

## SURTEES PROPERTY AGREEMENT

**THIS AGREEMENT** dated September 18, 2017 is between City of Kelowna of 1435 Water Street, Kelowna, BC V1Y 1J4, email: JSaufferer@kelowna.ca (the “**City**”) and JEM HTB Properties Inc. 300-1665 Ellis Street, Kelowna, BC V1Y 2B3, email: shane@worman.ca (“**JEM**”).

### **BACKGROUND:**

A. The City is the owner of certain lands located at 4629 Lakeshore Road, Kelowna, British Columbia, legally described as Parcel Identifier: 025-433-997, Lot A Section 25 Township 28 Similkameen Division Yale District Plan KAP71341 (the “**Surtees Property**”).

B. The City intends to lease to JEM a portion of the Surtees Property shown on Schedule A shaded in red and labelled “Leased Area” (the “**Leased Premises**”), and use a portion of the remainder of the Surtees Property shown on Schedule A (the “**City Remainder Parcel**”) as parking for public access to a linear park trailhead known as “Bellevue Creek”.

C. The Surtees barn and the Surtees homestead are located within the area of the Leased Premises, and those buildings are listed in the City’s heritage register as heritage buildings (the “**Heritage Buildings**”), and the parties wish to provide for arrangements for JEM to revitalize the Heritage Buildings.

D. In addition to the Heritage Buildings, the parties wish to provide for a new commercial building on the Leased Premises (the “**New Building**”).

E. The arrangements between the City and JEM involve several different legal agreements and are conditional on certain events.

F. The City and JEM wish to enter into this Agreement to set out the conditions to the implementation of their legal arrangements and establish the forms of the legal agreements into which they will enter.

### **AGREEMENT:**

#### **1. LEASE**

1.1 Subject to the terms and conditions sent out in this Agreement, the City agrees to lease to JEM, and JEM agrees to lease from the City the Leased Premises on the terms set out in the lease attached as Schedule B (the “**Lease**”) on the date which is 30 days after the waiver or satisfaction of the last condition precedent described in Section 2.1(a), (b) and (c) to be waived or satisfied, or other date as may be agreed by the parties (the “**Closing Date**”) in accordance with the procedures set out in Section 3.

#### **2. CONDITIONS**

2.1 The obligations of the parties are subject to the following conditions to be satisfied or waived on or before the date below indicated:

- (a) council of the City adopting a bylaw by October 31, 2017, to authorize an amending agreement between the City and JEM (the “**Amending Agreement**”) amending the Heritage Revitalization Agreement between the City and JEM dated June 20, 2017 attached as Schedule C, pursuant to section 610 of the *Local Government Act* (British Columbia) in respect of the restoration of the Heritage Buildings in exchange for certain variances to City of Kelowna Zoning Bylaw No. 8000, which Amending Agreement will be substantially in the form attached as Schedule D. In connection with adoption of the bylaw contemplated by this section, JEM will deliver to the City a signed copy of the Amending Agreement in advance of first reading of that bylaw. If the bylaw is adopted by the council of the City, in its sole discretion, the City will arrange for its authorized signatories to sign the Amending Agreement and will deliver a fully-signed copy to JEM. The City will then proceed to file a notice of such amendment on title to the Surtees Property as required by the applicable provisions of the *Local Government Act*;
- (b) JEM obtaining approval for the construction of the New Building including the approval of all final architectural, engineering, and landscape drawings, specifications, and plans relating thereto by December 31, 2017;
- (c) preparation of a reference plan (the “**SRW Plan**”) showing the Right of Way Area, as that term is defined in the Statutory Right of Way (defined below), which area is to be substantially as shown outlined in red in Schedule E, and approval of the SRW Plan by JEM by December 31, 2017. In connection with the SRW Plan contemplated by this section, the City agrees with JEM that the City is responsible, at its sole cost and expense, for the costs of preparing the SRW Plan; and
- (d) preparation of a reference plan of the Surtees Property showing the Leased Premises (the “**Lease Plan**”), approval of the Lease Plan by JEM, and execution of the related Application to Deposit the Lease Plan by all required signatories and the approving officer for the City under the Land Title Act and by any other approving authority having jurisdiction including, without limitation, approval of the Lease Plan for registration in the Land Title Office on or before the Closing Date. In connection with the leasehold subdivision contemplated by this section, the City agrees with JEM that the City is responsible, at its sole cost and expense, for the payment of all fees, costs and charges related thereto including, but not limited to, the preparation of the Lease Plan and the Application to Deposit.

2.2 The conditions precedent set forth in Section 2.1 are for the benefit of both the City and JEM and may be waived only by mutual agreement of the parties. If those conditions precedent have not been satisfied or waived by mutual agreement within the applicable time therein provided then JEM’s obligation to lease the Leased Premises from the City, and the City’s obligation to lease the Leased Premises to JEM, is at an end and thereafter neither party shall have any further or continuing obligation to the other under this Agreement.

### **3. CLOSING**

3.1 JEM will deliver to the City the following documents duly executed by JEM, in accordance with the procedure set out below:

- (a) the Lease substantially in the form set out in Schedule B, except for the following:

- (i) the reference date will be the Closing Date;
  - (ii) the definition of “Commencement Date” in Section 1.1(f) will be revised to set out the date which is the Closing Date;
  - (iii) the definition of “Lands” in Section 1.1(p) will be revised to set out the reference plan number of the Lease Plan;
  - (iv) Section 23.3 will be revised to insert the registration number for the Statutory Right of Way (defined below);
  - (v) Schedule A will be revised to attach the Lease Plan;
  - (vi) Schedule B-2 will be revised to attach the Amending Agreement approved as described in Section 2.1(a); and
  - (vii) it will be in a form acceptable for registration in the Land Title Office,
- (b) a parking agreement whereby the City agrees not to enforce any “park user only” restrictions with respect to 7 parking stalls on the City Remainder Parcel, which will be substantially in the form attached as Schedule G and will not be in a form registerable in the Land Title Office (the “**Parking Agreement**”);

3.2 The City will deliver to JEM the following documents duly executed by the City, in accordance with the procedure set out below:

- (a) a letter from SLR Consulting (Canada) Ltd. (“**SLR**”) to JEM stating that JEM is entitled to rely on the Phase 1 environmental report prepared by SLR dated December 18, 2015 (the “**Reliance Letter**”);
- (b) the Lease, modified as described in Section 3.1(a);
- (c) the Parking Agreement; and
- (d) a statutory right of way granting public access through a portion of the Leased Premises, substantially in the form attached as Schedule F (the “**Statutory Right of Way**”), except for the following:
  - (i) Section 1 will be revised to set out the reference plan number for the Right of Way Area;
  - (ii) Schedule A will be revised to attach a reference plan for the Right of Way Area as approved under Section 2 of this Agreement; and
  - (iii) the Statutory Right of Way will be in a form acceptable for registration in the Land Title Office;

3.3 JEM will prepare or will cause to be prepared and attend to the execution of the Lease, Statutory Right of Way and Parking Agreement, and forward those documents, executed where

applicable, to the City's solicitors at least 14 days before the Closing Date on the condition that those documents will only be used and released in accordance with these procedures.

3.4 After receipt of the documents and items referred to in Section 3.3, the City will execute the Lease, Statutory Right of Way and Parking Agreement, and submit the Lease Plan together with all necessary or desirable supporting documents to the City's approving officer for execution and deliver to JEM's lawyers the Lease Plan, Lease, Statutory Right of Way, Parking Agreement, and Reliance Letter on undertakings satisfactory to the City's lawyers, acting reasonably.

3.5 On or before the date which is 3 days before the Closing Date, JEM will pay to JEM's lawyers in trust the Basic Rent, as that term is defined in the Lease.

3.6 On the Closing Date, after receipt of the payment in trust referred to in Section 3.5 and the documents referred to in Section 3.4, JEM will cause its lawyers to register the Statutory Right of Way, the Lease Plan and the Lease in the Land Title Office against title to the Surtees Property.

3.7 Upon JEM's lawyers being satisfied as to the final registration and priority of the Lease Plan and the Lease, after conducting a post filing registration check of the property index disclosing only the following:

- (a) the existing title number to the Surtees Property;
- (b) the encumbrances listed on Schedule H;
- (c) registration numbers assigned to the Statutory Right of Way; and
- (d) registration numbers assigned to the Lease Plan and the Lease,

JEM will cause JEM's lawyers to pay to the City the Basic Rent.

3.8 It is a condition of this Agreement that all requirements of this Section 3 are concurrent requirements and it is specifically agreed that nothing will be completed on the Closing Date until everything required to be paid, executed and delivered on the Closing Date has been so paid, executed and delivered and until JEM's lawyers have satisfied themselves as to the registration and priority of the Lease Plan and the Lease.

#### **4. GENERAL**

4.1 No amendment of this Agreement is valid unless it is in writing and signed by each party.

4.2 This Agreement is not assignable without the prior written consent of the other party.

4.3 This Agreement constitutes the entire agreement between the parties with respect to the matters described in this Agreement, and the parties do not rely upon any representation or agreement whatsoever which is not incorporated in this Agreement.

4.4 This Agreement is binding on and benefits the parties and their respective successors and permitted assigns.

4.5 Any notice required or permitted under this Agreement must be in writing and may be given by personal delivery, overnight courier, mail or email transmission to the party at the address set out on the first page of this Agreement. Notices given by personal delivery will be deemed to have been received on the date of the delivery. Notices given by overnight courier or email transmission will be deemed to have been received on the day following the date of delivery. Notices delivered by mail will be deemed to have been received on the third day following the date of mailing.

4.6 This Agreement and all claims arising out of or relating to this Agreement are governed by the laws of the Province of British Columbia and the applicable laws of Canada. Each of the parties agree to bring any action arising out of or related to this Agreement in a court of British Columbia and the parties submit to the exclusive jurisdiction of the courts of British Columbia and any courts competent to hear appeals.

4.7 This Agreement may be executed in counterparts and delivered by electronic transmission.

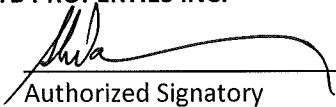
Signed by the parties as of the date first written above.

**CITY OF KELOWNA**

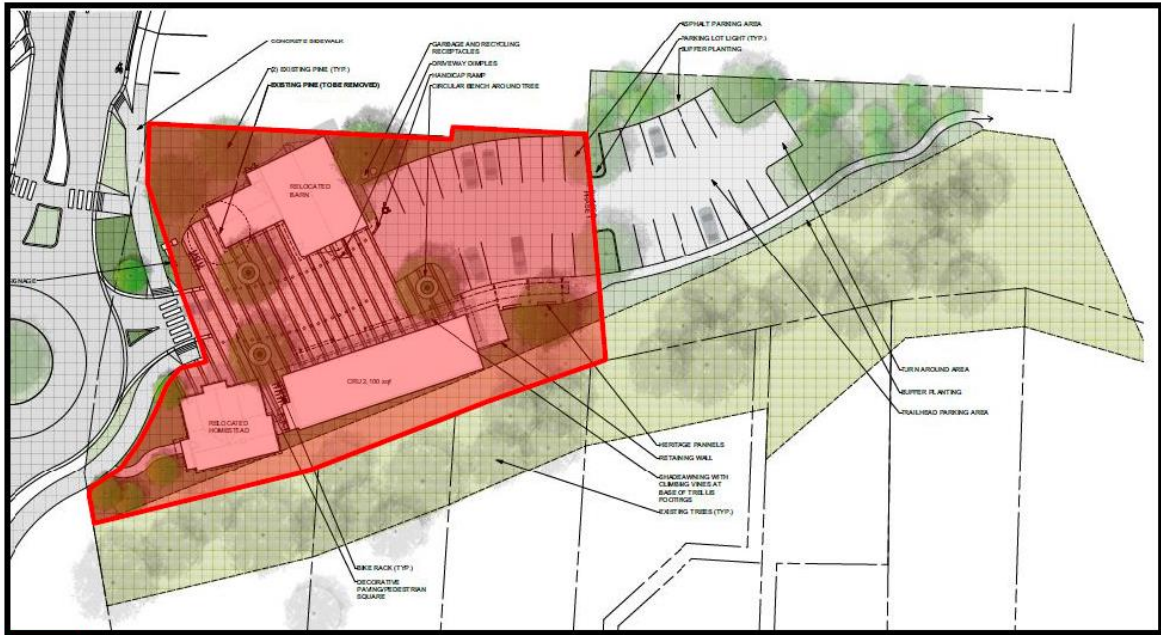
Per: \_\_\_\_\_  
Authorized Signatory


Per: \_\_\_\_\_  
Authorized Signatory

**JEM HTB PROPERTIES INC.**

Per:  \_\_\_\_\_  
Authorized Signatory

# SCHEDULE A SURTEES PROPERTY



 Leased Area

# Schedule B

## SURTEES PROPERTY LEASE

THIS LEASE dated for reference \_\_\_\_\_, 2017.

BETWEEN:

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

(the "Landlord")

AND:

**JEM HTB PROPERTIES INC.** (Inc. No. BC0949919), c/o Pushor Mitchell LLP, 3<sup>rd</sup> Floor, 1665 Ellis Street, Kelowna, British Columbia, V1Y 2B3

(the "Tenant")

WHEREAS:

- A. The Landlord is the owner of the Lands.
- B. Located on the Lands are the Heritage Buildings.
- C. The Landlord has agreed to lease the Lands to the Tenant for the Term in order that the Tenant may restore the Heritage Buildings, erect the New Building, and use, occupy, and enjoy the Lands and the Buildings upon the terms and conditions, and subject to the provisos, contained in this Lease.

NOW THIS LEASE WITNESSES that in consideration of the Rent, covenants, and agreements reserved and contained in this Lease, which Rent, covenants, and agreements are to be paid, observed, and performed by the Tenant, the Landlord does hereby demise and lease unto the Tenant the Lands and the Tenant does hereby lease from the Landlord the Lands, from the Commencement Date for and during the Term, unless sooner terminated as hereinafter provided, upon the terms and conditions and subject to the provisos contained in this Lease.

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

### ARTICLE 1 - DEFINITIONS

- 1.1** The terms defined in this clause 1.1, for all purposes of this Lease unless otherwise specifically provided, have the following meanings:
- (a) "Additional Rent" means the amounts, if any, payable by the Tenant as additional amounts that are expressed in this Lease to be added to and made part of Additional Rent, other than Basic Rent.

