

**MUNICIPAL FACILITY LEASE**

**(COMMERCIAL)**

BETWEEN:

**CITY OF KELOWNA**, a municipal corporation having Offices at  
1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "Landlord")

OF THE FIRST PART

AND:

**PS RESTAURANTS INC.** (Ontario Corp. No. 2529892), 1120  
Brevick Place, Mississauga, Ontario, L4W 3Y5, d.b.a. Pizza Studio

(the "Tenant")

OF THE SECOND PART

AND:

**660685 B.C. LTD.** (Inc. No. BC0987234), c/o Drysdale Bacon  
McStravick, #211 – 1015 Austin Avenue, Coquitlam, B.C. V3K 3N9

(the "Guarantor")

OF THE THIRD PART

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THIS LEASE, dated the 1<sup>st</sup> day of September, 2017, is made and entered into by the Landlord and the Tenant named herein who, in consideration of the covenants herein contained, agree as follows:

**1. BASIC TERMS, SCHEDULES, AND DEFINITIONS**

1.1 The following is a summary of certain basic Lease provisions, which are referred to in subsequent provisions of this Lease. In the event of a conflict between the contents of this summary and the remaining provisions of this Lease, the remaining provisions will govern:

- | (a)                | Landlord:<br>Address of Landlord:   | CITY OF KELOWNA<br>City Hall, 1435 Water Street<br>Kelowna, B.C. V1Y 1J4<br>Fax: 250-862-3349<br>Email: molson@kelowna.ca  |                    |                                     |        |         |         |         |
|--------------------|-------------------------------------|--|--------------------|-------------------------------------|--------|---------|---------|---------|
| (b)                | Tenant:<br>Address of Tenant:       | PS RESTAURANTS INC., d.b.a. Pizza Studio<br>1120 Brevick Place<br>Mississauga, ON L4W 3Y5  |                    |                                     |        |         |         |         |
| (c)                | Premises:                           | Unit 103 – 1360 Ellis Street, Kelowna, British Columbia, V1Y 2A2 (see Schedule A-1)  |                    |                                     |        |         |         |         |
| (d)                | Rentable Area:                      | approximately 1,485 square feet of ground floor space (to be verified by Landlord upon completion of demising wall)  |                    |                                     |        |         |         |         |
| (e)                | Initial Term:<br>Commencement Date: | 10 years<br>The earlier of February 1, 2018 and the date on which the Tenant begins to conduct business in the Premises, provided that if such date is not the first day of a month the Commencement Date will be deemed to be the first day of the next month following such date             |                    |                                     |        |         |         |         |
| (f)                | Renewal Term (if any):              | Two renewals of 5 years each in accordance with section 3.2 of this Lease  |                    |                                     |        |         |         |         |
| (g)                | Annual Base Rent + Tax:             | <table border="0"> <thead> <tr> <th style="text-align: left;"><u>Lease Years</u></th> <th style="text-align: left;"><u>\$ per square foot per annum</u></th> </tr> </thead> <tbody> <tr> <td>1 to 5</td> <td>\$22.00</td> </tr> <tr> <td>5 to 10</td> <td>\$25.00</td> </tr> </tbody> </table> | <u>Lease Years</u> | <u>\$ per square foot per annum</u> | 1 to 5 | \$22.00 | 5 to 10 | \$25.00 |
| <u>Lease Years</u> | <u>\$ per square foot per annum</u> |  |                    |                                     |        |         |         |         |
| 1 to 5             | \$22.00                             |  |                    |                                     |        |         |         |         |
| 5 to 10            | \$25.00                             |  |                    |                                     |        |         |         |         |
| (h)                | Security/Performance Deposit:       | Equal to two (2) months Annual Base Rent, pre-paid by the Tenant in accordance with section 4.7 of this Lease  |                    |                                     |        |         |         |         |
| (i)                | Permitted Use:                      | Licensed pizza sit-down and take-out restaurant under the firm name and style of Pizza Studio  |                    |                                     |        |         |         |         |
| (j)                | Parking                             | Two assigned parking spaces in the Library Parkade, to be determined by the Landlord   |                    |                                     |        |         |         |         |

The foregoing Basic Terms are approved by the parties. Each reference in this Lease to any of the Basic Terms shall be construed to include the provisions set forth above as well as all of the additional terms and conditions of the applicable sections of this Lease where such Basic Terms are more fully set forth.

1.2 Schedules

All Schedules to this Lease are incorporated into and form an integral part of this Lease and are as follows:

SCHEDULE	SUBJECT
A-1	Site Plan of Premises
A-2	Sketch of Patio Licence Area
B	Definitions
C	Rules and Regulations
D	Landlord & Tenant Responsibility Checklist
E	Certificate of Insurance

1.3 Definitions

In this Lease, the words, phrases and expressions set forth in Schedule B are used with the meanings defined therein.

**2. LEASE OF PREMISES AND LICENCE OF PATIO LICENCE AREA**

2.1 Lease of Premises

In consideration of the rents, covenants, and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed, and performed, the Landlord hereby demises and leases to the Tenant, and the Tenant leases from the Landlord, the Premises.

2.2 Patio Licence

In connection with the lease of the Premises granted by section 2.1 above, the Landlord further grants to the Tenant a licence to use and occupy the Patio Licence Area during the Term, provided that the Tenant is not at any time in material default of this Lease. The Tenant shall allow access to and over the Patio Licence Area as may be reasonably required for pedestrians to move freely and easily to and from the Premises and across such common areas and facilities. To the extent applicable, all provisions of this Lease apply to the Patio Licence Area and the licence granted by this section 2.2, except for the payment of Annual Base Rent and Additional Rent. For certainty, the Tenant shall not be required to pay Annual Base Rent or Additional Rent for the Patio Licence Area during the Term or any renewals thereof. Without limiting the foregoing, in connection with the licence of the Patio Licence Area granted by this section 2.2, the Tenant shall:

- (a) obtain and maintain all required "user" permits from the City of Kelowna and any other municipal or governmental authority having jurisdiction;
- (b) not install any railings, patio furniture, umbrellas, signage or any other items on the Patio Licence Area unless the Tenant has submitted all plans and specifications to the Landlord and has obtained the Landlord's prior written approval, not to be unreasonably withheld or delayed;
- (c) pay all costs and expenses associated with the installation, maintenance, and replacement of railings in the Patio Licence Area;
- (d) pay all costs associated with fixturing the Patio Licence Area (including chairs, tables, bar, umbrellas, etc.) and ensure that all such fixtures comply with the Landlord's design criteria; and
- (e) be solely responsible for all maintenance, repair, and clean-up of the Patio Licence Area throughout the Term.

### 2.3 Parking

In connection with the lease of the Premises granted by section 2.1 above, the Landlord further grants to the Tenant a licence to use the parking spaces set out in sub-clause 1.1(j) during the Term and any renewal terms, provided that the Tenant is not at any time in material default of this Lease.

## 3. TERM

### 3.1 Term

The Term of this Lease and the related licences described in sections 2.2 and 2.3 above, shall be for the initial term of ten (10) years, beginning on the Commencement Date, and subject to earlier termination or renewal on the terms and conditions as set out herein.

### 3.2 Option to Renew

The Landlord covenants with the Tenant that if:

- (a) the Tenant gives notice to the Landlord that the Tenant wishes to obtain renewal of this Lease, such notice to be given not later than 6 months prior to the expiration of the initial Term of 10 years; and
- (b) at the time of giving such notice, the Tenant is not in breach of any covenant or condition herein contained and which has not been remedied; and
- (c) the Tenant has duly and regularly throughout the initial Term of 10 years observed and performed the covenants and conditions herein contained,

then the Landlord shall grant to the Tenant at the Tenant's expense two renewals of the Premises for the Renewal Term(s) of 5 years each, upon the same terms and conditions, not including Annual Base Rent and Additional Rent as are herein contained. The Annual Base Rent payable during any Renewal Term shall be the greater of the Annual Base Rent payable during the preceding 12 months of the Term (or the previous Renewal Term) and the then fair market rental value of the Premises as at the commencement of the Renewal Term having regard to the rent payable for similar premises of a similar design, age, and nature in Kelowna, British Columbia. In the event that the Landlord and the Tenant are unable to agree upon the fair market rental value of the Premises as at the commencement of a Renewal Term within 90 days prior to the commencement of that Renewal Term, either the Landlord or the Tenant may, by notice in writing to the other, require that such fair market rental value be determined by arbitration conducted by a single arbitrator pursuant to the *Arbitration Act* (British Columbia).

The lease may be renewed twice for a total of 20 years including the original Term.

## 4. RENT

### 4.1 Rent

The Tenant shall yield and pay to the Landlord, in the manner outlined in clause 4.2, at the office of the Landlord's accounts payable division, or at such other place as the Landlord may direct in writing, during the Term in lawful money of Canada without any set-off, abatement, compensation, or deduction whatsoever on the days and at the times hereinafter specified, Rent which shall include the aggregate of the sums specified in sub-clauses (a) and (b) below:

(a) Annual Base Rent

Annual Base Rent in the amount per annum set out in sub-clause 1.1(g) for each respective Lease Year.

(b) Additional Rent

The Tenant acknowledges and agrees that this Lease shall be a completely carefree net lease for the Landlord and that the Tenant shall pay for its own account all costs, expenses, charges or outlays of any kind arising from, relating to, or affecting the Premises as well as its share of any kind arising from, relating to, or affecting the Premises. Without limiting the generality of the foregoing, the Tenant shall pay to the Landlord as Additional Rent in each Lease Year the aggregate of:

- (i) the Tenant's proportionate share of property taxes;
- (ii) the Tenant's proportionate share of insurance costs;
- (iii) a charge for supplying electricity, water, gas, and any other utilities to the Premises, unless separately metered;
- (iv) the Tenant's proportionate share of salaries and wages and all independent service contract and supplies incurred in cleaning, maintenance, garbage collection and disposal, operation, security, landscape repair and maintenance, snow removal, and traffic control;
- (v) the Tenant's proportionate share of repairs and maintenance of all or any portion of the Land and the building located thereon. Including without limitation the common areas and facilities;
- (vi) such other amounts as may be set forth in this Lease.

