

TERMS OF INSTRUMENT - PART 2

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND INTERPRETATION 7

ARTICLE 2 PAYMENT OF RENT 9

 2.1 Basic Rent..... 9

 2.2 Net Lease 9

 2.3 Interest on Amounts in Arrears 9

 2.4. Application of Section 2.3 9

ARTICLE 3 PAYMENT OF TAXES 10

 3.1 Payment of Realty Taxes if Lands Not Exempt 10

 3.2 Payment in Lieu of Realty Taxes if Lands Exempt 10

 3.3 Right to Appeal Assessment..... 10

 3.4 Business Tax and License Fees 10

 3.5 Other Taxes 10

 3.6 Pro-rating Obligations 10

 3.7 Application of Sections 3.1 and 3.2..... 11

ARTICLE 4 CONSTRUCTION OF BUILDING 11

 4.1 Lessee to Construct Building..... 11

 4.2 Substantial Completion of Building 11

 4.3 Termination of Lease on Failure to Construct..... 12

 4.4 Landscaping..... 12

 4.5 Alterations After Substantial Completion 12

 4.6 Unavoidable Delays..... 12

ARTICLE 5 BUILDERS LIENS 13

 5.1 Builders Liens..... 13

 5.2 Discharge of Builders Liens 13

5.3 Notice by Lessor..... 13

ARTICLE 6 RESTRICTIONS ON OPERATIONS AND USE..... 13

6.1 Use..... 13

6.2 Management of Lands by Operator 14

6.3 No Nuisance 14

6.4 No Subdivision 14

6.5 Permitted Encumbrances 14

6.6 Obligations of the Commission 14

ARTICLE 7 REPAIRS AND MAINTENANCE 15

7.1 Lessor Not Obligated to Repair..... 15

7.2 Repairs by the Lessee 15

7.3 Removal of Ice and Snow from Sidewalks..... 16

ARTICLE 8 ADDITIONAL RENT 16

8.1 All Defaults in Payment as Additional Rent..... 16

ARTICLE 9 INSURANCE 16

9.1 Insurance During Construction of Building 16

9.2 Commercial General Liability Insurance..... 17

9.3 All Risk Property and Pressure Vessel Insurance..... 17

9.4 Insurance – Additional Provisions..... 17

9.5 Evidence of Insurance 18

9.6 Payment of Loss Under Insurance Policies 18

9.7 Workers Compensation Coverage 18

9.8 Release of Lessor and Commission from Liability for Insured Loss or Damage..... 19

9.9 Insurance Exemption for the Commission and PRHC 19

ARTICLE 10 DAMAGE OR DESTRUCTION 20

10.1 Rent Not to Abate..... 20

10.2 Lessee’s Obligation When Building Partially Damaged or Destroyed 20

10.3 Lessee’s Obligations When Building Completely or Substantially Destroyed 20

10.4 Replacement, Repair or Reconstruction 20

10.5 Destruction or Damage During Last Five Years of Term 20

ARTICLE 11 INSPECTION AND EXHIBITION BY LESSOR 21

11.1 Inspection by Lessor and Commission 21

11.2 Exhibition by Lessor..... 21

ARTICLE 12 OBSERVANCE OF GOVERNMENTAL REGULATIONS 22

12.1 Compliance..... 22

ARTICLE 13 EXCLUSION OF LIABILITY AND INDEMNITY 22

13.1 Limitation of Liability and Release 22

13.2 Exclusion of Liability 22

13.3 Indemnification..... 22

13.4 Indemnification Survives Termination of Lease 23

13.5 Indemnity Exemption for PRHC 23

ARTICLE 14 SUBLETTING AND ASSIGNING 23

14.1 Subletting and Assigning by Lessee 23

14.2 Copies of Subleases 23

ARTICLE 15 BANKRUPTCY OF LESSEE 24

15.1 Bankruptcy of Lessee 24

ARTICLE 16 DEFAULT BY LESSEE 24

16.1 Re-entry on Certain Defaults by Lessee 24

16.2 Remedies of Lessor and the Commission are Cumulative 25

16.3 Waiver by Lessor and Commission 25

ARTICLE 17 ARBITRATION 25

17.1 Arbitration 25

ARTICLE 18 SURRENDER OF LEASE 26

18.1 Surrender of Lease..... 26

ARTICLE 19 QUIET ENJOYMENT, OWNERSHIP OF TENANTS’ FIXTURES AND OWNERSHIP OF BUILDING 26

 19.1 Covenant for Quiet Enjoyment..... 26

 19.2 Ownership of Tenant’s Fixtures 26

 19.3 Ownership of Building 26

ARTICLE 20 OVERHOLDING 26

 20.1 Overholding 26

ARTICLE 21 ADDITIONAL RIGHTS OF THE COMMISSION 27

 21.1 Notice to Commission 27

 21.2 Rights of Commission Not Limited..... 27

 21.3 Commission May Perform Obligations of Lessee..... 27

ARTICLE 22 ENVIRONMENTAL MATTERS 27

 22.1 Definitions 27

 22.2 Lessee’s Covenants and Indemnity 28

ARTICLE 23 OPTION TO RENEW..... 29

 23.1 Option to Renew..... 29

ARTICLE 24 NOTICES 29

 24.1 Notices 29

ARTICLE 25 MISCELLANEOUS 30

 25.1 Statements by Lessor 30

 25.2 Time of Essence 30

 25.3 Formality of Modifications..... 30

 25.4 Captions and Headings 30

 25.5 Enurement..... 31

 25.6 Covenants or Conditions 31

 25.7 References 31

 25.8 Execution..... 31

WHEREAS:

- A. The Lessee wishes to provide housing for persons with special housing requirements and/or limited income and agrees to use the Lands for this purpose.
- B. The Commission, a representative of the Province, has agreed to provide financial assistance for the operating costs of the Building and the programs to be offered to the residents of the Building.
- C. The Lessor is the owner of the Lands and has agreed to lease to the Lessee the Lands for the Term upon the terms, conditions and provisos herein.

WITNESS that in consideration of the rents reserved and the covenants and agreements set forth below, the parties agree as follows:

THE LESSOR HEREBY DEMISES AND LEASES UNTO THE LESSEE AND THE LESSEE DOES HEREBY TAKE AND RENT THE LANDS, TO HAVE AND TO HOLD THE LANDS UNTO THE LESSEE FOR AND DURING THE TERM AS HEREIN PROVIDED.

IN CONSIDERATION OF THE SUM OF TEN DOLLARS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION PAID AND PROVIDED BY THE COMMISSION TO BOTH THE LESSOR AND THE LESSEE, BOTH THE LESSOR AND THE LESSEE COVENANT AND AGREE WITH THE COMMISSION THAT THE COMMISSION WILL HOLD AND ENJOY THE RIGHTS, BENEFITS, PRIVILEGES, AUTHORITY AND DISCRETIONS GRANTED TO THE COMMISSION IN THIS LEASE.