- (b) "Architect" means \_\_\_\_\_ of Kelowna, British Columbia, or such other architect(s) as the Tenant may appoint from time to time, who is a member in good standing of the Architectural Institute of British Columbia.
- (c) "Authority" means the City of Kelowna and any other authority having jurisdiction over development on the Lands.
- (d) "Basic Rent" as of any particular time means the net basic rental provided for in this Lease as specified in Article 2 of this Lease.
- (e) "Buildings" means, together, the Surtees Homestead, the Surtees Barn, and the New Building.
- (f) "Commencement Date" means \_\_\_\_\_, 201\_\_.
- (g) "Commencement of Construction" means that a building permit or permits have been issued to the Tenant by the Authority for the New Building, and the foundations and footings of the New Building have been commenced as certified to the Landlord by the Architect.
- (h) "Commencement of Restoration" means that a Heritage Alteration Permit and a building permit or permits have been issued to the Tenant by the Authority for the restoration and alteration of the Heritage Buildings in accordance with the Heritage Revitalization Agreement.
- (i) "Completion" means completion as defined in clause 4.2 of this Lease.
- (j) "Environmental Contaminants" means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable materials, explosive materials, radioactive materials, dangerous goods, microwaves, hazardous waste, urea formaldehyde, asbestos, noxious substances, compounds known as chlorobiphenyls, mould, and any other substance or material the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release of which into the environment is prohibited, regulated, controlled, or licensed under Environmental Laws.
- (k) "Environmental Laws" means any laws, statutes, regulations, orders, bylaws, permits or lawful requirements of any government authority with respect to environmental protection, or regulating, controlling, licensing, or prohibiting Environmental Contaminants.
- (l) "Fair Market Rent" means the rent, being basic rent, percentage rent, additional rent, and all other amounts and charges that would be paid for the Buildings and the Lands as between persons dealing in good faith and at arm's length, for the highest and best use as permitted from time to time by the Authority; but if at any time the parties cannot agree on what the Fair Market Rent is, it will be determined by arbitration as provided in Article 20.



- (m) “Heritage Alteration Permit” means the heritage alteration permit issued by the Authority to the Tenant relating to the restoration and alteration of the Heritage Buildings.
- (n) “Heritage Buildings” means, together, the Surtees Homestead and the Surtees Barn.
- (o) “Heritage Revitalization Agreement” means an agreement between the Authority and the Tenant pursuant to section 610 of the *Local Government Act* (British Columbia) in respect of the restoration of the Heritage Buildings in exchange for certain variances to City of Kelowna Zoning Bylaw No. 8000, a copy of which is attached as Schedule “B-1”, as amended by an amending agreement, a copy of which is attached as Schedule “B-2”.
- (p) “Lands” means that portion of Lot A shown outlined in bold on Reference Plan EPP\_\_\_\_\_, a copy of which is attached hereto as Schedule “A”, including all improvements from time to time thereon, therein, or thereto.
- (q) “Lease” means this lease, including all schedules attached to it.
- (r) “Lease Plan” means a leasehold subdivision plan of Lot A, showing the Lands outlined in bold.
- (s) “Lease Year” means a 12-month period commencing with the 1<sup>st</sup> day of January in one calendar year and ending on the last day of December thereof, provided that the first Lease Year will commence on the Commencement Date and end on the last day of December next following and the last Lease Year will end on the last day of the Term and commence on the first day of the immediately preceding January.
- (t) “Lot A” means that parcel of land located at 4629 Lakeshore Road, Kelowna, British Columbia, legally described as Parcel Identifier: 025-433-997, Lot A Section 25 Township 28 Similkameen Division Yale District Plan KAP71341.
- (u) “Mortgage” means a mortgage or mortgages upon or in respect of and specifically charging the leasehold interest of the Tenant in the Lands and the Buildings or any part of them and includes any debenture or deed of trust and mortgage to secure any bonds or debentures issued under it, and any assignment of rents made to the Mortgagee as security.
- (v) “Mortgagee” means a mortgagee or mortgagees under a Mortgage.
- (w) “New Building” means a commercial building with a footprint of no more than 2,200 square feet and a total gross building area of no more than 4,400 square feet, an internal road network as required for vehicle circulation and associated parking areas (using a combination of asphalt and concrete or concrete pavers), a public trail for pedestrian and vehicle access from Lakeshore Road to the future trail head for the Bellevue Creek Linear Park, hard landscaping complementary to the heritage and commercial development of the Lands, all substantially as shown on the site plan attached as Schedule “A”, and all necessary facilities for the passage or provision of municipal services to the Buildings and surrounding landscaping within the boundaries of the Lands, together with all replacements, alterations, additions, changes, substitutions, improvements, or repairs to

them and all other improvements from time to time constructed or caused to be constructed upon or affixed to the Lands by the Tenant.

- (x) "Person" or any word or expression descriptive of a person, includes any body corporate and politic, the heirs, executors, administrators, or other legal representatives of such person.
  - (y) "Prime Rate" means the annual percentage rate of interest established from time to time by the Royal Bank of Canada, Kelowna Branch, Kelowna, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Royal Bank of Canada as the prime rate.
  - (z) "Public Access Area" has the meaning set out in clause 7.12.
  - (aa) "Rent" means the Basic Rent, Additional Rent, and any other amounts payable by the Tenant under this Lease.
  - (bb) "Substantial Completion" means substantial completion as defined in clause 5.2 of this Lease.
  - (cc) "Surtees Barn" means the building labelled "Barn" on the site plan attached as Schedule "A", which building is listed on the City's Heritage Register.
  - (dd) "Surtees Homestead" means the building labelled "Homestead" on the site plan attached as Schedule "A", which building is listed in the City's Heritage Register.
  - (ee) "Term" means the 75-year period commencing on the Commencement Date and ending at 5:00 p.m. on that date which is one day prior to the 75<sup>th</sup> anniversary of the Commencement Date.
- 1.2** All of the provisions of this Lease will be deemed and construed to be conditions as well as covenants as though the words specifically expressing or importing covenants or conditions were used in each separate clause of this Lease.
- 1.3** The words "herein", "hereby", "hereunder", and words of similar import refer to this Lease as a whole and not to any particular article, clause, or subclause of the Lease.
- 1.4** The captions and headings throughout this Lease are for convenience and reference only and the words and phrases used in the captions and headings will in no way be held or deemed to define, limit, describe, explain, modify, amplify, or add to the interpretation, construction, or meaning of any clause or the scope or intent of this Lease, nor in any way affect this Lease.

## ARTICLE 2 - PAYMENT OF RENT

### 2.1 Rent

The Tenant has paid as Basic Rent for the entire Term the amount of \$200,000.00, to the Landlord on or before the Commencement Date, the receipt of which is acknowledged by the Landlord. This amount is the total Basic Rent payable for the Term of this Lease.

### 2.2 Payments Generally

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

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

### 2.3 Net Lease

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

### 2.4 Interest on Amounts in Arrears

When the Rent is in arrears, such amounts will bear interest, including interest on overdue interest, at the Prime Rate plus 3% per annum calculated monthly not in advance from the date due until paid, irrespective of whether or not the Landlord demanded payment. The Landlord will have all the remedies for the collection of such interest, if unpaid after demand, as in the case of Rent in arrears, but this stipulation for interest will not prejudice or affect any other remedy of the

Landlord under this Lease. If the Tenant fails to pay taxes under clause 3.1 when due, then clause 3.2 will apply rather than this clause 2.4.

## **2.5 Goods and Services Taxes**

The Tenant agrees to pay to the Landlord at the times required by the applicable legislation all goods and services taxes or harmonized sales taxes payable under the *Excise Tax Act* (Canada), or such other tax as may be substituted for those taxes from time to time.

### **ARTICLE 3 - PAYMENT OF TAXES**

#### **3.1 Payment of Taxes**

- (a) Except as otherwise provided in clause 3.2, the Tenant will in each and every year during the Term, not later than the day immediately preceding the date or dates on which real property taxes and other charges imposed upon real property within the Province of British Columbia become due and payable, whether monthly, quarterly, twice yearly, or otherwise, pay and discharge or cause to be paid and discharged all taxes, rates, duties, charges, and assessments, including school taxes, local improvement rates, and other charges that now are or will or may be levied, rated, charged, or assessed against the Lands, the Buildings, all other structures, all machinery, equipment, facilities, and other property of any nature whatsoever in or on them, whether such taxes, rates, duties, charges, and assessments are charged by any municipal, parliamentary, legislative, regional, school, or other authority during the Term and will indemnify and keep indemnified the Landlord from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such taxes, rates, duties, charges, and assessments; and any such losses, costs, charges, and expenses incurred by the Landlord may be collected by the Landlord as Additional Rent.
- (b) The Tenant further covenants and agrees that during the Term it will, promptly on the Landlord's written request, deliver to the Landlord for inspection receipts for payments of all taxes, rates, duties, charges, and assessments, including school taxes, local improvement rates, and other charges in respect of the Lands, the Buildings, all other structures, all machinery, equipment, facilities, and other property of any nature whatsoever on or in the Lands or Buildings that were due and payable during the Term.
- (c) The Landlord will, not later than 14 days following receipt of any assessment notices delivered to the Landlord by any taxing authority relating to the Lands, the Buildings or any other structures, any machinery, equipment, facilities, and other property of any nature whatsoever on or in the Lands or Buildings, forward a copy of those notices to the Tenant. The Tenant will have the right to appeal any assessment of the Lands or the Buildings or any other tax, rate, duty, charge, or amount referred to in this clause 3.1 provided that such appeal will be at the sole cost and expense of the Tenant. The Landlord will cooperate with the Tenant, at the Tenant's expense, in order to assist the Tenant with any such appeal.

The Tenant will be responsible for the payments referred to in this clause 3.1 from the Commencement Date.

### **3.2 Delinquent Taxes**

If the Tenant in any year during the Term fails to pay the taxes under clause 3.1 when due, the Tenant will pay to the Landlord, on demand, interest on the amount outstanding at the percentage rate or rates established by the Province of British Columbia, the Authority, or any other taxing authority for unpaid real property taxes in the Province of British Columbia.

### **3.3 Payment of Utility Services**

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

### **3.4 Business Tax and Licence Fees**

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

## **ARTICLE 4 - RESTORATION OF HERITAGE BUILDINGS**

### **4.1 Tenant to Complete Restoration of Heritage Buildings**

Prior to the commencement of any development on the Lands, the Tenant will apply to the Authority for a Heritage Alteration Permit and any other permits necessary to restore the Heritage Buildings in accordance with the Heritage Revitalization Agreement. Upon receipt of a Heritage Alteration Permit and a building permit, as necessary, the Tenant will carry out the restoration of the Heritage Buildings expeditiously and in a good and workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including materials to be used), location on the Lands, and exterior decoration and design all upon which the issuance of the Heritage Alteration Permit and building permits by the Authority having jurisdiction are based. The Tenant

will comply at all times with each and every provision of the Heritage Revitalization Agreement, as if it were the owner of the Lands under that agreement.

#### **4.2 Completion of Restoration**

The Tenant will complete the restoration of the Heritage Buildings in accordance with the Heritage Revitalization Agreement and restoration will be deemed to have been Completed when the Architect or engineer of the Tenant has issued a certificate to the Landlord, signed and sealed by the Architect or engineer, certifying that:

- (a) the Heritage Buildings are restored in all material respects in a proper and workmanlike manner and in accordance with the applicable plans, specifications, and supporting documents upon which the issuance by the Authority of any Heritage Alteration Permit and building permits for the Heritage Buildings have been based;
- (b) the Heritage Revitalization Agreement and all building bylaws and regulations of the Authority have been complied with by the Tenant;
- (c) all permits for occupancy that may be required by the Authority have been obtained; and
- (d) the Heritage Buildings are ready for occupancy.

#### **4.3 Deadlines for Commencement and Completion of Restoration of Heritage Buildings**

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

- (a) Commencement of Restoration of the Heritage Buildings will take place on or before the day that is 90 days following the Commencement Date; and
- (b) the restoration of the Heritage Buildings will be Completed in accordance with the requirements of clause 4.2 on or before the day that is 548 days following the Commencement Date.

#### **4.4 Termination Where Tenant Defaults in Commencement or Completion of Restoration**

- (a) If Commencement of Restoration or Completion of the restoration of the Heritage Buildings does not occur by the dates specified in clause 4.3, the Landlord will have the right and option to terminate this Lease and the provisions of clause 18.1 will apply, except as modified by subclause 4.4(c) and subject to the rights of a Mortgagee under clause 17.2.
- (b) In the event of a dispute between the Landlord and the Tenant as to whether or not the Landlord is entitled to terminate this Lease pursuant to the provisions of this clause 4.4, the Landlord and the Tenant agree to submit such dispute to arbitration in accordance with the provisions of Article 20.
- (c) If the Landlord terminates this Lease under this clause 4.4, then:

- (i) the Landlord will be entitled to retain the Basic Rent paid as its sole remedy and as liquidated damages and not as a penalty.
- (ii) the Landlord will pay compensation to the Tenant as provided for in clause 18.5.

#### **4.5 Fire and Liability Insurance During Restoration of Heritage Buildings**

- (a) Without limiting any insurance requirements set out in the Heritage Revitalization Agreement, the Tenant will effect or will cause its contractor or contractors to effect prior to the commencement of the restoration of the Heritage Buildings and will maintain and keep in force until the insurance required under Article 7 is effected, insurance:
  - (i) protecting both the Tenant and the Landlord and the Landlord's servants and agents (without any rights of cross claim or subrogation against the Landlord) against claims for personal injury, death, or property damage, or other third-party or public liability claims arising from any accident or occurrence upon, in, or about the Lands and from any cause, including the risks occasioned by the restoration of the Heritage Buildings, and to an amount reasonably satisfactory to the Landlord, for any personal injury, death, property, or other claims in respect of any one accident or occurrence; and
  - (ii) protecting both the Tenant and the Landlord and the Landlord's servants and agents from loss or damage (without any rights of cross claim or subrogation against the Landlord) to the Heritage Buildings and all fixtures, equipment, improvements, and building materials on the Lands from time to time both during and after restoration (but which may be by policies effected from time to time covering the risk during different phases of restoration and alteration of the Heritage Buildings) against fire, earthquake and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Landlord may reasonably require to be insured against to the full insurable value thereof at all times and in any event in the amount sufficient to prevent the Landlord or the Tenant being deemed co-insurer.
- (b) The proceeds of insurance that may become payable under any policy of insurance effected pursuant to this clause 4.5 will be payable to the Tenant and will be available to finance repair and reconstruction.
- (c) All of the provisions of Article 7 respecting insurance that are of general application will apply to the insurance applying during restoration of the Heritage Buildings required by this clause 4.5.

**ARTICLE 5 - CONSTRUCTION OF NEW BUILDING****5.1 Tenant to Construct New Building**

- (a) Prior to the commencement of any development on the Lands, the Tenant will apply to the Authority for any permits necessary to construct the New Building, and at the same time deliver to the Landlord drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and exterior decoration and design of the proposed New Building for the Landlord's approval, which approval the Landlord agrees not to unreasonably withhold. Upon receipt of the Landlord's approval and a building permit, the Tenant will construct the New Building, together with other facilities ancillary to and connected with the New Building on the Lands, expeditiously and in a good and workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including materials to be used), location on the Lands, and exterior decoration and design all upon which the issuance of the building permits by the Authority having jurisdiction are based.
- (b) Any changes to the drawings, specifications, location, exterior decoration, design, or exterior appearance of the New Building or the appearance of the Lands will first be approved by the Landlord.

