

File No.: 04-1000-20-2024-343

September 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 June 5, 2024 under the *Freedom of Information and Protection of Privacy Act* for:

**Record of most recent operator agreement and lease agreement for Kinship Housing Co-operative, signed between the City and Community Land Trust (CLT), located at 3183 and 3245 Pierview Crescent. Date range: September 18, 2018 to June 4, 2024.**

All responsive records are attached\*.

\*Please note, Non-Market Housing Operations staff advised that the City does not have a record of CLT's Operating Agreement for this property.

Under Part 5 of the Act, 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 (2024-343); 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**

If you have any questions, please email us at [foi@vancouver.ca](mailto:foi@vancouver.ca) and we will respond to you as soon as possible. You may also contact 3-1-1 (604-873-7000) if you require accommodation or do not have access to email.

Encl. (Response Package)

:lg

NEW WESTMINSTER LAND TITLE OFFICE

LAND TITLE ACT  
FORM C (Section 233) CHARGE

Jun-12-2019 12:56:46.001

CA7555045

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE 1 OF 53 PAGES

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.

Jada Martine  
Tellier CFTQ25  
Digitally signed by Jada Martine Tellier CFTQ25  
Date: 2019.06.11 15:12:03 -07'00'

1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

L. Michael Walker, Miller Thomson LLP  
400 - 725 Granville Street

604-643-1288  
Client No. 010437 File No.: 0202846.0012  
CLT(3183 Pierview)/ Doc ID:39280949

Vancouver BC V7Y 1G5  
Document Fees: \$74.16

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]

SEE SCHEDULE

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Lease

Entire Instrument

4. TERMS: Part 2 of this instrument consists of (select one only)

(a)  Filed Standard Charge Terms D.F. No.

(b)  Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

CITY OF VANCOUVER

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

COMMUNITY LAND TRUST FOUNDATION OF BRITISH COLUMBIA

200-1651 COMMERCIAL DRIVE  
VANCOUVER

BRITISH COLUMBIA  
CANADA

Incorporation No  
S0063904

V5L 3Y3

7. ADDITIONAL OR MODIFIED TERMS:

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

Execution Date

Transferor(s) Signature(s)

BRAD WOODS

LAWYER

453 WEST 12TH AVENUE  
VANCOUVER, BC V5Y 1V4

Y	M	D
19	05	08

CITY OF VANCOUVER by its authorized signatory:

Name: JERRY EVANS,  
Director of Real Estate Services

Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM D**

**EXECUTIONS CONTINUED**

Officer Signature(s)

**Execution Date**

Transferor / Borrower / Party Signature(s)

\_\_\_\_\_  
JADA TELLIER

Barrister & Solicitor

400 - 725 GRANVILLE STREET  
VANCOUVER, BC V7Y 1G5  
(604) 687-2242

**Y M D**

19 05 07

COMMUNITY LAND TRUST  
FOUNDATION OF BRITISH  
COLUMBIA by its authorized  
signatories:

\_\_\_\_\_  
Name: TIFFANY DUZITA

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

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

PAGE 3 OF 53 PAGES

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2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]

**030-284-767 LOT 52 BLOCK 10 DISTRICT LOT 330 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP65172**

STC? YES

---

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]

**030-284-775 LOT 53 BLOCK 10 DISTRICT LOT 330 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP65172**

STC? YES

---

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]

STC? YES

THIS AGREEMENT is made as of the 30<sup>th</sup> day of April, 2019,

**BETWEEN:**

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

(the “**Lessor**”)

**AND:**

**COMMUNITY LAND TRUST FOUNDATION OF BRITISH COLUMBIA**,  
a society incorporated under the laws of British Columbia and  
having an office at 200-1651 Commercial Drive,  
Vancouver, British Columbia, V5L 3Y3

(the “**Lessee**”)

**PREMISES:**

**Civic Address:** 3183 Pierview Crescent and 3245 Pierview Crescent

**Legal Descriptions:** PID: 030-284-767

Lot 52 Block 10 District Lot 330 Group 1 New Westminster  
District Plan EPP65172

PID: 030-284-775

Lot 53 Block 10 District Lot 330 Group 1 New Westminster  
District Plan EPP65172

