

GROUND LEASE – TOURISM CENTRE

THIS LEASE dated for reference January 24, 2017.

BETWEEN:

CITY OF KELOWNA, having an office at 1435 Water Street, Kelowna, British Columbia, V1Y 1J4

(the "Landlord")

AND:

TOURISM KELOWNA SOCIETY (S-0052974), c/o Pushor Mitchell, 301 – 1665 Ellis Street, Kelowna, British Columbia, V1Y 2B3

(the "Tenant")

WHEREAS:

- A. The Landlord is the owner of the Lands, which have no improvements presently on them.
- B. The Landlord has agreed to lease the Lands to the Tenant for the Term in order that the Tenant may erect the Building and use, occupy, and enjoy the Lands and the Building upon the terms and conditions, and subject to the provisos, contained in this Lease.

NOW THIS LEASE WITNESSES that in consideration of the Rent, covenants, and agreements to be paid, observed, and performed by the Tenant, the Landlord leases to the Tenant and the Tenant leases from the Landlord the Lands upon the terms and conditions and subject to the provisos contained in this Lease.

This Lease is made upon and subject to the following covenants and conditions which each of the Landlord and the Tenant respectively covenants and agrees to keep, observe, and perform to the extent that the same are binding or expressed to be binding upon it.

ARTICLE 1 - DEFINITIONS

- 1.1** The terms defined in this clause 1.1, for all purposes of this Lease unless otherwise specifically provided, have the following meanings:
 - (a) "Actual Commencement Date" means the date the parties determine all conditions precedent set out in Article 2 of this Lease have been fulfilled and in any event no later than December 31, 2017.
 - (b) "Additional Rent" means the amounts, if any, payable by the Tenant as additional amounts that are expressed in this Lease to be added to and made part of Additional Rent, other than Basic Rent.

- (c) "Architect" means Meiklejohn Architects Inc. of Kelowna, British Columbia, or such other architect(s) as the Tenant may appoint from time to time, who is a member in good standing of the Architectural Institute of British Columbia.
- (d) "Authority" means the City of Kelowna and any other authority having jurisdiction over development on the Lands.
- (e) "Basic Rent" as of any particular time means the net basic rental provided for in this Lease as specified in Article 3 of this Lease.
- (f) "Block F" means that parcel of land located at 238 Queensway Avenue, Kelowna, British Columbia and legally described as Parcel Identifier: 025-620-185, Block F District Lot 1527 Osoyoos Division Yale District.
- (g) "Building" means a tourism centre building located within the Lands and containing a maximum height of 7.5 metres, landscaping immediately around the tourism centre building walls and entrances within the Lands, and all necessary facilities for the passage or provision of municipal services to the tourism centre building and surrounding landscaping within the boundaries of the Lands, together with all replacements, alterations, additions, changes, substitutions, improvements, or repairs to them and all other improvements from time to time constructed or caused to be constructed upon or affixed to the Lands by the Tenant.
- (h) "Commencement Date" means that date which is 60 days after the removal of all conditions precedent set out in Article 2 of this Lease and in any event no later than January 24, 2018.
- (i) "Commencement of Construction" means that a building permit or permits have been issued to the Tenant by the Authority for the Building, and the foundations and footings of the Building have been commenced as certified to the Landlord by the Architect.
- (j) "Development Permit" means the development permit issued by the Authority to the Tenant relating to the development of the Lands.
- (k) "Environmental Contaminants" means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable materials, explosive materials, radioactive materials, dangerous goods, microwaves, hazardous waste, urea formaldehyde, asbestos, noxious substances, compounds known as chlorobiphenyls, mould, and any other substance or material the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release of which into the environment is prohibited, regulated, controlled, or licensed under Environmental Laws.
- (l) "Environmental Laws" means any laws, statutes, regulations, orders, bylaws, permits or lawful requirements of any government authority with respect to environmental protection, or regulating, controlling, licensing, or prohibiting Environmental Contaminants.

- (m) "Lands" means that approximately 303 square meter portion of Block F shown outlined in a black dashed line on the reference plan attached hereto as Schedule "A", including all improvements from time to time thereon, therein or thereto.
- (n) "Lease" means this lease, including all schedules attached to it.
- (o) "Lease for Registration Purposes" means the lease attached hereto as Schedule "D".
- (p) "Lease Plan" means a leasehold subdivision plan of Block F, showing the Lands outlined in bold.
- (q) "Lease Year" means a 12-month period commencing with the 1st day of January in one calendar year and ending on the last day of December thereof, provided that the first Lease Year will commence on the Commencement Date and end on the last day of December next following and the last Lease Year will end on the last day of the Term and commence on the first day of the immediately preceding January.
- (r) "Legal Proceeding" means any judicial, administrative or arbitration action, suit, claim, investigation or proceeding, including but not limited to claims for judicial review, injunctive relief, or damages.
- (s) "Mortgage" means a mortgage or mortgages upon or in respect of and specifically charging the leasehold interest of the Tenant in the Lands and the Building or any part of them and includes any debenture or deed of trust and mortgage to secure any bonds or debentures issued under it, and any assignment of rents made to the Mortgagee as security.
- (t) "Mortgagee" means a mortgagee or mortgagees under a Mortgage.
- (u) "Person" or any word or expression descriptive of a person, includes any body corporate and politic, the heirs, executors, administrators, or other legal representatives of such person.
- (v) "Prime Rate" means the annual percentage rate of interest established from time to time by the Royal Bank of Canada, Kelowna Branch, Kelowna, British Columbia 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 Royal Bank of Canada as the prime rate.
- (w) "Rent" means the Basic Rent, Additional Rent, and any other amounts payable by the Tenant under this Lease.
- (x) "Substantial Completion" means substantial completion as defined in clause 5.2 of this Lease.
- (y) "Term" means the 29-year period commencing on the Commencement Date and ending at 5:00 p.m. on that date which is one day prior to the 29th anniversary of the Commencement Date.

- 1.2** 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 clause of this Lease.
- 1.3** The words "herein", "hereby", "hereunder", and words of similar import refer to this Lease as a whole and not to any particular article, clause, or subclause of the Lease.
- 1.4** The captions and headings throughout this Lease are for convenience and reference only and the words and phrases used in the captions and headings 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 clause or the scope or intent of this Lease, nor in any way affect this Lease.

ARTICLE 2 - CONDITIONS

The obligations of the Landlord and Tenant under the terms of this Lease are subject to the conditions outlined in this Article 2. Each condition is for the sole benefit of the party indicated and must be waived or declared fulfilled by the benefitting party providing notice to the other party to this Lease, as the case may be.

- 2.1** The Lease is subject to the Tenant securing appropriate financing from public and/or private sources, with assistance from the Authority if financing cannot otherwise be secured, as determined in the Tenant's sole discretion, for the development of the Lands, the construction of the Building, and the operation of the Building by the Tenant for the purposes outlined in Article 6, such financing to be secured no later than July 26, 2017.
- 2.2** This Lease is subject to the Tenant determining, in its sole discretion, that the Lands are suitable for the purposes of constructing the Building by March 22, 2017.
- 2.3** This Lease is subject to the Tenant obtaining the requisite approvals from the Authority for the following purposes:
 - (a)** approval for the development of the Lands by March 22, 2017, such approval indicated by council of the Authority adopting:
 - (i)** a bylaw to rezone the Lands to P1 – Major Institutional (for reference, a listing of the allowable principal and secondary uses in the P1 zone pursuant to City of Kelowna Zoning Bylaw No. 8000 is attached hereto as Schedule "C"),
 - (ii)** a resolution authorizing the issuance of a development permit for the development on the Lands, and
 - (iii)** a resolution authorizing the issuance of a development variance permit for any required setback, site coverage, and landscape buffer variances required by the Tenant for the development on the Lands;
 - (b)** approval for the construction of the Building including the approval of all final

architectural, engineering, and landscape drawings, specifications, and plans relating thereto by July 26, 2017.

- 2.4** This Lease is subject to the Tenant entering into a satisfactory contract for the construction of the Building by November 22, 2017.
- 2.5** This Lease is subject to the Landlord approving on or before March 22, 2017, such approval not to be unreasonably withheld, the Tenant's pro forma operating budget for the Building covering a period of 5 years, such budget to be provided to the Landlord by the Tenant by February 21, 2017.
- 2.6** This Lease is subject to, on or before July 26, 2017, execution of the Lease Plan by all required signatories and approval of the Lease Plan by the Tenant and the Approving Officer for the City of Kelowna under the *Land Title Act* and by any other approving authority having jurisdiction including, without limitation, approval of the Lease Plan for registration in the Land Title Office. In connection with the leasehold subdivision contemplated by this section, the Landlord agrees with the Tenant that the Landlord shall be responsible, at its sole cost and expense, for the payment of all fees, costs and charges related thereto including, but not limited to, the preparation of the Lease Plan.
- 2.7** This Lease is subject to, on or before December 31, 2017, the parties agreeing upon the Actual Commencement Date and:
- (a) inserting the date determined as the Actual Commencement Date into the Lease For Registration Purposes as the "Commencement Date" as defined therein;
 - (b) the addition of the Lease Plan to the Lease for Registration Purposes; and
 - (c) the registration of the Lease for Registration Purposes in the Land Title Office.
- 2.8** The parties acknowledge that the reference plan to be attached hereto as Schedule "A" will not be prepared by the Landlord until after the execution of this Lease by the parties and after the Landlord arranges a public hearing to review the project contemplated herein. This Lease is subject to, on or before July 26, 2017, the review and approval by the Tenant and the Landlord of the reference plan to be attached hereto as Schedule "A" and the parties mutual agreement to attach such reference plan to this Lease as Schedule "A".

2.9 Consideration for Conditions of the Tenant and Waiver

In consideration of Ten Dollars (\$10.00) non-refundable to be paid by the Tenant to the Landlord and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Landlord, the Landlord agrees not to revoke its acceptance of this Lease while this Lease remains subject to the conditions precedent set forth in clauses 2.1, 2.2, and 2.4 of this Lease. For greater certainty, the Tenant acknowledges and agrees that the Ten Dollars (\$10.00) paid pursuant to this clause is the absolute property of the Landlord and in no event shall such Ten Dollars (\$10.00) be returnable to or paid to the Tenant.

The conditions precedents set forth in clauses 2.1, 2.2, and 2.4 are for the Tenant's sole benefit and each may be waived, unilaterally by the Tenant, at the Tenant's election. No condition precedent will be considered satisfied unless the Tenant confirms to the Landlord in writing that the condition precedent has been satisfied. If the Tenant does not give the Landlord notice of the satisfaction or waiver of the conditions precedent in clauses 2.1, 2.2, and 2.4 within the applicable time therein provided then the Tenant's obligation to lease the Lands from the Landlord as set forth herein, and the Landlord's obligation to lease the Lands to the Tenant as set forth herein, will be at an end and thereafter neither party shall have any further or continuing obligation to the other under this Lease (except as otherwise specifically provided for in this Lease).

2.10 Consideration for Conditions of the Landlord and Waiver

In consideration of Ten Dollars (\$10.00) non-refundable to be paid by the Landlord to the Tenant and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Tenant, the Tenant agrees not to revoke its acceptance of this Lease while this Lease remains subject to the condition precedent set forth in clause 2.5 of this Lease. For greater certainty, the Landlord acknowledges and agrees that the Ten Dollars (\$10.00) paid pursuant to this clause is the absolute property of the Tenant and in no event shall such Ten Dollars (\$10.00) be returnable to or paid to the Landlord.

The condition precedent set forth in clause 2.5 is for the Landlord's sole benefit and may be waived, unilaterally by the Landlord, at the Landlord's election. No condition precedent will be considered satisfied unless the Landlord confirms to the Tenant in writing that the condition precedent has been satisfied. If the Landlord does not give the Tenant notice of the satisfaction or waiver of the condition precedent in clause 2.5 within the applicable time therein provided then the Tenant's obligation to lease the Lands from the Landlord as set forth herein, and the Landlord's obligation to lease the Lands to the Tenant as set forth herein, will be at an end and thereafter neither party shall have any further or continuing obligation to the other under this Lease (except as otherwise specifically provided for in this Lease).

2.11 Mutual Conditions Precedent

The conditions precedent set forth in clauses 2.3, 2.6 2.7 and 2.8 are for the benefit of both the Landlord and the Tenant and may be waived only by mutual agreement of the parties. If those conditions precedent have not been satisfied or waived by mutual agreement within the applicable time therein provided then the Tenant's obligation to lease the Lands from the Landlord as set forth herein, and the Landlord's obligation to lease the Lands to the Tenant as set forth herein, will be at an end and thereafter neither party shall have any further or continuing obligation to the other under this Lease (except as otherwise specifically provided for in this Lease).