**5.2 Substantial Completion of New Building**

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

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

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



### **5.3 Deadlines for Commencement of Construction and Substantial Completion of New Building**

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

- (a) Commencement of Construction of the New Building will take place on or before the day that is 90 days following the Commencement Date; and
- (b) the New Building will be Substantially Completed in accordance with the requirements of clause 5.2 on or before the day that is 548 days following the Commencement of Construction.

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

- (a) If Commencement of Construction or Substantial Completion of the New Building does not occur by the dates specified in clause 5.3, the Landlord will have the right and option to terminate this Lease and the provisions of clause 18.1 will apply, except as modified by subclause 5.4(c) and subject to the rights of a Mortgagee under clause 17.2.
- (b) In the event of a dispute between the Landlord and the Tenant as to whether or not the Landlord is entitled to terminate this Lease pursuant to the provisions of this clause 5.4, the Landlord and the Tenant agree to submit such dispute to arbitration in accordance with the provisions of Article 20.
- (c) If the Landlord terminates this Lease under this clause 5.4, then:
  - (i) the Landlord will be entitled to retain the Basic Rent paid as its sole remedy and as liquidated damages and not as a penalty; and
  - (ii) the Landlord will pay compensation to the Tenant as provided for in clause 18.5.

### **5.5 Fire and Liability Insurance During Construction of New Building**

- (a) The Tenant will effect or will cause its contractor or contractors to effect prior to the Commencement of Construction of the New Building and will maintain and keep in force until the insurance required under Article 7 is effected, insurance:
  - (i) protecting both the Tenant and the Landlord and the Landlord's servants and agents (without any rights of cross claim or subrogation against the Landlord) against claims for personal injury, death, or property damage, or other third-party or public liability claims arising from any accident or occurrence upon, in, or about the Lands and from any cause, including the risks occasioned by the construction of the New Buildings, and to an amount reasonably satisfactory to the Landlord, for any personal injury, death, property, or other claims in respect of any one accident or occurrence; and

- (ii) protecting both the Tenant and the Landlord and the Landlord's servants and agents from loss or damage (without any rights of cross claim or subrogation against the Landlord) to the New Building and all fixtures, equipment, improvements, and building materials on the Lands from time to time both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the New Building) against fire, earthquake and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Landlord may reasonably require to be insured against to the full insurable value thereof at all times and in any event in the amount sufficient to prevent the Landlord or the Tenant being deemed co-insurer.
- (b) The proceeds of insurance that may become payable under any policy of insurance effected pursuant to this clause 5.5 will be payable to the Tenant and will be available to finance repair and reconstruction.
- (c) All of the provisions of Article 7 respecting insurance that are of general application will apply to the insurance applying during construction of the New Building required by this clause 5.5.

## **ARTICLE 6 - USE OF BUILDINGS**

### **6.1 Tenant's Purposes**

The Tenant covenants and agrees with the Landlord that neither the Lands nor the Buildings, nor any part of the Lands or the Buildings, will be used for any purposes except those uses that are permitted by the Heritage Revitalization Agreement. For certainty, the Tenant acknowledges and agrees that neither the Lands nor the Buildings, nor or any part of the Lands or the Buildings, will be used for the following uses: gas bar, recycled materials drop-off centre, supportive housing.

## **ARTICLE 7 - INSURANCE**

### **7.1 Insurance**

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

## **7.2 Co-insurance Clauses**

If any of the policies of insurance referred to in clauses 4.5, 5.5, or 7.1 contain any co-insurance clauses, the Tenant will maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent the Landlord or the Tenant from becoming a co-insurer under the terms of such policy or policies and to permit full recovery from the insurer in the event of loss.

## **7.3 Identity of Insured and Subrogation**

Any and all policies of insurance referred to in clauses 4.5, 5.5, or 7.1 will:

- (a) be written in the name of the Tenant as the insured, and the Landlord as additional insured, with loss payable to the Tenant and the Mortgagee, if any, as their respective interests may appear;
- (b) contain a waiver of subrogation clause in favour of the Landlord and its employees, agents or Mortgagee;
- (c) contain a clause to the effect that any release from liability entered into by the Tenant prior to any loss will not affect the right of the Tenant, the Mortgagee, or the Landlord to recover; and
- (d) contain a provision or bear an endorsement that the insurer will not cancel such policy without first giving the Landlord and the Mortgagee at least 15 days' notice in writing of its intention to cancel or materially alter the policy.

## **7.4 Release of Landlord from Liability for Insured Loss or Damage**

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

## **7.5 Payment of Loss Under the Insurance Policy Referred to in Clause 7.1**

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

and the Tenant may agree upon who is in charge of such restoration, reconstruction, or replacement.

#### **7.6 Landlord's Right to Repair and Receive the Insurance Proceeds**

Subject to Article 9, should the Tenant fail to effect the restoration, reconstruction, or replacement of the loss or damage in respect of which the insurance monies are payable, without unreasonable delay, the Landlord will be entitled to effect such restoration, reconstruction, or replacement and the Tenant will pay or cause to be paid to the Landlord such insurance monies payable for such restoration, reconstruction, or replacement.

#### **7.7 Workers' Compensation Coverage**

- (a) At all times during the Term, the Tenant will at its own expense procure and carry, or cause to be procured and carried and paid for, full workers' compensation coverage in respect of all workers, employees, servants, and others engaged by the Tenant in or upon any work, non-payment of which would create a lien on the Lands or the Buildings.
- (b) The Tenant will immediately notify the Landlord of any dispute involving third parties that may arise in connection with obtaining and maintaining the workers' compensation coverage required under this Lease if such dispute results in the requisite coverage not being in place, and the Tenant will take all reasonable steps to ensure the resolution of such dispute promptly. At all times the Tenant will indemnify and save harmless the Landlord, its servants and agents from and against all damages, costs, claims, suits, judgments, and demands that the Landlord may incur as a result of any default by the Tenant of its obligation under this clause 7.7 to ensure that the full workers' compensation coverage is maintained. The Tenant will further ensure that no amount of the workers' compensation coverage is left unpaid so as to create a lien on the Lands or the Buildings. If the workers' compensation coverage required by this clause 7.7 is not in place within 60 days of the date of the notice to the Landlord mentioned above, the Landlord will be entitled to have recourse to the remedies of the Landlord specified in this Lease or at law or equity.

#### **7.8 Commercial General Liability**

At all times during the Term, the Tenant will at its own expense maintain with one or more companies duly authorized to carry on business within the Province of British Columbia and approved by the Landlord, commercial general liability insurance against claims for personal injury, death, or property damage or loss arising out of the use and occupation of the Lands and Buildings of not less than \$5,000,000.00 or in such other reasonable amount as may be required by the Landlord, which insurance will include the Landlord as an additional insured, indemnifying and protecting the Landlord and its respective servants and agents and the Tenant to limits approved by the Landlord from time to time. The liability insurance will contain a cross-liability clause and severability of interest endorsement in favour of the Landlord and also a waiver of subrogation in favour of the Landlord, its employees, or agents.

## **7.9 Payment of Insurance Premiums**

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

## **7.10 Copies of Insurance Certificates**

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

## **7.11 Insurance May Be Maintained by Landlord**

The Tenant agrees that should the Tenant at any time during the Term fail to insure or keep insured the Buildings against loss or damage by fire and other perils as required under clause 7.1, or fail to maintain insurance against claims for personal injury, death, or property damage or loss as required under clause 7.8, then in any of such events, the Landlord, although not obliged to do so, may obtain and maintain such insurance in such amount or amounts with such deductible amounts and for such period or periods of time as the Landlord deems advisable; and the Tenant will pay to the Landlord as Additional Rent, upon the Landlord obtaining any such insurance and thereafter annually during the Term, within 30 days after receipt of any invoice from the Landlord, such amounts as the Landlord has expended for such insurance. If the Landlord pays for or obtains and maintains any insurance pursuant to this clause 7.11, the Landlord will submit to the Tenant annually a statement of the amount or amounts payable by the Tenant under this clause 7.11 as the cost of such insurance for the next ensuing year, and upon receipt of payment will apply the payment on account of the premiums of such insurance with the loss, if any, thereunder payable to the Tenant and the Landlord as their interests may appear.

## **7.12 Public Access Insurance**

Notwithstanding anything else in this Article 7, the Landlord will obtain and maintain commercial general liability insurance in respect to the public access area in respect of which the Landlord holds a statutory right of way for access to the parking and trailhead located on Lot A in the approximated location shown on Schedule "A" (the "**Public Access Area**") against claims for personal injury, death, or property damage or loss arising out of the use and occupation of the Public Access Area of not less than \$5,000,000.00 or in such other reasonable amount as may be required by the Tenant, which insurance will include the Tenant as an additional insured, indemnifying and protecting the Tenant and its respective servants and agents and the Landlord to limits approved by the Tenant from time to time. The liability insurance will contain a cross-liability clause and severability of interest endorsement in favour of the Tenant and also a waiver of subrogation in favour of the Tenant, its employees, or agents.

## **ARTICLE 8 - REPAIRS AND MAINTENANCE**

### **8.1 Landlord Not Obligated to Repair**

With the exception of services normally provided by the Landlord acting in its capacity as the City of Kelowna, to the Lands and Buildings, and those municipal services specifically mentioned in clause 19.3, the Landlord will not be obliged to furnish any additional services or facilities or to make repairs or alterations in or to the Lands or the Buildings, and the Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Lands and the Buildings.

### **8.2 Repair by the Tenant**

The Tenant will during the Term, at its cost, by itself or by the use of agents, put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the foundation or structure of the Buildings) the Lands and the Buildings, and the appurtenances and equipment of them, both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, elevators (if any) and similar devices, heating and air-conditioning equipment, sidewalks, landscaping, yards and other like areas, water and sewer mains and connections, water, steam, gas, and electric pipes and conduits, and all other fixtures on the Lands and the Buildings and machinery and equipment used or required in the operation of them, whether or not enumerated in this Lease, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacements, alterations, additions, changes, substitutions, and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Buildings and aforesaid fixtures, appurtenances, and equipment fully usable for all of the purposes for which the Buildings were erected and constructed and the specified fixtures, appurtenances, and equipment were supplied and installed. Such repairs will be in all respects to the standard at least substantially equal in quality of material and workmanship to the original work and material in the Buildings and aforesaid fixtures, appurtenances, and equipment. Without limiting the foregoing, the Tenant shall comply with all bylaws and regulations relating to maintenance and repair of designated heritage properties.

### **8.3 Tenant Not to Commit Waste or Injury**

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

### **8.4 No Unlawful Purpose**

The Tenant will not use or occupy or permit to be used or occupied the Lands or the Buildings or any part of them for any illegal or unlawful purpose or in any manner that will result in the

cancellation of any insurance, or in the refusal of any insurers generally to issue any insurance as requested.

### **8.5 At Expiration Deliver Up Lands and Buildings**

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

### **8.6 Environmental Condition of Lands at Commencement Date**

The Landlord has delivered to the Tenant a copy of the Phase 1 report prepared by SLR Consulting (Canada) Ltd. dated December 18, 2015. If at any time during the construction contemplated by Article 4 or Article 5, the Tenant discovers Environmental Contaminants which are on the Lands but not disclosed in the above-mentioned report, the Tenant will give the Landlord prompt notice of such discovery. Any such Environmental Contaminants are the responsibility of the Landlord. Following delivery of such notice, the Landlord will have 90 days to retain an environmental consultant to prepare a remediation plan with an estimate of the costs to remediate those Environmental Contaminants in a manner that conforms to Environmental Laws. Following receipt of such an estimate, the City will have 30 days to approve the remediation plan and notify the Tenant that it may proceed to remediate those Environmental Contaminants in accordance with the approved remediation plan, in which case the Landlord will reimburse the Tenant for all of the Tenant's costs and expenses on demand, or alternatively to notify the Tenant that this Lease is at an end and thereafter neither party shall have any further or continuing obligation to the other under this Lease (except as otherwise specifically provided for in this Lease) and the Landlord will repay the Rent and all other costs and expenses reasonably incurred by the Tenant with respect to this Lease plus a 10% administration fee thereon to the Tenant on demand.

### **8.7 Repairs to Buildings by Landlord**

If at any time during the Term the Tenant fails to maintain the Lands and the Buildings and the fixtures, appurtenances, and equipment of them, both inside and outside, in the condition required by the provisions of clause 8.2, the Landlord through its agents, servants, contractors, and subcontractors may but will not be obliged to enter upon those parts of the Lands and the Buildings required for the purpose of making the repairs required by clause 8.2. The Landlord will make such repairs, only after giving the Tenant 60 days' written notice of its intention so to do, except in the case of an emergency when no notice to the Tenant is required. Any amount paid by the Landlord in making such repairs to the Lands and the Buildings or any part or parts thereof, together with all costs and expenses of the Landlord, will be reimbursed to the Landlord by the Tenant on demand plus a 10% administration fee together with interest at the rate specified in clause 2.4.

## **8.8 Removal of Ice and Snow from Sidewalks**

The Tenant covenants and agrees with the Landlord that if the Tenant at any time during the Term fails to keep the public sidewalks adjacent to the Lands reasonably clean from ice and snow during the times and to the extent required of an owner under the bylaws or other regulation of the Authority in effect from time to time, the Landlord through its agents, servants, contractors, and subcontractors may remove such ice and snow and the Landlord will not be required to give the Tenant any notice of its intention so to do. Any costs and expenses incurred by the Landlord in removing such ice and snow will be reimbursed to the Landlord by the Tenant on demand plus a 10% administration fee together with interest at the rate specified in clause 2.4.

## **ARTICLE 9 - DAMAGE OR DESTRUCTION**

### **9.1 Rent Not to Abate**

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

### **9.2 Tenant's Obligations When the Buildings are Damaged or Partially Destroyed**

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

### **9.3 Tenant's Obligations When the Buildings are Completely or Substantially Destroyed**

The Tenant covenants and agrees with the Landlord that in the event of complete or substantially complete destruction of the Heritage Buildings, the Tenant, subject to the regulations and requirements of the Authority and any other government authority having jurisdiction, will reconstruct or replace the Heritage Buildings in accordance with the requirements set out in the Heritage Revitalization Agreement.

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

Any replacement, repair, or reconstruction of the Buildings or any part of the Buildings pursuant to the provisions of clauses 9.2 or 9.3 will be made or done in compliance with the provisions of clause 8.2 and Article 10.

## **ARTICLE 10 - REPLACEMENT, CHANGES, ALTERATIONS, AND SUBSTITUTIONS**

- (a) The Tenant will not make or permit to be made any changes, alterations, replacements, substitutions, or additions affecting the structure of the Buildings, the major electrical and/or mechanical systems contained in them, or the exterior decoration, design, or



appearance of the Buildings without the written approval of the Landlord, which approval the Landlord will not withhold unreasonably. No changes, alterations, replacements, substitutions, or additions will be undertaken until the Tenant has submitted or caused to be submitted to the Landlord drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable), and exterior decoration and design of the proposed changes, alterations, replacements, substitutions, or additions, and until they have been approved in writing by the Landlord, which approval the Landlord agrees not to unreasonably withhold.

