertakes to be bound by and perform the covenants and agreements of the Lease, and subsequently during the Term the Building is damaged or destroyed to the extent of at least twenty-five percent (25%) of the full replacement cost of the Building, the Corporation as tenant may at its option either repair, reconstruct or replace the Building so damaged or destroyed or decline to repair, reconstruct or replace the Building and instead elect to terminate this Lease, provided that the Corporation as tenant makes such election within sixty (60) days after the date on which the Building was so damaged or destroyed and notifies the Lessor and the Commission of its election forthwith after making it. If the Corporation as tenant does not so elect to terminate this Lease, then the Corporation as tenant will repair, reconstruct or replace the Building or any part thereof damaged or destroyed in accordance with section 10.2 or section 10.3, as the case may be, and section 10.4;
- (c) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Lessee pursuant to section 10.5(a) or section 10.5(b), the Lessee will demolish and completely remove the Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing

such destruction will, notwithstanding the provisions of Article 9, be distributed as follows:

- (i) firstly, to reimburse the Lessee for all costs and expenses necessarily incurred by the Lessee in the demolition and removal of the Building and all foundations and debris from the Lands and the restoration of the Lands as aforesaid;
- (ii) secondly, to pay and satisfy the Mortgage, if any;
- (iii) thirdly, to pay the balance of the insurance monies, if any, as follows:

A. to the Lessor, the amount calculated as follows:

amount payable = (balance of insurance monies) x (days in expired portion of the Term ÷ total days in Term); and

B. to the Lessee, the amount calculated as follows:

amount payable = (balance of insurance monies) x (days remaining in the Term ÷ total days in Term),

provided however that any amount so payable to the Lessee will be paid directly to the Commission;

- (d) If this Lease is terminated pursuant to this section 10.5, then upon the Lessee substantially completing the work required by section 10.5(c), the Lessor will forthwith refund to the Commission a portion of the prepaid Basic Rent that has been paid pursuant to this Lease, calculated as follows:

amount payable = (prepaid Basic Rent) x (days remaining in the Term as of the date of such substantial completion of work ÷ total days in the Term),

provided however that the Commission hereby assigns such refund to all Mortgagees, if any, and such refund will be paid by the Lessor to such Mortgagees in the same priority as registration of their Mortgages, if any;

- (e) Notwithstanding anything contained herein, in the event the Lessee terminates this Lease in accordance with this section 10.5, this section will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this section 10.5 or any part thereof remains unperformed; and
- (f) The provisions of this section 10.5 are subject always to the provisions of section 10.6.

10.6 Destruction or Damage During Last Five Years of Term

(a) In the event of the complete or substantial destruction of the Building during the last five (5) years of the Term, the Lessee may, at its option, either reconstruct or replace the Building so destroyed or damaged in accordance with section 10.3 or decline to do so, and instead elect to terminate this Lease, provided that the Lessee makes such election within sixty (60) days after the date on which the Building was so destroyed and notifies the Lessor of its election forthwith after making it;

(b) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Lessee pursuant to section 10.6(a), the Lessee will demolish and completely remove the Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 9, be distributed as follows:

(i) firstly, to reimburse the Lessee for all costs and expenses necessarily incurred by the Lessee in the demolition and removal of the Building and all foundations and debris from the Lands and the restoration of the Lands as aforesaid;

(ii) secondly, to pay and satisfy the Mortgage, if any;

(iii) thirdly, to pay the balance of the insurance monies, if any, as follows:

A. to the Lessor the amount calculated as follows:

amount payable = (balance of insurance monies) x (days in expired portion of the Term ÷ total days in Term); and

B. to the Lessee the amount calculated as follows:

amount payable = (balance of insurance monies) x (days remaining in the Term ÷ total days in Term),

provided however that any amount payable to the Lessee will be paid directly to the Commission;

(c) If this Lease is terminated pursuant to this section 10.6, then upon the Lessee, substantially completing the work required by section 10.6(b), the Lessor will forthwith refund to the Commission a portion of the prepaid Basic Rent that has been paid pursuant to this Lease, calculated as follows:

amount payable = (prepaid Basic Rent) x (days remaining in the Term as of the date of substantial completion of such work ÷ total days in the Term),

provided however that the Commission hereby assigns such refund to all Mortgagees, if any, and such refund will be paid by the Lessor to such Mortgagees in the same priority as registration of their Mortgages, if any; and

- (d) Notwithstanding anything contained herein, in the event the Lessee terminates this Lease in accordance with this section 10.6, this section 10.6 will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this section 10.6 or any part thereof remains unperformed.

ARTICLE 11 INSPECTION AND EXHIBITION BY LESSOR

11.1 Inspection by Lessor and Commission

The Lessor and the Lessee agree that it will be lawful for representatives of the Lessor and the Commission to enter the Lands and the Building at all reasonable times during the Term, with prior written notice to the Lessee, to examine the condition thereof. If the Lessor or the Commission determines that any of the repairs described in section 7.2 are required, notice of such required repairs will be given by the Commission or the Lessor to the Lessee, and the Lessee will within thirty (30) days after every such notice, or such longer period as provided in section 18.1(d), repair and make good accordingly.

11.2 Exhibition by Lessor

During the final year of the Term, the Lessor will be entitled to display upon the Lands the usual signs advertising the Lands and Building as being available for purchase or lease, provided such signs are displayed in such a manner as not to unreasonably interfere with the Lessee's use and enjoyment of the Lands and the Building.

ARTICLE 12 OBSERVANCE OF GOVERNMENTAL REGULATIONS

12.1 Compliance

The Lessee covenants to competently and faithfully observe and comply with all laws, bylaws and lawful orders which apply to the Lands and the Building or the Lessee's occupation of or activities on the Lands or in the Building, and to not use or occupy or permit to be used or occupied the Lands or the Building or any part thereof for any illegal or unlawful purpose or in any manner which would result in the cancellation or threatened cancellation of any insurance, or in the refusal of any insurer to issue any insurance as requested. If any law, bylaw or lawful order is directed at or places a duty or obligation upon the Lessor, with reference to the Lands and Buildings, then the same will be performed and observed by the Lessee, at its cost, in the place and stead of the Lessor.