**TERM:** 99 years, commencing on the Lease Commencement Date

**RENT:** Total prepaid rent in the amount of Ten Dollars (\$10.00) for  
the Term

**OPTION(S) TO RENEW:** None

**TABLE OF CONTENTS**

ARTICLE 1 DEFINITIONS AND INTERPRETATION ..... 9

ARTICLE 2 PAYMENT OF RENT..... 12

    2.1 Basic Rent ..... 12

    2.2 Net Lease..... 12

    2.3 Interest on Amounts in Arrears ..... 12

ARTICLE 3 PAYMENT OF TAXES..... 13

    3.1 Payment of Realty Taxes if Lands Not Exempt ..... 13

    3.2 Payment in Lieu of Realty Taxes if Lands Exempt..... 13

    3.3 Right to Appeal Assessment ..... 13

    3.4 Business Tax and License Fees..... 13

    3.5 Other Taxes ..... 14

    3.6 Pro-rating Obligations..... 14

ARTICLE 4 CONSTRUCTION OF BUILDING ..... 14

    4.1 Intentionally Deleted..... 14

    4.2 Lessee to Construct Building ..... 14

    4.3 Substantial Completion of Building ..... 14

    4.4 Termination of Lease on Failure to Construct..... 15

    4.5 Landscaping..... 15

    4.6 Alterations After Substantial Completion ..... 16

    4.7 Unavoidable Delays ..... 16

ARTICLE 5 BUILDERS LIENS ..... 16

    5.1 Builders Liens..... 16

    5.2 Discharge of Builders Liens..... 17

    5.3 Notice by Lessor..... 17

ARTICLE 6 RESTRICTIONS ON OPERATIONS AND USE ..... 17

{01169260v1}

6.1 Restricted Use ..... 17

6.2 No Subdivision ..... 18

6.3 Intentionally Deleted..... 18

6.4 Permitted Encumbrances ..... 18

6.5 Housing Requirements ..... 18

ARTICLE 7 REPAIRS AND MAINTENANCE..... 18

7.1 Lessor Not Obligated to Repair..... 18

7.2 Repairs by the Lessee ..... 18

7.3 Removal of Ice and Snow from Sidewalks..... 19

ARTICLE 8 ADDITIONAL RENT..... 20

8.1 All Defaults in Payment as Additional Rent..... 20

ARTICLE 9 INSURANCE..... 20

9.1 Insurance During Construction of Building ..... 20

9.2 Commercial General Liability Insurance ..... 20

9.3 All Risk Property, Pressure Vessel and Rental Income Insurance..... 21

9.4 Insurance - Additional Provisions..... 21

9.5 Evidence of Insurance ..... 22

9.6 Payment of Loss Under Insurance Policies ..... 22

9.7 Workers Compensation Coverage..... 22

9.8 Release of Lessor from Liability for Insured Loss or Damage ..... 23

ARTICLE 10 DAMAGE OR DESTRUCTION..... 23

10.1 Rent Not to Abate..... 23

10.2 Lessee’s Obligation When Building Partially Damaged or Destroyed ..... 24

10.3 Lessee’s Obligations When Building Completely or Substantially Destroyed ..... 24

10.4 Replacement, Repair or Reconstruction ..... 24

10.5 Special Provisions Where Lessee has Mortgaged its Interest..... 24

{01169260v1}



7

10.6 Destruction or Damage During Last Two Years of Term ..... 25

ARTICLE 11 INSPECTION AND EXHIBITION BY LESSOR ..... 26

11.1 Inspection by Lessor ..... 26

11.2 Exhibition by Lessor ..... 26

ARTICLE 12 OBSERVANCE OF GOVERNMENTAL REGULATIONS..... 27

12.1 Compliance ..... 27

ARTICLE 13 RIGHTS OF LESSOR AND LESSEE ..... 27

13.1 As Landlord and Tenant..... 27

ARTICLE 14 EXCLUSION OF LIABILITY AND INDEMNITY ..... 27

14.1 Limitation of Liability and Release ..... 27

14.2 Exclusion of Liability ..... 27

14.3 Indemnification ..... 28

14.4 Indemnification Survives Termination of Lease..... 28

ARTICLE 15 SUBLETTING AND ASSIGNING ..... 28

15.1 Subletting and Assigning by Lessee ..... 28

15.2 Copies of Subleases..... 29

ARTICLE 16 MORTGAGE ..... 29

16.1 Mortgaging by Lessee..... 29

16.2 Tripartite Agreement..... 29

ARTICLE 17 BANKRUPTCY OF LESSEE..... 29

17.1 Bankruptcy of Lessee..... 29

ARTICLE 18 DEFAULT BY LESSEE ..... 30

18.1 Re-entry on Certain Defaults by Lessee ..... 30

18.2 Notice to and Remedies of Mortgagee..... 31

18.3 Remedies of Lessor are Cumulative..... 34

18.4 Waiver by Lessor ..... 34

{01169260v1}

ARTICLE 19 ARBITRATION ..... 34

    19.1 Arbitration ..... 34

ARTICLE 20 SURRENDER OF LEASE ..... 35

    20.1 Surrender of Lease ..... 35

ARTICLE 21 QUIET ENJOYMENT, OWNERSHIP OF TENANTS’ FIXTURES AND OWNERSHIP OF BUILDING ..... 35

    21.1 Covenant for Quiet Enjoyment ..... 35

    21.2 Ownership of Tenant’s Fixtures ..... 35

    21.3 Ownership of Building ..... 36

ARTICLE 22 OVERHOLDING ..... 36

    22.1 Overholding ..... 36

ARTICLE 23 ENVIRONMENTAL MATTERS ..... 36

    23.1 Definitions ..... 36

    23.2 Lessee’s Covenants and Indemnity ..... 37

ARTICLE 24 NOTICE ..... 38

    24.1 Notice ..... 38

ARTICLE 25 MISCELLANEOUS ..... 39

    25.1 Statements by Lessor ..... 39

    25.2 Time of Essence ..... 39

    25.3 Formality of Modifications ..... 39

    25.4 Captions and Headings ..... 39

    25.5 Enurement ..... 39

    25.6 Covenants or Conditions ..... 39

    25.7 References ..... 40

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**WHEREAS:**

- A. The Lessee wishes to provide housing for Eligible Occupants and requires a lease of the Lands for this purpose.
- B. The Lessor is the owner of the Lands and has agreed to lease to the Lessee the Lands for the Term upon the terms, conditions and provisos herein so that the Lessee may construct the Building and otherwise use, occupy and enjoy the Lands.

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

IN CONSIDERATION OF THE GOOD AND VALUABLE CONSIDERATION PAID TO THE LESSOR BY THE LESSEE THE LESSOR HEREBY DEMISES AND LEASES UNTO THE LESSEE AND THE LESSEE DOES HEREBY TAKE AND RENT THE LANDS, TO HAVE AND TO HOLD THE LANDS UNTO THE LESSEE FOR AND DURING THE TERM AS HEREIN PROVIDED.

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

- 1.1 Capitalized terms used in this Lease have the meanings specified in this section 1.1, unless otherwise provided in this Lease:
- (a) “Additional Rent” means all sums, costs, expenses and other amounts, if any, payable by the Lessee to the Lessor pursuant to this Lease, including, without limitation, Realty Taxes, payments in lieu of Realty Taxes, Utilities and all sums payable by way of indemnity under this Lease, but excluding Basic Rent;
  - (b) “Alterations” means all alterations, changes, replacements, substitutes, additions and improvements to the Lands and Building;
  - (c) “Architect” means the architect qualified as such pursuant to the laws of the province of British Columbia who is supervising the design, construction, repair, renovation and/or reconstruction of the Building;
  - (d) “Basic Rent” means the net basic rent as described in the General Instrument, together with any other and additional amounts which are herein expressed to be added to and made part of Basic Rent, other than Additional Rent;
  - (e) “Building Permits” means any building permits issued by the City for the Building, together with all amendments, modifications or replacements thereof, and all plans, drawings and specifications related thereto, which are approved by the City;
  - (f) “Building” means the multiple unit residential building and all other structures to be constructed on the Lands, together with all Alterations or repairs thereto and all improvements from time to time constructed upon or affixed or appurtenant to the Lands;

