

File No.: 04-1000-20-2020-505

December 18, 2020

s.22(1)

Dear s.22(1)

Re: **Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")**

I am responding to your request of September 17, 2020 for:

**Record of Lease between the City of Vancouver and Hostelling International for the location at 1515 Discovery Street.**

All responsive records are attached. Some information in the records has been severed, (blacked out), under s.17(1) of the Act. You can read or download this section here: [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/96165\\_00](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00).

Under section 52 of the Act you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your request. The Act allows you 30 business days from the date you receive this notice to request a review by writing to: Office of the Information & Privacy Commissioner, [info@oipc.bc.ca](mailto:info@oipc.bc.ca) or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number assigned to your request (#04-1000-20-2020-505); 2) a copy of this letter; 3) a copy of your original request for information sent to the City of Vancouver; and 4) detailed reasons or grounds on which you are seeking the review.

Please do not hesitate to contact the Freedom of Information Office at [foi@vancouver.ca](mailto:foi@vancouver.ca) if you have any questions.

Yours truly,

[Signature on file]

**Barbara J. Van Fraassen, BA**  
**Director, Access to Information & Privacy**

[Barbara.vanfraassen@vancouver.ca](mailto:Barbara.vanfraassen@vancouver.ca)

453 W. 12th Avenue Vancouver BC V5Y 1V4

\*If you have any questions, please email us at [foi@vancouver.ca](mailto:foi@vancouver.ca) and we will respond to you as soon as possible. Or you can call the FOI Case Manager at 604.871.6584.

Encl.

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## OPERATING AGREEMENT

THIS AGREEMENT effective the 1<sup>st</sup> day of February, 2013,

BETWEEN:

**CITY OF VANCOUVER**, as represented by its  
**BOARD OF PARKS AND RECREATION**  
2099 Beach Avenue  
Vancouver, British Columbia V6G 1Z4  
  
(the "Park Board")

AND:

**CANADIAN HOSTELLING ASSOCIATION/ASSOCIATION  
CANADIENNE DE L'AJISME - BRITISH COLUMBIA REGION**  
Incorporation No. S-0005621)  
200-1155 West Pender Street  
Vancouver, British Columbia V6E 2P4  
  
(the "Society")

### BACKGROUND:

- A. The City of Vancouver (the "City") is the owner of a parcel of land which is that part of Jericho Park located between Trimble Street and Discovery Street north of NorthWest Marine Drive, and legally described as:

Parcel Identifier: 007-025-726

Legal Description: Lot E Blocks 131 and 132 District Lot 540 Plan 19382

(the "Lands");

a portion of the Lands having been transferred to the City by way of Crown grants which contain a Possibility of Reverter if same are not "used for public park and recreational purposes";

- B. Pursuant to the *Vancouver Charter*, the Lands have been designated as a permanent public park and the Park Board has jurisdiction and control of the Lands;
- C. A building, generally known as "Building No. 4", is located on the Lands, as identified in heavy bold outline on the plan attached as Schedule A (the "Facility");
- D. The Society, incorporated on March 6, 1959, has occupied the Facility since 1971, and wishes to continue to manage and operate the Facility;

- E. The Park Board, pursuant to a resolution made at its meeting held on February 24, 2003, entered into an operating agreement with the Society dated February 1, 2003 for a term of ten years (the "Original Agreement") to allow the Society to manage and operate the Facility; and
- F. Pursuant to Section 19 of the Original Agreement, the Park Board wishes to enter into this Agreement for a further period of ten years on the terms and conditions set out in this Agreement.

**AGREEMENT:**

The parties agree as follows:

**1. TERM OF AGREEMENT**

- 1.1 This agreement is for a term of TEN YEARS commencing on February 1, 2013 (the "Effective Date") and expiring at 11:59pm on January 31, 2023 (the "Term").