ARTICLE 13
RIGHTS OF LESSOR AND LESSEE

13.1 As Landlord and Tenant

All rights and benefits and all obligations of the Lessor and the Lessee under this Lease will be rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as landlord and tenant respectively under this Lease.

ARTICLE 14
EXCLUSION OF LIABILITY AND INDEMNITY

14.1 Limitation of Liability and Release

Neither the Lessor nor the Commission nor their respective Personnel or contractors will be liable for, and the Lessee hereby releases the Lessor, the Commission and their respective Personnel and contractors from all Losses, including without limitation, Losses as a result of:

- (a) any bodily injury or death, however caused, suffered or sustained in or about the Lands or the Building;
- (b) any property damage or other loss or damage of any nature whatsoever, however caused, to the Lands or the Building, or to any property belonging to the Lessee or to any other person in or about the Lands or the Building; or
- (c) any challenge whatsoever as to the validity of this Lease, the Lessor's authority to enter into this Lease, or the use of the Lands and the Building under this Lease,

whether such Losses arise from an exercise of the Lessor's or the Commission's respective rights or privileges herein or otherwise, unless resulting from the respective negligence or unlawful acts of the Lessor, the Commission or their respective Personnel or contractors, as the case may be.

14.2 Exclusion of Liability

Notwithstanding section 14.1, neither the Lessor nor the Commission nor their respective Personnel or contractors will be liable for:

- (a) consequential, business, economic or indirect loss or damage of any nature whatsoever, however caused, which may be suffered or sustained by the Lessee or any other person who may be in or about the Lands or the Building; or
- (b) any loss against which the Lessee is obligated to insure or has insured.

14.3 Indemnification

The Lessee hereby agrees to indemnify and save harmless the Lessor, the Commission and their respective Personnel and contractors from and against all Losses which the Lessor, the Commission or their respective Personnel or contractors may suffer or incur arising out of, or in any way connected with this Lease; provided, however, that such indemnity will not apply to the extent, if any, to which such Losses result from the respective negligence or unlawful acts of the Lessor, the Commission or their respective Personnel or contractors, as the case may be. Without derogating from the generality of the foregoing, the Lessee agrees to indemnify and save harmless the Lessor, the Commission and their respective Personnel and contractors in respect of all Losses:

- (a) as a result of bodily injury or death, property damage or other damage arising from the conduct of any work by or any act or omission of or relating to or arising from the occupation or possession of the Lands and the Building by the Lessee or any assignee, subtenant, Personnel, contractor, invitee or licensee of the Lessee;
- (b) suffered or incurred by the Lessor, the Commission or their respective Personnel and contractors that arise, whether directly or indirectly, from any breach by the Lessee, its Personnel, contractors or any other person for whom the Lessee is responsible in law, of any of its covenants and obligations under this Lease; or
- (c) as a result of any challenge whatsoever as to the validity of this Lease, the Lessor's authority to enter into this Lease, or the use of the Lands and the Building under this Lease.

14.4 Indemnification Survives Termination of Lease

The obligations of the Lessee to indemnify the Lessor, the Commission and their respective Personnel and contractors will apply and continue notwithstanding the termination or expiration of this Lease.

14.5 Indemnity Exemption for PRHC

None of the provisions of the Lease, including section 25.2(g) which require the Lessee to indemnify the Lessor or the Commission will apply if PRHC is the Lessee under this Lease.

ARTICLE 15 SUBLETTING AND ASSIGNING

15.1 Subletting and Assigning by Lessee

The Lessee will not sublease, assign, transfer, sell or encumber its interest in the Lease or enter into any agreement for the purpose of sub-leasing, assignment, transferring, selling or encumbering its interest in the Lease, the Building or the Lands, except as expressly permitted in this Lease, or with the prior written consent

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of the Lessor and the Commission, which consent the Lessor and the Commission may arbitrarily withhold; provided, however, that if the Lessee is PRHC, the Corporation or a Mortgagee which is an Approved Lender, the Lessor and the Commission will not unreasonably withhold their consent. The Lessee may sublet or grant licences or other rights to occupy or use any part of the Building to:

- (a) Eligible Occupants; or
- (b) staff and other personnel authorized by the Lessor and the Commission who are required to operate and maintain the Building and the Lands for the purposes of this Lease.

15.2 Copies of Subleases

If requested by the Lessor or the Commission, a copy of any or all such subleases will be forwarded to the Lessor or the Commission, as the case may be, within thirty (30) days after entering into such subleases, together with particulars of registration (if any) in the Land Title Office.

15.3 Where Mortgagee is Approved Lender, Commission or Corporation

If a Mortgagee which is an Approved Lender, the Commission or the Corporation takes an assignment of the rents payable to the Lessee by holders of occupation rights granted by the Lessee pursuant to section 15.1, the Lessee is permitted to enter into such assignment of rents, without the consent of the Lessor or the Commission, as collateral or additional security for an Insured Loan, if such Mortgagee has registered that assignment in the Land Title Office as a charge against the interest of the Lessee in the Lands and the Building or any part thereof. The Lessor agrees that such an assignment of rents will have priority over any similar assignment of those particular rents granted to the Lessor by this Lease.

ARTICLE 16 MORTGAGE

16.1 Mortgaging by Lessee

The Lessee may mortgage its leasehold interest in the Lands and the Building only with the prior written consent of the Lessor, which consent may not be unreasonably withheld, and the Commission, which consent may be arbitrarily withheld. Notwithstanding any such Mortgage, the Lessee will be and remain liable for the payment of all Basic Rent and Additional Rent, and the performance of all of its obligations set out in this Lease.

16.2 Tripartite Agreement

At the request of the Mortgagee, the Lessor will execute and deliver to the Mortgagee an agreement among the Lessee, the Lessor and the Mortgagee, or between the Lessor and the Mortgagee, which will be binding and enforceable against the Lessee (if a party thereto), the Lessor and the Mortgagee and their successors and assigns,

whereby the Lessor will agree with the Mortgagee to afford to the Mortgagee the rights and remedies afforded to Mortgagees under this Lease.

