

File No.: 04-1000-20-2024-247

July 25, 2024

s.22(1)

Dear s.22(1)

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

I am responding to your request of April 20, 2024 under the ***Freedom of Information and Protection of Privacy Act*** for:

**Record of the lease from the City of Vancouver for Dusty Flowerpot Cabaret at 2050 Scotia Street.**

All responsive records are attached.

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 (#04-1000-20-2024-247); 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

Encl. (Response Package)

:kt



## LAW DEPARTMENT

File No.: 15-0559

## MEMORANDUM

June 25, 2019

TO: Katrina Leckovic, City Clerk

CC: Patricia Eng, Property Negotiator - Real Estate Services  
Tara Simmer, Project Manager - Facilities Planning  
Debra Bodner, Cultural Planner - Cultural Services

FROM: Natalie Coric, Solicitor, Law Department

SUBJECT: Lease dated November 1, 2018 between City of Vancouver and Dusty Flowerpot Cabaret Society (the "Agreement")

Enclosed please find the above-noted Agreement for filing. Please note the following:

<b>TYPE OF AGREEMENT</b>	One (1) originally signed Agreement
<b>DATE OF AGREEMENT</b> (if this date is execution date and there is more than one date, use the latest date as the date of the agreement)	November 1, 2018 (retroactive to November 1, 2014)
<b>PARTIES</b> (complete names)	City of Vancouver and Dusty Flowerpot Cabaret Society
<b>CIVIC ADDRESS</b> (no abbreviations - must be searchable)	#141 - 2050 Scotia Street (Artiste Building)
<b>LEGAL DESCRIPTION</b> (no abbreviations - must be searchable)	PID: 024-037-117, Strata Lot 34 District Lot 200A Group 1 New Westminster District Strata Plan LMS3101
<b>EXPIRY DATE</b> (indicate "N/A" if there is no expiry date)	October 31, 2032 (including renewals)

{01195478v1}

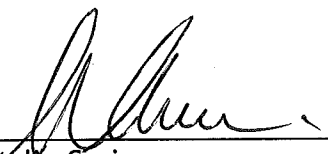
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City of Vancouver, Law Department  
453 West 12<sup>th</sup> Avenue  
Vancouver, BC V5Y 1V4  
Canada  
Telephone: (604) 873-7512  
Fax: (604) 873-7445

**Site/Delivery Address:**  
401-515 West 10<sup>th</sup> Avenue  
Vancouver, BC V5Z 4A8  
Canada



<b>RETENTION DATE</b> (if there is an expiry date, fill in the date that the City Clerk may send this document to Records - usually one year after expiry date)	October 31, 2033
<b>REMINDER DATE</b> (if there are no expiry/retention dates, THIS MUST BE FILLED IN - the lawyer can help to determine when this agreement could possibly be sent to Records - City Clerks will use this date to remind us to review the agreement to determine whether it can be sent to Records)	
<b>WHO TO NOTIFY:</b> (this may be more than one person)  make sure you indicate the person's name, department (including division) and telephone number	Natalie Coric Solicitor, Law Department Phone: (604) 606-2674  Patricia Eng Property Negotiator - Real Estate Services Phone: (604) 873-7807  Tara Simmer Project Manager - Facilities Planning Phone: (604) 871-6692  Debra Bodner Cultural Planner - Cultural Services Phone: (604) 873-7211
<b>FILE NUMBER</b> (Law Department file number)	15-0559




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Natalie Coric

NVC:rfs  
 Attachment

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**LEASE  
THE ARTISTE - #141 - 2050 SCOTIA STREET**

THIS AGREEMENT is dated for reference the 1st day of November, 2018, with retroactive effect to the 1<sup>st</sup> day of November, 2014,

**BETWEEN:**

**CITY OF VANCOUVER**, a municipal corporation with offices at 453 West 12<sup>th</sup> Avenue, in the City of Vancouver, in the Province of British Columbia, V5Y 1V4

(the "Landlord")

**AND:**

**DUSTY FLOWERPOT CABARET SOCIETY**, (Society Registration No. S-0060749) having a registered and records office at 141 - 2050 Scotia Street, Vancouver, British Columbia, V5T 4T1

(the "Tenant")

**PREMISES:**

**Civic Address:** #141 - 2050 Scotia Street  
Vancouver, British Columbia

**Parcel Identifier:** 024-037-117

**Legal Description:** Strata Lot 34 District Lot 200A Group 1 New Westminster District Strata Plan LMS3101, together with an Interest in the Common Property in Proportion to the Unit Entitlement of the Strata Lot as shown on Form 1

**TERM:** Three (3) years, commencing on November 1, 2014

**RENT:** ONE DOLLAR (\$1.00) for the Term inclusive of rent in lieu of property taxes, payable in advance, plus any applicable taxes

**OPTION(S) TO RENEW:** Three (3) renewal options, each for a term of five (5) years. The First Renewal Term has already been exercised thereby extending the term to October 31, 2022

**EARLY TERMINATION:** See Sections 1.02 and 1.03

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**WITNESSES THAT WHEREAS:**

- A. The Landlord is the owner of a strata lot within a building (the “**Building**”) in the City of Vancouver, in the Province of British Columbia, having a civic address of #141 - 2050 Scotia Street, Vancouver, and legally described as:

Parcel Identifier Number: 024-037-117

Legal Description: Strata Lot 34 District Lot 200A Group 1 New Westminster District Strata Plan LMS3101, together with an Interest in the Common Property in Proportion to the Unit Entitlement of the Strata Lot as shown on Form 1

which lands and premises are hereinafter called “**Premises**”;

- B. In response to a Request for Proposals issued by the Landlord, the Tenant submitted a proposal to use the Premises for a non-profit arts production facility and the Landlord accepted the Tenant’s proposal, modified as agreed by the Landlord and the Tenant;
- C. The Tenant has requested that the Landlord provide use and access by way of exclusive licence in favour of the Tenant to those two (2) outside surface parking stalls shown in bold in Schedule F as “**License Area - Parking**”, to the Tenant as hereinafter provided (the “**Licensed Areas**”);
- D. The Premises are subject to the liens, charges and encumbrances registered at the Land Title Office on title to the Premises which is attached hereto as Schedule E, all of which are collectively referred to as the “**Prior Encumbrances**”;
- E. The Landlord's City Council, by resolution made at its meeting the 14<sup>th</sup> day of October, 2014, resolved 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 and license the Premises unto the Tenant and the Tenant does hereby take and rent the Premises upon and subject to the conditions set out hereunder.

**ARTICLE I**

**Section 1.01 - Demise and Term**

Subject to the Prior Encumbrances and any early termination rights as provided in this Agreement, including without limitation pursuant to Section 1.02 and Section 1.03, and 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 and grants an exclusive license over the Licensed Areas to the Tenant to have and to hold the same for and during the term of three (3) years commencing on the 1<sup>st</sup> day of November, 2014 (the “**Commencement Date**”) and expiring at 11:59 p.m. on the 31<sup>st</sup> day of October, 2017 (the “**Term**”). The parties confirm that the Term has been extended pursuant to Section 14.01 until the 31<sup>st</sup> day of October, 2022.

### Section 1.02 - Early Termination by Landlord

Not so as to limit the Landlord's rights as specified elsewhere in this Agreement, the Landlord may terminate this Agreement on one hundred and eighty (180) days' notice if the City's elected council is not satisfied with the Tenant's performance of any of its obligations hereunder, including the Public Service Requirements.

The council's dissatisfaction shall be expressed by a resolution approved by a simple majority of those hearing the issues, and the Landlord shall not be required to pay to the Tenant any compensation due to such termination.

### Section 1.03 - Early Termination by Tenant

The Tenant may terminate this Agreement if the Tenant intends to or has ceased to use or intends to cease to use the Premises for the Permitted Use (as defined below) upon giving the Landlord one hundred and eighty (180) days' prior written notice of such termination.

The Tenant shall not pay to the Landlord any compensation due to early termination as permitted under this Agreement.

### Section 1.04 - Rent

Yielding and paying therefore in advance prepaid rent for the Term in the amount of One Dollar (\$1.00), inclusive of payment in lieu of property taxes, plus GST, (the "Rent") payable on or before the Commencement Date. The Rent together with any additional rent payable by the Tenant is referred to as "rent" in this Agreement.

This Agreement shall be completely net to the Landlord, save and except for those certain capital costs which are the responsibility of the Landlord as provided for in the Service Level Agreement set out at Schedule "B" hereto (the "Service Level Agreement").

### Section 1.05 - Payments Generally

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

- (a) paid to the Landlord by the Tenant in lawful currency of Canada;
- (b) made when due hereunder, without prior demand therefor and without any setoff, compensation or deduction whatsoever at the office of the Landlord's Director of Real Estate Services specified in Section 15.01 or such other place as the Landlord may designate from time to time in writing to the Tenant;
- (c) applied towards amounts then outstanding hereunder, in such manner as the Landlord may see fit; and
- (d) deemed to be rent, in partial consideration for which this Agreement has been entered into, and shall be payable and recoverable as rent, such that the Landlord shall 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.



**Section 1.06 - Utilities, Janitorial, Maintenance and Repairs**

The arrangements concerning the utilities, janitorial, maintenance and repairs as of the date of this Agreement are contained in the Service Level Agreement. The Service Level Agreement may be amended and replaced in writing from time to time by the Landlord and the Tenant by mutual agreement.

Notwithstanding the foregoing, Section 1.04 or any other provision in this Agreement:

- (a) from and after the Commencement Date, the Tenant shall pay all charges, rates and levies on account of all directly metered utilities and services provided to the Premises (which are not included in the Strata Fees), including without limitation heat, electricity, gas, water, sewer, garbage and recycling collection, telephone, cable, internet, fire-lines, cross connection fees, all costs related to security systems monitoring and servicing and all other costs and expenses and outgoings relating to the Premises, as well as the costs of all maintenance, repair and replacement obligations identified as "NPO" in the Service Level Agreement (collectively, the "Operating Costs") immediately when due and, upon request, provide the Landlord with receipts evidencing such payment; and
- (b) the Landlord collects some utility charges, rates fees and levies by inserting them in the real property tax roll, such charges, rates, fees and levies include those for water supply, water meter rental, water meter shutoff, air conditioning, fireline, fireline shutoff, sewer, recycling pickup and dumping, recycling cart rental, recycling cart carryout, recycling cart storage, yard waste pickup, yard waste cart rental, garbage pickup and dumping, garbage cart rental and stopping garbage pickup. Notwithstanding that the Premises and improvements are exempt from property taxes, when such charges, rates and levies are inserted in the tax roll for the Premises, the Tenant shall pay 100% of same upon receiving the Landlord's invoice therefor as if the Premises were not exempt from property taxes.