ARTICLE 3 - PAYMENT OF RENT

3.1 Rent

The Tenant covenants and agrees to pay Basic Rent in the amount of \$50.00, to the Landlord on or

before the Commencement Date. This amount is the total Basic Rent payable for the Term of this Lease.

3.2 Payments Generally

All payments by the Tenant to the Landlord of whatsoever nature required or contemplated by this Lease will be:

- (a) paid to the Landlord by the Tenant in lawful currency of Canada;
- (b) made when due under this Lease, without prior demand and without any set off, abatement, or deduction whatsoever, at the office of the Landlord or such other place as the Landlord may designate from time to time to the Tenant;
- (c) applied towards amounts then outstanding under this Lease, in such manner as the Landlord may see fit; and
- (d) deemed to be Rent, in partial consideration for which this Lease has been entered into, and will be payable and recoverable as Rent, such that the Landlord will have all of the rights and remedies against the Tenant for default in making any such payment that may not be expressly designated as rent, as the Landlord has for default in payment of Rent.

3.3 Net Lease

It is the intention of the Landlord and Tenant that all expenses, costs, payments, and outgoings incurred in respect of the Lands, the Building, and any other improvements of the Lands or for any other matter or thing affecting the Lands, will be borne by the Tenant and unless expressly stipulated to the contrary, the Basic Rent will be absolutely net to the Landlord and free of all abatements, set off, or deduction of real property taxes, charges, rates, assessments, expenses, costs, payments, or outgoings of every nature arising from or related to the Lands, the Building or any other improvements on the Lands and, unless expressly stated to the contrary, the Tenant will pay or cause to be paid all such taxes, charges, rates, assessments, expenses, costs, payments, and outgoings.

3.4 Interest on Amounts in Arrears

When the Rent is in arrears, such amounts will bear interest, including interest on overdue interest, at the Prime Rate plus 6% per annum calculated monthly not in advance from the date due until paid, irrespective of whether or not the Landlord demanded payment. The Landlord will have all the remedies for the collection of such interest, if unpaid after demand, as in the case of Rent in arrears, but this stipulation for interest will not prejudice or affect any other remedy of the Landlord under this Lease. If the Tenant fails to pay taxes under clause 4.1 when due, then clause 4.2 will apply rather than this clause 3.4.

3.5 Goods and Services Taxes

The Tenant agrees to pay to the Landlord at the times required by the applicable legislation all

goods and services taxes or harmonized sales taxes payable under the *Excise Tax Act* (Canada), or such other tax as may be substituted for those taxes from time to time.

ARTICLE 4 - PAYMENT OF TAXES

4.1 Payment of Taxes

- (a) Except as otherwise provided in clause 4.2, the Tenant will in each and every year during the Term, not later than the day immediately preceding the date or dates on which real property taxes and other charges imposed upon real property within the Province of British Columbia become due and payable, whether monthly, quarterly, twice yearly, or otherwise, pay and discharge or cause to be paid and discharged all taxes, rates, duties, charges, and assessments, including school taxes, local improvement rates, and other charges that now are or will or may be levied, rated, charged, or assessed against the Lands, the Building, all other structures, all machinery, equipment, facilities, and other property of any nature whatsoever in or on them, whether such taxes, rates, duties, charges, and assessments are charged by any municipal, parliamentary, legislative, regional, school, or other authority during the Term and will indemnify and keep indemnified the Landlord from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such taxes, rates, duties, charges, and assessments; and any such losses, costs, charges, and expenses incurred by the Landlord may be collected by the Landlord as Additional Rent.
- (b) The Tenant further covenants and agrees that during the Term it will deliver to the Landlord for inspection receipts for payments of all taxes, rates, duties, charges, and assessments, including school taxes, local improvement rates, and other charges in respect of the Lands, the Building, all other structures, all machinery, equipment, facilities, and other property of any nature whatsoever on or in the Lands or Building that were due and payable during the Term within 14 days following receipt by the Tenant of each of such receipts for payment.
- (c) The Landlord acknowledges that the Tenant may be entitled to apply for permissive exemptions with respect to certain taxes, rates, duties, charges and assessments levied by any municipal, parliamentary, legislative, regional, school or other authority, and the Landlord will cooperate with the Tenant, at the Tenant's expense and in the manner that a tenant might reasonably request of an ordinary landlord, in respect of any such application by the Tenant. The Landlord covenants and agrees that the Landlord will accept confirmation of the Tenant's valid and applicable exemption from certain taxes, rates, duties, charges, and assessments levied by any municipal, parliamentary, legislative, regional, school, or other authority as evidence of the Tenant's performance of its obligations for payment and reporting pursuant to subclause 4.1(a) and 4.1(b) in respect of the exempted tax, rate, duty, or charge for the period during which the exemption applies.
- (d) The Landlord will, not later than 14 days following receipt of any assessment notices delivered to the Landlord by any taxing authority relating to the Lands, the Building or any other structures, any machinery, equipment, facilities, and other property of any nature

whatsoever on or in the Lands or Building, forward a copy of those notices to the Tenant. The Tenant will have the right to appeal any assessment of the Lands or the Building or any other tax, rate, duty, charge, or amount referred to in this clause 4.1 provided that such appeal will be at the sole cost and expense of the Tenant. The Landlord will co-operate with the Tenant, at the Tenant's expense, in order to assist the Tenant with any such appeal.

- (e) The Tenant will be responsible for the payments referred to in this clause 4.1 from the Commencement Date.

4.2 Delinquent Taxes

If the Tenant in any year during the Term fails to pay the taxes under clause 4.1 when due, the Tenant will pay to the Landlord, on demand, interest on the amount outstanding at the percentage rate or rates established by the Province of British Columbia, the Authority, or any other taxing authority for unpaid real property taxes in the Province of British Columbia.

4.3 Payment of Utility Services

The Tenant covenants with the Landlord to pay for or cause to be paid when due to the providers thereof all charges for gas, electricity, light, heat, power, telephone, cable, water, and other utilities and services used in or supplied to the Lands and the Building throughout the Term, and will indemnify and keep indemnified the Landlord from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such charges, and any such loss, costs, charges, and expenses that relate to such charges suffered by the Landlord may be collected by the Landlord as Additional Rent.

4.4 Business Tax and Licence Fees

The Tenant covenants with the Landlord to pay for or cause to be paid when due every tax and permit and licence fee in respect of the use or occupancy of the Lands by the Tenant (and any and every subtenant, permittee, and licensee) other than such taxes as corporate income, profits, or excess profit taxes assessed upon the income of the Tenant (or such subtenant, permittee, and licensee) whether such taxes or permit and licence fees are charged by any municipal, parliamentary, legislative, regional, or other authority during the Term, and will indemnify and keep indemnified the Landlord from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such taxes and permit and licence fees; and any such loss, costs, charges, and expenses that relate to such charges incurred by the Landlord may be collected by the Landlord as Additional Rent.

ARTICLE 5 - CONSTRUCTION

5.1 Tenant to Construct Building

- (a) Prior to the commencement of any development on the Lands, the Tenant will apply to the Authority for a Development Permit and any other permits necessary to construct the Building, and at the same time deliver to the Landlord drawings, elevations (where

applicable), specifications (including the materials to be used), locations (where applicable), and exterior decoration and design of the proposed Building for the Landlord's approval, which approval the Landlord agrees not to unreasonably withhold. Upon receipt of the Landlord's approval and a building permit, the Tenant will construct the Building, together with other facilities ancillary to and connected with the Building on the Lands, expeditiously and in a good and workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including materials to be used), location on the Lands, and exterior decoration and design all upon which the issuance of the building permits by the Authority having jurisdiction are based.

- (b) Any changes to the drawings, specifications, location, exterior decoration, design, or exterior appearance of the Building or the appearance of the Lands will first be approved by the Landlord.

5.2 Substantial Completion of Building

The Building will be deemed to have been Substantially Completed when the Architect or engineer of the Tenant has issued a certificate to the Landlord, signed and sealed by the Architect or engineer, certifying that:

- (a) the Building is substantially complete in all material respects in a proper and workmanlike manner and in accordance with the applicable plans, specifications, and supporting documents submitted to and accepted by the Landlord upon which the issuance by the Authority of any development permit and building permits for the Building have been based, except for deficiencies the correction of which, in the opinion of the Architect or engineer, is adequately ensured;
- (b) all building bylaws and regulations of the Authority have been complied with by the Tenant except for deficiencies the correction of which, in the opinion of the Architect or engineer, is adequately ensured;
- (c) all permits for occupancy that may be required by the Authority have been obtained; and
- (d) the Building is ready for occupancy.

For purposes other than subclause 5.3(b), Substantial Completion may be in respect of portions of the Building.

5.3 Deadlines for Commencement of Construction and Substantial Completion of Building

The Tenant covenants and agrees with the Landlord that, subject always to Article 11 and clause 18.2:

- (a) Commencement of Construction of the Building will take place on or before the day that is 120 days following the Commencement Date; and
- (b) the Building will be Substantially Completed in accordance with the requirements of clause

5.2 on or before the day that is 2 years following the Commencement of Construction, however; should Legal Proceedings arise respecting those conditions set out in Article 2, and more specifically with respect to that bylaw described in clause 2.3, then the foregoing deadlines for Commencement of Construction and Substantial Completion of the Building will be extended by the Landlord by a reasonable period of time at least equal to that of resolution of such Legal Proceedings.

5.4 Termination Where Tenant Defaults in Commencement of Construction or Substantial Completion

- (a) If Commencement of Construction or Substantial Completion of the Building does not occur by the dates specified in clause 5.3, or such extended period of time as permitted by the Landlord as a result of Legal Proceedings, the Landlord will have the right and option to terminate this Lease and the provisions of clause 19.1 will apply, except as modified by subclause 5.4(c).
- (b) In the event of a dispute between the Landlord and the Tenant as to whether or not the Landlord is entitled to terminate this Lease pursuant to the provisions of this clause 5.4, the Landlord and the Tenant agree to submit such dispute to arbitration in accordance with the provisions of Article 21.
- (c) If the Landlord terminates this Lease under this clause 5.4, then the Landlord will be entitled to retain the Basic Rent paid as its sole remedy and as liquidated damages and not as a penalty.

5.5 Termination Where Legal Proceedings Restrict Tenant's Purposes

- (a) The Landlord and Tenant agree that, if Legal Proceedings arise that extend the deadlines for Commencement of Construction and Substantial Completion of the Building pursuant to clause 5.3, and the resolution of such Legal Proceedings results in a substantial restriction of the Tenant's use of the Building for the purpose of operating a tourism facility pursuant to clause 6.1, then the Tenant will have the right and option to terminate this Lease, without penalty, upon giving written notice to the Landlord, and the Tenant shall remove all buildings and structures constructed, placed, or otherwise erected on the Lands by the Tenant and shall leave the Lands in the same condition as that in which the Tenant found the Lands on the Commencement Date.
- (b) The Landlord and Tenant agree that the Tenant may terminate the Lease under the provisions of this clause 5.5 without being liable to any prosecution or damages therefor, other than for failure to remove all buildings and structures constructed, placed, or otherwise erected on the Lands by the Tenant and to leave the Lands in the condition required by subclause (a).

5.6 Access

The Landlord will provide the Tenant, its employees and agents with access to the Lands for the

purposes of conducting due diligence for a period of time commencing February 1, 2017 and ending on the Commencement Date, provided that the Tenant provides the Landlord with 2 business days' notice of its intention to access the Lands prior to the desired access.

5.7 Fire and Liability Insurance During Construction of Building

- (a) The Tenant will effect or will cause its contractor or contractors to effect prior to the Commencement of Construction of the Building and will maintain and keep in force until the insurance required under Article 7 is effected, insurance:
 - (i) protecting both the Tenant and the Landlord and the Landlord's servants and agents (without any rights of cross claim or subrogation against the Landlord) against claims for personal 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 and from any cause, including the risks occasioned by the construction of the Building, and to an amount reasonably satisfactory to the Landlord, for any personal injury, death, property, or other claims in respect of any one accident or occurrence; and
 - (ii) protecting both the Tenant and the Landlord and the Landlord's servants and agents from loss or damage (without any rights of cross claim or subrogation against the Landlord) 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 policies effected from time to time covering the risk during different phases of construction of the Building) against fire, earthquake 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 Landlord may reasonably require to be insured against to the full insurable value thereof at all times and in any event in the amount sufficient to prevent the Landlord or the Tenant being deemed co-insurer.
- (b) The proceeds of insurance that may become payable under any policy of insurance effected pursuant to this clause 5.7 will be payable to the Tenant and will be available to finance repair and reconstruction.
- (c) All of the provisions of Article 7 respecting insurance that are of general application will apply to the insurance applying during construction of the Building required by this clause 5.7.

