

File No.: 04-1000-20-2023-051 – Phased Release

May 10, 2023

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 writing regarding your request of January 27, 2023 under the ***Freedom of Information and Protection of Privacy Act*** for:

1. **Record of original and updated budgets for s̱əq̱əḻxenəm ts'əxwts'áxwí7/Rainbow Park and final build out costs against the budget, including all costs from turning the parking lot into the park;**
  2. **City agreement with Kafka's Coffee; and**
  3. **Listing of the top 10 vendors paid in relation to the creation of this park, including company name and dollars spent by year.**
- Date range: June 15, 2015 to January 26, 2023.**

Please note this is a phased release. All records responsive to points one and three are attached.

Records pertaining to point two of the request may be released to you pending the completion of the third party notification and review process, as per our previous letter sent April 24, 2023.

Under section 52 of the Act, and within 30 business days of receipt of this letter, you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your FOI request 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 (#04-1000-20-2023-051); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

Kevin Tuerlings, FOI Case Manager, for

*[Signed by Kevin Tuerlings]*

**Cobi Falconer, MAS, MLIS, CIPP/C**  
**Director, Access to Information & Privacy**  
[cobi.falconer@vancouver.ca](mailto:cobi.falconer@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. (Records Package)

:aa

File No.: 04-1000-20-2023-051 – Phased Release 2 of 2

July 6, 2023

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 writing regarding your request of January 27, 2023 under the ***Freedom of Information and Protection of Privacy Act*** for:

1. **Record of original and updated budgets for s̱əq̱əlxenəm ts'exwts'áxwi7/Rainbow Park and final build out costs against the budget, including all costs from turning the parking lot into the park;**
  2. **City agreement with Kafka's Coffee; and**
  3. **Listing of the top 10 vendors paid in relation to the creation of this park, including company name and dollars spent by year.**
- Date range: June 15, 2015 to January 26, 2023.**

Please note this is a phased release. All records responsive to point two are attached. Some information in the records has been severed (blacked out) under section s.17(1) of the Act. You can read or download these sections 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)

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If you request a review, please provide the Commissioner's office with: 1) the request number (#04-1000-20-2023-051); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

*[Signed by Cobi Falconer]*

**Cobi Falconer, MAS, MLIS, CIPP/C**  
**Director, Access to Information & Privacy**  
[cobi.falconer@vancouver.ca](mailto:cobi.falconer@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. (Records Package)

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# Rainbow Park Construction Budget

2015-06-15 and 2023-01-26

	Year	Project Budget	Record Documents
			Park Board Report
Concept Approval	2016Q2	\$ 6,000,000.00	<a href="https://parkboardmeetings.vancouver.ca/2016/20160530/REPORT-">https://parkboardmeetings.vancouver.ca/2016/20160530/REPORT-</a>
Budget Adjustment	2018Q2	\$ 12,000,000.00	Council Report <a href="https://council.vancouver.ca/20180724/documents/a3.pdf">https://council.vancouver.ca/20180724/documents/a3.pdf</a>
Budget Adjustment	2019Q2	\$ 16,000,000.00	Council Report <a href="https://council.vancouver.ca/20190723/documents/RTS13330-">https://council.vancouver.ca/20190723/documents/RTS13330-</a>
			Council Report <a href="https://council.vancouver.ca/20191211/documents/cfsc1.pdf">https://council.vancouver.ca/20191211/documents/cfsc1.pdf</a>
Construction Contract Award	2019Q4	\$ 16,000,000.00	Park Board Report <a href="https://parkboardmeetings.vancouver.ca/2019/20191209/REPORT-DowntownParkSmithRichardsConstructionContract-20191209.pdf">https://parkboardmeetings.vancouver.ca/2019/20191209/REPORT-DowntownParkSmithRichardsConstructionContract-20191209.pdf</a>
Budget Adjustment	2020Q3	\$ 16,200,000.00	Capital Budet Policy <a href="https://policy.vancouver.ca/ADMIN005.pdf">https://policy.vancouver.ca/ADMIN005.pdf</a>
Budget Adjustment	2021Q1	\$ 17,900,000.00	Council Report <a href="https://council.vancouver.ca/20210223/documents/r1.pdf">https://council.vancouver.ca/20210223/documents/r1.pdf</a>
Budget Adjustment	2021Q2	\$ 18,010,000.00	Capital Budet Policy <a href="https://policy.vancouver.ca/ADMIN005.pdf">https://policy.vancouver.ca/ADMIN005.pdf</a>
Budget Adjustments	2021Q3	\$ 18,400,000.00	Capital Budet Policy <a href="https://policy.vancouver.ca/ADMIN005.pdf">https://policy.vancouver.ca/ADMIN005.pdf</a>
Final Budget	1/26/2023	\$ 18,400,000.00	
Final Build Out Cost	1/26/2023	\$ 18,197,038.74	

## Rainbow Park Construction

### Top 10 Paid Vendors

2015-06-15 and 2023-01-26

Top 10 Paid Vendors				
1	Smith Bro & Wilson			
		2019	\$	108,559.75
		2022	\$	5,781,139.79
		2023	\$	8,244,989.91
		2024	\$	1,072,737.00
		<b>Total</b>	<b>\$</b>	<b>15,207,426.45</b>
2	Dialog BC Architecture Engineering			
		2015	\$	80,898.00
		2016	\$	119,925.00
		2017	\$	356,596.69
		2018	\$	121,467.55
		2019	\$	130,487.88
		2020	\$	505,579.45
		2021	\$	336,230.56
		2022	\$	219,353.37
		<b>Total</b>	<b>\$</b>	<b>1,870,538.50</b>
3	Scott Special project			
		2022	\$	311,598.69
		<b>Total</b>	<b>\$</b>	<b>311,598.69</b>
4	Elander Inspection Ltd			
		2020	\$	13,525.00
		2021	\$	143,877.00
		2022	\$	2,015.00
		<b>Total</b>	<b>\$</b>	<b>159,417.00</b>
5	Pottinger Gaherty Environment			
		2017	\$	33,423.30
		2018	\$	73,096.18
		2020	\$	23,581.04
		2022	\$	6,212.39
		<b>Total</b>	<b>\$</b>	<b>136,312.91</b>
6	Willis Canada Inc.			
		2020	\$	53,334.00
		2021	\$	57,455.19
		2022	\$	5,230.46
		<b>Total</b>	<b>\$</b>	<b>116,019.65</b>
7	Davies Geotechnical Inc.			
		2017	\$	6,030.00
		2018	\$	2,725.00
		2020	\$	23,620.00
		2021	\$	5,286.00
		<b>Total</b>	<b>\$</b>	<b>37,661.00</b>
8	Metro Testing & Engineering Ltd			
		2020	\$	6,471.30
		2021	\$	9,854.51
		2022	\$	2,434.33
		<b>Total</b>	<b>\$</b>	<b>18,760.14</b>
9	Kamala Todd			
		2020	\$	4,000.00
		2021	\$	3,800.00
		2022	\$	9,730.00
		<b>Total</b>	<b>\$</b>	<b>17,530.00</b>
10	Telus Communications Inc.			
		2017	\$	6,364.52
		2022	\$	5,791.02
		<b>Total</b>	<b>\$</b>	<b>12,155.54</b>

## LEASE

### CAFÉ FACILITY AT SMITHE & RICHARDS PARK (860 RICHARDS STREET)

THIS AGREEMENT is made as of the 23<sup>rd</sup> day of May, 2022

BETWEEN:

CITY OF VANCOUVER, represented by its  
VANCOUVER BOARD OF PARKS AND RECREATION  
2099 Beach Avenue  
Vancouver, British Columbia  
V6G 1Z4

(the "Landlord")

AND:

KAFKA'S COFFEE INC (Inc. No. BC0865508)  
2525 Main Street  
Vancouver, British Columbia  
V5T 3E5

(the "Tenant")

Premises: Café Facility at Smithe & Richards Park (860 Richards Street)

Parcel Identifier: 029-379-989

Legal Description: LOT A BLOCK 65 DISTRICT LOT 541 GROUP 1 NEW  
WESTMINSTER DISTRICT PLAN EPP37124

Initial Term: Four (4) years from Commencement Date

Rent:

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Option(s) to Renew: One (1) option to renew for four (4) years

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**WITNESSES THAT WHEREAS:**

- A. The Landlord is the owner of certain lands situate in the City of Vancouver, in the Province of British Columbia, with a civic address of 860 Richards Street and which are legally described as:

Parcel Identifier: 029-379-989

Legal Description: LOT A BLOCK 65 DISTRICT LOT 541 GROUP 1 NEW WESTMINSTER DISTRICT PLAN EPP37124

on which lands (the "**Lands**") exists the Smithe & Richards Park and a café building with public washrooms (the "**Building**"), over all of which the Vancouver Board of Parks and Recreation has jurisdiction and control;

- B. The portions of the Building outlined in bold black attached as Schedule A - Lease Area and described as follows (the "**Premises**") have been constructed for use as a café:

Café front and back of house	Main Level	707 sf
Café storage room	Below Grade Level	120 sf
Café garbage room	Below Grade Level	62 sf

- C. The portions of the Lands outlined in bold black attached as Schedule A.1 - Licence Areas (the "**Licence Areas**") are contemplated to be used by patrons of the café;
- D. Due to the significant and negative impacts of the global COVID-19 pandemic on the hospitality sector, the City of Vancouver's Chief Procurement Officer has approved the procurement strategy of sole sourcing the lease of the Premises to the Tenant, in compliance with the Procurement Policy including posting a Notice of Intent to Contract (NOITC);
- E. The Landlord has agreed to:
- (i) lease the Premises to the Tenant as hereinafter provided; and
  - (ii) grant a licence to the Tenant to use the Licence Areas as hereinafter provided;
- F. The Tenant has agreed to supply the Tenant's Equipment required for the proper and efficient operation of the Premises as a café in conjunction therewith; and
- G. The Landlord has agreed to lease the Premises to the Tenant upon the terms and conditions hereinafter set out.

NOW THEREFORE in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord by these presents does demise and lease the Premises unto the Tenant and the Tenant does hereby take and rent the Premises upon and subject to the conditions set out herein:

**ARTICLE I  
DEFINITIONS & INTERPRETATION**

**Section 1.01 Definitions**

In this lease, the following words and expressions will have the following meanings:

- (a) **"Access Date"** has the meaning set out in Section 3.01(a)(i);
- (b) **"Alterations"** has the meaning set out in Section 6.03;
- (c) **"Business"** has the meaning set out in Section 4.01;
- (d) **"Commencement Date"** means the date immediately following the expiry of the Tenant's Equipping Phase, as further set out in Section 3.01(a)(i);
- (e) **"Gross Revenue"** means the entire amount of the total sale prices whether for cash or credit of all sales of food, beverages (including alcoholic beverages) and merchandise and the entire amount of all other receipts from all of the food service operations including, without limitation, revenue generated by acting as a third-party caterer to clients and any take out service operations, and includes all receivables whatsoever of all business conducted at, in, on or from the Premises by the Tenant and any affiliate of the Tenant, including receipts and receivables in respect of services provided at the Premises even though the orders for such services are not made at or through the Premises, but excluding:
  - (i) gratuities from patrons;
  - (ii) all sums collected and paid out for any direct retail sales tax imposed by any government authority, including GST;
  - (iii) the "free" food portion of any bona fide coupon promotion, public relations or promotional program applicable to the food services operations, including Entertainment Book, Solid Gold, Gastronomic or any other discount promotion applicable to the food services operations; and
  - (iv) proceeds of insurance in reimbursement of any losses, damages or claims suffered by the Tenant, except for reimbursement for loss of revenue which will be included in Gross Revenue;less:
  - (v) refunds to patrons;
  - (f) s.17(1) [REDACTED]  
s.17(1) [REDACTED]
    - s.17(1) [REDACTED]

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(g) "Lease Year" means for the first (1st) year of the term, the date upon which this lease commences and continuing for twelve (12) months thereafter and, for each succeeding year, the ensuing twelve (12) month period;

(h) "Property Manager" means the Downtown Vancouver Business Improvement Association (DVBIA) or such other property manager as may be engaged by the Landlord from time to time to manage and operate the Lands and the Building;

(i) "Payment in Lieu of Taxes" has the meaning set out in Section 3.03;

(j) "Rent" means the monthly payments that the Tenant will pay to the Landlord as set out in Section 3.01; for the purposes of this lease "rent" means, as the context requires, any additional rent, fees, charges or other expenses for which the Tenant is obligated to pay hereunder;

(k) s.17(1)

(l) "Tenant's Equipment" means all of the equipment (including POS system), furniture and furnishings to be provided by the Tenant at its cost, including:

- Commercial oven
- Merry chef high speed oven
- Baking rack
- Coffee brewer
- Reach in cooler (x2)

- Reach in freezer
- Low temperature dishwasher
- Ice machine
- Double door under counter cooler
- Single door direct draw cooler
- Coffee grinder (x3)
- Espresso machine
- Point of sale terminal
- Pitcher rinse
- Plants
- Hot water dispenser
- Food warmer
- Tables
- Chairs
- Menu board
- Pastry display
- Soft serve ice cream machine
- Stereo and speaker system
- Security system
- Indoor tables and chairs
- Outdoor bench feature

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**s.17(1)**

(n) "Tenant's Equipping Phase" has the meaning set out in Section 3.01(a)(i).

## Section 1.02 Interpretation

(a) The words "include" and "including" are to be construed as meaning "including, without limitation".