**2. USE OF FACILITY**

- 2.1 The Park Board hereby grants to the Society a licence to use the Facility only for the purpose of operating a hostel, including a cafeteria, for use by travellers, unless otherwise agreed in writing by the Park Board. For greater certainty, the Society agrees that the Facility must not be used for commercial purposes unless the Society obtains the prior written approval of the Park Board.
- 2.2 If requested by the Park Board, the Society will allow all or part of the Facility to be used:
  - 2.2.1 for public recreational activities; or
  - 2.2.2 by exchange groups, visiting teams and non-profit recreational organizations and clubs as a hostel, at the usual hostel rates charged by the Society.
- 2.3 Prior to applying to the Liquor Control and Licensing Branch or any successor in function of such Branch for a new or amended liquor licence or permit for the Facility, the Society will obtain the prior written consent of the Park Board.
- 2.4 On the written request of the Society, the Park Board will allow the Society to use that portion of the Lands adjacent to the Facility identified by hatching and marked as the "Maintenance Area" on Schedule A, to maintain or repair the Facility.
- 2.5 The Society will ensure that membership in the Society is open to any member of the public who wishes to participate in the activities of the Society, provided that the Society may:
  - 2.5.1 terminate a membership, or refuse an applicant for membership, if the member or applicant fails or refuses to comply with the Constitution or Bylaws of the Society or the reasonable rules and regulations established by the Society for use of the Facility; and

2.5.2 require that an applicant for membership establish that he or she has an interest in the activities of the Society.

2.6 The Society agrees that it will establish the fees and assessments payable with respect to the Facility or the Society (if such fees and/or assessments specifically relate or apply to the Facility) in a professional and orderly manner consistent with the Bylaws and rules of the Society from time to time, including without limitation any fee or assessment for:

2.6.1 membership in the Society;

2.6.2 use of all or part of the Facility, including without limitation overnight hostel rates; or

2.6.3 improvements to all or part of the Facility;

provided that, for matters referred to in Section 2.6.2 and 2.6.3, if the Society increases any fee or assessment by more than ten percent in any calendar year or levies a new fee or assessment, the Society must obtain the prior written approval of the Park Board for such increase or new fee or assessment.

2.7 The Society agrees to obtain the prior written approval of the Park Board prior to amending the Constitution or Bylaws of the Society or any operating policy affecting the operation of the Facility, which approval will not be unreasonably withheld or delayed.

### 3. ANNUAL FEE

3.1 The Society agrees to pay to the Park Board, without prior demand or any deduction or set off whatsoever, an annual fee (the "Annual Fee") for use of the Facility as follows:

3.1.1 during the Term, the Annual Fee for each Fiscal Year will be the greater of:

(a) s.17(1)

(b) s.17(1)

which payment will be accompanied by a Revenue Report prepared and submitted in accordance with Section 4.

3.1.2 For the purposes of this Agreement:

- (a) **"Fiscal Year"** means the fiscal year of the Society which is a 12 month period commencing on the 1<sup>st</sup> day of April in one calendar year and ending on the 31<sup>st</sup> day of March in the next calendar year, providing that the first Fiscal Year will commence on the Effective Date and expire on the 31<sup>st</sup> day of March next following and the last Fiscal Year will commence on the 1<sup>st</sup> day of April and terminate on the last day of the Term; and
- (b) **"Gross Revenue"** means the entire amount of the total revenue from rental of beds or space in the Facility or sales of food, beverages (including alcoholic beverages, if sold) and merchandise, whether for cash or credit, and the entire amount of all other receipts from all operations at the Facility and includes all receivables whatsoever of all operations conducted at, in, on or from the Facility by the Society and any affiliate of the Society, including receipts and receivables in respect of services provided at the Facility even though orders for such services are not made at or through the Facility, but excluding:
  - 3.1.2.b.1. all sums collected and paid out for any direct retail sales tax imposed by any government authority, including HST and PST;
  - 3.1.2.b.2. any credit card fees, including charges for rejected credit cards; and
  - 3.1.2.b.3. any revenue remitted directly to the Canadian Hostelling Association on account of memberships in the Society, provided such remittance of revenue is a requirement of the affiliation of the Society with the Canadian Hostelling Association or with an international hostelling association.