4.2 Payment of Rent

The Rent provided for in this Article shall be paid by the Tenant as follows:

(a) Annual Base Rent

The Annual Base Rent shall be paid in equal consecutive monthly instalments, in the amounts set out in sub-clause 1.1(g), in advance on the first day of each and every month during the Term. The first monthly instalment of the Annual Base Rent shall be paid by the Tenant on the Commencement Date. Where the Commencement Date is the first day of a month such instalment shall be in respect of such month; where the Commencement Date is not the first day of a calendar month, the Annual Base Rent for the period from the Commencement Date to the first day of the next ensuing calendar month shall be pro-rated on a per diem basis and paid on the Commencement Date and the first regular instalment of the Annual Base Rent shall be paid on the first day of the first full calendar month of the Term. Thereafter, subsequent monthly instalments shall each be paid in advance on the first day of each ensuing calendar month during the Term.

(b) Additional Rent Payments

The Landlord may estimate all items included in the Additional Rent and the Tenant shall pay such estimate in monthly equal installments. The Landlord shall compute the Tenant's actual proportionate share of Additional Rent and reconcile and bill, or reimburse, as the case may be, the difference billed to the Tenant each Lease Term.

(c) Payment Format

The Tenant agrees to pay all Rent via Bank Transfer on a monthly basis.

4.3 Rent for Irregular Periods

All Rent reserved herein shall be deemed to accrue from day-to-day, and if for any reason it shall become necessary to calculate the Annual Base Rent for irregular periods of less than one year an appropriate pro-rata adjustment shall be made on a daily basis in order to compute the Annual Base Rent for such irregular period.

4.4 Application of Payments

All payments by the Tenant to the Landlord under this Lease shall be applied toward such amounts then outstanding hereunder as the Landlord determines and the Landlord may subsequently alter the application of any such payment.

4.5 Net Lease

Without limiting section 4.1(b), the Tenant Acknowledges and agrees that it is intended that this Lease shall be a completely net lease for the Landlord except as shall be otherwise provided in the specific provisions contained in this Lease, and that the Landlord shall not be responsible during the Term for any costs, charges, expenses, and outlays of any nature whatsoever arising from or relating to the specific provisions contained in this Lease, and the Tenant shall pay all charges, impositions, and costs of every nature and kind relating to the Premises whether or not referred to herein and whether or not within the contemplation of the Landlord or the Tenant, and the Tenant covenants with the Landlord accordingly.

4.6 Interest on Overdue Rent

Overdue Rent payments shall be interest at the current Bank of Canada lending rate effective from the date the amount is due.

4.7 Security Deposit

The Tenant has deposited the Security Deposit with the Landlord. The Security Deposit will be held by the Landlord as security for the faithful performance by the Tenant of all of the provisions of this Lease to be performed and observed by the Tenant. If the Tenant fails to pay Rent or otherwise defaults with respect to any provision of this Lease, the Landlord may use, apply or retain all or any portion of the Security Deposit for the payment of any Rent in default, or for the payment of any other expense which the Landlord may incur by reason of the Tenant's default, or to compensate the Landlord for any loss or damage which the Landlord may suffer thereby. If the Landlord so uses or applies all or any portion of the Security Deposit, the Tenant will within 10 days after demand therefor deposit cash with the Landlord in an amount sufficient to restore the Security Deposit to the full amount thereof. If the Tenant performs all of the Tenant's obligations hereunder, the Security Deposit, or so much thereof as has not yet been applied by the Landlord, will be returned to the Tenant at the expiration of the Term, after the Tenant has vacated the Premises in accordance with the provisions of this Lease. No trust relationship is created herein between the Landlord and the Tenant with respect to the Security Deposit.

**5. TENANT'S COVENANTS**

5.1 Tenant's Covenants

The Tenant covenants with the Landlord as follows:

(a) Rent

To pay the Rent on the days and in the manner provided herein and to pay all other amounts, charges, costs, and expenses as are required to be paid by the Tenant to the Landlord or to others under this Lease.

(b) Occupancy and Permitted Use

To take possession of and occupy the Premises and commence to carry on business in all or substantially all of the Premises no later than 30 days after the Commencement Date, to use the Premises only for the purpose set out in clause 1(i) herein and not for any other purpose.

(c) Waste and Nuisance

Not to commit or permit: any waste or injury to the Premises including the Leasehold Improvements and the trade fixtures therein; any overloading of the floors thereof; any conduct which impedes or, in the opinion of the Landlord acting reasonably, could constitute a nuisance to the Landlord or anyone else; any other use or manner of use which, in the opinion of the Landlord acting reasonably, may have an adverse impact on the reputation of the Premises.

(d) Insurance Risks

Not to do, omit to do, or permit to be done or omitted to be done upon the Premises anything which would cause the Landlord's cost of insurance to be increased (and, without waiving the foregoing prohibition, the Landlord may demand, and the Tenant shall pay to the Landlord upon demand, the amount of any such increase of cost caused by anything so done or omitted to be done) or which shall cause any policy of insurance to be subject to cancellation.

(e) Cleanliness

Not to permit the Premises to become untidy, unsightly, or hazardous, or permit unreasonable quantities of waste or refuse to accumulate therein, and at the end of each business day to leave the Premises in a clean and neat condition, to the satisfaction of the Landlord.

(f) Compliance with Laws

To comply at its own expense with all municipal, provincial, and federal laws, bylaws, regulations, and requirements pertaining to the operation and use of the Premises, the condition of the Leasehold Improvements, trade fixtures and equipment installed therein, and the making by the Tenant of any repairs, changes or improvements therein.

(g) Installations

To permit the Landlord during the Term, at the Tenant's cost, to install any equipment in or make alterations to the Premises necessary to comply with the requirements of any statute, law, bylaw, ordinance, order, or regulation referred to in sub-clause 5.1(f) and imposed after completion of the Landlord's original construction of the Premises.



(h) Overholding

That if the Tenant shall continue to occupy the Premises after the expiration of this Lease without any further written agreement and without objection by the Landlord, the Tenant shall be a monthly tenant at a monthly base rent equal to 125% of the Annual Base Rent payable by the Tenant as set forth in Article 4 during the last month of the Term. The monthly tenancy shall be (except as to the length of tenancy) subject to the provisions and conditions herein set out.

(i) Signs

Not to display, place, or affix any sign except in accordance with the regulations of the Landlord. Notwithstanding the foregoing, the Tenant may display signage on the exterior of the Premises with no signage rent payable to the Landlord, so long as such signage does not interfere with the signage of other tenants of the Landlord, and all such signage, including all design work and signboards, shall be supplied and installed at the Tenant's sole cost and expense.

(j) Inspection and Access

To permit the Landlord at any time and from time to time to enter and to have its authorized agents, employees, and contractors enter the Premises for the purpose of inspection or making repairs, alterations, or improvements to the Premises as the Landlord may deem necessary or desirable, or as the Landlord may be required to make by law. The Landlord shall be allowed to take into the Premises all material which may be required for such purpose and the rent reserved shall in no way abate while such repairs, alterations or improvements are being made by reason of interruption of the business of the Tenant. The Landlord shall exercise reasonable diligence as to minimize the disturbance or interruption of the Tenant's operation.

(k) Showing Premises

To permit the Landlord and its authorized agents and employees to show the Premises to prospective tenants during the normal business hours of the last three months of the Term.

(l) Rules and Regulations

The Tenant shall comply at all times with the rules and regulations attached as Schedule "C", as those rules and regulations may be amended, modified or supplemented by the Landlord from time to time throughout the Term.

**6. LANDLORD'S COVENANTS**

6.1 Landlord's Covenants

The Landlord covenants with the Tenant as follows:

(a) Quiet Enjoyment

Provided the Tenant pays the Rent hereby reserved and performs its other covenants herein contained, the Tenant shall and may peaceably possess and enjoy the Premises for the Term hereby granted, without any interruption or disturbance from the

Landlord or its assigns, or any other person or persons lawfully, claiming by, from, through, or under the Landlord.

**7. REPAIR, DAMAGE, AND DESTRUCTION**

**7.1 Landlord's Repairs**

The Landlord covenants with the Tenant that the Landlord will maintain the Premises according to the terms set out in the Landlord & Tenant Responsibility Checklist attached as Schedule D. Unauthorized repairs, except in a bona fide emergency, will not be reimbursed

**7.2 Tenant's Repairs**

The Tenant covenants with the Landlord:

- (a) subject to sub-clause 7.1 and 7.3(b) to keep in a good and reasonable state of repair subject to reasonable wear and tear, the Premises including all Leasehold Improvements and all trade fixtures therein and all glass including all glass portions of exterior walls; and
- (b) that the Landlord may enter and view the state of repair (without having any obligation to do so), and that the Tenant will repair according to notice in writing, and that the Tenant will leave the Premises and the Patio Licence Area in a good and reasonable state of repair, allowing for reasonable wear and tear.

**7.3 Abatement and Termination**

It is agreed between the Landlord and the Tenant that in the event of damage to the Premises:

- (a) if the damage is such that the Premises or any substantial part thereof are rendered not reasonably capable of use and occupancy by the Tenant for the purposes of its business for any period of time in excess of 10 days, then:
  - (i) unless the damage was caused by the fault of negligence of the Tenant or its employees, or others under its control and the damage is not covered by insurance, from and after the date of occurrence of the damage and until the Premises are again reasonably capable of use and occupancy as aforesaid, Rent shall abate from time to time in proportion to the part or parts of the Premises not reasonably capable of use and occupancy; and
  - (ii) unless this Lease is terminated as hereinafter provided, the Landlord or the Tenant, as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with all reasonable diligence, but to the extent that any part of the Premises is not reasonably capable of such use and occupancy by reason of damage which the Tenant is obligated to repair hereunder, any abatement of Rent to which the Tenant is otherwise entitled hereunder shall not extend later than the time by which, in the reasonable opinion of the Landlord, repairs by the Tenant ought to have been completed with reasonable diligence; and
- (b) if the Premises are substantially damaged or destroyed by any cause to the extent such that in the reasonable opinion of the Landlord they cannot be repaired or rebuilt (based on standard hours of construction work) within 240 days after the occurrence of the damage or destruction, then either the Landlord or Tenant may at its option,

exercisable by written notice to the Tenant or Landlord, given within 60 days after the occurrence of such damage or destruction, terminate this Lease, in which event neither the Landlord nor the Tenant shall be bound to repair as provided in clauses 7.1 and 7.2, and the Tenant shall instead deliver up possession of the Premises and Patio Licence Area to the Landlord with reasonable expedition but in any event within 60 days after delivery of such notice of termination, and Rent shall be apportioned and paid to the date upon which possession is so delivered up (but subject to any abatement to which the Tenant may be entitled under sub-clause 7.3(a) by reason of the Premises having been rendered in whole or in part not reasonably capable of use and occupancy), but otherwise the Landlord or the Tenant as the case may be (according to the nature of the damage and their respective obligations to repair as provided in clauses 7.1 and 7.2) shall repair such damage with reasonable diligence.