ARTICLE 6 - USE OF BUILDING

6.1 Tenant's Purposes

Subject to clause 8.4, the Tenant will use the Building for the sole purpose of operating a tourism

facility providing information, services, and programs for both residents and visitors to Kelowna in a manner that strengthens and fosters the economic, social and environmental well-being of Kelowna, in a manner that complies with the allowable principal and secondary uses in the P1 zone pursuant to City of Kelowna Zoning Bylaw No. 8000, which are listed in Schedule "C".

6.2 Tenant's Operating Obligations

In operating the Building, the Tenant will, at all times during the Term:

- (a) provide public access to the main floor of the Building; and
- (b) provide public access to washrooms located within the Building.

ARTICLE 7 - INSURANCE

7.1 Insurance

At all times during the Term immediately following the Substantial Completion of construction of the Building, the Tenant will, at its expense, insure and keep insured or cause to be insured the Building with one or more companies entitled to do business in the Province of British Columbia against loss or damage by fire and other perils now or hereafter from time to time included in the commercial building form of insurance coverage applicable to similar properties as the Lands and the Building and effected in the Province of British Columbia by prudent owners from time to time during the Term, including, without restricting the generality of the foregoing, the hazards of lightning, earthquake, explosion, wind storm, cyclone, tornado, hail, riot, civil commotion, malicious damage, aircraft, smoke, and vehicle damage to the extent that insurance against such risk or perils, or any of them, may be obtained in an amount equal to the full replacement value of the property being insured.

7.2 Deductible Amounts

Any of the policies of insurance referred to in clauses 5.7 or 7.1 may, with the approval of the Landlord, which approval will not be unreasonably withheld, provide that the amount payable in the event of any loss will be reduced by a deductible amount designated by the Tenant and approved by the Landlord, such approval not to be unreasonably withheld. The Tenant will be a co-insurer to the extent of the amount deducted from the insurance monies paid in the event of any loss, and that amount will, for the purpose of clause 7.6, be included as part of the insurance monies payable and paid.

7.3 Co-insurance Clauses

If any of the policies of insurance referred to in clauses 5.7 or 7.1 contain any co-insurance clauses, the Tenant will maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent the Landlord or the Tenant from becoming a co-insurer under the terms of such policy or policies and to permit full recovery from the insurer in the event of loss.

7.4 Identity of Insured and Subrogation

Any and all policies of insurance referred to in clauses 5.7 or 7.1 will:

- (a) be written in the name of the Tenant as the insured, and the Landlord as additional insured, with loss payable to the Landlord and the Mortgagee, if any, as their respective interests may appear;
- (b) contain a waiver of subrogation clause in favour of the Landlord and its employees and agents, and any Mortgagee;
- (c) contain a clause to the effect that any release from liability entered into by the Tenant prior to any loss will not affect the right of the Tenant, the Mortgagee, or the Landlord to recover; and
- (d) contain a provision or bear an endorsement that the insurer will not cancel such policy without first giving the Landlord and the Mortgagee at least 30 days' notice in writing of its intention to cancel or materially alter the policy.

7.5 Release of Landlord from Liability for Insured Loss or Damage

The Tenant hereby releases the Landlord and its servants, agents, successors, and assigns from any and all liability for loss or damage caused by any of the perils against which the Tenant has insured or pursuant to the terms of this Lease is obligated to insure the Building, or any part or parts of them, and the Tenant hereby covenants to indemnify and save harmless the Landlord and its respective servants, agents, successors, and assigns from and against all manner of actions, causes of action, suits, damages, loss, costs, claims, and demands of any nature whatsoever relating to such insured loss or damage or loss or damage that the Tenant is obligated to insure.

7.6 Payment of Loss Under the Insurance Policy Referred to in Clause 7.1

- (a) The insurance monies payable under any or all of the policies of insurance referred to in clause 7.1 will, notwithstanding the terms of the policy or policies, be paid to the order of the Tenant.
- (b) Subject to Article 9, the Landlord and the Tenant agree that the Tenant will use such insurance monies for the restoration, reconstruction, or replacement of the loss or damage in respect of which such insurance monies are payable under this Article 7 against certificates of the Architect engaged by the Tenant or such other person as the Landlord and the Tenant may agree upon who is in charge of such restoration, reconstruction, or replacement.

7.7 Landlord's Right to Repair and Receive the Insurance Proceeds

Should the Tenant fail to effect the restoration, reconstruction, or replacement of the loss or damage in respect of which the insurance monies are payable, without unreasonable delay, the Landlord will be entitled to effect such restoration, reconstruction, or replacement and the Tenant

will pay or cause to be paid to the Landlord such insurance monies payable for such restoration, reconstruction, or replacement.

7.8 Workers' Compensation Coverage

- (a) At all times during the Term, the Tenant will at its own expense procure and carry, or cause to be procured and carried and paid for, full workers' compensation coverage in respect of all workers, employees, servants, and others engaged in or upon any work, non-payment of which would create a lien on the Lands or the Building.
- (b) The Tenant will immediately notify the Landlord of any dispute involving third parties that may arise in connection with obtaining and maintaining the workers' compensation coverage required under this Lease if such dispute results in the requisite coverage not being in place, and the Tenant will take all reasonable steps to ensure the resolution of such dispute promptly. At all times the Tenant will indemnify and save harmless the Landlord, its servants and agents from and against all damages, costs, claims, suits, judgments, and demands that the Landlord may incur as a result of any default by the Tenant of its obligation under this clause 7.8 to ensure that the full workers' compensation coverage is maintained. The Tenant will further ensure that no amount of the workers' compensation coverage is left unpaid so as to create a lien on the Lands or the Building. If the workers' compensation coverage required by this clause 7.8 is not in place within 60 days of the date of the notice to the Landlord mentioned above, the Landlord will be entitled to have recourse to the remedies of the Landlord specified in this Lease or at law or equity.

7.9 Commercial General Liability

At all times during the Term, the Tenant will at its own expense maintain with one or more companies duly authorized to carry on business within the Province of British Columbia and approved by the Landlord, commercial general liability insurance against claims for personal injury, death, or property damage or loss arising out of the use and occupation of the Lands and Building of not less than \$5,000,000 or in such other reasonable amount as may be required by the Landlord, which insurance will include the Landlord as an additional insured, indemnifying and protecting the Landlord and its respective servants and agents and the Tenant to limits approved by the Landlord from time to time. The liability insurance will contain a cross-liability clause and severability of interest endorsement in favour of the Landlord and also a waiver of subrogation in favour of the Landlord, its employees, or agents.

7.10 Payment of Insurance Premiums

The Tenant will pay or cause to be paid all of the premiums under the policies of insurance referred to in this Article 7 as they become due and payable; and in default of payment by the Tenant, the Landlord may pay the same and add the amount so paid to the Additional Rent.

7.11 Copies of Insurance Policies

If requested by the Landlord the Tenant will promptly from time to time deliver or cause to be delivered to the Landlord certified copies of all policies of insurance referred to in this Article 7 and obtained and maintained by the Tenant, accompanied by evidence satisfactory to the Landlord that the premiums on those policies have been paid.

7.12 Insurance May Be Maintained by Landlord

The Tenant agrees that should the Tenant at any time during the Term fail to insure or keep insured the Building against loss or damage by fire and other perils as required under clause 7.1, or fail to maintain insurance against claims for personal injury, death, or property damage or loss as required under clause 7.9, then in any of such events, the Landlord, although not obliged to do so, may obtain and maintain such insurance in such amount or amounts with such deductible amounts and for such period or periods of time as the Landlord deems advisable; and the Tenant will pay to the Landlord as Additional Rent, upon the Landlord obtaining any such insurance and thereafter annually during the Term, within 30 days after receipt of any invoice from the Landlord, such amounts as the Landlord has expended for such insurance. If the Landlord pays for or obtains and maintains any insurance pursuant to this clause 7.12, the Landlord will submit to the Tenant annually a statement of the amount or amounts payable by the Tenant under this clause 7.12 as the cost of such insurance for the next ensuing year, and upon receipt of payment will apply the payment on account of the premiums of such insurance with the loss, if any, thereunder payable to the Tenant and the Landlord as their interests may appear.

ARTICLE 8 - REPAIRS AND MAINTENANCE

8.1 Landlord Not Obligated to Repair

With the exception of services normally provided by the Landlord acting in its capacity as the City of Kelowna, to the Lands and Building, and those municipal services specifically mentioned in clause 20.3, the Landlord will not be obliged to furnish any additional services or facilities or to make repairs or alterations in or to the Lands or the Building, and the Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Lands and the Building.

8.2 Repair by the Tenant

The Tenant will during the Term, at its cost, by itself or by the use of agents, put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Building) the Lands and the Building, and the appurtenances and equipment of them, both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, elevators (if any) and similar devices, heating and air-conditioning equipment, sidewalks, landscaping, yards and other like areas, water and sewer mains and connections, water, steam, gas, and electric pipes and conduits, and all other fixtures on the Lands and the Building and machinery and equipment used or required in the operation of them, whether or not enumerated in this Lease, and will, in the same manner and to the same

extent as a prudent owner, make any and all necessary repairs, replacements, alterations, additions, changes, substitutions, and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Building and aforesaid fixtures, appurtenances, and equipment fully usable for all of the purposes for which the Building were erected and constructed and the specified fixtures, appurtenances, and equipment were supplied and installed. Such repairs will be in all respects to the standard at least substantially equal in quality of material and workmanship to the original work and material in the Building and aforesaid fixtures, appurtenances, and equipment.

8.3 Tenant Not to Commit Waste or Injury

The Tenant will not commit or permit waste to the Lands or the Building or any part of them (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Building); nor will the Tenant injure or disfigure the Lands or the Building or permit them to be injured or disfigured in any way.

8.4 No Unlawful Purpose

The Tenant will not use or occupy or permit to be used or occupied the Lands or the Building or any part of them for any illegal or unlawful purpose or in any manner that will result in the cancellation of any insurance, or in the refusal of any insurers generally to issue any insurance as requested.

8.5 At Expiration Deliver Up Lands and Building

At the expiration or other termination of this Lease, the Tenant will, except as may be otherwise expressly provided in this Lease, surrender and deliver up the Lands with the Building and the fixtures, appurtenances, and equipment attached thereto, including all replacements and substitutions, in good order and condition, reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Building.

8.6 Lands Accepted "As Is"

The Tenant accepts the Lands "as is" knowing the condition of the Lands, and agreeing that the Landlord has made no representation, warranty, or agreement with respect to the Lands, except as may be otherwise expressly provided in this Lease.

8.7 Repairs to Building by Landlord

If at any time during the Term the Tenant fails to maintain the Lands and the Building and the fixtures, appurtenances, and equipment of them, both inside and outside, in the condition required by the provisions of clause 8.2, the Landlord through its agents, servants, contractors, and subcontractors may but will not be obliged to enter upon those parts of the Lands and the Building required for the purpose of making the repairs required by clause 8.2. The Landlord will make such repairs, only after giving the Tenant 60 days' written notice of its intention so to do, except in the case of an emergency when no notice to the Tenant is required. Any amount paid by the Landlord in making such repairs to the Lands and the Building or any part or parts thereof,

together with all costs and expenses of the Landlord, will be reimbursed to the Landlord by the Tenant on demand plus a 15% administration fee together with interest at the rate specified in clause 3.4.

8.8 Removal of Ice and Snow from Sidewalks

The Tenant covenants and agrees with the Landlord that if the Tenant at any time during the Term fails to keep the public sidewalks adjacent to the Lands reasonably clean from ice and snow during the times and to the extent required of an owner under the bylaws or other regulation of the Authority in effect from time to time, the Landlord through its agents, servants, contractors, and subcontractors may remove such ice and snow and the Landlord will not be required to give the Tenant any notice of its intention so to do. Any costs and expenses incurred by the Landlord in removing such ice and snow will be reimbursed to the Landlord by the Tenant on demand plus a 15% administration fee together with interest at the rate specified in clause 3.4. For clarity, nothing herein requires the Tenant to clear ice and snow from or maintain the promenade walkway or the main boardwalk through Kerry Park.