ARTICLE 1
DEFINITIONS AND INTERPRETATION

- 1.1 Capitalized terms used in this Lease have the meanings specified in this Section 1.1, unless otherwise provided in this Lease:
 - (a) "Additional Rent" means all sums, costs, expenses and other amounts, if any, payable by the Lessee to the Lessor pursuant to this Lease, including, without limitation, Realty Taxes, payments in lieu of Realty Taxes, Utilities and all sums payable by way of indemnity under this Lease, but excluding Basic Rent;
 - (b) "Alterations" means all alterations, changes, replacements, substitutes, additions and improvements to the Building;
 - (c) "Architect" means the architect qualified as such pursuant to the laws of the province of British Columbia who is supervising the design, construction, repair, renovation and/or reconstruction of the Building;
 - (d) "Basic Rent" means ten dollars (\$10.00);
 - (e) "Building" means the building(s) and all other structures to be constructed on the Lands, together with all Alterations or repairs thereto and all improvements from time to time constructed upon or affixed or appurtenant to the Lands;
 - (f) "City" means the City of Salmon Arm;

- (g) “Commencement of Construction” means the later of the date when the first building permit for the Building is issued to the Lessee by the City and the date when the Lessee’s contractor commences any work on the Lands related to construction of the Building;
- (h) “Commission” means British Columbia Housing Management Commission or its successors in function;
- (i) “Eligible Occupant” means a person who, during the time that such person is an occupant in the Building, meets the criteria prescribed in an Operator Agreement;
- (j) “General Instrument” means the Form C - *Land Title (Transfer Forms) Regulation* pursuant to the *Land Title Act* (British Columbia), and all schedules and addenda to the Form C;
- (k) “Lands” means all of the Lessor’s interest in the land described as Lease Area A and Lease Area B in the General Instrument, including every incidental right, benefit or privilege attaching to that land or running with it;
- (l) “Lease” means this Lease;
- (m) “Lease Commencement Date” means the date this Lease is registered at the Kamloops Land Title Office;
- (n) “Lessee” means PRHC;
- (o) “Lessor” means the City;
- (p) “Losses” means liabilities, actions, judgments, claims, losses, damages, orders, fines, penalties, expenses, including related professional and other fees and disbursements, and costs;
- (q) “Operator” means a non-profit organization that has entered into an Operator Agreement;
- (r) “Operator Agreement” means an agreement entered into or to be entered into that relates to the management of the Building and the support services to be provided to the Eligible Occupants;
- (s) “Permitted Encumbrances” means the charges and encumbrances, if any, registered on title to the Lands on the Lease Commencement Date and any other charges specifically approved in writing by both the Commission and the Lessor;
- (t) “Personnel” of a party means the elected officials and directors, officers, employees, servants and agents of that party, as applicable;
- (u) “Province” means the province of British Columbia;
- (v) “PRHC” means the Provincial Rental Housing Corporation;
- (w) “Prime Rate” means the floating annual percentage rate of interest established from time to time by the main branch of the Bank of Montreal located in Vancouver, British Columbia, or its successor, as the base rate that is used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as its “prime rate”;

- (x) “Realty Taxes” means all assessments for taxes, rates, duties (including school taxes, local improvement rates and other charges levied pursuant to the *Hospital District Finance Act* (British Columbia), the *Municipal Finance Authority Act* (British Columbia) or otherwise) that now are or will or may be levied, rated, charged or assessed against the Lands, the Building, and all other structures, machinery, equipment, facilities and other property of any nature whatsoever located on the Lands, by any municipal, parliamentary, legislative, regional, school or other authority;
- (y) “Review Date” means the date on which the constitution and bylaws of the Lessee are approved in writing by the Commission;
- (z) “Term” means ten (10) years commencing on the Lease Commencement Date;
- (aa) “Trustee” means a trust company duly authorized to carry on business in the province of British Columbia and appointed by the Commission for the purposes of Article 9 of this Lease; and
- (bb) “Utilities” means all charges, rates and levies on account of utilities, including heat, electricity, gas, telephone, television, internet and other costs and expenses of a similar nature, and, if not included in Realty Taxes, for water and garbage collection.

1.2 Any reference in this Lease to legislation will be deemed to include all regulations thereto, all amendments and re-enactments thereof and all successor legislation.

ARTICLE 2 PAYMENT OF RENT

2.1 Basic Rent

The Lessee covenants and agrees with the Lessor to pay to the Lessor the Basic Rent for the Term on the Lease Commencement Date.

2.2 Net Lease

All Basic Rent and Additional Rent required to be paid by the Lessee hereunder will be paid at such location as the Lessor may stipulate from time to time without any deduction, abatement or set-off whatsoever, it being the intention of this Lease that the Basic Rent and Additional Rent payable under this Lease will, unless otherwise expressly stipulated herein to the contrary, be absolutely net to the Lessor and free of all abatements, set-off or deduction of any costs, payments and outgoing of every nature arising from or related to the Lands, the Building, or any other improvements on the Lands, and the Lessee will pay or cause to be paid all such costs, payments and outgoings.

2.3 Interest on Amounts in Arrears

When the Basic Rent, Additional Rent or any other amount payable hereunder by the Lessee to the Lessor is in arrears, such amount will bear interest at the Prime Rate plus two percent (2%) per annum, calculated and compounded monthly not in advance, from the date due until paid.

2.4. Application of Section 2.3

Section 2.3 will apply only if the Commission is not providing operating assistance to the Building under the terms of the subsidy commitment contained in the Operator Agreement.

ARTICLE 3
PAYMENT OF TAXES

3.1 Payment of Realty Taxes if Lands Not Exempt

Save as otherwise provided in Section 3.2, the Lessee will, during the Term, no later than the day immediately preceding the date or dates on which the Realty Taxes become due and payable, pay and discharge or cause to be paid and discharged the Realty Taxes and, if requested by the Lessor, will deliver to the Lessor for inspection receipts for payments of the Realty Taxes within fourteen (14) days of such payment. Not later than thirty (30) days following receipt of any tax assessment or notice the Lessor will deliver a copy of such assessment or notice to the Lessee.

3.2 Payment in Lieu of Realty Taxes if Lands Exempt

The Lessee covenants and agrees with the Lessor that if during the Term all or any part of the Lands, Building, structures, machinery, equipment and facilities thereon are exempt from Realty Taxes in whole or in part, then the Lessee will, in each and every year during the Term that such exemption occurs, pay to the Lessor as Additional Rent, at the same time as Realty Taxes would be payable if such exemption were not available, an amount equal to the amount that would be payable as Realty Taxes if such exemption were not available.

3.3 Right to Appeal Assessment

The Lessee will have the right from time to time to appeal, in its own or the Lessor's name, any assessment of the Lands or Building or any Realty Taxes referred to in Sections 3.1 and 3.2, provided that such appeal will be at the sole expense of the Lessee.

3.4 Business Tax and License Fees

The Lessee covenants with the Lessor to pay or cause to be paid during the Term when due every tax, permit and license fee (including penalties and interest) in respect of any and every business carried on, in or upon the Lands or Building or in respect of the use or occupancy of the Lands or Building by the Lessee (and any and every sublessee, permittee and licensee), whether such taxes or permit and license fees are charged by any municipal, parliamentary, legislative, regional or other authority.

3.5 Other Taxes

The Lessee will pay when due all goods and services taxes, harmonized sales taxes, value-added taxes, sales taxes and consumption based taxes, rates, levies and assessments, including penalties and interest, that are from time to time payable by the Lessee as a result of, or that would not be payable but for, its rights and obligations contained in this Lease, including but without derogating from the generality of the foregoing, such taxes, rates, levies and assessments payable as a result of any payment obligations herein of the Lessee to the Lessor.

3.6 Pro-rating Obligations

In the first and last years of the Term, the Lessee's obligations under Sections 3.1 and 3.2 will be pro-rated according to the portion of the year included in the Term, such pro-rating to be on a per diem basis.