- (b) The Tenant covenants and agrees with the Landlord that, subject to Article 11, all changes, alterations, replacements, substitutions, and additions undertaken by or for the Tenant once begun will be prosecuted with due diligence to completion. All such changes, alterations, and additions will meet the requirements of the Authority and any other government authorities having jurisdiction.

#### **ARTICLE 11 - UNAVOIDABLE DELAYS**

- (a) Without limiting clauses 4.3 and 5.3, if, by reason of strike, lock out, or other labour dispute, material or labour shortage not within the control of the Tenant, stop-work order issued by any court or tribunal of competent jurisdiction (provided that such order was not issued as the result of any act or fault of the Tenant or of anyone employed by it directly or indirectly), fire or explosion, flood, wind, water, earthquake, act of God, or other similar circumstances beyond the reasonable control of the Tenant and not avoidable by the exercise of reasonable effort or foresight by the Tenant (each of which is an "Unavoidable Delay"), the Tenant is, in good faith and without default or neglect on its part, prevented or delayed in the performance of its covenants or obligations which under the terms of this Lease the Tenant is required to do by a specified date or within a specified time or, if not specified, within a reasonable time, the date or period of time within which the work was to have been completed or the covenant or obligation was to have been met will be extended by the Landlord by a reasonable period of time at least equal to that of such delay or prevention; and the Tenant will not be deemed to be in default if it performs and completes the work or meets the covenant or obligation in the manner required by the terms of this Lease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Landlord and the Tenant. If the Landlord and the Tenant cannot agree as to whether or not there is an Unavoidable Delay within the meaning of this Article, or they cannot agree as to the length of such Unavoidable Delay, then such matter will be determined by reference to arbitration in accordance with Article 20. For the purposes of this Article 11 the inability of the Tenant to meet its financial obligations under this Lease or otherwise will not be an Unavoidable Delay.
- (b) The Tenant will act diligently and take all reasonable steps of a prudent owner to remove any Unavoidable Delay.

## **ARTICLE 12 - BUILDERS' LIENS**

### **12.1 Tenant to Remove Liens**

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

### **12.2 Landlord Not Responsible for Liens**

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

## **ARTICLE 13 - INSPECTION AND EXHIBITION BY LANDLORD**

### **13.1 Inspection by Landlord**

The Landlord and the Tenant agree that it will be lawful for a representative of the Landlord at all reasonable times during the Term to enter the Lands and the Buildings, or any of them and to examine their condition. The Landlord will give to the Tenant notice of any repairs or restorations required in accordance with clause 8.2 and the Tenant will, within 60 days after every such notice or such longer period as provided in subclause 18.2(a), well and sufficiently repair, restore, and make good accordingly.

### **13.2 Exhibition by Landlord**

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

## **ARTICLE 14 - OBSERVANCE OF REGULATIONS**

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

## **ARTICLE 15 - INDEMNITY**

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

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

### **15.2 Injury, Damage, or Loss of Property**

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

- (a) any injury to person or persons, including death resulting at any time therefrom, occurring in or about the Lands or the Buildings but excepting the Public Access Area; and
- (b) any damage to or loss of property occasioned by the use and occupation of the Lands or the Buildings but excepting the Public Access Area;

however, no provision of this Lease will require the Tenant to indemnify the Landlord against any actions, causes of actions, suits, claims, or demands for damages arising out of the willful or negligent acts or omissions of the Landlord, its servants, agents, or contractors, unless the act or omission involves a peril against which the Tenant is obligated to place insurance, in which case

the release and indemnity specified in clause 7.4 absolves the Landlord of all liability with respect to the act or omission.

### **15.3 Indemnification Survives Termination of Lease**

The obligation of the Tenant to indemnify the Landlord under any provision of this Lease with respect to liability by reason of any matter arising prior to the end of the Term, including without limitation under the provisions of clauses 3.1, 3.2, 3.3, 7.4, 15.1, and 15.2, will survive any termination of this Lease, anything in this Lease to the contrary notwithstanding.

## **ARTICLE 16 - SUBLETTING AND ASSIGNING**

### **16.1 Assignment**

The Tenant may assign its interest in this Lease on the following conditions:

- (a) the assignment must be for the whole of the Tenant's interest in the Lease;
- (b) the assignment must be completed in a form acceptable for registration in the Land Title Office and registered in the applicable Land Title Office;
- (c) the assignment must include covenants pursuant to which the assignee agrees in writing to be bound and liable under all terms, conditions, covenants and agreement of the Tenant under this Lease; and
- (d) the Tenant must not be in default in any of its obligations under this Lease.

### **16.2 Release of Tenant Upon Assignment**

Upon the assignment of this Lease by the Tenant in accordance with clause 16.1, the Tenant is released from any and all further obligations arising under this Lease which arise after the time of that assignment, provided that the Tenant is not released from or in respect of any default or any obligation of the Tenant under this Lease which is in respect of any matter occurring during the time that the Tenant held an interest in the Lease (which will be determined by reference to the registration dates and times of the Lease and subsequent assignments in the Land Title Office), and all obligations of the Tenant, or an assignee as applicable, arising during that time remain unaltered and in full force and effect notwithstanding that any default or failure to perform may not become known until after the time of the assignment.

### **16.3 Subletting by Tenant**

The Tenant may sublet any portion of the Lands or Buildings provided that any use of the Lands and Buildings is in strict accordance with the uses permitted by the Heritage Revitalization Agreement.

#### **16.4 Non-Disturbance of Subtenants**

The Landlord agrees in favour of the Tenant and each subtenant that if this Lease is cancelled for any reason whatsoever prior to the expiration of the Term, the Landlord will not disturb or interfere with the possession, interest of rights of a subtenant, provided that such subtenant observes and performs for and in favour of the Landlord the subtenant's covenants and obligations in that sublease. The Landlord will sign such non-disturbance agreement as may be reasonably requested, but subject always to payment of the Landlord's reasonable legal and consulting costs without delay. Should any sublessee require a new lease directly from the Landlord on cancellation of the Lease, the Landlord will grant to such sublessee a new lease on the same terms as contained in the sublease held by that sublessee.

#### **16.5 Mortgaging by Tenant**

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

#### **16.6 Tenant to Comply with All of Its Obligations in Respect of Assignments, Subleases, Tenancies, and Mortgages**

The Tenant will observe and perform all of its obligations incurred in respect of assignments, subleases, agreements for lease, and Mortgages of its leasehold interest in the Buildings, and will not allow any such obligations to be in default; and if any such default occurs, the Landlord may, but will not be obliged to, rectify such default for the account of the Tenant, and any amount paid by the Landlord in so doing, together with all costs and expenses of the Landlord, will be reimbursed to the Landlord by the Tenant on demand plus an administration fee of 10% together with interest at the rate specified in clause 2.4.

### **ARTICLE 17 - MORTGAGE**

#### **17.1 Rights of Mortgagee**

The Mortgagee under any Mortgage referred to in clause 16.5 may enforce such Mortgage and acquire title to the leasehold estate in any lawful way and, by its representative or by a receiver, as the case may be, take possession of and manage the Lands, and upon foreclosure of such mortgage may sell or assign the leasehold estate; and the purchaser or assignee of the leasehold estate will be liable to perform the obligations imposed upon the Tenant by this Lease only so long as such purchaser or assignee has ownership or possession of such leasehold estate. The Mortgagee may, upon foreclosure of the Mortgage, assign the leasehold estate without the consent of the Landlord provided the Mortgagee has given the Landlord an opportunity to remedy

the Tenant's default in accordance with section (6) of the tri-partite agreement attached to this Lease as Schedule "C".

## **17.2 Notice to and Remedies of Mortgagee**

- (a) No re-entry, termination, acceptance of surrender, disclaimer, or forfeiture of this Lease by the Landlord or by a receiver, interim receiver, receiver manager, liquidator, custodian, or trustee will be valid against the Mortgagee who has executed and delivered to the Landlord a tripartite agreement in the form attached hereto as Schedule "C" unless the Landlord first has given to the Mortgagee notice of the default entitling the Landlord to re-enter, terminate, or forfeit this Lease, specifying the nature of that default and stating the Landlord's intention to take such proceedings and requiring the Mortgagee:
  - (i) to cure the default specified in the notice within a period of 60 days from the date of receipt of that notice by the Mortgagee; or
  - (ii) if the default is other than the failure to pay Rent or any other sums required to be paid by the Landlord by any provisions of this Lease and if the default cannot reasonably be cured within such 60-day period, then to immediately commence to cure the default and to diligently prosecute to conclusion all acts necessary to cure the default, and the Landlord hereby grants the Mortgagee access to the Lands and the Buildings for that purpose.
- (b) If the default is cured within the period specified, the Mortgagee will be entitled to become tenant of the Lands and Buildings for the balance of the Term remaining at the date of the notice of default or contingency, providing that the Mortgagee attorns as tenant to the Landlord and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term. If there is more than one Mortgage and more than one Mortgagee wishes to cure the default or contingency specified in the notice referred to in subclause 17.2(a), then the Landlord agrees to permit the curing of the default or contingency specified in such notice and the assumption of the balance of the Term by that Mortgagee whose Mortgage ranks higher in priority; but if any Mortgagee has commenced a foreclosure action, the provisions of subclause 17.2(c) will apply.
- (c)
  - (i) If the Mortgagee commences foreclosure proceedings against the Tenant, whether or not the Tenant is in default of the performance of its covenants and agreements with the Landlord under this Lease at the time such foreclosure proceedings are commenced, the Landlord will not re-enter, terminate, or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Landlord to re-enter, terminate, or forfeit this Lease if the Mortgagee:
    - (A) first gives notice to the Landlord of the foreclosure proceedings,

- (B) is actively prosecuting the foreclosure proceedings without undue delay,
  - (C) cures the default or contingency within a period of 60 days from the date of receipt of notice from the Landlord specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Rent or any other sums required to be paid to the Landlord by any provision of this Lease and if such default or contingency cannot reasonably be cured within such 60-day period, immediately commences to cure the default and to diligently prosecute to conclusion all acts necessary to cure the default or contingency, and
  - (D) performs and observes all of the Tenant's covenants and agreements under this Lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee.
- (ii) If the Mortgagee acquires title to the Tenant's interest in the Lands and the Buildings pursuant to the foreclosure proceedings, the Mortgagee will then become subrogated to the rights of the Tenant under this Lease, provided it attorns to the Landlord as tenant and undertakes to be bound by and to perform the covenants and agreements of this Lease for so long as it remains tenant and has not assigned the balance of the Term. If there is more than one Mortgage and more than one Mortgagee commences foreclosure proceedings, the right to cure any default or contingency granted by this subclause 17.2(c) to a foreclosing Mortgagee will be granted to the Mortgagee whose Mortgage ranks higher in priority.
- (d) Any re-entry, termination, or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Tenant will be valid and effectual against the Tenant even though made subject to the rights of any Mortgagee to cure any default of the Tenant and to continue as tenant under this Lease.
  - (e) No entry upon the Lands or into the Buildings by the Mortgagee pursuant to this clause 17.2 for the purpose of curing any default or defaults of the Tenant will release or impair the continuing obligations of the Tenant.

### **17.3 Mortgage Subject to Landlord's Rights Under Lease**

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

### **17.4 Protection of Mortgagee (Tri-partite Agreements)**

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

performed or observed by the Tenant, whether or not the Landlord has taken any steps to enforce performance or observance of any of the covenants and agreements in this Lease to be performed or observed by the Tenant.

## **ARTICLE 18 - DEFAULT BY TENANT**

### **18.1 Re-entry on Certain Defaults By Tenant**

The Landlord and the Tenant agree that subject to the provisions of clause 16.2, if:

- (a) the Tenant defaults in ensuring commencement and completion of the restoration of the Heritage Buildings as required by clause 4.3 and the Heritage Revitalization Agreement, and such default continues for a period of 90 days after written notice of intention to terminate this Lease by reason of such default has been given by the Landlord to the Tenant; or
- (b) the Tenant defaults in ensuring Commencement of Construction or Substantial Completion of the New Building by the dates specified in clause 5.3, and such default continues for a period of 90 days after written notice of intention to terminate this Lease by reason of such default has been given by the Landlord to the Tenant;

the Landlord or the Landlord's agents or employees authorized by the Landlord may immediately or at any time thereafter re-enter the Lands and the Buildings without being liable to any prosecution or damages therefor and may repossess and enjoy the Lands, the Buildings, and all fixtures and improvements on the Lands except fixtures and improvements that are of the nature of usual tenant's fixtures and normally removable by tenants, and that are not part of the Buildings or the Lands, as liquidated damages, without such re-entry and repossession constituting a forfeiture or waiver of the Rent paid or to be paid to the Landlord, all of which Rent may be retained by the Landlord as the sole remedy of the Landlord and as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Tenant up to the date of such re-entry and repossession provided that the Landlord shall be obligated to pay compensation to the Tenant as provided for in clause 18.5.

### **18.2 Forfeiture on Certain Other Defaults by Tenant**

The Landlord and the Tenant agree that, subject to the provisions of clause 16.2, if:

- (a) the Tenant defaults in performing or observing any of its covenants or obligations under this Lease (other than those referred to in clause 18.1) and the Landlord has given to the Tenant notice of such default and at the expiration of 60 days after the giving of such notice the default continues to exist or, in the case of a default that cannot with due diligence be cured within the period of 60 days, the Tenant fails to proceed promptly after the giving of such notice to cure such default; and
- (b) the Landlord desires to re-enter the Lands and to repossess and enjoy the Lands and the Buildings and all fixtures and improvements thereon (except fixtures and improvements



that are of the nature of usual tenant's fixtures and normally removable by tenants, and that are not part of the Lands and the Buildings);

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

- (i) the interest of the Tenant in this Lease and the Lands and the Buildings for the remainder of the Term and all of the rights of the Tenant under this Lease be sold by public auction or private sale on such terms and conditions as the court deems fair and equitable in the circumstances, the proceeds from the sale to be distributed, after all Rent and other money due to the Landlord under this Lease is paid to the Landlord, in accordance with the priorities of the persons interested as aforesaid as ascertained by the court upon inquiry or reference; or
- (ii) the Landlord or the Landlord's agents or employees be authorized to re-enter the Lands and the Buildings without being liable to any prosecution or damages therefor, and
  - (A) the Landlord will pay compensation to the Tenant as provided for in clause 18.5; and thereafter,
  - (B) the Landlord may repossess and enjoy the Lands and the Buildings and all fixtures and improvements (except for fixtures and improvements that are of the nature of usual tenant's fixtures and normally removable by tenants, and that are not part of the Buildings or the Lands), without such re-entry and repossession working a forfeiture or waiver of the Rent and other money paid or to be paid to the Landlord, all of which Rent may be retained by the Landlord as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Tenant up to the date of such re-entry and repossession; and

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

### **18.3 Remedies of Landlord Are Cumulative**

The remedies of the Landlord specified in this Lease are cumulative and are in addition to any remedies of the Landlord at law or equity. No remedy will be deemed to be exclusive, and the Landlord may from time to time have recourse to one or more or all of the available remedies specified in this Lease or at law or equity. In addition to any other remedies provided in this Lease,

the Landlord will be entitled to restrain by injunction any violation or attempted or threatened violation by the Tenant of any of the covenants or agreements under this Lease.