#### 4. REVENUE REPORT

- 4.1 The Society will, at its expense, deliver to the Park Board the following reports (the **"Revenue Reports"**) during the Term:
  - 4.1.1 an annual Revenue Report for each Fiscal Year or portion of Fiscal Year during the Term, to be delivered on or before 90 days after the end of such Fiscal Year, and to be in accordance section 4.1.4, provided that the annual Revenue Reports for each Fiscal Year, will be accompanied by the balance of the Annual Fee payable, if such Revenue Report indicates that, based on the Gross Revenue for such Fiscal Year, the amount owing on account of the Annual Fee exceeds that paid for that Fiscal Year pursuant to Section 3.1.1;
  - 4.1.2 on the 21<sup>st</sup> day of every third month during the Term, a quarterly Revenue Report for the previous three months, together with the portion of the Annual Fee payable pursuant to Section 3.1.1;
  - 4.1.3 within 30 days of the date of the expiry or earlier termination of this agreement, a Revenue Report for the period between the most recently submitted Revenue Report for a Fiscal Year and the date of expiry or earlier termination, together with the balance of the Annual Fee payable if such Revenue Report indicates that, based on the Gross Revenue for that period, the

amount owing on account of the Annual Fee exceeds that paid for such period pursuant to Section 3.1.1; and

4.1.4 **“Revenue Report”** means a report on revenue collected by the Society from the operation of the Facility, which report must:

- (a) be in writing and certified by a director or officer of the Society as being complete and true as to its contents;
- (b) indicate both the actual revenue and the Gross Revenue collected by the Society from the operation of the Facility for all of the reporting period; and
- (c) indicate the Annual Fee for the reporting period based on the Gross Revenue from the operation of the Facility.

provided that the annual Revenue Report for each Fiscal Year during the Term (but not the monthly Revenue Report) must be:

- (d) audited and the audit must be certified by an independent Certified General Accountant or a Chartered Accountant who is in good standing in the Province of British Columbia and is acceptable to the Park Board;
- (e) unqualified and in the form recommended by the Canadian Institute of Chartered Accountants for such an engagement; and
- (f) supplemented by a management letter prepared by the auditor that states whether the Revenue Report presents fairly the Gross Revenue for that reporting period or, if the Revenue Report is inaccurate, sets out the correct Gross Revenue for that reporting period and identifies and comments on any internal control weaknesses regarding the collection and reporting of revenue and, if no such weaknesses are identified, the audit report must be supplemented by a letter from the auditor in which this is indicated.

4.2 The Society will maintain a high standard of internal accounting procedures and controls over all revenues collected by the Society in the operation of the Facility and will ensure that all revenues collected with respect to the Facility are clearly and accurately accounted for in accordance with the terms of this agreement. The Society will maintain records for the operation of the Facility which are separate from the records which the Society maintains for other operations or businesses conducted by the Society.

4.3 The Society will retain possession of all documents pertaining to the operation of the Facility for not less than six years.

4.4 The Park Board reserves the right to:

- 4.4.1 audit the books, records and accounts of the Society with respect to the operation of the Facility at any reasonable time and the Society will make available to the Park Board, at any reasonable time, all documents pertaining

- to the operation of the Facility, and, subject to Section 4.4.3, the Park Board and the Society will each bear their own costs for such audit;
- 4.4.2 require that the Society submit audited financial statements of the Society for each Fiscal Year during the Term, and the requirements with respect to the audited Revenue Reports set out in Section 4.1.4 will apply to such audited financial statements;
  - 4.4.3 require that, if any audit conducted by the Park Board discloses that the actual Gross Revenue for any Fiscal Year is greater by three percent or more than that disclosed by the audited financial statements provided by the accountant for the Society, the Society pay the cost of such audit forthwith on demand by the Park Board; and
  - 4.4.4 terminate this agreement on 30 days' written notice to the Society if any audit conducted by the Park Board discloses that the actual Gross Revenue for any Fiscal Year is greater by five percent or more than that disclosed by the audited financial statements provided by the accountant for the Society and, in the reasonable opinion of the General Manager of the Park Board the misstatement of Gross Revenue is intentional, which right to terminate is in addition to the Park Board's other rights in this agreement.
- 4.5 Whenever and so long as the Annual Fee or any other amounts payable under this agreement by the Society to the Park Board is in arrears, such amounts will bear interest at the rate of three percent per annum above the "prime rate" (hereinafter defined), per annum calculated monthly not in advance, from the date due until paid irrespective of whether or not the Park Board has demanded payment. In this agreement, "prime rate" means the floating annual percentage rate of interest established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, 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 Bank of Montreal as its prime rate.
- 5. RESPONSIBILITY OF SOCIETY**
- 5.1 The Society will manage and operate the Facility in a proper, efficient and timely manner as would a prudent owner of similar property and will:
    - 5.1.1 equip, furnish and maintain the Facility in a satisfactory state of repair and in a neat and tidy condition and fit for the use set out in Section 2.1, including compliance with all health and safety standards;
    - 5.1.2 repair or replace as required all utility connections from the property lines of the Lands to the Facility;
    - 5.1.3 comply with all laws, bylaws and orders with respect to the Society's use of the Facility, and will obtain all necessary permits and licences as required by law; and
    - 5.1.4 post a sign at the main entrance to the Facility identifying the Facility and such other wording as required by the Park Board from time to time, and the Society



must obtain the prior written approval of the Park Board for such sign or any changes to such sign.