3.7 Application of Sections 3.1 and 3.2

If the Lessee applies for and Council for the City exercises its discretion to grant a permissive tax exemption for the Lands or Building or both pursuant to Section 224 of the *Community Charter* (British Columbia), then Sections 3.1 and 3.2 will not apply to the extent, for the period and subject to the conditions provided in the tax exemption bylaw.

ARTICLE 4
CONSTRUCTION OF BUILDING

4.1 Lessee to Construct Building

The Lessee will construct the Building, together with other facilities ancillary thereto and connected therewith, on the Lands in substantial accordance with the drawings, specifications (including materials to be used), elevations, location on the Lands and exterior decoration and design and all other documents and information upon which the issuance of the building permits by the City are based and that have been approved by the Lessor and the Commission. No changes will be made to such drawings, specifications, elevations, location, exterior decoration and design, other documents or information, or to the requirements of such building permits without the approval of the Lessor and the Commission, provided that the Commission may approve minor changes allowed by the building permit(s) for the Building without the approval of the Lessor.

4.2 Substantial Completion of Building

For the purposes of this Article 4, the Building will be deemed to have been substantially completed when the Architect has certified to, or otherwise satisfied, the Lessor and the Commission that, with respect to the Building:

- (a) all work of a structural nature has been properly completed;
- (b) all building equipment and services, including elevators (if any), heating systems and air-conditioning systems (if any), and utilities have been completed, are operating properly and are available for use by tenants of the Lessee, and all lobbies, stairwells and other areas intended for the common use of tenants of the Lessee are completed except for work of a superficial nature, which is both minor in character and of a type that, owing to the likelihood of damage, may reasonably be deferred until the Building is partially or substantially occupied by tenants of the Lessee;
- (c) all building bylaws and regulations of the City have been complied with by the Lessee;
- (d) all rentable space is completed for occupancy except for work of a superficial nature that is dependent upon unascertained requirements of individual tenants of the Lessee, and work that is reasonably and customarily performed by tenants of the Lessee;
- (e) all areas are clean and all surplus building material and rubbish have been removed;
- (f) the Building is in a condition in which it can be occupied by tenants of the Lessee, and any work that is still unfinished can be completed promptly and is work the incompleteness of which will not be objectionable to a tenant of the Lessee acting reasonably;

- (g) the Building has been constructed in all respects in a good and workmanlike manner and in accordance with the drawings and specifications, and in compliance with all building permits issued by the City; and
- (h) a certificate of completion has been issued in respect of the Building pursuant to the *Builders Lien Act* (British Columbia).

4.3 Termination of Lease on Failure to Construct

Subject to Section 4.6 and Article 21, if Commencement of Construction has not taken place within one hundred and eighty (180) days of the Lease Commencement Date, or if construction of the Building is not substantially completed in accordance with the requirements of Section 4.1 within one hundred and eighty (180) days after the second anniversary of the Lease Commencement Date, the Lessor will have the option at any time thereafter to terminate this Lease, and in such event this Lease will terminate and be of no further force or effect and without any reimbursement or compensation to the Lessee, unless the Lessor consents in writing to extend the deadline for Commencement of Construction, such consent not to be unreasonably withheld.

4.4 Landscaping

Within one hundred and eighty (180) days of substantial completion of the Building, the Lessee will landscape the Lands and thereafter maintain the landscaping in accordance with landscaping plans that have been approved by the Commission.

4.5 Alterations After Substantial Completion

After substantial completion of the Building, the Lessee will not make or permit to be made any Alterations affecting the structure of the Building or the exterior appearance of the Building without the written approval of the Lessor and the Commission, which approval the Lessor and the Commission will not unreasonably withhold. No Alterations involving an estimated cost of more than two hundred thousand dollars (\$200,000.00) will be undertaken until the Lessee has submitted or caused to be submitted to the Lessor and the Commission such drawings, specifications (including the materials to be used), elevations (where applicable), locations (where applicable), exterior decoration and design and such other documentation and information as the Lessor and the Commission may request in connection with the proposed Alterations, and until all of the same have been approved in writing by the Lessor and the Commission, which approval the Lessor and the Commission will not unreasonably withhold. The Lessee covenants and agrees with the Lessor and the Commission that, subject to Section 4.6, all Alterations undertaken by or for the Lessee once begun will be prosecuted with due diligence to completion.

4.6 Unavoidable Delays

If, by reason of strike, lock-out or other labour dispute, material or labour shortage not within the control of the Lessee, fire, explosion, flood, wind, water, earthquake, act of God or other similar circumstances beyond the reasonable control of the Lessee and not avoidable by the exercise of reasonable effort or foresight by the Lessee, the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in achieving Commencement of Construction or substantial completion of the Building in accordance with Section 4.2 or the repair of the Building or any part or parts of the Building which under the terms of this Lease the Lessee is required to do by a specified date or within a specified time, the date or period of time within which such work was to have been completed will be extended by the Lessor by a reasonable period of time at least equal to that of such prevention or delay, and the Lessee will not be deemed to be in default if it

performs and completes the work in the manner required by the terms of this Lease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Lessor, the Lessee and the Commission.

ARTICLE 5
BUILDERS LIENS

5.1 Builders Liens

In connection with all labour performed on or materials supplied to the Lands, including but not limited to the construction of the Building, the Lessee will comply with, and will cause any contractor hired by it to comply with, the provisions of the *Builders Lien Act* (British Columbia), and with all other statutes applicable in connection therewith and in force from time to time, including any provision or statute requiring or permitting the retention of portions of any sums payable by way of holdbacks.

5.2 Discharge of Builders Liens

If and whenever any builders lien, or other lien or claim arises or is filed against the Lessor's interest in the Lands in connection with work, labour, services or materials supplied to or for the Lessee or for the cost of which the Lessee may in any way be liable, the Lessee will, within fifteen (15) days after receipt of notice of such lien or claim, procure the discharge thereof, and the discharge of any certificate of pending litigation registered in respect of any such lien or claim, by payment or giving security or in such other manner as may be required or permitted by law; provided, however, that in the event of a bona fide dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee will not be bound by the foregoing, but will be entitled to defend against the same in any proceedings brought in respect thereof after first paying into a court of competent jurisdiction the amount claimed or sufficient security therefor, and such costs as the court may direct. The Lessor may pay and discharge any lien claim if, in its reasonable judgement, the Lands or the Lessor's interest in the Lands becomes liable to forfeiture or sale, or is otherwise in jeopardy. The Lessee will reimburse to the Lessor any amount paid by the Lessor in discharging a lien claim and the Lessor's reasonable expenses in connection therewith.

5.3 Notice by Lessor

Pursuant to Section 3(2) of the *Builders Lien Act*, the Lessor may file in the Land Title Office notice of its fee simple interest in the Lands and for all purposes of this Lease the construction of the Building by the Lessee will be deemed not to be done at the request of the Lessor.

ARTICLE 6
RESTRICTIONS ON OPERATIONS AND USE

6.1 Use

Unless otherwise agreed to in writing by the Lessor and the Commission, the Lessee covenants and agrees with the Lessor and the Commission that neither the Lands nor Building nor any part of the Lands or Building will be used for any purpose except that of housing Eligible Occupants, subject always to the laws, bylaws, regulations and permits governing the use of the Lands and Building from time to time. Neither the Lands nor Building nor any part of the Lands or Building will be used for business, trade or manufacture without the written approval of the Lessor and the Commission, which approval the Lessor and the Commission may arbitrarily withhold. If, however, the Lessor and the Lessee determine that it is not practical or commercially reasonable to continue

to carry on the use described in this Section 6.1, the Lessee may commence to use and occupy the Lands and Building for another use, including a commercial use that is approved by the Lessor, and if it elects to do so:

- (a) the Basic Rent will be adjusted, from time to time, to reflect the fair rental value of the Lands, without reference to the Building, given the use to which the Lands and Building are put, from time to time. If the parties cannot agree on the Basic Rent or the dates when the Basic Rent is to be adjusted, the Basic Rent and/or adjustment dates will be settled by arbitration pursuant to Article 19; and
- (b) the Lands and Building will not be exempt from Realty Taxes.