#### **18.4 Waiver by Landlord**

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

#### **18.5 Compensation to Tenant**

Where this Lease is terminated pursuant to the provisions of clauses 4.4, 5.4 and 18.2 the Landlord shall either:

- (a) pay to the Tenant in a lump sum by bank draft an amount equal to the fair market value of all improvements made to the Lands including but not limited to the Heritage Buildings and the New Building (the "Fair Market Value") such payment to be made within 30 days of the Fair Market Value being determined. The Fair Market Value will be determined by an appraiser retained by and at the expense of the Landlord, who has designation from the Appraisal Institute of Canada AACI or the Real Estate Institute of British Columbia RIBC, which appraisal will be dated within 30 days (before or after) the date of termination of this Lease and a copy of which the Landlord will provide to the Tenant within 30 days of the termination date. If the Tenant disagrees with the Landlord's appraisal, the Tenant may cause its own appraisal to be prepared by an appraiser by and at its expense having the designation identified above, which appraisal the Tenant will provide to the Landlord no later than 30 days from the delivery of the Landlord's appraisal. If the Tenant's appraisal exceeds the Landlord's appraisal by greater than 10% of the Landlord's appraisal amount, the Landlord and the Tenant will jointly retain a third appraiser with the qualifications described above to complete an appraisal at least 21 days from the date of delivery of the Tenant's appraisal and the resulting appraisal amount will be the reimbursement amount payable to the Tenant. If the Landlord and the Tenant are unable to agree on the person who will act as the third appraiser, then the third appraiser will be selected by a single arbitrator jointly by the parties, and if the parties are unable to agree on an arbitrator, either party may apply to court for appointment of an arbitrator in accordance with the Arbitration Act (British Columbia) and the arbitrator's fees will be paid by the losing party, as determined by the arbitrator;
- (b) elect to sell the Lease forthwith, or as soon as reasonably possible, to a third party acting in good faith to obtain the best possible price (the "Third Party Sale"). Within seven (7) days of the completion of the Third Party Sale the Landlord shall deduct its reasonable costs related to the termination of the Lease and the Third Party Sale and thereafter pay the Tenant the lesser of the Fair Market Value as determined in clause 18.5(a) above and the remainder of the Third Party Sale proceeds. Any remaining proceeds of the Third Party Sale

shall be shared equally by the Landlord and the Tenant. For certainty, for the purposes of clause 18.5(b) only, nothing in this clause 18.5(b) obligates the Landlord to pay the Tenant the Fair Market Value as determined in clause 18.5(a) above if that value exceeds the Third Party Sale proceeds less the Landlord's reasonable costs as set out herein.

## **ARTICLE 19 - COVENANTS AND REPRESENTATIONS OF LANDLORD**

### **19.1 Covenant Respecting Charges and Encumbrances**

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

### **19.2 Covenant Respecting Authority to Lease**

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

### **19.3 Covenant Respecting Municipal Servicing**

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

### **19.4 Landlord's Sale, Transfer, or Assignment**

If the Landlord sells, transfers, or otherwise disposes of its interest in the Lands or any part thereof, or if the Landlord assigns this Lease in whole or in part, then the Landlord will cause the purchaser, transferee or assignee, as the case may be, to enter into an agreement with the Tenant under which such purchaser, transferee or assignee covenants that, so long as it retains any interest in the Lands or the Lease, it will perform the obligations of the Landlord under this Lease

and be bound by all of the provisions of this Lease, including this provision as to sales or other transfers and assignments, which will apply to each and every subsequent sale, transfer or assignment of any interest in the Lands or this Lease, provided that this clause 19.4 will not apply to transfers effected pursuant to clause 23.3, and further provided that any such transfer will not release the Landlord from any of its obligations under this Lease without the written consent of the Tenant, not to be unreasonably withheld.

#### **ARTICLE 20 - DISPUTE RESOLUTION**

If the Landlord and the Tenant do not agree on any matter that is by any provision of this Lease to be determined by arbitration, such disagreement will be referred to three arbitrators, one of whom will be chosen by the Landlord, one by the Tenant, and the third by the two so chosen, and the third arbitrator so chosen will be the chair. The award may be made by the majority of the arbitrators appointed. If, within 15 days or such extended time as the parties may agree upon, a party who has been notified of a dispute fails to appoint an arbitrator or the two arbitrators appointed by the parties do not agree upon a third arbitrator, then the party or parties not in default may apply to the Supreme Court of British Columbia for the appointment of an arbitrator to represent the party or parties in default or a third arbitrator or both of such arbitrators. Each party will pay its own costs of attending the reference. The costs of the arbitrators and the award will be in the discretion of the arbitrators, who may direct to and by whom and in what manner those costs or any part of those costs be paid, and may tax or settle the amount of costs to be paid or any part of those costs, and may award costs to be paid as between solicitor and client. Except as to matters otherwise provided in this Article 20, the rules of the British Columbia International Commercial Arbitration Centre as amended from time to time will apply. The case will be administered by the British Columbia International Commercial Arbitration Centre in accordance with its "Domestic Commercial Arbitration: Rules of Procedure". The case will be conducted, to the extent reasonably possible, in Kelowna, British Columbia.

#### **ARTICLE 21 - CONDUCT ON LANDS AND BUILDINGS**

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

#### **ARTICLE 22 - SURRENDER OF LEASE**

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

**ARTICLE 23 - QUIET ENJOYMENT AND OWNERSHIP OF TENANT'S FIXTURES****23.1 Covenant for Quiet Enjoyment**

If the Tenant pays the Rent hereby reserved and the other charges, and performs the covenants hereinbefore on the Tenant's part contained, the Tenant will and may peaceably enjoy and possess the Lands for the Term, without interruption or disturbance whatsoever from the Landlord or any other person, firm, or corporation lawfully claiming from or under the Landlord, provided however that nothing in this clause 23.1 will limit the rights of access reserved by the Landlord under clause 8.7, the rights of inspection conferred upon the Landlord by clause 13.1, the right of the Landlord to show the Lands and the Buildings and to post "for rent" or "for sale" signs, pursuant to clause 13.2.

**23.2 Ownership of Tenant's Fixtures**

The Tenant may confer upon subtenants or occupants of the Buildings the right of property in, or the right to remove fixtures or improvements that are of the nature of usual tenant's fixtures and normally removable by tenants, and that are not part of the Buildings or the Lands. The Tenant will make good, or will cause such tenants to make good, any damage to the Buildings caused by any removal of the tenant's fixtures. If any such tenant's fixtures are not removed upon the termination of this Lease, the Tenant agrees to remove them at its cost, if requested to do so by the Landlord, within seven days of the termination of this Lease. If the Landlord does not request that the Tenant remove any such tenant's fixtures, then upon the termination of this Lease they will become the absolute property of the Landlord free of all encumbrances.

**23.3 Compliance with Existing Encumbrances and Landlord's Right to Further Encumber**

The Tenant will use and occupy the Lands and Buildings in strict compliance with any charges, liens, and interests registered on title to the Lands as of the Commencement Date of this Agreement and at any time thereafter, including, without limitation, any charges, liens, and interests registered in favour of the City of Kelowna. For certainty and without limiting the foregoing, the Tenant will comply with all obligations of the grantor as set out in the statutory right of way registered on title to the Lands in favour of the City of Kelowna under number \_\_\_\_\_, in respect of the Public Access Area. The Landlord hereby reserves the right to further charge the Lands, or any part of them, by way of easement, right of way, or restrictive covenant in favour of a Crown corporation or agency, a municipality, a regional district, or other government agency or authority so long as such further charge does not unreasonably interfere with the Tenant's ongoing use of the Lands or the Buildings; provided that the Landlord first obtains the Tenant's consent which consent shall not be unreasonably withheld. For the purposes of this clause it would be reasonable for the Tenant not to provide its consent if the requested charge significantly and negatively affected the Tenant's use of the Lands and Buildings as provided for under this Lease.

### **23.4 Ownership of the Buildings**

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

### **ARTICLE 24 - OVERHOLDING**

The Tenant covenants and agrees with the Landlord that if the Tenant holds over and the Landlord accepts Rent after the expiration of the Term, the new tenancy thereby created will be a tenancy from month to month, at a rent that is the Fair Market Rent of the Lands as agreed between the Landlord and the Tenant, or, failing such agreement, as determined by arbitration pursuant to Article 20, and not a tenancy from year to year and will be subject to the covenants and conditions in this Lease so far as they are applicable to a tenancy from month to month.

### **ARTICLE 25 - NOTICE**

All notices, demands, and requests that may be or are required to be given pursuant to this Lease will be in writing and will be sufficiently given if served personally upon the party or an executive officer of the party for whom it is intended or mailed prepaid and registered addressed to the parties at the addresses set out on the title page of this Lease, or such other addresses as the parties may from time to time advise by notice in writing. Mortgagees of this Lease will supply their respective mailing addresses to the Landlord and the Tenant. The date of receipt of any such notice, demand, or request will be deemed to be the date of delivery if such notice, demand, or request is served personally or if mailed on the second business day following the date of such mailing, provided however that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slowdown of postal service, or other labour dispute that affects the delivery of such notice, then such notice will be deemed to be received when actually delivered.

### **ARTICLE 26 - ENVIRONMENTAL**

#### **26.1 Environmental Provisions**

The Tenant covenants and agrees with the Landlord to:

- (a) develop and use the Lands and Buildings only in compliance with all Environmental Laws;
- (b) permit the Landlord to investigate the Lands and Buildings, any goods on the Lands or Buildings, and the Tenant's records at any time and from time to time to verify such compliance with Environmental Laws and this Lease;

- (c) within 6 months before the expiration of this Lease, or within 6 months after the earlier termination of this Lease, the Tenant will obtain at the Tenant's cost a report from an independent consultant designated or approved by the Landlord verifying compliance with Environmental Laws and this Lease or the extent of any non-compliance;
- (d) at any other time during the Term other than as set out in paragraph (c), upon the reasonable request of the Landlord, from time to time, the Tenant will obtain at the Landlord's cost a report from an independent consultant designated or approved by the Landlord verifying compliance with Environmental Laws and this Lease or the extent of any non-compliance;
- (e) except in compliance with Environmental Laws, not store, manufacture, dispose, treat, generate, use, transport, remediate, or release Environmental Contaminants on or from the Lands or Buildings without notifying the Landlord in writing and receiving prior written consent from the Landlord, which consent may be unreasonably or arbitrarily withheld;
- (f) promptly remove any Environmental Contaminants from the Lands or Buildings in a manner that conforms to Environmental Laws governing their removal; and
- (g) notify the Landlord in writing of:
  - (i) any enforcement, clean up, removal, litigation, or other governmental, regulatory, judicial, or administrative action instituted, contemplated, or threatened against the Tenant, the Lands, or the Buildings pursuant to any Environmental Laws;
  - (ii) all claims, actions, orders, or investigations instituted, contemplated, or threatened by any third party against the Tenant, the Lands, or the Buildings relating to damage, contribution, cost recovery, compensation, loss, or injuries resulting from any Environmental Contaminants or any breach of the Environmental Laws; and
  - (iii) the discovery of any Environmental Contaminants or any occurrence or condition on the Lands or Buildings or any real property adjoining or in the vicinity of the Lands that could subject the Tenant, the Lands, or the Buildings to any fines, penalties, orders, or proceedings under any Environmental Laws.

## **26.2 Landlord May Make Inquiries**

The Tenant hereby authorizes the Landlord to make inquiries from time to time of any government authority with respect to the compliance by the Tenant with Environmental Laws, and the Tenant agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may reasonably require in order to facilitate the obtaining of such information.

**ARTICLE 27 - MISCELLANEOUS****27.1 Certificate of Good Standing**

The Landlord and the Tenant agree that at any time and from time to time upon not less than 15 days' prior request by the other party, each will execute, acknowledge, and deliver to the other a statement in writing certifying:

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

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

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

**27.2 Time Is of the Essence**

Time is of the essence of this Lease.

**27.3 No Modification**

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

**27.4 Successors and Assigns**

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



### **27.5 Severability**

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

### **27.6 Registration**

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

### **27.7 Entire Agreement**

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

### **27.8 Further Assurances**

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

### **27.9 Right of First Refusal to Lease**

(a) If the Tenant:

- (i) duly and regularly pays the Rent and observes and performs the covenants, provisos, and agreements contained in this Lease on its part to be paid, observed, and performed;

then during the Term (and for a period to and including one year after the expiry of the Term) the Tenant will have a right of first refusal (the "Right of First Refusal") to lease the Lands and Buildings, upon the following terms and conditions:

- (ii) if the Landlord receives and is prepared to accept a bona fide offer to lease (the "Agreement") from a third party, the Landlord will provide the Tenant with a true copy of the Agreement;
- (iii) the Tenant will have thirty (30) business days after delivery to the Tenant of the copy of the Agreement to deliver a written notice (the "Acceptance Notice") to the Landlord exercising the Tenant's Right of First Refusal;

- (iv) if the Tenant delivers the Acceptance Notice to the Landlord within the applicable time period, there will be a binding agreement to lease between the Landlord and the Tenant with respect to the Lands and Buildings on the terms and conditions specified in the Agreement, except that the permitted use of the Lands and Buildings will, at the Tenant’s option, be as provided in this Lease.
- (b) If the Tenant fails to deliver the Acceptance Notice to the Landlord within the applicable time period:
  - (i) the Landlord may at any time during the six-month period thereafter enter into a lease of the Lands and Buildings with any third party on substantially the same terms and conditions as specified in the Agreement, and failing such leasing, the provisions of the Right of First Refusal will again apply to the Lands and Buildings for the remainder of the time period set out in clause 27.9(a) above; and
  - (ii) if the Landlord leases the Lands and Buildings in accordance with clause 27.9(b)(i), the Tenant’s Right of First Refusal with respect to the Lands and Buildings will lapse and be of no further force and effect.

**27.10 Renewals and Extensions**

The parties may renew or extend this Lease by agreement between the parties.