ARTICLE 17
BANKRUPTCY OF LESSEE

17.1 Bankruptcy of Lessee

Subject to the provisions of section 18.2(c), if the Term is at any time seized or taken in execution by any creditor of the Lessee, or if the Lessee makes a general assignment for the benefit of creditors, or institutes proceedings to subject itself to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files an application or petition or answer or consent seeking reorganization or readjustment of the Lessee under any law of Canada or any province thereof relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver, or if the Lessee or its directors pass any resolution authorizing the dissolution or winding-up of the Lessee, or if a receiver, interim receiver, trustee or liquidator of all or any part of the property of the Lessee is appointed or applied for by the Lessee, or if a judgment, decree or order is entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of any applicable legislation determining the proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or winding-up or any similar relief under any law of Canada or any province thereof relating to bankruptcy or insolvency has been properly instituted, then, subject to Section 24.1, this Lease will, at the option of the Lessor, immediately become terminated.

ARTICLE 18
DEFAULT BY LESSEE

18.1 Re-entry on Certain Defaults by Lessee

Subject to the provisions of sections 18.2 and 24.1, if and whenever:

- (a) Basic Rent or any part thereof is not paid on the day appointed for payment thereof; or
- (b) the Lessee defaults in payment of Additional Rent or any other sums required to be paid to the Lessor or the Commission by any provision of this Lease, and such default continues for forty-five (45) days following any specific due date on which the Lessee is to make such payment or, in the absence of such specific due date, for forty-five (45) days following notice by the Lessor or the Commission requiring the Lessee to pay the same; or
- (c) the Building is abandoned or remains vacant for more than thirty (30) days; or
- (d) the Lessee defaults in performing or observing any of its other covenants or obligations under this Lease, or any contingency occurs which by the terms of this Lease constitutes a breach hereof or confers upon the Lessor the right to re-enter or forfeit or terminate this Lease, and the Lessor has given to the

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Lessee notice of such default or the happening of such contingency, and if at the expiration of forty-five (45) days after the giving of such notice the default or contingency continues to exist, or in the case of a default or contingency which cannot with due diligence be cured within the period of forty-five (45) days aforesaid, if the Lessee does not commence the rectification of such default or contingency within the said forty-five (45) day notice period and thereafter promptly and diligently and continuously proceed with such rectification; or

- (e) this Lease expires or is forfeited or terminated pursuant to any other provision contained herein, including, without restricting the generality of the foregoing, the termination of this Lease pursuant to the provisions of sections 4.3 or 10.5,

then and in every such case, it will be lawful for the Lessor at any time thereafter without notice or demand, with or without process of law and by forced entry if necessary, to enter into and upon the Lands and the Building, or part thereof in the name of the whole, and, if this Lease has not already expired or been forfeited or terminated, to terminate this Lease by leaving upon the Lands notice in writing of such termination. If the Lessor terminates this Lease pursuant to this section 18.1, or otherwise as a result of default of the Lessee, or if the Lessee has forfeited this Lease, the Lessee will be liable to the Lessor for the rents and all other amounts to be paid and the covenants to be performed by the Lessee up to the date of such termination or forfeiture.

18.2 Notice to and Remedies of Mortgagee

The following provisions will apply with respect to any Mortgagee:

- (a) no re-entry, termination or forfeiture of this Lease by the Lessor will be valid against the Mortgagee who has filed with the Lessor a notice of Mortgage and specified an address for notice in accordance with Article 26, unless the Lessor has first given to the Mortgagee written notice of the default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease, specifying the nature of that default or contingency, and stating the Lessor's intention to take such proceedings and requiring the Mortgagee:
 - (i) to cure the default or contingency specified in the notice within a period of sixty (60) days from the date of receipt of that notice by the Mortgagee; or
 - (ii) if the default or contingency is other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease, and if the default or contingency cannot reasonably be cured within such sixty (60) day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency,

and the Lessor hereby grants the Mortgagee access to the Lands and the Building for that purpose. If the default or contingency is cured within the period specified, or in the circumstances referred to in 18.2(a)(ii), if cured

within a reasonable period, the Mortgagee will be entitled to continue as tenant for the balance of the Term remaining at the date of the notice of default or contingency providing that the Mortgagee attorns as tenant to the Lessor and undertakes to be bound by and to perform and observe all of the Lessee's obligations, covenants and agreements under this Lease until such Mortgagee as tenant assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to be bound by and to perform and observe all of the Lessee's obligations, covenants and agreements under this Lease. If the Mortgagee consists of more than one mortgagee, each having a separate charge upon the Lessee's interest in this Lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Lessor hereby agrees to permit curing of the default or contingency specified as aforesaid by that Mortgagee that is willing to cure the default or contingency and attorn as tenant as aforesaid and whose charge ranks in priority over the charge or charges held by the other Mortgagee or Mortgagees willing to cure and attorn as aforesaid, except that in the event that any Mortgagee has commenced a foreclosure action, the provisions of section 18.2(b) will apply;

- (b) in the event the Mortgagee commences foreclosure proceedings against the Lessee, whether or not the Lessee is in default of the performance of its covenants and agreements with the Lessor under this Lease at the time such foreclosure proceedings are commenced, the Lessor will not re-enter, terminate or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease if the Mortgagee:
 - (i) has given to the Lessor notice of the foreclosure proceedings;
 - (ii) is actively prosecuting the foreclosure proceedings;
 - (iii) except for the bankruptcy or insolvency of the Lessee, which will be governed by section 18.2(c), cures the default or contingency within a period of sixty (60) days from the date of receipt of notice from the Lessor specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or contingency cannot reasonably be cured within such sixty (60) day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency; and
 - (iv) performs and observes all of the Lessee's covenants and agreements under this Lease, except for any obligation to cure the bankruptcy or insolvency of the Lessee and except for the obligations of the Lessee which the Mortgagee is exempt from fulfilling, pursuant to the terms of

this Lease, and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee;

provided, however, that if the Mortgagee is an Approved Lender, the Corporation or the Commission, the curing of the default or contingency may be delayed until the earlier of the date of the assignment of this Lease to a third party or an Approved Lender, the Corporation or the Commission acquiring the Lessee's interest in this Lease. In the event that the Mortgagee acquires the Lessee's interest in the Lands and Building pursuant to the foreclosure proceedings, the Mortgagee will thereupon become subrogated to the rights of the Lessee under this Lease, provided it attorns to the Lessor as tenant and undertakes to be bound by and perform the covenants and agreements of this Lease until such Mortgagee as Lessee assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to be bound by and to perform the covenants and agreements of this Lease. If the Mortgagee consists of more than one mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default or contingency granted by this section 18.2(b) to a foreclosing Mortgagee will be deemed granted to them in the order of priority of the charges held by the foreclosing mortgagees;