6.2 Management of Lands by Operator

The Lessor acknowledges and agrees that the Lessee may engage an Operator to operate and manage the Lands on behalf of the Lessee provided that such engagement of an Operator will not, in any way, relieve the Lessee from any of its obligations hereunder.

6.3 No Nuisance

The Lessee will not carry on, or suffer or permit to be carried on, upon the Lands anything which would constitute a nuisance to the Lessor or to any neighbouring properties or their owners or occupants provided, however, that the occupation of the Lands and Building by Eligible Occupants in accordance with the terms of this Lease shall not constitute a nuisance.

6.4 No Subdivision

The Lessee covenants that it will not subdivide the Lands or the Building pursuant to the *Strata Property Act* (British Columbia).

6.5 Permitted Encumbrances

The Lessor and the Lessee covenant and agree that, during the Term, the Lessee, at its expense, will perform and observe all of the obligations of the Lessor and may enjoy all of the rights of the City as Lessor (but not those rights of the City in its regulatory capacity) set out in the Permitted Encumbrances. None of the Permitted Encumbrances will merge or be deemed to have merged with the Lessor's title to the Lands, and accordingly all Permitted Encumbrances will be deemed to be in full force and effect. The Lessor will execute such documents as might reasonably be requested by the Lessee to enable it to comply with its obligations and to enjoy its rights in respect of the Permitted Encumbrances. The Lessee further covenants and agrees with the Lessor that if the City exercises any of its rights in its regulatory capacity under the Permitted Encumbrances, such exercise will not be a breach of the Lessor's covenant for quiet enjoyment.

6.6 Obligations of the Commission

The Commission will:

- (a) cause the Operator to use the Lands and the Building in a manner that is consistent with the Lessee's obligations contained in Section 6.1;

- (b) cause the Operator to operate the Building on a non-profit basis such that there will be no accumulation of funds in excess of those needed to operate and manage the Lands and Building in the manner approved by the Commission; and
- (c) provide the Lessor with current copies of the Operator Agreement upon the request of the Lessor.

ARTICLE 7
REPAIRS AND MAINTENANCE

7.1 Lessor Not Obligated to Repair

The Lessor will not be obliged to furnish any services or facilities or to make repairs or Alterations in or to the Lands or the Building, and the Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Lands and the Building and all expenses related thereto.

7.2 Repairs by the Lessee

Reasonable wear and tear excepted, so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Building:

- (a) the Lessee at the Lessee's cost and expense will put and keep in good order and condition, or cause to be put and kept in good order and condition, the Lands and Building (and any equipment located thereon and therein), both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, stairways, elevators (if any) and similar devices, heating and air conditioning equipment, sidewalks, yards and other like areas, water and sewer mains and connections, water, steam, gas and electric pipes and conduits, and all other fixtures and appurtenances to the Lands and the Building and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs and, subject to Section 4.5, Alterations, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Building and any and all fixtures and equipment therein fully usable for the purposes for which the Building was constructed. Such repairs and Alterations will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Building, and will in each case be performed only in accordance with all applicable terms and conditions of the Permitted Encumbrances;
- (b) the Lessee will not commit or suffer waste to the Lands or the Building or any part thereof;
- (c) in accordance with Section 18.1, at the expiration or earlier termination of this Lease, the Lessee will, except as otherwise expressly provided herein, surrender and deliver up the Lands with the Building and the fixtures, appurtenances and equipment thereon and therein, or any replacements or substitution therefor, in good order and condition; and
- (d) if the Lessee does not fulfil its obligations set out in this Article 7, the Lessor or the Commission, through their agents, servants, contractors and subcontractors, may, but will not be obliged to, enter (without hindrance by the Lessee) upon the Lands and the Building as required for the purpose of making any repairs necessary to put the Lands and the Building in good order and condition, provided that the Lessor or the Commission will make such repairs only after giving the Lessee not less than fourteen (14) days written

notice of its intention to do so, except in the case of an emergency when no notice will be required. Any costs and expenses (including overhead costs) incurred by the Lessor or the Commission in making such repairs to the Lands and Building will be reimbursed to the Lessor or the Commission, as the case may be, by the Lessee on demand, together with interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly, from the date incurred until the date paid.

7.3 Removal of Ice and Snow from Sidewalks

The Lessee covenants and agrees with the Lessor that if the Lessee at any time fails to keep the public sidewalk adjacent to the Lands (within Easement Area C and Easement Area D of the General Instrument, within which the Lessor and the Lessee agree shall be kept free of obstructions to allow access by the public to the Lands) reasonably clean from rubbish, ice and snow during the times and to the extent lawfully required of an owner, the Lessor, through its agents, servants, contractors and subcontractors, may remove such rubbish, ice and snow and the Lessor will not be required to give the Lessee any notice of its intention to do so. Any costs and expenses incurred by the Lessor in removing such ice and snow will be reimbursed to the Lessor by the Lessee on demand, together with interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly, from the date incurred until paid.

ARTICLE 8
ADDITIONAL RENT

8.1 All Defaults in Payment as Additional Rent

If the Lessee defaults in the payment of any sums required to be paid by it pursuant to the terms of this Lease, or fails to fulfil any of its obligations under this Lease, the Lessor may (but will be under no obligation to) pay such sums or fulfil such obligations on behalf of the Lessee, and any losses, costs, charges and expenses suffered by the Lessor as a result, including sums payable by way of indemnity, whether or not expressed in this Lease to be rent, may at the option of the Lessor be treated as and deemed to be Additional Rent, in which event the Lessor will have all remedies for the collection of such sums, costs, expenses or other amounts when in arrears as are available to the Lessor for the collection of rent in arrears.

ARTICLE 9
INSURANCE

9.1 Insurance During Construction of Building

Prior to the Commencement of Construction of the Building, and throughout the entire period of construction until substantial completion of the Building pursuant to Section 4.2, the Lessee will effect or will cause its contractor or contractors to effect and maintain in full force the following insurance coverage:

- (a) wrap-up liability insurance with limits of not less than Ten Million Dollars (\$10,000,000), or such other amount as the Lessor and the Commission may require from time to time, per occurrence, issued in the joint names of the Lessee, the Lessor, the Commission, the Lessee's contractors, any subcontractors and their respective Personnel, protecting them against claims for bodily injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands from any cause, including the risks occasioned by the construction of the Building; and

- (b) all-risk course of construction insurance issued in the joint names of the Lessee, the Lessor and the Commission, protecting them from all loss or damage of or to the Building and all fixtures, equipment, improvements and building materials on the Lands from time to time, both during and after construction (but which may be by different policies effected from time to time covering the risk during different phases of construction of the Building, provided that at no time will the Building be uninsured) against fire, earthquake, flood and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the province of British Columbia by prudent owners, and such other perils as the Lessor or the Commission may reasonably require to be insured against, to the full replacement value thereof at all times.