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

LANDLORD:

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

TENANT:

Executed and delivered by **JEM HTB** )  
**PROPERTIES INC.** )  
 )  
 Per: \_\_\_\_\_ )  
 Authorized Signatory )  
 )  
 Per: \_\_\_\_\_ )  
 Authorized Signatory )

**SCHEDULE "A"**

**LEASE PLAN**

**SCHEDULE "B-1"**

**HERITAGE REVITALIZATION AGREEMENT**

**See next page**

**SCHEDULE "A"**  
**HERITAGE REVITALIZATION AGREEMENT**

THIS AGREEMENT dated as of the 20<sup>th</sup> day of June, 2017

BETWEEN:

City of Kelowna, a Municipal Corporation having offices at 1435 Water Street, Kelowna, British Columbia V1Y 1J4

(herein called the "CITY")

OF THE FIRST PART

AND: JEM HTB Properties Inc. of 401 – 590 KLO Road, Kelowna, British Columbia, V1Y7S2

(herein called the "LEASEE")

OF THE SECOND PART

WHEREAS a local government may, by bylaw, enter into a Heritage Revitalization Agreement with the Leasee of property identified as having heritage value, pursuant to Section 610 of the *Local Government Act*;

AND WHEREAS the Leasee has interest in certain real property on which is situated a building of heritage value, pursuant to the City's Heritage Register, which property and building are located at 4629 Lakeshore Road, Kelowna, BC and legally described as:

Parcel Identifier: 025-433-997  
Lot A, Section 25 Township 28, SDYD, Plan KAP71341

(herein called the "Heritage Lands")

AND WHEREAS the Leasee has presented to the City a proposal for the use, development and preservation of the Heritage Lands and has voluntarily and without any requirement by the City, entered into this agreement pursuant to Section 610 of the *Local Government Act*;

AND WHEREAS a local government must hold a Public Hearing on the matter before entering into, or amending, a Heritage Revitalization Agreement if the agreement or amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning of the Heritage Lands and for these purposes Section 464 through 470 of the *Local Government Act* apply;

AND WHEREAS within thirty days after entering into, or amending, a Heritage Revitalization Agreement the local government must file a notice in the Land Title Office in accordance with Section 594 of the *Local Government Act* and give notice to the Minister responsible for the *Heritage Conservation Act* in accordance with Section 595 of the *Local Government Act*;

NOW THEREFORE in consideration of the mutual promises contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

## SCHEDULE "A" HRA1

## 1.0 Heritage Revitalization

- 1.1 The parties agree that the Heritage Lands have heritage value, deserving of protection and conservation and the Leasee specifically agrees to maintain, preserve and protect the heritage character of the buildings located on the Surtees Property in accordance with attached Schedule "AA".
- 1.2 The parties agree that the Heritage Lands may, notwithstanding Zoning Bylaw No. 8000 including the provision identified in the P3 – Parks and Open Space zoning on the Heritage Lands, be developed under the following regulations:

HRA17-0001 Regulations	
CRITERIA	Parameter
Permitted Uses	
Principal Uses	(a) animal clinics, minor (b) breweries and distilleries, minor (c) child care centre, major (d) child care centre, minor (e) community garden (f) community recreation services (g) financial services (h) food primary establishment (i) Health Services, Major (j) Health Services, Minor (k) liquor primary establishment, minor (l) parks & open space (m) participant recreation services, indoor (n) participant recreation services, outdoor (o) personal service establishments (p) private clubs (q) public libraries and cultural exhibits (r) offices (s) retail liquor sales establishment (t) retail stores, convenience (u) retail stores, general
Secondary Uses	(a) agriculture, urban (b) amusement arcades, minor (c) home based businesses, minor (d) residential security/operator unit
Development Regulations	
Max commercial FAR	0.3
Max Residential FAR	0.2
Max Site Coverage	40%
Max Height	10.5 m or 2 ½ storeys
Setbacks	n/a
Parking Regulations	
Parking for Commercial	15 stalls required
Parking for Public (Trail Head spaces)	13 stalls
Other Regulations	

SCHEDULE "A" HRA<sub>1</sub>

Specific Rules	a) Drive-in and drive-thru food services are not a permitted form of development
<u>Notes</u> Definitions and meaning of words are extracted from City of Kelowna Zoning Bylaw No.8000 as amended from time to time.	

- 1.3 The parties agree that, except as varied or supplemented by the provisions of this agreement, all bylaws and regulations of the City and all laws of any authority having jurisdiction shall apply to the property and commercial business.
- 1.3.1 To clarify Bylaw No. 10515 Development Cost Charges will not apply to any of the restored buildings onsite and will only apply to the one (1) new commercial building permitted through this agreement.
- 1.4 Where a Heritage Alteration Permit is required, the discretion to approve, refuse, or revise such permit is delegated by Council to the Director of Community Planning.
- 2.0 Conservation and Maintenance of Existing Development.**
- 2.1 The leasee agrees not to alter the exterior of the heritage buildings or heritage character other than as described in Schedule "B" pursuant to a Heritage Alteration Permit issued by the City, and in accordance with this agreement.
- 2.2 The leasee agrees to maintain the exterior of the Heritage Buildings (barn and house) on the Heritage Lands in general accordance with the Heritage Report labelled "Surtees House & Barn, 4629 Lakeshore Road" prepared by Donald Luxton and Assoc. (dated March 2017) attached hereto as Schedule "D". The interior layout of the heritage buildings will be determined by the Leasee, subject to BC Building Code requirements.
- 2.3 If original features must be replaced, the new material shall be similar or identical to the original. Where original features were removed through earlier renovations or alterations and the replacements were not in keeping with the original style of the building, any subsequent replacement of these features shall complement the building's heritage style.
- 3.0 Proposed Development**
- 3.1 The parties agree that no more than one (1) new commercial building with a foot print of no more than 2,200 square feet and a total gross building area of no more than 4,400 square feet. The building character of this new building is to contrast with the existing heritage buildings in a manner that provides a strong juxtaposition between the two forms. The building is to conform to provincial building codes. Such new development is attached hereto as Schedule "B".
- 3.2 The Leasee agrees to undertake and maintain appropriate landscaping on the subject property in general accordance with the landscape plan attached hereto as Schedule "C" and forming part of this agreement.
- 3.3 The Leasee agrees to undertake and maintain an internal road network as required for vehicle circulation and associated parking areas. The road network should be able to accommodate future parking expansion requirements by the City for the Bellevue Creek linear park. A combination of asphalt and concrete or concrete pavers shall be used to create an aesthetically pleasing road network. All pedestrian crossings over the road area shall be combined with traffic calming measures such as raised crossings and signage to ensure pedestrian safety. This road network will be in accordance with the landscape plan attached hereto as Schedule "C".
- 3.4 The Leasee agrees to undertake and maintain public (pedestrian and vehicular) access from Lakeshore Road to the future trail head for the Bellevue Creek Linear Park. This access network will be in accordance with the landscape plan attached hereto as Schedule "C". The Leasee will be required to guarantee public access from 6:00am – 11:00pm (or as otherwise stipulated in Bylaw No. 10680). The Leasee acknowledges that the Subject Lands will be encumbered with a

SCHEDULE "A" HRA<sub>1</sub>

Statutory Right of Way guaranteeing public access to the site in a manner agreed upon between the City and Leasee.

- 3.5 It is the goal of the City and Leasee to preserve the natural state of the site. The City understands that due to the development and the associated road right of way, some trees will need to be removed. All efforts shall be made by the Leasee to minimize the site impact in order to protect the trees and hillside vegetation. There is a registered covenant (KT71699) on title to protect the existing hillside and associated vegetation.
- 3.6 As part of this agreement it is understood that the Leasee will require signage on each of the buildings including the Heritage Buildings. All signage will conform to City of Kelowna Sign Bylaw # 8235. For the Heritage Buildings signage will be limited to the approximate size and locations as described within Schedule "B". All signage on the property must be non-illuminated and non-animated.
- 3.7 As part of this agreement it is understood that the Leasee will document the decisions made during the construction process and how they relate to the principles set out in the statement of significance & conservation plans as outlined in the Donald Luxton and Associates Report dated March 2017.
- 3.8 As part of this agreement a Heritage Alteration Permit application will be triggered by any changes to the Statement of Significance with respect to the heritage structures on the property as identified in Schedule 'D'.

#### 4.0 Damage or Destruction

- 4.1 In the event that no more than 75% of the Heritage Building is damaged, the parties agree as follows:
- a) The Leasee may repair the Heritage Building in which event the Leasee shall forthwith commence the repair work and complete same within one year of the date of damage;
- OR, in the event that the Heritage Building is destroyed,
- b) The City may, by bylaw, and after conducting a Public Hearing in the manner prescribed by Sections 464 through 470 of the *Local Government Act*, cancel this agreement, whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

#### 5.0 Breach

- 5.1 In the event that the Leasee is in breach of any term of this Agreement, the City may give the Leasee notice in writing of the breach and the Leasee shall remedy the breach within 30 days of receipt of the notice. In the event that the Leasee fails to remedy the breach within the time allotted by the notice, the City may, by bylaw and after conducting a Public Hearing in the manner prescribed by Sections 464 through 470 of the *Local Government Act*, cancel this Agreement whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

#### 6.0 Amendment

- 6.1 The parties acknowledge and agree that this Agreement may only be amended by one of the following means:
- a) By bylaw with the consent of the parties provided that a Public Hearing shall be held if an amendment would permit a change to use or density of use on site or;



**SCHEDULE "A" HRA<sub>1</sub>**

b) By Heritage Alteration Permit (HAP), issued pursuant to Section 617 of the *Local Government Act*.

**7.0 Representations**

7.1 It is mutually understood and agreed upon between the parties that the City has made no representations, covenants, warranties, promises or agreements expressed or implied, other than those expressly contained in this Agreement.

**8.0 Statutory Functions**

8.1 Except as expressly varied or supplemented herein, this Agreement shall not prejudice or affect the rights and powers of the City in the exercise of its statutory functions and responsibilities including, but not limited to, the *Local Government Act* and its rights and powers under any enactments, bylaws, order or regulations, all of which, except as expressly varied or supplemented herein, are applicable to the Heritage Lands.

**9.0 Inurement**

9.1 This Agreement inures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**10.0 Other Documents**

10.1 The Leasee agrees at the request of the City, to execute and deliver or cause to be executed and delivered all such further agreements, documents and instruments and to do and perform or cause to be done and performed all such acts and things as may be required in the opinion of the City to give full effect to the intent of this Agreement.

**11.0 Notices**

11.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall either be delivered mailed by registered mail as follows:

(a) To the City:

City of Kelowna  
1435 Water Street  
Kelowna, B.C. V1Y 1J4

ATTENTION: City Clerk

(b) To the Leasee:

JEM HTB Properties Inc.  
401 – 590 KLO Road  
Kelowna, BC  
V1Y7S2

Or, to such other address to which a party hereto may from time to time advise in writing


**12.0 No Partnership or Agency**

12.1 The parties agree that nothing contained herein creates a relationship between the parties of partnership, joint venture or agency.

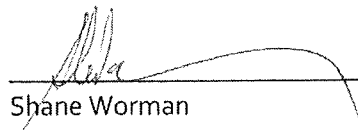
IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the day and year first above written.

CITY OF KELOWNA  
By its authorized signatories

  
\_\_\_\_\_  
Mayor **Colin Basran, MAYOR**


  
\_\_\_\_\_  
City Clerk **Stephen Fleming,  
City Clerk**

JEM HTB Properties Inc.  
By its authorized Signatories

  
\_\_\_\_\_  
Shane Worman

In the presence of:

Heather Kirk  
\_\_\_\_\_  
Witness (print name)

  
\_\_\_\_\_  
Witness (Signature)

3771 Carrall Rd, Westbank, B.C.  
\_\_\_\_\_  
Address

Bookkeeper  
\_\_\_\_\_  
Occupation

**SCHEDULE "B-2"**  
**AMENDING AGREEMENT**

**SCHEDULE "C"**

**TRIPARTITE AGREEMENT**

THIS AGREEMENT made \_\_\_\_\_

BETWEEN:

**JEM HTB PROPERTIES INC.** (Inc. No. BC0949919), c/o Pushor Mitchell LLP, 3<sup>rd</sup>  
Floor, 1665 Ellis Street, Kelowna, British Columbia, V1Y 2B3

(the "Tenant")

AND:

\_\_\_\_\_  
\_\_\_\_\_

(the "Mortgagee")

AND:

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

(the "Landlord")

WHEREAS:

- A. By a lease dated for reference \_\_\_\_\_, 2017 (the "Lease"), and registered in the land title office under registration number \_\_\_\_\_, on the terms and conditions therein contained, the Landlord did demise and lease to the Tenant, as Tenant, those lands in the Province of British Columbia more particularly known and described as that portion of Lot A Section 25 Township 28 Similkameen Division Yale District Plan KAP71341 shown outlined in bold on Leasehold Subdivision Plan EPP \_\_\_\_ (the "Lands");
- B. By an indenture of mortgage (the "Mortgage") made \_\_\_\_\_ between the Tenant as mortgagor, and the Mortgagee, and registered in the land title office under number \_\_\_\_\_, the Tenant did demise and assign by way of mortgage unto the Mortgagee all of the Tenant's right, title, and interest in the Lands under the Lease to secure a loan in the sum of \$\_\_\_\_\_;
- C. The Mortgagee is a "Mortgagee", as defined under clause 1.1 of the Lease, and desires to have every opportunity to protect its interest and security.

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

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

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

- (6) In the event that the Tenant is in default of its obligations to the Mortgagee, prior to commencing foreclosure proceedings against the Tenant the Mortgagee agrees to provide the Landlord with a fifteen (15) day period during which the Landlord may, at the Landlord's option (and, for clarity, without obligation to proceed with either option below):
- (a) pay funds to the Mortgagee (in a lump sum) to satisfy the indebtedness owing by the Tenant to the Mortgagee under the Mortgage and, subject to paragraph (c), thereupon terminate the Lease; or
  - (b) with the prior consent of the Mortgagee, acting reasonably, and subject to paragraph (c), take over the Tenant's leasehold interest in the Lands and assume the Mortgage and pay amounts in default by the Tenant to the Mortgagee under the Mortgage and making further debt payments under the Mortgage in accordance with the payment schedule under the Mortgage and, if the Tenant's leasehold interest then merges with the Landlord's ownership interest in the Lands, register the Mortgage against title to the Lands;
  - (c) and in either case, a valuation of the improvements in accordance with clause 18.5 of the Lease must be provided to the Tenant before the Landlord exercises any option under this Section (6), and where the fair market value of the improvements so determined exceeds the amount required to satisfy the indebtedness owing by the Tenant to the Mortgagee (the "**Tenant's Improvement Equity**"), the Landlord will pay to the Tenant in a lump sum the Tenant's Improvement Equity by bank draft concurrently with the Landlord's payment in paragraph (a) or assumption in paragraph (b), as applicable, provided that were the Tenant has exercised its right under clause 18.5 of the Lease to obtain further appraisals, the timing of the Landlord's payment is delayed until 30 days after the final determination of the fair market value.
- (7) In the event of loss or damage to the Lands or any building on the Lands for which insurance monies become payable to the Mortgagee, the Mortgagee shall apply the insurance monies in accordance with Article 7 of the Lease.
- (8) If the Tenant and the Landlord cannot agree as to any matters regarding the Lease and they decide that the resolution of that matter is to be determined by arbitration pursuant to the arbitration provisions of the Lease, the Mortgagee will be given adequate notice of such arbitration proceedings; and if in the reasonable opinion of the Mortgagee such proceedings may affect its mortgage security, the Mortgagee will be given a reasonable

opportunity by the Tenant and the Landlord to participate in the arbitration proceedings if the Mortgagee considers such proceedings may affect its mortgage security.