#### 7.4 Service Interruptions

The Tenant acknowledges to the Landlord that the operation of systems and the availability of facilities for which the Landlord is responsible under clause 7.1 may be interrupted from time to time in cases of accident and emergency, in order to carry out maintenance, repairs, alterations, replacements, and upgrading, or for any other reasonable reason required by the Landlord.

### 8. TAXES AND OTHER COSTS

#### 8.1 Tenant Tax Obligation

The Tenant covenants with the Landlord:

- (a) to pay when due, all property Taxes, business Taxes, business license fees, and other Taxes, rates, duties or charges levied, imposed, or assessed by lawful authority in respect of the use and occupancy of the Premises by the Tenant, the business or businesses carried on therein, or the equipment, machinery, or fixtures brought therein by or belonging to the Tenant, or to anyone occupying the Premises with the Tenant's consent, or from time to time levied, imposed, or assessed in the future in addition or in lieu thereof, and to pay the Landlord upon demand the portion of any tax, rate, duty, or charge levied or assessed upon the Premises that is attributable to any equipment, machinery, or fixtures on the Premises which are not the property of the Landlord or which may be removed by the Tenant;
- (b) to pay promptly to the Landlord when demanded or otherwise due hereunder all Taxes in respect of all Leasehold Improvements in the Premises.

#### 8.2 Goods and Services Tax

In accordance with the applicable legislation the Goods and Services Tax applies to this Lease as per the terms contained herein.

### 9. UTILITIES AND ADDITIONAL SERVICES

#### 9.1 Utilities

The Tenant shall be responsible for all aspects of, including payment of costs related to, utilities and services of whatever nature or kind required in connection with the Premises and the conduct by the Tenant of the Tenant's business as described herein including without limitation, water, telephone, sewer, hydro, power, heating, air conditioning, garbage disposal, snow clearing, and maintenance of the immediately surrounding areas. The Tenant shall be responsible for obtaining and maintaining a gas

operating permit. The Tenant shall be responsible for obtaining and maintaining an electrical operating permit. The Tenant is responsible for informing the Property Manager, Real Estate and Building Services of the permits and who the Field Safety Representative is.

**10. LICENSES, ASSIGNMENTS, AND SUBLETTING**

**10.1 General**

- (a) It is understood and agreed that the Tenant may assign this Lease or sublet to: (1) any affiliate or subsidiary of the Tenant, (2) the franchisor of the Pizza Studio franchise system, or (3) any franchisee of the Pizza Studio system, without first obtaining the Landlord's consent, but with written notice to the Landlord.
- (b) Subject to subsection (a) above, it is understood and agreed that the Tenant may not assign this Lease, or sublease the Premises, to any other party without the written consent of the Landlord, such consent not to be unreasonably withheld. Unless the Landlord has consented to such sub-tenancy, assignment or transfer in accordance with this Article 10, the acceptance of any Rent or the performance of any obligation hereunder by any person other than the Tenant shall not be construed as an admission by the Landlord of any right, title, or interest of such person as a sub-tenant, assignee, transferee or otherwise in the place and stead of the Tenant.

Assignment and Subletting

Subject to subsection (a) above, the Tenant shall not, without first obtaining the written consent of the Landlord, assign this Lease or sublet the whole or any part of the Premises, unless:

- (a) it shall have received or procured a bona fide written offer to take an assignment or sub-lease which is not inconsistent with, and the acceptance of which would not breach any provision of, this Lease if this clause is complied with, and which the Tenant has determined to accept subject to this section being complied with; and
- (b) it shall have first requested and obtained the consent in writing of the Landlord thereto.

**10.2 Request for Consent**

Any required request for such consent shall be in writing and accompanied by a true copy of such offer, and the Tenant shall furnish to the Landlord all information available to the Tenant and requested by the Landlord as to the responsibility, reputation, financial standing, and business of the proposed assignee or sub-tenant. Within 30 days after the receipt by the Landlord of such request for consent and of all information which the Landlord shall have requested hereunder (and if no such information has been requested, within 30 days after receipt of such request for consent) the Landlord shall have the right upon written notice to the Tenant to:

- (a) in the case of a proposed sub-lease, either sublet from the Tenant any portion of the Premises proposed to be sublet for the Term for which such portion is proposed to be sublet but at the same Annual Base Rent and Additional Rent as the Tenant is required to pay to the Landlord under this Lease for such portion or, if the proposed sub-lease is for all or substantially all of the remainder of the Term, terminate this Lease as it pertains to the portion of the Premises so proposed by the Tenant to be sublet; or
- (b) in the case of a proposed assignment, terminate this Lease, provided the Tenant shall be entitled to withdraw its request for consent in such event.

### 10.3 If Landlord Terminates

If the Landlord terminates this Lease in accordance with clause 10.2 with respect to all or a portion of the Premises, such termination shall be effective on the date stipulated in the notice of termination which shall not be less than 60 days or more than 90 days following the giving of such notice, and the Tenant shall surrender the whole or part, as the case may be, of the Premises in accordance with such notice, and Rent shall be apportioned and paid to the date of surrender and, if a part only of the Premises is surrendered, Rent payable under clause 4.1 shall thereafter abate proportionately.

### 10.4 Terms of Assignment

Subject to clause 10.1(a), the Tenant shall assign or sublet, as the case may be, only upon the terms set out in the offer submitted to the Landlord as aforesaid and not otherwise. As a condition of every assignment or sublease, whether or not the Landlord's consent is required, the assignee or sub-tenant, as the case may be, shall agree (and will be deemed to have agreed) with the Landlord to observe the obligations of the Tenant under this Lease as the same relate to the space assigned or sublet (except, in the case of a sub-lease, the Tenant's covenant to pay Rent) by entering into an assumption agreement with the Landlord and the Tenant, in the Landlord's then-standard form, and shall pay the Landlord's then-current processing charge and solicitor's fees and disbursements for preparing such agreement. The Tenant further agrees that, in the event of any assignment or subletting, the Tenant shall be responsible for Improvements and all other expenses, costs, and charges with respect to or arising out of any such assignment or subletting. Notwithstanding any such consent being given by the Landlord and such assignment or subletting being effected, the Tenant shall remain bound to the Landlord for the fulfilment of all the terms, covenants, conditions, and agreements herein contained in the case of a sublet, and shall remain bound to the Landlord pursuant to Section 13.15 in the case of an assignment of this Lease. Any consent by the Landlord to any assignment or subletting shall not constitute a waiver of the requirement for consent by the Landlord to any subsequent assignment or subletting by either the Tenant or any assignee or sub-tenant.

### 10.5 Landlord Not to Unreasonably Withhold Consent

If the Tenant complies with clauses 10.3 and 10.4 and the Landlord does not exercise an option provided to the Landlord under clause 10.2, then the Landlord's consent to a proposed assignment or sublet shall not be unreasonably withheld. The Tenant acknowledges that the Landlord shall not be liable to the Tenant in damages, where, in giving good faith consideration to any request of the Tenant hereunder, it withholds its consent to a proposed assignment or sublease.

### 10.6 Terms of Consent

If the Landlord consents in writing to an assignment or sub-lease as contemplated herein, the Tenant may complete such assignment or sub-lease subject to the following covenants and conditions:

- (a) no assignment or sub-lease shall be valid and no assignee or sub-tenant shall take possession of the Premises or any part thereof until an executed duplicate original of such assignment or sub-lease has been delivered to the Landlord; and
- (b) all "Excess Rent", as hereinafter defined, derived from such assignment or sub-lease shall be payable to the Landlord. The Excess Rent shall be deemed to be and shall be paid by the Tenant to the Landlord as Rent. The Tenant shall pay the Excess Rent to the Landlord immediately as and when such Excess Rent is receivable by the Tenant.

As used herein, "Excess Rent" means the amount by which the total money and other economic consideration to be paid by the assignee or sub-tenant as a result of an assignment or sub-lease, whether denominated as Rent or otherwise, exceeds, in the aggregate, the total amount of Annual Base Rent and

Additional Rent which the Tenant is obligated to pay to the Landlord under this Lease, pro-rated for the portion of the Premises being assigned or sublet, less the reasonable costs paid by the Tenant for additional improvements installed in the portion of the Premises subject to such assignment or sub-lease by the Tenant at the Tenant's sole cost and expense for the specific assignee or sub-tenant in question, reasonable leasing costs (such as brokers' commissions and the fees payable to the Landlord under clause 10.1) paid by the Tenant in connection with such assignment or sub-lease, and the amount of Annual Base Rent and Additional Rent the Tenant is obligated to pay the Landlord under this Lease, pro-rated for the portion of the Premises being assigned or sublet that is not occupied or used by the Tenant, until the date of such assignment or sub-lease. In determining the amounts to be deducted from Excess Rent in each monthly payment period in respect of the Tenant's costs of assigning or sub-leasing, such costs shall be amortized without interest over the Term (in the case of an assignment) or Term of the sub-lease (in the case of a sub-lease) on a straight line basis.

## **11. FIXTURES AND IMPROVEMENTS**

### **11.1 Installation of Fixtures and Improvements**

The Tenant will not make, erect, install, or alter any Leasehold Improvements in the Premises, any safe or special lock in the Premises, or any apparatus for illumination, air conditioning, cooling, heating, refrigerating, or ventilating the Premises, in any case without having requested and obtained the Landlord's prior written approval, which the Landlord shall not unreasonably withhold. In making, erecting, installing, or altering any Leasehold Improvements the Tenant shall comply with the tenant construction guidelines as established by the Landlord from time to time, and shall obtain all required building and occupancy permits and comply with all laws of all authorities having jurisdiction. The Tenant's request for any approval hereunder shall be in writing and be accompanied by a reasonably detailed description of the contemplated work and, where appropriate, plans, working drawings, and specifications. All work to be performed in the Premises shall be performed by competent contractors and subcontractors and shall be performed and completed in a good and workmanlike manner.