- (b) The division of this lease into Articles and Sections, and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this lease. The terms "this lease", "hereof", "hereunder" and similar expressions refer to this lease and not to any particular Article or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles are to Articles of this lease.
- (c) Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa and words incorporating persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.
- (d) This lease shall be governed by and in accordance with the laws of the Province of British Columbia.
- (e) Any reference to a statute is to the British Columbia statute and its regulations (unless specified to be a federal statute) in force on the date this lease is fully executed, and to subsequent amendments to or replacements of the statute or regulations.

## ARTICLE II DEMISE & TERM

### Section 2.01 Term

In consideration of the rents, covenants and conditions herein on the part of the Tenant to be performed and observed, the Landlord hereby leases the Premises to the Tenant to have and to hold the same for a period of four (4) years commencing on the Commencement Date (as defined in Section 3.01(a)(i)) and terminating at 11:59 p.m. on the day immediately preceding the fourth anniversary of the Commencement Date (the "Term").

## ARTICLE III RENT

### Section 3.01 Rent

- (a) *Tenant's Equipping Phase*
  - (i) Prior to the commencement of the Term, the Tenant will be granted access to the Premises for a period of time commencing on May 23, 2022 (the "Access Date") to install the Tenant's Equipment and prepare for opening (the "Tenant's Equipping Phase"), provided that the Tenant's Equipping Phase will automatically terminate upon the earlier of:
    - (1) the date upon which the Business is in commercial operation and open to the public for the conduct of normal business; or
    - (2) June 4, 2022,(the "Commencement Date").

The Landlord shall not be liable to the Tenant for any loss, damage or inconvenience resulting from any delay in delivering possession of the Premises for the purposes of the Tenant's Equipping Phase.

- (ii) During the Tenant's Equipping Phase the Tenant will not be required to pay Rent or Payment of Lieu of Taxes, but the Tenant will be required to comply with and observe all other terms of this lease including, without limitation, the Tenant's obligation to obtain and maintain the insurance in Section 9.01 and to pay all charges, rates and levies on account of utilities including heat, electricity, gas, water, garbage collection, telephone and all other expenses and outgoings relating to the Premises when due and, upon request, the Tenant will provide the Landlord with receipts evidencing such payments.

(b) s.17(1)

(i) s.17(1)

(ii) s.17(1)

(iii) s.17(1)

(c) s.17(1)

s.17(1)

(i) s.17(1)

(ii) s.17(1)

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### Section 3.02 Utilities

The Tenant will promptly pay when due all charges, rates and levies on account of utilities including heat, electricity, gas, water, waste disposal (garbage and recycling), sewer, telephone, security system, internet and cablevision and all other expenses and outgoings relating to the Premises which are calculated and payable by way of separate meters or billing arrangements with the service provider and, upon request, the Tenant will provide the Landlord with receipts evidencing such payments. Invoicing of those utilities for which separate meters have been installed for the Premises will be based on actual consumption plus applicable taxes.

### Section 3.03 Payment in Lieu of Taxes

Notwithstanding the preceding terms of this lease, in addition to Rent, the Tenant will pay monthly as additional rent in each and every month of the Term a sum on account of the annual general, school and local improvement charges and taxes and any charges and taxes levied against the Lands and the Building under or by virtue of the *Hospital District Finance Act*, R.S.B.C. 1996, c. 203, the *Municipal Finance Authority Act*, R.S.B.C., 1996, c. 325, and any and all other statutes, laws, enactments, regulations and ordinances of the federal or provincial governments or other competent authority, or any modifications or re-enactments thereof which, except for any exemption allowed by law, would in the ordinary course have been lawfully imposed against the Premises, and against all machinery in and about the Premises for each year of the Term (the "**Payment in Lieu of Taxes**"), as follows:

- (a) for the period commencing on the Commencement Date and ending on December 31, 2022, the Landlord's 2022 tax rate per square foot of the Premises (889 square feet), excluding the Licence Areas, pro-rated for the portion of the calendar year (in 2021 such rate was \$6.73 per square foot);
- (b) for the next three (3) calendar years of the Term and the portion of the remaining calendar year until the expiry of the Term, the Landlord will review and, if necessary, revise effective January 1<sup>st</sup>;
- (c) Payment in Lieu of Taxes will be paid monthly and the Tenant will, for each month of the Term, pay to the Landlord an amount equal to one-twelfth of the Payment in Lieu of Taxes for the calendar year, such amount to be paid on or before the first day of the month;

- (d) at the option of the Landlord, the Landlord may require that the Payment in Lieu of Taxes be paid semi-annually in two lump sums on dates to be specified by the Landlord; and
- (e) the parties agree that the square footage of the Premises for the purpose of calculation of the Payment in Lieu of Taxes will be 889 square feet.

Should the Premises or any portion thereof or any trade fixtures or chattels therein for any reason become subject to taxation, then the Tenant will pay all such taxes, provided that the Tenant will not be required to pay any portion of such taxes in addition to the Payment in Lieu of Taxes if such portion is included in the calculation of the Payment in Lieu of Taxes.

### **Section 3.04 Goods and Services Tax**

The Tenant will pay when due all goods and services taxes, value-added taxes, sales taxes and consumption based taxes, rates, levies and assessments which are from time to time payable by the Tenant or the Landlord as a result of or that would not be payable but for the 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 Tenant to the Landlord, but excluding any taxes personal to the Landlord or dependent on the income or capital of the Landlord. Any loss, costs, charges and expenses which relate to such taxes, rates, levies and assessments suffered by the Landlord may be collected by the Landlord as additional rent with all rights of distress and otherwise as reserved to the Landlord in respect of rent in arrears.

### **Section 3.05 Payments Generally**

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

- (a) paid to the Landlord by the Tenant in Canadian dollars;
- (b) made when due hereunder, without prior demand therefor and without any setoff, compensation or deduction whatsoever at the office of the Vancouver Board of Parks and Recreation specified in Section 19.01 or such other place as the Landlord may designate from time to time in writing to the Tenant, provided that at the start of each Lease Year, the Tenant will deliver to the Landlord twelve (12) post-dated cheques for the Basic Rent, and upon the request of the Landlord, the Tenant will deliver to the Landlord a series of post-dated cheques each in the amount of the additional rent as reasonably estimated by the Landlord, for the next ensuing twelve (12) months, and the Tenant will continue to do so upon each yearly anniversary thereafter during the Term. The failure of the Tenant to comply in any way with the provisions of this subsection will be deemed to be default under this lease and will entitle the Landlord to exercise any and all remedies available to the Landlord under this lease;
- (c) applied towards amounts then outstanding hereunder, in such manner as the Landlord may see fit;
- (d) deemed to be rent, in partial consideration for which this lease has been entered into, and will be payable and recoverable as rent, such that the Landlord will have all rights

and remedies against the Tenant for default in making any such payment which may not be expressly designated as rent as the Landlord has for default in payment of rent; and

- (e) deemed to accrue from day to day, and if for any reason it becomes necessary to calculate for irregular periods of less than one (1) month or at some other interval, an appropriate pro-rata adjustment will be made on a daily basis in order to compute rent for such irregular period.

### Section 3.06 Interest on Arrears

Whenever and so long as the rent or any other amounts payable hereunder by the Tenant to the Landlord will be in arrears, such amounts will bear interest at the rate of three percent (3%) 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 Landlord has demanded payment. In this lease, "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; provided that if a court declares or holds the prime rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder will be fourteen percent (14%) per annum calculated monthly not in advance from the date due until paid. The Landlord will have all the remedies for the collection of such interest as in the case of rent in arrears, but this provision for interest will not prejudice or affect any other remedy of the Landlord under this lease. The Tenant will also pay the Landlord's standard charge levied on N.S.F. cheques.

### Section 3.07 Security Deposit

The Tenant will lodge with the Landlord, if requested by the Landlord, a security deposit of **s.17(1)** prior to the Commencement Date. At all times the deposit will stand charged with a lien in favour of the Landlord which will be in priority to any claims of the Tenant's trustee in bankruptcy or the Tenant's creditors, whether by execution, attachment, garnishing order or otherwise. The Landlord may satisfy any claims it may have against the Tenant arising hereunder, whether liquidated or otherwise, by forthwith applying the deposit or any portion thereof to payment of such claims. In the event that the Landlord appropriates all or any portion of the deposit in payment of such claims, the Tenant will forthwith replenish the deposit upon notice from the Landlord and failing such replenishment the Landlord may terminate this lease. Subject to any claims by the Landlord, upon termination of this lease the balance of the deposit will be remitted to the Tenant PROVIDED HOWEVER no interest will be payable on the deposit. The Landlord will not be obliged to apply any or all of the deposit to any claims it may have against the Tenant before terminating this lease or having recourse to any other remedy. The deposit will not be refundable upon assignment. The assignor and assignee between themselves will make whatever adjustment they deem appropriate.

## ARTICLE IV USE OF PREMISES

### Section 4.01      Use of Premises

For the purposes of this Lease, the “**Business**” means the operation of a café.

The Tenant will not use or occupy, nor suffer or permit the use of the Premises or any part thereof for any purpose other than for carrying on of the Business (the “**Permitted Use**”). Without limiting the generality of the foregoing, the Tenant will not at any time suffer, permit or allow any person to:

- (a) use the Premises and the Tenant’s equipment on the Premises in connection with any operations not deemed by the Landlord, acting reasonably, to be part of the on-site operation of the Permitted Use; or
- (b) occupy the Premises for residential purposes.

The Tenant will not use, or suffer or permit the use of, any part of the Premises and Licence Areas in such a manner so as to cause, suffer or permit annoying noises, inordinately offensive odours or other nuisances to emanate from any part of the Premises or Licence Areas.

The Tenant will obtain, at its sole expense, any and all permits, approvals, authorizations and licenses from any governmental authority, including the City of Vancouver, which may be required for the Tenant to occupy the Premises and use the Premises for the Permitted Use.

By agreeing to the Tenant using the Premises for the Permitted Use, the Landlord is agreeing as the owner of the Premises only and is not in any way (either in its capacity as landlord or as a regulatory public body) stating, warranting or representing that the Permitted Use is a permitted use under the City of Vancouver Zoning and Development By-law No. 3575 and amendments thereto and other relevant by-laws. Nothing in this Section 4.01 affects the Tenant’s obligations to comply at its sole expense with all such by-laws pursuant to Section 13.01 of this lease.

### Section 4.02      Licence to Use Licence Areas

The Landlord hereby grants to the Tenant a licence to use the Licence Areas, which may be expanded by the Landlord at its sole discretion, provided that the Tenant has no interest in the land in the Licence Areas, which licence will be concurrent with the term of this lease, provided that all the terms and conditions of this lease will apply to the Licence Areas as if they were a part of the Premises, including the payment of Rent based on Gross Revenue and the insurance requirements set out in Article XI, except that:

- (a) the Licence Areas will not be included in the calculation of the square footage of the Premises for the purpose of calculating the Payment in Lieu of Taxes;
- (b) the Tenant will close the Licence Areas by 10:00 p.m. each day unless otherwise agreed to by the Landlord; and
- (c) the Tenant will not use or occupy, nor suffer or permit the use of the Licence Areas or any part thereof for any purpose other than for outdoor seating for café operations.

#### **Section 4.03      Permission to Use Public Washrooms**

The Landlord, to the extent that it has the authority to do so, hereby permits the Tenant and its customers and invitees to access and use the public washrooms located in the Building provided that such use is reasonable.

#### **Section 4.04      Conduct of Business**

The Tenant agrees that the following will apply to the conduct of the business at the Premises:

- (a) the Tenant will manage and operate the café as a high quality/high value food and beverage service, 7 days a week, in an efficient and professional manner, including maintaining an inventory of food, goods and supplies as may be necessary and appropriate for the efficient operation of the café and supplying all necessary working capital for the effective operation of all services;
- (b) the Tenant will operate the Business in a manner that caters to people of all ages as permitted by law and will obtain the prior written approval of the Landlord for any change to the style of service to customers;
- (c) the Tenant will not apply for nor request any change to any liquor licence (if applicable) for the Business without the consent of the Landlord, such consent not to be unreasonably withheld;
- (d) the Tenant will operate the Business year round with the daily hours of operation to be set by the Landlord in consultation with the Tenant;
- (e) the Tenant will ensure that its employees will be at all times of neat, clean and professional appearance;
- (f) at the reasonable request of the Landlord, the Tenant will attend any meeting requested by the Landlord to deal with concerns of the surrounding neighbourhood;
- (g) the Tenant will, and will ensure that its employees will, engage in a respectful manner with all park users, including marginalized and at-risk populations; and
- (h) within six (6) months of the third anniversary of the Commencement Date and within six (6) months of every third (3rd) anniversary thereafter, the Tenant, if requested by the Landlord and at its cost, will engage a professional inspection company approved by the Landlord acting reasonably to conduct a maintenance inspection of the Premises to determine the condition of the Premises, including without limitation, the structural, mechanical and electrical elements of the Premises and the finishes inside and outside of the Premises, and the Tenant will promptly provide to the Landlord a copy of that company's report, will promptly implement all of the recommendations contained in such report, save for matters of reasonable wear and tear and any other matters which are not the responsibility of the Tenant to repair or maintain pursuant to the terms of this Lease and, in any event, will have implemented all of the applicable and reasonable recommendations contained in such report within six (6) months of the Tenant's receipt of such report, which are the responsibility of the Tenant to repair and maintain pursuant to the terms of this Lease and the Landlord

will, at its sole cost and expense, undertake and complete the items of replacement, repair and maintenance which are the obligation of the Landlord pursuant to the terms of this Lease and the parties agree to cooperate with one another in coordination of the works required.

