

Apr-08-2015 13:33:07.001

CA4325029

## LAND TITLE ACT

## FORM C (Section 233) CHARGE

## GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 44 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Barry Scott  
Williamson  
ISWL3Y

Digitally signed by Barry Scott  
Williamson ISWL3Y  
DN: c=CA, cn=Barry Scott Williamson  
ISWL3Y, o=Lawyer, ou=Verify ID at  
www.juricert.com/LKUP.cfm?  
id=ISWL3Y  
Date: 2015.04.07 15:21:33 -07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

YOUNG ANDERSON, Barristers & Solicitors

Suite 201

Phone: 250-712-1130

1456 St. Paul Street

Kelowna

BC V1Y 2E6

File: 122-1326

Document Fees: \$78.10

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:

[PID]

[LEGAL DESCRIPTION]

028-791-649

LOT 2 DISTRICT LOT 139 OSOYOOS DIVISION YALE DISTRICT PLAN  
KAP92715 EXCEPT PLAN EPP40150

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Lease

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) ☐ Filed Standard Charge Terms D.F. No.

(b) ☒ Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

CITY OF KELOWNA

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

KI-LOW-NA FRIENDSHIP SOCIETY

442 LEON AVENUE

Incorporation No

KELOWNA

BRITISH COLUMBIA

S-0010638

V1Y 6J3

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

N/A

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges 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.

Officer Signature(s)

Carol-Ann Mary Marquardt

Commissioner for Taking Affidavits in BC

1435 Water Street

Kelowna, BC V1Y 1J4

(as to all signatures)

Execution Date		
Y	M	D
15	03	10

Transferor(s) Signature(s)

CITY OF KELOWNA, by its  
authorized signatories:

Colin Basran, Mayor

Stephen Fleming, City Clerk

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.

LAND TITLE ACT  
FORM D

EXECUTIONS CONTINUED

Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
Ronald P. Labossiere  
Barrister & Solicitor  
1726 Sonora Drive  
Kelowna, BC V1Y 8K7

Y	M	D
15	02	12
15	02	19

KI-LOW-NA FRIENDSHIP SOCIETY,  
by its authorized signatory:  
  
\_\_\_\_\_  
Edna Madeline Terbasket

(as to all signatures)

\_\_\_\_\_  
Charlotte K. Wong  
Barrister & Solicitor  
300 - 5687 Yew Street  
Vancouver, BC V6M 3Y2

BRITISH COLUMBIA HOUSING  
MANAGEMENT COMMISSION, by its  
authorized signatoryies:  
  
\_\_\_\_\_  
Dan Maxwell  
  
\_\_\_\_\_  
Agnes Ross

(as to all signatures)

\_\_\_\_\_

\_\_\_\_\_

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.

## TERMS OF INSTRUMENT - PART 2

### TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND INTERPRETATION .....	9
ARTICLE 2 PAYMENT OF RENT .....	12
2.1 Basic Rent .....	12
2.2 Net Lease .....	12
2.3 Interest on Amounts in Arrears .....	12
ARTICLE 3 PAYMENT OF TAXES .....	13
3.1 Payment of Realty Taxes if Lands Not Exempt.....	13
3.2 Payment in Lieu of Realty Taxes if Lands Exempt .....	13
3.3 Right to Appeal Assessment .....	13
3.4 Business Tax and License Fees.....	13
3.5 Other Taxes.....	14
3.6 Pro-rating Obligations.....	14
3.7 Application of Sections 3.1 and 3.2 .....	14
ARTICLE 4 CONSTRUCTION OF BUILDING .....	14
4.1 Lessee to Construct Building .....	14
4.2 Substantial Completion of Building.....	14
4.3 Termination of Lease on Failure to Construct .....	15
4.4 Landscaping .....	15
4.5 Alterations After Substantial Completion.....	16
4.6 Unavoidable Delays .....	16
ARTICLE 5 BUILDERS LIENS.....	16
5.1 Builders Liens .....	16
5.2 Discharge of Builders Liens.....	17