The Landlord, acting reasonably, may, at its option, estimate a portion of the Operating Costs that may be billed directly to the Landlord for each calendar year of the Term and the Tenant shall pay to the Landlord monthly in advance on the first day of each calendar month an amount equal to one-twelfth (1/12<sup>th</sup>) of that estimate. Within ninety (90) days of the end of each such year, the Landlord will deliver to the Tenant a statement of the actual amount of the Operating Costs, and any excess amount due to the Tenant shall be reimbursed by the Landlord and any shortfall due to the Landlord shall promptly be paid to the Landlord by the Tenant.

The Tenant, at its cost, shall keep and maintain the Premises in good repair as would a reasonable and prudent owner of such premises, reasonable wear and tear and structural elements or defects excepted and in a sanitary, neat, tidy and safe condition and free from nuisance at all times.

In addition to the above costs, the Tenant shall be responsible for all operating and administrative costs of the Premises, including those items set out in the Service Level Agreement to the best of the Landlord's knowledge. The responsibility for all capital life cycle repair costs associated with the Premises will be as set out in the Service Level Agreement and otherwise as specifically provided for in this Agreement, and the Landlord and the Strata Corporation, as applicable, will be responsible for major repairs and capital life-cycle replacement of the major base building systems and structural components of the Premises.

The Tenant shall prepare and submit to the Landlord Annual Maintenance Plans and Periodic Maintenance Plans as outlined in the Service Level Agreement and the Public Service Requirements.

The Landlord shall have access to the Premises (upon twenty-four (24) hours prior written notice to the Tenant, except in the case of an emergency) in order to inspect them during normal business hours. The Landlord shall provide the Tenant with written notice of any repairs which, in accordance with the Service Level Agreement, the Landlord requires the Tenant to make to the Premises. The Tenant shall make such repairs in accordance with such notice within a reasonable period of time. 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 on the provision of reasonable notice to the Tenant in a manner so as to cause the least reasonably possible disruption to the Tenant, the costs of which shall be payable by the Tenant, and the Landlord and its employees, agents, contractors and subcontractors, shall 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 1.07 - Strata By-laws and Fees**

Commencing on the first day of the third month after the Commencement Date, the Tenant shall pay to the Landlord an amount equivalent to the monthly strata fees for the Premises as levied by the strata corporation for the Building (the “**Strata Corporation**”), which are as of the effective date of this Agreement, \$612.00/month (plus applicable sales tax of 5% GST, totalling \$642.60/month), subject to change as approved annually by the Strata Corporation (the “**Strata Fees**”).

The Tenant will abide by the Strata By-laws and Rules and shall be responsible for all fines and levies assessed by the Strata Corporation on account of breaches of Strata By-laws and Rules by the Tenant, its licensees, contractors, representatives or invitees.

#### **Section 1.08 - Use of Premises**

The Tenant shall not use or occupy, nor suffer or permit the use of the Premises or any part thereof for any purpose other than the operation of a not-for-profit artist production studio in the production of art and/or cultural festivals for the benefit of the public, in accordance with the mandate and public service objectives established by the Tenant and attached hereto as Schedule D (the “**Public Service Requirements**”), in compliance with the applicable zoning for the Premises and all Strata By-laws, Rules and Regulations in effect from time to time (collectively the “**Permitted Use**”).

Without limiting the generality of the foregoing, the Tenant shall not at any time suffer, permit or allow any person to occupy the Premises for residential purposes.

The Premises may not be used for performance or public presentation/event purposes except as permitted under the City of Vancouver Arts Event License regulation.

The Tenant shall not use, or suffer or permit the use of, any part of the Premises in such a manner as to cause, suffer or permit any annoying noises or offensive odours to emanate from any part of the Premises which are not associated with normal arts production activities. For

certainly, any noises or odours emanating from any part of the Premises in connection with the Permitted Use shall not be considered annoying or offensive under this Section 1.08.

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 1.08 affects the Tenant's obligations to comply at its sole expense with all such by-laws pursuant to Section 10.01 of this Agreement.

#### **Section 1.09 - 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), calculated monthly and not in advance, from the date due until paid irrespective of whether or not the Landlord has demanded payment. In this agreement, "prime rate" means the floating annual percentage rate of interest established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as its prime rate; 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 agreement. The Tenant will also pay the Landlord's standard charge levied on N.S.F. cheques

#### **Section 1.10 - Security Deposit - Intentionally Deleted**

#### **Section 1.11 - Taxes - Intentionally Deleted**

#### **Section 1.12- Goods and Services Tax**

The Tenant shall 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 Agreement, 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. 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 1.13 - Rent Review - Intentionally Deleted**

#### **Section 1.14 - Amalgamation, Sponsorship, Naming, Renaming and Signage**

The Tenant shall, effective from the date hereof:

- (a) not amalgamate with any other body, without first receiving the Landlord's prior written approval, which approval may not be unreasonably withheld;

- (b) subject to sections 8.01 and the Third Party Use policy attached as Schedule C, not sell, transfer, assign or otherwise permit the naming of the Premises or any portion thereof without the Landlord's approval, such approval not to be unreasonably withheld; and
- (c) in connection with the naming of all or any portion of the Premises, comply with any policies, guidelines and by-laws adopted by the Landlord's Council and all other applicable laws relating to the naming of and signage (including without limitation, flags and banners) regarding all or portions of lands and/or premises owned, leased or otherwise controlled by the Landlord in force at the time of the proposed naming, and without limiting the generality of the foregoing, the Tenant will not name or rename the Premises or any parts or portions thereof without the Landlord's explicit prior written consent, which consent shall not be unreasonably withheld or delayed, and without, in doing so, complying fully with all such policies, guidelines and bylaws and other laws.

#### **Section 1.15 - Suitability of the Premises**

Except as stated in the motion approved by the Landlord's Council dated October 14, 2014, the Tenant acknowledges and agrees that the Landlord, either itself or through its officers, employees or agents, has not made and the Tenant has not relied upon any representations or warranties from the Landlord or its 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; or
- (c) the suitability of the Premises for use by the Tenant.

#### **Section 1.16 - 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; and
- (b) the suitability of the Premises for use by the Tenant;
- (c) 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 on an "as is" basis.

#### **Section 1.17 - Excess Rent - Intentionally Deleted**

#### **Section 1.18 - Permits**

The Tenant shall be solely responsible at its own cost and expense for obtaining all necessary permits to operate its business on the Premises and for any Alterations to the Premises

### Section 1.19 - Parking

Pursuant to the grant of license set out in Section 1.01, the Tenant has an exclusive licence for it and its employees, agents, permittees and invitees to use the two (2) outside surface parking stalls identified on Schedule F of this Agreement.

## ARTICLE II

### Section 2.01 - No Damage

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

### Section 2.02 - Snow off Sidewalks

The Strata Corporation takes care of the removal of snow off the common property which includes the sidewalks, however the Tenant is responsible for snow removal from the limited common property assigned to the Premises, including the patio area.

### Section 2.03 - Alterations

The Tenant shall not carry out or cause to be carried out any additions, alterations, fixturing, improvements (including tenant improvements), modifications, renovations or upgrades to or in respect of the Premises or redecoration of the Premises or erections on the Premises (herein after together called "Alterations") 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, acting reasonably, and the same shall be conditions of this Agreement. Notwithstanding the foregoing, the Tenant shall be permitted to carry out any Alterations of a minor nature (including, without limitation, painting, installing carpet or removing interior partitions) without the Landlord's prior written consent. All such Alterations 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. Should consent of the Strata Corporation be required for any Alterations, the Tenant will seek such consent and provide evidence of same to the Landlord.

The Tenant will obtain, at its sole expense, any and all permits, approvals and authorizations from any governmental authority, including the City of Vancouver, which may be required to undertake the Alterations. The Tenant shall be solely responsible for all claims and/or liabilities arising from or relating to any bodily injury or death, property damage or other loss or damage arising from the Alterations.

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. 6134* and amendments thereto, and other relevant by-laws. No consent given by the Landlord (and no failure to enforce this section of this Agreement) will affect the Tenant's obligations to comply at its sole expense with all such by-laws pursuant to Section 9.01 of this Agreement.

### Section 2.04 - 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*, SBC 1997, c.45, as amended or substituted from time to time (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.

The Tenant may grant a security interest in respect of any of its trade fixtures, equipment or other personal property. The Tenant shall not create any mortgage, security agreement or other encumbrance in respect of any of its leasehold improvements or permit any such mortgage, security agreement or other encumbrance to attach to the Building or the Premises.

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 or any such mortgage, security agreement or other encumbrance attaches to the title to the Premises, the Tenant will, within fifteen (15) 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. This section shall 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 or legal parcel 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 Agreement.

### ARTICLE III

#### Section 3.01 - Delivery of Facility Profile to the Landlord by the Tenant - Intentionally Deleted

### ARTICLE IV

#### Section 4.01 - Limitation of Liability

The Landlord and its officials, officers, employees, agents, contractors, subcontractors, licensees, invitees and permittees (collectively, the "**Landlord's Personnel**") shall not, under any circumstances, be liable or responsible in any way for:

- (a) any personal injury, bodily injury, death or consequential damage of any nature whatsoever, however caused, that may be suffered or sustained by the Tenant its officers, employees, agents, contractors, subcontractors, licensees, invitees and permittees (collectively, the "**Tenant's Personnel**") 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, the Tenant's Personnel, 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 Agreement or otherwise, unless resulting from the negligence or wilful misconduct of the Landlord or the Landlord's Personnel.