#### **Section 4.05 Prohibited Activities/Products**

The Tenant acknowledges and agrees that its business in the Premises is being conducted within a city park and that therefore the Tenant must conduct its business in and from the Premises in a manner consistent with the best interests of the neighbourhood as a whole, as determined from time to time by the Landlord, and the following will apply:

- (a) the Tenant will not enter into any sponsorship agreements without obtaining the Landlord's prior written consent;
- (b) the Tenant will not permit the use of the Premises for any of the following businesses or activities:
  - (i) sale of firecracker or fireworks of any kind;
  - (ii) any gambling device or game of chance or gambling whatsoever;
  - (iii) an auction, flea market, pawn shop, bulk sale, liquidation sale, distress sale, going-out-of-business sale, bankruptcy sale, sheriff's sale, receivership sale, or any other sale which in the Landlord's opinion suggests that business operations are to be discontinued in the Premises; and
  - (iv) the sale or supply of any service which would, in the Landlord's opinion reasonably held:
    - (1) tend to lower the high quality character of the Building;
    - (2) constitute unethical, deceptive or fraudulent advertising, dishonest procedures or practices;
    - (3) be objectionable; or
    - (4) be a nuisance; and
- (c) except for the Premises, the Tenant will not, without the prior written consent of the Landlord, use any part of the Lands, including any other area outside of the Lands (eg. Sidewalks), for merchandising displays, decorations, signs, entertainment and structures (including, without limitation, kiosks, carts and other installations), permanent or otherwise, other than carts or other non-permanent structures for the dispensing of condiments, cutlery, napkins and similar products, including for example, catering or special features of non-commercial or commercial activities, provided the foregoing restrictions will not apply to any carts, kiosks or other non-permanent structures which the Tenant may from time to time utilize within the Licence Areas for the sale of food and beverages with the express prior written consent of the Landlord for each such structure.



#### Section 4.06 Suitability of Premises

The Tenant acknowledges and agrees that it has been afforded all reasonable opportunity to inspect the Premises and all relevant documentation in respect thereof and to carry out such walk-throughs, investigations, tests and surveys as it considers reasonably necessary to ascertain the state of repair and the suitability of the Premises for use by the Tenant, and by taking possession thereof it acknowledges that the Landlord has satisfactorily completed all of the s.17(1)

#### Section 4.07 Install Tenant's Equipment and Continuously Operate

The Tenant will occupy the Premises on the Access Date and will continuously, actively and diligently install all Tenant's Equipment, so that the Premises are operational by the end of the Tenant's Equipping Phase. During the Tenant's Equipping Phase, the Landlord may access the Premises and inspect any work being carried out by the Tenant to ensure that such work is in accordance with the terms and conditions of this lease and in accordance with any plans and specifications that may have been approved by the Landlord.

From and after the Commencement Date, the Tenant will continuously, actively and diligently operate the Business in the Premises for the duration of the Term.

### ARTICLE V REPORTING & AUDITING

#### Section 5.01 Revenue Report

The Tenant will deliver to the Landlord the following Revenue Reports during the Term:

- (a) commencing on the 15<sup>th</sup> day of the second month of the Term and continuing on the 15<sup>th</sup> day of each remaining month during the Term, a revenue declaration for the previous month, and s.17(1)  
s.17(1)
- (b) a Revenue Report for each Lease Year, to be delivered on or before ninety (90) days after the end of the Lease Year, together with the balance of the Rent payable if such Revenue Report indicates that, based on the Gross Revenue for the Lease Year, the amount owing on account of the Sales Rent exceeds the Basic Rent paid for that Lease Year pursuant to Section 3.01;
- (c) within sixty (60) days of the date of the expiry or earlier termination of this lease, a Revenue Report for the period between the most recently submitted Revenue Report for a Lease Year and the date of expiry or earlier termination, together with the balance of the Rent payable if such Revenue Report indicates that, based on the Gross Revenue for that period, the amount owing on account of the Sales Rent exceeds the Basic Rent paid for such period pursuant to Section 3.01; and
- (d) "Revenue Report" means a report on revenue collected by the Tenant from the business at the Premises, provided by the Tenant to the Landlord, which report must:
  - (i) be in writing and certified by its author as being complete and true as to its contents to best of the knowledge of the author;

- (ii) indicate both the actual revenue and the Gross Revenue collected by the Tenant from the business at the Premises for all of the reporting period and separately indicate:
  - (1) the value of all meals and other products and services at the Premises provided for promotional purposes;
  - (2) all refunds to patrons;
  - (3) the Gross Revenue derived from regular café operations (whether sit down or take out); and
  - (4) the Gross Revenue derived from third-party catering service; and
- (iii) indicate the Sales Rent for the reporting period based on the Gross Revenue from the Business at the Premises.

#### **Section 5.02 Accounting Procedures and Controls**

The Tenant will maintain a commercially reasonable standard of internal accounting procedures and controls over all revenues collected by the Tenant in the operation of the business at the Premises and will ensure that all revenues collected with respect to the business at the Premises are clearly and accurately accounted for in accordance with the terms of this lease. The Tenant will maintain records for the Business at the Premises which are separate from the records which the Tenant maintains for other businesses conducted by the Tenant.

#### **Section 5.03 Audited Revenue Reports**

The Tenant will, at its expense, prepare and submit to the Landlord an audited Revenue Report for each Lease Year during the Term and the following will apply:

- (a) such audited Revenue Report must be submitted on or before ninety (90) days after the end of the Lease Year and for any partial Lease Year to the expiry or earlier termination of this lease, within ninety (90) days of such expiry or earlier termination;
- (b) the audit must be certified by an independent Certified Professional Accountant who is in good standing in the Province of British Columbia and is acceptable to the Landlord acting reasonably;
- (c) the audit report must be unqualified and state that the auditor has examined the Revenue Report and that such examination included a general review of the Tenant's accounting procedures and such tests of the Tenant's books and records and other supporting evidence as the auditor considers necessary in the circumstances and must be in the form recommended by the Chartered Professional Accountants of Canada for such an engagement;
- (d) the audit report must be supplemented by a management letter prepared by the auditor that states whether the Revenue Report presents fairly and accurately the Gross Revenue for that reporting period in accordance with the provisions of this lease and generally accepted accounting principles applied on a basis consistent with that used for the immediately preceding Lease Year, if any, 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;

- (e) the Tenant will retain possession of all documents pertaining to the business at the Premises or at the Tenant's head office in the Province for not less than seven (7) years;
- (f) the Landlord reserves the right to:
  - (i) audit the books, records and accounts of the Tenant with respect to the business at the Premises at any reasonable time, provided that the Landlord will give the Tenant at least two (2) business days, and the Tenant will make available to the Landlord, at any reasonable time, all documents pertaining to the operation of the business at the Premises; and
  - (ii) require that the Tenant submit audited statement of revenue of the Tenant for each Lease Year during the Term, and the requirements with respect to the audited Revenue Reports set out in this Section 5.03 will apply to such audited financial statements;
- (g) if any audit conducted by the Landlord discloses that the actual Gross Revenue for any Lease Year is greater by two percent (2%) or more than that disclosed by the audited financial statements provided by the accountant for the Tenant, the Tenant will pay the cost of such audit forthwith on demand by the Landlord; and
- (h) if any audit conducted by the Landlord discloses that the actual Gross Revenue for any Lease Year is greater by five percent (5%) or more than that disclosed by the audited financial statements provided by the accountant for the Tenant, if in the reasonable opinion of the General Manager of the Park Board the misstatement of Gross Revenue is intentional, the Landlord, in addition to its other rights in this lease, may terminate this lease on thirty (30) days' written notice to the Tenant.

## **ARTICLE VI MAINTENANCE AND REPAIR**

### **Section 6.01      No Damage**

The Tenant will not suffer, cause nor permit any damage or injury to the Premises other than reasonable wear and tear.

### **Section 6.02      Snow Removal from the Premises and Licence Areas and Sidewalks**

The Tenant covenants that, subject to any alternative arrangement with the Park Board or Property Manager, it will keep the Premises and Licence Areas clear of snow and ice and will keep the adjacent sidewalks, if any, clear of snow and ice to comply with the requirements of the Street and Traffic By-law of the City of Vancouver and that it will indemnify and save harmless the Landlord from all costs, loss, damages, compensation and expenses suffered by the Landlord and sustained or caused by the Tenant's failure to remove snow and ice from the Premises and Licence Areas PROVIDED THAT if the Tenant does not remove snow and ice as

required by the Street and Traffic By-law, the Landlord may clear the sidewalks and the cost of such removal will be paid by the Tenant to the Landlord.

### Section 6.03 Alterations

The Tenant shall not carry out or cause to be carried out any additions, renovations or alterations to the Premises (the "**Alterations**") or any Tenant Improvements, without the Landlord's prior written consent and in the giving of such consent the Landlord may attach whatever conditions, directions, stipulations, prohibitions or deadlines as it deems appropriate and the same shall be conditions of this lease, PROVIDED THAT the Tenant shall first submit to the Landlord details of the proposed work, including drawings and specifications conforming to good construction practice, which details shall be approved by the Landlord or consultants designated by the Landlord and, prior to commencement of any Alterations, will provide the Landlord with evidence that the Tenant has obtained, at its expense, all necessary consents, permits, licenses and inspections from all governmental and regulatory authorities having jurisdiction. All such works shall be wholly at the Tenant's expense but shall be the Landlord's absolute property except to the extent that the same may be reasonably categorized as trade fixtures. The Landlord may withhold its consent, in its sole discretion, with respect to any structural alterations or improvements.

All such work will be performed in a good and workmanlike manner so as not to cause any unreasonable interference with the lawful use by any other person of the Building or any part thereof, and shall be performed at the sole cost of the Tenant in accordance with the drawings and specifications approved by the Landlord or its consultants.

All such work shall be subject to the reasonable regulations, controls and inspection of the Landlord and any work made by the Tenant without the prior written consent of the Landlord or which is not made in accordance with any drawings and specifications approved by the Landlord or its consultants or otherwise in accordance with the foregoing shall, if requested by the Landlord, be promptly removed by the Tenant at the Tenant's expense and the Premises restored to their previous condition. Failing such removal, the Landlord shall be entitled to remove the same forthwith without notice and at the Tenant's sole cost and expense. If any such work will affect the structure or the heating, electrical, air conditioning or mechanical systems of the Premises or any other part of the Building, such work shall, at the option of the Landlord, be performed only by the Landlord or its contractors, at the Tenant's sole cost and expense. From time to time during the course of such work, the Tenant shall pay to the Landlord, upon demand, reasonable fees of any architectural and engineering consultants reasonably retained by the Landlord in respect of the work. No such work shall be permitted which, in the Landlord's reasonable opinion, may weaken or endanger the structure or adversely affect the condition or operation or appearance of the Premises, or the Building.

By consenting to any Alterations, the Landlord is not in any way (either in its capacity as landlord or as a regulatory public body) stating, warranting or representing that the Alterations are permitted under the City of Vancouver Zoning and Development By-law No. 3575 and amendments thereto, the City of Vancouver Building By-law No. 9419 and amendments thereto, and other relevant by-laws. No consent given by the Landlord (and no failure to enforce this section of this lease) will affect the Tenant's obligations to comply at its sole expense with all such by-laws.

#### **Section 6.04 Maintenance**

The Tenant will maintain the Premises and Licence Areas in a sanitary, neat, tidy and safe condition and free from nuisance at all times and will clean the Premises daily and will redecorate the interior of the Premises at reasonable intervals, and the following will apply:

- (a) the Tenant will not obstruct the hallways, entrances, stairways and driveways leading to the Premises or suffer same to be used by the Tenant's employees or invitees for any purpose other than ingress to and egress from the Premises, and the Tenant agrees not to place in the hallways, entrances, stairways and driveways any waste paper, dust, garbage, refuse or anything whatsoever that would tend to make such areas appear untidy or filthy;
- (b) the Tenant will employ the services of a commercial garbage and refuse removal company and will ensure that refuse, garbage and solid waste is removed as required in order to maintain the cleanliness of the Premises; and
- (c) the Tenant will follow good environmental practices whenever possible and conform to the Landlord's policies in use at other similar operations.

#### **Section 6.05 Repairs to Premises and Licence Areas**

The Tenant will, at the Tenant's sole expense, keep and maintain the Premises in good repair as would a reasonable and prudent owner of such premises (including, without limitation, wiring, piping, lighting and plumbing fixtures, operating equipment, as well as the electrical, plumbing, sprinkler, sewage, heating, ventilating and air-conditioning systems within the Premises as well as such systems outside of the Premises which serve the Premises, and for this purpose the Landlord hereby grants the Tenant a licence over such portions of the Lands and the Building as may be required), reasonable wear and tear and structural elements or defects excepted, and the Landlord will have access to the Premises for purpose of inspection during normal business hours and the Tenant will repair according to notice. Without limiting the generality of the foregoing, the Tenant will, at its sole expense, maintain and repair all materials and finishes in the interior of the Premises (excluding landscaping), excluding the building envelope, which shall be the obligation of the Landlord. The Tenant will promptly replace all damaged glass, plate glass, doors and windows (whether exterior or interior) within the Premises unless such damage is caused by the negligence or willful act of the Landlord or those for whom the Landlord is responsible at law. For greater certainty, the Tenant will be responsible for repairing, servicing, inspecting, maintaining and replacing (if necessary) all of the Tenant's Equipment during the currency of this lease to a first class standard at its sole cost.

If the Tenant fails to promptly commence repairs and diligently prosecute same to completion after receipt of notice from the Landlord requiring repairs, then the Landlord may carry out or cause to be carried out such repairs, the costs of which will be payable by the Tenant, and the Landlord and its employees, agents, contractors and subcontractors will not be liable to the Tenant for any inconvenience, annoyance, disruption, loss of income or liability suffered or incurred by the Tenant by reason of the Landlord effecting such repairs unless caused by the negligence of the Landlord or those for whom the Landlord is responsible in law.