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- (g) “City” means the municipality and corporation of the City of Vancouver;
- (h) “Commencement of Construction” means the later of the date when the first Building Permit for the first Building to be constructed is issued to the Lessee by the City and the date when the Lessee’s contractor commences any work on the Lands related to construction of the first Building to be constructed;
- (i) “Construction Work” means the construction of the Building in accordance with the Project Design, including:
  - (i) competitively procuring construction services for the Building;
  - (ii) executing and administering all contracts related to construction of the Building;
  - (iii) paying in full all invoices for construction work for the Building;
  - (iv) providing appropriate staff resources for day-to-day construction management; and
  - (v) preserving all records related to construction of the Building for a period of not less than three (3) years after completion of construction;
- (j) “CRU Mortgagee” means a mortgagee or mortgagees under a mortgage of prepaid lease of a CRU Unit, and includes any trustee for bondholders or debenture holders under a deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (k) “CRU Units” means the at-grade commercial retail units in the Building, if any, as contemplated in the applicable Building Permits issued in respect of the Building;
- (l) “Development Permits” means the development permits for the Building, together with all amendments, modifications or replacements thereof, and all plans, drawings and specifications related thereto, which are approved by the City;
- (m) “Eligible Occupant” means a person who meets the income or housing need criteria prescribed in Schedule A hereto;
- (n) “General Instrument” means the Form C under the *Land Title (Transfer Forms) Regulation* under the *Land Titles Act* (British Columbia), and all schedules and addenda to the Form C;
- (o) “Lands” means all of the Lessor’s interest in the lands described in the General Instrument, including every incidental right, benefit or privilege attaching to that land or running with it;
- (p) “Lease” means the General Instrument together with these Terms of Instrument;

- (q) “Lease Commencement Date” means the commencement date of the Lease set out in the General Instrument;
- (r) “Losses” means all manner of liabilities, actions, statutory or other proceedings, judgments, investigations, claims, losses, damages, orders, fines, penalties, expenses, professional and other fees and disbursements, and costs;
- (s) “Mortgage” means a registered mortgage or registered mortgages granted by the Lessee in accordance with section 16.1 upon or in respect of the interest of the Lessee in the Lands and the Building or any part thereof and includes any deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (t) “Mortgagee” means a mortgagee or mortgagees under a Mortgage and includes any trustee for bondholders or debenture holders under a deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (u) “Permitted Encumbrances” means the charges and encumbrances, if any, named in the General Instrument as Permitted Encumbrances, the Mortgage and any other charges specifically approved in writing by the Lessor;
- (v) “Personnel” of a party means the elected officials and directors, as applicable, officers, employees, servants and agents of that party;
- (w) “Prime Rate” means the floating annual percentage rate of interest established from time to time by the main branch of the Bank of Montreal located in Vancouver, British Columbia, or its successor, as the base rate that 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”;
- (x) “Project Design” means the design of the Building approved by the Lessor;
- (y) “Realty Taxes” means all assessments for taxes, rates, duties (including school taxes, local improvement rates and other charges levied pursuant to the *Hospital District Finance Act* (British Columbia), the *Municipal Finance Authority Act* (British Columbia) or otherwise) and all other charges for services used in or supplied to the Lands and the Building (including penalties and interest) that now are or will or may be levied, rated, charged or assessed against the Lands, the Building, and all other structures, machinery, equipment, facilities and other property of any nature whatsoever located thereon or therein, charged by any municipal, parliamentary, legislative, regional, school or other authority during the Term;
- (z) “Rental Housing” means a dwelling unit which is not occupied by the registered or beneficial owner of the same, but which is made available by such owner to the general public, at arm’s length, for use as rental accommodation on a month-to-month or longer basis in accordance with this Lease, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto;

- (aa) "Term" means nine-nine (99) years commencing on the Lease Commencement Date;
  - (bb) "Trustee" means a trust company duly authorized to carry on business in the province of British Columbia and appointed by the Lessor for the purposes of Article 9 of this Lease; and
  - (cc) "Utilities" means all charges, rates and levies on account of utilities, including for heat, electricity, gas, telephone, television, internet and other costs and expenses of a similar nature, and, if not included in Realty Taxes, for water and garbage collection.
- 1.2 Any reference in this Lease to legislation will be deemed to include all regulations thereto, all amendments and re-enactments thereof and all successor legislation.

## ARTICLE 2 PAYMENT OF RENT

### 2.1 Basic Rent

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

### 2.2 Net Lease

All Basic Rent and Additional Rent required to be paid by the Lessee hereunder will be paid at such location as the Lessor may stipulate from time to time without any deduction, abatement or set-off whatsoever, it being the intention of this Lease that:

- (a) all expenses, costs, payments and outgoings incurred in respect of the Lands, the Building and any other improvements on the Lands or for any other matter or thing affecting the Lands, will, unless otherwise expressly stipulated herein to the contrary, be borne by the Lessee; and
- (b) the Basic Rent and Additional Rent payable under this Lease will be absolutely net to the Lessor and free of all abatements, set-off or deduction of any costs, payments and outgoing of every nature arising from or related to the Lands, the Building, or any other improvements on the Lands, and the Lessee will pay or cause to be paid all such costs, payments and outgoings.

### 2.3 Interest on Amounts in Arrears

When the Basic Rent, Additional Rent or any other amount payable hereunder by the Lessee to the Lessor is in arrears, such amount will bear interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly not in advance, from the date due until paid. Notwithstanding the foregoing, this section will not apply to defaults under sections 3.1 and 3.2.

## 2.4 Reimbursement of Development Costs

Within 30 days of the Lease Commencement Date , the Lessee shall pay to the Lessor an amount equal to all costs and expenses incurred by the Lessee or its affiliate, Vancouver Affordable Housing Agency Ltd. ("VAHA"), in connection with the engagement of contractors and consultants in connection with the design of the Building, including the costs of all permits and approvals required for the construction of the Building, whether incurred directly by the Lessor or VAHA or paid as disbursements to contractors or consultants.