ARTICLE 9 - DAMAGE OR DESTRUCTION

9.1 Rent Not to Abate

The partial destruction or damage or complete destruction by fire or other casualty of the Building will not terminate this Lease or entitle the Tenant to surrender possession of the Lands or the Building or to demand any abatement or reduction of the Rent or other charges payable under this Lease, any law or statute now or in the future to the contrary.

9.2 Tenant's Obligations When the Building Is Damaged or Partially Destroyed

The Tenant covenants and agrees with the Landlord that in the event of damage to or partial destruction of the Building, the Tenant, subject to the regulations and requirements of the Authority and any other government authority having jurisdiction, will repair, replace, or restore any part of the Building so destroyed.

9.3 Tenant's Obligations When the Building Is Completely or Substantially Destroyed

The Tenant covenants and agrees with the Landlord that in the event of complete or substantially complete destruction of the Building, the Tenant, subject to the regulations and requirements of the Authority and any other government authority having jurisdiction, will reconstruct or replace the Building with structures comparable to those being replaced.

9.4 Replacement, Repair or Reconstruction Under Clauses 9.2 or 9.3 to Be Carried Out in Compliance with Clause 8.2 and Article 10

Any replacement, repair, or reconstruction of the Building or any part of the Building pursuant to the provisions of clauses 9.2 or 9.3 will be made or done in compliance with the provisions of

clause 8.2 and Article 10.

ARTICLE 10 - REPLACEMENT, CHANGES, ALTERATIONS, AND SUBSTITUTIONS

- (a) The Tenant will not make or permit to be made any changes, alterations, replacements, substitutions, or additions affecting the structure of the Building, the major electrical and/or mechanical systems contained in them, or the exterior decoration, design, or appearance of the Building without the written approval of the Landlord, which approval the Landlord will not withhold unreasonably. No changes, alterations, replacements, substitutions, or additions will be undertaken until the Tenant has submitted or caused to be submitted to the Landlord drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and exterior decoration and design of the proposed changes, alterations, replacements, substitutions, or additions, and until they have been approved in writing by the Landlord, which approval the Landlord agrees not to unreasonably withhold.
- (b) The Tenant covenants and agrees with the Landlord that, subject to Article 11, all changes, alterations, replacements, substitutions, and additions undertaken by or for the Tenant once begun will be prosecuted with due diligence to completion. All such changes, alterations, and additions will meet the requirements of the Authority and any other government authorities having jurisdiction.

ARTICLE 11 - UNAVOIDABLE DELAYS

- (a) Without limiting clause 5.3, if, by reason of strike, lock out, or other labour dispute, material or labour shortage not within the control of the Tenant, stop-work order issued by any court or tribunal of competent jurisdiction (provided that such order was not issued as the result of any act or fault of the Tenant or of anyone employed by it directly or indirectly), Legal Proceedings respecting those conditions set out in Article 2 and more specifically with respect to that bylaw described in clause 2.3, fire or explosion, flood, wind, water, earthquake, act of God, transportation embargoes or failures or delays in transportation, or other similar circumstances beyond the reasonable control of the Tenant and not avoidable by the exercise of reasonable effort or foresight by the Tenant (each of which is an "Unavoidable Delay"), the Tenant is, in good faith and without default or neglect on its part, prevented or delayed in the performance of its covenants or obligations which under the terms of this Lease the Tenant is required to do by a specified date or within a specified time or, if not specified, within a reasonable time, the date or period of time within which the work was to have been completed or the covenant or obligation was to have been met will be extended by the Landlord by a reasonable period of time at least equal to that of such delay or prevention; and the Tenant will not be deemed to be in default if it performs and completes the work or meets the covenant or obligation 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 Landlord and the Tenant. If the Landlord and the Tenant cannot agree as to whether or not there is an Unavoidable Delay within the meaning of this Article, or they cannot agree as to the length of such Unavoidable Delay, then such matter will be determined by

reference to arbitration in accordance with Article 21. For the purposes of this Article 11 the inability of the Tenant to meet its financial obligations under this Lease or otherwise will not be an Unavoidable Delay.

- (b) If, as a result of an Unavoidable Delay, the Tenant will not be able to substantially use the Building for the purpose of operating a tourism facility in accordance with clause 6.1 for a period of 120 days or more, then either party may, at any time after the commencement of the Unavoidable Delay, terminate this Lease by delivering written notice to the other party.
- (c) The Tenant will act diligently and take all reasonable steps of a prudent owner to remove the Unavoidable Delay.

ARTICLE 12 - BUILDERS' LIENS

12.1 Tenant to Remove Liens

The Tenant will, throughout the Term at its own cost and expense, cause any and all builders' liens and other liens for labour, services, or materials alleged to have been furnished with respect to the Lands or the Building, which may be registered against or otherwise affect the Lands or the Building, to be paid, satisfied, released (including, without limitation, the release of all such liens from the interest of the Landlord in the Lands), or vacated within 42 days after the Landlord sends to the Tenant written notice by registered mail of any claim for any such lien. PROVIDED HOWEVER that in the event of a bona fide dispute by the Tenant of the validity or correctness of any claim for any such lien the Tenant will not be bound by the foregoing, but will be entitled to defend against the claim in any proceedings brought in respect of the claim after first paying into court the amount claimed or sufficient security, and such costs as the court may direct, or the Tenant may provide, as security in respect of such claim, an irrevocable letter of credit, lodged with the Landlord, for 120% of the full amount of any claim for any such lien, the amount of which letter of credit will be increased every six months to include interest on the claimed amount at the Prime Rate, calculated semi-annually not in advance from the date any such claim is registered against or otherwise affects the Lands or the Building, continuing so long as the proceedings continue and which letter of credit will be on terms sufficient to protect the Landlord's interest in the Lands and the Building and in a form reasonably satisfactory to the Landlord and will be issued by one of the chartered Banks of Canada; and, upon being entitled to do so, the Tenant will register all such documents as may be necessary to cancel such lien from the Lands and the Building, including the Landlord's interest in them.

12.2 Landlord Not Responsible for Liens

It is agreed that the Landlord will not be responsible for claims of builders liens filed by persons claiming through the Tenant or persons for whom the Tenant is in law responsible. The Tenant acknowledges and agrees that the improvements to be made to the lands are made at the Tenant's request solely for the benefit of the Tenant and those for whom the Tenant is in law responsible.

ARTICLE 13 - INSPECTION AND EXHIBITION BY LANDLORD

13.1 Inspection by Landlord

The Landlord and the Tenant agree that it will be lawful for a representative of the Landlord at all reasonable times during the Term to enter the Lands and the Building, or any of them and to examine their condition. The Landlord will give to the Tenant notice of any repairs or restorations required in accordance with clause 8.2 and the Tenant will, within 60 days after every such notice or such longer period as provided in subclause 19.3(a), well and sufficiently repair, restore, and make good accordingly.

13.2 Exhibition by Landlord

During the final 6 months of the Term, the Landlord will be entitled to display upon the Lands the usual signs advertising the Lands and the Building as being available for purchase or letting, provided such signs are displayed in such a manner as not to interfere unreasonably with the Tenant's use and enjoyment of the Lands and the Building.

ARTICLE 14 - OBSERVANCE OF REGULATIONS

The Tenant covenants with the Landlord that, notwithstanding any other provision of this Lease to the contrary, throughout the Term the Tenant will comply with all provisions of law, including without limitation municipal, regional, provincial, and federal legislative enactments concerning, without limitation, all environmental, police, fire, and sanitary regulations, zoning and building bylaws, and any municipal, regional, provincial, federal or other government regulations that relate to the construction and erection of the Building, to the equipment and maintenance of the Building, to the operation, occupation, and use of the Building or the Lands to the extent that the Tenant operates, occupies, and uses the Building or the Lands, whether by subletting them or any part of them or otherwise, and to the making of any repairs, replacements, alterations, additions, changes, substitutions, or improvements of or to the Building, the Lands, or any part of them.

ARTICLE 15 - INDEMNITY

15.1 Breach, Violation, or Non-performance of Covenants by Tenant

The Tenant will indemnify and save harmless the Landlord, its servants, agents, successors, and assigns from any and all manner of actions, causes of action, suits, damages, loss, costs, builders' liens, claims, and demands of any nature whatsoever relating to and arising during the Term out of any breach, violation, or non-performance of any covenant, condition, or agreement in this Lease to be fulfilled, kept, observed and performed by the Tenant.

15.2 Injury, Damage, or Loss of Property

Notwithstanding the provisions of Article 7, the Tenant will indemnify and save harmless the Landlord from any and all manner of actions, causes of action, suits, damages, loss, costs, claims, and demands of any nature whatsoever relating to and arising during the Term out of:

- (a) any injury to person or persons, including death resulting at any time therefrom, occurring in or about the Lands or the Building; and

- (b) any damage to or loss of property occasioned by the use and occupation of the Lands or the Building;

however, no provision of this Lease will require the Tenant to indemnify the Landlord against any actions, causes of actions, suits, claims, or demands for damages arising out of the willful or negligent acts or omissions of the Landlord, its servants, agents, or contractors, unless the act or omission involves a peril against which the Tenant is obligated to place insurance, in which case the release and indemnity specified in clause 7.5 absolves the Landlord of all liability with respect to the act or omission.

15.3 Notice of Claims

To be entitled to indemnification under clauses 15.1 and 15.2, the Landlord must promptly (and in any event no later than ten (10) days after the Landlord first knew of any actions, causes of action, suits, damages, loss, costs, builders' liens, claims, Legal Proceedings and demands of any nature whatsoever) notify the Tenant of any actions, causes of action, suits, damages, loss, costs, builders' liens, claims, Legal Proceedings and demands of any nature whatsoever and deliver to the Tenant a copy of all Legal Proceedings with respect to same. If the Landlord fails to give notice to the Tenant of any actions, causes of action, suits, damages, loss, costs, builders' liens, claims, Legal Proceedings and demands of any nature whatsoever, the Tenant will be relieved of its indemnification to the extent that the Tenant was prejudiced by that failure, and the Tenant will not be required to reimburse the Landlord for any litigation expenses or other dispute resolution costs incurred by the Landlord during the period in which the Landlord failed to notify the Tenant.

15.4 Participation by Tenant

- (a) In the event that the Landlord is made party to any Legal Proceedings as a result of any breach, violation, or non-performance of any covenant, condition or agreement in this Lease to be fulfilled, kept, observed or performed by the Tenant, or as a result of any matter arising under the provisions of clauses 4.1, 4.2, 4.3, 7.5, 15.1 and 15.2, then the Tenant, at its option, may participate in or assume carriage of any Legal Proceedings or settlement discussions relating to Legal Proceedings, or any other matter for which the Tenant is required to indemnify the Landlord under this Lease.
- (b) The Tenant will give written notice to the Landlord that the Tenant will participate in or assume carriage of any Legal Proceedings or settlement discussions relating to Legal Proceedings, or any other matter for which the Tenant is required to indemnify the Landlord under this Lease within ten (10) days from receiving a copy of all Legal Proceedings provided to the Tenant pursuant to clause 15.3.

15.5 Consent by Tenant

Should the Tenant participate in or assume carriage of any Legal Proceedings or settlement discussions relating to Legal Proceedings, or any matter for which the Tenant is required to indemnify the Landlord under this Lease pursuant to clause 15.4, then the Landlord shall not

contest, pay or settle any Legal Proceedings or any demands of any nature whatsoever without the consent of the Tenant.

15.6 Indemnification Survives Termination of Lease

The obligation of the Tenant to indemnify the Landlord under any provision of this Lease with respect to liability by reason of any matter arising prior to the end of the Term, including without limitation under the provisions of clauses 4.1, 4.2, 4.3, 7.5, 15.1, and 15.2, will survive any termination of this Lease, anything in this Lease to the contrary notwithstanding.

ARTICLE 16 - SUBLETTING AND ASSIGNING

16.1 Subletting and Assigning

- (a) Except as expressly provided in this Article, the Tenant will not assign this Lease in whole or in part, or sublease the Lands or Building or any part of them, or grant any concession or licence of any part of the Lands or Building.
- (b) The Tenant will not assign this Lease without the prior written consent of the Landlord, which consent will not be unreasonably withheld or delayed. The Tenant will not be relieved of its obligations under this Lease upon assignment of the Lease unless the Landlord expressly consents to such release.