## Section 6.06 Repairs to Building

Without in any way limiting the Landlord's and Tenant's obligations, rights and remedies contained elsewhere in this lease:

- (a) the Landlord is responsible for all replacements and repairs to, and maintenance of, the structural elements of the Building, including, without limitation, the foundations, load-bearing walls and the roof and roof membrane; and
- (b) the Tenant is responsible for:
  - (i) adequately protecting from damage the structural elements of the Building located on the Premises; and
  - (ii) any repair to or replacement of the structural elements of the Building located on the Premises required due, in whole or in part, to the Tenant's failure to meet its obligations contained in Section 6.06(b)(i).

## Section 6.07 Liens and Encumbrances

In connection with all labour performed in, or materials supplied for, the making, erection, installation or alteration of any work or installations made by or for the Tenant in the Premises, the Tenant will comply with all the provisions of the *Builders Lien Act*, and other statutes from time to time applicable thereto, including any provision requiring or enabling the retention of any sum as a holdback.

If and whenever any builders lien or other lien for work, labour, services or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable, or claims therefor arise or are filed against title to the Premises, the Tenant will, within thirty (30) days after receipt of notice thereof, procure the discharge thereof, including any certificate of pending litigation or other notation or charge registered in respect of any lien, 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 Tenant of the validity or correctness of any claim for any such lien, the Tenant will not be bound by the foregoing, but will be entitled to defend against the 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, or otherwise posting security as may be satisfactory to the Landlord. This Section will not prevent the Tenant mortgaging or encumbering its chattels, inventory, trade fixtures or equipment which are not fixtures.

Pursuant to Section 3(2) of the *Builders Lien Act*, the Landlord may file in the Land Title Office notice of its fee simple interest in the land on which the Premises are located, as is required by law to ensure that the Landlord's title does not become charged with liens related to this lease.

## Section 6.08 Signage

The Tenant will not erect on the outside of the Building (or any part of the interior of the Premises which is visible from the outside), any sign, picture, device, photograph, marking, pole, tower or other structure without first having obtained the consent in writing of the Landlord, which consent may be unreasonably withheld.

## ARTICLE VII LIABILITY

### Section 7.01      Limitation of Liability

The Landlord and its officials, officers, employees and agents will not be responsible in any way for:

- (a) any personal injury, death or consequential damage of any nature whatsoever, however caused, that may be suffered or sustained by the Tenant or by any other person who may be in or about the Premises; or
- (b) any loss or damage of any nature whatsoever, however caused, to the Premises, any property belonging to the Tenant or to any other person while such property is in or about the Premises,

whether in the course of the performance of the Landlord's obligations under this lease or otherwise, unless resulting from the negligence or willful misconduct of the Landlord or those for whom the Landlord is responsible at law.

### Section 7.02      Exclusion of Liability

The Landlord and its officials, officers, employees and agents will not under any circumstances be liable or responsible in any way for:

- (a) any personal injury, death or consequential damage of any nature whatsoever, that may be suffered or sustained by the Tenant or by its officers, employees or agents or any other person who may be in or about the Premises, or any loss or damage of any nature whatsoever to the Premises or to any property belonging to the Tenant or to its officers, employees or agents or to any other person while such property is in or about the Premises,
  - (i) caused by failure, by reason of breakdown or any other cause, to supply adequate drainage, or by interruptions for any reason of any utility or other services, including without limitation heating, plumbing and electrical services, or by steam, water, rain, snow, or other substances leaking, entering, issuing or flowing onto or into any part of the Premises or by reason of breakage or want of repair of any pipes, plumbing, equipment or other machinery serving the Premises; or
  - (ii) however caused, if the Landlord or its officials, officers, employees or agents enter upon the Premises in the case of an emergency;
- (b) any loss or damage of any nature whatsoever, however caused, to books, records, files, money, securities, negotiable instruments, papers or other valuables of the Tenant or its officers, employees or agents;
- (c) any business, economic or indirect loss or damage suffered or sustained by the Tenant or its officers, employees or agents of any nature whatsoever, however caused; or

- (d) any loss which the Tenant is obligated to insure against hereunder or has insured against.

### Section 7.03 Indemnification

The Tenant hereby agrees to indemnify and save harmless the Landlord and its officials, officers, employees and agents in respect of all claims for bodily injury or death, property damage or other loss or 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 Premises by the Tenant, and in respect of all costs, expenses and liabilities incurred by the Landlord in connection with or arising out of all such claims, including the expenses of any action or legal proceeding pertaining thereto and the liabilities or obligations incurred or sustained by or imposed upon the Landlord or in respect of any of its officials, officers, employees or agents, and in respect of any loss, cost, expense or damage suffered or incurred by the Landlord arising from any breach by the Tenant of any of its covenants and obligations under this lease, PROVIDED HOWEVER the Tenant's covenant to indemnify and save harmless the Landlord and its officials, officers, employees and agents will not apply to the extent that the loss or damage is caused by the gross negligence or wilful misconduct on the part of the Landlord or its officials, officers, employees and agents.

## ARTICLE VIII ENVIRONMENTAL

### Section 8.01 Definitions

In this lease, the following words and expressions will have the following meanings:

- (a) "Environment" has the meaning given to it in the *Canadian Environmental Protection Act, 1999* (Canada) as of the date of this lease;
- (b) "Hazardous Substances" means any Substance capable of creating harm to people, property and/or the Environment including, without limitation, any flammable liquids, flammable or reactive solids, oxidizers, poisons, gases (compressed, liquefied or dissolved), explosives, radioactive materials, ureaformaldehyde, asbestos materials, underground tanks, compounds known as chlorobiphenyls or polychlorinated biphenyls (PCBs), Pollutants, contaminants, hazardous, corrosive or toxic Substances, Hazardous Waste or waste of any kind, including, without limitation, any Substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the Environment of which is prohibited, controlled, regulated or licensed by any federal, provincial or municipal authority;
- (c) "Hazardous Waste" has the meaning given to it in the *Environmental Management Act*, S.B.C. 2003, c. 53;
- (d) "Medium" means any land, water or air and includes the Premises;
- (e) "Pollute" is a verb which means to Release into or onto any Medium any Substance that:
  - (i) alters the physical, biological or chemical nature of that Medium;

- (ii) alters the capacity of the Medium to support any living thing, whether animal or plant life;
- (iii) injures or is capable of injuring the health or safety of a person in, on or near the Medium;
- (iv) injures or is capable of injuring property or any life form in, on or near the Medium;
- (v) interferes with or is capable of interfering with visibility or the dispersion of light or any photochemical activity within the Medium;
- (vi) interferes with or is capable of interfering with the normal conduct of business in, on, near or from the Medium;
- (vii) causes or is capable of causing physical discomfort to a person in, on or near the Medium;
- (viii) damages or is capable of damaging the Environment; or
- (ix) is Hazardous Waste,

and "Polluted" is an adjective, and "Pollution" and "Pollutant" are nouns, which have meanings that correspond to the meaning contained in this paragraph;

- (f) "Release" includes release, spill, leak, pump, pour, dump, abandon, emit, empty, discharge, spray, inoculate, deposit, seep, throw, place, exhaust, inject, escape, leach, dispose, infuse or introduce; and
- (g) "Substance" has the meaning given to it in the *Canadian Environmental Protection Act, 1999* (Canada) as of the date of this lease.

## Section 8.02 Suitability of the Premises

The Tenant acknowledges and agrees that the Landlord, either itself or through its officials, officers, employees or agents, has not made and the Tenant has not relied upon any representations or warranties from the Landlord or its officials, officers, employees or agents as to:

- (a) the state of repair of the Premises;
- (b) the suitability of the Premises for any business, activity or purpose whatever;
- (c) the suitability of the Premises for use by the Tenant;
- (d) the existence, nature or extent of any Pollution on or of the Premises; or
- (e) the need to take any remedial action in relation to any Pollution on or of the Premises.

### **Section 8.03      Tenant's Inspection of the Premises**

The Tenant acknowledges and agrees that it has been afforded all reasonable opportunity to inspect the Premises and all relevant documentation in respect thereof and to carry out such audits, investigations, tests and surveys as it considers reasonably necessary to ascertain:

- (a) the state of repair of the Premises;
- (b) the suitability of the Premises for use by the Tenant;
- (c) the existence, nature or extent of any Pollution on the Premises; and
- (d) the need to take any remedial action in relation to any Pollution on or of the Premises;

and the Tenant has independently made all such inspections, audits, investigations, tests and surveys as it regards as being necessary for the above purposes. It is understood and agreed that the Premises are being leased to the Tenant, and the Permission is being granted to the Tenant, on an "as is" basis.

The Tenant hereby assumes any and all duties, obligations, liabilities, costs or expenses for any remedial action for any Pollution of the Premises caused by the Tenant during the Term.

### **Section 8.04      Release and Indemnification**

The Tenant hereby releases the Landlord and its officials, officers, employees and agents from any and all costs, expenses, damages, losses or liabilities that may be incurred or suffered by the Tenant by reason of or resulting from or in connection with or arising in any manner whatsoever out of:

- (a) the Premises not being suitable for use by the Tenant;
- (b) the Premises being, or being found to be at any time, Polluted; or
- (c) the need to take any remedial action and the taking of such action as a result of such Pollution on or off the Premises.

The Tenant will indemnify, defend and save harmless the Landlord in respect of all claims for bodily injury (including death), property damage or other loss or damage, including damage to property outside the Premises, arising out of or in any way connected with the manufacture, storage, transportation, handling and discharge of Hazardous Substances on or from the Premises by the Tenant or any one for whom the Tenant is responsible in law.

### **Section 8.05      Removal of Hazardous Substances**

The Tenant will not bring upon the Premises or any part thereof, or cause or suffer the bringing upon the Premises or any part thereof, any Hazardous Substances, except those that are required by the Tenant for day to day maintenance of the Premises, and then only in reasonable quantities, only if such Hazardous Substances are not prohibited by any federal, provincial or municipal authority, and only if such use is in compliance with all statutes, by-laws, regulations or orders relating to Hazardous Substances. If at any time there is any



Hazardous Substances upon the Premises or a part thereof in breach of this covenant, the Tenant will, at its own expense:

- (a) immediately give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the following provisions of this Article;
- (b) promptly remove the Hazardous Substances from the Premises in a manner which conforms with all laws and regulations governing the movement of the same; and
- (c) if requested by the Landlord, obtain at the Tenant's cost and expense from an independent consultant designated or approved by the Landlord verification of the complete and proper removal of the Hazardous Substances from the Premises or, if such is not the case, reporting as to the extent and nature of any failure to comply with the foregoing provisions of this Section 8.05.

#### **Section 8.06 Breach of Laws Relating to Hazardous Substances**

Without limiting the generality of Section 8.05, the Tenant will immediately give written notice to the Landlord of the occurrence of any event on the Premises constituting an offence under or a breach of any statutes, by-laws, regulations or orders from time to time enforced relating to Hazardous Substances, and at its own cost and expense, comply with all laws and regulations from time to time in force relating to the activities carried out on the Premises during the Term relating to Hazardous Substances and the protection of the Environment and will immediately give written notice to the Landlord of the occurrence of any event on the Premises constituting an offence thereunder or a breach thereof and, if the Tenant will, either alone or with others, cause or suffer the happening of such event, the Tenant will, at its own expense:

- (a) immediately give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the following provisions of this Section 8.06;
- (b) promptly remove the Hazardous Substances from the Premises in a manner which conforms with all laws and regulations governing the movement of the same; and
- (c) if requested by the Landlord, obtain at the Tenant's cost and expense from an independent consultant designated or approved by the Landlord a report verifying the complete and proper removal thereof from the Premises or, if such is not the case, a report as to the extent and nature of any failure to comply with the foregoing provisions of this Section 8.06.

The Tenant will, at its own expense, remedy any damage to the Premises caused by such event within the Premises or by the performance of the Tenant's obligations under this Section 8.06 as a result of such occurrence.

If any governmental authority having jurisdiction will require the cleanup of any Hazardous Substances held, Released, spilled, abandoned or placed upon the Premises or Released into the Environment from the Premises during the Term, then the Tenant will, at its own expense, prepare all necessary studies, plans and proposals and submit the same for approval, provide all bonds and other security required by governmental authorities having

jurisdiction and carry out the work and will keep the Landlord fully informed and provide to the Landlord full information with respect to proposed plans and comply with the Landlord's requirements with respect to such plans. AND the Tenant agrees that if the Landlord determines, in its sole discretion, that the Landlord, its property or its reputation is placed in any jeopardy by the requirement for any such work, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant, pursuant to Section 15.07 of this lease.

#### **Section 8.07      Enquiries Pertaining to Hazardous Substances**

The Tenant hereby authorizes the Landlord to make enquiries from time to time of any government or governmental agency with respect to the Tenant's compliance with any and all laws and regulations pertaining to the Tenant, the Tenant's activities on the Premises and the Premises including without limitation laws and regulations pertaining to Hazardous Substances and the protection of the Environment; and the Tenant covenants and agrees that the Tenant will from time to time provide to the Landlord such written authorization as the Landlord may require in order to facilitate the obtaining of such information.

#### **Section 8.08      Landlord's Inspection of Goods**

The Landlord may at any time and from time to time inspect the Tenant's goods upon the Premises and the Tenant's records relating thereto for the purpose of identifying the nature of the goods and the existence or absence of any Hazardous Substances and the Tenant will assist the Landlord in so doing.

#### **Section 8.09      Ownership Remains With Tenant**

If the Tenant will bring or create upon the Premises any Hazardous Substances or suffer the bringing or creation upon the Premises of any Hazardous Substances or if the conduct of the Tenant's business will cause there to be any Hazardous Substance upon the Premises then, notwithstanding any rule of law or equity to the contrary, such Hazardous Substance will be and remain the sole and exclusive property of the Tenant and will not become the property of the Landlord and notwithstanding the degree of affixation of the Hazardous Substance or the goods containing the Hazardous Substance to the Premises and notwithstanding the expiry or earlier termination of this lease.