- (c) if this Lease is subject to termination or forfeiture pursuant to Article 17 by reason of the bankruptcy or insolvency of the Lessee and the Mortgagee has filed with the Lessor a notice of Mortgage in favour of the Mortgagee and specified an address for notice in accordance with Article 26, the Lessor will give to the Mortgagee notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to terminate or forfeit this Lease and stating the Lessor's intention to take such proceedings and requiring the Mortgagee to cure the Lessee's default under this Lease (except for the bankruptcy or insolvency of the Lessee), and the Lessee's default will be deemed to have been sufficiently cured if the Mortgagee:
- (i) takes possession and control of the Lands and Building, or causes a receiver to be appointed under the terms of the Mortgagee's charge or by a court of competent jurisdiction, which receiver will take possession and control of the Lands and Building, and the Lessor hereby grants the Mortgagee or such receiver access to the Lands and Building for that purpose;
 - (ii) cures every default under this Lease (except for the bankruptcy or insolvency of the Lessee) within a period of sixty (60) days from the date of receipt by the Mortgagee of the notice from the Lessor of the bankruptcy or insolvency of the Lessee, or if such default or defaults are other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or defaults cannot reasonably be cured within such sixty (60) day period, immediately commences to cure the same

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and to diligently prosecute to conclusion all acts necessary to cure such default or defaults; provided, however, that if the Mortgagee is an Approved Lender, the Commission or the Corporation, the curing of the default or contingency may be delayed until the earlier of the date of the assignment of this Lease to a third party or an Approved Lender, the Commission or the Corporation acquiring the Lessee's interest in this Lease; and

- (iii) subject to the right of an Approved Lender, the Commission or the Corporation to delay the curing of the default or contingency as set out in section 18.2(c)(ii), attorns as tenant to the Lessor and undertake to observe, be bound by and perform the obligations, covenants and agreements of the Lessee under this Lease until such Mortgagee, as tenant, assigns its leasehold estate as permitted under this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to observe, be bound by and perform the obligations, covenants and agreements of the Lessee under this Lease.

If the Mortgagee consists of more than one mortgagee, the right to take possession and control, to cure any default and to assume the Lease as aforesaid will be deemed granted to them in the order of the priority of their respective charges;

- (d) any re-entry, termination or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Lessee will be valid and effectual against the Lessee even though made subject to the rights of any Mortgagee to cure any default of the Lessee and to continue as tenant under this Lease; and
- (e) no entry upon the Lands or into the Building by the Mortgagee for the purpose of curing any default of the Lessee will release or impair the continuing obligations of the Lessee.

18.3 Remedies of Lessor and the Commission are Cumulative

The remedies of the Lessor and the Commission specified in this Lease are cumulative and are in addition to any remedies that the Lessor and the Commission may have at law or equity. No remedy will be deemed to be exclusive, and the Lessor and the Commission may from time to time have recourse to one or more or all of the available remedies specified herein, or at law or equity. In addition to any other remedy provided in this Lease, the Lessor and the Commission will be entitled to restrain by injunction any violation or attempted or threatened violation by the Lessee of any of the covenants or agreements contained herein.

18.4 Waiver by Lessor and Commission

The failure of the Lessor or the Commission to insist upon the strict performance of any covenant or agreement contained in this Lease will not waive such covenant or

agreement, and the waiver by the Lessor or the Commission of any breach of any covenant or agreement of the Lessee under this Lease will not constitute a waiver of such covenant or agreement in respect of any other breach. The receipt and acceptance by the Lessor of rent or other monies due hereunder with knowledge of any breach of any covenant or agreement by the Lessee will not constitute a waiver of such breach. No waiver by the Lessor or the Commission will be effective unless made in writing.

ARTICLE 19
DISPUTE RESOLUTION

19.1 Dispute Resolution

The Lessee will agree to enter into a dispute resolution process with the City, which may include arbitration, to address any potential disagreement regarding the Lease and the Commission is entitled to participate if it is the mortgagee.

ARTICLE 20
ARBITRATION

20.1 Arbitration

If a disagreement arises pursuant to sections 4.3, 4.6, or 6.1, the same will be settled by arbitration. The arbitration will be conducted by a single arbitrator chosen by the Commission which arbitrator will be at arm's length from the Commission. The costs and expenses of the arbitration will be dealt with as follows:

- (a) each party will bear its own expense of preparing and presenting its case to the arbitrator, irrespective of whether any such expense was incurred or contracted for prior to the appointment of the arbitrator, including the expenses of appraisals, witnesses and legal representation; and
- (b) the fees of the arbitrator will be shared by the parties equally unless the arbitrator decides otherwise.

The *Arbitration Act* (British Columbia) will apply with respect to the arbitration. If an Approved Lender or the Corporation holds a Mortgage of the Lessee's leasehold interest in the Lands and Building, any notice of arbitration given under this section by one of the parties to the others will be given at the same time to such Mortgagee, if it has specified an address for notice, and such Mortgagee so notified will be given a reasonable opportunity by the parties to participate in the arbitration proceedings if it considers such proceedings may affect the Mortgage security.

ARTICLE 21
SURRENDER OF LEASE

21.1 Surrender of Lease

Subject to the obligations of the Lessee contained in sections 10.5(c) and 10.6(b), at the termination or expiration of the Term, whether by forfeiture, default or lapse of

time, the Lessee will surrender the Lands and Building to the Lessor in the condition in which they were required to be kept by the Lessee pursuant to the provisions of this Lease.