### ARTICLE 3 PAYMENT OF TAXES

#### 3.1 Payment of Realty Taxes if Lands Not Exempt

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

#### 3.2 Payment in Lieu of Realty Taxes if Lands Exempt

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

#### 3.3 Right to Appeal Assessment

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

#### 3.4 Business Tax and License Fees

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

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### 3.5 Other Taxes

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

### 3.6 Pro-rating Obligations

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

## ARTICLE 4 CONSTRUCTION OF BUILDING

### 4.1 Intentionally Deleted

### 4.2 Lessee to Construct Building

Subject to section 4.1, the Lessee will perform the Construction Work, together with other facilities ancillary thereto and connected therewith, on the Lands in substantial accordance with the drawings, specifications (including materials to be used), elevations, location on the Lands and exterior decoration and design and all other documents and information upon which the issuance of the Building Permits by the City are based and that have been approved by the Lessor, and are in compliance with the requirements of the applicable Development Permit. No changes will be made to such drawings, specifications, elevations, location, exterior decoration and design, other documents or information, or to the requirements of such Building Permit or Development Permit, without the approval of the Lessor.

### 4.3 Substantial Completion of Building

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

- (a) all work of a structural nature has been properly completed;
- (b) all building equipment and services, including elevators (if any), heating systems and air-conditioning systems (if any), and utilities have been completed, are operating properly and are available for use by tenants of the Lessee, and all lobbies, stairwells and other areas intended for the common use of tenants of the Lessee are completed except for work of a superficial nature, which is both minor in character and of a type that, owing to the likelihood of damage, may reasonably be deferred until the Building is partially or substantially occupied by tenants of the Lessee;



- (c) all building bylaws and regulations of the City have been complied with by the Lessee;
- (d) all rentable space is completed for occupancy except for work of a superficial nature that is dependent upon unascertained requirements of individual tenants of the Lessee, and work that is reasonably and customarily performed by tenants of the Lessee;
- (e) all areas are clean and all surplus building material and rubbish have been removed;
- (f) the Building is in a condition in which it can be occupied by tenants of the Lessee, and any work that is still unfinished can be completed promptly and is work the incompleteness of which will not be objectionable to a tenant of the Lessee acting reasonably;
- (g) the Building has been constructed in all respects in a good and workmanlike manner and in accordance with the drawings and specifications, location on the Lands and the exterior decoration and design approved in writing by the Lessor, and in compliance with the Development Permit and all Building Permits issued by the City; and
- (h) a certificate of completion has been issued in respect of the Building pursuant to the *Builders Lien Act* (British Columbia).

#### 4.4 Termination of Lease on Failure to Construct

Subject to sections 4.7 and 18.2 and Article 23, the Lessee agrees with the Lessor that if Commencement of Construction for the first Building to be constructed has not taken place within one hundred and eighty (180) days of the Lease Commencement Date, or if construction of the last Building to be constructed is not substantially completed in accordance with the requirements of section 4.2 by the third anniversary of the Lease Commencement Date, the Lessor will have the option at any time thereafter to terminate this Lease, and in such event this Lease will terminate and be of no further force or effect and without any reimbursement or compensation to the Lessee, unless the Lessor consents in writing to extend the deadline for Commencement of Construction or substantial completion of construction, as the case may be, such consent not to be unreasonably withheld.

#### 4.5 Landscaping

Within one hundred and eighty (180) days of substantial completion of the Building, the Lessee will landscape the Lands in substantial accordance with the drawings, specifications (including materials to be used), elevations, location on the Lands and exterior decoration and design and all other documents and information upon which the issuance of the Building Permits by the City are based, and thereafter the Lessee will keep and maintain the landscaping of the Lands to a standard acceptable to a skilled gardener selected by the Lessor.

#### 4.6 Alterations After Substantial Completion

After substantial completion of each Building, the Lessee will not make or permit to be made any Alterations affecting the structure of the Building or the exterior appearance of the Building without the written approval of the Lessor, which approval the Lessor will not unreasonably withhold. No Alterations involving an estimated cost of more than Two Hundred Thousand Dollars (\$200,000.00) (in 2017 dollars) will be undertaken until the Lessee has submitted or caused to be submitted to the Lessor such drawings, specifications (including the materials to be used), elevations (where applicable), locations (where applicable), exterior decoration and design and such other documentation and information as the Lessor may request in connection with the proposed Alterations, and until all of the same have been approved in writing by the Lessor, which approval the Lessor will not unreasonably withhold. The Lessee covenants and agrees with the Lessor that, subject to section 4.7, all Alterations undertaken by or for the Lessee once begun will be prosecuted with due diligence to completion.

#### 4.7 Unavoidable Delays

- (a) Subject to the exceptions set out in Section 4.7(c), time periods for the performance under this Lease will be extended for periods of time during which the performance is delayed or prevented due to an Unavoidable Delay.
- (b) An “Unavoidable Delay” means any circumstances beyond the parties’ reasonable control such as failure to obtain any required regulatory approval or other governmental action impeding the Project, acts of God, strikes/lockouts, war, or other strife. However, despite the preceding sentence, an “Unavoidable Delay” does not include any lockouts, strikes or other disputes between the Lessor or the Lessee and their respective employees.
- (c) This Section 4.7 does not apply to the performance of any obligations of the Lessee to pay money in connection with this Lease.
- (d) Whenever the Lessee is aware of an event or any circumstance which constitutes or could constitute an Unavoidable Delay, it will promptly provide the Lessor with a written notice of:
  - (i) the particulars of the cause of any anticipated Unavoidable Delay,
  - (ii) the anticipated length of the Unavoidable Delay and
  - (iii) steps that the Lessee intends to take to mitigate or overcome any delays caused by the actual or expected Unavoidable Delay.

### ARTICLE 5 BUILDERS LIENS

#### 5.1 Builders Liens

In connection with all labour performed on or materials supplied to the Lands, including but not limited to the construction of the Building, the Lessee will comply

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with, and will cause any contractor hired by it to comply with, the provisions of the *Builders Lien Act* (British Columbia), and with all other statutes applicable in connection therewith and in force from time to time, including any provision or statute requiring or permitting the retention of portions of any sums payable by way of holdbacks.

## 5.2 Discharge of Builders Liens

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

## 5.3 Notice by Lessor

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

## ARTICLE 6 RESTRICTIONS ON OPERATIONS AND USE

### 6.1 Restricted Use

Unless otherwise agreed to in writing by the Lessor, the Lessee covenants and agrees with the Lessor that neither the Lands nor Building nor any part of the Lands or Building will be used for any purpose except:

- (a) the provision of Rental Housing in accordance with the requirements set out in Schedule A hereto and the Operating Agreement; and
- (b) in the case of the CRU Units, subletting to commercial or retail tenants for market rent;

subject always to the laws, bylaws, regulations and permits governing the use of the Lands and Building from time to time. Except as provided immediately above, neither the Lands nor Building nor any part of the Lands or Building will be used for business, trade or manufacture without the written approval of the Lessor, which approval the Lessor may arbitrarily withhold.