#### Section 4.02 - Exclusion of Liability

The Landlord and the Landlord's Personnel shall not under any circumstances be liable or responsible in any way for:

- (a) any personal injury, bodily injury, death or consequential damage of any nature whatsoever, that may be suffered or sustained by the Tenant or the Tenant's Personnel 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, the Tenant's Personnel or to any other person while such property is in or about the Premises:
  - (i) caused by failure, by reason of breakdown or other cause, to supply adequate drainage, or by interruptions of any utility or other services, or by steam, water, rain, snow, or other substances leaking, entering, issuing or flowing onto or into any part of the Premises; or
  - (ii) however caused, if the Landlord or Landlord's Personnel enter upon the Premises in the case of an emergency pursuant to this Agreement;
- (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 the Tenant's Personnel of any nature whatsoever, however caused; or
- (d) any loss which the Tenant is obligated to insure against hereunder or has insured against.

#### Section 4.03 - Indemnification

The Tenant shall indemnify and save harmless the Landlord and the Landlord's Personnel 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, use and/or possession of the Premises and/or other Landlord property by the Tenant and/or the Tenant's Personnel and/or from any alterations to the Premises, and in respect of all costs, expenses and liabilities incurred by the Landlord and the Landlord's Personnel 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 and the Landlord's Personnel in respect of any loss, cost, expense or damage suffered or incurred by the Landlord and the Landlord's Personnel arising from any breach by the Tenant of any of its covenants and obligations under this Agreement.

Without limiting anything else contained in this Agreement, the Tenant shall at all times be liable to the Landlord for the actions of any third party that the Tenant permits to use the Premises. If those actions result in any damage or loss to the Premises or if the Landlord and/or the Landlord's Personnel sustain any loss of any kind due in whole or in part to such

actions, the Tenant shall repair the damage or loss to the Landlord's satisfaction and shall indemnify the Landlord and the Landlord's Personnel for any loss they might sustain due in whole or part to such actions, except where such damage or loss was caused by or contributed to by the negligence of the Landlord or the Landlord's Personnel.

#### Section 4.04 - Notice of Liability Concerns

Forthwith after becoming aware of significant liability concerns regarding the operation of the Premises or any matter relating to the Premises or the use of the Premises, the Tenant shall notify the Landlord in accordance with Section 16.01 of this Agreement.

### ARTICLE V

#### Section 5.01 - Environmental Definitions

In this Agreement, the following words and expressions shall have the following meanings:

- (a) "Environment" has the meaning given to it in the *Canadian Environmental Protection Act* (Canada) as of the date of this Agreement;
- (b) "Environmental Laws" means any and all statutes, laws, regulations, orders, bylaws, standards, guidelines, protocols, permits and other lawful requirements of any governmental authority having jurisdiction over the Premises now or hereafter in force relating in any way to the environment, environmental assessment, health, occupational health and safety, protection of any form of plant or animal life, or transportation of dangerous goods, including the principles of common law and equity;
- (c) "Hazardous Substances" means any Substance capable of creating harm to people, property, animal or plant life and/or the Environment including, without limitation, any flammable liquids, flammable or reactive solids, oxidizers, poisons, gases (compressed, liquefied or dissolved), explosives, radioactive materials, urea formaldehyde, asbestos-containing materials, above or underground storage tanks, compounds known as chlorobiphenyls, polychlorinated biphenyls ("PCBs"), PCB-containing equipment or materials, Pollutants, contaminants, hazardous, corrosive or toxic Substances, 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 Environmental Laws;
- (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 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;
- (g) “Substance” has the meaning given to it in the *Canadian Environmental Protection Act* (Canada) as of the date of this Agreement; and
- (h) “Waste” has the meaning given to it in the *Environmental Management Act*, S.B.C. 2003, c. 53, as amended or substituted from time to time but if the *Environmental Management Act* is repealed, “Waste” has the meaning given to it on the day immediately preceding the repeal of that Act or if that Act is amended so that the term “Waste” is no longer used in it, then “Waste” has the same meaning as the term which replaces it in that Act.

#### Section 5.02 - Suitability of the Premises

Except as stated in the motion approved by the Landlord’s Council dated October 14, 2014, the Tenant acknowledges and agrees that the Landlord, either itself or through its officers, employees or agents, has not made and the Tenant has not relied upon any representations or warranties from the Landlord or Landlord’s Personnel 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 off the Premises; or
- (e) the need to take any remedial action in relation to any Pollution on or off the Premises.

### Section 5.03 - 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 off 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 on an "as is" basis.

The Tenant hereby assumes any and all duties, obligations or liabilities under any relevant law in respect of the Premises, including, but not limited to, any costs, expenses or liabilities for any remedial action for any Pollution of the Premises caused by the Tenant during the Term.

### Section 5.04 - Release and Indemnification

The Tenant hereby releases the Landlord and its 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 shall 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 5.05 - Removal of Hazardous Substances

The Tenant shall 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 in accordance with the Tenant's policies regarding the use of materials (which may include Hazardous Substances) in connection with the costume shop and theatre and in compliance with Environmental Laws and if at any time there shall be any Hazardous Substances upon the Premises or a part thereof as a result of the breach of this covenant, the Tenant shall, 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 5.05.

#### **Section 5.06 - Breach of Laws Relating to Hazardous Substances**

Without limiting the generality of Section 5.05, the Tenant shall 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 Environmental Laws from time to time enforced relating to Hazardous Substances, and at its own cost and expense, comply with all Environmental Laws from time to time in force relating to the Tenant, the activities carried out on the Premises relating to Hazardous Substances and the protection of the Environment and shall 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 shall, either alone or with others for whom the Tenant is responsible in law, cause or suffer the happening of such event, the Tenant shall, 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 5.06;
- (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 5.06.

The Tenant shall, 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 5.06 as a result of such occurrence.

If any governmental authority having jurisdiction shall 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 by the Tenant or others for whom the Tenant is responsible in law, then the Tenant shall, 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 shall 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 11.07 of this Agreement.

#### **Section 5.07 - 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 Environmental Laws 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 5.08 - 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 shall assist the Landlord in so doing.

#### **Section 5.09 - Ownership Remains with Tenant**

If the Tenant shall 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 shall cause there to be any Hazardous Substance upon the Premises then, notwithstanding any rule of law or equity to the contrary, such Hazardous Substance shall be and remain the sole and exclusive property of the Tenant and shall 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 Agreement.

#### **Section 5.10 - Environmental Covenants Survive Termination**

The obligations of the Tenant in this Article V shall survive the expiry or earlier termination of this Agreement 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 shall 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 shall have no obligation to the Tenant to complete such work.

### **ARTICLE VI**

#### **Section 6.01 - Building Insurance**

The Strata Corporation is responsible for insuring the Building against fire and certain other perils. The Tenant shall be responsible to pay, as part of the Strata Fees, its proportionate share of the cost of this insurance.

**Section 6.02 - Tenant's Insurance**

The Tenant shall, without limiting any of its obligations or liabilities under this Agreement, purchase and maintain during the term of this Agreement, at their own cost, insurance coverage 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 may require from time to time and the policy shall:
  - (i) indemnify and protect the Tenant and the Tenant's Personnel against all claims for loss, damage, injury or death to any person or persons and for loss of or damage to the Premises or to any public or private property occurring within or about the Premises or arising by virtue of the Tenant's occupation or possession of the Premises, including that caused by any third party permitted to use the Premises;
  - (ii) name the Landlord, its officials, officers, employees and agents and the Strata Corporation as additional insureds;
  - (iii) include a cross-liability or severability of interest clause insuring the Tenant, the Landlord, the Landlord's Personnel and the Tenant's Personnel 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 shall not affect the protection given by the policy to any other party or to any officer, employee or agent of any party;
  - (iv) include tenant's legal liability coverage for an amount equal to the actual cash value of the Premises, such coverage to include the activities and operations conducted by the Tenant and third parties in the Premises;
  - (v) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this Agreement;
  - (vi) include non-owned auto liability coverage;
  - (vii) include personal injury and advertising liability coverage;
  - (viii) include products and completed operations coverage;
  - (ix) provide for a limit of deductibility not greater than Five Thousand Dollars (\$5,000) or other such amount as the Landlord may approve from time to time; and
  - (x) without limiting anything else contained in this Agreement, adequately protect the Tenant from the actions of the third parties that the Tenant permits to occupy all or a portion of the Premises.
- (b) All Risk Property (Broad Form) insurance on property of every description and kind owned by the Tenant or for which the Tenant is legally liable or provided by or on behalf of the Tenant (and which is located in the Premises), including, without

limitation, leasehold improvements, furniture, computers, equipment, toys, supplies, appliances, trade fixtures and any display model, project, prototype, tool, instrument and/or device within the Premises in an amount not less than ninety percent (90%) of the full replacement cost thereof. The City of Vancouver and the Strata Corporation shall be added as named insureds and loss payees with respect to their insurable interest.

- (c) Automobile Liability insurance on all licensed vehicles owned or leased to the Tenant with a limit of not less than Five Million Dollars (\$5,000,000) per occurrence or other such amount as the Landlord may approve from time to time protecting against damages arising from bodily injury, death and from claims for property damage arising from the operations of the Tenant or the Tenant's Personnel.
- (d) Directors and Officers Liability insurance providing One Million Dollars (\$1,000,000) of coverage per claim and Two Million Dollars (\$2,000,000) in the aggregate.
- (e) During construction/installation of any Tenant's Alterations (for the purposes of this Article VI, the "Project") and in addition to the insurance policies indicated above, the Tenant shall take out the following Project Insurance which shall be continuous throughout the entire term of the Project:
  - (i) All-Risks Course of Construction Insurance issued in the joint names of the Landlord, the Tenant and the Tenant's contractor, covering the Tenant's improvement work and all property of every description to be used in the performance thereof. This insurance shall be primary, and be of an amount of not less than the total value of the tenant improvements.
  - (ii) Wrap Up Liability Insurance issued in the joint names of the Landlord, the Tenant and the Tenant's Contractor and Consultants protecting all other participants, including any Subcontractors and Sub-consultants in all activities pertaining to the Project with limits not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury, death and property damage losses including loss of use. Completed operations coverage shall be extending for a further 24 months after completion and acceptance of the project. Limit of deductibility shall not be greater than Ten Thousand Dollars (\$10,000) per occurrence.