ARTICLE 22

QUIET ENJOYMENT, OWNERSHIP OF LESSEE'S FIXTURES AND OWNERSHIP OF BUILDING

22.1 Covenant for Quiet Enjoyment

Subject to the Lessor's and the Commission's rights herein, and subject to the Permitted Encumbrances as extended or modified from time to time, if the Lessee pays the rent hereby reserved and all other amounts payable hereunder, and observes and performs all of the obligations, covenants and agreements of the Lessee herein contained, the Lessee may peaceably enjoy and possess the Lands and Building for the Term, without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming through, from or under the Lessor, provided however that the enforcement by the Lessor, in its capacity as a civic body, of laws, bylaws and orders that touch and concern the Lands and Building will not be a breach of the Lessor's covenant set forth in this section 22.1.

22.2 Ownership of Lessee's Fixtures

The Lessee, tenants or occupants of the Building have the right of property in, or the right to remove, fixtures or improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Building or the Lands. The Lessee will make good, or will cause such tenants to make good, any damage to the Building caused by any removal of the tenants' fixtures.

22.3 Ownership of Building

The Building will become the absolute property of the Lessor, free and clear of all liens, charges, encumbrances, equities or claims of any kind or nature whatsoever, save and except for the Permitted Encumbrances, upon the expiration or earlier termination of the Term or any permitted period of overholding, but will be deemed, as between the Lessor and the Lessee during the Term, to be the separate property of the Lessee and not of the Lessor but subject to and governed by all the provisions of this Lease, provided always that the Lessor's absolute right of property in the Building, which will arise at the expiration or earlier termination of the Term or any permitted period of overholding, will take priority over any other interest in the Building that may now or hereafter be created by the Lessee without the prior written consent of the Lessor, and provided that all dealings by the Lessee with the Building which in any way affect title thereto will be made expressly subject to this right of the Lessor and the Lessee will not assign, encumber or otherwise deal with the Building separately from any permitted dealing with the leasehold interest under this Lease, to the intent that no person will hold or enjoy any interest in this Lease acquired from the Lessee who does not at the same time hold a like interest in the Building.

ARTICLE 23
OVERHOLDING

23.1 Overholding

The Lessee covenants and agrees with the Lessor that if the Lessee will hold over and the Lessor will accept rent after the expiration of the Term, the new tenancy thereby created will be a tenancy from month to month and not a tenancy from year to year and will be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month, provided however that the monthly Basic Rent payable by the Lessee will be the then market rental value of the Lands and the Building as determined from time to time in the bona fide opinion of the Lessor's Director of Real Estate or his or her successor in function, and such monthly Basic Rent will be paid in advance. The Lessee will also pay monthly as Additional Rent one-twelfth of the then current sums described in section 3.1 or 3.2 hereof, as the case may be.

ARTICLE 24
ADDITIONAL RIGHTS OF THE COMMISSION

24.1 Notice to Commission

Unless otherwise agreed in writing by the Commission and unless failure of the Lessor to act in the circumstances would result in an emergency situation, the Lessor may not exercise any of its rights which arise as a result of a default by the Lessee under this Lease until ninety (90) days (the "Notice Period") after receipt by the Commission of written notice describing the Lessee's default.

If at the expiration of the Notice Period:

- (a) the Commission has not cured such default or in the case of a default which cannot, with due diligence, be cured within the Notice Period, if the Lessee does not commence to cure the default within the Notice Period and thereafter diligently proceed to cure the default; or
- (b) the Commission has not given the Lessor a notice in writing (the "Attornment Notice") advising the Lessor that the Commission or its nominee will attorn as tenant under this Lease;

then the Lessor will be at liberty to proceed to exercise any of the powers given to it under this Lease.

Upon receipt of the Attornment Notice the Lessor will enter into the necessary agreement with the Commission or its nominee allowing it to attorn as tenant under the Lease.

24.2 Rights of Commission Not Limited

The Lessee and the Lessor agree that the rights given to the Commission pursuant to Article 24 are not to be construed in any manner whatsoever so as to limit or

otherwise prejudice the rights of the Commission as against the Lessee under any Operator Agreement or any other agreement between the Commission and the Lessee or the Commission and the Lessor.

24.3 Commission May Perform Obligations of Lessee

Where the Commission chooses to perform an obligation of the Lessee under this Lease in order to avoid forfeiture, the Lessor will accept that performance as if the same had been performed by the Lessee.

ARTICLE 25 ENVIRONMENTAL MATTERS

25.1 Definitions

For the purposes of this Article 24:

- (a) "Contaminants" mean any pollutants, contaminants, deleterious substances, underground or aboveground tanks, asbestos materials, urea formaldehyde, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance which is now or hereafter prohibited, controlled or subject to Environmental Laws; and
- (b) "Environmental Laws" means any statute, law, regulation, order, bylaw, standard, guideline, permit and other lawful requirement of any governmental authority having jurisdiction over the Lands or Building, now or hereafter in force and relating in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, and includes the principles of common law and equity.

25.2 Lessee's Covenants and Indemnity

The Lessee covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the Lands or Building for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with Contaminants, without the prior written consent of the Lessor, which consent may be arbitrarily or unreasonably withheld;
- (b) to strictly comply, and cause all persons for whom it is at law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Lands and Building;
- (c) to promptly provide to the Lessor a copy of any environmental site investigation, assessment, audit or report relating to the Lands or Building and conducted by or for the Lessee at any time before, during or after the Term, or any renewal or extension thereof. The Lessee hereby waives the requirement for the Lessor to provide a site profile for the Lands pursuant to the *Environmental Management Act* (British Columbia), any regulations enacted pursuant thereto, or any similar or successor legislation;

