

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 of WorkSafeBC 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 workmen, employees, servants and others engaged in or upon any work, and that all workmen, contractors or other workers require the same of their workmen 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, including without limitation those set forth in Division 3 of Part 3 of the WCA and in sections 20.2 and 20.3 of the OHS Regulation, 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 9.2 to the same extent as if the Lessee had taken out insurance.

9.9 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 Lease.

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 and any Air Space Parcel Charges applicable, 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 and any Air Space Parcel Charges applicable, 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 Basic Rent payable pursuant to this Lease, calculated as follows:

amount payable = (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:
 
$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days in expired portion of the Term} \div \text{total days in Term}); \text{ and}$$
    - B. to the Lessee the amount calculated as follows:
 
$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days remaining in the Term} \div \text{total days in Term}),$$

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 Basic Rent payable pursuant to this Lease, calculated as follows:

amount payable = (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 and 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, 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.

13.2 Air Space Parcel Considerations

If the Building is going to be constructed in an air space parcel, the following provisions will apply:

- (a) the Lessee covenants with the Lessor to perform any obligation of the Lessor pursuant to any Air Space Parcel Charges;
- (b) each of the Lessee, the Lessor and the Commission acknowledges and agrees that it will not modify or replace the Air Space Parcel Charges without the prior written consent of the other parties; however, if any of the Air Space Parcel Charges contemplate future modification or replacement, if requested by the Lessor, the Lessee covenants with the Lessor that the Lessee will consent to such modification or replacement and perform the Lessor's obligations contained therein;
- (c) if the Lessor is obligated to pay the holders of the Air Space Parcel Charges for the value of any work or service benefiting the Lands and Building, the Lessee covenants with the Lessor to reimburse the Lessor for such amounts as Additional Rent, on demand; and
- (d) the Lessee covenants with the Lessor and the Commission, which will, at their option, be deemed to have an interest in all actions and arbitrations concerning the rights and obligations arising from the Air Space Parcel Charges, to promptly provide the Lessor and the Commission with written notice of all such actions and arbitrations and, if necessary, the Lessee covenants to consent to the Lessor and/or the Commission becoming a party to such actions or arbitrations. If the Lessee or the Commission may only be a party in the name of the Lessor, the Lessor covenants to permit such standing by the Lessee and the Commission in the Lessor's name.

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; or
- (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,

whether such Losses arise from an exercise of the Lessor's or the Commission's respective rights or privileges herein or otherwise, unless directly resulting from the respective negligence 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, or that would not or could not be made or incurred but for this Lease; 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 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;  
or

- (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.

#### 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 which require the Lessee to indemnify the Lessor or the Commission will apply if PRHC is the Lessee under this Lease. However, upon the request of the Lessor, the Commission agrees to apply to the Minister of Finance to allow the Commission or PRHC to grant such indemnities, and the Commission will use its best efforts to obtain the necessary consent so as to grant such indemnities to the Lessor.

### ARTICLE 15 SUBLETTING AND ASSIGNING

#### 15.1 Subletting and Assigning by Lessee

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

#### 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 the conclusion of each transaction, 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 the *Winding-up and Restructuring Act* (Canada) or 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 the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or 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 the *Winding-up and Restructuring Act* or *Bankruptcy and Insolvency Act* or determining the proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or winding-up or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency has been properly instituted, then, subject to Section 23.1, 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

The Lessee, the Lessor and the Commission agree that, subject to the provisions of sections 18.2 and 23.1, 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 thirty (30) 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 thirty (30) 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 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 25, 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 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 25, 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 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 will:
  - (i) take possession and control of the Lands and Building, or cause 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) cure 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 commence to cure the same 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), attorn 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 Change of Use

If the Lessee, by foreclosure or otherwise, acquires or intends to assign or sublet an interest in the Lands, the Lessee, assignee or subtenant will not be obliged to observe or perform the Lessee's obligations under section 6.1 but will otherwise comply with all the Lessee's other obligations under this Lease. If the Lessee, assignee or subtenant elects not to use and occupy the Lands for the use set out in section 6.1 and commences to use and occupy the Lands for another use, the Basic Rent will be adjusted, from time to time, to reflect the fair rental value of the Lands, without reference to the Improvements thereon, given the use to which the Lands is 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.

### 18.4 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 remedies 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.

### 18.5 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 ARBITRATION

### 19.1 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 reference and award 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 election for arbitration, including the expenses of appraisals, witnesses and legal representation; and
- (b) the fees of the arbitrator will be shared by the parties equally.

The *Commercial 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 a dispute 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 20 SURRENDER OF LEASE

### 20.1 Surrender of Lease

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, including, without restricting the generality of the foregoing, the provisions of sections 10.5(c) and 10.6(b), except as herein otherwise expressly provided.

## ARTICLE 21 QUIET ENJOYMENT, OWNERSHIP OF TENANTS' FIXTURES AND OWNERSHIP OF BUILDING

### 21.1 Covenant for Quiet Enjoyment

Subject always to the Lessor's and the Commission's rights herein, and subject always 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 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 municipality, 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 21.1.

#### 21.2 Ownership of Tenant's Fixtures

The Lessee may confer upon tenants or occupants of the Building 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.

#### 21.3 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, except as provided in Article 10, 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 22 OVERHOLDING

#### 22.1 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 Housing and Properties 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 sum described in section 3.1 or 3.2 hereof, as the case may be.

ARTICLE 23  
ADDITIONAL RIGHTS OF THE COMMISSION

23.1 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
- (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; or
- (c) the Commission has not entered into a new Operating Agreement with a new Operator;

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 them to attorn as tenant under the Lease.

23.2 Rights of Commission Not Limited

The Lessee and the Lessor agree that the rights given to the Commission pursuant to Article 23 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 Operating Agreement or any other agreement between the Commission and the Lessee or the Commission and the Lessor.

23.3 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 24  
ENVIRONMENTAL MATTERS

24.1 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 statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements 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.

24.2 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, PRHC 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 25 NOTICES

### 25.1 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: Manager of Community Development & Real Estate

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

Ki-Low-Na Friendship Society  
442 Leon Avenue  
Kelowna, BC V1Y 6J3  
Attention: Director

- (c) in the case of the Commission or PRHC, 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 26 MISCELLANEOUS

### 26.1 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.

### 26.2 Time of Essence

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

26.3 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.

26.4 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.

26.5 Enurement

It is further agreed and declared by the Lessor and the Lessee that this Lease will extend to, be binding upon and enure to the benefit of the Lessor, the Commission, PRHC and the Lessee, the successors and assigns of the Lessor, the Commission and PRHC, and the successors and permitted assigns of the Lessee.

26.6 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.

26.7 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.

26.8 Execution

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

**END OF DOCUMENT**