### Section 6.03 - General Requirements of Insurance

The following shall apply to all insurance policies referred to in Section 6.02:

- (a) the policies shall be with insurers authorized to carry on business in the Province of British Columbia, on terms satisfactory to the Landlord, acting reasonably;
- (b) shall be primary insurance with respect to all claims arising out of the Tenant, and any insurance or self-insurance maintained by the Landlord will be in excess of this insurance and will not contribute to such policies;
- (c) shall not be cancelled or endorsed to reduce the limits of liability without the insurer or their authorized representative giving the Landlord at least thirty (30) day's written notice. Should the policy be endorsed to restrict coverage midterm, written notice of such restriction will be sent to the Landlord no later than the effective date change; the exception is cancellation for non-payment of premium in which case the

applicable statutory conditions will apply. Notice to the Landlord must identify the name of the Tenant as set out in this Agreement and the location or address of the Premises;

- (d) 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 shall be held to relieve the Tenant from any other provisions of this Agreement with respect to liability of the Tenant or otherwise; and
- (e) subject to the provisions of this Article VI, the Tenant shall purchase and maintain, at their own cost any additional insurance which the Tenant is required by law to obtain, or other lines of insurance coverages, endorsements or increased limits of insurance as deemed necessary by the Landlord and as a reasonable and prudent Tenant would require to protect their occupation or possession of the Premises.

#### **Section 6.04 - Evidence of Insurance**

Prior to the commencement of the Term, and upon annual renewal of each of the Tenant's insurance policies required under this Agreement, the Tenant will provide the Landlord's Director of Real Estate Services with evidence of all required insurance to be taken out in the form of one or more certificate(s) of insurance, satisfactory to the Landlord. Upon request of the Landlord, the Tenant shall deliver to the Landlord a certified copy of the policy(ies) of insurance required under this Agreement. If the Tenant fails to deliver to the Landlord any such certificate or policy of insurance within the stipulated time, the Landlord may obtain such insurance, and the Tenant will pay to the Landlord the cost of the premiums on demand by the Landlord from time to time.

### **ARTICLE VII**

#### **Section 7.01 - Termination on Substantial 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, acting reasonably, the Landlord may, at its option, elect to not rebuild or repair the Premises and may terminate this Agreement 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 7.02 - Repair of Damage or Destruction**

If the Landlord elects to rebuild or repair the Premises pursuant to Section 7.01, the Landlord will commence rebuilding or repairing within sixty (60) calendar days of (or as soon as reasonably possible after) 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 Agreement 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 7.03 - 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 at law, the rent will abate from the date of such damage or destruction 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, acting reasonably, and such abatement will continue until the Premises are rendered usable or convenient access to the Premises is can be had, as applicable.

**ARTICLE VIII****Section 8.01 - Assignment**

The Tenant shall not assign its leasehold interest in the Premises or any portion thereof save and except with the prior written consent of the Landlord, such consent not to be unreasonably withheld. 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 this Agreement, 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. In no way will such consent release the Tenant of its personal covenants under this Agreement.

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 Agreement and will be subject to all of the provisions of this Section 8.01. 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 8.02 - Subleasing**

Other than as permitted by the Occasional Third Party Use Policy attached as Schedule "C", the Tenant shall not sublease, license, set over or otherwise part with possession of the Premises or any portion thereof or let any third party into possession of the Premises or any portion thereof save and except with the prior written consent of the Landlord, which consent the Landlord may unreasonably withhold.

**Section 8.03 - Assignment of Sublease Rent**

Notwithstanding Section 8.02 hereof, the Tenant hereby assigns to the Landlord all rents and fees payable to the Tenant under any sublease, license or occupation agreement with any third party, which assignment shall 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 shall 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 sublease 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 shall pro tanto discharge the sublessee's, licensee's or other third party's obligations



to the Tenant and the Landlord shall 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 sublease, license or other third party agreement shall cease and determine and the Landlord may forthwith re-enter the subleased, licensed or occupied portion of the Premises and arrange for new occupants thereof whose occupation shall be subject to the provisions of this paragraph.

#### **Section 8.04 - Mortgage of Lease**

Except as otherwise set out in this Agreement, under no circumstances whatsoever may the Tenant's interest in this Agreement be mortgaged or otherwise encumbered by way of sublease, assignment or otherwise.

#### **Section 8.05 - Management Agreement**

Subject to Section 8.01, under no circumstances whatsoever may the Tenant enter into any management agreement or other agreement with another party which licenses, transfers or assigns, temporarily or otherwise, the Tenant's rights and obligations in this Agreement without the Landlord's prior written consent.

### **ARTICLE IX**

#### **Section 9.01 - Bankruptcy**

If the Term or 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 shall 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 shall be appointed or applied for by the Tenant or by one or more of the Tenant's creditors, then the Landlord shall be so notified and the then current rent plus an additional three (3) months current rent shall 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 then at the option of the Landlord the Term shall 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.

### **ARTICLE X**

#### **Section 10.01 - 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 and all Strata Corporation By-laws and rules and regulations now or hereafter which are in force and in effect which touch and concern the Premises or the Tenant's activities within the Premises, including, without

limitation, any applicable Environmental Laws, 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 shall perform and observe same at its own expense in the place and stead of the Landlord.

The Tenant acknowledges that it has received copies of the Strata Corporation By-laws and rules and regulations.

Without limiting the generality of the foregoing, the Tenant shall promptly and faithfully observe and comply with:

- (a) all federal, provincial or civic statutes, by-laws, regulations and orders and policies now or hereafter which are in force relating to the Tenant's operation of the Premises and shall provide the Landlord with evidence satisfactory to the Landlord, in its sole discretion, of such compliance on request by the Landlord; and
- (b) the British Columbia *Human Rights Code*, R.S.B.C. 1996, c. 210, as amended or substituted from time to time, which prohibits discrimination in many areas including in publications which are likely to expose a person or a group or class of persons to hatred or contempt because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or that group or class of persons.

The Tenant shall, on request by the Landlord, promptly provide the Landlord with evidence of compliance with this Section 10.01.

#### **Section 10.02 - WorkSafeBC Coverage**

Not so as to restrict the generality of Section 10.01 of this Agreement, the Tenant shall comply with all applicable requirements of WorkSafeBC ("WCB") including, without limitation, any requirement to procure and carry or cause to be procured and carried and paid for, at its own expense, full WCB coverage for itself and for all workers, employees, contractors, subcontractors, agents, licensees, permittees, and all others engaged on the Tenant's behalf in connection with any work done or service performed on, in or around the Premises. The Landlord shall have the unfettered right to set off the amounts of the unpaid premiums and assessments for such WCB coverage against any monies owing by the Landlord to the Tenant pursuant to any grant application or otherwise. The Landlord shall have the right to withhold payment of any such monies until the WCB premiums, assessments and/or penalties in respect of the work done and/or services performed have been paid in full.

The Tenant confirms that it is registered and in good standing with the WCB and all assessments have been paid in full as of the date of this Agreement and that it shall throughout the Term continue to be registered and in good standing with the WCB and pay all assessments in full. If requested by the Landlord, the Tenant shall provide the Landlord with the Tenant's WCB registration number and a letter from the WCB confirming that the Tenant is registered in good standing with the WCB and that all assessments have been paid to the date thereof. The Tenant shall indemnify the Landlord and hold harmless the Landlord from all manner of claims, demands, costs, losses, sanctions and penalties and proceedings arising out of or in any way related to unpaid WCB assessments owing from any person or corporation engaged on the Tenant's behalf in connection with any work done or service performed on, in or around the Premises or arising out of or in any way related to the failure to observe safety rules, regulations and practices of the WCB, including penalties levied by the WCB.

The Tenant shall, on request by the Landlord, promptly provide the Landlord with evidence of compliance with this Section 10.02.

### **Section 10.03 - Vancouver Charter**

Subject to the provisions of this Agreement and subject to the provision that nothing contained or implied herein shall prejudice or affect the Landlord's rights and powers in the exercise of its functions pursuant to the *Vancouver Charter*, as amended or substituted from time to time, 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 Agreement had not been executed and delivered by the Landlord and the Tenant. Without limiting the foregoing, the Landlord acknowledges that the Landlord's status as a government authority or the exercise of its rights and obligations as a government authority does not relieve the Landlord from its obligations under this Agreement.

### **Section 10.04 - Performance of Obligations**

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

### **Section 10.05 - No Registration of Lease**

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

## **ARTICLE XI**

### **Section 11.01 - Breach of Covenants**

If and whenever:

- (a) any Rent payment or any part thereof is not made by the Tenant on the day appointed for payment 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 Agreement, including for any insurance costs, if applicable, incurred by the Landlord, 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 Agreement other than those requiring payment of money to the Landlord but including, without limiting the generality of the foregoing, failure by the Tenant to comply with any statutes, bylaws, regulations or orders relating to its operation of the Premises, 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; or
- (f) this Agreement is terminated;

then and in every such case, it shall be lawful for the Landlord at any time thereafter without notice or demand, with or without process of law and by forcible entry if necessary, to re-enter into and upon the Premises, and to terminate this Agreement by leaving upon the Premises notice in writing of such termination. If the Landlord terminates this Agreement pursuant to this section, or otherwise as a result of default of the Tenant, there shall 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 next six (6) months or that date on which the Tenant delivers vacant possession of the Premises, whichever is later. This provision for notice and termination shall not be construed so as to delay or supersede any specific remedy to which the Landlord may have recourse in this Agreement.

#### **Section 11.02 - 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 Agreement) 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 those goods and property of the Tenant that were previously upon the Premises 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 11.03 - Right to Re-let**

If the Landlord becomes entitled to re-enter the Premises the Landlord shall 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 shall 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 11.04 - Forfeiture**

Subject only to any order that may be made by a court of competent jurisdiction, 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 shall 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 Agreement is terminated before the expiration date thereof originally fixed herein.

#### **Section 11.05 - Remedies Generally**

Mention in this Agreement of any particular right or remedy of the Landlord in respect of the default by the Tenant shall 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 Agreement. No right or remedy shall 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 Agreement 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 shall be restricted to that remedy) shall be for such damages as the Tenant shall 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 Agreement 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 Agreement, 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 Agreement, the Landlord shall 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 defence based on merger and agrees that neither the commencement of any action or proceeding, nor the settlement thereof, nor the entry of judgment therein shall bar the Landlord from bringing any subsequent action or proceeding from time to time. If the Tenant shall default hereunder prior to the date fixed as the commencement of any renewal or extension of this Agreement, 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 Agreement, upon written notice to the Tenant.