- 5.2 The Society will be responsible for and will pay all costs associated with the operation of the Facility, including without limitation the following:
- 5.2.1 insurance as required by Section 9;
  - 5.2.2 sewer, water, garbage pickup;
  - 5.2.3 utilities, including electricity, gas, telephone and cablevision;
  - 5.2.4 staffing costs and activity and program costs;
  - 5.2.5 maintenance of the Facility in a satisfactory state of repair and in a neat and tidy condition, including all equipment, material and supplies required;
  - 5.2.6 all repairs to the structure, including the roof, roof membrane, bearing walls, and floor of the building and repairs to and maintenance of the exterior of the building and repairs and replacements to the fire alarm/safety systems, heating, plumbing and electrical systems for the Facility and any exterior addition, renovation or alteration to the building at the Facility (the "Major Repairs"); and
  - 5.2.7 administration costs, including accounting and legal fees.
- 5.3 The Society will permit representatives of the Park Board to inspect the Facility at any reasonable time. If in the opinion of the Park Board the Society is not providing prudent management or maintaining the Facility in a satisfactory state of repair as required, on 60 days' written notice, except in the case of an emergency, from the Park Board, the Society will rectify the deficiencies in accordance with such notice within the said 60 days or as soon as possible thereafter provided that the Society commences remedying such deficiencies within the said 60 days and continues to remedy same expeditiously.
- 5.4 If the Society fails to comply within the period of time set out in a notice given by the Park Board in accordance with Section 5.3, the Park Board may take such measures as the Park Board, in its sole discretion, deems necessary to restore the Facility to a satisfactory state of repair and to ensure prudent management of the Facility and the proper renovation of the Facility, including terminating this agreement in accordance with Section 14.2.
- 5.5 The Society acknowledges that the City and the Park Board have the right to enter the Facility to construct, maintain or repair any public works, services and utilities on the Facility, and the Park Board agrees that, if as a result of such work any property of the Society is damaged by the City or the Park Board, the Park Board will either repair such property or reimburse the Society for the cost of having such property repaired or replaced, the amount and sufficiency of such reimbursement to be determined by the Park Board in its sole discretion.

## **6. AUTHORITY OF SOCIETY**

- 6.1 The Society must not commit or otherwise obligate the City or the Park Board in any manner whatsoever, except to the extent specifically provided in this agreement, or specifically authorized in writing by the Park Board and in particular, without limiting the generality of the foregoing, the Society must not take any action, expend any sum, make any decision, give any consent, approval or authorization or incur any obligation with respect to any of the following matters except with the prior written approval of the Park Board:

- 6.1.1 allowing any encumbrance to charge title to the Lands;
- 6.1.2 executing any lease or any other arrangement involving the rental, use or occupancy of all or part of the Facility, other than as permitted in Sections 2.1 and 2.2;
- 6.1.3 installing any signage on the exterior of any structure at the Facility; and
- 6.1.4 making a Major Repair.

- 6.2 Without limitation of the foregoing, the Society must not make any new capital expenditure during the Term unless such expenditure is made by prior mutual agreement of the parties.

## **7. RESPONSIBILITY OF THE CITY/ PARK BOARD**

- 7.1 Neither the City nor the Park Board will be required to make any payment to the Society for the management and operation or repair of the Facility.
- 7.2 The Park Board will use reasonable efforts to consult with the Society if the Park Board proposes to change the use of any building on the Lands which is immediately adjacent to the Facility.

## **8. RECORDS FOR THE FACILITY**

- 8.1 The Society will make available to the Park Board, at any reasonable time, all documents pertaining to the operation of the Facility. If requested by the Park Board, on termination of this agreement the Society will deliver to the Park Board all data and information generated by or for the Society in connection with the Facility.