#### **Section 8.10      Environmental Covenants Survive Termination**

The obligations of the Tenant in this Article VIII will survive the expiry or earlier termination of this lease save only that, to the extent that the performance of those obligations requires access to or entry upon the Premises or any part thereof the Tenant will have such entry and access only at such times and upon such terms and conditions as the Landlord may from time to time specify; and the Landlord may, at the Tenant's cost and expense, undertake the performance of any necessary work in order to complete such obligations of the Tenant; but having commenced such work, the Landlord will have no obligation to the Tenant to complete such work.

## ARTICLE IX INSURANCE

### Section 9.01      Tenant's Insurance

The Tenant will, without limiting any of its obligations or liabilities under this lease, obtain and continuously carry, at its own expense and cost, insurance coverage with minimum limits of not less than those specified, as follows:

- (a) Commercial General Liability insurance with limits of not less than five million dollars (\$5,000,000) per occurrence or such higher limit of coverage as the Landlord's Chief Risk Officer may reasonably require from time to time and the policy will:
  - (i) indemnify and protect the Tenant, its employees, agents and contractors against all claims for loss, damage, injury or death to any person or persons and for damage to the Premises or the Licence Areas or to any public or private property occurring within or about the Premises or the Licence Areas arising by virtue of the Tenant's occupation or possession of the Premises or the Licence Areas;
  - (ii) contain a cross liability clause insuring the Tenant, the Landlord 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;
  - (iii) add the Landlord, its officials, officers, employees and agents as additional insureds;
  - (iv) include Tenants Legal Liability (Broad Form) insurance for an amount not less than one million dollars (\$1,000,000), such coverage to include the activities and operations conducted by the Tenant and third parties in the Premises or on the Licence Areas;
  - (v) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this lease;
  - (vi) include liquor legal liability with limits of not less than five million dollars (\$5,000,000) per occurrence (if applicable).
- (b) All Risk (Broad Form) insurance on property of every description and kind owned by the Tenant or for which the Tenant is legally liable or installed by or on behalf of the Tenant (and which is located in the Premises or on the Licence Areas), against loss, damage or repairs, including without limitation, to the interior of the Premises, doors, windows, millwork, Tenant's Equipment, stock, furniture, fittings, installations, alterations, additions, partitions, fixtures, trade fixtures and any display model, project, prototype, tool, instrument or device within the Premises or on the Licence

Areas in an amount not less than ninety percent (90%) of the full replacement cost thereof;

- (c) insurance for the replacement of all glass in the Premises for any damage howsoever caused;
- (d) Insurance for all damage to the Premises or Licence Areas sustained due to burglary, vandalism or attempt;
- (e) If applicable, Broad Form Boiler and Machinery insurance on a blanket repair and replacement basis with limits of each accident in an amount not less than the full replacement cost of all Tenant's Equipment and of all boilers, pressure vessels, heating, ventilating and air conditioning equipment and miscellaneous electrical apparatus owned or operated by the Tenant or by others (other than the Landlord) on behalf of the Tenant in the Premises or relating to or serving the Premises;
- (f) Business interruption insurance on a Profits Form basis with at least twelve (12) months period of indemnity;
- (g) Comprehensive Dishonesty Disappearance & Destruction Crime coverage with limits of not less than ten thousand dollars (\$10,000) Employee Dishonesty Form A, twelve thousand and five hundred dollars (\$12,500) Inside or Outside Hold-up, twelve thousand and five hundred dollars (\$12,500) Money Orders and Counterfeit Paper Currency and twelve thousand and five hundred dollars (\$12,500) Depositor's Forgery, with each policy providing for a limit of deductibility not greater than one thousand dollars (\$1,000) per occurrence;

and these insurance policies will:

- (i) unless otherwise stated above, provide for a limit of deductibility not greater than twenty five thousand dollars (\$25,000) per occurrence with respect to all perils except earthquake, and the deductible for any claim will be paid by the Tenant; and
- (ii) carry a loss payable clause stating that the proceeds of any claim against the insurer will be payable to the Landlord and the Tenant as their interests appear.

## **Section 9.02 General Requirements of Insurance**

The following will apply to all insurance policies:

- (a) 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 Landlord's Chief Risk Officer and will provide the Landlord with thirty (30) days prior written notice of material change resulting in reduction of coverage to the detriment of the Landlord or cancellation. Notice will be given to the Vancouver Board of Parks and Recreation, Attention: Insurance Administrator. Notice must identify the name of the Tenant as set out in this lease and the location or address of the Premises;

- (b) neither the providing of insurance by the Tenant in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing will be held to relieve the Tenant from any other provisions of this lease with respect to liability of the Tenant or otherwise, except to the extent that any loss or liability is covered by such policy or policies of insurance;
- (c) the insurance coverage will be primary insurance as respects the Landlord and any insurance or self-insurance maintained by or on behalf of the Landlord, its officials, officers, employees or agents will be excess of this insurance and will not contribute with it;
- (d) all insurance policies shall contain a clause that waives the insurer's right of subrogation against the Landlord or its officers, employees, servants or agents; and
- (e) subject to the provisions of this Article XI, the Tenant will provide at its own cost any additional insurance which the Tenant is required by law to provide or which the Tenant considers necessary to protect its own interest or such further other insurance as deemed to be necessary and required by the Landlord's Chief Risk Officer, acting reasonably.

#### **Section 9.03 Evidence of Insurance**

Prior to taking possession of the Premises, the Tenant will provide evidence of each policy of insurance required to be taken out by the Tenant in the City's standard Certificate of Insurance attached hereto as Appendix 1. Each certificate of insurance must identify the contract title, number, policy holder and contract subject-matter. Similar evidence of renewals, extensions or replacement of said policies must be made available to the General Manager of Vancouver Board of Parks and Recreation at any time upon request. If at any time, the Tenant fails to adduce satisfactory proof of such coverage being in full force and effect, the City and the Board may, but is not obligated to or liable for the manner in which it does so, secure such insurance and the Tenant will pay the cost of all incurred expenses as additional rent.

#### **Section 9.04 WorksafeBC Coverage**

At all times during the Term, the Tenant will, and will cause its directors, as applicable, officers, employees, servants and agents 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 Tenant will:

- (a) require as a condition of any agreement made with respect to any Alterations (including Tenant Improvements) carried out in the Building, whether with contractors, materialmen or otherwise, that there is full workers compensation insurance coverage in place in respect of all workmen, employees, servants and others engaged in or upon any work, and that all workmen, contractors or other workers require the same of their workmen and subcontractors. The Tenant will immediately notify the Landlord 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 Tenant will take all reasonable steps to ensure resolution of

such dispute forthwith. The Tenant 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 9.04 is not in place, the Landlord 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 Landlord 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 Landlord, a contractor hired by the Tenant to perform work on the Premises on its behalf may be designated as the Prime Contractor instead of the Tenant.

## **ARTICLE X DAMAGE & DESTRUCTION**

### **Section 10.01 Termination on Damage or Destruction**

If the Premises are substantially damaged or destroyed to the extent that the Premises or a substantial area of the Premises are rendered unusable by the Tenant or convenient access to the Premises cannot be had, all as determined by the Landlord in its sole discretion, the Landlord may, at its option, elect to not rebuild or repair the Premises and may terminate this lease and the Tenant's liability for rent will end as of the date of such damage or destruction but such termination will not operate so as to relieve the Tenant of any liability arising from such damage or destruction. There will be no compensation to the Tenant on account of such termination.

### **Section 10.02 Repair of Damage or Destruction**

If the Landlord elects to rebuild or repair the Premises, the Landlord will use commercially reasonable efforts to commence rebuilding or repairing within sixty (60) calendar days of the occurrence of the damage or destruction. If the Landlord does not initiate the rebuilding or repairing within such time period or, having commenced rebuilding or repairing, does not prosecute same to completion with reasonable dispatch, then the Tenant may give the Landlord fourteen (14) calendar days' notice of the termination of this lease but such termination will not operate so as to relieve the Tenant of any liability arising from such damage or destruction. There will be no compensation to the Tenant on account of such termination.

### **Section 10.03 Abatement of Rent**

In the event of damage or destruction to the Premises to the extent that the Premises or part of the Premises are rendered unusable or convenient access to the Premises cannot be had, which in either case is not caused by the default or negligence of the Tenant or those for whom it is responsible in law, the rent will abate in the same proportion that the area of which the Tenant is deprived bears to the total area as determined in the opinion of the

Landlord and such abatement will continue only so long as the Landlord determines its continuance to be reasonable.

#### **Section 10.04 No Effect on Repair Obligations**

Other than as set forth in Section 10.01 of this lease, nothing in this Article X will alter the parties' respective repair obligations as set out in Article VI of this lease.

#### **Section 10.05 Tenant to Notify Promptly**

The Tenant will give immediate notice to the Landlord in the event of fire or accident or other damage or destruction to the Premises.

### **ARTICLE XI ASSIGNMENT & SUBLETTING**

#### **Section 11.01 Assignment**

The Tenant shall not assign its leasehold interest in the Premises save and except upon the written consent of the Landlord, which consent the Landlord may unreasonably withhold but nevertheless if there are personal covenants herein on the part of the Tenant which, in the opinion of the Landlord's solicitors will not run with the lease, then the Landlord may withhold its consent to assignment unless the prospective assignee covenants with the Landlord to be bound by such personal covenants as if such covenants had been made between the Landlord and the prospective assignee.

If the Tenant is a corporate entity, then any amalgamation of the Tenant with any other party, and any change of effective control of the Tenant, will constitute an assignment of the Tenant's interest under this lease and will be subject to all of the provisions of this Section 11.01. Change of effective control of the Tenant includes any transfer, voluntary or involuntary, direct or indirect, which results in a change in the person or persons exercising or who might exercise effective control of the Tenant or the business required to be carried on in the Premises.

#### **Section 11.02 Subleasing**

The Tenant shall not sublease, license, set over or otherwise part with possession of the Premises or let any third party into possession of the Premises save and except upon written consent of the Landlord, which consent the Landlord may unreasonably withhold.

#### **Section 11.03 Assignment of Lease Rent**

Notwithstanding Section 11.02 hereof, the Tenant hereby assigns to the Landlord all rents and fees payable to the Tenant under any lease, license or occupation agreement with any third party in respect of the Premises, which assignment will supersede any provisions regarding the Tenant in bankruptcy and any claims of the creditors of the Tenant whether by execution, attachment, garnishing order or otherwise PROVIDED HOWEVER the Landlord agrees to refrain from enforcing the said assignment so long as the Tenant will not be in default in the payment of rent or the performance or observance of its covenants hereunder. Upon the Tenant falling into default in the payment of its rent or the performance or observance of its other covenants hereunder, the Landlord may forthwith direct the sublessee, licensee or such other third party to pay to the Landlord the lease rent, license fees or other monies as would

otherwise be owing to the Tenant from time to time and the payment of such monies to the Landlord will pro tanto discharge the sublessee's, licensee's or other third party's obligations to the Tenant and the Landlord will apply such monies to the rent and the performance and observance of the Tenant's covenants hereunder notwithstanding any claims on the part of the Tenant's trustee in bankruptcy or the Tenant's creditors, whether by execution, attachment, garnishing order or otherwise. If the sublessee, licensee or other third party fails to abide by the Landlord's directions in this behalf then, at the Landlord's election, the lease, license or other third party agreement will cease and determine and the Landlord may forthwith re-enter the leased, licensed or occupied portion of the Premises and arrange for new occupants thereof whose occupation will be subject to the provisions of this Section.

**Section 11.04    Mortgaging by Tenant - INTENTIONALLY DELETED**

**Section 11.05    Mortgage Subject to Landlord's Rights under Lease - INTENTIONALLY DELETED**

**Section 11.06    Notice to and Remedies of Mortgagee - INTENTIONALLY DELETED**

**ARTICLE XII  
BANKRUPTCY**

**Section 12.01    Bankruptcy**

If during the Term, any of the goods or chattels of the Tenant are at any time seized or taken in execution by any creditor of the Tenant, or if the Tenant makes a general assignment for the benefit of creditors, or if the Tenant institutes proceedings to have the Tenant adjudicated as bankrupt or insolvent, or if the Tenant becomes the subject of bankruptcy or insolvency proceedings, or if a judgment, decree or order be entered by a court of competent jurisdiction adjudging the Tenant bankrupt or insolvent, or if the Tenant is unable to meet all debts as they fall due for a period of not less than three (3) months, or if the Tenant or its directors will pass any resolution authorizing the dissolution or winding-up of the Tenant, or if a receiver, interim receiver, manager, receiver-manager, trustee or liquidator of all or any part of the Tenant's property will be appointed or applied for by the Tenant or by one or more of the Tenant's creditors, then the Landlord will be so notified and the then current rent plus an additional three (3) months current rent will immediately become due and be paid and the Landlord may immediately claim the same together with any arrears of rent and, at the option of the Landlord, the Term is subject to termination forthwith. If the Tenant becomes defunct or amalgamates with any other body without obtaining the prior written consent of the Landlord or if a committee is appointed under the *Patients Property Act*, R.S.B.C. 1996, c.349, to lawfully deal with the Tenant's estate then at the option of the Landlord the Term will forthwith terminate. If the Tenant surrenders up its certificate of incorporation or otherwise ceases to exist the Term terminates as of such surrender or dissolution. If the Tenant is a natural person, at any time after the Tenant's death the Landlord may terminate the Term upon sixty (60) days' notice to any executor or administrator of his estate.