16.2 Subletting by Tenant

The Tenant may not sublet any portion of the Lands or the Building without the prior written consent of the Landlord, which consent may be withheld in the Landlord's sole discretion.

16.3 Mortgaging by Tenant

The Tenant will not mortgage its leasehold interest under this Lease and its interest in the Lands and the Building without the prior written consent of the Landlord, which consent will not be unreasonably withheld, except that the Tenant may mortgage (whether by assignment or sublease) its leasehold interest and its interest in the Lands without the consent of the Landlord for the purpose of financing the cost of constructing the Building but not otherwise, subject always to Article 17. The Tenant will not refinance any mortgage without the prior written consent of the Landlord, which consent will not be unreasonably withheld.

16.4 Tenant to Comply with All of Its Obligations in Respect of Approved Assignments, Subleases, Tenancies, and Mortgages

The Tenant will observe and perform all of its obligations incurred in respect of assignments, subleases, agreements for lease, and Mortgages of its leasehold interest in the Building, and will not allow any such obligations to be in default; and if any such default occurs, the Landlord may, but will not be obliged to, rectify such default for the account of the Tenant, and any amount paid

by the Landlord in so doing, together with all costs and expenses of the Landlord, will be reimbursed to the Landlord by the Tenant on demand plus an administration fee of 15% together with interest at the rate specified in clause 3.4.

ARTICLE 17 - MORTGAGE

17.1 Rights of Mortgagee

The Mortgagee under any Mortgage referred to in clause 16.3 may enforce such Mortgage and acquire title to the leasehold estate in any lawful way and, by its representative or by a receiver, as the case may be, take possession of and manage the Lands, and upon foreclosure of such mortgage may sell or assign the leasehold estate; and the purchaser or assignee of the leasehold estate will be liable to perform the obligations imposed upon the Tenant by this Lease only so long as such purchaser or assignee has ownership or possession of such leasehold estate. The Mortgagee may, upon foreclosure of the Mortgage, assign the leasehold estate without the consent of the Landlord provided the Mortgagee has given the Landlord an opportunity to remedy the Tenant's default in accordance with section (6) of the tri-partite agreement attached to this Lease as Schedule "B".

17.2 Notice to and Remedies of Mortgagee

- (a) No re-entry, termination, acceptance of surrender, disclaimer, or forfeiture of this Lease by the Landlord or by a receiver, interim receiver, receiver manager, liquidator, custodian, or trustee will be valid against the Mortgagee who has executed and delivered to the Landlord a tripartite agreement in the form attached hereto as Schedule "B" unless the Landlord first has given to the Mortgagee notice of the default entitling the Landlord to re-enter, terminate, or forfeit this Lease, specifying the nature of that default and stating the Landlord's intention to take such proceedings and requiring the Mortgagee:
 - (i) to cure the default specified in the notice within a period of 60 days from the date of receipt of that notice by the Mortgagee; or
 - (ii) if the default is other than the failure to pay Rent or any other sums required to be paid by the Landlord by any provisions of this Lease and if the default cannot reasonably be cured within such 60-day period, then to immediately commence to cure the default and to diligently prosecute to conclusion all acts necessary to cure the default, and the Landlord hereby grants the Mortgagee access to the Lands and the Building for that purpose.
- (b) If the default is cured within the period specified, the Mortgagee will be entitled to become tenant of the Lands and Building 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 Landlord and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term. If

there is more than one Mortgage and more than one Mortgagee wishes to cure the default or contingency specified in the notice referred to in subclause 17.2(a), then the Landlord agrees to permit the curing of the default or contingency specified in such notice and the assumption of the balance of the Term by that Mortgagee whose Mortgage ranks higher in priority; but if any Mortgagee has commenced a foreclosure action, the provisions of subclause 17.2(c) will apply.

(c)

(i) If the Mortgagee commences foreclosure proceedings against the Tenant, whether or not the Tenant is in default of the performance of its covenants and agreements with the Landlord under this Lease at the time such foreclosure proceedings are commenced, the Landlord 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 Landlord to re-enter, terminate, or forfeit this Lease if the Mortgagee:

(A) first gives notice to the Landlord of the foreclosure proceedings,

(B) is actively prosecuting the foreclosure proceedings without undue delay,

(C) cures the default or contingency within a period of 60 days from the date of receipt of notice from the Landlord specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Rent or any other sums required to be paid to the Landlord by any provision of this Lease and if such default or contingency cannot reasonably be cured within such 60-day period, immediately commences to cure the default and to diligently prosecute to conclusion all acts necessary to cure the default or contingency, and

(D) performs and observes all of the Tenant's covenants and agreements under this Lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee.

(ii) If the Mortgagee acquires title to the Tenant's interest in the Lands and the Building pursuant to the foreclosure proceedings, the Mortgagee will then become subrogated to the rights of the Tenant under this Lease, provided it attorns to the Landlord as tenant and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term. If there is more than one Mortgage and more than one Mortgagee commences foreclosure proceedings, the right to cure any default or contingency granted by this subclause 17.2(c) to a foreclosing Mortgagee will be granted to the Mortgagee whose Mortgage ranks higher in priority.

(d) If this Lease becomes subject to termination or forfeiture pursuant to Article 18 by reason of the bankruptcy or insolvency of the Tenant and the Mortgagee has filed with the

Landlord notice of Mortgage in favour of the Mortgagee and specified an address for notice under Article 26, the Landlord will give to the Mortgagee notice of the bankruptcy or insolvency of the Tenant entitling the Landlord to terminate or forfeit this Lease, and stating the Landlord's intention to take such proceedings, and requiring the Mortgagee to cure any other default of the Tenant; and the Tenant's other default will be deemed to have been sufficiently cured if the Mortgagee:

- (i) commences foreclosure proceedings against the Tenant as more particularly set out in subclause 17.2(c);
- (ii) takes possession and control of the Lands and the Building, or causes a receiver to be appointed, under the terms of the Mortgage or by a court of competent jurisdiction, who takes possession and control of the Lands and the Building, and the Landlord hereby grants the Mortgagee or such receiver access to the Lands and the Building for that purpose;
- (iii) cures every default within a period of 60 days from the date of receipt by the Mortgagee of the notice from the Landlord of the bankruptcy or insolvency of the Tenant, or if such default or defaults are other than the failure to pay Rent or any other sums required to be paid to the Landlord by any provision of this Lease and if such default or defaults cannot reasonably be cured within such 60-day period, immediately commences to cure the default and to diligently prosecute to conclusion all acts necessary to cure the default or defaults; and
- (iv) attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term.

If there is more than one Mortgagee, the right to take possession and control to cure any default and to assume the Lease will be granted to the Mortgagee who wants to do so and whose mortgage ranks higher in priority.

- (e) Any re-entry, termination, or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Tenant will be valid and effectual against the Tenant even though made subject to the rights of any Mortgagee to cure any default of the Tenant and to continue as tenant under this Lease.
- (f) No entry upon the Lands or into the Building by the Mortgagee pursuant to this clause 17.2 for the purpose of curing any default or defaults of the Tenant will release or impair the continuing obligations of the Tenant.

17.3 Mortgage Subject to Landlord's Rights Under Lease

Subject to the provisions of clause 17.2, every Mortgage will be made expressly subject to the rights of the Landlord under this Lease.

17.4 Protection of Mortgagee (Tri-partite Agreements)

The Landlord and the Tenant agree that the obligations of the Landlord under clause 17.2 are subject to the Mortgagee entering into an agreement in the form attached to this Lease as Schedule "B", whereby the Mortgagee covenants and agrees that if it acquires title to the Tenant's interest in this Lease, but only for so long as it holds such title, it will perform and observe the covenants and agreements required of the Tenant to be performed and observed, if not performed or observed by the Tenant, whether or not the Landlord has taken any steps to enforce performance or observance of any of the covenants and agreements in this Lease to be performed or observed by the Tenant.

ARTICLE 18 - BANKRUPTCY OF TENANT

18.1 Events of Bankruptcy or Receivership

The parties agree, subject to the provisions of clauses 17.2 and 17.4, that:

- (a) if the Tenant makes a general assignment for the benefit of creditors; or
- (b) if the Tenant institutes proceedings to be adjudicated bankrupt or insolvent or consents to the institution of bankruptcy or insolvency proceedings against the Tenant or files an application or petition or answer or consent seeking re organization or re adjustment of the indebtedness of the Tenant under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province of Canada 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 receiver manager; or
- (c) if a receiver, interim receiver, receiver manager, trustee, liquidator, or custodian of all or substantially all of the property of the Tenant or of the Tenant's leasehold interest in the Lands and interest in the Building is appointed or applied for by the Tenant or appointed pursuant to an instrument or by order of a court; or
- (d) if a judgment, decree, or order is entered by a court of competent jurisdiction adjudging the Tenant a bankrupt or insolvent or subject to the provisions of the *Bankruptcy and Insolvency Act* or determining that proceedings for re organization, arrangement, adjustment, composition, liquidation, or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province of Canada relating to bankruptcy or insolvency have been properly instituted otherwise than by the Tenant, provided that such judgment, decree or order is not in good faith contested by the Tenant; or
- (e) if any application or petition or certificate or order is made or granted for the winding-up or dissolution of the Tenant, voluntary or otherwise;

then the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee will have the right to disclaim this Lease or to hold and retain the Lands and the Building for a period not exceeding six months from the effective date of any such appointment, bankruptcy order, assignment, judgment, decree, order, or the commencement of

dissolution or winding up, as the case may be, or until the expiration of the Term, whichever first happens, on the same terms and conditions as the Tenant might have held the Lands and the Building had no such appointment, bankruptcy order, assignment, judgment, decree, or order been made or dissolution or winding up commenced.

If the receiver, interim receiver, receiver-manager, liquidator, or custodian holds and retains the Lands and the Building as aforesaid, he or she will during the specified period either:

- (i) surrender possession at any time and the Term will thereupon terminate; or
- (ii) upon approval of the court as hereinafter provided, sell, transfer, or otherwise dispose of all of the interest of the Tenant in this Lease and the Lands and the Building for the remainder of the Term or any part thereof and all of the rights of the Tenant under this Lease, notwithstanding anything to the contrary in Article 16 contained, if the Supreme Court of British Columbia upon the application of such receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee and after 14 days' written notice of such application to the Landlord, approves such sale, transfer, or disposition; or
- (iii) continue as tenant for the balance of the Term remaining provided that the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of this Lease on the part of the Tenant to be performed and observed.

18.2 Certain Rights of the Parties

The Landlord and the Tenant agree that:

- (a) should the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee at any time before or after taking possession disclaim this Lease or surrender possession to the Landlord, his or her liability and the liability of the estate of the Tenant and of the Tenant for payment of Rent is limited to the period of time during which the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee remains in possession of the Lands and the Building for the purposes of the trust estate. If the receiver, receiver-manager, liquidator, custodian, or trustee disclaims this Lease or surrenders possession, the Landlord or the Landlord's agents or employees authorized by the Landlord may immediately or at any time thereafter re-enter the Lands and the Building without being liable for any prosecution or damages therefor, and may repossess and enjoy the Lands and the Building and all fixtures and improvements in and on them, except fixtures and improvements that are of the nature of usual tenant's fixtures and normally removable by tenants and that are not part of the Building or the Lands; and such receiver, receiver-manager, liquidator, custodian, or trustee will execute a surrender or assignment to the Landlord in registrable form;

- (b) entry into possession of the Lands and the Building by the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee and its occupation by him or her while required for the purposes of the performance of his or her duties in his or her office will not be deemed to be evidence of an intention on his or her part to retain the Lands and the Building, nor affect his or her right to disclaim or to surrender possession pursuant to the provisions of clause 18.1; and
- (c) if after occupation of the Lands and the Building, the receiver, interim receiver, receiver-manager, liquidator, custodian, or trustee elects to retain it and thereafter sells, transfers, or otherwise disposes of the Lease, the Lands, and the Building and all interests and rights of the Tenant in them and under this Lease to a person approved by the court as provided by clause 18.1, his or her liability and the liability of the Tenant and its estate for the payment of the Rent, if any, is limited to the period of time during which he or she remains in possession of the Lands and the Building.

18.3 No Abatement of Rent

The receiver, receiver-manager, liquidator, custodian, or trustee will pay to the Landlord for the period during which the receiver, receiver-manager, liquidator, custodian, or trustee, actually occupies the Lands and the Building pursuant to clause 18.1 the Rent calculated on the basis of this Lease and payable in accordance with the terms of this Lease.