#### **Section 11.06 - 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 shall 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" shall include, without limitation, any arbitration, administrative, governmental, quasi-governmental or any other mediation proceeding and the term "costs" shall 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 Agreement, the Tenant shall 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 11.06) which the Landlord may incur or pay out by reason of, or in connection with:

- (a) any proceeding by the Landlord to terminate this Agreement 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 Agreement 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 Landlord's Personnel as a witness or otherwise in any proceeding whatsoever involving or affecting the Landlord, the Tenant, this Agreement, the indemnity agreement (if any) or the Premises;
- (g) any amendment, modification or change in any of the terms of this Agreement or the indemnity agreement, if any, initiated by the Tenant (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 Agreement or the indemnity agreement, if any, initiated by the Tenant (and any request or negotiations pertaining thereto, whether or not such renewal, extension, surrender or release becomes effective);
- (i) any transfer of this Agreement (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 11.06 shall survive the expiration or earlier termination of this Agreement.

#### **Section 11.07 - Landlord May Remedy Tenant's Default**

If the Tenant fails to pay, when due, any amount required to be paid by the Tenant pursuant to this Agreement, the Landlord, after giving two (2) days' notice in writing to the Tenant, may, but shall 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 Agreement), 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 10.07, shall be paid by the Tenant to the Landlord as additional rent upon demand. The Landlord shall 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 11.08 - Security Agreement - Intentionally Deleted**

### **ARTICLE XII**

#### **Section 12.01 - Vacant Possession**

Upon termination of the Term, whether by the passage of time or otherwise, the Tenant shall:

- (a) deliver up vacant possession of the Premises and shall leave the Premises in a sanitary, neat, tidy, safe and empty condition free from all nuisance, debris, rubbish and stock-in-trade;
- (b) except what is the property of the Landlord, remove from the Premises all furniture, computers, equipment, improvements, materials and appliances and failing prompt removal, all such shall be deemed to be the property of the Landlord without further instrument of transfer and without compensation to the Tenant; and
- (c) shall ensure that the Premises are to the standard of repair and decoration required of the Tenant pursuant to Article II hereof.

#### **Section 12.02 - Trade Fixtures**

- (a) If the Tenant is not in default hereunder at the expiration of the Term, the Tenant shall have the right to remove its trade fixtures from the Premises but shall make good any damage caused to the Premises resulting from the installation or removal thereof, and the Tenant acknowledges that it shall not have the right to remove any trade fixtures that were present at the time of initial occupation of the Premises by the Tenant.
- (b) If the Tenant fails to remove any of its trade fixtures and restore the Premises as provided in Section 12.02(a), all such trade fixtures shall become the property of the Landlord except to the extent that the Landlord requires removal thereof pursuant to Section 12.02(d).
- (c) If the Tenant abandons the Premises or this Agreement 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) shall, except to the extent the Landlord requires the removal thereof pursuant to Section 12.02(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 shall forthwith remove all or part of the same and shall 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 12.02(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 shall forthwith be paid by the Tenant to the Landlord.

**Section 12.03 - Overholding**

If the Tenant continues to occupy the Premises after the expiration of the Term, and the Landlord shall accept rent, the new tenancy thereby created shall be a tenancy from month to month and not from year to year, and shall be subject to the covenants and conditions herein contained so far as may be applicable to a tenancy from month to month, and shall be determined by one month's prior notice in writing.

**ARTICLE XIII  
RIGHT OF ENTRY**

**Section 13.01 - Landlord's Access to Premises For Showings/Inspection**

The Landlord or Landlord's Personnel shall have the right to enter the Premises at any reasonable time (and upon twenty-four (24) hours prior written notice to the Tenant) to examine them or to show them to prospective purchasers, tenants or mortgagees, and to enter the Premises at such other times as mutually agreed between the Landlord and the Tenant (or on reasonable prior 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. Whenever the Landlord enters the Premises, it shall take reasonable steps to avoid interfering with the Tenant's use and occupation of the Premises.

**Section 13.02 - Landlord's Access to Records**

The Landlord may at any reasonable time and upon twenty-four (24) 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 Agreement, 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 13.03 - "For Lease/Sale" Signs**

During the six (6) months prior to the expiration of the Term, the Landlord may place upon the Premises the usual notices "For Lease" or "For Sale" and the Tenant will permit the notices to remain without interference or interruption. The Landlord may at any time within six (6) months before the end of the Term enter the Premises and bring others at all reasonable hours for the purposes of showing the Premises to prospective tenants or purchasers.



**Section 13.04 - Emergency Access**

If and when for any reason an emergency will exist or be 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 Agreement. 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.

**ARTICLE XIV****Section 14.01 - First Option to Renew**

On the expiration of the Term, provided that:

- (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 Agreement; and
- (b) the Landlord is satisfied in its sole discretion that the Tenant has the financial and organizational capacity to continue to operate, maintain and program the Premises in accordance with the terms of this Agreement, and the Public Service Requirements; and
- (c) the Tenant gives the Landlord not less than twelve (12) months' and not more than eighteen (18) months' written notice prior to the expiration of the Term of the Tenant's exercise of this first option to renew,

the Tenant will have the right and option at its election to renew this Agreement for a further term of five (5) years (the "First Renewal Term") on the same terms and conditions, and the following will apply:

- (d) the First Renewal Term will commence on the 1<sup>st</sup> day of November, 2017 and will end at 11:59 p.m. on the 31<sup>st</sup> day of October, 2022;
- (e) there will be two (2) further rights to renew;
- (f) with respect to such First Renewal Term, 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 Landlord's work in, on, to or for the Premises; and
- (g) if the Tenant fails to give notice to the Landlord as provided in this Section 14.01, this Agreement will automatically terminate at the end of the Term and the Tenant will have no further option to renew.

**Section 14.02 - Second Option to Renew**

On the expiration of the First Renewal Term, provided that:

- (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 Agreement; and

- (b) the Landlord is satisfied in its sole discretion that the Tenant has the financial and organizational capacity to continue to operate, maintain and program the Premises in accordance with the terms of this Agreement, and the Public Service Requirements; and
- (c) the Tenant gives the Landlord not less than twelve (12) months' and not more than eighteen (18) months' written notice prior to the expiration of the Term of the Tenant's exercise of this first option to renew,

the Tenant will have the right and option at its election to renew this Agreement for a further term of five (5) years (the "Second Renewal Term") on the same terms and conditions and the following will apply:

- (d) the Second Renewal Term will commence on the 1<sup>st</sup> day of November, 2022 and will end at 11:59 p.m. on the 31<sup>st</sup> day of October, 2027;
- (e) there will be one (1) further right to renew;
- (f) with respect to such Second Renewal Term, 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 Landlord's work in, on, to or for the Premises; and
- (g) if the Tenant fails to give notice to the Landlord as provided in this Section 14.02, this Agreement will automatically terminate at the end of the First Renewal Term and the Tenant will have no further option to renew.

#### Section 14.03 - Third Option to Renew

On the expiration of the Second Renewal Term, provided that:

- (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 Agreement; and
- (b) the Landlord is satisfied in its sole discretion that the Tenant has the financial and organizational capacity to continue to operate, maintain and program the Premises in accordance with the terms of this Agreement, and the Public Service Requirements; and
- (c) the Tenant gives the Landlord not less than twelve (12) months' and not more than eighteen (18) months' written notice prior to the expiration of the Term of the Tenant's exercise of this first option to renew,

the Tenant will have the right and option at its election to renew this Agreement for a further term of five (5) years (the "Third Renewal Term") on the same terms and conditions and the following will apply:

- (d) the Third Renewal Term will commence on the 1<sup>st</sup> day of November, 2027 and will end at 11:59 p.m. on the 31<sup>st</sup> day of October, 2032;
- (e) there will be no further right to renew;

- (f) with respect to such Third Renewal Term, 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 Landlord's work in, on, to or for the Premises; and
- (g) if the Tenant fails to give notice to the Landlord as provided in this Section 14.03, this Agreement will automatically terminate at the end of the Second Renewal Term and the Tenant will have no further option to renew.

## ARTICLE XV

### Section 15.01 - 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 Agreement, the Landlord will without further written agreement be released and relieved of and from such liabilities and obligations, provided that any purchaser, assignee or transferee of the Landlord's interest in the Premises expressly assumes the Landlord's covenants and obligations under this Agreement.

### Section 15.02 - 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 attorn to and become the Tenant of such party under the terms of this Agreement 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 15.03 - Status Statement

The Tenant will provide within five (5) business days of the request of the Landlord a status statement for the Landlord, addressed to the Landlord and any potential buyer or mortgagee, binding upon the Tenant, confirming:

- (a) that the Tenant has accepted possession of the Premises whether or not the Landlord has carried out all of its obligations pursuant to this Agreement;
- (b) that this Agreement constitutes the whole of the agreement between the parties or setting out such other agreements;
- (c) that this Agreement 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); and
- (d) such other matters as may be reasonably required by the Landlord or any potential or actual purchaser of the Premises.

ARTICLE XVI

**Section 16.01 - Delivery of Notices**

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

(a) to the Tenant:

**Dusty Flowerpot Cabaret Society**  
#141 - 2050 Scotia Street  
Vancouver, British Columbia V5T 4T1

Attention: *Kat Single-Dain*  
Fax: \_\_\_\_\_

and

(b) to the Landlord:

**City of Vancouver**  
c/o Director of Real Estate Services  
453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia V5Y 1V4

Attention: *Non-Profit Negotiator, Real Estate Services*  
Fax: *604-871-6972*

or to such other address or fax number as the party may designate and will be deemed to have been received on the day of delivery or faxing 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 shall only be effective if actually delivered.

**Section 16.02 - Administration of Lease**

Where this Agreement 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 shall be well and truly performed on the part of the Landlord when performed by the Landlord's Director of Real Estate Services or his nominee.

**Section 16.03 - Covenants Survive Termination**

The covenants herein on the part of the Landlord and the Tenant which, as of termination of this Agreement or the Term whether by passage of time or otherwise, remain unfulfilled, undischarged or otherwise outstanding shall 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 16.04 - Time is of the Essence**

Time shall be of the essence of this Agreement, save as herein otherwise specified.