## **9. INSURANCE**

- 9.1 The Society, at its expense, will obtain and maintain insurance coverage with minimum limits of not less than those specified, as follows:

- 9.1.1 **Commercial General Liability Insurance** with limits no less than Five Million Dollars (\$5,000,000) per occurrence or such higher limit of coverage as the City's Director of Risk and Emergency Management may require from time to time and the policy will:

- (a) indemnify and protect the Society, its employees, agents and contractors against all claims for loss, damage, injury or death to any

person or persons and for damage to the Facility or to any public or private property occurring within or about the Facility or arising by virtue of the Society's occupation or possession of the Facility or any rental of all or part of the Facility as permitted by this agreement;

- (b) insure the Society, the City, the Park Board and their respective officers, employees and agents in the same manner and to the same extent as if separate policies had been issued to each and apply with respect to any action brought against one party by the other or by any officer, employee or agent of one party and any breach of a condition of the policy by any party or by any officer, employee or agent of one party will not affect the protection given by the policy to any other party or to any officer, employee or agent of any party;
- (c) add the City, the Park Board, their officials, officers, employees and agents as additional insureds;
- (d) include All Risk (Broad Form) Society's Legal Liability insurance for an amount equal to the full replacement cost of the Facility, such coverage to include the activities and operations conducted by the Society and third parties in the Facility;
- (e) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this agreement; and
- (f) provide for a limit of deductibility not greater than \$5,000.00 or such other minimum limit as the City's Director of Risk and Emergency Management may sanction from time to time.

9.1.2 The Society will, at its cost, on terms and to limits as would a prudent owner of similar property, obtain and continuously carry during the Term a separate commercial broadform policy of insurance on the Facility up to its full replacement value without a co-insurance clause, protecting the Park Board, the City and the Society for any loss or damage to the Facility against perils that are customarily included in an all risk property insurance policy, which may include without limitation earthquake, flood, and tidal wave insurance. Such policy will name the Park Board, the City and the Society as joint named insureds.

9.1.3 The Society will, at its cost, obtain and continuously carry during the Term All Risk (Broadform) insurance on:

- (a) property of every description and kind owned by the Society or for which the Society is legally liable or installed by or on behalf of the Society (and which is located in the Facility), including without limitation furniture, fittings, installations, alterations, additions, partitions, fixtures, trade fixtures and any display model, project, prototype, tool, instrument or device within the Facility in an amount not less than 90% of the full replacement cost thereof; and

- (b) **Boiler and Machinery Insurance** protecting the Park Board, the City and the Society against accidental damage to all boilers, pressure vessels (fired and unfired), refrigerating and air conditioning systems, piping and accessory equipment,

and these insurance policies will:

- (c) provide for a limit of deductibility not greater than \$5,000.00 per occurrence with respect to all perils except earthquake and the deductible for any claim will be paid by the Society; and
- (d) carry a loss payable clause stating that the proceeds of any claim against the insurer will be payable to the Park Board, the City and the Society as their interests appear.

9.2 The following will apply to all insurance policies:

- 9.2.1 the policies will be with insurers duly authorized to carry on business in the Province of British Columbia, in a form and in amounts satisfactory from time to time and acceptable to the City's Director of Risk and Emergency Management and will provide the City and the Park Board with 60 days prior written notice of material change or cancellation that may result in a reduction of coverage, such notice to be given to the City of Vancouver, c/o Risk and Emergency Management Division, Attention: Insurance Administrator and to identify the name of the Society as set out in this agreement and the location or address of the Facility;
  - 9.2.2 neither the providing of insurance by the Society in accordance with the requirements under this agreement, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Society from any other provisions of this agreement with respect to liability of the Society or otherwise;
  - 9.2.3 the insurance coverage will be primary insurance as respects the City and the Park Board and any insurance or self-insurance maintained by or on behalf of the City and the Park Board, their officials, officers, employees or agents will be excess of this insurance and will not contribute with it; and
  - 9.2.4 subject to the provisions of Section 9, the Society will provide, at its cost, any additional insurance which the Society is required by law to provide or which the Society considers necessary.
- 9.3 Prior to the commencement of this agreement, the Society will provide to the Park Board evidence of each policy of insurance required to be taken out by the Society in the form of a detailed Certificate of Insurance supported by a certified copy of the policy, which certificate must not contain any disclaimer whatsoever. At all times during the Term, the Society will covenant and agree to comply with all its insurance obligations described in this agreement. Similar evidence of renewals, extensions or replacement of such policies must be made available to the City's Director of Risk and Emergency Management at any time upon request and if the Society fails to provide satisfactory proof of such coverage being in full force and effect, the Park Board may,

but is not obligated to or liable for the manner in which it does so, secure such insurance and the Society will reimburse the Park Board for the cost of all incurred expenses.