### **11.2 Liens and Encumbrances on Fixtures and Improvements**

In connection with the making, erection, installation, or alteration of Leasehold Improvements and trade fixtures, and all other work or installations made by or for the Tenant in the Premises, the Tenant shall comply with all of the provisions of the *Builders Lien Act*, S.B.C. 1997, c. 45 and amendments thereto, and other statutes from time to time applicable thereto (including any provision requiring or enabling the retention of portions of any sums payable by way of holdbacks), shall permit the Landlord to take all steps to enable the Landlord to obtain the benefit of the provisions of the *Builders Lien Act*, and, except as to any lawful holdback, shall promptly pay all accounts relating thereto. The Tenant shall not create any mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 and amendments thereto, or other encumbrance in respect of its Leasehold Improvements or trade fixtures, or permit any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance to attach to the Premise; provided that the Tenant may do so in respect to any bank financing that it seeks etc.

### **11.3 Discharge of Liens and Encumbrances**

If and when any builders' or other lien for work, labour, service, or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable or claims therefore shall arise or be filed or any such mortgage, conditional sale agreement, general security agreement under the *Personal Property Security Act*, or other encumbrance shall attach, the Tenant shall within 20 days after receipt of notice thereof procure the discharge thereof, including any certificate of action registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law, and failing which the Landlord may in addition to all other remedies hereunder avail itself of its remedy under clause 16.1 and may make any payments required to procure the discharge of any such liens or encumbrances,

and shall be entitled to be reimbursed by the Tenant as provided in clause 16.1, and its right to reimbursement shall not be affected or impaired if the Tenant shall then or subsequently establish or claim that any lien or encumbrance so discharged was without merit or excessive or subject to any abatement, set-off, or defence.

#### 11.4 Removal of Fixtures and Improvements

All Leasehold Improvements in or upon the Premises shall immediately upon termination or expiration of this Lease be and become the Landlord's property without compensation therefore to the Tenant. Except to the extent otherwise expressly agreed by the Landlord in writing, no Leasehold Improvements shall be removed by the Tenant from the Premises or the Patio Licence Area either during or at the expiration or sooner termination of the Term, except that:

- (a) the Tenant may at the end of the Term remove its trade fixtures;
- (b) the Tenant shall at the end of the Term remove such of the Leasehold Improvements and trade fixtures as the Landlord shall require to be removed; and
- (c) the Tenant shall remove its furniture and equipment at the end of the Term, and also during the Term in the usual and normal course of its business where such furniture or equipment has become excess for the Tenant's purposes or the Tenant is substituting therefore new furniture and equipment.
- (d) all Leasehold Improvements shall be insured by the Tenant as described in Section 12.2 (b) unless otherwise agreed in writing by the Landlord.

The Tenant shall, in the case of every removal either during or at the end of the Term, immediately make good any damage caused to the Premises or the Patio Licence Area by the installation and removal, reasonable wear and tear excepted.

#### 11.5 Alterations by Landlord

The Landlord reserves the right from time to time to make alterations and additions to the Premises, provided that in exercising any such rights, the Landlord will take reasonable steps to minimize any interference cause to the Tenant's operations in the Premises , but by exercising any such rights, the Landlord shall not be deemed to have constructively evicted the Tenant or otherwise to be in breach of this Lease, nor shall the Tenant be entitled to any abatement of Rent or other compensation from the Landlord.

### 12. INSURANCE AND LIABILITY

#### 12.1 Tenant To Provide

The Tenant shall procure and maintain, at its own expense and cost, the insurance policies listed in section 12.2 of this Lease, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the agreement, services and/or occupancy the Landlord advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of this agreement, services and/or occupancy until the date that the Landlord certifies in writing completion of the agreement, services and/or occupancy or such further period as may be specified by the Landlord.

## 12.2 Insurance

As a minimum, the Tenant shall, without limiting its obligations or liabilities under any other contract with the Landlord, procure and maintain, at its own expense and cost, the following insurance policies:

### (a) Workers' Compensation Insurance

Covering all employees of the Tenant at the Premises in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.

### (b) Comprehensive General Liability Insurance

- (i) providing for an inclusive limit of not less than \$5,000,000.00 for each occurrence or accident;
- (ii) providing for all sums which the Tenant shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting there from) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to this Lease, activities and/or occupancy or any operations carried on in connection with this Lease;
- (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability;
- (iv) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgement made against any other Insured.

## 12.3 Automobile Liability Insurance

Covering all motor vehicles, owned, operated and used or to be used by the Tenant directly or indirectly in connection with this Lease and the use and occupancy of the Premises and the Patio Licence Area. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

## 12.4 The Landlord Named As Additional Insured

The policies required by sections 12.1, 12.2 and 12.3 above shall provide that the Landlord is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the Landlord.

## 12.5 Tenant's Sub-contractors

The Tenant shall require each of its sub-contractors to provide comparable insurance to that set forth under section 12.22 of this Lease.

## 12.6 Certificates of Insurance

The Tenant agrees to submit Certificates of Insurance in the form attached as Schedule E for itself and all of its sub-contractors to the Landlord prior to commencement of the Fixturing Period, and thereafter promptly upon request by the Landlord from time to time during the Term. Such certificates shall provide that 30 days' written notice shall be given to the Landlord, prior to any material changes or cancellations of any such policy or policies.



#### 12.7 Other Insurance

After reviewing the Tenant's Certificates of Insurance, the Landlord may require other insurance or alterations to any applicable insurance policies in force during the period of this Lease and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the Landlord and result in increased insurance premium, such increased premium shall be at the Tenant's expense.

#### 12.8 Additional Insurance

The Tenant may take out such additional insurance as it may consider necessary and desirable. All such additional insurance shall be at no expense to the Landlord. The Tenant shall ensure that all of its sub-contractors are informed of and comply with the Landlord's requirements set out in this Lease.

#### 12.9 Insurance Companies

All insurance, which the Tenant is required to obtain with respect to this Lease, shall be with insurance companies registered in and licensed to underwrite such insurance in the Province of British Columbia.

#### 12.10 Failure to Provide

If the Tenant fails to do all or anything which is required of it with regard to insurance, the Landlord may do all that is necessary to effect and maintain such insurance, and any monies expended by the Landlord shall be repayable by and recovered from the Tenant. The Tenant expressly authorizes the Landlord to deduct from any monies owing the Tenant, any monies owing by the Tenant to the Landlord.

#### 12.11 Non-payment of Losses

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Tenant or any sub-contractor shall not be held to waive or release the Tenant or sub-contractor from any of the provisions of the insurance requirements or this Lease, with respect to the liability of the Tenant otherwise. Any insurance deductible maintained by the Tenant or any sub-contractor under any of the insurance policies is solely for their account and any such amount incurred by the Landlord will be recovered from the Tenant as stated in section 12.10 of this Lease.

#### 12.12 Indemnification and Hold Harmless Clause

The Tenant must indemnify and hold harmless the Landlord, its elected officials, officers, agents and employees, from and against all liabilities, losses, damages, personal injury, death, property loss or damage, actions, causes of action, costs (including legal fees and costs) or expenses in connection with loss of, or damage or injury (including death) to, any person or property that occurs during the Term of this Lease, whether suffered, incurred or made by the Tenant or an employee of the Tenant or other party for whom the Tenant is responsible and caused through a willful or negligent act or omission or other actionable wrong of the Tenant, its officers, agents, employees, or subcontractors, or any of their officers, agents or employees, and at its expense the Tenant must defend any and all actions and pay all damages and legal costs and other costs arising therefrom to the extent of its sole or partial fault as determined by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body, apportionment or reimbursement of any such costs not attributed solely or partially to the fault of the Tenant as determined by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body shall be made only following the binding determination by a court of competent jurisdiction or other mutually agreed alternative dispute resolution body.

### 13. ENVIRONMENTAL MATTERS

#### 13.1 Definitions

For the purposes of this Section and Lease, the following terms shall have the following meanings:

- (a) **"Contaminants"** means any radioactive materials, asbestos materials, urea formaldehyde, underground or above ground tanks, pollutants, contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is now or hereafter prohibited, controlled or regulated under Environmental Laws;
- (b) **"Environment"** includes the air (including all layers of the atmosphere), land (including soil, sediment deposited on land, fill and lands submerged under water) and water (including oceans, lakes, rivers, streams, ground water and surface water);
- (c) **"Environmental Laws"** means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any federal, provincial, municipal or other governmental authority having jurisdiction over the Premises now or hereafter in force with respect in any way to the Environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity; and
- (d) **"Release"** includes any release, spill, leak, pumping, pouring, emission, emptying, discharge, injection, escape, leaching, migration, disposal or dumping.

#### 13.2 Tenant's Representations and Warranties

The Tenant represents and warrants to the Landlord, and acknowledges that the Landlord is relying on such representations and warranties in entering into this Lease, that as of the date of this Lease:

- (a) except as disclosed to the Landlord in writing, the Tenant is not, and has never been, subject to any charge, conviction, notice of defect or non-compliance, work order, pollution abatement order, remediation order or any other or proceeding under any Environmental Laws; and
- (b) except as disclosed to and approved in writing by the Landlord, the Tenant's business at the Premises does not involve the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with any Contaminants.

If any of the representations and warranties contained in this section are untrue or incorrect in any material respect, the same shall constitute a breach of this Agreement by the Tenant and shall be subject to the provisions of Section 16.1 of this Agreement.

#### 13.3 Condition of Premises

The Landlord agrees to indemnify and save harmless the Tenant for any and all costs associated with pre-existing Contaminants on the Premises and the removal thereof from the Premises.

#### 13.4 Use of Contaminants

The Tenant shall not use or permit to be used all or any part of the Premises for the sale, storage, manufacture, disposal, handling, treatment, generation, use, transport, refinement, processing, production, remediation, Release into the Environment of, or any other dealing with, any Contaminants, without the prior written consent of the Landlord, which consent may be unreasonably and arbitrarily withheld. Without limiting the generality of the foregoing, the Tenant shall in no event use, and does not plan or intend to use, the Premises to dispose of, handle or treat any Contaminants in a manner that, in whole or in part, would cause the Premises, or any adjacent property to become a contaminated site under Environmental Laws.

#### 13.5 Compliance with Environmental Laws

The Tenant shall promptly and strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Premises under or pursuant to this Agreement, including without limitation obtaining all required permits or other authorizations.