**Section 16.05 - Captions and Headings**

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

**Section 16.06 - Interpretation**

Words herein importing the singular number or the masculine gender only shall include more persons, parties or things of the same kind than one, and females or corporations as well as males, and the converse whenever the context requires; these presents shall extend to, be binding upon and enure to the benefit of the Landlord and the Tenant and the successors and assigns of the Landlord and the heirs, executors, administrators, successors and permitted assigns of the Tenant.

**Section 16.07 - Joint and Several**

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

**Section 16.08 - Waiver**

No waiver of or neglect to enforce this Agreement 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 16.08, the acceptance by the Landlord of part payment of any sums, including rent, required to be paid under this Agreement will not constitute a waiver or release of the Landlord's right to payment in full of such sums.

**Section 16.09 - Entire Agreement**

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

**Section 16.10 - Governing Law**

This Agreement will be governed by and interpreted in accordance with the laws of British Columbia and the parties irrevocably attorn to the jurisdiction of the courts of British Columbia.

**Section 16.11 - Severability**

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

### **Section 16.12 - Relationship between Landlord and Tenant**

Nothing contained in this Agreement 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.

### **Section 16.13 - Force Majeure**

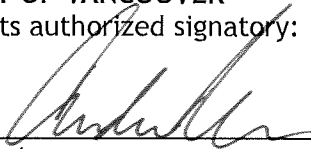
Despite anything contained in this Agreement to the contrary, if the Landlord or the Tenant is, in good faith, delayed or prevented from doing anything required by this Agreement because of a strike, labour trouble, inability to get materials or services, power failure, restrictive governmental laws 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 Agreement.

### **Section 16.14 - Confidentiality**

The Landlord agrees that any financial information about the Tenant or its activities received by or on behalf of the Landlord, or any one of its agents, shall be considered to have been received on an absolutely confidential basis and shall not be disclosed or made accessible to any other persons whatsoever. Without limiting the generality of the foregoing prohibition, the Landlord agrees that all information received pursuant to Section 3.01 of this Agreement is absolutely confidential. The Tenant hereby acknowledges that the Landlord is subject to the British Columbia *Freedom of Information and Protection of Privacy Act* ("FOIPPA") and, while it will treat information provided to it by the Tenant as confidential and notify the Tenant of any requests that are made pursuant to FOIPPA, the Landlord may be required to disclose information.

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

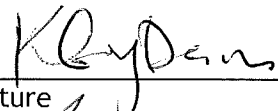
CITY OF VANCOUVER  
by its authorized signatory:

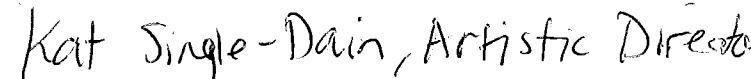
  
\_\_\_\_\_  
Signature


ANDREW NEWMAN  
Real Estate Services

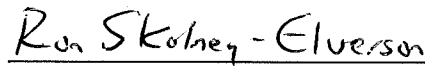
\_\_\_\_\_  
Print Name and Title

DUSTY FLOWERPOT CABARET SOCIETY  
by its authorized signatories:

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Print Name and Title *Kat Single-Dain, Artistic Director  
+ Senior Manager*

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Print Name and Title *Ron Skolney-Elverson  
Board Chair*

Approved by resolution of Vancouver City Council on October 14, 2014,

This is the signature page of a lease between the City of Vancouver, as Landlord, and the Dusty Flowerpot Cabaret Society, as Tenant, concerning #141 - 2050 Scotia Street, Vancouver, British Columbia.





**SCHEDULE "B"  
SERVICE LEVEL AGREEMENT**

**SERVICE LEVEL AGREEMENT**

**141 - 2050 SCOTIA STREET  
ARTIST PRODUCTION STUDIO**

For purposes of this document, the parties are identified as follows:

Strata Corporation	STRATA
City of Vancouver	CoV
NPO Operator	NPO

The tenant will be responsible for routine maintenance and minor repairs within the strata unit (The "Premises"), including janitorial, utilities, pest control, and security services, and for the monthly strata fees for the Premises associated with general maintenance and repair of the common area. Generally, the City of Vancouver and/or the Strata Corporation will be responsible for major repairs and capital life-cycle replacement of the major base building systems and structural components of the Premises.

Strata\* - Under 'Party Responsible to Pay for Work', Strata\* means these costs are included in the monthly strata fees, which are payable by the NPO tenant.

**Annual Maintenance Plan**

The Operator must prepare and submit an Annual Maintenance Plan including both the Routine and Preventative Maintenance Plan, which the City reserves the right to validate. The Operator will submit a report/reports summarizing the Routine and Preventative Maintenance that has been performed and costs, and the Capital Maintenance and Improvements performed and cost annually on the anniversary of the commencement of the lease.

Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
1.	Heating, Ventilation and Air Conditioning within the Premises (excluding common equipment/systems)		
a	- annual inspection	NPO	NPO
b	- routine maintenance and repair	NPO	NPO
c	- provision & replacement of filter material	NPO	NPO
d	- cleaning of ducts	NPO	NPO

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Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
e	- life cycle replacement (Capital Maintenance)	CoV	CoV
f	- operating costs	NPO	NPO
2.	<b>Common Heating, Ventilation and Air Conditioning (systems serving more than the Premises)</b>		
a	- annual inspection, maintenance and repair	STRATA	STRATA*
b	- life cycle replacement	STRATA	STRATA/CoV
3.	<b>Plumbing Systems within the Premises (excluding common systems/equipment)</b>		
a	- preventive maintenance and repairs to hot water heating systems and domestic cold water systems	NPO	NPO
b	- major repairs and replacement of hot water heating systems and domestic cold water systems	CoV	CoV
c	- repairs to all fixtures including faucets, unplugging toilets and all other routine repairs	NPO	NPO
d	- life cycle replacement of hot water systems, fixtures, (including all sinks and toilets) and piping	CoV	CoV
4.	<b>Common Plumbing Systems (systems serving more than the Premises)</b>		
a	- annual inspection, maintenance and repair	STRATA	STRATA*
b	- life cycle replacement	STRATA/CoV	STRATA/CoV

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Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
5.	Mechanical Systems exclusive to or within the Premises		
a	- preventive maintenance and repairs	NPO	NPO
b	- life cycle replacement	CoV	CoV
c	- installation, maintenance and replacement of additional equipment provided and installed by the occupant	NPO	NPO
6.	Common Mechanical Systems (systems serving more than the Premises)		
a	- annual inspection, maintenance and repair	STRATA	STRATA*
b	- life cycle replacement	STRATA/CoV	STRATA/CoV
7.	Fire Protection & Suppression exclusive to the Premises		
a	- annual inspection of <i>fire extinguishers</i> , fire sprinkler and smoke detectors within the Premises	STRATA	STRATA*
b	- repairs/recharging of fire extinguishers within the Premises	NPO	NPO
c	- life cycle replacement of fire extinguishers within the Premises	CoV	CoV
8.	Common Fire Protection & Suppression (systems serving more than the Premises)		
a	- annual inspection, maintenance and repairs of the fire alarm system	STRATA	STRATA*
b	- life cycle replacement of fire alarm system	STRATA/CoV	STRATA/CoV

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Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
c	- annual inspection, maintenance and repair of fire sprinkler system	STRATA	STRATA*
d	- life cycle replacement of fire sprinkler system	STRATA/CoV	STRATA/CoV
9.	<b>Security Systems dedicated to or within the Premises</b>		
a	- system monitoring, inspection, maintenance and repair	NPO	NPO
b	- life cycle replacement	NPO	NPO
c	- repair, replacement, re-keying of all locks	NPO	NPO
10.	<b>Common Security Systems (systems serving more than the Premises)</b>		
a	- system monitoring, inspection, maintenance and repair	STRATA	STRATA*
b	- life cycle replacement	STRATA/CoV	STRATA/CoV
11.	<b>Electrical Distribution Systems exclusive to or within the Premises (excluding common systems/equipment)</b>		
a	- repairs and upgrades required by Code initiated by the Tenant	NPO	NPO
b	- repairs and upgrades required by Code initiated by the Landlord	CoV	CoV
c	- inspection, maintenance and repair of wiring, breakers and electrical panels	NPO	NPO
d	- life cycle replacement of wiring, breakers and panels	CoV	CoV

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Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
e	- repair or replacement of switches, receptacles, cover plates	NPO	NPO
12.	<b>Common Electrical Distribution Systems (systems serving more than the Premises)</b>		
a	- inspection, maintenance and repair of electrical distribution systems to the Premises	STRATA	STRATA*
b	- life cycle replacement of electrical distribution systems to the Premises	STRATA/CoV	STRATA/CoV
13.	<b>Lighting Systems within the Premises</b>		
a	- bulb/tube replacement for interior lighting	NPO	NPO
b	- annual inspection and maintenance of interior emergency/exit lighting	NPO	NPO
c	- life cycle replacement of fixtures	CoV	CoV
d	- cleaning of interior light fixtures	NPO	NPO
e	- provision, maintenance, repair and replacement of portable lighting fixtures integral to Premises	NPO	NPO
14.	<b>Common Lighting Systems (systems serving more than the Premises)</b>		
a	- inspection, maintenance, repair, and cleaning	STRATA	STRATA*
b	- life cycle replacement	STRATA/CoV	STRATA/CoV

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Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
15.	Interior Windows within the Premises (if applicable)		
a	- breakage and replacement of interior windows, caused by the occupant or operations	NPO	NPO
b	- routine repairs and cleaning of interior windows	NPO	NPO
c	- replacement due to normal wear and tear	NPO	NPO
16.	Exterior Windows of the Premises		
a	- breakage, routine repairs and replacement of exterior windows, not caused by the occupant or operations	STRATA	STRATA*
b	- breakage, routine repairs and replacement of exterior windows, caused by the occupant or operations	STRATA/CoV	NPO
c	- cleaning of interior surfaces of exterior windows	NPO	NPO
d	-cleaning of exterior surfaces of exterior windows	STRATA	STRATA*
e	- life cycle replacement of the exterior windows	STRATA/CoV	STRATA/CoV
17.	Common Area Windows		
a	- breakage and routine repair	STRATA	STRATA*
b	- cleaning (of exterior surfaces)	STRATA	STRATA*
c	- cleaning (of interior surfaces)	STRATA	STRATA*
d	- life cycle replacement	STRATA/CoV	STRATA/CoV