- (9) If the Mortgagee has cured all defaults and contingencies of which the Mortgagee has received notice from the Landlord under clause 17.2 of the Lease, then it will be entitled to permit the Tenant to continue as tenant of the Lands unless the Mortgagee has acquired the right, title, and interest of the Tenant in the Lands under the Lease, in which case the provisions of clause (5) of this Agreement will apply.
- (10) This Agreement will be deemed to terminate and be of no further force and effect and the obligations, if any, of the Mortgagee under the Lease as tenant will cease and be of no further force and effect at such time as the Mortgage has been paid in full, has been terminated or released in accordance with the terms and conditions contained in the Lease, or has been released or discharged from the Lands or the Mortgagee has assigned the balance of the Term; unless, having obtained an order absolute in foreclosure proceedings against the Tenant, the Mortgagee elects otherwise to continue this Agreement in full force and effect and to be bound as tenant under the Lease.
- (11) This Agreement will enure to the benefit of and be binding upon the parties to it, and their respective successors and assigns.

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

TENANT:

Executed and delivered by **JEM HTB** )  
**PROPERTIES INC.** )  
) )  
Per: )  
\_\_\_\_\_ )  
Authorized Signatory )

MORTGAGEE:

Executed and delivered by \_\_\_\_\_ )  
) )  
Per: )  
\_\_\_\_\_ )  
Authorized Signatory )

LANDLORD:

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



# Schedule C Heritage Revitalization Agreement

## SCHEDULE "A"

### HERITAGE REVITALIZATION AGREEMENT

THIS AGREEMENT dated as of the 20<sup>th</sup> day of June, 2017

BETWEEN:

City of Kelowna, a Municipal Corporation having offices at 1435 Water Street, Kelowna, British Columbia V1Y 1J4

(herein called the "CITY")

OF THE FIRST PART

AND: JEM HTB Properties Inc. of 401 – 590 KLO Road, Kelowna, British Columbia, V1Y7S2

(herein called the "LEASEE")

OF THE SECOND PART

WHEREAS a local government may, by bylaw, enter into a Heritage Revitalization Agreement with the Leasee of property identified as having heritage value, pursuant to Section 610 of the *Local Government Act*;

AND WHEREAS the Leasee has interest in certain real property on which is situated a building of heritage value, pursuant to the City's Heritage Register, which property and building are located at 4629 Lakeshore Road, Kelowna, BC and legally described as:

Parcel Identifier: 025-433-997  
Lot A, Section 25 Township 28, SDYD, Plan KAP71341

(herein called the "Heritage Lands")

AND WHEREAS the Leasee has presented to the City a proposal for the use, development and preservation of the Heritage Lands and has voluntarily and without any requirement by the City, entered into this agreement pursuant to Section 610 of the *Local Government Act*;

AND WHEREAS a local government must hold a Public Hearing on the matter before entering into, or amending, a Heritage Revitalization Agreement if the agreement or amendment would permit a change to the use or density of use that is not otherwise authorized by the applicable zoning of the Heritage Lands and for these purposes Section 464 through 470 of the *Local Government Act* apply;

AND WHEREAS within thirty days after entering into, or amending, a Heritage Revitalization Agreement the local government must file a notice in the Land Title Office in accordance with Section 594 of the *Local Government Act* and give notice to the Minister responsible for the *Heritage Conservation Act* in accordance with Section 595 of the *Local Government Act*;

NOW THEREFORE in consideration of the mutual promises contained in this agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SCHEDULE "A" HRA<sub>1</sub>

## 1.0 Heritage Revitalization

- 1.1 The parties agree that the Heritage Lands have heritage value, deserving of protection and conservation and the Leasee specifically agrees to maintain, preserve and protect the heritage character of the buildings located on the Surtees Property in accordance with attached Schedule "AA".
- 1.2 The parties agree that the Heritage Lands may, notwithstanding Zoning Bylaw No. 8000 including the provision identified in the P<sub>3</sub> – Parks and Open Space zoning on the Heritage Lands, be developed under the following regulations:

HRA17-0001 Regulations	
CRITERIA	Parameter
Permitted Uses	
Principal Uses	(a) animal clinics, minor (b) breweries and distilleries, minor (c) child care centre, major (d) child care centre, minor (e) community garden (f) community recreation services (g) financial services (h) food primary establishment (i) Health Services, Major (j) Health Services, Minor (k) liquor primary establishment, minor (l) parks & open space (m) participant recreation services, indoor (n) participant recreation services, outdoor (o) personal service establishments (p) private clubs (q) public libraries and cultural exhibits (r) offices (s) retail liquor sales establishment (t) retail stores, convenience (u) retail stores, general
Secondary Uses	(a) agriculture, urban (b) amusement arcades, minor (c) home based businesses, minor (d) residential security/operator unit
Development Regulations	
Max commercial FAR	0.3
Max Residential FAR	0.2
Max Site Coverage	40%
Max Height	10.5 m or 2 ½ storeys
Setbacks	n/a
Parking Regulations	
Parking for Commercial	15 stalls required
Parking for Public (Trail Head spaces)	13 stalls
Other Regulations	

SCHEDULE "A" HRA<sub>1</sub>

Specific Rules	a) Drive-in and drive-thru food services are not a permitted form of development
<u>Notes</u> Definitions and meaning of words are extracted from City of Kelowna Zoning Bylaw No.8000 as amended from time to time.	

- 1.3 The parties agree that, except as varied or supplemented by the provisions of this agreement, all bylaws and regulations of the City and all laws of any authority having jurisdiction shall apply to the property and commercial business.
- 1.3.1 To clarify Bylaw No. 10515 Development Cost Charges will not apply to any of the restored buildings onsite and will only apply to the one (1) new commercial building permitted through this agreement.
- 1.4 Where a Heritage Alteration Permit is required, the discretion to approve, refuse, or revise such permit is delegated by Council to the Director of Community Planning.
- 2.0 Conservation and Maintenance of Existing Development.**
- 2.1 The leasee agrees not to alter the exterior of the heritage buildings or heritage character other than as described in Schedule "B" pursuant to a Heritage Alteration Permit issued by the City, and in accordance with this agreement.
- 2.2 The leasee agrees to maintain the exterior of the Heritage Buildings (barn and house) on the Heritage Lands in general accordance with the Heritage Report labelled "Surtees House & Barn, 4629 Lakeshore Road" prepared by Donald Luxton and Assoc. (dated March 2017) attached hereto as Schedule "D". The interior layout of the heritage buildings will be determined by the Leasee, subject to BC Building Code requirements.
- 2.3 If original features must be replaced, the new material shall be similar or identical to the original. Where original features were removed through earlier renovations or alterations and the replacements were not in keeping with the original style of the building, any subsequent replacement of these features shall complement the building's heritage style.
- 3.0 Proposed Development**
- 3.1 The parties agree that no more than one (1) new commercial building with a foot print of no more than 2,200 square feet and a total gross building area of no more than 4,400 square feet. The building character of this new building is to contrast with the existing heritage buildings in a manner that provides a strong juxtaposition between the two forms. The building is to conform to provincial building codes. Such new development is attached hereto as Schedule "B".
- 3.2 The Leasee agrees to undertake and maintain appropriate landscaping on the subject property in general accordance with the landscape plan attached hereto as Schedule "C" and forming part of this agreement.
- 3.3 The Leasee agrees to undertake and maintain an internal road network as required for vehicle circulation and associated parking areas. The road network should be able to accommodate future parking expansion requirements by the City for the Bellevue Creek linear park. A combination of asphalt and concrete or concrete pavers shall be used to create an aesthetically pleasing road network. All pedestrian crossings over the road area shall be combined with traffic calming measures such as raised crossings and signage to ensure pedestrian safety. This road network will be in accordance with the landscape plan attached hereto as Schedule "C".
- 3.4 The Leasee agrees to undertake and maintain public (pedestrian and vehicular) access from Lakeshore Road to the future trail head for the Bellevue Creek Linear Park. This access network will be in accordance with the landscape plan attached hereto as Schedule "C". The Leasee will be required to guarantee public access from 6:00am – 11:00pm (or as otherwise stipulated in Bylaw No. 10680). The Leasee acknowledges that the Subject Lands will be encumbered with a

SCHEDULE "A" HRA<sub>1</sub>

Statutory Right of Way guaranteeing public access to the site in a manner agreed upon between the City and Leasee.

- 3.5 It is the goal of the City and Leasee to preserve the natural state of the site. The City understands that due to the development and the associated road right of way, some trees will need to be removed. All efforts shall be made by the Leasee to minimize the site impact in order to protect the trees and hillside vegetation. There is a registered covenant (KT71699) on title to protect the existing hillside and associated vegetation.
- 3.6 As part of this agreement it is understood that the Leasee will require signage on each of the buildings including the Heritage Buildings. All signage will conform to City of Kelowna Sign Bylaw # 8235. For the Heritage Buildings signage will be limited to the approximate size and locations as described within Schedule "B". All signage on the property must be non-illuminated and non-animated.
- 3.7 As part of this agreement it is understood that the Leasee will document the decisions made during the construction process and how they relate to the principles set out in the statement of significance & conservation plans as outlined in the Donald Luxton and Associates Report dated March 2017.
- 3.8 As part of this agreement a Heritage Alteration Permit application will be triggered by any changes to the Statement of Significance with respect to the heritage structures on the property as identified in Schedule 'D'.

#### 4.0 Damage or Destruction

- 4.1 In the event that no more than 75% of the Heritage Building is damaged, the parties agree as follows:
- a) The Leasee may repair the Heritage Building in which event the Leasee shall forthwith commence the repair work and complete same within one year of the date of damage;
- OR, in the event that the Heritage Building is destroyed,
- b) The City may, by bylaw, and after conducting a Public Hearing in the manner prescribed by Sections 464 through 470 of the *Local Government Act*, cancel this agreement, whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

#### 5.0 Breach

- 5.1 In the event that the Leasee is in breach of any term of this Agreement, the City may give the Leasee notice in writing of the breach and the Leasee shall remedy the breach within 30 days of receipt of the notice. In the event that the Leasee fails to remedy the breach within the time allotted by the notice, the City may, by bylaw and after conducting a Public Hearing in the manner prescribed by Sections 464 through 470 of the *Local Government Act*, cancel this Agreement whereupon all use and occupation of the Heritage Lands shall thenceforth be in accordance with the zoning bylaws of the City and in accordance with all other bylaws or regulations of the City or any other laws of authority having jurisdiction.

#### 6.0 Amendment

- 6.1 The parties acknowledge and agree that this Agreement may only be amended by one of the following means:
- a) By bylaw with the consent of the parties provided that a Public Hearing shall be held if an amendment would permit a change to use or density of use on site or;

SCHEDULE "A" HRA<sub>1</sub>

b) By Heritage Alteration Permit (HAP), issued pursuant to Section 617 of the *Local Government Act*.

**7.0 Representations**

7.1 It is mutually understood and agreed upon between the parties that the City has made no representations, covenants, warranties, promises or agreements expressed or implied, other than those expressly contained in this Agreement.

**8.0 Statutory Functions**

8.1 Except as expressly varied or supplemented herein, this Agreement shall not prejudice or affect the rights and powers of the City in the exercise of its statutory functions and responsibilities including, but not limited to, the *Local Government Act* and its rights and powers under any enactments, bylaws, order or regulations, all of which, except as expressly varied or supplemented herein, are applicable to the Heritage Lands.

**9.0 Inurement**

9.1 This Agreement inures to the benefit of and is binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

**10.0 Other Documents**

10.1 The Leasee agrees at the request of the City, to execute and deliver or cause to be executed and delivered all such further agreements, documents and instruments and to do and perform or cause to be done and performed all such acts and things as may be required in the opinion of the City to give full effect to the intent of this Agreement.

**11.0 Notices**

11.1 Any notice required to be given pursuant to this Agreement shall be in writing and shall either be delivered mailed by registered mail as follows:

(a) To the City:

City of Kelowna  
1435 Water Street  
Kelowna, B.C. V1Y 1J4

ATTENTION: City Clerk

(b) To the Leasee:

JEM HTB Properties Inc.  
401 – 590 KLO Road  
Kelowna, BC  
V1Y7S2

Or, to such other address to which a party hereto may from time to time advise in writing


**12.0 No Partnership or Agency**

12.1 The parties agree that nothing contained herein creates a relationship between the parties of partnership, joint venture or agency.

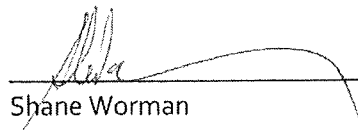
IN WITNESS WHEREOF this Agreement has been executed by the parties hereto on the day and year first above written.

CITY OF KELOWNA  
By its authorized signatories

  
\_\_\_\_\_  
Mayor **Colin Basran, MAYOR**


  
\_\_\_\_\_  
City Clerk **Stephen Fleming,  
City Clerk**

JEM HTB Properties Inc.  
By its authorized Signatories

  
\_\_\_\_\_  
Shane Worman

In the presence of:

Heather Kirk  
\_\_\_\_\_  
Witness (print name)

  
\_\_\_\_\_  
Witness (Signature)

3771 Carrall Rd, Westbank, B.C.  
\_\_\_\_\_  
Address

Bookkeeper  
\_\_\_\_\_  
Occupation

# Schedule D Amending Agreement

CITY OF KELOWNA

## HERITAGE REVITALIZATION AGREEMENT AMENDMENT BYLAW NO. 11478, 2017

### A Bylaw to authorize an agreement to amend a Heritage Revitalization Agreement

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WHEREAS Section 610 of the *Local Government Act* [RSBC 2015] Chapter 1 authorizes a local government to enter into a heritage revitalization agreement with an owner of heritage property and further provides that a heritage revitalization agreement may only be amended by bylaw with the consent of the owner;

AND WHEREAS in accordance with Heritage Revitalization Agreement Authorization Bylaw No. 11408, 2017, the City of Kelowna entered into a Heritage Revitalization Agreement (the "HRA"), with the tenant of a portion of the property located at 4629 Lakeshore Road, Kelowna, BC, legally described as PID: 025-433-997, Lot A Section 25 Township 28 Similkameen Division Yale District Plan KAP71341;

AND WHEREAS the City and the tenant now wish to amend the HRA;

NOW THEREFORE, the Council of the City of Kelowna enacts as follows:

1. This Bylaw may be cited as "Heritage Revitalization Agreement (4629 Lakeshore Road) Amendment Bylaw No. 11478, 2017".
2. The City of Kelowna is authorized to enter into an agreement to amend the HRA substantially in the form attached as Schedule "A" and forming part of this Bylaw.
3. The Mayor and City Clerk are authorized to sign and seal the amendment agreement substantially in the form attached as Schedule "A".