## **10. LIABILITY**

- 10.1 Except to the extent caused by the negligence of the Park Board or of any person for whom the Park Board is responsible in law, the Society agrees to indemnify and save harmless the City and the Park Board and their officers, employees and agents against all loss, damage, costs and liabilities which the City, the Park Board and their officers, employees and agents may be liable for or suffer by reason of the management and operation of the Facility by the Society.
- 10.2 Except to the extent of the negligence of the Park Board or any person for whom the Park Board is responsible in law, the Society hereby releases and forever discharges the City, the Park Board and their officers, employees and agents from any and all claims, demands, damages, actions or causes of actions arising or which may arise by reason of the management and operation of the Facility by the Society.

## **11. PAYMENTS TO OFFICERS OR DIRECTORS OF THE SOCIETY**

- 11.1 The Society must not use any part of the income from the Facility to provide any benefit, directly or indirectly, to an officer, director or member of the Society, provided however that the Society may pay normal wages, fees and benefits to any officer, director or member of the Society who is also an employee or contractor of the Society for the operation of the Facility.
- 11.2 The Society must not make any payment to any director of the Society or to any person or corporation directly or indirectly related to or associated with any director of the Society, provided however that the Society may pay normal wages, fees and benefits to any director of the Society who is also an employee or contractor of the Society for the operation of the Facility.

## **12. GOOD STANDING OF SOCIETY**

- 12.1 During the term of this agreement the Society will remain a society in good standing under the Society Act of British Columbia or the applicable federal legislation if the Society is continued as a non-profit corporation under federal legislation.

## **13. DEFAULT**

- 13.1 If the City or the Park Board incurs any damage, loss or expense or is obliged to make any payment for which the Society is liable by reason of any failure of the Society to observe and comply with this agreement, any such amount will immediately be due and payable by the Society to the Park Board on receipt of written demand by the Park Board, which obligation will survive the expiry or termination of this agreement.

## **14. TERMINATION**

- 14.1 **Termination without Notice.** Despite any other provision of this agreement, the Park Board has the right at any time, without notice to the Society, to forthwith terminate this agreement if:

- 14.1.1 the Society fails to pay its debts as they become due or becomes insolvent or commits an act of bankruptcy;
  - 14.1.2 the Society ceases to operate as a non-profit entity;
  - 14.1.3 the Facility suffers material damage or is destroyed; or
  - 14.1.4 the Society uses the Facility for a purpose other than set out in Section 2.
- 14.2 **Termination on Default.** Despite any other provision of this agreement, the Park Board has the right at any time, upon giving 30 days' written notice to the Society, to forthwith terminate this agreement if the Society:
- 14.2.1 fails to carry out any of the terms of this agreement and fails to cure its default within the said 30 days' written notice, or within such further period as may be reasonably necessary in light of the nature of the default so long as the Society is proceeding diligently to cure;
  - 14.2.2 wilfully and persistently breaches acceptable standards of management for such a facility, where such breach results in any prejudice whatever to persons using the Facility or to the City or the Park Board;
  - 14.2.3 fails to remain in good standing under the *Society Act* of British Columbia or the applicable federal legislation if the Society is continued as a non-profit corporation under federal legislation;
  - 14.2.4 carries on activities or undertakings other than those authorized or permitted under its Constitution; or
  - 14.2.5 fails to comply with any law, regulation or bylaw applicable to the Society or the Facility.
- 14.3 **Termination if No Longer Permanent Park.** This agreement will terminate on the date that the Facility ceases to be designated as a permanent public park pursuant to Section 490(1) of the *Vancouver Charter*.
15. **TRADE FIXTURES AND EQUIPMENT**
- 15.1 On the expiry or termination of this agreement, provided that the Society is not in default under this agreement, the Society may remove any of its trade fixtures and equipment from the Facility, but will repair any damage caused to the Facility resulting from such removal. If the Society does not remove any of its trade fixtures and equipment, they will become the property of the Park Board unless the Park Board gives the Society written notice that the Society must forthwith remove all or part of same at the Society's expense.