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Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
<b>18.</b>	<b>Interior and Exterior Doors within the Premises</b>		
a	- maintenance and repair of interior doors	NPO	NPO
b	- life cycle replacement of interior doors	CoV	CoV
c	- maintenance and repair of exterior doors	STRATA	STRATA*
d	- life cycle replacement of exterior doors	STRATA/CoV	STRATA/CoV
<b>19.</b>	<b>Common Area Doors</b>		
a	- maintenance and repair	STRATA	STRATA*
b	- life cycle replacement	STRATA/CoV	STRATA/CoV
<b>20.</b>	<b>Interior Surfaces within the Premises</b>		
a	- interior life cycle repainting	CoV	CoV
b	- maintenance and cleaning of window applications including, but not limited to blinds and curtains	NPO	NPO
c	- repairs to interior walls and ceilings, including minor painting	NPO	NPO
d	- interior repairs due to building system failures such as roof leaks, exterior walls and foundation leaks not caused by the occupant or operations	STRATA/CoV	STRATA/CoV
e	- maintenance and repairs of floor coverings, including carpet and tile	NPO	NPO
f	- life cycle replacement of floor coverings	NPO	NPO
g	- maintenance and repair of millwork	NPO	NPO

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Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
h	- life cycle replacement of millwork	NPO	NPO
i	- life cycle replacement of window coverings	NPO	NPO
21.	<b>Common Area Interior Surfaces</b>		
a	- all maintenance and repairs	STRATA	STRATA*
b	- all capital maintenance or replacements	STRATA/CoV	STRATA/CoV
22.	<b>Major Structural Systems included within the Premises</b>		
a	- repairs or replacements of foundations, flooring sub-structure, building envelope including bearing walls and roofing	STRATA/CoV	STRATA/CoV
b	- repairs and painting of exterior surfaces including windows, trim, fascia and soffits	STRATA	STRATA*
23.	<b>Major Structural Systems external to the Premises</b>		
a	- all repairs and replacements	STRATA/CoV	STRATA/CoV
24.	<b>Site Services within the Premises</b>		
a	- snow and ice removal from Limited Common Property, patio and entrances including the provision of de-icing materials	NPO	NPO
b	-graffiti removal	STRATA	STRATA*

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Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
25.	Site Services outside of the Premises		
a	- landscaping repairs and maintenance	STRATA	STRATA*
b	- grass cutting	STRATA	STRATA*
c	- general cleaning of grounds, litter disposal	STRATA	STRATA*
d	- snow and ice removal from common property including steps, walkways, entrances including the provision of de-icing materials	STRATA	STRATA*
e	- snow and ice removal from entrance to parking areas	STRATA	STRATA*
f	- snow and ice removal from roof areas, canopies, and/or awnings (if applicable)	STRATA	STRATA*
g	- repairs of water and sewage systems (beyond the building perimeter), unless deemed to be caused by the Tenant	STRATA	STRATA*
h	- maintenance, repair and replacement of gates and fences (excluding tenant specific gates and fences)	STRATA	STRATA*
i	- maintenance and repair of parking and loading areas	STRATA	STRATA*
j	-graffiti removal	STRATA	STRATA*
k	-pest control services on strata common property (exterior and interior)	STRATA	STRATA*
26.	Signage exterior to the Premises		
a	- maintenance, repair, and replacement (subject to prior approval of the CoV and Strata Corporation)	NPO	NPO

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Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
27.	<b>Janitorial Services within the Premises</b>		
a	- routine janitorial /custodial services	NPO	NPO
b	- pest control services (interior)	NPO	NPO
c	- provision of all washroom and cleaning supplies	NPO	NPO
28.	<b>Common Area Janitorial Services</b>		
a	- routine janitorial/custodial services	STRATA	STRATA*
b	- pest control services (interior and exterior of strata common property)	STRATA	STRATA*
c	- provision of all washroom supplies	STRATA	STRATA*
d	- garbage and recycling removal services	STRATA	STRATA*
29.	<b>Appliances, Program and Other Non-Installed Equipment within the Premises</b>		
a	- inspection, maintenance and repair of all non-building equipment including stoves, refrigerators, microwaves, coolers, free standing cabinets, track lighting	NPO	NPO
b	- replacement of all appliances, program and non-installed equipment	NPO	NPO
c	- maintenance, repair and replacement of furniture	NPO	NPO

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Item	Description	Party to Perform the Work	Party Responsible to Pay for Work
30.	<b>Renovations and Upgrades within the Premises</b>		
a	- any upgrades, additions, enhancements or improvements beyond what was originally provided during construction (subject to prior approval by Strata Corporation and CoY)	NPO	NPO
31.	<b>Utilities</b>		
a	- electricity	NPO	NPO
b	- gas	NPO	NPO
c	- water and sewer	Strata	Strata*
32.	<b>Business Operations</b>		
a	- staff costs	NPO	NPO
b	- telephone, internet & cable services	NPO	NPO
c	- insurance (Commercial general liability, full replacement costs of the Premises, business interruption, contents, etc.)	NPO	NPO
d	- supplies and equipment, including for bathroom and kitchen	NPO	NPO
e	- security services	NPO	NPO

**Life Cycle Replacement**

Life cycle replacement of components and systems within the Premises is based on fair wear and tear. The need of such replacement is at the Landlord's sole discretion.

**Damage**

Notwithstanding the foregoing, it is a condition hereof that the Landlord's obligation to maintain, repair, and replace parts of the Premises as indicated above is always subject to the availability of funds currently budgeted by the Landlord for such purposes at the Premises.

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Artist Production Studio

**SCHEDULE "C"**  
**OCCASIONAL THIRD PARTY USE POLICY**

This Occasional Third Party Use Policy (the "Policy") forms part of the Agreement made as of November 1, 2018 between the CITY OF VANCOUVER, as the Landlord, and the DUSTY FLOWERPOT CABARET SOCIETY, as the Tenant.

**1. Purpose of Policy**

The purpose of this Policy is to provide for use of the Premises by third parties at various times in order to generate earned revenues which will assist the Tenant in supporting its operations.

**2. Amendments**

This Policy shall not be amended unless the Landlord and the Tenant agree to any amendment in writing.

**3. Tenant Liable for Actions of Third Parties**

Without limiting anything else contained in the Agreement, the Tenant shall at all times be fully responsible for the actions of any third party that the Tenant permits to use the Premises. If those actions result in any damage or loss to the Premises or if the Landlord sustains any loss of any kind due in whole or in part to such actions, the Tenant shall repair the damage or loss to the Landlord's satisfaction and shall indemnify the Landlord for any loss it might sustain due in whole or in part to such actions.

The Tenant shall ensure that the Tenant's insurance is adequate to protect the Tenant for the actions of third parties.

**4. Use by Third Parties**

Any use by third parties of all or any portion of the Premises shall:

- (a) not be a subletting but shall only be a license to use on the terms set out in the Rental Agreement (hereinafter defined);
- (b) be appropriate to and support and not detract from the Public Service Requirements;
- (c) be no longer than 5 consecutive days, except with the prior written approval of the Landlord, not to be unreasonably withheld except that the Landlord may arbitrarily withhold consent if the use is to be longer than 14 consecutive days; and
- (d) be for the purposes of conducting rehearsals or other short term use(s) to other non-profit cultural organizations.

**5. Rental Agreement**

Before the Tenant permits a third party to use all or any portion of the Premises, the Tenant shall enter into a written agreement with the third party (the "Rental Agreement").

At a minimum the Rental Agreement shall contain the following information and requirements:

- (a) the full and correct legal name, address, contact name and telephone number of the third party;
- (b) identification of which area(s) of the Premises is/are to be used by the third party;
- (c) the purpose for which the area(a) is/are to be used by the third party;
- (d) the amount of the fee being paid by the third party including the amount of the deposit, if any;
- (e) the duration of the Rental Agreement;
- (f) proposed additional janitorial and security arrangements if such additional arrangements seem reasonably necessary in view of the proposed use; and
- (g) an obligation on the third party to comply with all federal, provincial or civic statutes, by-laws, regulations and orders in force at the time of execution of the License Agreement or thereafter relating to the Premises and the third party's use of the Premises.

**6. No Occupation by Third Party until Certain Conditions Met**

The Tenant shall not permit any third party to occupy all or any portion of the Premises unless:

- (a) the third party has executed the Rental Agreement; and
- (b) the third party has satisfied all the preconditions set out in the Rental Agreement.

**7. Policy Part of Agreement**

As this Policy forms part of the Agreement, default by the Tenant in its obligations enumerated in this Policy is default under the Agreement.

**SCHEDULE "D"**  
**PUBLIC SERVICE REQUIREMENTS**

This Schedule D forms part of the Lease made as of November 1, 2018 between the City of Vancouver as the landlord (the "Landlord" and Dusty Flowerpot Cabaret Society as the tenant (the "Tenant"). A breach of the requirements of this Schedule will constitute a breach under Section 11.01(c) of the Lease. The Tenant may attach additional sheets as necessary to complete this Schedule.

**1. City's Requirements:**

The City requires that the Premises be used and occupied in accordance with the following:

- (a) in a manner that is consistent with the City's policy objectives set out as follows in Council Report RTS 10685, (approved October 14, 2014):

Use of the Premises as an artist production studio aligns with Cultural Services' *Making Space for Art: 2018 Cultural Infrastructure Plan*, which identifies affordable places for artists to live and work as a key gap.

The approved assignment of Dusty Flowerpot Cabaret Society (DFCS) as Tenant of the artist production studio also achieves several key objectives of the *Cultural Plan Update* (RTS 10309) presented to Council on October 23, 2013: by fostering cultural leadership, increasing public participation and community engagement in arts and culture, encouraging adaptable and sustainable long-term cultural facilities, optimizing City investment in cultural assets, and contributing to Vancouver's creative economy.

In its use of the Premises, the Tenant must remain aligned with the following mandate for cultural uses of the Premises identified in Report to Council RTS 10685 (approved October 14, 2014):

The Premises is to be used by Dusty Flowerpot Cabaret Society (the Tenant) primarily for the purpose of an artist production studio in the production of art and/or cultural festivals and the administrative support of these cultural activities as reflected by the Tenant's community-based mandate and other activities permitted by the applicable zoning for the Premises, and as per the Third Party Use Policy attached to this lease agreement as Schedule. The Premises may also be used for performance or public presentation/event purposes for over 30 people only under the application and approval of the City of Vancouver Arts Events License regulations.