## ARTICLE XIII COMPLIANCE WITH LAWS

### Section 13.01 Statutes and By-laws

The Tenant covenants to promptly and faithfully observe and comply with all federal, provincial or civic statutes, by-laws, regulations and orders now or hereafter which are in force and in effect which touch and concern the Premises and/or the Licence Areas or the Tenant's activities within them or either of them, including, without limitation any applicable environmental guidelines, and any amendments thereto, which deal with environmental protection and safety and/or Hazardous Substances. If any such statutes, by-laws, regulations, orders or guidelines are directed at owners, the Tenant will perform and observe same at its own expense in the place and stead of the Landlord. Notwithstanding the foregoing, if compliance with statutes, by-laws, regulations and orders requires any repair or replacement or modification of the structure of the Building for which the Landlord is responsible not occasioned by the use of the Premises specifically for the Business, the Landlord will be responsible, at its expense, for such repair, replacement or modification.

## ARTICLE XIV OTHER COVENANTS

### Section 14.01 Quiet Enjoyment

Subject to the provisions of this lease and subject to the provision that nothing contained or implied herein will prejudice or affect the Landlord's rights and powers in the exercise of its functions pursuant to the *Vancouver Charter*, S.B.C. 1953, c.55, and the rights and powers of the Landlord under all of its public and private statutes, by-laws and regulations, all of which may be as fully and effectively exercised in relation to the Premises as if this lease had not been executed and delivered by the Landlord and the Tenant, the Landlord covenants with the Tenant for quiet enjoyment.

### Section 14.02 Performance of Obligations

The Tenant covenants with the Landlord to faithfully and promptly pay the rent and perform and observe its obligations herein.

### Section 14.03 Covenants of the Landlord

The Landlord will:

- (a) substantially complete the s.17(1) before the Access Date;
- (b) not lease or grant any person any right of occupancy in the Building or suffer or permit any person in the Building to operate any business or concession in the nature of a restaurant comparable to the Business.

### Section 14.04 No Registration of Lease

The Landlord is not obligated to deliver this lease in registrable form. The Tenant will not register this lease in the Land Title Office.

#### **Section 14.05 Landlord's Rules and Regulations**

The Tenant shall at all times comply with all reasonable rules and regulations made by or on behalf of the Landlord in respect to the Tenant's use and occupation of the Premises which are not inconsistent with the terms of this lease.

#### **Section 14.06 Property Manager**

The Tenant acknowledges that the Landlord may engage a Property Manager to manage the Lands and the Building, including the planning and delivery of public programming and activation of the public park on the Lands. The Tenant agrees that, if a Property Manager is so engaged, the Tenant will attorn to the Property Manager as agent of the Landlord, and will cooperate and collaborate with the Property Manager to support public programming and stewardship activities at the park.

### **ARTICLE XV DEFAULT & REMEDIES**

#### **Section 15.01 Breach of Covenants**

The Landlord and Tenant agree that if and whenever:

- (a) any Rent payment or any part thereof is not made on the day appointed for payment thereof and such default continues for seven (7) days following notice thereof; or
- (b) the Tenant is in default in the payment of any money, other than Rent, required to be paid by the Tenant under the terms of this lease and such default continues for ten (10) days following any specific due date on which the Tenant is to make such payment or, in the absence of such specific due date, for ten (10) days following notice requiring the Tenant to pay the same; or
- (c) the Tenant defaults in performing or observing any of the provisions of this lease other than those requiring payment of money to the Landlord and such default continues for a period of twenty (20) days after notice thereof to the Tenant, except for a default which to be cured with all due diligence would require a longer period, then after such longer period, or if the Tenant fails to proceed promptly and diligently and continuously after the service of such notice to cure same; or
- (d) the Premises are vacated or unoccupied for ten (10) or more consecutive days while the Premises can be used for the Permitted Use, without the consent of the Landlord; or
- (e) the Premises are abandoned by the Tenant;
- (f) the Tenant commits any other breach under this lease which gives rise to a right of termination; or
- (g) this lease is terminated;

then and in every such case, it will be lawful for the Landlord at any time thereafter without notice or demand, with or without process of law and by forceable entry if necessary, to re-enter into and upon the Premises, and to terminate this lease by leaving upon the Premises

notice in writing of such termination. If the Landlord terminates this lease pursuant to this Section, or otherwise as a result of default of the Tenant, there will immediately become due and owing to the Landlord, in addition to any other sums payable to the Landlord hereunder as damages suffered by the Landlord as a result of the Tenant's breach, the then current month's rent, together with the rent accruing for the remainder of the Term. This provision for notice and termination will not be construed so as to delay or supersede any specific remedy to which the Landlord may have recourse in this lease.

#### **Section 15.02    Distraint**

The Tenant waives and renounces the benefit of any present or future law taking away or limiting the Landlord's rights against the property of the Tenant and, notwithstanding any such law, the Landlord may seize and sell all the Tenant's goods and property, whether within the Premises or not, and apply the proceeds of such sale towards any arrears of rent (including amounts deemed to be rent under this lease) and the costs of the seizure and sale. The Tenant further agrees that if it abandons the Premises and any arrears of rent remain unpaid, the Landlord, in addition to any remedy otherwise provided by law, may seize and sell the goods and property of the Tenant at any place to which the Tenant or any other person may have removed them from the Premises, in the same manner as if such goods and property had remained in, about or upon the Premises.

#### **Section 15.03    Right to Re-let**

If the Landlord becomes entitled to re-enter the Premises the Landlord will have the right, if it thinks fit, to enter the Premises as the agent of the Tenant either by force or otherwise without being liable for any prosecution therefor, and as agent of the Tenant to re-let the Premises or any part or parts thereof at the risk of the Tenant and, as agent for the Tenant, to receive the rent therefor and, as agent for the Tenant, to take possession of any furniture, equipment and other property therein and sell the same at public or private sale without notice. Such rent and proceeds from the sale of the furniture, equipment and other properties will be allocated first to the Landlord's cost of so entering and re-letting, then to interest on amounts due by the Tenant to the Landlord hereunder and unpaid, and then to the payment of such unpaid sums. The balance of such rent and proceeds, if any, may be applied by the Landlord on account of the rent due hereunder to the Landlord.

#### **Section 15.04    Forfeiture**

The Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event the Tenant will be evicted or dispossessed from the Premises for any cause, statutory or otherwise, or if the Landlord re-enters the Premises following the occurrence of any default by the Tenant hereunder, or if this lease is terminated before the expiration date thereof originally fixed herein.

#### **Section 15.05    Remedies Generally**

Mention in this lease of any particular right or remedy of the Landlord in respect of the default by the Tenant will not preclude the Landlord from any other right or remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this lease. No right or remedy will be exclusive or dependent upon any one or more of such rights or remedies independently or in combination, such rights or remedies being cumulative and not alternative. Whenever the Tenant seeks a remedy in order to enforce the observance

or performance of any of the terms, covenants and conditions contained in this lease on the part of the Landlord to be observed or performed, the Tenant's only remedy (except where another remedy is expressly provided herein, in which event the Tenant will be restricted to that remedy) will be for such damages as the Tenant will be able to prove in a court of competent jurisdiction that the Tenant has suffered as a result of a breach (if established) by the Landlord in the observance and performance of any of the terms, covenants and conditions contained in this lease on the part of the Landlord to be observed and performed. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of or in any way connected with this lease, the relationship of the Landlord and the Tenant created hereby, the Tenant's use or occupancy of the Premises or any claim for any injury. In the event the Landlord commences any action or proceeding for non-payment of rent, the Tenant agrees not to interpose any counterclaim of any nature or description in any such action or proceeding. In the event of any breach or threatened breach by the Tenant of any of the terms and provisions of this lease, the Landlord will have the right to injunctive relief as if no other remedies were provided herein for such breach. The Tenant hereby expressly waives any right to assert a defense based on merger and agrees that neither the commencement of any action or proceeding, nor the settlement thereof, nor the entry of judgment therein will bar the Landlord from bringing any subsequent action or proceeding from time to time. If the Tenant will default hereunder prior to the date fixed as the commencement of any renewal or extension of this lease, whether by a renewal or extension option herein contained or by separate agreement, the Landlord may cancel such option or agreement for renewal or extension of this lease, upon written notice to the Tenant.

#### **Section 15.06 Expenses**

If any legal proceeding is brought for recovery of possession of the Premises, for the recovery of rent or because of the breach of any other terms, covenants or conditions herein contained on the part of the Tenant to be kept or performed, the Tenant will pay to the Landlord as additional rent, upon demand, all costs and expenses incurred therefor (including without limitation, all professional and consultant fees, and all legal fees on a solicitor and his own client basis, disbursements, and all court costs and expenses of any legal proceeding; and the term "proceeding" will include, without limitation, any arbitration, administrative, governmental, quasi-governmental or any other mediation proceeding and the term "costs" will include the pro-rata portion of the wages, salaries and all other remuneration of the Landlord's officers and employees reasonably attributed to the matter).

Without limiting the generality of the immediately preceding paragraph or any other provisions of this lease, the Tenant will pay to the Landlord, as additional rent upon demand, all costs and expenses (including, without limitation, those fees, disbursements, costs and expenses set out in the bracketed insert in the immediately preceding paragraph of this Section 15.06) which the Landlord may incur or pay out by reason of, or in connection with:

- (a) any proceeding by the Landlord to terminate this lease or for the recovery of possession of the Premises or for the recovery of rent;
- (b) any other proceeding by the Landlord against the Tenant or any indemnitor;
- (c) any distress levied by the Landlord against the Tenant's goods, chattels and inventory or any of them on the Premises for the recovery of rent;

- (d) any default by the Tenant in the observance or performance of any obligations of the Tenant under this lease whether or not the Landlord commences any proceeding against the Tenant or any indemnitor;
- (e) any proceeding brought by the Tenant against the Landlord (or any officer, employee or agent of the Landlord) in which the Tenant fails to secure a final judgment against the Landlord;
- (f) any other appearance by the Landlord (or any officer, employee or agent of the Landlord) as a witness or otherwise in any proceeding whatsoever involving or affecting the Landlord, the Tenant, this lease, the indemnity agreement (if any) or the Premises;
- (g) any amendment, modification or change in any of the terms of this lease or the indemnity agreement, if any (and any request or negotiations pertaining thereto, whether or not such amendment, modification or change is finally agreed on);
- (h) any renewal, extension, surrender, or release of this lease or the indemnity agreement, if any (and any request or negotiations pertaining thereto, whether or not such renewal, extension, surrender or release becomes effective);
- (i) any transfer of this lease (and any request or negotiations pertaining thereto, whether or not such transfer is approved and finally agreed on); and
- (j) any Alterations of or to the Premises (and any request or negotiations pertaining thereto, whether or not such Alterations are approved and finally agreed on).

The Tenant's obligations under this Section 15.06 will survive the expiration or earlier termination of this lease.

#### **Section 15.07 Landlord May Remedy Tenant's Default**

If the Tenant fails to pay, when due and prior to the expiration of any curative period provided for in this Lease, any amount required to be paid by the Tenant pursuant to this lease, the Landlord, after giving two (2) days' notice in writing to the Tenant, may, but will not be obligated to, pay all or any part of it. If the Tenant is in default in the performance of any of its covenants or obligations hereunder (other than the payment of rent required to be paid by the Tenant pursuant to this lease) and the applicable curative period has expired, the Landlord may from time to time after giving such notice as it considers sufficient (or without notice in the case of an emergency) having regard to the circumstances applicable, perform or cause to be performed any of such covenants or obligations, or any part thereof, and for such purpose may do such things as may be required, including, without limitation, entering upon the Premises and doing such things upon or in respect of the Premises or any part thereof as the Landlord considers requisite or necessary. All expenses incurred and expenditures attributable to or made (including all employee, overhead and other internal costs) pursuant to this Section 15.07, will be paid by the Tenant to the Landlord as additional rent upon demand. The Landlord will have no liability to the Tenant or any other person for any claims resulting from any such action, entry or performance of any work by the Landlord upon the Premises.

## **Section 15.08 Landlord's Access to Records**

The Landlord may at any reasonable time and upon forty-eight (48) hours written notice to the Tenant enter (or permit governmental authorities to enter) the Premises or any other office of the Tenant's for the purpose of ensuring the Tenant's compliance with this lease, including without limitation, by auditing the Tenant's environmental and financial records and by conducting soil, water and other tests, provided that the Landlord takes reasonable steps to avoid interfering with the Tenant's use and occupation of the Premises.

## **Section 15.09 Emergency Access**

If and when for any reason an emergency exists or is reasonably contemplated, the Landlord or its agents may enter the Premises by a master key, or may forcibly enter them, provided reasonable care is exercised, without rendering the Landlord or such agent liable, and without in any manner affecting the Tenant's obligations under this lease. However, despite the above, the Landlord has no obligation, responsibility or liability, for the care, maintenance or repair of the Premises except as otherwise specifically provided.

## **Section 15.10 Security Agreement - INTENTIONALLY DELETED**

### **ARTICLE XVI END OF TERM**

## **Section 16.01 Vacant Possession**

Upon termination of the Term, whether by the passage of time or otherwise, the Tenant will deliver up vacant possession of the Premises and will leave the Premises in a sanitary, neat, tidy, safe and empty condition free from all nuisance, debris, rubbish and stock-in-trade and will ensure that the Premises are to the standard of repair and decoration required of the Tenant pursuant to Article VI hereof.

Provided however, that the Tenant's Equipment will become the property of the Landlord at the end of the tenancy, subject to the right of the Landlord to refuse all or some of it in its sole discretion. Any refused equipment will remain the property of the Tenant, and the Tenant will be required to remove it from the Premises at the end of the tenancy.