## 6.2 No Subdivision

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

## 6.3 Intentionally Deleted

## 6.4 Permitted Encumbrances

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

## 6.5 Housing Requirements

The Lessee shall comply with the requirements set out in Schedule A hereto.

## ARTICLE 7 REPAIRS AND MAINTENANCE

### 7.1 Lessor Not Obligated to Repair

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

### 7.2 Repairs by the Lessee

Reasonable wear and tear is not excepted and the Lessee will periodically replace or repair any part of the Lands and Building which become subject to reasonable wear and tear with the express intent that the Lands and Building will be substantially in the same condition as at the Lease Commencement Date:

- (a) the Lessee at the Lessee's cost and expense will, during the Term, put and keep in good order and condition, or cause to be put and kept in good order and condition, the Lands and Building (and any equipment located thereon and therein), both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, stairways, elevators (if any) and similar devices, heating and air conditioning equipment, sidewalks, yards and other like areas, water and sewer mains and connections, water, steam, gas and electric pipes

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and conduits, and all other fixtures and appurtenances to the Lands and the Building and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs and, subject to section 4.6, Alterations, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Building and any and all fixtures and equipment therein fully usable for the purposes for which the Building was constructed. Such repairs and Alterations will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Building, and will in each case be performed only in accordance with all applicable terms and conditions of the Permitted Encumbrances;

- (b) the Lessee will not commit or suffer waste or injury to the Lands or the Building or any part thereof;
- (c) the Lessee will not injure or disfigure the Lands or the Building or permit them to be injured or disfigured in any way, and at the expiration or earlier termination of this Lease, the Lessee will, except as otherwise expressly provided herein, surrender and deliver up the Lands with the Building, and the fixtures, appurtenances and equipment thereon and therein, or any replacements or substitution therefor, in good order and condition; and
- (d) if the Lessee does not fulfil its obligations set out in this Article 7, the Lessor, through their agents, employees, contractors and subcontractors, may, but will not be obliged to, enter (without hindrance by the Lessee) upon the Lands and the Building as required for the purpose of making any repairs necessary to put the Lands and the Building in good order and condition, provided that the Lessor will make such repairs only after giving the Lessee not less than thirty (30) days written notice of its intention to do so, except in the case of an emergency when no notice will be required. Any costs and expenses (including overhead costs) incurred by the Lessor in making such repairs to the Lands and Building will be reimbursed to the Lessor, by the Lessee on demand, together with interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly, from the date incurred until the date paid.

### 7.3 Removal of Ice and Snow from Sidewalks

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

ARTICLE 8  
ADDITIONAL RENT

8.1 All Defaults in Payment as Additional Rent

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

ARTICLE 9  
INSURANCE

9.1 Insurance During Construction of Building

Prior to the Commencement of Construction of the Building, and throughout the entire period of construction until substantial completion of the applicable Building pursuant to section 4.3, the Lessee will effect or will cause its contractor or contractors to effect and maintain in full force the following insurance coverage for the Building:

- (a) wrap-up liability insurance with limits of not less than Five Million Dollars (\$5,000,000), or such other amount as the Lessor may require from time to time, per occurrence, issued in the joint names of the Lessee, the Lessor, the Lessee's contractors, any subcontractors and their respective Personnel, protecting them against claims for bodily injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands from any cause, including the risks occasioned by the construction of the Building; and
- (b) all-risk course of construction insurance issued in the joint names of the Lessee, the Lessor, protecting them from all loss or damage of or to the Building and all fixtures, equipment, improvements and building materials on the Lands from time to time, both during and after construction (but which may be by different policies effected from time to time covering the risk during different phases of construction of the Building, provided that at no time will the Building be uninsured) against fire, earthquake, flood and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the province of British Columbia by prudent owners, and such other perils as the Lessor may reasonably require to be insured against, to the full replacement value thereof at all times.

9.2 Commercial General Liability Insurance

At all times during the Term, the Lessee will effect and keep in force commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000),

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or such other amount as the Lessor may require from time to time, per occurrence, against public liability claims for bodily injury, death and property damage (including loss of use) arising from the Lessee's use and occupancy of the Building and from any occurrence or accident on the Lands or Building. Such insurance will be written on an occurrence basis and will provide for blanket contractual liability, including liability assumed by the Lessee under this Lease. The policy will also contain a cross liability or severability of interests clause and will name the Lessor and Lessor's Personnel as additional insureds with respect to third party claims arising out of the Lessee's operations pursuant to this Lease.

### 9.3 All Risk Property, Pressure Vessel and Rental Income Insurance

Immediately following substantial completion of each Building and at all times thereafter during the Term, the Lessee will effect and maintain property insurance in the joint names of the Lessor and the Mortgagee (if any) as their interests may appear, to the full replacement value of the applicable Building and fixtures on the applicable Lands, protecting them against "All Perils" of loss or damage including flood, sewer backup and earthquake, and will include:

- (a) rental income insurance in an amount equal to the maximum annual rental income of the Building pursuant to the terms and conditions set out herein; and
- (b) boilers and pressure vessels, protecting against usual and unusual perils, including damage caused by rupture of steam pipes.

The policies described in this section 9.3 will contain a clause directing insurers to make losses payable to the Lessee, the Lessor, and the Mortgagee as their interests may appear.

### 9.4 Insurance - Additional Provisions

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

- (a) the policies will be primary and non-contributing with respect to any policy or self-insured fund otherwise held or established on behalf of the Lessor;
- (b) the stated amount of value insured under property policies will be of sufficient amount that neither the Lessee nor the Lessor will become co-insurers with respect to any loss claimed against the insurance;
- (c) each policy will be written on a form acceptable to the Lessor and with insurers licensed to do business in the province of British Columbia and acceptable to the Lessor;
- (d) any deductible amounts applying to a claim against a policy will be of an amount approved by the Lessor;
- (e) each policy will contain a clause requiring that the insurers provide to the Lessor a minimum of sixty (60) days prior written notice of any cancellation

(except for cancellation resulting from non-payment of premiums, in which case applicable statutory provisions will apply); and

- (f) all premiums and deductibles required under said policies will be paid by the Lessee to the insurers and proof of such payment will be submitted to the Lessor.