**16. RESPONSIBILITY FOR UN-DEPRECIATED CAPITAL UPON EXPIRY OR TERMINATION**

- 16.1 Subject to any agreement made pursuant to Section 6.2, on the expiry or termination of this agreement, the Society will be wholly responsible for any un-depreciated capital existing as of the date of such termination or expiry. For certainty, the parties hereby acknowledge and agree that the Park Board will not be responsible for any un-depreciated capital upon the expiry or termination of this Agreement.

**17. ASSIGNMENT**

- 17.1 The Society will not assign any of its rights under this agreement or delegate any of the management functions with respect to the Facility without the prior written consent of the Park Board, provided that the Park Board will not unreasonably withhold or delay consent to the Society being continued as a non-profit corporation under the applicable federal legislation for non-profit corporations if the constitution and bylaws of the continued non-profit corporation are materially similar to the Constitution and Bylaws of the Society.

**18. REPRESENTATIONS AND WARRANTIES**

- 18.1 The Society acknowledges and agrees that the Park Board has not made any representations or warranties about the condition or state of repair of the Facility or its fitness for any particular purpose, and the Society accepts the Facility on an "as is, where is" basis.

**19. INTENTION OF THIS AGREEMENT**

- 19.1 It is the express intention and agreement of the Park Board and the Society that this agreement grants the Society a licence to occupy the Facility for the purpose of operating a hostel, including a cafeteria, and for no other purpose, and does not create a landlord and tenant relationship nor any interest in land whatsoever nor does this agreement constitute a grant of exclusive possession to the Society.

**20. NOTICES**

- 20.1 All notices, demands or requests of any kind, which the Park Board or the Society may be required or permitted to give to the other in connection with this agreement, will be in writing and may be served on the other party by registered mail, by telecopier or by personal service, at the addresses set out on page one. Service of that notice, demand or request is deemed complete:

20.1.1 if made by registered mail, 72 hours after the time of mailing, except where there is a postal service disruption during that period;

20.1.2 if made by telecopy, on the first business day after the date when that telecopy is transmitted; and

20.1.3 if made by personal service, upon that personal service being effected.

## 21. COMMUNICATION BETWEEN PARK BOARD AND SOCIETY

- 21.1 Except as otherwise agreed by the Park Board in writing, all communication between the Park Board and the Society will be between the General Manager of the Park Board and the Society.

## 22. INTERPRETATION

- 22.1 The following provisions will apply to this agreement:

22.1.1 sections and headings are for convenient reference and are not to affect the meaning of the provisions;

22.1.2 use of the singular or masculine includes the plural, feminine or body corporate, and vice versa;

22.1.3 the laws of British Columbia are to govern its interpretation and enforcement;

22.1.4 waiver of a default by the Society or failure or delay by the Park Board in exercising a right or remedy does not mean that the Park Board waives any other default or that the Park Board has waived its right to exercise such right or remedy; and

22.1.5 no amendment is to have any force or effect unless the Park Board and the Society have signed it.

## 23. CONTINUING EFFECT

- 23.1 This agreement enures to the benefit of and is binding upon the parties to this agreement and their respective successors and permitted assigns.

TO EVIDENCE THIS AGREEMENT the authorized signatories of each of the parties have executed this agreement to be effective as of the Effective Date.

CITY OF VANCOUVER as represented by its  
BOARD OF PARKS AND RECREATION  
by its authorized signatory:

Signature

Malcolm Bromley, General  
Print Name and Title Manager

CANADIAN HOSTELLING ASSOCIATION/  
ASSOCIATION CANADIENNE DE L'AJISME-  
BRITISH COLUMBIA REGION  
by its authorized signatories:

Signature

Print Name and Title

Alistair McLean CEO  
Print Name and Title





# SCHEDULE A

# SCHEDULE A

PLAN SHOWING LOCATION OF PORTION OF  
LOT 1, BLOCK 11, AND 1/2  
QUARTER LOT 10, MAP 52302,  
2007 OF THE DISTRICT OF VICTORIA