9.2 Commercial General Liability Insurance

The Lessee will effect and keep in force commercial general liability insurance with limits of not less than Ten Million Dollars (\$10,000,000), or such other amount as the Lessor and the Commission may require from time to time, per occurrence, against public liability claims for bodily injury, death and property damage (including loss of use) arising from the Lessee's use and occupancy of the Lands and from any occurrence or accident on the Lands or Building. Such insurance will be written on an occurrence basis and will provide for blanket contractual liability, including liability assumed by the Lessee under this Lease. The policy will also contain a cross liability or severability of interests clause and will name the Lessor, the Commission and their respective Personnel as additional insureds with respect to third party claims arising out of the Lessee's operations pursuant to this Lease.

9.3 All Risk Property and Pressure Vessel Insurance

Immediately following substantial completion of the Building and at all times thereafter during the Term, the Lessee will effect and maintain property insurance in the joint names of the Lessor, and the Commission as their interests may appear, to the full replacement value of the Building and fixtures on the Lands, protecting them against "All Perils" of loss or damage including flood, sewer backup and earthquake, and will include boiler and pressure vessel insurance. The policies described in this Section 9.3 will contain a clause directing insurers to make losses payable to the Lessee, the Lessor, and the Commission as their interests may appear.

9.4 Insurance – Additional Provisions

The following provisions will apply to all policies of insurance which are referred to in this Article 9:

- (a) the policies will be primary and non-contributing with respect to any policy or self-insured fund otherwise held or established on behalf of the Lessor or the Commission;
- (b) the stated amount of value insured under property policies will be of sufficient amount that none of the Lessee, the Commission nor the Lessor will become co-insurers with respect to any loss claimed against the insurance;
- (c) each policy will be written on a form acceptable to the Lessor and the Commission and with insurers licensed to do business in the province of British Columbia and acceptable to the Lessor and the Commission;

- (d) any deductible amounts applying to a claim against a policy will be of an amount approved by the Lessor and the Commission;
- (e) each policy will contain a clause requiring that the insurers provide to the Lessor and the Commission a minimum of thirty (30) days prior written notice of any cancellation (except for cancellation resulting from non-payment of premiums, in which case applicable statutory provisions will apply); and
- (f) all premiums and deductibles required under said policies will be paid by the Lessee to the insurers and proof of such payment will be submitted to the Lessor and the Commission.

In addition to the notification obligations of the insurers required by Section 9.4(e), the Lessee will provide to the Lessor and the Commission a minimum of sixty (60) days prior written notice of any cancellation, lapse or material change resulting in reduction of coverage, either in whole or in part, in respect of any of the policies of insurance which are referred to in this Article 9.

9.5 Evidence of Insurance

Prior to the Lease Commencement Date the Lessee will provide the Lessor and the Commission with evidence of all insurance required to be taken out pursuant to this Lease, in the form of one or more detailed certificates of insurance, in such form(s) and contents as the Lessor and the Commission requests. Each certificate of insurance must identify the Lease number, policy holder and subject matter, and must not contain any disclaimer. Thereafter, and throughout the Term, forthwith upon request by the Lessor or the Commission, similar evidence of renewals, extensions or replacement of such insurance will be provided in the form of such certificate(s) of insurance. In addition, if requested by the Lessor or the Commission at any time, the Lessee will forthwith deliver to the Lessor or the Commission, as applicable, a certified copy of each insurance policy requested.

9.6 Payment of Loss Under Insurance Policies

The insurance monies payable under the policies of insurance referred to in this Article 9, will, notwithstanding the terms of the policy or policies, be paid to the Trustee on behalf of the Lessee, the Lessor, and the Commission. The Lessee, the Lessor and the Commission agree that the Trustee will pay for all restoration, reconstruction or replacement of the loss or damage in respect of which such insurance monies were paid to the Trustee out of such insurance monies in accordance with certificates of the Architect or such other person as the Lessee, the Lessor and the Commission may agree upon and who is in charge of such restoration, reconstruction or replacement, after receiving such other certificates, evidence or opinions as the Trustee will require for the purpose of being satisfied that such restoration, reconstruction or replacement is being properly carried out. If the Lessee fails to restore, reconstruct or replace the loss or damage in respect of which the insurance monies were paid to the Trustee within a reasonable time, the Lessor and the Commission will be entitled to effect such restoration, reconstruction or replacement and the Trustee will pay such insurance monies to the Lessor or the Commission in the same manner that the Trustee would have done had the Lessee effected such restoration, reconstruction or replacement.

9.7 Workers Compensation Coverage

At all times during the Term, the Lessee will, and will cause its Personnel and all others engaged in or upon any work on the Building or the Lands to, comply with the *Workers Compensation Act* (British Columbia) (the "WCA") and the requirements and regulations of WorkSafeBC in respect of the Building and the Lands. Without limiting the generality of the foregoing, the Lessee will:

- (a) require as a condition of any agreement made with respect to construction, repair, renovation or demolition of the Building, whether with contractors, materialmen or otherwise, that there is full workers compensation insurance coverage in place in respect of all workers, employees, servants and others engaged in or upon any work, and that all workers, contractors or other persons require the same of their workers and subcontractors. The Lessee will immediately notify the Lessor and the Commission of any dispute involving third parties that arises in connection with obtaining and maintaining the workers compensation insurance coverage required hereby if such dispute results or may result in the required insurance coverage not being in place, and the Lessee will take all reasonable steps to ensure resolution of such dispute forthwith. The Lessee will further ensure that no amount payable pursuant to the WCA is left unpaid so as to create a lien on the Lands or the Building. If the workers compensation insurance coverage required by this Section 9.7 is not in place, the Lessor and the Commission will be entitled to have recourse to all remedies specified in this Lease or at law or equity; and
- (b) be deemed to be, and is hereby designated and appointed by the Lessor as, the “Prime Contractor” as that term is defined in Section 118 of the WCA for the purposes of the WCA and related regulations, including the Occupational Health and Safety Regulation (the “OHS Regulation”), and the requirements and regulations of WorkSafeBC, and will in that capacity strictly comply with all requirements applicable to that designation, including without limitation those set forth in Division 3 of Part 3 of the WCA and in Sections 20.2 and 20.3 of the OHS Regulation, as they may be amended from time to time. Notwithstanding the foregoing, with the prior written consent of the Lessor, a contractor hired by the Lessee to perform work on the Lands on its behalf may be designated as the Prime Contractor instead of the Lessee.

9.8 Release of Lessor and Commission from Liability for Insured Loss or Damage

The Lessee hereby releases the Lessor and the Commission and their respective Personnel, whether or not the Lessor, the Commission and their respective Personnel have been negligent, from any and all liability for loss or damage caused by any of the perils against which the Lessee will have insured or is obligated to insure pursuant to the terms of this Lease or any applicable law, or self insures if it elects to do so under Section 9.9, the intent being that the Lessee’s policies of insurance will contain a waiver of subrogation in favour of the Lessor and the Commission or, if the Lessee elects to self insure under Section 9.9, the Lessee will release the Lessor and the Commission from any and all liability for loss or damage caused by the perils referred to in Sections 9.2 and 9.3 to the same extent as if the Lessee had taken out insurance.

9.9 Insurance Exemption for the Commission and PRHC

Notwithstanding anything contained in this Lease, at any time the Commission or PRHC is the Lessee, the Commission or PRHC, as the case may be, will not be under any obligation to take out and keep in force any of the insurance required to be taken out and kept in force under this Article other than the insurance required pursuant to Section 9.1, provided that the Commission or PRHC, as the case may be, has in place a program of self insurance that provides the same or better coverage than the insurance described in this Article.