#### 13.6 Evidence of Compliance

The Tenant shall, at the Landlord's request from time to time, provide the Landlord with a certificate of a senior officer of the Tenant certifying that the Tenant is in compliance with all Environmental Laws and that no adverse environmental occurrences have taken place at the Premises, other than as disclosed in writing to the Landlord.

#### 13.7 Confidentiality of Environmental Reports

The Tenant shall maintain all environmental site investigations, assessments, audits and reports relating to the Premises in strict confidence and shall not disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the Tenant's professional advisers and lenders on a need to know basis or with the prior written consent of the Landlord, which consent may be unreasonably withheld.

#### 13.8 Records

The Tenant shall maintain at the Premises all environmental and operating documents and records, including permits, licences, orders, approvals, certificates, authorizations, registrations and other such records, relating to the operations at the Premises, which may be reviewed by the Landlord at any time during the Term on twenty-four (24) hours' prior written notice, except in the case of an emergency, when no prior notice shall be required.

#### 13.9 Access by Landlord

Without relieving the Tenant of any of its obligations under this Lease, the Tenant shall, at such reasonable times as the Landlord requires, permit the Landlord to enter and inspect the Premises and the operations conducted at the Premises, to conduct tests and environmental investigations, to remove samples from the Premises, to examine and make copies of any documents or records relating to the Premises, to interview the Tenant's employees and to take such steps as the Landlord deems necessary for the safety and preservation of the Premises.

#### 13.10 Authorizations

The Tenant shall promptly provide to the Landlord on request such written authorizations as the Landlord may require from time to time to make inquiries of any governmental authorities regarding the Tenant's compliance with Environmental Laws.

### 13.11 Notices

The Tenant shall promptly notify the Landlord in writing of:

- (a) any Release of a Contaminant or any other occurrence or condition at the Premises, the Land, or any adjacent property which could subject the Tenant, the Landlord, the Land or the Premises to any fines, penalties, orders or proceedings under Environmental Laws;
- (b) any charge, order, investigation or notice of violation or non-compliance issued against the Tenant or relating to the operations at the Premises under any Environmental Laws; and
- (c) any notice, claim, action or other proceeding by any third party against the Tenant or in respect of the Premises concerning the Release or alleged Release of Contaminants at or from the Premises.

The Tenant shall notify the appropriate regulatory authorities of any Release of any Contaminants at or from the Premises in accordance with Environmental Laws and failure by the Tenant to do so shall authorize, but not obligate, the Landlord to notify the regulatory authorities.

### 13.12 Removal of Contaminants

Prior to the expiry or earlier termination of this Lease or at any time if requested by the Landlord or required by any governmental authority pursuant to Environmental Laws, the Tenant shall, promptly at its own cost and in accordance with Environmental Laws, remove from the Premises any and all Contaminants which the Tenant introduced onto the Premises, and remediate any contamination of the Premises, the Land, or any adjacent property resulting from Contaminants, in either case brought onto, or used at the Premises by the Tenant or any person for whom it is in law responsible. For greater certainty, the foregoing obligations of the Tenant shall include, without limitation, the treatment of water (including surface and ground water) and the remediation by removal of any soils containing Contaminants at levels exceeding the standards set as acceptable at the time of remediation by the applicable governmental authority, being with respect to soils, the standard applicable to property used for commercial purposes and with respect to water, as determined by the governmental authority given the character and use of water in the area of the Premises. Any soil so removed shall be promptly replaced by soil free of Contaminants at concentrations above the standard described in the preceding sentence. The Tenant shall provide to the Landlord full information with respect to any remedial work performed pursuant to this section and shall comply with the Landlord's requirements with respect to such work. The Tenant shall use a qualified environmental consultant approved by the Landlord to perform the remediation. The Tenant shall, at its own cost, obtain such approvals and certificates from the B.C. Ministry of Environment, Lands & Parks in respect of the remediation as are required under Environmental Laws or required by the Landlord, including without limitation a certificate of compliance evidencing completion of the remediation satisfactory to the Ministry. The Tenant agrees that if the Landlord reasonably determines that the Landlord, its property, its reputation, the Land, or the Premises is placed in any jeopardy by the requirement for any such remedial work, the Landlord may, but shall be under no obligation to, undertake itself such work or any part thereof at the cost of the Tenant.

### 13.13 Ownership of Contaminants

Notwithstanding any rule of law to the contrary, any Contaminants or Leasehold Improvements or goods containing Contaminants brought onto, used at, or Released from, the Premises by the Tenant or any person for whom it is in law responsible shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord, notwithstanding the degree of their affixation to the

Premises and notwithstanding the expiry or earlier termination of this Lease. This section supersedes any other provision of this Lease to the contrary.

13.14 Indemnity

The Tenant shall indemnify and save harmless the Landlord and its directors, officers, shareholders, employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including without limitation, the full amount of all consulting and legal fees and expenses on a solicitor-client basis and the costs of removal, treatment, storage and disposal of Contaminants and remediation of the Premises, and any adjacent property) which may be paid by, incurred by or asserted against the Landlord or its directors, officers, shareholders, employees, agents, successors or assigns, during or after the Term (or any renewal thereof), arising from or in connection with any breach of or non-compliance with the provisions of this Section 13 by the Tenant or arising from or in connection with:

- (a) any legal or administrative action, proceeding, investigation, demand, claim or notice of any third party, including without limitation any governmental authority, against any one or more of them pursuant to or under Environmental Laws; or
- (b) any Release or alleged Release of any Contaminants (introduced by the Tenant onto the Premises) at or from the Premises into the Environment,

related to or as a result of the use and occupation of the Premises by the Tenant or those for whom it is in law responsible or any act or omission of the Tenant or any person for whom it is in law responsible.

13.15 Survival of Tenant's Obligations

The obligations of the Tenant under this Section 13 (including, without limitation, the Tenant's indemnity, its obligation to remove and remediate Contaminants and its covenant of confidentiality) shall survive the expiry or earlier termination of this Lease. The obligations of the Tenant under this Section 13 are in addition to, and shall not limit, the obligations of the Tenant contained in other provisions of this Lease.

**14. SUBORDINATION, ATTORNMENT, REGISTRATION, AND CERTIFICATES**

14.1 Tenant's Covenants

The Tenant agrees with the Landlord that:

- (a) Sale or Financing of Premises

The rights of the Landlord under this Lease may be mortgaged, charged, transferred, or assigned to a purchaser or purchasers, or to a mortgagee or trustee for bond holders, and in the event of a sale or of default by the Landlord under any mortgage, trust deed, or trust indenture and the purchaser, mortgagee, or trustee, as the case may be, duly entering into possession of the Premises, the Tenant agrees to attorn to and become the tenant of such purchaser or purchasers, mortgagee, or trustee under the terms of this Lease.

- (b) Registration

The Tenant agrees that the Landlord shall not be obliged to deliver this Lease in form registrable under the *Land Title Act*, R.S.B.C. 1996, c. 250 and covenants and agrees with the Landlord not to register this Lease. If the Tenant desires to register under the *Land Title Act*, then all costs of preparing and registering all documents in connection therewith are to be borne by the Tenant.

(c) Certificates

The Tenant agrees with the Landlord that the Tenant shall promptly whenever requested by the Landlord from time to time execute and deliver to the Landlord and, if required by the Landlord, to any mortgagee (including any trustee under a trust deed or trust indenture) or prospective purchaser (as designated by the Landlord) a certificate in writing as to the status of this Lease at that time, including as to whether it is in full force and effect, is modified or unmodified, confirming the rental payable hereunder and the state of the accounts between the Landlord and Tenant, the existence or non-existence of defaults, and any other matters pertaining to this Lease as to which the Landlord shall request a certificate. If the Tenant fails to do so within seven days after the Tenant receives the form of certificate, the Tenant hereby irrevocably and conclusively authorizes the Landlord to complete, execute, and deliver the certificate for, on behalf of, in the name of, and as agent of, the Tenant.

(d) Assignment by Landlord

In the event of the sale by the Landlord of the Premises or the assignment by the Landlord of this Lease or any interest of the Landlord hereunder, and to the extent that such purchaser or assignee has assumed the covenants and obligations of the Landlord hereunder, the Landlord shall, without further written agreement, be freed and relieved of liability upon such covenants and obligations.

**15. OCCURRENCE OF DEFAULT**

15.1 Unavoidable Delay

Except as herein otherwise expressly provided, if and whenever and to the extent that either the Landlord or the Tenant shall be prevented, delayed, or restricted in the fulfilment of any obligations hereunder in respect of the supply or provision of any service or utility, the making any repair, the doing of any work or any other thing (other than the payment of Rent) by reason of civil commotion, war-like operation, invasion, rebellion, hostilities, sabotage, strike, or work stoppage, or being unable to obtain any material, service, utility, or labour required to fulfill such obligation or by reason of any statute, law, or regulation of or inability to obtain permission from any governmental authority having lawful jurisdiction preventing, delaying, or restricting such fulfilment, or by reason of other unavoidable occurrence other than lack of funds, the time for fulfilment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay, or restrict the fulfilment thereof, and the other party to this Lease shall not be entitled to compensation for any inconvenience, nuisance, or discomfort thereby occasioned, nor shall Rent abate; but nevertheless the Landlord will use reasonable efforts to maintain services essential to the use and enjoyment of the Premises .

15.2 No Admission

The acceptance of any Rent from or the performance of any obligation hereunder by a person other than the Tenant shall not be construed as an admission by the Landlord of any right, title, or interest of such person as a sub-tenant, assignee, transferee, or otherwise in the place and stead of the Tenant.

15.3 Part Payment

The acceptance by the Landlord of a part payment of any sums required to be paid hereunder shall not constitute waiver or release of the right of the Landlord to payment in full of such sums.

**16. TENANT'S DEFAULT, REMEDIES OF LANDLORD, AND SURRENDER**

**16.1 Remedying by Landlord, Non-payment, and Interest**

In addition to all the rights and remedies of the Landlord available to it in the event of any default hereunder by the Tenant, either by any other provision of this Lease or by statute or the general law, and the event of default is not remedied within the respective time period for doing so, the Landlord:

- (a) shall have the right at all times to remedy or attempt to remedy any default of the Tenant, and in so doing may make any payments due or alleged to be due by the Tenant to third parties and may enter upon the Premises to do any work or other things therein, and in such event all expenses of the Landlord in remedying or attempting to remedy such default together with an administrative charge equal to 15% of the total of such expenses shall be payable by the Tenant to the Landlord forthwith upon demand;
- (b) shall have the same rights and remedies in the event of any non-payment by the Tenant of any amounts payable by the Tenant under any provision of this Lease as in the case of non-payment of Rent.