- (d) to promptly provide to the Lessor on request such written authorizations as the Lessor may require from time to time to make inquiries of any governmental authorities regarding the Lessee's compliance with Environmental Laws;
- (e) to promptly notify the Lessor in writing of the existence or release of any Contaminant on, in or under the Lands or Building or of any other occurrence or condition at the Lands or any adjacent property that could contaminate the Lands or the Building or result in the non-compliance of the Lands or Building with Environmental Laws, or subject the Lessor or Lessee to any fines, penalties, orders, investigations or proceedings under Environmental Laws;
- (f) on the expiry or earlier termination of this Lease, or at any time if requested by the Lessor or required pursuant to Environmental Laws, to remove from the Lands and Building all Contaminants, and to remediate any contamination of the Lands or any adjacent or other affected property resulting from Contaminants, in either case brought onto, used at, created upon or released from the Lands by the Lessee or any person for whom the Lessee is at law responsible. The Lessee will perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants will remain the property of the Lessee, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding their degree of affixation to the Lands or Building; and
- (g) without limiting the generality of Article 14, to indemnify the Lessor, the Commission and their respective Personnel and contractors from any and all Losses (including the cost of remediation of the Lands and Building and any other affected property) arising from or in connection with:
 - (i) any breach of or non-compliance with the provisions of this Article 24 by the Lessee; or
 - (ii) the release or alleged release of any Contaminants at or from the Lands related to or as a result of the use and occupation of the Lands and Building by, or any act or omission of, the Lessee or any person for whom the Lessee is responsible at law.

The obligations of the Lessee under this Article 24 will survive the expiry or earlier termination of this Lease, and the obligations of the Lessee under this Article 24 are in addition to, and will not limit, the other obligations of the Lessee under this Lease.

ARTICLE 26 NOTICES

26.1 Notices

All notices, demands and request which may or are required to be given pursuant to this Lease will be in writing and will be sufficiently given if served personally upon the party for which it is intended, or mailed prepaid and double registered:

- (a) in the case of the Lessor, addressed to:

City of Kelowna
1435 Water Street
Kelowna, BC V1Y 1J4

Attention: _____

- (b) in the case of the Lessee, addressed to:

Pathways Abilities Society
123 Franklyn Road
Kelowna, BC V1X 6A9

Attention: _____

- (c) in the case of the Commission, addressed to:

British Columbia Housing Management Commission
Suite 1701 - 4555 Kingsway
Burnaby BC V5H 4V8
Attention: Manager Real Estate Services

or at such other addresses as each of the parties may from time to time advise by notice in writing. Mortgagees will supply their respective mailing addresses to the Lessor and the Lessee. The date of receipt of any such notice, demand or request will be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed as aforesaid on the fifth business day next following the date of such mailing; provided, however, that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down of postal service or other labour dispute which affects the delivery of such notice, then such notice will be deemed to be received when actually delivered.

ARTICLE 27 STATUTORY RIGHTS OF WAY

27.1 Statutory Right of Way Lessor

During the Term:

- a) the Lessor will not amend nor discharge the statutory right of way registered against the Lands under No. CA9577758 (the "Statutory Right of Way") without the consent of the Lessee, such consent not to be unreasonably withheld;
- b) the Lessor will, at its cost, construct, maintain and repair the right of way area described in the Statutory Right of Way (the "Right of Way Area");
- c) the Lessor will fulfill the obligations of the Transferor contained in the Statutory Right of Way and will indemnify and save harmless the Lessee, the Commission and

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their respective personnel and contractors from and against all Losses which the Lessee or the Commission or their respective personnel or contractors may suffer or incur arising out of, or in any way connected with, the granting of the Statutory Right of Way, and the use of the Right of Way Area, provided however, that such indemnity will not apply to the extent, if any, to which such losses directly result from the respective negligence of the Lessee, the Commission or their respective personnel or contractors, as the case may be; and

- d) notwithstanding any rights granted to the Lessor (as defined in the Statutory Right of Way), the Lessor will not exercise such rights in a manner that would unreasonably interfere with the Lessee and its invitees and permittees use and enjoyment of the Right of Way Area, and in particular, the right to pass and repass on, over and along the Right of Way Area, in common with members of the public.

ARTICLE 28 MISCELLANEOUS

28.1 Statements by Lessor

The Lessor and the Lessee agree that at any time and from time to time, upon not less than thirty (30) days prior request by the other party, each will execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this Lease is unmodified and in full force and effect, or if there have been modifications, the nature of such modifications and that the same are in full force and effect as modified;
- (b) the dates to which the rent and any other amounts payable under this Lease have been paid; and
- (c) that to the best of the information and belief of the maker of the statements, the Lessor and the Lessee are not in default under any provision of this Lease, or, if in default, the particulars thereof.

28.2 Time of Essence

Time will be of the essence of this Lease, save as otherwise specified herein.

28.3 Formality of Modifications

This Lease may not be modified or amended except by an instrument in writing executed by the Lessor and the Commission or their successors or assigns, and by the Lessee or its successors or permitted assigns.

28.4 Captions and Headings

The captions and headings throughout this Lease are for convenience and reference only and the words and phrases contained therein will in no way be held or deemed to define, limit, describe explain, modify, amplify or add to the interpretation,

construction or meaning of any provision of or the scope or intent of this Lease nor in any way affect this Lease.

28.5 Enurement

This Lease will extend to, be binding upon and enure to the benefit of the Lessor, the Commission and the Lessee, the successors and assigns of the Lessor and the Commission, and the successors and permitted assigns of the Lessee.

28.6 Covenants or Conditions

All of the provisions of this Lease will be deemed and construed to be conditions as well as covenants, as though the words specifically expressing or importing covenants or conditions were used in each separate provision hereof.

28.7 References

The words "herein", "hereby", "hereunder" and words of similar import refer to this Lease as a whole and not to any particular Article, section or subsection in this Lease.

28.8 Execution

By signing the General Instrument, the parties have agreed to be bound by their respective obligations contained in this Lease.