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

#### 9.5 Evidence of Insurance

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

#### 9.6 Payment of Loss Under Insurance Policies

The insurance monies payable under any or all of the policies of insurance referred to in this Article 9, will, notwithstanding the terms of the policy or policies, be paid to the Trustee on behalf of the Lessee, the Lessor, and the Mortgagee. The Lessee and Lessor agree that the Trustee will, subject to section 10.5, pay for all restoration, reconstruction or replacement of the loss or damage in respect of which such insurance monies were paid to the Trustee out of such insurance monies in accordance with certificates of the Architect or such other person as the Lessee and Lessor may agree upon and who is in charge of such restoration, reconstruction or replacement, after receiving such other certificates, evidence or opinions as the Trustee will require for the purpose of being satisfied that such restoration, reconstruction or replacement is being properly carried out. If the Lessee fails to restore, reconstruct or replace the loss or damage in respect of which the insurance monies were paid to the Trustee within a reasonable time, the Lessor will be entitled to effect such restoration, reconstruction or replacement and the Trustee will pay such insurance monies to the Lessor in the same manner that the Trustee would have done had the Lessee effected such restoration, reconstruction or replacement.

#### 9.7 Workers Compensation Coverage

At all times during the Term, the Lessee will, and will cause its Personnel and all others engaged in or upon any work on the Building or the Lands to, comply with the *Workers Compensation Act* (British Columbia) (the "WCA") and the requirements and



regulations of WorkSafeBC in respect of the Building and the Lands. Without limiting the generality of the foregoing, the Lessee will:

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

#### 9.8 Release of Lessor from Liability for Insured Loss or Damage

The Lessee hereby releases the Lessor and Lessor’s Personnel, whether or not the Lessor or its Personnel have been negligent, from any and all liability for loss or damage caused by any of the perils against which the Lessee will have insured or is obligated to insure pursuant to the terms of this Lease or any applicable law.

### ARTICLE 10 DAMAGE OR DESTRUCTION

#### 10.1 Rent Not to Abate

Subject to the provisions of sections 10.5 and 10.6, the partial destruction or damage or complete destruction by fire or other casualty of the Building will not result in the termination of this Lease or entitle the Lessee to surrender possession of the Lands or the Building or to demand any abatement or reduction of the Basic Rent or Additional

Rent or other charges payable under this Lease, any law or statute now or in the future to the contrary notwithstanding.

#### 10.2 Lessee's Obligation When Building Partially Damaged or Destroyed

Subject to the provisions of sections 10.5 and 10.6, the Lessee covenants and agrees with the Lessor that in the event of partial damage to or partial destruction of the Building, the Lessee will either:

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

#### 10.3 Lessee's Obligations When Building Completely or Substantially Destroyed

Subject to the provisions of sections 10.5 and 10.6, the Lessee covenants and agrees with the Lessor that in the event of complete or substantially complete destruction of the Building, the Lessee will either:

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

#### 10.4 Replacement, Repair or Reconstruction

Any replacement, repair or reconstruction of a Building or any part thereof pursuant to the provisions of section 10.2 or 10.3 will be made or done in compliance with section 4.6 and Article 7.

#### 10.5 Special Provisions Where Lessee has Mortgaged its Interest

- (a) If, during the Term, the Building is damaged or destroyed to the extent of at least twenty-five percent (25%) of the full replacement cost of the Building, and at the time of such damage or destruction the Lessee has mortgaged its interest in the Building, and such Mortgagee notifies the parties that the insurance monies made available by reason of the casualty causing such damage or destruction will not be applied in repairing, reconstructing or replacing the Building, and the right to so elect is reserved to the Mortgagee under the terms of the Mortgage, then the Lessee may decline to repair, reconstruct or replace the Building and instead elect to terminate this Lease, provided that the Lessee makes such election within sixty (60) days after the date on which the Building was so damaged or destroyed and notifies the Lessor of its election forthwith after making it. If the Lessee does not elect to so

terminate this Lease, then the Lessee will repair, reconstruct or replace the Building or any part thereof damaged or destroyed in accordance with section 10.2 or section 10.3, as the case may be, and section 10.4;

- (b) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Lessee pursuant to section 10.5(a), the Lessee will demolish and completely remove the damaged or destroyed Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 9, be distributed as follows:
  - (i) firstly, to reimburse the Lessee for all costs and expenses necessarily incurred by the Lessee in the demolition and removal of the Building and all foundations and debris from the Lands and the restoration of the Lands as aforesaid;
  - (ii) secondly, to pay and satisfy the Mortgage, if any; and
  - (iii) thirdly, to pay the balance of the insurance monies, if any, to the Lessor.
- (c) Notwithstanding anything contained herein, in the event the Lessee terminates this Lease in accordance with this section 10.5, this section will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this section 10.5 or any part thereof remains unperformed; and
- (d) The provisions of this section 10.5 are subject always to the provisions of section 10.6.

#### 10.6 Destruction or Damage During Last Two Years of Term

- (a) In the event of the complete or substantially complete destruction of a Building during the last two (2) years of the Term, the Lessee may, at its option, either reconstruct or replace the Building so destroyed or damaged in accordance with section 10.3 or decline to do so, and instead elect to terminate this Lease, provided that the Lessee makes such election within sixty (60) days after the date on which the Building was so destroyed and notifies the Lessor of its election forthwith after making it;
- (b) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Lessee pursuant to section 10.6(a), the Lessee will demolish and completely remove the Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 9, be distributed as follows:

- (i) firstly, to reimburse the Lessee for all costs and expenses necessarily incurred by the Lessee in the demolition and removal of the Building and all foundations and debris from the Lands and the restoration of the Lands as aforesaid;
- (ii) secondly, to pay and satisfy the Mortgage, if any;
- (iii) thirdly, to pay the balance of the insurance monies, if any, as follows:
  - A. to the Lessor the amount calculated as follows:  

$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days in expired portion of the Term} \div \text{total days in Term}); \text{ and}$$
  - B. to the Lessee the amount calculated as follows:  

$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days remaining in the Term} \div \text{total days in Term}).$$
- (c) Notwithstanding anything contained herein, in the event the Lessee terminates this Lease in accordance with this section 10.6, this section 10.6 will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this section 10.6 or any part thereof remains unperformed.