5.3	Notice by Lessor .....	17
ARTICLE 6 RESTRICTIONS ON OPERATIONS AND USE .....		17
6.1	Use .....	17
6.2	No Nuisance.....	18
6.3	Subdivision by Strata Titling .....	18
6.4	Constitution.....	18
6.5	Restriction on Contracting .....	18
6.6	Permitted Encumbrances .....	19
6.7	Obligations of the Commission .....	19
ARTICLE 7 REPAIRS AND MAINTENANCE .....		19
7.1	Lessor Not Obligated to Repair .....	19
7.2	Repairs by the Lessee.....	20
7.3	Removal of Ice and Snow from Sidewalks.....	21
ARTICLE 8 ADDITIONAL RENT .....		21
8.1	All Defaults in Payment as Additional Rent.....	21
ARTICLE 9 INSURANCE.....		21
9.1	Insurance During Construction of Building.....	21
9.2	Commercial General Liability Insurance.....	22
9.3	All Risk Property, Pressure Vessel and Rental Income Insurance .....	22
9.4	Insurance – Additional Provisions .....	22
9.5	Evidence of Insurance.....	23
9.6	Payment of Loss Under Insurance Policies .....	23
9.7	Workers Compensation Coverage .....	24
9.8	Release of Lessor and Commission from Liability for Insured Loss or Damage.....	25
9.9	Insurance Exemption for Corporation and PRHC .....	25
ARTICLE 10 DAMAGE OR DESTRUCTION.....		25



10.1	Rent Not to Abate .....	25
10.2	Lessee's Obligation When Building Partially Damaged or Destroyed .....	25
10.3	Lessee's Obligations When Building Completely or Substantially Destroyed .....	26
10.4	Replacement, Repair or Reconstruction .....	26
10.5	Special Provisions Where Approved Lender or Corporation is Mortgagee .....	26
10.6	Destruction or Damage During Last Five Years of Term.....	28
ARTICLE 11 INSPECTION AND EXHIBITION BY LESSOR .....		29
11.1	Inspection by Lessor and Commission .....	29
11.2	Exhibition by Lessor .....	29
ARTICLE 12 OBSERVANCE OF GOVERNMENTAL REGULATIONS .....		29
12.1	Compliance .....	29
ARTICLE 13 RIGHTS OF LESSOR AND LESSEE .....		30
13.1	As Landlord and Tenant.....	30
13.2	Air Space Parcel Considerations.....	30
ARTICLE 14 EXCLUSION OF LIABILITY AND INDEMNITY .....		31
14.1	Limitation of Liability and Release .....	31
14.2	Exclusion of Liability .....	31
14.3	Indemnification .....	31
14.4	Indemnification Survives Termination of Lease.....	32
14.5	Indemnity Exemption for PRHC .....	32
ARTICLE 15 SUBLETTING AND ASSIGNING.....		32
15.1	Subletting and Assigning by Lessee .....	32
15.2	Copies of Subleases .....	32
15.3	Where Mortgagee is Approved Lender, Commission or Corporation.....	33
ARTICLE 16 MORTGAGE.....		33
16.1	Mortgaging by Lessee.....	33

16.2	Tripartite Agreement.....	33
ARTICLE 17 BANKRUPTCY OF LESSEE .....		33
17.1	Bankruptcy of Lessee.....	33
ARTICLE 18 DEFAULT BY LESSEE.....		34
18.1	Re-entry on Certain Defaults by Lessee .....	34
18.2	Notice to and Remedies of Mortgagee.....	35
18.3	Change of Use.....	38
18.4	Remedies of Lessor and the Commission are Cumulative .....	38
18.5	Waiver by Lessor and Commission.....	38
ARTICLE 19 ARBITRATION.....		39
19.1	Arbitration.....	39
ARTICLE 20 SURRENDER OF LEASE .....		39
20.1	Surrender of Lease .....	39
ARTICLE 21 QUIET ENJOYMENT, OWNERSHIP OF TENANTS' FIXTURES AND OWNERSHIP OF BUILDING.....		39
21.1	Covenant for Quiet Enjoyment .....	39
21.2	Ownership of Tenant's Fixtures.....	40
21.3	Ownership of Building.....	40
ARTICLE 22 OVERHOLDING.....		40
22.1	Overholding .....	40
ARTICLE 23 ADDITIONAL RIGHTS OF THE COMMISSION .....		41
23.1	Notice to Commission.....	41
23.2	Rights of Commission Not Limited .....	41
23.3	Commission May Perform Obligations of Lessee .....	41
ARTICLE 24 ENVIRONMENTAL MATTERS .....		42
24.1	Definitions.....	42

24.2	Lessee's Covenants and Indemnity.....	42
ARTICLE 25 NOTICES.....		43
25.1	Notices .....	43
ARTICLE 26 MISCELLANEOUS .....		44
26.1	Statements by Lessor .....	44
26.2	Time of Essence .....	44
26.3	Formality of Modifications .....	45
26.4	Captions and Headings .....	45
26.5	Enurement .....	45
26.6	Covenants or Conditions.....	45
26.7	References.....	45
26.8	Execution .....	45

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 a capital contribution and financing for the capital costs of the Building.
- 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.