## **Section 16.02 Trade Fixtures**

- (a) If the Tenant is not in default hereunder at the expiration of the Term, the Tenant will have the right to remove its trade fixtures from the Premises but will make good any damage caused to the Premises resulting from the installation or removal thereof.
- (b) If the Tenant fails to remove any of its trade fixtures and restore the Premises as provided in Section 16.02(a), all such trade fixtures will become the property of the Landlord except to the extent that the Landlord requires removal thereof pursuant to Section 16.02(d).
- (c) If the Tenant abandons the Premises or this lease is terminated before the proper expiration of the Term due to a default on the part of the Tenant, as of the moment of such default by the Tenant, all trade fixtures and furnishings of the Tenant (whether or not attached in any manner to the Premises) will, except to the extent the Landlord requires the removal thereof pursuant to Section 16.02(d), become and

be deemed to be the property of the Landlord, without compensation to the Tenant but without prejudice to any other right or remedy of the Landlord at law or in equity.

- (d) Notwithstanding that any trade fixture is or may become the property of the Landlord, the Tenant will forthwith remove all or part of the same and will make good any damage caused to the Premises resulting from the installation or removal thereof, all at the Tenant's expense, should the Landlord so require by notice to the Tenant.
- (e) If the Tenant, after receipt of a notice from the Landlord pursuant to Section 16.02(d), fails to promptly remove any trade fixture in accordance with such notice, the Landlord may enter into the Premises and remove therefrom all or part of such trade fixture and make good any damage caused to the Premises resulting from the installation or removal thereof, without any liability accruing against the Landlord and at the expense of the Tenant, which expense will forthwith be paid by the Tenant to the Landlord.

### **Section 16.03 Overholding**

If the Tenant continues to occupy the Premises after the expiration of the Term without exercising its option to renew, or after the expiration of the Renewal Term, and the Landlord will accept rent, the new tenancy thereby created will be a tenancy from month to month and not from year to year, and will be subject to the covenants and conditions herein contained so far as may be applicable to a tenancy from month to month, and will be determined by one (1) month's prior notice in writing. The Rent payable for any overholding period after the expiration of the Term or the Renewal Term if the Tenant has not exercised its option to renew will be 9% of Gross Revenue + GST.

### **Section 16.04 For Showings/Inspections**

The Landlord or its agents have the right to enter the Premises at any reasonable time (and upon not less than forty-eight (48) hours written notice to the Tenant) to examine them (or within the last sixty (60) days of the Term if not renewed or any renewal term if not further renewed, to show them to prospective purchasers or tenants) and to enter the Premises at times mutually agreed between the Landlord and the Tenant (or on reasonable prior notice but except in the case of emergency not less than forty-eight (48) hours' notice) to make such repairs as the Landlord may deem necessary or desirable and the Landlord will be allowed to take all required material into and upon the Premises without such entry constituting an eviction of the Tenant in whole or in part nor a breach of the Landlord's obligations and the rent reserved will in no way abate by reason of loss or interruption of the business of the Tenant or otherwise while the repairs are being made, provided the Landlord takes all commercially reasonable steps to perform the work outside of the normal operating hours of the Tenant's business on the Premises and expeditiously and with as little inconvenience to the Tenant as is possible in the circumstances.

## **ARTICLE XVII RENEWAL**

### **Section 17.01 Option to Renew**

If:

- (a) the Tenant pays the rent as and when due and punctually observes and performs the terms, covenants and conditions to be observed and performed by it in accordance with the terms of this lease; and
- (b) the Tenant gives the Landlord not less than six (6) months and not more than twelve (12) months written notice prior to the expiration of the Term of the Tenant's exercise of its option to renew;

then the Landlord shall grant to the Tenant one (1) renewal term upon the expiration of the Term, for a period of four (4) years (the "Renewal Term") on the same terms and conditions as set out in this lease except that the Landlord shall have no obligation to pay or provide to the Tenant any allowance, concession or inducement of any nature, or provide any free rent or discounted rent of any nature, or provide any fixturing period, or do or perform any s.17(1) in, on, to or for the Premises.

## **ARTICLE XVIII TRANSFER**

### **Section 18.01 Landlord Released**

In the event of the sale or lease by the Landlord of the Premises or the assignment by the Landlord of its interest in this lease, the Landlord will without further written agreement be released and relieved of and from such liabilities and obligations.

### **Section 18.02 Tenant's Covenant**

The Landlord may sell, transfer or otherwise dispose of the Premises, or any portion of the Premises, to any party and upon the conveyance to such party of the Premises or any portion of them, the Tenant will, upon receipt of written acknowledgement from such party of this lease and the Tenant's rights under this lease, attorn to and become the Tenant of such party under the terms of this lease and the Tenant will provide such party with an acknowledgment in writing binding upon the Tenant that it will perform the obligations and satisfy the liabilities of the Tenant, and any indemnifier or covenantor will execute and deliver a new covenant or indemnity agreement to such party on the same terms as any existing agreement with the Landlord.

### **Section 18.03 Status Statement**

The Landlord and the Tenant will provide to the other, within three (3) days of such party's request, a status statement confirming the particulars of the Lease, addressed to the other and any potential buyer or mortgagee, binding upon the Tenant or the Landlord, as the case may be, confirming:

- (a) in the case of the Tenant, that the Tenant has accepted possession of the Premises;
- (b) whether or not any party hereto has carried out all of its obligations pursuant to this lease;
- (c) that this lease constitutes the whole of the agreement between the parties (or setting out such other agreements);



- (d) that this lease is in full force and effect and that there are no defences or set offs which the Tenant claims against the Landlord (or setting out any such claims) or vice versa; and
- (e) such other matters as may be reasonably required by the requesting party or any potential or actual purchaser or mortgagee of the Premises.

## **ARTICLE XIX MISCELLANEOUS**

### **Section 19.01 Delivery of Notices**

Any notice required to be given hereunder must be in writing and the sender must deliver it by hand, facsimile, email or by mail to the party to which it is to be given, as follows:

- (a) to the Tenant:

**Kafka's Coffee Inc.**  
2525 Main Street  
Vancouver, British Columbia V5T 3E5

Attention: Aaron Kafka

Email: aaron@kafkascOFFEE.ca

- (b) to the Landlord:

**Vancouver Board of Parks and Recreation**  
2099 Beach Avenue  
Vancouver, British Columbia V6G 1Z4

Attention: General Manager

Fax No.: 604-257-8501

or to such other address, fax number or email address as the party may designate and will be deemed to have been received on the day of delivery, faxing or emailing if within business hours on a business day and otherwise on the next succeeding business day and, if mailed, the fifth (5<sup>th</sup>) day after mailing, provided that if there is between the time of mailing and the actual receipt of the notice a mail strike, slow-down or other labour dispute which might affect delivery of such notice then such notice will only be effective if actually delivered.

### **Section 19.02 Covenants Survive Termination**

The covenants herein on the part of the Landlord and the Tenant which, as of termination of this lease or the Term whether by passage of time or otherwise, remain unfulfilled, undischarged or otherwise outstanding 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 there is any liability or indebtedness by either party to the other or so long as any such covenant remains unfulfilled, undischarged or otherwise outstanding, whether in whole or in part, notwithstanding anything herein to the contrary.

### **Section 19.03 Administration of Lease**

Where this lease requires or permits on the part of the Landlord any authority, reservation, discretion, disallowance, approval or other act of supervision or the giving of any notice, such act or action will be well and truly performed on the part of the Landlord when performed by the General Manager of the Vancouver Board of Parks and Recreation or his or her nominee (which may include the Property Manager).

### **Section 19.04 Time is of the Essence**

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

### **Section 19.05 Joint and Several**

Any covenant, agreement, condition or proviso made by two (2) or more persons will be construed as several as well as joint.

### **Section 19.06 Waiver**

No waiver of or neglect to enforce any provision of this lease upon a default by the Tenant will be deemed to be a waiver of any such right upon any subsequent similar default. Without limiting the generality of this Section 19.06, the acceptance by the Landlord of part payment of any sums, including rent, required to be paid under this lease will not constitute a waiver or release of the Landlord's right to payment in full of such sums.

### **Section 19.07 Entire Agreement**

The Tenant acknowledges that there are no covenants, representations, warranties, agreements, terms or conditions expressed or implied relating to this lease or the Premises except as expressly set out in this lease, and that this lease may not be modified except by an agreement in writing executed by both the Landlord and the Tenant.

### **Section 19.08 Severability**

If any provision or provisions of this lease are determined by a court to be illegal or not enforceable, it or they will be considered separate and severable from this lease and the remaining provisions of this lease will remain in full force and be binding upon the parties.

### **Section 19.09 Relationship between Landlord and Tenant**

Nothing contained in this lease nor any acts of the Landlord or the Tenant will be deemed to create any relationship between the Landlord and the Tenant other than the relationship of landlord and tenant, and the Tenant will throughout the Term take all reasonable steps to inform the public that the Tenant is the operator of the Premises as an independent contractor and not as employee or agent of the Landlord.

### **Section 19.10 Force Majeure**

Despite anything contained in this lease to the contrary, if the Landlord or the Tenant is, in good faith, delayed or prevented from doing anything required by this lease because of a strike, labour trouble, inability to get materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, or

any other similar reason, that is not the fault of the party delayed or of its officers, employees or agents, the doing of the thing is excused for the period of the delay and the party delayed will promptly do what was delayed or prevented within the appropriate period after the delay. The preceding sentence does not excuse the Tenant from payment of rent or the Landlord from payment of amounts, if any, that it is required to pay, in the amounts and at the time specified in this lease.

#### **Section 19.11 Permanent Public Park**

Notwithstanding anything contained in this lease, if the Building of Lands are part of a permanent public park within the meaning of section 490 of the *Vancouver Charter*, S.B.C. 1953, C. 55, as amended, and ceases to be part of such a permanent public park, then this lease will be terminable at the option of the Landlord but all obligations of the Tenant up to the date of any such termination will survive such termination. Upon termination pursuant to this Section 19.11, at the option of the Tenant, subject to the approval of Vancouver City Council, the City of Vancouver will enter into a lease with the Tenant on the same terms and conditions of this lease, including Rent and the right of renewal, for the balance of the Term or renewal term, as the case may be, that was remaining on this lease immediately prior to the effective date of termination.

#### **Section 19.12 Parking**

This lease does not include any parking rights in favour of the Tenant.

#### **Section 19.13 No Promotion**

The Tenant must not disclose or promote its relationship with the City of Vancouver, including by means of any verbal declarations or announcements and by means of any sales, marketing or other literature, letters, client lists, press releases, brochures or other written materials, without the express prior written consent of the City of Vancouver (except as may be necessary for the Tenant to perform the Tenant's obligations under the terms of this lease).

#### **Section 19.14 Trade and Domain Names**

The Tenant will not use any trade names for the cafe it intends to establish in the Premises in any medium, including, without limitation, print, radio, internet or television advertisements, or register any internet domain names for the cafe, without the prior written approval of such trade or domain names by the Landlord, which approval will not be unreasonably withheld. The Landlord hereby provides approval for the trade name "Kafka's Coffee Roasting".

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF the parties hereto have executed this lease as of the day and year first above written.