ARTICLE 10
DAMAGE OR DESTRUCTION

10.1 Rent Not to Abate

Subject to the provisions of Section 10.5, the partial destruction or damage or complete destruction by fire or other casualty of the Building will not result in the termination of this Lease or entitle the Lessee to surrender possession of the Lands or the Building or to demand any abatement or reduction of the Basic Rent or Additional Rent or other charges payable under this Lease, any law or statute now or in the future to the contrary notwithstanding.

10.2 Lessee's Obligation When Building Partially Damaged or Destroyed

Subject to the provisions of Section 10.5, the Lessee covenants and agrees with the Lessor and the Commission that in the event of partial damage to or partial destruction of the Building, the Lessee will either:

- (a) replace any part of the Building damaged or destroyed with a new structure in accordance with any agreement which may be made by the Lessee with the Lessor and the Commission; or
- (b) in the absence of any such agreement, repair or replace such damage or destruction to a standard comparable to the standard of the structure being repaired or replaced.

10.3 Lessee's Obligations When Building Completely or Substantially Destroyed

Subject to the provisions of Section 10.5, the Lessee covenants and agrees with the Lessor and the Commission that in the event of complete or substantially complete destruction of the Building, the Lessee will either:

- (a) reconstruct or replace the Building with a new structure or structures in accordance with any agreement which may be made by the Lessee with the Lessor and the Commission; or
- (b) in the absence of any such agreement, replace the Building with a new structure or structures comparable to the structure or structures being replaced.

10.4 Replacement, Repair or Reconstruction

Any replacement, repair or reconstruction of the Building or any part thereof pursuant to the provisions of Section 10.2 or 10.3 will be made or done in compliance with Section 4.5 and Article 7.

10.5 Destruction or Damage During Last Five Years of Term

- (a) In the event of the complete or substantial destruction of the Building during the last five (5) years of the Term, the Lessee may, at its option, either reconstruct or replace the Building so destroyed or damaged in accordance with Section 10.3 or decline to do so, and instead elect to terminate this Lease, provided that the Lessee makes such election within sixty (60) days after the date on which the Building was so destroyed and notifies the Lessor of its election forthwith after making it;
- (b) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Lessee pursuant to Section 10.5(a),

the Lessee will demolish and completely remove the Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 9, be distributed as follows:

(i) firstly, to reimburse the Lessee for all costs and expenses necessarily incurred by the Lessee in the demolition and removal of the Building and all improvements, foundations and debris from the Lands and the restoration of the Lands as aforesaid;

(ii) secondly, to pay the balance of the insurance monies, if any, as follows:

A. to the Lessor the amount calculated as follows:

amount payable = (balance of insurance monies) x (days in expired portion of the Term ÷ total days in Term); and

B. to the Lessee the amount calculated as follows:

amount payable = (balance of insurance monies) x (days remaining in the Term ÷ total days in Term),

provided however that any amount payable to the Lessee will be paid directly to the Commission; and

(c) Notwithstanding anything contained herein, in the event the Lessee terminates this Lease in accordance with this Section 10.5, this Section 10.5 will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this Section 10.5 or any part thereof remains unperformed.

ARTICLE 11 INSPECTION AND EXHIBITION BY LESSOR

11.1 Inspection by Lessor and Commission

The Lessor and the Lessee agree that it will be lawful for representatives of the Lessor and the Commission to enter the Lands and the Building at all reasonable times during the Term and to examine the condition thereof. If the Lessor or the Commission determines that any of the repairs described in Section 7.2 are required, notice of such required repairs will be given by the Commission or the Lessor to the Lessee, and the Lessee will within fourteen (14) days after every such notice, or such longer period as provided in Section 16.1(d), repair and make good accordingly.

11.2 Exhibition by Lessor

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

ARTICLE 12
OBSERVANCE OF GOVERNMENTAL REGULATIONS

12.1 Compliance

The Lessee covenants to competently and faithfully observe and comply with all laws, bylaws and lawful orders which apply to the Lands and the Building or the Lessee's occupation of or activities on the Lands or in the Building, and to not use or occupy or permit to be used or occupied the Lands or the Building or any part thereof for any illegal or unlawful purpose or in any manner which would result in the cancellation or threatened cancellation of any insurance, or in the refusal of any insurer to issue any insurance as requested. If any law, bylaw or lawful order is directed at or places a duty or obligation upon the Lessor then the same will be performed and observed by the Lessee, at its cost, in the place and stead of the Lessor.

ARTICLE 13
EXCLUSION OF LIABILITY AND INDEMNITY

13.1 Limitation of Liability and Release

Neither the Lessor nor the Commission nor their respective Personnel or contractors will be liable for, and the Lessee hereby releases the Lessor, the Commission and their respective Personnel and contractors from all Losses, including without limitation, Losses as a result of:

- (a) any bodily injury or death caused, suffered or sustained in or about the Lands or the Building; or
- (b) any property damage or other loss or damage to the Lands or the Building, or to any property belonging to the Lessee or to any other person in or about the Lands or the Building,

unless resulting from the respective negligence or wilful acts of the Lessor, the Commission or their respective Personnel or contractors, as the case may be.

13.2 Exclusion of Liability

Notwithstanding Section 13.1, neither the Lessor nor the Commission nor their respective Personnel or contractors will be liable for:

- (a) business, economic or indirect loss or damage of any nature whatsoever, however caused, which may be suffered or sustained by the Lessee or any other person who may be in or about the Lands or the Building; or
- (b) any loss against which the Lessee is obligated to insure or has insured.

13.3 Indemnification

The Lessee will indemnify and save harmless the Lessor, the Commission and their respective Personnel and contractors from and against all Losses which the Lessor, the Commission or their respective Personnel or contractors may suffer or incur arising out of this Lease; provided, however, that such indemnity will not apply to the extent to which such Losses result from the respective negligence and/or wilful acts of the Lessor, the Commission or their respective Personnel or contractors, as the case may be. Subject to the foregoing proviso, the Lessee will indemnify and

save harmless the Lessor, the Commission and their respective Personnel and contractors in respect of all Losses:

- (a) as a result of bodily injury or death, property damage or other damage arising from the conduct of any work by or any act or omission of or relating to or arising from the occupation or possession of the Lands and the Building by the Lessee or any assignee, subtenant, Personnel, contractor, invitee or licensee of the Lessee; or
- (b) suffered or incurred by the Lessor, the Commission or their respective Personnel and contractors that arise, whether directly or indirectly, from any breach by the Lessee, its Personnel, contractors or any other person for whom the Lessee is responsible in law, of any of its covenants and obligations under this Lease.

13.4 Indemnification Survives Termination of Lease

The obligations of the Lessee to indemnify the Lessor, the Commission and their respective Personnel and contractors will apply and continue notwithstanding the termination or expiration of this Lease.

13.5 Indemnity Exemption for PRHC

None of the provisions of the Lease which require the Lessee to indemnify the Lessor or the Commission will apply if PRHC is the Lessee under this Lease.

ARTICLE 14 SUBLETTING AND ASSIGNING

14.1 Subletting and Assigning by Lessee

The Lessee will not sublease, assign, transfer, sell or encumber the Lease or enter into any agreement for the purpose of sub-leasing, assignment, transferring, selling or encumbering the Lease, the Building or the Lands, except as expressly permitted in this Lease, or with the prior written consent of the Lessor and the Commission, which consent the Lessor and the Commission may arbitrarily withhold; provided, however, that if the Lessee is PRHC, or the Commission, the Lessor and the Commission will not unreasonably withhold their consent. The Lessee may sublet or grant licences or other rights to occupy or use any part of the Building to:

- (a) Eligible Occupants; or
- (b) staff and other personnel authorized by the Lessor and the Commission who are required to operate and maintain the Building and the Lands for the purposes of this Lease.