AND 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) "Air Space Parcel Charges" means, where the Lands are an air space parcel, all easements, statutory rights of way and other charges which are Permitted Encumbrances that are registered against the Lands in priority to this Lease in the course of creating such air space parcel;
  - (c) "Alterations" means all alterations, changes, replacements, substitutes, additions and improvements to the Building;
  - (d) "Approved Lender" means any Mortgagee approved by Canada Mortgage and Housing Corporation for the purpose of making loans under the *National Housing Act* (Canada);



- (e) “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;
- (f) “Basic Rent” means ten dollars (\$10.00);
- (g) “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;
- (h) “City” means the municipality and corporation of the City of Kelowna;
- (i) “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;
- (j) “Commission” means British Columbia Housing Management Commission or its successors in function;
- (k) “Corporation” means Canada Mortgage and Housing Corporation or its successors in function, or the Commission;
- (l) “Eligible Occupant” means a person who, during the time that such person is a tenant 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;
- (m) “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;
- (n) “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;
- (o) “Interest Adjustment Date” means the date from which the principal amount of the Insured Loan together with interest thereon becomes payable by regular instalments;
- (p) “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;
- (q) “Lease” means this Lease;
- (r) “Lease Commencement Date” means the date this Lease is registered at the Kamloops Land Title Office;
- (s) “Lessee” means Ki-Low-Na Friendship Society;

- (t) “Lessor” means the City of Kelowna;
- (u) “Losses” means liabilities, actions, statutory or other proceedings, judgments, investigations, claims, losses, damages, orders, fines, penalties, expenses, professional and other fees and disbursements, and costs;
- (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 relates to the management of the Building;
- (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 the elected officials and directors, as applicable, 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
- (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.

### 2.3 Interest on Amounts in Arrears

When the Basic Rent, Additional Rent or any other amount payable hereunder by the Lessee to the Lessor is in arrears, such amount will bear interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly not in advance, from



the date due until paid. Notwithstanding the foregoing, this section will not apply to defaults under sections 3.1 and 3.2.

### 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, or that would not be payable but for, 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 incompletion 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, the Lessee agrees with the Lessor that 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.



#### 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 Two Hundred and Fifty Thousand Dollars (\$250,000.00) (in 2014 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, 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, subject always to the laws, bylaws, regulations and permits governing the use of the Lands and Building from time to time. 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 in its unfettered discretion 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 19; 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, that 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 Subdivision by Strata Titling

The Lessee may subdivide the Lands or the Building pursuant to the *Strata Property Act* (British Columbia), and upon such stratification, the Lessee may transfer title to some of the resulting strata properties to the Commission, but shall not transfer title of the resulting properties to any other organization or individual without the consent of the Lessor.

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 6.5 but such directors will forthwith and forever be disqualified from such directorship.

#### 6.6 Permitted Encumbrances

The Lessor and the Lessee covenant and agree that, 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.

#### 6.7 Obligations of the Commission

The Commission will:

- (a) cause the Operator to use the Lands and the Building in a manner that is consistent with the Lessee's obligations contained in section 6.1;
- (b) cause the Operator to operate the Building on a non-profit basis and to operate and manage the Lands and Building in the manner approved by the Commission; and
- (c) provide the Lessor with current copies of the Operating Agreement upon the request of the Lessor.

### 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:

- (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, vaults, 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;
- (c) at the expiration or earlier termination of this Lease, the Lessee will, except as otherwise expressly provided herein, surrender and deliver up the Lands with the Building, and the fixtures, appurtenances and equipment thereon and therein, or any replacements or substitution therefor, in good order and condition; and
- (d) 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) 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 (\$5,000,000), 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, Pressure Vessel and Rental Income 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:

- (a) rental income insurance in an amount equal to the maximum annual rental income of the Building pursuant to the Operating Agreement; and
- (b) boilers and pressure vessels, protecting against usual and unusual 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