Specifically, the following public benefits must be provided by the Tenant of the Premises:

- engagement of local artists in the production of the *Parade of Lost Souls* festival and other events and productions
- provide affordable production, rehearsal and workshop space to community arts groups and for the production of community festivals and performance works

- contribute to a diverse local cultural ecology by increasing public participation and engagement in arts and culture, contributing to a healthy, vibrant, livable city

(b) in a manner that is consistent with, and upholds the following principles:

- i) Accessibility: the Tenant will demonstrate accommodation, welcomeness and openness to people of all ages, abilities, sexual orientation, gender identities (including trans\*, gender-variant and two-spirit people), ethnicities, cultural backgrounds, religions, languages, under-represented communities and socio-economic conditions in the Tenant's policies, practices and programs.
- ii) Financial Management: the Tenant will demonstrate sound financial planning and management practices to sustain current and longer-term programming and operation of the Premises.
- iii) Leadership: the Tenant will have sound management in place and an engaged board of directors, with the appropriate representation of communities served and the skills and expertise to support the Tenant's use, Mission, Vision and Mandate. The board of directors must function in a governance role, be active in setting direction, policy and long-term planning, and fulfill their legal and fiduciary responsibilities.
- iv) Alignment with City's Mission and Values: the Tenant's use of the Premises must align with the City's Mission and Values, as set out below:

*City's Mission: to create a great city of communities that cares about its people, its environment, and its opportunities to live, work, and prosper.*

*City's Values: being responsive to the needs of citizens and colleagues, striving for the best results, approaching work with unbiased judgement and sensitivity, being open and honest, and honouring commitments; setting examples that others will choose to follow, and being a learning organization that grows through its experiences.*

*Vancouver is committed to being a Healthy City for All - a city where everyone can create and continually improve the conditions that enable the highest level of health and well-being possible.*

The foregoing principles may be amended from time to time by the City and if so amended, the City will notify the Tenant in writing of such amendments and will include a copy of same and the Tenant will abide by such amended principles as though they were originally contained herein;

(c) only for the purpose set out in Section 1.08 of the Lease and specifically:

The permitted use of the studio is "Artist Studio - Class A" which allows the use of the studio for the production of paintings, drawings, pottery, sculpture, ceramics, video, moving or still photography, creative writing, dance or music. As an artist production studio, the Premises will be used primarily for the work-shopping, production and

rehearsal of art and/or cultural festivals and performances held off-site and the administrative support of these cultural activities and may include the following uses:

- festival, theatre, dance rehearsals
- costume, prop and set production
- small workshops and arts education programs
- meetings
- administration activities
- prop, costume and materials storage
- presentation/performance/event under 30 people

Assembly on-site of over 30 persons for the purpose of presentation, event or performance, unless under the application and approval of an Arts Events Licence, is not permitted.

(collectively, the “City’s Requirements”).

## 2. Tenant’s Acknowledgement, Representations and Covenants

- (a) Acknowledgement: the Tenant acknowledges that the City has been authorized by its elected Council to lease the Premises, for the public benefit, to the Tenant in its capacity as a non-profit public-service organization that meets the City’s Requirements, and that the City has relied on the Tenant’s representations and covenants hereinafter set out, in determining that the Tenant is an appropriate tenant for the Premises.
- (b) Representations: the Tenant represents that its Mission, Vision and Mandate are as follows:

### Mission:

The Dusty Flowerpot Cabaret Society is a non-profit organization that creates and supports original theatre and arts events.

### Vision:

The Dusty Flowerpot Cabaret Society aims to be innovators and leaders in providing Professional theatrical productions, festivals and events focused on engaging and enriching the community.

### Mandate:

The Dusty Flowerpot Cabaret Society creates and performs theatrical productions, festivals and events focused on engaging and enriching the community.

The City acknowledges that the Tenant’s organization may evolve, expand, contract, diversify or specialize over time (for example, by offering new types of services to meet emerging community needs), and that such changes may necessitate revisions to the Tenant’s Mission, Vision and Mandate from time to time. The Tenant will notify the City immediately of any such revisions, and such revisions will be permissible, PROVIDED that the Tenant, in the City’s sole discretion, continues to be a non-profit,



public-service organization, and the Tenant's use of the Premises continues to be a Permitted Use that meets the City's Requirements.

- (c) Covenants: throughout the Term of the Lease the Tenant covenants that it will consistently, actively and rigorously implement, promote, advance and fulfil the City's Requirements and its Mission, Vision and Mandate through its use of the Premises.

The Tenant will fulfill its Mission in the following way(s):

The Dusty Flowerpot Cabaret Society will fulfill its Mission by producing innovative theatre and arts events throughout the year. The company will continue to demonstrate community engagement by acting as a production company and hub of performers, volunteers, and audience members that develop and present original works of theater and performance.

The DFCS welcomes new work to the stage and provide opportunities for local artists to showcase original multi-disciplinary theatrical work through Festivals. The DFCS produces theatrical events for a wide audience in the community.

The Tenant will fulfill its Vision in the following ways(s):

The Dusty Flowerpot Cabaret Society invites everyone including professionals, non-professionals and the uninitiated to receive an immersive experience in the performing arts that actively engages their senses.

The DFCS support audience interactive immersive theater, events and performance by helping professionals and community members to work together.

The Tenant will fulfill its Mandate in the following way(s):

The Dusty Flowerpot Cabaret Society helps local artists to learn and practice interactive theatrical productions, festivals and events by providing performance, training and volunteering opportunities. The DFCS also provides opportunities for pre-professional artists to perform alongside professionals.

Operated by professionals, the DFCS manages the Scotia Street Studio which offers financially and physically accessible rehearsal and performance space to the performing arts community of Vancouver.

The DFCS produce a financially and physically accessible multidisciplinary arts festival annually.

### 3. Reporting and Monitoring

The Tenant will report to the City about its use and operation of the Premises on an annual basis, by no later than December 31<sup>st</sup>, or as frequently as may otherwise be reasonably required by the City. Reports must be made in a form and manner that satisfy the City's reporting requirements in effect from time to time. The City will notify the Tenant in writing of any changes to its reporting requirements, and the Tenant will abide by such amended reporting requirements as though they were originally contained herein.

The City's current reporting requirements are as follows:

ANNUAL REPORTING:

- (a) the name and contact information of the key persons for the Tenant at the Premises;
- (b) a current list of directors and officers of the Tenant including their terms, positions and affiliations;
- (c) financial statements of the Tenant, including at a minimum a statement of income and expenses for the Premises, for the previous year independently prepared at the Tenant's expense by an accounting professional (review engagement or audit) OR financial statements, including at a minimum a statement of income and expenses for the Premises, endorsed by two signing officers of the Board of Directors, if independently prepared or audited statements are not available;
- (d) a proposed annual budget for the Premises with an estimate of all revenues and expenditures as well as a maintenance reserve sufficient to meet the Tenant's obligations under the Lease, in a form acceptable to the City, which must have first been approved by the directors of the Tenant;
- (e) a summary of activities for the past fiscal year demonstrating how the Tenant has implemented its Mission, Vision and Mandate through its use of the Premises and complied with the City's Requirements;
- (f) a summary of activities at the Premises for the past fiscal year demonstrating how the Tenant has complied with the Maintenance Plan and Service Level Agreement requirements;
- (g) a summary of activities at the Premises planned for the coming fiscal year;
- (h) a summary (including users, dates, rental fees, and MOUs or other agreements if any) of third party and community uses at the Premises and rental rates charged.

BEGINNING OF TERM AND MID-TERM REPORTING (Submit only in the first year of a five-year Term or Renewal Term or in the first and fifth year of a ten-year Term or Renewal Term):

- (a) a five-year Maintenance Plan for the Premises;
- (b) evidence of good standing as a not-for-profit or charity (submit a current Corporate Registry Search from BC Registry Services).

In the City's discretion, the Tenant may also be required from time to time to provide a copy of its strategic plan, board minutes, and a summary of governance policies.

In advance of granting any renewal of the Lease the City will review whether the Tenant has met the City's Requirements.

**4. AMENDMENTS**

The Tenant shall not make any changes to this Schedule without the prior written approval of the City's Managing Director of Cultural Services.

SCHEDULE "E"  
TITLE SEARCH

TITLE SEARCH PRINT

File Reference: REM  
Declared Value \$ 265000

2019-05-17, 15:53:42  
Requestor: Roxanne Siddon

\*\*CURRENT INFORMATION ONLY - NO CANCELLED INFORMATION SHOWN\*\*

**Title Issued Under** CONDOMINIUM ACT (Section 3)

**Land Title District** VANCOUVER  
Land Title Office VANCOUVER

**Title Number** BM186499  
From Title Number BM186498

**Application Received** 1998-06-30

**Application Entered** 1998-07-07

**Registered Owner in Fee Simple**  
Registered Owner/Mailing Address: CITY OF VANCOUVER  
453 WEST 12TH AVENUE  
VANCOUVER, BC  
V5Y 1V4

**Taxation Authority** Vancouver, City of

**Description of Land**  
Parcel Identifier: 024-037-117  
Legal Description:  
STRATA LOT 34 DISTRICT LOT 200A GROUP 1 NEW WESTMINSTER DISTRICT  
STRATA PLAN LMS3101  
TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT  
ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM 1

**Legal Notations**  
NOTICE OF INTEREST, BUILDERS LIEN ACT (S.3(2)), SEE BN107096  
FILED 1999-04-29

**Charges, Liens and Interests**  
Nature: EASEMENT AND INDEMNITY AGREEMENT  
Registration Number: 397664M  
Registration Date and Time: 1965-01-20 11:47  
Registered Owner: CITY OF VANCOUVER  
Remarks: INTER ALIA  
AS TO PART FORMERLY LOTS 12 TO 17 INCLUSIVE  
AND THE SOUTH HALF OF LOT 18, BLOCK 26 PLAN 197

**TITLE SEARCH PRINT**

File Reference: REM  
Declared Value \$ 265000

2019-05-17, 15:53:42  
Requestor: Roxanne Siddon

<b>Duplicate Infeasible Title</b>	NONE OUTSTANDING
<b>Transfers</b>	NONE
<b>Pending Applications</b>	NONE

SCHEDULE "F"  
PLAN OF PARKING LICENSE AREA