**16.2 Remedies Cumulative**

The Landlord and the Tenant may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant or the Landlord, as the case may be, either by any provision of this Lease or by statute or the general law, all of which rights and remedies are intended to be cumulative and not alternative, as the express provisions hereunder as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord or the Tenant, as the case may be, by statute or the general law.

**16.3 Right of Re-entry on Default**

Provided and it is expressly agreed that:

- (a) if and whenever the Rent hereby reserved or other moneys payable by the Tenant or any part thereof, whether lawfully demanded or not, are unpaid and the Tenant shall have failed to pay such Rent or other moneys within five days after the Landlord has given to the Tenant written notice requiring such payment; or
- (b) if the Tenant shall breach or fail to observe and perform any of the covenants, agreements, provisos, conditions, rules, regulations or other obligations on the part of the Tenant to be kept, observed, or performed hereunder and such breach or failure continues for 10 days after the Landlord has given the Tenant written notice thereof; or
- (c) if without the written consent of the Landlord the Premises shall be used by any other persons than the Tenant or its permitted assigns or permitted sub-tenants or for any purpose other than that for which the Premises were leased, or occupied by any persons whose occupancy is prohibited by this Lease; or
- (d) if the Premises shall be vacated or abandoned or remain unoccupied for 15 days or more while capable of being occupied; or
- (e) if any of the goods and chattels of the Tenant shall at any time be seized in execution or attachment; or

- (f) if a receiver or receiver-manager is appointed of the business or property of the Tenant, or if the Tenant shall make any assignment for the benefit of creditors or any bulk sale, become bankrupt or insolvent or take the benefit of any statute now or hereafter in force for bankrupt or insolvent debtors or (if a corporation) shall take any steps or suffer any order to be made for its winding-up or other termination of its corporate existence; or
- (g) if any policy of insurance upon the Premises from time to time effected by the Landlord shall be cancelled or about to be cancelled by the insurer by reason of the use or occupation of the Premises by the Tenant or any assignee, sub-tenant, or licensee of the Tenant or anyone permitted by the Tenant to be upon the Premises and the Tenant after receipt of notice in writing from the Landlord shall have failed to take such immediate steps in respect of such use or occupation as shall enable the Landlord to reinstate or avoid cancellation of (as the case may be) such policy of insurance; or
- (h) if the Landlord shall have become entitled to Terminate this Lease or to re-enter the Premises under any provision hereof;

then and in every such case it shall be lawful for the Landlord thereafter to enter into and upon the Premises or any part thereof in the name of the whole and the same to have again, repossess, and enjoy as of its former estate, anything in this Lease to the contrary notwithstanding. The Landlord may use such force as it may deem necessary for the purpose of gaining admittance to and re-taking possession of the Premises, and the Tenant hereby releases the Landlord from all actions, proceedings, claims, and demands whatsoever for and in respect of any such forcible entry or any loss or damage in connection therewith.

#### 16.4 Termination and Re-entry

If and whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease, the Landlord, in addition to all other rights and remedies, shall have the right to terminate this Lease by giving to the Tenant or by leaving upon the Premises notice in writing of such termination. Thereupon, this Lease and the term shall terminate, and the Tenant shall immediately deliver up possession of the Premises and the Patio Licence Area to the Landlord in accordance with clause 16.9.

#### 16.5 Certain Consequences of Termination and Re-entry

If the Landlord re-enters the Premises and the Patio Licence Area or if this Lease is terminated by reason of any event set out in clause 16.3 or 16.5, then without prejudice to the Landlord's other rights and remedies:

- (a) the provisions of this Lease which relate to the consequences of termination, and the provisions of this Lease as they apply with respect to acts, events, and omissions which occurred prior to the termination, shall all survive such termination;
- (b) in addition to the payment by the Tenant of Rent and other payments for which the Tenant is liable under this Lease, Rent for the current month and the next ensuing three months shall immediately become due and be paid by the Tenant or the person then controlling the Tenant's affairs; and
- (c) the Tenant or person then controlling the affairs of the Tenant shall pay to the Landlord on demand such reasonable expenses as the Landlord has incurred, and a reasonable estimate of the Landlord of expenses the Landlord expects to incur, in connection with the re-entering, terminating, re-letting, collecting sums due or payable by the Tenant, and storing and realizing upon assets seized, including without limitation brokerage



fees, legal fees, and disbursements, the expenses of cleaning and making and keeping the Premises and the Patio Licence Area in good order, and the expenses of repairing the Premises and preparing them for re-letting.

#### 16.6 Waiver of Distress and Bankruptcy

The Tenant will not sell, dispose of, or remove any other fixtures, goods, or chattels of the Tenant from or out of the Premises during the Term without the consent of the Landlord, unless the Tenant is substituting new fixtures, goods, or chattels of equal value or is bona fide disposing of individual items which have become excess for the Tenant's purposes; and the Tenant will be the Landlord or lessee of its fixtures, goods, and chattels and will not permit them to become subject to any lien, mortgage, charge, or encumbrance.

#### 16.7 Re-letting and Sale of Personalty

Whenever the Landlord becomes entitled to re-enter upon the Premises under any provision of this Lease, the Landlord, in addition to its other rights, shall have the right as agent of the Tenant to enter the Premises and re-let them (for a term or terms shorter or longer than the balance of the Term, granting reasonable concessions in connection therewith), and to receive the Rent therefore, and as the agent of the Tenant to take possession of any furniture or other property thereon, and to sell the same at public or private sale without notice, and to apply the proceeds thereof and any rent derived from re-letting the Premises upon account of the Rent due and to become due under this Lease, and the Tenant shall be liable to the Landlord for the deficiency, if any.

#### 16.8 Surrender on Termination

Forthwith upon the termination of this Lease, whether by effluxion of time or otherwise, the Tenant shall vacate and deliver up possession of the Premises in a neat and tidy state and in good and substantial repair in accordance with the Tenant's obligation under this Lease to repair the Premises, but subject to the Tenant's rights and obligations in respect of removal in accordance with clause 11.4, and subject to reasonable wear and tear. At the same time, the Tenant shall surrender to the Landlord at the place then fixed for the payment of Rent all keys and other devices which provide access to the Premises, or any part thereof and shall inform the Landlord of all combinations to locks, safes, and vaults, if any, in the Premises.

### 17. MISCELLANEOUS

#### 17.1 Notices

Any notice required or contemplated by any provision of this Lease shall be given in writing, and if to the Landlord, either delivered to an executive officer of the Landlord or delivered or mailed (by prepaid registered mail) to the Landlord at the address set out in sub-clause 1.1(a), or if the Landlord has given the Tenant notice of another address in Canada to which notices to the Landlord under this Lease are to be given, then to the last such address of which the Tenant has been given notice; and if to the Tenant, either delivered to the Tenant personally (or to a partner or officer of the Tenant if the Tenant is a firm or corporation) or delivered or mailed (by prepaid registered mail) to the Tenant at the Premises. Every such notice shall be deemed to have been given when delivered or, if mailed as aforesaid, upon the third business day after the day of mailing thereof in Canada provided that if mailed, should there be a mail strike, slowdown, or other labour dispute which might affect delivery of such notice between the time of mailing and the actual receipt of notice, then such notice shall only be effective if actually delivered.

#### 17.2 Extraneous Agreements

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, or conditions expressed or implied relating to this Lease, the Premises save as expressly set out in this Lease and in any agreement to lease in writing between the Landlord and the Tenant pursuant to which this Lease has been executed. In the event of any conflict between the terms of this Lease and such agreement to lease, the terms of this Lease shall prevail. This Lease may not be modified except by an agreement in writing executed by the Landlord and the Tenant, and no verbal agreements or conversations with any officer, agent, or employee of the Landlord, either before or after the execution of this agreement, shall affect or modify any of the terms or obligations herein contained.

#### 17.3 Time of Essence

Time shall be of the essence in this Lease.

#### 17.4 Enurement

This Lease and everything herein contained shall enure to the benefit of and be binding upon the successors and assigns of the Landlord and its heirs, executors, and administrators and the permitted successors and permitted assigns of the Tenant.

#### 17.5 References to Tenant

References to the Tenant shall be read with such changes in gender as may be appropriate, depending upon whether the Tenant is a male or female person or a firm or corporation. If the Tenant is comprised of more than one person or entity, then each such person and entity is jointly and severally bound by the representations, warranties, agreements, and covenants of the Tenant herein and any notice given or deemed to have been given at any time to any such person or entity shall be deemed to have been given at the same time to each other such person and entity.

#### 17.6 Waiver

No condoning, excusing, or overlooking by the Landlord or Tenant of any default, breach, or non-observance by the Tenant or the Landlord at any time or times in respect of any covenant, proviso, or condition herein contained shall operate as a waiver of the Landlord's or the Tenant's rights hereunder in respect of any continuing or subsequent default, breach, or non-observance or so as to defeat or affect in any way the rights of the Landlord or the Tenant herein in respect of any such continuing or subsequent default or breach, and no acceptance of Rent by the Landlord subsequent to a default by the Tenant (whether or not the Landlord knows of the default) shall operate as a waiver by the Landlord, and no waiver shall be inferred from or implied by anything done or omitted by the Landlord or the Tenant save only express waiver in writing.

#### 17.7 Governing Law and Severability

This Lease shall be governed by and construed in accordance with the laws in force in the province of British Columbia. The venue of any proceedings taken in respect of or under this Lease shall be Kelowna, British Columbia as long as such venue is permitted by law, and the Tenant shall consent to any application by the Landlord to change the venue to Kelowna, British Columbia of any proceedings taken elsewhere. The Landlord and the Tenant agree that all the provisions of this Lease are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate section hereof. Should any provision or provisions of this Lease be illegal or not enforceable, it or they shall be considered separate and severable from the Lease and its remaining provisions shall remain in force and be binding upon the parties as though the said provision or provisions had never been included.

17.8 Captions

The captions appearing in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Lease or of any provision thereof.