ARTICLE 19 - DEFAULT BY TENANT

19.1 Re-entry on Certain Defaults by Tenant

The Landlord and the Tenant agree that, subject to the provisions of clause 17.2, if:

- (a) the Tenant defaults in payment of Rent or any other sums required to be paid to the Landlord by any provision of this Lease, and such default continues for a period of 30 days after written notice of intention to terminate this Lease by reason of such default has been given by the Landlord to the Tenant; or
- (b) the Tenant defaults in ensuring Commencement of Construction or Substantial Completion of the Building by the dates specified in clause 5.3, or such extended period of time as permitted by the Landlord as a result of Legal Proceedings, and such default continues for a period of 30 days after written notice of intention to terminate this Lease by reason of such default has been given by the Landlord to the Tenant; or
- (c) the Tenant fails to ensure the operation of a tourism centre, as required by clause 6.1 and such default continues for a period of 30 days after written notice of intention to terminate this Lease by reason of such default has been given by the Landlord to the Tenant;

the Landlord or the Landlord's agents or employees authorized by the Landlord may immediately or at any time thereafter re-enter the Lands and the Building without being liable to any prosecution or damages therefor and may repossess and enjoy the Lands, the Building, and all fixtures and improvements on the Lands except fixtures and improvements that are of the nature

of usual tenant's fixtures and normally removable by tenants, and that are not part of the Building or the Lands, as liquidated damages, without such re-entry and repossession constituting a forfeiture or waiver of the Rent paid or to be paid to the Landlord, all of which Rent may be retained by the Landlord as the sole remedy of the Landlord and as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Tenant up to the date of such re-entry and repossession.

19.2 Forfeiture on Certain Other Defaults by Tenant

The Landlord and the Tenant agree that, subject to the provisions of clause 17.2, if:

- (a) the Tenant defaults in performing or observing any of its covenants or obligations under this Lease (other than those referred to in clause 19.1) and the Landlord has given to the Tenant notice of such default and at the expiration of 60 days after the giving of such notice the default continues to exist or, in the case of a default that cannot with due diligence be cured within the period of 60 days, the Tenant fails to proceed promptly after the giving of such notice to cure such default; and
- (b) the Landlord desires to re-enter the Lands and to repossess and enjoy the Lands and the Building and all fixtures and improvements thereon (except fixtures and improvements that are of the nature of usual tenant's fixtures and normally removable by tenants, and that are not part of the Lands and the Building);

the Landlord will, unless the Tenant voluntarily surrenders the Lands and the Building to the Landlord, apply to the Supreme Court of British Columbia, upon not less than 14 days' notice to all persons interested in the Lands and the Building, for an order that either:

- (i) the interest of the Tenant in this Lease and the Lands and the Building for the remainder of the Term and all of the rights of the Tenant under this Lease be sold by public auction or private sale on such terms and conditions as the court deems fair and equitable in the circumstances, the proceeds from the sale to be distributed, after all Rent and other money due to the Landlord under this Lease is paid to the Landlord, in accordance with the priorities of the persons interested as aforesaid as ascertained by the court upon inquiry or reference; or
- (ii) the Landlord or the Landlord's agents or employees be authorized to re-enter the Lands and the Building without being liable to any prosecution or damages therefor, and repossess and enjoy the Lands and the Building and all fixtures and improvements (except for fixtures and improvements that are of the nature of usual tenant's fixtures and normally removable by tenants, and that are not part of the Building or the Lands), as liquidated damages, without such re-entry and repossession working a forfeiture or waiver of the Rent and other money paid or to be paid to the Landlord, all of which Rent may be retained by the Landlord as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Tenant up to the date of such re-entry and repossession; and

in ordering such sale or re-entry, the court may direct the Registrar to cancel the Tenant's interest in the Lands and the Building, the registration thereof, and any certificate of leasehold charge and this Lease, and issue a new or replacement certificate in the name of the Landlord or the purchaser, as the case may be, free and clear of and from all liens, charges, and encumbrances, whatsoever. The Landlord will not be responsible for any loss to any such person interested that may arise by reason of any such sale or re-entry unless the loss occurs by reason of the wilful neglect or default of the Landlord.

19.3 Remedies of Landlord Are Cumulative

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

19.4 Waiver by Landlord

The failure of the Landlord to insist upon the strict performance of any covenant or agreement of this Lease will not waive such covenant or agreement, and the waiver by the Landlord of any breach of any covenant or agreement of this Lease will not waive such covenant or agreement in respect of any other breach. The receipt and acceptance by the Landlord of rent or other moneys due under this Lease with knowledge of any breach of any covenant or agreement by the Tenant will not waive such breach. No waiver by the Landlord will be effective unless made in writing.

ARTICLE 20 - COVENANTS AND REPRESENTATIONS OF LANDLORD

20.1 Covenant Respecting Charges and Encumbrances

- (a) The Landlord covenants with the Tenant that the Landlord has a good and marketable title in fee simple to the Lands and that the Landlord has not at any time prior to the reference date of this Lease made, done, committed, executed, or wilfully or knowingly permitted any act, deed, matter, or thing whatsoever whereby the Lands or any part of the Lands are charged or encumbered in title or estate other than the subsisting exceptions and reservations contained in the original grant of the Lands from the Crown and any restrictive covenants and/or easements and/or rights-of-way in favour of the Landlord or other public bodies that may be registered against the Lands.
- (b) The Landlord and the Tenant have executed this Lease upon the understanding that the Lease or the short form thereof may be registered by the Tenant on the title to the Lands in priority to all mortgages and other financial liens, charges, and encumbrances thereon. If any such mortgage or financial lien, charge, or encumbrance is registered before this Lease is registered, the Landlord will use reasonable efforts to promptly (that is, within 60 days after commencement of the term of this Lease) obtain and register a postponement of it by which the interests of such mortgagee or other financial lien, charge, or encumbrance

holder will be subject to the rights and interests of the Tenant under this Lease as if this Lease had been executed and registered prior to the execution and registration of such mortgage or financial lien, charge, or encumbrance and prior to the advancement of any money upon the security of them.

20.2 Covenant Respecting Authority to Lease

The Landlord covenants with the Tenant that it now has in itself good right, full power, and authority to lease the Lands to the Tenant in the manner and according to the true intent of this Lease.

20.3 Covenant Respecting Municipal Servicing

The Landlord covenants with the Tenant to provide, at its own cost and in accordance with all bylaws of the Authority, municipal water and wastewater services to the Lands.

20.4 Landlord's Sale, Transfer, or Assignment

If the Landlord sells, transfers, or otherwise disposes of its interest in the Lands or any part thereof, or if the Landlord assigns this Lease in whole or in part, then the Landlord will cause the purchaser, transferee or assignee, as the case may be, to enter into an agreement with the Tenant under which such purchaser, transferee or assignee covenants that, so long as it retains any interest in the Lands or the Lease, it will perform the obligations of the Landlord under this Lease and be bound by all of the provisions of this Lease, including this provision as to sales or other transfers and assignments, which will apply to each and every subsequent sale, transfer or assignment of any interest in the Lands or this Lease, provided that this clause 20.4 will not apply to transfers effected pursuant to clause 24.3, and further provided that any such transfer will not release the Landlord from any of its obligations under this Lease without the written consent of the Tenant, not to be unreasonably withheld.

20.5 Covenant Respecting Mortgages or Other Security

The Landlord will not mortgage, charge, or otherwise encumber by way of security the Lands, unless the Landlord has provided the Tenant with an agreement, in form satisfactory to the Tenant acting reasonably, with holders of any mortgage, charge or other encumbrance to enter into an instrument with the Tenant permitting the Tenant to continue in quiet enjoyment and possession of the Lands in accordance with the terms of this Lease, notwithstanding any default by the Landlord under any such mortgage, charge or other encumbrance.

20.6 Representation Respecting the Use of the Lands

The Landlord represents and warrants that to the best of its knowledge, the Lands are not subject to the provisions of the community trust area known as the "Sawmill Community Trust", which, among other things, expressly restricts certain property within the City of Kelowna from being used for a commercial or industrial purpose.

ARTICLE 21 - DISPUTE RESOLUTION

21.1 Process of Dispute Resolution

If a dispute arises out of, or in connection with this Lease, and the Landlord and the Tenant do not resolve some or all of the dispute through discussions then:

- (a) Either the Landlord or the Tenant may provide written notice to the other party, containing a request to negotiate. This notice will be given promptly in order to prevent further damages resulting from delay and will specify the issues in dispute.
- (b) Negotiations will occur between representatives of the Landlord and representatives of the Tenant.
- (c) All information exchanged during these negotiations will be regarded as "without prejudice" communications for the purpose of settlement negotiations and will be treated as confidential by the parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable will not be rendered inadmissible or non-discoverable by virtue of its use during the negotiations.
- (d) If the parties do not resolve some or all of the issues in dispute within 30 days after notice has been given, or within another period as agreed upon between the parties, then the parties agree to attempt to resolve the dispute through mediation.
- (e) If the parties do not resolve all of the issues in dispute through mediation, then within 30 days from the date of the mediator's report, the parties may initiate Legal Proceedings, including, but not limited to arbitration, which will be referred to and finally resolved by arbitration administered by the British Columbia International Commercial Arbitration Centre pursuant to its Rules.
- (f) If Legal Proceedings have commenced pursuant to subclause 21.1(e) then the Landlord and the Tenant agree that no further Legal Proceedings will be commenced concerning the same subject matter.
- (g) Dispute resolution proceedings pursuant to this Article 21 will be conducted, to the extent reasonably possible, in Kelowna, British Columbia.

21.2 Terms of Mediation

- (a) If a dispute arises out of, or in connection with this Lease, and the parties do not resolve some or all of that dispute through negotiation, then either the Landlord or the Tenant may promptly submit to the other party a notice of intent to mediate. This notice will be in writing and will specify the issues in dispute.
- (b) The Landlord and the Tenant agree to jointly select a mediator. If the Landlord and the Tenant cannot agree on the choice of mediator within 14 days from the date of the notice

of intent to mediate, then a mediator will be chosen, upon application by the parties, by the British Columbia International Commercial Arbitration Centre.

- (c) The parties agree to exchange of all information upon which they intend to rely in any oral or written presentation during mediation. This exchange will be complete no later than ten (10) days prior to the date set for the mediation.
- (d) All information exchanged during this mediation shall be regarded as "without prejudice" communications for the purpose of settlement negotiations and shall be treated as confidential by the parties and their representatives, unless otherwise required by law. However, evidence that is independently admissible or discoverable shall not be rendered inadmissible or non-discoverable by virtue of its use during the mediation.
- (e) Either party may terminate the mediation at any time.

ARTICLE 22 - CONDUCT ON LANDS AND BUILDING

Taking into account that during construction of the Building the Lands will be operated as a normal construction site, the Tenant covenants and agrees with the Landlord that it will not carry on or do, or allow to be carried on or done upon the Lands or in the Building any work, business, or occupation that may be a nuisance or that may be improper, noisy, or contrary to any law or to any bylaw or to any regulation of the Authority or any enactment of any other government agencies or authorities having jurisdiction for the time being in force.

ARTICLE 23 - SURRENDER OF LEASE

At the expiration or sooner determination of the Term, the Tenant will surrender the Lands and the Building to the Landlord in the condition in which they were required to be kept by the Tenant under the provisions of this Lease, except as otherwise expressly provided in this Lease. The Tenant will not be entitled to any compensation from the Landlord for surrendering and yielding up the Lands and the Building as provided.

ARTICLE 24 - QUIET ENJOYMENT AND OWNERSHIP OF TENANT'S FIXTURES

24.1 Covenant for Quiet Enjoyment

If the Tenant pays the Rent hereby reserved and the other charges, and performs the covenants hereinbefore on the Tenant's part contained, the Tenant will and may peaceably enjoy and possess the Lands for the Term, without interruption or disturbance whatsoever from the Landlord or any other person, firm, or corporation lawfully claiming from or under the Landlord, provided however that nothing in this clause 24.1 will limit the rights of access reserved by the Landlord under clause 8.7, the rights of inspection conferred upon the Landlord by clause 13.1, the right of the Landlord to show the Lands and the Building and to post "for rent" or "for sale" signs, pursuant to clause 13.2.