SCHEDULE 'A'

A. DEFINITIONS

This Schedule 'A' adopts the defined terms of the Lease and, for the purposes of this Schedule 'A', the following terms are also defined:

1. "**Accumulated Operating Revenue**" means any revenue accumulated in the course of the Lessee's operation of the Development in any year.
2. "**Affordable Market Rent**" means the average market rent, as determined by PRHC from time to time based on the most recent, applicable Canada Mortgage and Housing Corporation rental market or housing report.
3. "**Constituting Documents**" means the constitution and bylaws of the Lessee, together with any amendments, as registered with the appropriate registry.
4. "**Development**" means the Building and the Lands.
5. "**Improvements**" means those improvements, structures, buildings, fixtures and systems which exist within the Development from time to time including the heating, ventilating, air-conditioning, plumbing, electrical and mechanical systems and equipment.
6. "**Eligible Occupant**" means a person who, at the date of commencement of residency in the Building, has a Low and Moderate Income.
7. "**Income**" means total income before tax from all sources of a Resident.
8. "**Low and Moderate Income**" means the maximum income for eligibility to occupy a Residential Unit and means:
 - a. For Residential Units with less than two (2) bedrooms, a gross household income that does not exceed the median income for families without children, as determined by the City from time to time (for 2023, this figure is \$82,310.00); and
 - b. For Residential Units with two (2) or more bedrooms, a gross household income that does not exceed the median income for families with children, as determined by the City from time to time (for 2023, this figure is \$120,990.00)
 - c.
9. "**Resident Rent**" means the amount a Resident is obliged to contribute monthly to the Lessee for a Residential Unit.
10. "**Residency Agreement**" means an agreement, lease, license or other right of a Resident to occupy a Residential Unit.

11. "Resident" means the person or persons legally entitled to reside in a Residential Unit pursuant to a Residency Agreement.
12. "Resident Unit" means a self-contained residential dwelling within the Development.
13. "Specific Purpose" means the operation of the Development to provide affordable housing for persons who have Low and Moderate Incomes.

B. HOUSING OBJECTIVE

1. The Lessor and the Lessee agree the common goal of the parties is to provide housing for households who have Low and Moderate Incomes.

C. OBLIGATIONS OF THE LESSEE

1. Covenants of the Lessee:

The Lessee covenants and agrees that following the termination of the Operating Agreement, but for the balance of the Term of the Lease it:

- a. will fulfill its obligations under this Lease in a proper, efficient and timely manner as would a prudent provider of similar services, and in accordance with this Lease;
- b. will operate the Development and collect Resident Rent from the Residents in accordance with this Schedule "A";
- c. it will remain in compliance with all applicable laws, bylaws, regulations, codes and corporate or contractual obligations and is responsible for obtaining and complying with all necessary approvals, licenses and permits relating to the Lessee's use of the Building, Lands, and operating of the Development as contemplated herein;
- d. maintain the Development pursuant to the terms of the Lease;
- e. agrees and understands that it is solely responsible for all its obligations under this Lease, including but not limited to its obligations arising as a result of any relationships between the Lessee and the applicants, Residents and other occupants of the Development, and any and all relationships with third parties, volunteers, or other invitees;
- f. within two (2) years following the termination of the Operating Agreement, the Lessee will establish and maintain a capital asset plan (the "Capital Asset Plan") that sets out the resource allocations and practices regarding protection of the Building that will take into consideration the remaining term of the Lease and the life cycle of the Building including the Lessee's replacement reserve fund, and sources of external funding for capital repairs;
- g. will retain a third party engineer to conduct a building condition assessment at five (5) year intervals that provides a professional opinion of the current condition of the

elements that compromise the Building including projected years and costs for capital repairs including, without limitation, a financial timeline for the remaining years of the Term of Lease for such planned repairs, renewals and replacements. The Lessee will update the Capital Asset Plan based on the findings of each building condition assessment and any capital repairs completed in the proceeding period since the previous plan was established. The Lessee will submit a copy of the Capital Asset Plan and building condition assessment reports to the Lessor upon request;

- h. will maintain a replacement reserve fund for repair and maintenance to the Building, subject to obtaining external funding where necessary. The Lessee will make regular contributions to the replacement reserve fund and will submit a balance of the replacement reserve fund to the Lessor upon request;
- i. will at all times maintain a complete set of material records relating to the Building, including, without limitation, a complete set of building plans, asset lists of all improvements and components, and detailed maintenance records and warranty information for all equipment located at the Building (i.e. all appliances, fixtures, furnaces, hot water tanks/boilers, elevators etc.), and confirmation from the Lessee that the tenant occupants of the Building meet the requirements as set out in the Lease and this Schedule "A"; and
- j. provides access to all Records when requested to do so by the Lessee and the Lessee shall have the right to inspect all Records related to, arising from, or maintained by the Lessee in connection with the Building, including the right of the Lessor and its agents to enter the Building, at any time after delivery of notice to the Lessee.

2. **Corporate Organization.** The Lessee will maintain a well-organized corporate structure and in particular will:

- a. operate as a non-profit entity;
- b. remain in good standing with the appropriate registry;
- c. have a purpose that includes the provision of affordable housing and is consistent with the Specific Purpose;
- d. not permit any officer, director or member of the Lessee to be remunerated except for reimbursement of any expenses necessarily and reasonably incurred by the director, officer, or member while engaged in the affairs of the Lessee. Reasonable wages or salary paid to an employee of the Lessee who is not an officer or director of the Lessee are exempt from this section;
- e. provide for the disposition of assets to an organization with a similar charitable purpose in the event of dissolution or wind up of the Lessee;
- f. not alter its Constatng Documents in any way that would make them inconsistent with the terms of this Lease or that would render the Lessee unable to fulfill its obligations under this Lease.

- g. provide the Lessor with a copy of the Lessee's Constatng Documents as requested by the Lessor from time to time; and
- h. maintain written policies and procedures regarding the Lessee's operations, including safety and security, human resource management and tenant management.

3. **Conflict of Interest.** The Lessee will:

- a. conduct its operation of the Development in accordance with the Lessee's by-laws and in a manner such that no part of the operations, finances and other assets or resources of the Lessee under this Lease, are used directly or indirectly for the provision of any gain or benefit to any officer, director, employee, or member of the Lessee or any entity or individual associated with, or related to them, without the prior written approval of the Lessor;
- b. not, during the Term, enter into a contractual relationship with a third party, conduct business with, perform or receive a service for or provide advice to or receive advice from any entity or individual where such activity may, directly or indirectly, cause an actual or perceived conflict of interest, without the prior written approval of the Lessor; and
- c. disclose any actual or perceived conflict of interest to the Lessee and the Lessor in advance and all such disclosure and any prior written approval from the Lessor will be recorded in the minutes of the meetings of the directors and/or the relevant committee of the Lessee.