17.9 Acceptance

The Tenant accepts this Lease, to be held by it as tenant, and subject to the conditions, restrictions, and covenants above set forth. The acceptance of possession of the Premises shall be conclusive evidence as against the Tenant that at the Commencement Date of the Term the Landlord had duly completed all work required to be completed by the Landlord prior to the Commencement Date of the Term and the Premises were in good order and satisfactory condition for the commencement of the work and business of the Tenant, latent and structural defects excepted.

17.10 Deposit

If the Landlord is holding any deposit in connection with this Lease, then unless the Landlord agreed in writing to different arrangements at the time the Landlord received the deposit, the deposit shall be held by the Landlord on a non-interest bearing basis to be applied to the Annual Base Rent for that month of the Term during which Annual Base Rent is first payable hereunder.

17.11 Expropriation

If at any time during the Term the interest of the Tenant under this Lease or the whole or any part of the Premises shall be taken by any lawful power or authority by the right of expropriation, the Landlord shall promptly give written notice of such expropriation to the Tenant and may at its option give notice to the Tenant terminating this Lease on the date when the Tenant or Landlord is required to yield up possession thereof to the expropriating authority. Upon such termination, or upon termination by operation of law, as the case may be, the Tenant shall immediately surrender the Premises and all its interest therein, Rent shall abate and be apportioned to the date of termination, the Tenant shall forthwith pay to the Landlord the apportioned Rent and all other amounts which may be due to the Landlord up to the date of termination, and clause 16.9 shall apply. The Tenant shall have no claim upon the Landlord for the value of its property or the unexpired Term of this Lease, but the parties shall each be entitled to separately advance their claims for compensation for the loss of their respective interests in the Premises, and the parties shall each be entitled to receive and retain such compensation as may be awarded to each respectively. If an award of compensation made to the Landlord specifically includes an award to the Tenant, the Landlord shall account therefore to the Tenant. In this clause the word "expropriation" shall include a sale by the Landlord to an authority with powers of expropriation, in lieu of or under threat of expropriation.

17.12 Statutory Functions

Nothing contained herein shall impair or affect in any way the exercise by the Landlord of its functions and authority under any enactment, constating document, law, bylaw, resolution or other source of authority.

**18. GUARANTEE**

**18.1 Grant of Guarantee/Indemnity**

In consideration of the Landlord granting this Lease to the Tenant and for other good and valuable consideration, the receipt and sufficiency of which the Guarantor acknowledges, the Guarantor unconditionally agrees with the Landlord as follows:

- (a) the Guarantor will, for a period of two (2) years commencing on the Commencement Date, upon demand given by the Landlord to the Guarantor:
  - (i) pay any Rent and other amounts payable by the Tenant under this Lease;
  - (ii) perform all of the obligations of the Tenant under this Lease; and
  - (iii) indemnify and save harmless the Landlord from any loss, cost, or damage, including consequential loss and costs on a solicitor and own client basis, suffered by the Landlord arising out of any failure by the Tenant to pay any Rent or other amounts payable, or to perform any of the obligations of the Tenant under this Lease, or arising out of the failure by the Tenant to complete performance of its obligations under this Lease;
  
- (b) the indemnity given above is absolute and unconditional, and without limiting the generality of the foregoing, the liability of the Guarantor will not be considered to have been released, waived or in any way affected by any of the following:
  - (j) any extension of time, indulgence or modification, which the Landlord may extend to the Tenant or make with the Tenant from time to time in connection with the performance of any of the Tenant's obligations under this Lease;
  - (ii) any waiver by, or neglect or failure of, the Landlord to enforce any term of this Lease;
  - (iii) any assignment of this Lease, or any subletting of the Premises, in whole or in part, or other transfer by the Tenant, or by any trustee, receiver, or liquidator of the Tenant or of the Guarantor;
  - (iv) any act or omission by the Landlord with respect to matters contained in this Lease;
  - (v) any consent that the Landlord may give to any assignment of the Lease or any subletting of the Premises or other transfer;
  - (vi) any amendment to this Lease, whether consented to or known by the Guarantor;
  - (vii) any winding up, amalgamation, bankruptcy, or receivership of the Tenant, any execution proceedings taken against the Tenant, or any release or discharge of the Tenant in any receivership, bankruptcy, winding-up, or other creditor's proceeding;
  - (viii) the filing by the Tenant of a proposal or a notice of intention to file a proposal or the repudiation, resiliation or disclaimer of this Lease by the Tenant or any

other person pursuant to the *Bankruptcy and Insolvency Act*, as amended or substituted from time to time;

- (ix) any surrender of the Lease by the Tenant, or by any trustee, receiver or liquidator of the Tenant, whether or not consented to by the Landlord;
  - (x) any creditor or debtor proceeding applicable to the Tenant, including any assignment by the Tenant for the benefit of its creditors and any application by the Tenant to obtain protection from its creditors;
  - (xi) any repossession and subletting of the Premises, except that any proceeds received by the Landlord, after deducting all costs and expenses of repossessing and subletting, will be credited from time to time by the Landlord to the account of the Tenant, and the Guarantor will pay to the Landlord, on demand, the difference between the amount of the payment received and the amount payable by the Tenant under this Lease if the amount received is less than the amount payable by the Tenant under this Lease; or
  - (xii) the expiration or sooner termination of the Term of this Lease or any renewal or extension of the Term, however arising, including without limitation by operation of law or resulting from the exercise of a trustee in bankruptcy's statutory right to disclaim any interest in this Lease and surrender possession of the Premises with or without the consent of the Landlord;
- (c) the Guarantor waives any notice of amendment of this Lease or of non-performance, non-payment, or non-observance on the part of the Tenant of any provision of this Lease from time to time;
- (d) if there is any default by the Tenant under this Lease, the Guarantor waives any right to require the Landlord to:
- (i) proceed against the Tenant or pursue any right or remedy of the Landlord under this Lease;
  - (ii) proceed against or realize upon any security granted by the Tenant in favour of the Landlord; or
  - (iii) pursue any other remedy available to the Landlord,

and the Landlord will have the right to enforce its rights under this clause 18.1 despite the acceptance by the Landlord of additional security from the Tenant and despite the release or discharge of the Tenant or any other guarantor by the Landlord, or by others, or by operation of any law;

- (e) no action or proceeding brought or instituted under this clause 18.1 and no recovery under that action or proceeding will be a bar or defence to any further action or proceeding that may be brought under this clause 18.1 by reason of any further default under this clause 18.1 or in the performance by the Tenant of any term of this Lease;
- (f) without limiting the generality of the foregoing, the Guarantor will be bound by the terms of this Lease in the same manner as if the Guarantor were the Tenant named in this Lease; and

- (g) any communication to be given to the Guarantor under this clause 18.1 will be in writing and delivered by hand or registered mail to the address of the Guarantor set out on the front page of this Lease, or to such other address as the Guarantor may designate in writing to the Landlord from time to time. Any communication to the Guarantor will be deemed to have been given and received on the day of hand delivery or on the third business day after registered mailing. In the event of a disruption or an impending or threatened disruption in the postal service, every communication to the Guarantor will be delivered by hand.

IN WITNESS WHEREOF the parties have executed this Lease.

**CITY OF KELOWNA**, by its Authorized Signatories: )  
 \_\_\_\_\_ )  
 Mayor )  
 \_\_\_\_\_ )  
 City Clerk )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

Witness \_\_\_\_\_  
 Address \_\_\_\_\_  
 Occupation \_\_\_\_\_  
 Date \_\_\_\_\_

**PS RESTAURANTS INC.**, by its Authorized Signatories: )  
 DocuSigned by: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Name: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Name: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

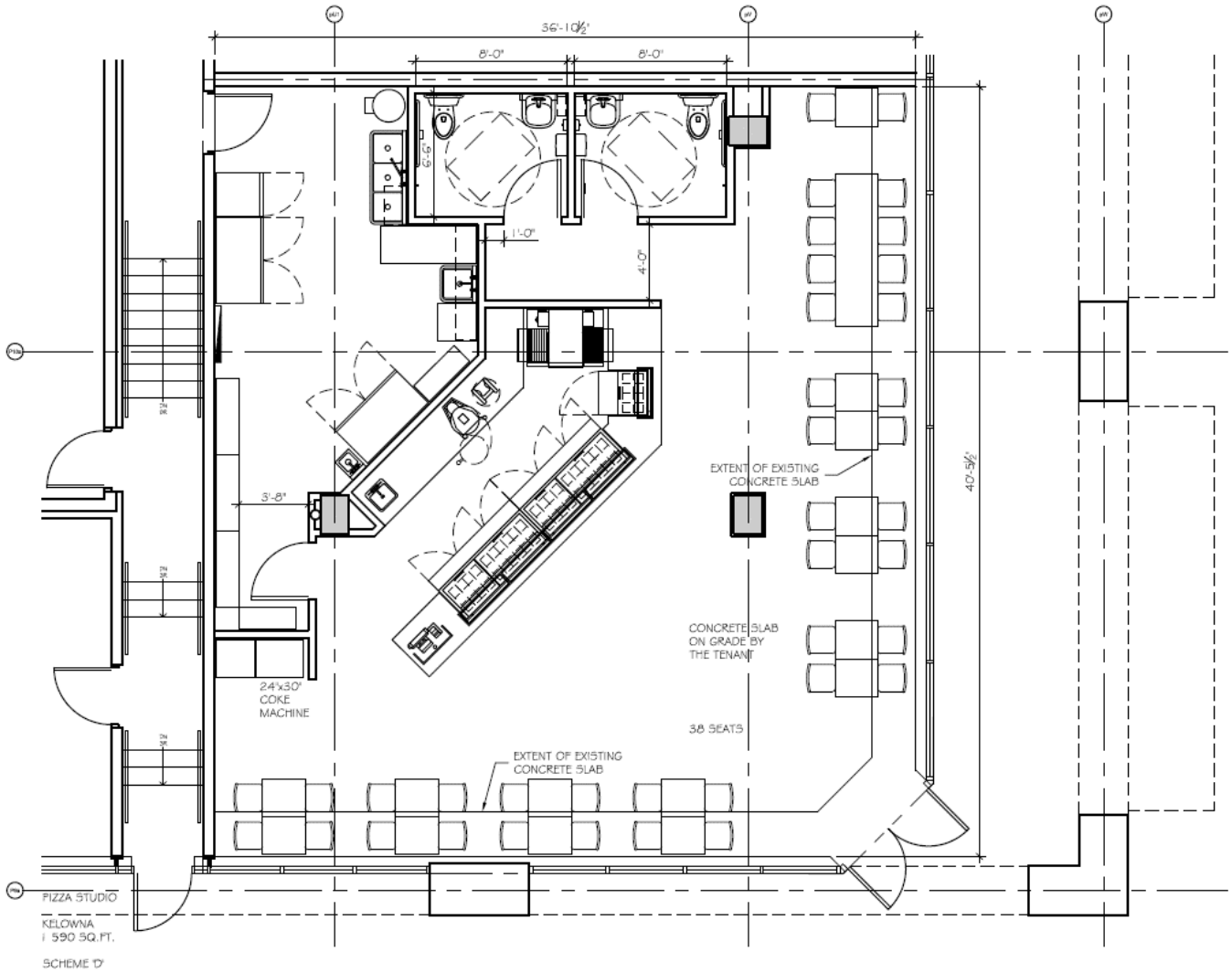
Witness \_\_\_\_\_  
 Address \_\_\_\_\_  
 Occupation \_\_\_\_\_  
 Date \_\_\_\_\_