ARTICLE 11  
INSPECTION AND EXHIBITION BY LESSOR

11.1 Inspection by Lessor

The Lessor and the Lessee agree that it will be lawful for representatives of the Lessor to enter the Lands and the Building at all reasonable times during the Term and to examine the condition thereof. If the Lessor determines that any of the repairs described in section 7.2 are required, notice of such required repairs will be given by the Lessor to the Lessee, and the Lessee will within thirty (30) days after every such notice, or such longer period as provided in section 18.1(c), repair and make good accordingly.

11.2 Exhibition by Lessor

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

ARTICLE 12  
OBSERVANCE OF GOVERNMENTAL REGULATIONS

12.1 Compliance

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

ARTICLE 13  
RIGHTS OF LESSOR AND LESSEE

13.1 As Landlord and Tenant

All rights and benefits and all obligations of the Lessor and the Lessee under this Lease will be rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as landlord and tenant respectively under this Lease.

ARTICLE 14  
EXCLUSION OF LIABILITY AND INDEMNITY

14.1 Limitation of Liability and Release

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

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

whether such Losses arise from an exercise of the Lessor's rights or privileges herein or otherwise, unless directly resulting from the respective negligence of the Lessor or its Personnel or contractors, as the case may be.

14.2 Exclusion of Liability

Notwithstanding section 14.1, neither the Lessor nor its Personnel or contractors will be liable for:

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

#### 14.3 Indemnification

The Lessee hereby agrees to indemnify and save harmless the Lessor and its Personnel and contractors from and against all Losses which the Lessor or its Personnel or contractors may suffer or incur arising out of, or in any way connected with, or that would not or could not be made or incurred but for this Lease; provided, however, that such indemnity will not apply to the extent, if any, to which such Losses directly result from the respective negligence of the Lessor or its Personnel or contractors, as the case may be. Without derogating from the generality of the foregoing, the Lessee agrees to indemnify and save harmless the Lessor and its Personnel and contractors in respect of all Losses:

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

#### 14.4 Indemnification Survives Termination of Lease

The obligations of the Lessee to indemnify the Lessor and its Personnel and contractors will apply and continue notwithstanding the termination or expiration of this Lease, breach of this Lease by the Lessor, or negligence on the part of the Lessor or its Personnel or contractors, anything in this Lease to the contrary notwithstanding.

### ARTICLE 15 SUBLETTING AND ASSIGNING

#### 15.1 Subletting and Assigning by Lessee

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

- (a) Eligible Occupants; or

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(b) commercial or retail tenants of the CRU Units.

Notwithstanding the foregoing, the Lessee may, with the written consent of the Lessor, acting reasonably, enter into agreements with one or more sub-operators in respect of some or all of the units in the Building. A sub-operator may, pursuant to such agreement, discharge duties of the Lessee hereunder, and may enter into occupancy agreements with Eligible Occupants in its own name. No agreement with any sub-operator will relieve the Lessee of any of its obligations to the Lessor hereunder.

#### 15.2 Copies of Subleases

If required by the Lessor, a copy of any or all subleases or agreements with sub-operators will be forwarded to the Lessor within thirty (30) days after the conclusion of each transaction, together with particulars of registration (if any) in the Land Title Office.

### ARTICLE 16 MORTGAGE

#### 16.1 Mortgaging by Lessee

The Lessee may mortgage its leasehold interest in the Lands and Building only with the prior written consent of the Lessor and subject to the mortgage requirements set out in Schedule A hereto. Notwithstanding any such Mortgage, the Lessee will be and remain liable for the payment of all Basic Rent and Additional Rent, and the performance of all of its obligations set out in this Lease.

#### 16.2 Tripartite Agreement

At the request of a Mortgagee or CRU Mortgagee, the Lessor will execute and deliver to the Mortgagee (or CRU Mortgagee) an agreement among the Lessee, the Lessor and the Mortgagee (or CRU Mortgagee), or between the Lessor and the Mortgagee (or CRU Mortgagee), which will be binding and enforceable against the Lessee (if a party thereto), the Lessor and the Mortgagee (or CRU Mortgagee) and their successors and assigns, whereby the Lessor will agree with the Mortgagee (or CRU Mortgagee) to afford to the Mortgagee (or CRU Mortgagee) the rights and remedies afforded to Mortgagees under this Lease.

### ARTICLE 17 BANKRUPTCY OF LESSEE

#### 17.1 Bankruptcy of Lessee

Subject to the provisions of section 18.2(c), if the Term is at any time seized or taken in execution by any creditor of the Lessee, or if the Lessee makes a general assignment for the benefit of creditors, or institutes proceedings to subject itself to the *Winding-up and Restructuring Act* (Canada) or to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files an application or petition or answer or consent seeking reorganization or readjustment of the Lessee under the *Bankruptcy and Insolvency Act*

(Canada) or the *Companies' Creditors Arrangement Act* (Canada) or any law of Canada or any province thereof relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver, or if the Lessee or its directors pass any resolution authorizing the dissolution or winding-up of the Lessee, or if a receiver, interim receiver, trustee or liquidator of all or any part of the property of the Lessee is appointed or applied for by the Lessee, or if a judgment, decree or order is entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Winding-up and Restructuring Act* or *Bankruptcy and Insolvency Act* or determining the proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or winding-up or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency has been properly instituted, then, subject to Section 23.4, this Lease will, at the option of the Lessor, immediately become terminated.