READ A FIRST TIME this \_\_\_ day of \_\_\_\_\_, 2017.

READ A SECOND TIME this \_\_\_ day of \_\_\_\_\_, 2017.

READ A THIRD TIME this \_\_\_ day of \_\_\_\_\_, 2017.

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2017.

---

Mayor

---

City Clerk

**SCHEDULE "A"**

**AMENDMENT AGREEMENT**

THIS AGREEMENT dated for reference the 1<sup>st</sup> day of September, 2017 is

BETWEEN:

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

(the "City")

AND:

**JEM HTB PROPERTIES INC.** (Inc. No. BC0949919), c/o Pushor Mitchell LLP, 3rd Floor, 1665 Ellis Street, Kelowna, British Columbia, V1Y 2B3

(the "Leasee")

WHEREAS:

- A. The Leasee and the City entered into a heritage revitalization agreement (the "Heritage Revitalization Agreement") to establish terms, conditions and requirements for the use and development of the Heritage Lands and the restoration, renovation, and conservation of the existing Heritage Buildings located thereon;
- B. The parties have agreed to amend the Heritage Revitalization Agreement in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the payment of \$1.00 by the Leasee to the City and other good and valuable consideration, the receipt and sufficiency of which the City hereby acknowledges, the Leasee and the City covenant and agree with each other as follows:

- 1. All words and phrases defined in the Heritage Revitalization Agreement and used in this Agreement shall have the same meaning as set forth in the Heritage Revitalization Agreement.
- 2. Section 4.1 of the Heritage Revitalization Agreement is hereby deleted and replaced with the following:
  - 4.1 If one or both of the Heritage Buildings are damaged, the Leasee shall obtain a heritage alteration permit and any other necessary permits and licenses and, in a timely manner, shall restore and repair the Heritage Buildings to the same condition and appearance that existed before the damage occurred.
  - 4.2 If, in the opinion of the City, one or both of the Heritage Buildings are completely destroyed, the Leasee shall construct replicas, using contemporary materials if necessary, of the Heritage Buildings that comply in all respects with the Conservation



Plan in Schedule D and with Zoning Bylaw No. 8000, as varied by this Agreement, after having obtained a heritage alteration permit and any other necessary permits and licenses, and this Agreement will remain in full force and effect.

- 4.3 The Leasee shall use its best efforts to commence and complete any repairs to the Heritage Buildings, or the construction of any replica buildings, with reasonable dispatch.
3. Part 5.0 of the Heritage Revitalization Agreement is hereby deleted in its entirety and replaced with the following:

**5.0 Enforcement of Agreement**

5.1 In the event that the Leasee is in breach of any term of this Agreement, the City may give the Leasee notice in writing of the breach and the Leasee shall remedy the breach within 60 days of receipt of the notice, or in the case of a breach that cannot with due diligence be cured within the period of 60 days, the Leasee shall promptly proceed to cure and continue with reasonable diligence to cure such default until the default is cured. The City acknowledges that in consideration of the Leasee performing its obligations under this Agreement and the rent under the lease of the Heritage Lands, the City will only be able to seek recourse in respect of an alleged default by the Leasee under this Agreement by:

- (a) bringing a claim in law against the Leasee for debt or damages, as the case may be, recoverable against the Leasee;
- (b) seeking an order of a Court of competent jurisdiction for specific performance of a mandatory term of this Agreement;
- (c) seeking an order of a Court of competent jurisdiction restraining a continuing breach of this Agreement; or
- (d) pursuing any rights that the City may have under statute in connection with the Heritage Buildings, this Agreement, or the subject matter of the breach, including but not limited to the City seeking recourse in respect to statutory offenses where the breach of this Agreement is also a breach of applicable law,

and the City has no right to cancel or terminate this Agreement so long as the lease of the Heritage Lands by the City to the Leasee, as it may be assigned from time to time, remains in force and effect.

4. All amendments in this Agreement take effect as of the date on which Council for the City of Kelowna adopts the bylaw approving this Agreement.
5. The Leasee affirms and agrees that the Heritage Revitalization Agreement remains unchanged, except as amended herein, and, as amended herein, in full force and effect, time being of the essence, and the Leasee shall perform and observe the covenants, provisos and stipulations in the Heritage Revitalization Agreement as amended herein as fully as if such covenants,

provisos and stipulations had been repeated herein in full.

- 6. This Agreement may be executed in multiple counterparts, each of which is to be deemed to be an original and all of which together constitute one and the same agreement.

IN WITNESS WHEREOF the Leasee and the City have executed this Agreement as of the date written above.

**CITY OF KELOWNA** by its authorized signatories:

**JEM HTB PROPERTIES INC.** by its authorized signatory(ies):

\_\_\_\_\_  
Mayor:

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

\_\_\_\_\_  
City Clerk:

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



# Schedule F

## Public Access Statutory Right of Way

### TERMS OF INSTRUMENT - PART 2

#### STATUTORY RIGHT OF WAY AGREEMENT - PUBLIC ROAD ACCESS

This Agreement dated for reference \_\_\_\_\_, 201\_\_, is

BETWEEN:

**CITY OF KELOWNA**, a municipality under the laws of British Columbia,  
having offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "Grantor")

AND:

**CITY OF KELOWNA**, a municipality under the laws of British Columbia,  
having offices at 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "City")

GIVEN THAT:

- A. The Grantor is the registered owner of the land (the "Land") described in Item 2 of the *Land Title Act* Form C to which this Agreement is attached;
- B. The Grantor or its tenant intends to construct certain roadworks on the Land, including but not limited to curbs and gutters, street paving, sidewalks and boulevards, with gravel, concrete, asphalt, bark-mulch, stone, brick or other all-weather impervious surface of any kind, landscaping, street lighting, retaining walls, railings, benches, signs, waste receptacles, catch basins, drainage pipes and other facilities and appurtenances necessary or convenient for the passage of the public from Lakeshore Road to the trail head for the Bellevue Linear Creek Park (together, the "Works");
- C. The Grantor wishes to grant to the City a statutory right of way for the passage of the public and the ongoing use of the Works in the Right of Way Area (defined below); and
- D. The statutory right of way granted by this Agreement is necessary for the operation and maintenance of the City's undertaking.

THIS AGREEMENT is evidence that, pursuant to s. 218 of the *Land Title Act*, and in consideration of \$1.00 paid by the City to the Grantor, and other good and valuable consideration (the receipt and sufficiency of which the Grantor acknowledges), the Grantor and covenants and agrees with the City as follows:

1. **Grant of Statutory Right of Way** - The Grantor hereby grants, conveys and confirms to the City in perpetuity the full, free and uninterrupted right, liberty, easement and statutory right of way (the "Statutory Right of Way") for the City, its officers, employees, contractors, licensees, agents, invitees and others of the City, in common with the Grantor, at all times following completion of the Works and thereafter from time to time at their will and pleasure to enter, go, be on, pass and repass, with or

without vehicles, personal property and equipment, upon, over, and across that portion of the Land shown outlined in heavy bold on Reference Plan of Statutory Right of Way EPP\_\_\_\_\_ (the "Right of Way Area"), a copy of which plan is attached hereto as Schedule "A", to:

- (a) permit the public, without specific invitation or authorization, to enter upon and use the Right of Way Area and the Works for the purpose passage of the public between Lakeshore Road and the trail head for the Bellevue Linear Creek Park and associated parking;
- (b) have unobstructed access over the Right of Way Area at any and all times;
- (c) remove from the Right of Way Area such structures, improvements, fixtures, fences, gates, guards, trees, shrubs, plants, vehicles, mobile homes and other obstructions whatsoever as, in the City's opinion, is necessary for it to exercise its rights under this Agreement; and
- (d) do all other things on the Right of Way Area as may be incidental to, or reasonably necessary or desirable in connection with, the foregoing.

**2. Grantor's Obligations - The Grantor will:**

- (a) not do or permit to be done anything which in the opinion of the City may interfere with, injure or impair the operating efficiency of, or obstruct access to or the use of, the Right of Way Area, the Works or the rights granted to the City under this Agreement;
- (b) trim or permit the City to trim or cut down any tree or other growth on the Land which in the opinion of the City constitutes or may constitute a danger, impairment or obstruction to those using the Right of Way Area or to the Works;
- (c) not deposit or place garbage, debris, junk or other material on the Right of Way Area;
- (d) not place, install or construct any building, structure, mobile home or other improvement (including any paving, walls or fences) on the Right of Way Area;
- (e) not carry on blasting on or adjacent to the Right of Way Area without the City's approval;
- (f) not diminish or increase the soil cover over any Works installed in the Right of Way Area without the City's approval.

**3. Additional City Rights - The City:**

- (a) is entitled to peaceably hold and enjoy the rights, liberties and statutory right of way hereby granted without hindrance, molestation or interruption by the Grantor or any person, firm or corporation claiming by, through, under or in trust for the Grantor;

- (b) may remove anything placed on the Right of Way Area by the Grantor contrary to this Agreement.
4. **Priority** - The Grantor will at its own expense, do or cause to be done all acts necessary to grant priority to this Agreement over all financial charges and encumbrances registered or pending registration against title to the Land at the time application is made to register this Agreement.
  5. **Further Assurances** - The Grantor will at its own expense, do or execute or cause to be done or executed all such further and other lawful acts, deeds, things, conveyances and assurances whatsoever reasonably required by the City for better assuring to the City the rights, liberties and statutory right of way hereby granted.
  6. **No Waiver** - No waiver of default by either party is effective unless expressed in writing by the party waiving default, and no condoning, overlooking or excusing by a party of a previous default of the other will operate as a waiver of any subsequent continuing default.
  7. **Severance** - If any portion of this Agreement is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion is to be severed and the decision that it is invalid does not affect the validity of the remainder of this Agreement.
  8. **Entire Agreement** - This agreement is the entire agreement between the parties and neither the City nor the Grantor has given or made any representations, warranties, guarantees, promises, covenants or agreements to the other except those expressed in this Agreement, and this Agreement may only be amended by written agreements by the parties.
  9. **Interest In Land and Enurement** - This agreement burdens and runs with, and binds the successors in title to, the Land and each and every part into which the Land may be subdivided (including by deposit of a strata plan of any kind) and any land with which the Land may be consolidated. This agreement enures to the benefit of and is binding on the parties and their respective heirs, executors, successors and assignees, as the case may be.

As evidence of their agreement to be bound by this Agreement, the parties have executed Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

**Schedule "A"**

**SURVEY PLAN**

# Schedule G Parking Agreement

## PARKING AGREEMENT

THIS AGREEMENT dated for reference \_\_\_\_\_, 2017.

BETWEEN:

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

(the "City")

AND:

**JEM HTB PROPERTIES INC.** (Inc. No. BC0949919), c/o Pushor Mitchell LLP, 3rd Floor, 1665 Ellis Street, Kelowna, British Columbia, V1Y 2B3

(the "Tenant")

WHEREAS:

- A. The City is the registered owner in fee simple of those lands located at 4629 Lakeshore Road, Kelowna, British Columbia, legally described as Parcel Identifier: 025-433-997, Lot A Section 25 Township 28 Similkameen Division Yale District Plan KAP71341 (the "Lands");
- B. The City has leased a portion of the Lands (the "Leased Area") to the Tenant for a term of 75 years pursuant to the terms of a lease agreement dated for reference \_\_\_\_\_, 2017 (the "Lease");
- C. There is a parking lot located on the Lands outside of and adjacent to the Leased Area, as shown on the sketch attached hereto as Schedule "A" (the "Trailhead Parking Lot"), and parking in the Trailhead Parking Lot is currently restricted to park users only;
- D. The Tenant wishes to ensure that residents of and visitors to the Leased Area are permitted to park motor vehicles in the Trailhead Parking Lot and the City has agreed not to enforce any "park user only" parking restrictions with respect to certain parking stalls in the Trailhead Parking Lot on the terms and conditions set out herein;

THIS AGREEMENT is evidence that in consideration of \$1.00 and other good and valuable consideration paid by the Tenant to the City, the receipt and sufficiency of which the City acknowledges, the Tenant and the City agree as follows:

1. So long as the Tenant is in compliance with the terms of the Lease, and for the duration of the Lease, the City confirms that it will not enforce any "park users only" restrictions with respect to seven (7) designated parking stalls in the Trailhead Parking Lot (the "Permitted Parking Stalls"), which stalls are shown outlined in red on Schedule "A".
2. Nothing herein limits the City's ability to enact and enforce any parking regulations and restrictions it wishes from time to time with respect to the parking stalls located in the Trailhead Parking Lot, except that the City will not enforce any "park users only" restrictions with respect



to the Permitted Parking Stalls. For certainty, the City may, in its sole discretion, enact and enforce time limitations and charge parking fees with respect to any parking stalls in the Trailhead Parking Lot, including the Permitted Parking Stalls. Parking in the Permitted Parking Stalls is permitted only in accordance with such regulations and restrictions.

- 3. The City confirms that if, at any time during the term of this Agreement, the City intends to place signage on the Trailhead Parking Lot denoting the Permitted Parking Stalls and describing the permitted use of such stalls, such signage will be in a form acceptable to the Tenant, acting reasonably.
- 4. This Agreement shall terminate upon the expiry or earlier termination of the Lease, or if the Tenant at any time gives notice to the City to terminate this Agreement.
- 5. This Agreement grants no interest in land in the Trailhead Parking Lot or the Permitted Parking Stalls to the Tenant, and nothing herein gives the Tenant or residents of or visitors to the Leased Area any special right, priority, or permission to park motor vehicles in the Trailhead Parking Lot. The Tenant acknowledges that parking in the Trailhead Parking Lot is on a first-come, first-served basis.
- 6. This Agreement shall enure to the benefit of and be binding on the parties hereto notwithstanding any rule of law or equity to the contrary.
- 7. The Tenant may assign its interest in this Agreement to the assignee of the Lease without the consent of the City.
- 8. This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the dates written below.

**CITY OF KELOWNA** by its  
authorized signatories:

**JEM HTB PROPERTIES INC.** by its  
authorized signatories:

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

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

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SCHEDULE "A"

SKETCH



**SCHEDULE H  
PERMITTED ENCUMBRANCES**

**Legal Notations**

THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 26 OF THE MUNICIPAL ACT, SEE KN110592

**Charges, Liens and Interests**

Nature:	UNDERSURFACE RIGHTS
Registration Number:	28916E
Registration Date and Time:	1942-06-01 11:33
Registered Owner:	THE DIRECTOR OF SOLDIER SETTLEMENT
Remarks:	INTER ALIA DD 86397F OTHER THAN THOSE EXCEPTED BY THE CROWN

Nature:	RIGHT OF WAY
Registration Number:	68300E
Registration Date and Time:	1957-02-13 12:20
Registered Owner:	INLAND NATURAL GAS CO. LTD.

Nature:	COVENANT
Registration Number:	KT71699
Registration Date and Time:	2002-07-03 08:52
Registered Owner:	CITY OF KELOWNA
Remarks:	PART ON PLAN KAP71459