14.2 Copies of Subleases

If requested by the Lessor or the Commission, a copy of all subleases will be forwarded to the Lessor or the Commission, as the case may be, within fourteen (14) days after the receipt of the request.

ARTICLE 15
BANKRUPTCY OF LESSEE

15.1 Bankruptcy of Lessee

If the Lessee's interest in this Lease is at any time seized or taken in execution by any creditor of the Lessee, or if the Lessee makes a general assignment for the benefit of creditors, or institutes proceedings to subject itself to the *Winding-up and Restructuring Act* (Canada) or to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files an application or petition or answer or consent seeking reorganization or readjustment of the Lessee under the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) or any law of Canada or any province thereof relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver, or if the Lessee or its directors pass any resolution authorizing the dissolution or winding-up of the Lessee, or if a receiver, interim receiver, trustee or liquidator of all or any part of the property of the Lessee is appointed or applied for by the Lessee, or if a judgment, decree or order is entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Winding-up and Restructuring Act* or *Bankruptcy and Insolvency Act* or determining the proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or winding-up or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency has been properly instituted, then, subject to Article 21, this Lease will, at the option of the Lessor, immediately become terminated.

ARTICLE 16
DEFAULT BY LESSEE

16.1 Re-entry on Certain Defaults by Lessee

Subject to the provisions of Article 21, if and whenever:

- (a) Basic Rent or any part thereof is not paid on the day appointed for payment thereof; or
- (b) the Lessee defaults in payment of Additional Rent or any other sums required to be paid to the Lessor or the Commission by any provision of this Lease, and such default continues for forty-five (45) days following any specific due date on which the Lessee is to make such payment or, in the absence of such specific due date, for forty-five (45) days following notice by the Lessor or the Commission requiring the Lessee to pay the same; or
- (c) the Building is abandoned or remains vacant for more than thirty (30) days; or
- (d) the Lessee defaults in performing or observing any of its other covenants or obligations under this Lease, or any event occurs which by the terms of this Lease constitutes a breach hereof or confers upon the Lessor the right to re-enter or forfeit or terminate this Lease, and the Lessor has given to the Lessee notice of such default or the happening of such event, and if at the expiration of forty-five (45) days after the giving of such notice the default continues to exist, or in the case of a default which cannot with due diligence be cured within the period of forty-five (45) days aforesaid, if the Lessee does not commence the rectification of such default within the said forty-five (45) day notice period and thereafter promptly and diligently and continuously proceed with such rectification; or

- (e) this Lease expires or is forfeited or terminated pursuant to any other provision contained herein, including, without restricting the generality of the foregoing, the termination of this Lease pursuant to the provisions of Sections 4.3 and 10.5,

then and in every such case, it will be lawful for the Lessor at any time thereafter without notice or demand, with or without process of law and by forced entry if necessary, to enter into and upon the Lands and the Building, or part thereof in the name of the whole, and, if this Lease has not already expired or been forfeited or terminated, to terminate this Lease by leaving upon the Lands notice in writing of such termination. If the Lessor terminates this Lease pursuant to this Section 16.1, or otherwise as a result of default of the Lessee, or if the Lessee has forfeited this Lease, the Lessee will be liable to the Lessor for the rents and all other amounts to be paid and the covenants to be performed by the Lessee up to the date of such termination or forfeiture.

16.2 Remedies of Lessor and the Commission are Cumulative

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

16.3 Waiver by Lessor and Commission

The failure of the Lessor or the Commission to insist upon the strict performance of any covenant or agreement contained in this Lease will not waive such covenant or agreement, and the waiver by the Lessor or the Commission of any breach of any covenant or agreement of the Lessee under this Lease will not constitute a waiver of such covenant or agreement in respect of any other breach. The receipt and acceptance by the Lessor of rent or other monies due hereunder with knowledge of any breach of any covenant or agreement by the Lessee will not constitute a waiver of such breach. No waiver by the Lessor or the Commission will be effective unless made in writing.

ARTICLE 17 ARBITRATION

17.1 Arbitration

If a disagreement arises pursuant to Sections 4.3, 4.6, or 6.1, the same will be settled by arbitration. The arbitration will be conducted by a single arbitrator chosen by the Commission which arbitrator will be at arm's length from the Commission. The costs and expenses of the reference and award will be dealt with as follows:

- (a) each party will bear its own expense of preparing and presenting its case to the arbitrator, irrespective of whether any such expense was incurred or contracted for prior to the commencement of the arbitration process, including the expenses of appraisals, witnesses and legal representation; and
- (b) the fees of the arbitrator will be paid as determined by the arbitrator.

The *Arbitration Act* (British Columbia) will apply with respect to the arbitration.

ARTICLE 18
SURRENDER OF LEASE

18.1 Surrender of Lease

At the termination or expiration of the Term, whether by forfeiture, default or lapse of time, the Lessee will remove the Building from the Lands and will surrender the Lands to the Lessor in the condition in which they were required to be kept by the Lessee pursuant to the provisions of this Lease, including, without restricting the generality of the foregoing, the provisions of Section 10.5(b), except as herein otherwise expressly provided.

ARTICLE 19
QUIET ENJOYMENT, OWNERSHIP OF TENANTS' FIXTURES AND OWNERSHIP OF BUILDING

19.1 Covenant for Quiet Enjoyment

Subject to the Lessor's and the Commission's rights and obligations herein, and subject to the Permitted Encumbrances as extended or modified from time to time, if the Lessee pays the Rent hereby reserved and all other amounts payable hereunder, and observes and performs all of the obligations, covenants and agreements of the Lessee herein contained, the Lessee may peaceably enjoy and possess the Lands for the Term, without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming through, from or under the Lessor, provided however that the enforcement by the Lessor, in its capacity as a local government, of its laws, bylaws and orders that touch and concern the Lands and Building will not be a breach of the Lessor's covenant set forth in this Section 19.1.

19.2 Ownership of Tenant's Fixtures

The Lessee may confer upon tenants or occupants of the Building the right of property in, or the right to remove, fixtures or improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Building or the Lands. The Lessee will make good, or will cause such tenants to make good, any damage to the Building caused by any removal of the tenants' fixtures.

19.3 Ownership of Building

Notwithstanding the degree of fixation of the Building to the Lands, the Building will be deemed, as between the Lessor and the Lessee during the Term, to be the separate property of the Lessee and not of the Lessor but subject to and governed by all the provisions of this Lease.

ARTICLE 20
OVERHOLDING

20.1 Overholding

The Lessee covenants and agrees with the Lessor that if the Lessee overholds and the Lessor accepts rent after the expiration of the Term, the new tenancy thereby created will be a tenancy from month to month and not a tenancy from year to year and will be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month, provided however that the monthly Basic Rent payable by the Lessee will be the then market rental value of the Lands and the Building as determined from time to time in the bona fide opinion of the Lessor, and such monthly Basic Rent will be paid in advance. The Lessee will also pay monthly as

Additional Rent one-twelfth of the then current amounts described in Section 3.1 or 3.2 hereof, as the case may be.