24.2 Ownership of Tenant's Fixtures

All articles of personal property and all business and trade fixtures, machinery and equipment and furniture owned by the Tenant or installed by the Tenant on the Lands at the Tenant's expense shall remain the property of the Tenant and may be removed by the Tenant at any time during the term of this Lease. The Tenant will make good, or will cause such tenants to make good, any damage to the Building caused by any removal of the tenant's fixtures. If any such tenant's fixtures are not removed upon the termination of this Lease, the Tenant agrees to remove them at its cost, if requested to do so by the Landlord, within seven days of the termination of this Lease. If the Landlord does not request that the Tenant remove any such tenant's fixtures, then upon the termination of this Lease they will become the absolute property of the Landlord free of all encumbrances.

24.3 Landlord's Right to Further Encumber

The Landlord hereby reserves the right to further charge the Lands, or any part of them, by way of easement, right of way, or restrictive covenant in favour of a Crown corporation or agency, a municipality, a regional district, or other government agency or authority; and the Tenant agrees, at the request of the Landlord, promptly to execute and deliver to the Landlord such instrument as may be necessary to subordinate the Tenant's right and interest in the Lands under this Lease to such charge.

24.4 Ownership of the Building

The Landlord and the Tenant agree that the title to and ownership of the Building and all alterations, additions, changes, substitutions, or improvements to it will at all times during the Term be vested in the Tenant, notwithstanding any rule or law as to the immediate vesting of the title to and ownership of the Building in the Landlord as owner of the freehold. The title to and ownership of the Building will not pass to or become vested in the Landlord until the expiration of the Term either by forfeiture, default, or lapse of time under the terms of this Lease, in which event the Building will become the absolute property of the Landlord free of all encumbrances.

ARTICLE 25 - OVERHOLDING

There shall be no holding over under the terms of this Lease under any circumstances.

ARTICLE 26 - NOTICE

All notices, demands, and requests that may be 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 or an executive officer of the party for whom it is intended or mailed prepaid and registered addressed to the parties at the addresses set out on the title page of this Lease, or such other addresses as the parties may from time to time advise by notice in writing. Mortgagees of this Lease will supply their respective mailing addresses to the Landlord and the Tenant. 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 on the second business day 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, slowdown of postal service, or other labour dispute that

affects the delivery of such notice, then such notice will be deemed to be received when actually delivered.

ARTICLE 27 - ENVIRONMENTAL

27.1 Environmental Provisions

The Tenant covenants and agrees with the Landlord to:

- (a) develop and use the Lands and Building only in compliance with all Environmental Laws;
- (b) permit the Landlord to investigate the Lands and Building, any goods on the Lands or Building, and the Tenant's records at any time and from time to time to verify such compliance with Environmental Laws and this Lease;
- (c) at the reasonable request of the Landlord, obtain from time to time at the Tenant's cost a report from an independent consultant designated or approved by the Landlord verifying compliance with Environmental Laws and this Lease or the extent of any non-compliance;
- (d) except in compliance with Environmental Laws, not store, manufacture, dispose, treat, generate, use, transport, remediate, or release Environmental Contaminants on or from the Lands or Building without notifying the Landlord in writing and receiving prior written consent from the Landlord, which consent may be unreasonably or arbitrarily withheld;
- (e) promptly remove any Environmental Contaminants from the Lands or Building in a manner that conforms to Environmental Laws governing their removal; and
- (f) notify the Landlord in writing of:
 - (i) any enforcement, clean up, removal, litigation, or other governmental, regulatory, judicial, or administrative action instituted, contemplated, or threatened against the Tenant, the Lands, or the Building pursuant to any Environmental Laws;
 - (ii) all claims, actions, orders, or investigations instituted, contemplated, or threatened by any third party against the Tenant, the Lands, or the Building relating to damage, contribution, cost recovery, compensation, loss, or injuries resulting from any Environmental Contaminants or any breach of the Environmental Laws; and
 - (iii) the discovery of any Environmental Contaminants or any occurrence or condition on the Lands or Building or any real property adjoining or in the vicinity of the Lands that could subject the Tenant, the Lands, or the Building to any fines, penalties, orders, or proceedings under any Environmental Laws.

27.2 Landlord May Make Inquiries

The Tenant hereby authorizes the Landlord to make inquiries from time to time of any government authority with respect to the compliance by the Tenant with Environmental Laws, and

the Tenant agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information.

ARTICLE 28 - MISCELLANEOUS

28.1 Certificate of Good Standing

The Landlord and the Tenant agree that at any time and from time to time upon not less than 15 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 that the same are in full force and effect as modified and identifying the modifications;
- (b) the dates to which the Rent and other charges have been paid, and the request will specify the charges in respect of which such information is required; and
- (c) that, so far as the maker of the statement knows, without having conducted any searches or made any particular inquiries, the party who requests the statement is not in default under any provisions of this Lease, or if in default, the particulars of the default.

This certification will be provided by the Landlord on the following conditions:

- (i) that neither the Landlord nor the party signing on behalf of the Landlord be liable for any damage or expense should for any reason, including negligence, the information provided be inaccurate, incomplete, or misleading;
- (ii) that should any or all of the information be inaccurate, incomplete, or misleading for any reason, including negligence, the Landlord will, as against any person or corporation who may rely on the contents of this certification statement, be able to assert and enforce its full rights in strict accordance with the Lease as if this certification statement had not been signed on behalf of the Landlord and as if any or all persons and corporations who may rely on the contents of the certification statement had not relied on the contents of the certification statement.

28.2 Time Is of the Essence

Time is of the essence of this Lease.

28.3 No Modification

This Lease may not be modified or amended except by an instrument in writing of equal formality as this Lease executed by the Landlord and the Tenant or by the successors or assigns of the Landlord and the successors or permitted assigns of the Tenant.

28.4 Successors and Assigns

It is agreed that these presents will extend to, be binding upon, and enure to the benefit of the Landlord and the Tenant and the successors and assigns of the Landlord and the successors and permitted assigns of the Tenant.

28.5 Severability

This Lease shall be construed and governed by the laws of the Province of British Columbia and the Tenant and Landlord attorn to the jurisdiction of the courts of the said Province. Should any provision or provisions of the Lease and/or its conditions be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions and conditions shall remain in force and be binding upon the parties hereto as though the said provision or provisions or conditions had never been included.

28.6 Registration

The Landlord consents to the Tenant registering the Lease or short form on the title to the Lands in the Kamloops Land Title Office under the *Land Title Act*, RSBC 1996, c 250 or any legislation in substitution for the Act, and will execute and deliver all necessary documents to provide this Lease in registrable form.

28.7 Entire Agreement

The Tenant and Landlord acknowledge that this Lease constitutes the entire agreement between the Landlord and the Tenant and may not be modified except as herein explicitly provided or except by subsequent agreement in writing duly signed by the Landlord and the Tenant.

28.8 Further Assurances

The parties will execute and deliver all such further documents, do or cause to be done all such further acts and things, and give all such further assurances as may be necessary to give full effect to the provisions and intent of this Lease.

IN WITNESS WHEREOF the parties have executed this Lease as of the date first above written.

LANDLORD:

Executed and delivered by **CITY OF**)
KELOWNA)

Per:)

_____)
 Authorized Signatory)

Per:)

_____)
 Authorized Signatory)

TENANT:

Executed and delivered by **TOURISM**)
KELOWNA SOCIETY)

Per:)

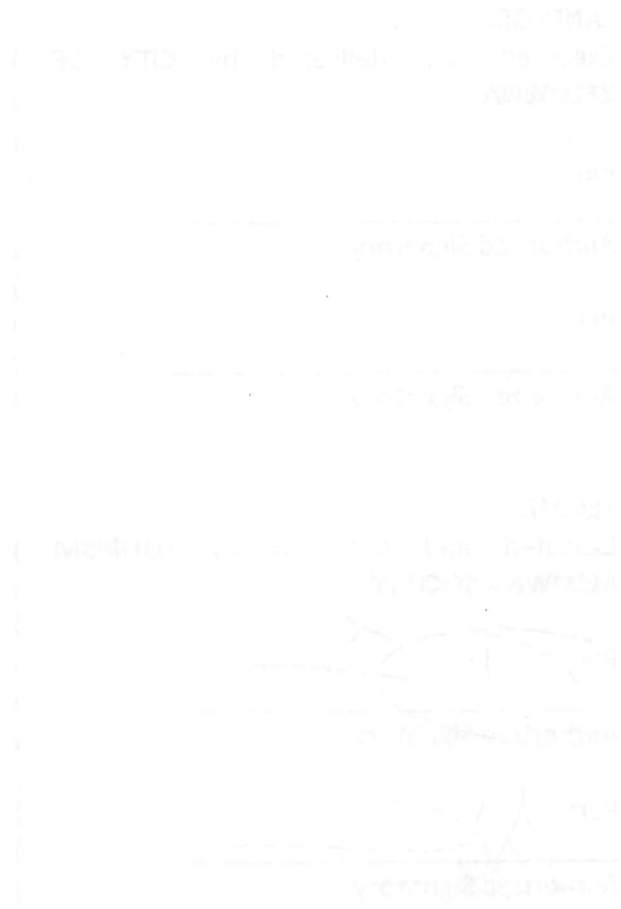
_____)
 Authorized Signatory)

Per:)

_____)
 Authorized Signatory)

SCHEDULE "A"

REFERENCE PLAN SHOWING LANDS



SCHEDULE "B"**TRIPARTITE AGREEMENT**

THIS AGREEMENT made _____

BETWEEN:

**TOURISM KELOWNA SOCIETY (S-0052974), c/o Pushor Mitchell, 301 – 1665
Ellis Street, Kelowna, British Columbia, V1Y 2B3**

(the "Tenant")

AND:

(the "Mortgagee")

AND:

**CITY OF KELOWNA, having an office at 1435 Water Street, Kelowna, British
Columbia, V1Y 1J4**

(the "Landlord")

WHEREAS:

- A. By a ground lease dated for reference the ___ day of _____, ____ (the "Ground Lease"), and registered in the land title office under registration number _____, on the terms and conditions therein contained, the Landlord did demise and lease to the Tenant, as Tenant, those lands in the Province of British Columbia more particularly known and described as Parcel Identifier: 025-620-185, Block F District Lot 1527 Osoyoos Division Yale District (the "Lands");
- B. By an indenture of mortgage (the "Mortgage") made _____ between the Tenant as mortgagor, and the Mortgagee, and registered in the land title office under number _____, the Tenant did demise and assign by way of mortgage unto the Mortgagee all of the Tenant's right, title, and interest in the Lands under the Ground Lease to secure a loan in the sum of \$ _____;
- C. The Mortgagee is a "Mortgagee", as defined under clause 1.1 of the Ground Lease, and desires to have every opportunity to protect its interest and security.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and of the sum of One Dollar (\$1.00) now paid by each of the Mortgagee, the Landlord, and the Tenant to the others (the receipt of which is hereby acknowledged by each of the parties):

- (1) The Landlord covenants and agrees with the Mortgagee that the Landlord:
 - (a) will not accept a surrender of the Ground Lease, in whole or in part, without the prior written consent of the Mortgagee, not to be unreasonably withheld; and
 - (b) will not agree to any modification or amendment to the Ground Lease:
 - (i) that may adversely affect the Mortgagee's security without the prior written consent of the Mortgagee, such consent not to be unreasonably withheld (provided that if the Mortgagee has neither provided its consent nor advised the Landlord in writing within 45 days of receipt of a request from the Landlord for its consent that it will not provide its consent, the Mortgagee will be deemed to have consented to the modification or amendment), or
 - (ii) that does not materially adversely affect the Mortgagee's security without giving the Mortgagee seven days' prior written notice.
- (2) The Tenant acknowledges and represents to the Mortgagee that it has entered into possession of the Lands pursuant to the terms of the Ground Lease.
- (3) The Landlord covenants and agrees to grant and provide to the Mortgagee all rights, assurance, and notice afforded under the terms of the Ground Lease to a "Mortgagee", as defined in the Ground Lease, and, without limiting the generality of the foregoing, all remedies afforded a "Mortgagee" under the Ground Lease.
- (4) The Landlord and the Tenant mutually covenant and agree, at any time and from time to time, upon not less than 30 days' prior request by the Mortgagee, to execute, acknowledge, and deliver to the Mortgagee a statement in writing certifying that:
 - (a) the Ground Lease is unmodified and in full force and effect, or, if there have been modifications, that same is in full force and effect as modified and identifying the modifications;
 - (b) the dates to which the rent and other charges payable under the Ground Lease have been paid, provided that the request specifies with particulars the charges in respect of which such information is required; and
 - (c) to the best knowledge of the maker of the statement, without having conducted any searches or made any particular inquiries, the other party to the Ground Lease is not in default under the provisions of the Ground Lease, or, if in default, the particulars of the default.
- (5) If the Mortgagee acquires title to the Tenant's interest in the Lands, the Mortgagee covenants and agrees to attorn as tenant under the Ground Lease pursuant to the terms thereof for so long as it remains tenant and has not assigned the balance of the Term, and hereby acknowledges that it has had the opportunity to read the Ground Lease and upon attorning as tenant under the Ground Lease will adopt the covenants and agreements of

the Ground Lease on the part of the Tenant to be performed and observed as though such provisions were incorporated in and formed a part of this Agreement, provided that the provisions of this clause (5) will not limit or affect the Landlord's rights to re-enter, seek an order for sale, terminate, or forfeit the Ground Lease if the Mortgagee fails to comply with the requirements of clause 17.2 of the Ground Lease. If the Mortgagee complies with the requirements of this clause (5) and clause 17.2 of the Ground Lease, the Mortgagee will be given and afforded the right, privileges, and benefits of the Tenant under the Ground Lease.