**KAFKA'S COFFEE INC.**

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Print Name and Title

**CITY OF VANCOUVER** as represented by its  
**VANCOUVER BOARD OF PARKS AND RECREATION**

\_\_\_\_\_  
Authorized Signatory

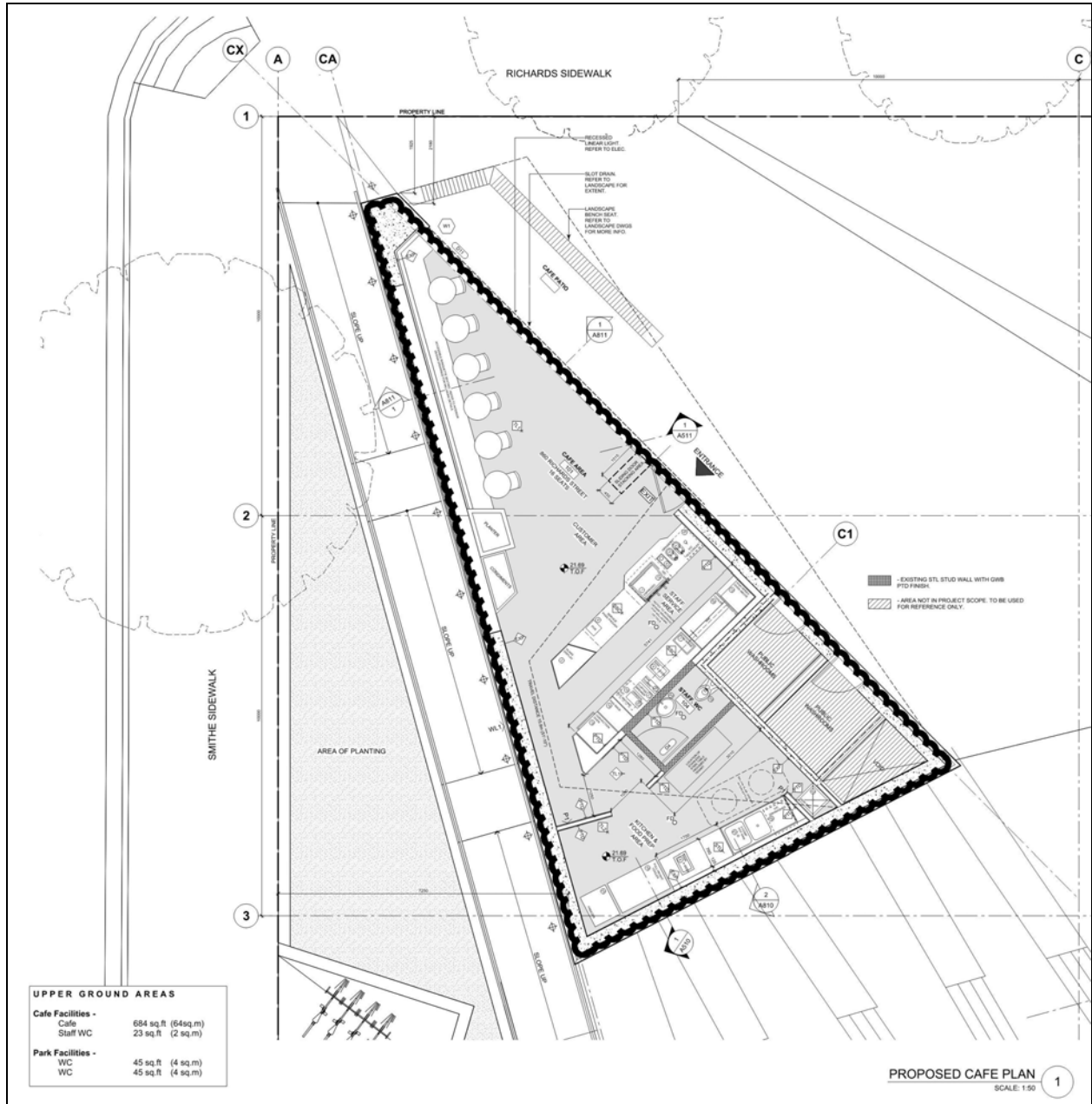
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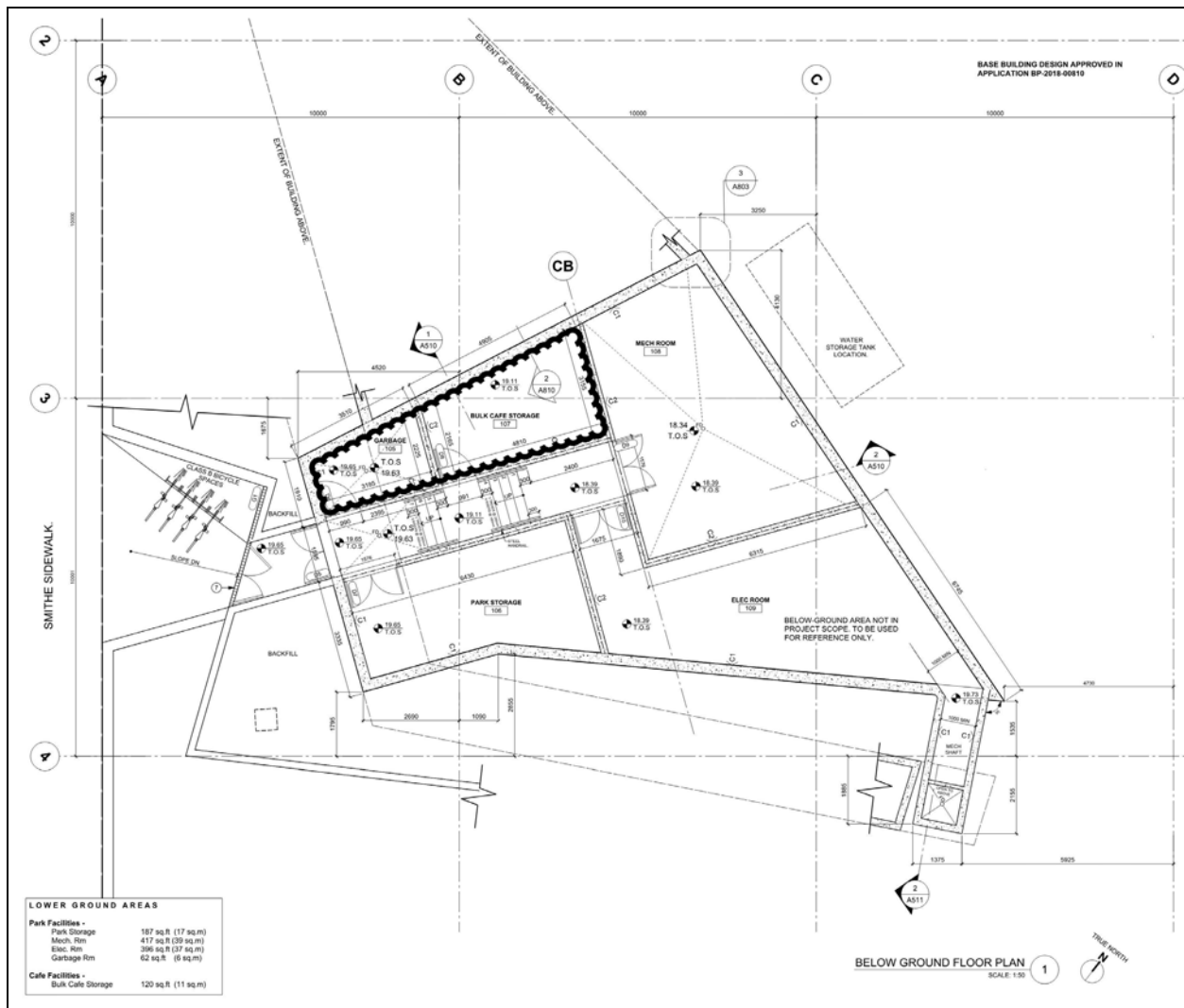
\_\_\_\_\_  
Authorized Signatory

\_\_\_\_\_  
Print Name and Title

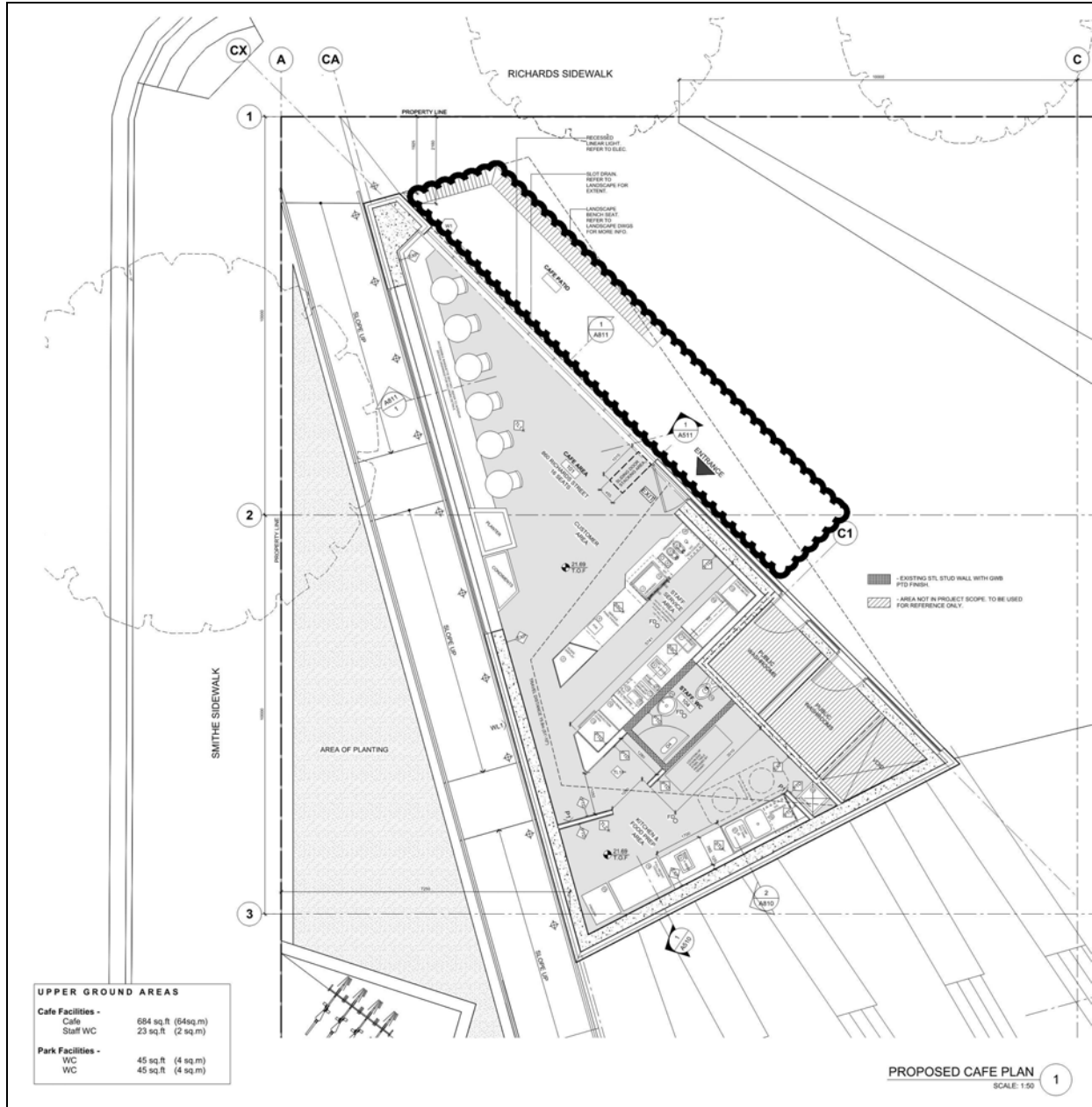
This is the signatory page of a Lease between the **City of Vancouver** as represented by its **Vancouver Board of Parks and Recreation** as Landlord and **Kafka's Coffee Inc.** as Tenant concerning the Café Facility at Smithe & Richards Park (860 Richards Street).

# SCHEDULE A LEASE AREAS (PREMISES)





# SCHEDULE A.1 LICENCE AREAS



APPENDIX 1  
CERTIFICATE OF INSURANCE





## GENERAL CERTIFICATE OF INSURANCE



Appendix A

Section 8 b) – Staff to select the required # of days Written Notice before sending the certificate out for completion.  
Section 2 through 8 – to be completed and executed by the Insurer or its Authorized Representative

1. **THIS CERTIFICATE IS ISSUED TO:** City of Vancouver, as represented by its Board of Parks & Recreation  
2099 Beach Avenue, Vancouver, BC, V6G 1Z4

*and certifies that the insurance policies as listed herein have been issued to the Named Insured(s) and are in full force and effect as of the effective date of the agreement described below.*

2. **NAMED INSURED:** *[must be the same name as the Permittee/Licensee or Party(ies) to the Contract and is/are either an individual(s) or a legally incorporated company(ies)]*

**MAILING ADDRESS:**

**LOCATION ADDRESS:**

**DESCRIPTION OF OPERATION, CONTRACT, AGREEMENT, LEASE, PERMIT OR LICENSE:**

3. **PROPERTY INSURANCE** naming the City of Vancouver and its Board of Parks & Recreation as Named Insureds and/or Loss Payees with respect to their interests and shall contain a waiver clause in favour of the City of Vancouver and its Board of Parks & Recreation (All Risks Coverage including Earthquake and Flood)

INSURER: _____	INSURED VALUES: (Replacement Cost)
TYPE OF COVERAGE: _____	Building and Tenants' Improvements \$ _____
POLICY NUMBER: _____	Contents and Equipment: \$ _____
POLICY PERIOD: From _____ to _____	Deductible Per Loss: \$ _____

4. **COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)**

Including the following extensions:

- ☒ Personal Injury
- ☒ Products and Completed Operations
- ☒ Cross Liability or Severability of Interest
- ☒ Employees as Additional Insureds
- ☒ Blanket Contractual Liability
- ☒ Non-Owned Auto Liability

INSURER: \_\_\_\_\_  
POLICY NUMBER: \_\_\_\_\_  
POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

**LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)**

Per Occurrence:	\$ _____
Aggregate:	\$ _____
All Risk Tenants' Legal Liability:	\$ _____
Deductible Per Occurrence:	\$ _____

5. **AUTOMOBILE LIABILITY INSURANCE** for operation of owned and/or leased vehicles

INSURER: \_\_\_\_\_  
POLICY NUMBER: \_\_\_\_\_  
POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

**LIMITS OF LIABILITY:**

Combined Single Limit: \$ \_\_\_\_\_  
*If vehicles are insured by ICBC, complete and provide Form APV-47.*

6. ☐ **UMBRELLA OR** ☐ **EXCESS LIABILITY INSURANCE**

INSURER: \_\_\_\_\_  
POLICY NUMBER: \_\_\_\_\_  
POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

**LIMITS OF LIABILITY: (Bodily Injury and Property Damage Inclusive)**

Per Occurrence:	\$ _____
Aggregate:	\$ _____
Self-Insured Retention:	\$ _____

7. **OTHER INSURANCE** (e.g. Boiler & Machinery, Business Interruption, Crime, etc.) – Please specify Name of Insurer(s), Policy Number, Policy Period, and Limit.

8. **POLICY PROVISIONS:**

*Where required by the governing contract, agreement, lease, permit or license, it is understood and agreed that:*

- a) *The City of Vancouver and its Board of Parks & Recreation, their officials, officers, employees, servants and agents have been added as Additional Insureds with respect to liability arising out of the operation of the Named Insured pursuant to the governing contract, agreement, lease, permit or license;*
- b) *THIRTY (30) days written notice of cancellation or material change resulting in reduction of coverage with respect to any of the policies listed herein, either in part or in whole, will be given by the Insurer(s) to the Holder of this Certificate; the exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply;*
- c) *The insurance policy (policies) listed herein shall be primary with respect to all claims arising out of the operation of the Named Insured. Any insurance or self-insurance maintained by the City of Vancouver and its Board of Parks & Recreation shall be in excess of this insurance and shall not contribute to it.*

**SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE**

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER \_\_\_\_\_ Dated: \_\_\_\_\_

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