ARTICLE 21
ADDITIONAL RIGHTS OF THE COMMISSION

21.1 Notice to Commission

Unless otherwise agreed in writing by the Commission and unless failure of the Lessor to act in the circumstances would result in an emergency situation, the Lessor may not exercise any of its rights which arise as a result of a default by the Lessee under this Lease until ninety (90) days (the "Notice Period") after receipt by the Commission of written notice describing the Lessee's default.

If at the expiration of the Notice Period:

- (a) the Commission has not cured such default; or
- (b) the Commission has not given the Lessor a notice in writing (the "Attornment Notice") advising the Lessor that the Commission or its nominee will attorn as tenant under this Lease;

then the Lessor will be at liberty to proceed to exercise any of the powers given to it under this Lease.

Upon receipt of the Attornment Notice the Lessor will enter into the necessary agreement with the Commission or its nominee allowing them to attorn as tenant under the Lease.

21.2 Rights of Commission Not Limited

The rights given to the Commission pursuant to Article 21 are not to be construed in any manner whatsoever so as to limit or otherwise prejudice the rights of the Commission under any other agreement, including the Operator Agreement.

21.3 Commission May Perform Obligations of Lessee

Where the Commission chooses to perform an obligation of the Lessee under this Lease in order to avoid forfeiture, the Lessor will accept that performance as if the same had been performed by the Lessee.

ARTICLE 22
ENVIRONMENTAL MATTERS

22.1 Definitions

For the purposes of this Article 22:

- (a) "Contaminants" mean any pollutants, contaminants, deleterious substances, underground or aboveground tanks, asbestos materials, urea formaldehyde, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance which is now or hereafter prohibited, controlled or subject to Environmental Laws; and

- (b) “Environmental Laws” means any statute, law, regulation, order, bylaw, standard, guideline, permit and other lawful requirement of any governmental authority having jurisdiction over the Lands or Building, now or hereafter in force and relating in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, and includes the principles of common law and equity.

22.2 Lessee’s Covenants and Indemnity

The Lessee covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the Lands or Building for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with Contaminants, without the prior written consent of the Lessor, which consent may be arbitrarily withheld;
- (b) to strictly comply, and cause all persons for whom it is at law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Lands and Building;
- (c) to promptly provide to the Lessor a copy of any environmental site investigation, assessment, audit or report relating to the Lands or Building and conducted by or for the Lessee at any time before, during or after the Term, or any renewal or extension thereof. The Lessee hereby waives the requirement for the Lessor to provide a site profile for the Lands pursuant to the *Environmental Management Act* (British Columbia), any regulations enacted pursuant thereto, or any similar or successor legislation;
- (d) to promptly provide to the Lessor on request such written authorizations as the Lessor may require from time to time to make inquiries of any governmental authorities regarding the Lessee’s compliance with Environmental Laws;
- (e) to promptly notify the Lessor in writing of the existence or release of any Contaminant on, in or under the Lands or Building or of any other occurrence or condition on the Lands or any adjacent property that could contaminate the Lands or the Building or result in the non-compliance of the Lands or Building with Environmental Laws, or subject the Lessor or Lessee to any fines, penalties, orders, investigations or proceedings under Environmental Laws;
- (f) on the expiry or earlier termination of this Lease, or at any time if requested by the Lessor or required pursuant to Environmental Laws, to remove from the Lands all Contaminants, and to remediate any contamination of the Lands or any adjacent or other affected property resulting from Contaminants, in either case brought onto, used at, created upon or released from the Lands by the Lessee or any person for whom the Lessee is at law responsible. The Lessee will perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants will remain the property of the Lessee, notwithstanding any rule of law or other provision of this Lease to the contrary and notwithstanding their degree of affixation to the Lands; and
- (g) without limiting the generality of Article 13, to indemnify the Lessor, the Commission and their respective Personnel and contractors from any and all Losses (including the cost of remediation of the Lands and Building and any other affected property) arising from or in connection with:
 - (i) any breach of or non-compliance with the provisions of this Article 22 by the Lessee; or

- (ii) the release or alleged release of any Contaminants on or from the Lands related to or as a result of the use and occupation of the Lands and Building by, or any act or omission of, the Lessee or any person for whom the Lessee is responsible at law.

The obligations of the Lessee under this Article 22 will survive the expiry or earlier termination of this Lease, and the obligations of the Lessee under this Article 22 are in addition to, and will not limit, the other obligations of the Lessee under this Lease.

ARTICLE 23 OPTION TO RENEW

23.1 Option to Renew

If:

- (a) the Lessee is not then in default under this Lease; and
- (b) the Lessee gives the Lessor not less than thirty (30) days written notice prior to the expiry of the Term that the Lessee wishes to exercise this option to renew,

then the Lessor will grant the Lessee a renewal of this Lease for the Lands for one successive and further term of five (5) years (the “Renewal Term”), upon the same terms and conditions as are set out in the Lease, provided that:

- (c) all references to the Term in the Lease shall be deemed to include the Renewal Term;
- (d) there shall be no further option to renew after the expiry of the Renewal Term; and
- (e) the Lessor or the Lessee will have the option at any time during the Renewal Term to terminate this Lease upon providing the other party with not less than one hundred eighty (180) days written notice of its intention to do so, and in such event this Lease will terminate one hundred eighty (180) days after the date of receipt of such notice by the receiving party.

ARTICLE 24 NOTICES

24.1 Notices

All notices, demands and request which may or are required to be given pursuant to this Lease will be in writing and will be sufficiently given if served personally upon the party for which it is intended, or mailed prepaid:

- (a) in the case of the Lessor, addressed to:

City of Salmon Arm
PO Box 40
500 2 Avenue NE
Salmon Arm, BC V1E 4N2

Attention: ♦

(b) in the case of the Commission or PRHC, addressed to:

British Columbia Housing Management Commission
Suite 1701 - 4555 Kingsway
Burnaby BC V5H 4V8
Attention: Manager Real Estate Services

or at such other addresses as each of the parties may from time to time advise by notice in writing. The date of receipt of any such notice, demand or request will be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed as aforesaid on the fifth business day next following the date of such mailing; provided, however, that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down of postal service or other labour dispute which affects the delivery of such notice, then such notice will be deemed to be received when actually delivered.

ARTICLE 25 MISCELLANEOUS

25.1 Statements by Lessor

The Lessor and the Lessee will, at any time and from time to time, upon not less than thirty (30) days prior request by the other party, execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this Lease is unmodified and in full force and effect, or if there have been modifications, the nature of such modifications and that the same are in full force and effect as modified;
- (b) the dates to which the rent and any other amounts payable under this Lease have been paid; and
- (c) that to the best of the information and belief of the maker of the statements, the Lessor and the Lessee are not in default under any provision of this Lease, or, if in default, the particulars thereof.

25.2 Time of Essence

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

25.3 Formality of Modifications

This Lease may not be modified or amended except by an instrument in writing executed by the Lessor and the Commission or their successors or assigns, and by the Lessee or its successors or permitted assigns.

25.4 Captions and Headings

The captions and headings throughout this Lease are for convenience and reference only and the words and phrases contained therein will in no way be held or deemed to define, limit, describe explain, modify, amplify or add to the interpretation, construction or meaning of any provision of or the scope or intent of this Lease nor in any way affect this Lease.

25.5 Enurement

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

25.6 Covenants or Conditions

All of the provisions of this Lease will be deemed and construed to be conditions as well as covenants, as though the words specifically expressing or importing covenants or conditions were used in each separate provision hereof.

25.7 References

The words “herein”, “hereby”, “hereunder” and words of similar import refer to this Lease as a whole and not to any particular Article, Section or subsection in this Lease.

25.8 Execution

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