- (6) In the event that the Tenant is in default of its obligations to the Mortgagee, prior to commencing foreclosure proceedings against the Tenant the Mortgagee agrees to provide the Landlord with a ninety (90) day period during which the Landlord may, at the Landlord's option (and, for clarity, without obligation to proceed with either option below):
 - (a) pay funds to the Mortgagee (in a lump sum) to satisfy the indebtedness owing by the Tenant to the Mortgagee under the Mortgage and thereupon terminate the Lease; or
 - (b) with the prior consent of the Mortgagee, acting reasonably, take over the Tenant's leasehold interest in the Lands and assume the Mortgage and pay amounts in default by the Tenant to the Mortgagee under the Mortgage and making further debt payments under the Mortgage in accordance with the payment schedule under the Mortgage and, if the Tenant's leasehold interest then merges with the Landlord's ownership interest in the Lands, register the Mortgage against title to the Lands.
- (7) In the event of loss or damage to the Lands or any building on the Lands for which insurance monies become payable to the Mortgagee, the Mortgagee shall apply the insurance monies in accordance with Article 7 of the Ground Lease.
- (8) If the Tenant and the Landlord cannot agree as to any matters regarding the Ground Lease and they decide that the resolution of that matter is to be determined by arbitration pursuant to the arbitration provisions of the Ground Lease, the Mortgagee will be given adequate notice of such arbitration proceedings; and if in the reasonable opinion of the Mortgagee such proceedings may affect its mortgage security, the Mortgagee will be given a reasonable opportunity by the Tenant and the Landlord to participate in the arbitration proceedings if the Mortgagee considers such proceedings may affect its mortgage security.
- (9) If the Mortgagee has cured all defaults and contingencies of which the Mortgagee has received notice from the Landlord under clause 17.2 of the Ground Lease, then it will be entitled to permit the Tenant to continue as tenant of the Lands unless the Mortgagee has acquired the right, title, and interest of the Tenant in the Lands under the Ground Lease, in which case the provisions of clause (5) of this Agreement will apply. For the purposes of this clause, the events contemplated by Article 18 of the Ground Lease will not constitute a default or contingency.

- (10) This Agreement will be deemed to terminate and be of no further force and effect and the obligations, if any, of the Mortgagee under the Lease as tenant will cease and be of no further force and effect at such time as the Mortgage has been paid in full, has been terminated or released in accordance with the terms and conditions contained in the Lease, or has been released or discharged from the Lands or the Mortgagee has assigned the balance of the Term; unless, having obtained an order absolute in foreclosure proceedings against the Tenant, the Mortgagee elects otherwise to continue this Agreement in full force and effect and to be bound as tenant under the Lease.
- (11) This Agreement will enure to the benefit of and be binding upon the parties to it, and their respective successors and assigns.

IN WITNESS WHEREOF the parties have executed this Lease as of the date first above written.

TENANT:

Executed and delivered by **TOURISM**)
KELOWNA SOCIETY)
)
 Per:)
)
 _____)
 Authorized Signatory)

MORTGAGEE:

Executed and delivered by _____)
)
 Per:)
)
 _____)
 Authorized Signatory)

LANDLORD:

Executed and delivered by **CITY OF**)
KELOWNA)
)
 Per:)
)
 _____)
 Authorized Signatory)

SCHEDULE "C"

P1 ZONE

Section 16 – Public and Institutional Zones

16.1 P1 – Major Institutional/ P1lp – Major Institutional (Liquor Primary)

16.1.1 Purpose

The purpose is to provide a **zone** primarily for major governmental and publicly or privately funded institutional uses.

16.1.2 Principal Uses

The principal uses in this zone are:

- (a) agriculture, urban
- (b) community garden
- (c) community recreation services
- (d) detention and correction services
- (e) emergency and protective services
- (f) exhibition and convention facilities
- (g) extended medical treatment services
- (h) government services
- (i) health services
- (j) participant recreation services, indoor
- (k) private clubs
- (l) public libraries and cultural exhibits
- (m) recycled materials drop-off centres
- (n) religious assemblies
- (o) spectator entertainment establishments
- (p) temporary shelter services
- (q) utility services, minor impact

16.1.3 Secondary Uses

The secondary uses in this zone are:

- (a) child care centre, major
- (b) congregate housing
- (c) food primary establishment
- (d) group homes, major
- (e) liquor primary establishment, major (P1lp only)
- (f) liquor primary establishment, minor
- (g) non-accessory parking
- (h) public parks
- (i) retail stores, general
- (ji) supportive housing

16.1.4 Subdivision Regulations

- (a) The minimum lot width is 13.0 m.
- (b) The minimum lot depth is 30.0 m.
- (c) The minimum lot area is 460 m².

16.1.5 Development Regulations

- (a) The maximum **floor area ratio** is 2.0.
- (b) The maximum **site coverage** is 50%.
- (c) The maximum **height** is 22.0 m or 6 **storeys**.
- (d) The minimum **front yard** is 6.0 m.
- (e) The minimum **side yard** is 4.5 m, except it is 6.0 m to a **flanking street**.
- (f) The minimum **rear yard** is 7.5 m.

16.1.6 Other Regulations

- (a) In addition to the regulations listed above, other regulations may apply. These include the general **development** regulations of Section 6 (accessory **development**, **yards**, projections into **yards**, accessory **development**, lighting, stream protection, etc.), the **landscaping** and fencing provisions of Section 7, the parking and loading regulations of Section 8, and the specific **use** regulations of Section 9.
- (b) Drive-in food services are not a permitted form of development in this zone.

SCHEDULE "D" LEASE FOR REGISTRATION PURPOSES

LAND TITLE ACT
FORM C (Section 233) CHARGE
GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 6 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.

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

PUSHOR MITCHELL LLP, Lawyers

301 - 1665 Ellis Street

Phone 250-762-2108

Client No. 10332

JAP/48489.019-jlb

Kelowna

BC V1Y 2B3

Deduct LTSA Fees? Yes ☒

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:
 [PID] [LEGAL DESCRIPTION]

STC? YES ☐

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

SEE SCHEDULE

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))

TOURISM KELOWNA

301 - 1665 ELLIS STREET

KELOWNA

V1Y 2B3

BRITISH COLUMBIA

CANADA

Incorporation No

S-0052974

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)

Execution Date		
Y	M	D

Transferor(s) Signature(s)

**CITY OF KELOWNA, by its
authorized signatory(ies):**

print name:

print name:

OFFICER CERTIFICATION:

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

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 E

SCHEDULE

PAGE 3 OF 6 PAGES

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Lease

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

TERMS OF INSTRUMENT – PART 2

LEASE

This agreement dated for reference January 23, 2017.

BETWEEN:

CITY OF KELOWNA, having an office at 1435 Water Street,
Kelowna, British Columbia, V1Y 1J4

("Landlord")

AND:

TOURISM KELOWNA SOCIETY (S-0052974), c/o Pushor Mitchell,
301 – 1665 Ellis Street, Kelowna, British Columbia, V1Y 2B3

("Tenant")

This agreement witnesses that in consideration of the mutual covenants of the parties, and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each party), the parties agree each with the other as follows:

1. LANDS

1.1 By this lease ("Lease"), the Landlord hereby leases to the Tenant, and the Tenant hereby leases from the Landlord, that approximately 3,067 square foot portion of that parcel of land located at 238 Queensway Avenue, Kelowna, British Columbia and legally described as Parcel Identifier: 025-620-185, Block F District Lot 1527 Osoyoos Division Yale District shown as "_____" on the reference plan issued plan number _____ a copy of which is attached hereto as schedule A, including all improvements from time to time thereon, therein or thereto (the "Lands").

2. TERM

2.1 The initial term of this Lease is 29 years ("Term"), commencing on _____, 2016 (the "Commencement Date") and ending on that date which is one day prior to the 29th anniversary of the Commencement Date.

3. RENT

3.1 The Tenant covenants and agrees to pay rent in the amount of \$50.00, to the Landlord on or before the Commencement Date. This amount is the total rent payable for the Term of this Lease.

3.2 The Tenant will pay to the Landlord the Tenant's proportionate share of operating costs and taxes on the terms and in the manner agreed upon in writing between the parties in a written agreement dated subsequent to the effective date of this Lease.

4. USE

4.1 The Tenant will use the Lands for the sole purpose of operating a tourism facility providing information, services, and programs for both residents and visitors to Kelowna in a manner that strengthens and fosters the economic, social and environmental well-being of Kelowna in a manner that complies with the allowable principal and secondary uses in the P1 zone pursuant to City of Kelowna Zoning Bylaw No. 8000.

5. CONDITIONS

5.1 The obligations of the Landlord and Tenant under the terms of this Lease are subject to the registration of this Lease in the Land Title Office.

6. ASSIGNMENT AND SUBLETTING

6.1 Except as expressly provided in this Article, the Tenant will not assign this Lease in whole or in part, or sublease the Lands or any building on the Lands or any part of them, or grant any concession or license of any part of the Lands or any building on the Lands.

6.2 The Tenant will not assign this Lease without the prior written consent of the Landlord, which consent will not be unreasonably withheld or delayed. The Tenant will not be relieved of its obligations under this Lease upon assignment of the Lease unless the Landlord expressly consents to such release.

7. SUBORDINATION

7.1 The Landlord hereby reserves the right to further charge the Lands, or any part of them, by way of easement, right of way, or restrictive covenant in favour of a Crown corporation or agency, a municipality, a regional district, or other government agency or authority; and the Tenant agrees, at the request of the Landlord, promptly to execute and deliver to the Landlord such instrument as may be necessary to subordinate the Tenant's right and interest in the Lands under this Lease to such charge.

8. QUIET ENJOYMENT

8.1 If the Tenant duly and punctually pays Rent and complies with each of its obligations under this Lease, the Tenant will be entitled to peaceably possess and enjoy the Lands during the Term.

9. NOTICES

9.1 All notices, demands, and requests that may be 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 or an executive officer of the party for whom it is intended or mailed prepaid and registered addressed to the parties at the addresses set out on the title page of this Lease, or such other

addresses as the parties may from time to time advise by notice in writing. Mortgagees of this Lease will supply their respective mailing addresses to the Landlord and the Tenant. 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 on the second business day 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, slowdown of postal service, or other labour dispute that affects the delivery of such notice, then such notice will be deemed to be received when actually delivered.

10. NO MERGER

10.1 This Lease will not create any merger or alter or prejudice the rights of the Landlord or the Tenant under any other agreement between the Landlord and the Tenant relating to the Lands, all of which rights are hereby reserved and will survive the execution, delivery, and registration of this Lease.

11. CONSTRUCTION/LAW

11.1 This Lease will be construed and governed by the laws applicable in the province of British Columbia. Should any provision of this Lease be illegal or not enforceable, it will be considered separate and several from this Lease and the remaining provisions will remain in force and be binding upon the parties as though the illegal or unenforceable provision had never been included.

12. TIME OF ESSENCE

12.1 Time is of the essence of this Lease.

13. BINDING EFFECT

13.1 This Lease and every agreement subsequent to this Lease will enure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns (or permitted successors and assigns in the case of the Tenant), and other legal representatives, as the case may be, of each of the parties.

14. FURTHER DOCUMENTATION

14.1 In the event that the parties execute any agreement dated after the date of this Lease with respect to the Lands and there is a contradiction between the terms of this Lease and the terms of any other such agreement, the terms of the other agreement will prevail.

In witness whereof, the parties have executed Form C, Part 1 of this General Instrument.

END OF DOCUMENT