4. **Communication.** The Lessee will notify the Lessor as soon as possible of any significant changes or incidents that could impact the Lessee's obligations under this Lease.

5. **Agency.** This Lease will not be construed as creating any partnership or agency between the Lessor and the Lessee and neither party will be deemed to be the legal representative of any other party for the purposes of this Lease. Neither the Lessor nor the Lessee will have, and will not represent itself as having, any authority to act for, to undertake any obligation on behalf of the other party, except as expressly provided in this Lease.

6. **Restrictions on Authority.** The Lessee will not commit or otherwise bind the Lessor to any agreements in any manner whatsoever, except to the extent specifically provided in this Lease and in particular, without limiting the generality of the foregoing, the Lessee will not take any action, expend any sum, make any decision, give any consent, approval or authorization or incur any obligation with respect to any lease or any other arrangement involving the rental, use or occupancy of all or part of the Development other than a Residency Agreement in accordance with this Lease, except with the prior written approval of the Lessor, in its sole discretion.

7. **Inspection.** The Lessee will permit the Lessor to inspect the Development or other premises used by the Lessee pursuant to this Lease at any time.

D. RESPONSIBILITY OF THE LESSOR

1. **Provide Information.** The Lessor will provide the information required by the Lessee to enable the Lessee to carry out its responsibilities under this Lease, and will provide that information in a timely manner.

E. REVENUES AND EXPENSES

1. **Resident Rent.** The rent for the Residents of the Development will be set at or below the Affordable Market Rent. Over time, the Lessee will make an effort to increase the number of below Affordable Market Rent units as operating costs and revenues permit.
2. **Revenues.** The Lessee will be responsible for collecting all Resident Rent and other revenue for the Development, and the Lessee will be responsible for paying out such revenues all costs associated with the operation of each Development.
3. **Deficit.** The Lessee will be responsible for any operating shortfalls or extraordinary expenses. Any deficit will not be the responsibility of the Lessor.

F. ACCUMULATED OPERATING REVENUE

1. **Accumulated Operating Revenue.** The Lessee will retain the Accumulated Operating Revenue. The Lessee will use the Accumulated Operating Revenue in order of priority as follows:
 - a. to increase the number of below Affordable Market Rent units in the Development;
 - b. on costs relating directly to the Development; or
 - c. any other purpose that is consistent with the provision of affordable housing.

G. FINANCIAL MANAGEMENT, ADMINISTRATION AND REPORTING

1. **Finances.** The Lessee will establish written policies and procedures for effective control of finances for the Development, including;
 - a. record keeping and financial statements in accordance with Canadian Accounting Standards;
 - b. clearly defined spending authority; and
 - c. policies and procedures for arrears, purchasing and investment of Capital Funds and Accumulated Operating Revenue.
2. **Revenue.** All revenue received by the Lessee from whatever source with respect to the Development will be collected by the Lessee, held by the Lessee and used by the Lessee solely for the purpose of and to the extent authorized by this Lease.

3. **Reporting.** On the annual anniversary of the Lease Commencement Date, provide the Lessor with:
 - a. A written declaration confirm that the Lessee is operating and managing the Development in compliance with the terms of the Lease, together with a statement of rents and confirming the resident income mix for the preceding 12-month period; and
 - b. An income statement for the Building certified by the Lessee's auditor or accountant, which income statement will set out the amount of any operating surplus;

H. RESIDENT SELECTION AND RESIDENCY AGREEMENTS

1. **Landlord and Tenant Relationship.** The full normal relationship between landlord and tenant will exist between the Lessee and the Resident. It is understood that the Lessor will not be responsible to the Lessee for any breach or failure of the Resident to observe any of the terms of the Residency Agreement between the Resident and the Lessee, including the covenant to pay Resident Rent.
2. **Resident Selection.** The Lessee will select Residents in accordance with the Specific Purpose. The Lessee will use all reasonable efforts to maintain full occupancy of the Development with Residents who meet the Specific Purpose, but if there are no applications for a vacant unit in accordance with the Specific Purpose then the Lessee may accept applicants at any income level with the approval of the Lessor, which will not unreasonably be withheld. Over time, as operating surpluses permit, the Lessee will increase the number of units being offered below Affordable Market Rent.
3. **Discrimination.** The Lessee will select Residents without unlawful discrimination on the basis of race, religion, culture, sexual orientation, gender identity, social condition, or level of physical ability. Where restricted populations are targeted, consideration of and compliance with applicable anti-discrimination legislation must be documented and submitted to the Lessor on request.
4. **Full Occupancy.** The Lessee will use all reasonable efforts to maintain full occupancy of the Development.
5. **Approved Residents.** All Residents must be selected in accordance with the Specific Purpose and must be placed in a Residential Unit appropriate to their household size. Exceptions may be made for:
 - a. persons designated by mutual agreement between the Lessor and the Lessee; or
 - b. staff or other authorized personnel required to operate and maintain the Development and who are bona fide employees of the Lessee. The maximum income threshold/limitation does not apply to this type of residency.
6. **Membership in Lessee.** The Lessee will not require a Resident to be a member of the Lessee.

7. **Residency Agreements.** The Lessee will enter into a Residency Agreement with each Resident and all Residency Agreements will be in compliance with the *Residential Tenancy Act* (British Columbia).
8. **Resident Relations.** The Lessee will establish policies and procedures to:
 - a. select Residents in an open, fair, consistent and non-discriminatory way;
 - b. serve Residents promptly and courteously, with clear and informative communication;
 - c. provide each Resident with access to information concerning that Resident and protect the privacy of Residents; and
 - d. develop an appeals process for Resident related issues. The process must be transparent and accessible for all applicants and Residents.
9. **Proof of Income.** The Lessee will obtain a declaration completed by a Resident as evidence of the Income of that Resident and supporting documentation as evidence of the Income of that Resident at the time of the Resident's initial occupancy. The Lessee will maintain a copy of each Resident's proof of Income in a file available to the Lessor on request.

-End-