**660685 B.C. LTD.**, by its Authorized Signatories: )  
 DocuSigned by: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Name: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Name: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )

Witness \_\_\_\_\_  
 Address \_\_\_\_\_  
 Occupation \_\_\_\_\_  
 Date \_\_\_\_\_

### SCHEDULE A-1

### PLAN OF THE LEASED PREMISES



**SCHEDULE A-2**

SKETCH OF THE PATIO LICENCE AREA

To be Inserted



## SCHEDULE B

### DEFINITIONS

In this Lease, the following expressions shall have the following meanings:

"Additional Rent" means all sums of money to be paid by the Tenant, whether to the Landlord or otherwise under this Lease, except for Annual Base Rent and Goods and Services Tax payable by the Tenant.

"Annual Base Rent" means the annual Rent set out in sub-clause 1.1(g) and payable by the Tenant as set forth in clause 4.2.

"Basic Terms" means those terms set out in clause 1.1.

"Commencement Date" means the date the term commences as set forth in or determined under sub-clause 1.1(e) and subject to clause 3.2.

"Fixturing Period" means a 90-day period, commencing October 1, 2017, during which the Tenant may complete its Leasehold Improvements.

"Goods and Services Tax" or "GST" means and includes any and all sales Taxes, value added Taxes, business transfer Taxes, or any other Taxes imposed on the Landlord or the Tenant from time to time in respect of the Rent payable by the Tenant to the Landlord under this Lease or the Rental of the Premises or the provision of any goods, services, or utilities whatsoever by the Landlord to the Tenant under this Lease, whether characterized as a Goods and Services Tax, sales Tax, value added Tax, business transfer Tax, or otherwise.

"Land" means that parcel of land at 1360 Ellis Street in Kelowna, British Columbia, more particularly described as PID: 028-910-915, Parcel A (being a consolidation of Lots 1 and 2 See CA2747117) District Lot 139 Osoyoos Division Yale District Plan KAP57837.

"Lease Year" means, in the case of the first Lease Year, the period beginning on the Commencement Date and terminating 12 months from the last day of the calendar month in which the Commencement Date occurs (except that if the Commencement Date occurs on the first day of a calendar month, the first Lease Year shall terminate on the day prior to the first anniversary of the Commencement Date) and, in the case of each subsequent Lease Year, means each 12-month period after the first Lease Year.

"Leasehold Improvements" means all fixtures, improvements, installations, alterations, and additions now and from time to time hereafter made, erected or installed, whether by the Tenant, and the Landlord or anyone else, in the Premises, including all partitions however fixed (including movable partitions) and all wall-to-wall carpeting with the exception of such carpeting where laid over vinyl tile or other finished floor and affixed so as to be readily removable without damage, but excluding trade fixtures and unattached free-standing furniture and equipment.

"Patio Licence Area" means that portion of the Land shown outlined in bold on Schedule A-2.

"Premises" means Unit 103 in the building located at 1360 Ellis Street, Kelowna, British Columbia, as set out in sub-clause 1.1(c) and shown on Schedule A-1.

"Rent" means and includes the Annual Base Rent, Additional Rent, and all other sums payable by the Tenant to the Landlord under this Lease except for Goods and Services Tax payable by the Tenant.

"Security Deposit" means the amount set forth in sub-clause 1.1(h) of this Lease.

“Taxes” means all Taxes, rates, duties, levies, and assessments whatsoever, whether municipal, parliamentary, or otherwise, which are levied, imposed, or assessed against or in respect of the Premises, the Land, which are from time to time levied, imposed or assessed in the future in addition or in lieu thereof, including, without limitation, those levied, imposed, or assessed for education, schools and local improvements.

“Term” means the Term of this Lease set forth in sub-clause 1.1(e) and any renewal or extension thereof and any period of permitted overholding.

## SCHEDULE C

### RULES AND REGULATIONS

The Tenant shall observe the following Rules and Regulations (as amended, modified, or supplemented from time to time by the Landlord as provided in the Lease):

1. The Tenant shall not use or permit the use of the Premises in such manner as to create any objectionable noises, odours, or other nuisance or hazard, or breach any applicable provisions of municipal bylaw or other lawful requirements applicable thereto or any requirements of the Landlord's insurers and shall keep the Premises tidy and free from rubbish, and shall leave the Premises at the end of each business day in a neat and tidy condition.
2. The Tenant shall not abuse, misuse, or damage the Premises or any of the improvements or facilities therein, and in particular shall not deposit rubbish in any plumbing apparatus or use it for other than purposes for which it is intended, and shall not deface or mark any walls or other parts of the Premises.
3. The Tenant shall not perform, patronize, or (to the extent under its control) permit any canvassing, soliciting, or peddling in the Building.
4. The Tenant shall not do anything that causes damage to the Building or in any way impairs the rights of the Landlord as owner of the Building.
5. The Tenant shall permit the entry of the Landlord at reasonable times into the Premises for the purposes of inspection and other lawful purposes.
6. The Tenant shall refer to the Building only by the name from time to time designated by the Landlord for it and shall use such name only for the business address of the Premises and not for any promotion or other purpose.

The foregoing Rules and Regulations, as from time to time amended, are not necessarily of uniform application, but may be waived in whole or in part in respect of other tenants without affecting their enforceability with respect to the Tenant and the Premises, and may be waived in whole or in part with respect to the Premises without waiving them as to future application to the Premises, and the imposition of Rules and Regulations shall not create or imply an obligation of the Landlord to enforce them or create any liability of the Landlord for their non-enforcement.

## SCHEDULE D

Tenant Responsibility Checklist						
PS RESTAURANTS INC.		Provided by the Landlord, Cost borne by the Landlord	Provided by the Landlord, Cost borne by the Tenant	Provided by the Tenant, Cost borne by the Landlord	Provided by the Tenant, cost borne by the tenant	Does not apply
Boiler operating permits						X
Electrical field safety representative					X	
Electrical operating permit					X	
Electrical system preventative maintenance					X	
Electrical system repairs					X	
Electrical/lights - lamp & tube replacement					X	
Elevator equipment repairs		X				
Elevator maintenance contract		X				
Elevator operating permits		X				
Emergency lighting testing & repairs					X	
Exterior doors, windows, facades, etc.					X	
Fire alarm system repairs					X	
Fire alarm system testing & inspection contracts					X	
Fire extinguisher monthly & annual inspections					X	
Fire safety plan and fire drills					X	
Fire sprinkler system repairs					X	
Fire sprinkler system testing and inspection contracts					X	
Furnishings (maintain & replace)					X	
Garbage removal			X			
HVAC preventative maintenance					X	
HVAC repairs					X	
Insurance – automotive					X	
Insurance – liability					X	
Insurance - property, building		X				
Insurance - tenant owned furnishings & fixtures					X	
Insurance - tenant owned operation equipment, computers, & furnishings					X	
Interior walls, flooring, doors, ceilings, etc.					X	
Internet					X	
Janitorial services & supplies					X	
Kitchen Exhaust Hood preventative maintenance					X	
Kitchen Exhaust Hood repairs					X	
Kitchen Hood Fire suppression system preventative					X	

maintenance					
Kitchen Hood Fire suppression repairs				X	
Kitchen Hood Fire suppression testing				X	
Landscape maintenance					X
Licences & permits				X	
Parking lots - lighting, parking lines, sweeping, asphalt, signage, drainage etc.	X				
Pest control				X	
Plumbing system preventative maintenance				X	
Plumbing system repairs				X	
Recycling program				X	
Roof inspection & maintenance	X				
Roof repairs	X				
Security system				X	
Signage				X	
Snow removal				X	
Taxes		X			
Telephone				X	
Tenant improvements				X	
Tenant improvements - Maintenance				X	
Tree removal					X
Utilities – electricity				X	
Utilities - natural gas				X	
Utilities – propane				X	
Utilities - water, sewer		X			
Vandalism (exterior)	X				
Vandalism (interior)				X	
Window Cleaning (exterior)	X				
Window Cleaning (interior)				X	

Document Revision History:

Revision			
1	Description	Revised by	Date

SCHEDULE E

**CERTIFICATE OF INSURANCE**



City staff to complete prior to circulation

City Dept.: \_\_\_\_\_  
Dept. Contact: \_\_\_\_\_  
Project/Contract/Event: \_\_\_\_\_

**Insured**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

**Broker**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_

**Location and nature of operation and/or contract reference to which this Certificate applies:**

Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
<b>Section 1</b> Comprehensive General Liability including: <ul style="list-style-type: none"> <li>• Products/Completed Operations;</li> <li>• Blanket Contractual;</li> <li>• Contractor's Protective;</li> <li>• Personal Injury;</li> <li>• Contingent Employer's Liability;</li> <li>• Broad Form Property Damage;</li> <li>• Non-Owned Automobile;</li> <li>• Cross Liability Clause.</li> </ul>				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive \$ _____ Aggregate \$ _____ Deductible
<b>Section 2</b> Automobile Liability				Bodily Injury and Property Damage \$ <u>2,000,000</u> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.
2. The City of Kelowna is named as an Additional Insured.
3. 30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company (Insurer or Broker)

\_\_\_\_\_  
Signature of Authorized Signatory

\_\_\_\_\_  
Date