ARTICLE 18  
DEFAULT BY LESSEE

18.1 Re-entry on Certain Defaults by Lessee

The Lessee and the Lessor agree that, subject to the provisions of sections 18.2 and 23.4, if and whenever:

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



- (e) this Lease expires or is forfeited or terminated pursuant to any other provision contained herein, including, without restricting the generality of the foregoing, the termination of this Lease pursuant to the provisions of sections 4.4 or 10.5,

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

## 18.2 Notice to and Remedies of Mortgagee

The following provisions will apply with respect to any Mortgagee:

- (a) no re-entry, termination or forfeiture of this Lease by the Lessor will be valid against the Mortgagee who has filed with the Lessor a notice of Mortgage and specified an address for notice in accordance with Article 26, unless the Lessor has first given to the Mortgagee written notice of the default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease, specifying the nature of that default or contingency, and stating the Lessor's intention to take such proceedings and requiring the Mortgagee:
- (i) to cure the default or contingency specified in the notice within a period of sixty (60) days from the date of receipt of that notice by the Mortgagee; or
  - (ii) if the default or contingency is other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease, and if the default or contingency cannot reasonably be cured within such sixty (60) day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency,

and the Lessor hereby grants the Mortgagee access to the Lands and the Building for that purpose. If the default or contingency is cured within the period specified, or in the circumstances referred to in 18.2(a)(ii), if cured within a reasonable period, the Mortgagee will be entitled to continue as tenant for the balance of the Term remaining at the date of the notice of default or contingency providing that the Mortgagee attorns as tenant to the Lessor and undertakes to be bound by and to perform and observe all of the Lessee's obligations, covenants and agreements under this Lease until such Mortgagee as tenant assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to be bound by and to perform

and observe all of the Lessee's obligations, covenants and agreements under this Lease. If the Mortgagee consists of more than one mortgagee, each having a separate charge upon the Lessee's interest in this Lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Lessor hereby agrees to permit curing of the default or contingency specified as aforesaid by that Mortgagee that is willing to cure the default or contingency and attorn as tenant as aforesaid and whose charge ranks in priority over the charge or charges held by the other Mortgagee or Mortgagees willing to cure and attorn as aforesaid, except that in the event that any Mortgagee has commenced a foreclosure action, the provisions of section 18.2(b) will apply;

- (b) in the event the Mortgagee commences foreclosure proceedings against the Lessee, whether or not the Lessee is in default of the performance of its covenants and agreements with the Lessor under this Lease at the time such foreclosure proceedings are commenced, the Lessor will not re-enter, terminate or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease if the Mortgagee:
- (i) has given to the Lessor notice of the foreclosure proceedings;
  - (ii) is actively prosecuting the foreclosure proceedings;
  - (iii) except for the bankruptcy or insolvency of the Lessee, which will be governed by section 18.2(c), cures the default or contingency within a period of sixty (60) days from the date of receipt of notice from the Lessor specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or contingency cannot reasonably be cured within such sixty (60) day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency; and
  - (iv) performs and observes all of the Lessee's covenants and agreements under this Lease, except for any obligation to cure the bankruptcy or insolvency of the Lessee, and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee;

provided, however, that the curing of the default or contingency may be delayed until the date that the Mortgagee acquires the Lessee's interest in this Lease. In the event that the Mortgagee acquires the Lessee's interest in the Lands and Building pursuant to the foreclosure proceedings, the Mortgagee will thereupon become subrogated to the rights of the Lessee under this Lease, provided it attorns to the Lessor as tenant and undertakes to be bound by and perform the covenants and agreements of this Lease until such Mortgagee as Lessee assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as

of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to be bound by and to perform the covenants and agreements of this Lease. If the Mortgagee consists of more than one mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default or contingency granted by this section 18.2(b) to a foreclosing Mortgagee will be deemed granted to them in the order of priority of the charges held by the foreclosing mortgagees;

- (c) if this Lease is subject to termination or forfeiture pursuant to Article 17 by reason of the bankruptcy or insolvency of the Lessee and the Mortgagee has filed with the Lessor a notice of Mortgage in favour of the Mortgagee and specified an address for notice in accordance with Article 26, the Lessor will give to the Mortgagee notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to terminate or forfeit this Lease and stating the Lessor's intention to take such proceedings and requiring the Mortgagee to cure the Lessee default under this Lease (except for the bankruptcy or insolvency of the Lessee), and the Lessee's default will be deemed to have been sufficiently cured if the Mortgagee will:
- (i) take possession and control of the Lands and Building, or cause a receiver to be appointed under the terms of the Mortgagee's charge or by a court of competent jurisdiction, which receiver will take possession and control of the Lands and Building, and the Lessor hereby grants the Mortgagee or such receiver access to the Lands and Building for that purpose;
  - (ii) cure every default under this Lease (except for the bankruptcy or insolvency of the Lessee) within a period of sixty (60) days from the date of receipt by the Mortgagee of the notice from the Lessor of the bankruptcy or insolvency of the Lessee, or if such default or defaults are other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or defaults cannot reasonably be cured within such sixty (60) day period, immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure such default or defaults; provided, however, that the curing of the default or contingency may be delayed until the Mortgagee acquires the Lessee's interest in this Lease; and
  - (iii) subject to the right of a Mortgagee to delay the curing of the default or contingency as set out in section 18.2(c)(ii), attorn as tenant to the Lessor and undertake to observe, be bound by and perform the obligations, covenants and agreements of the Lessee under this Lease until such Mortgagee, as tenant, assigns its leasehold estate as permitted under this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to observe, be bound by and

perform the obligations, covenants and agreements of the Lessee under this Lease.

If the Mortgagee consists of more than one mortgagee, the right to take possession and control, to cure any default and to assume the Lease as aforesaid will be deemed granted to them in the order of the priority of their respective charges;

- (d) any re-entry, termination or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Lessee will be valid and effectual against the Lessee even though made subject to the rights of any Mortgagee to cure any default of the Lessee and to continue as tenant under this Lease; and
- (e) no entry upon the Lands or into the Building by the Mortgagee for the purpose of curing any default of the Lessee will release or impair the continuing obligations of the Lessee.

### 18.3 Remedies of Lessor are Cumulative

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

### 18.4 Waiver by Lessor

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

## ARTICLE 19 ARBITRATION

### 19.1 Arbitration

If a disagreement arises pursuant to Sections 4.4 or 4.7, the same will be settled by arbitration. The arbitration will be conducted in accordance with the following procedures:

- (a) the arbitration will be commenced and finally resolved by arbitration under the rules of the British Columbia International Commercial Arbitration Centre ("BC ICAC") for domestic commercial arbitration;

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- (b) the arbitrator will be as agreed upon by the parties or, failing agreement, the appointing authority will be BC ICAC;
- (c) the arbitration will be conducted in the City of Vancouver;
- (d) the cost of the arbitration will be as determined by the arbitrator; and
- (e) the decision of the arbitrator will be final and binding on all parties.

The *Commercial Arbitration Act* (British Columbia) will apply with respect to the arbitration. If a Mortgagee holds a Mortgage of the Lessee's leasehold interest in the Lands and Building, any notice of a dispute given under this section by one of the parties to the others will be given at the same time to such Mortgagee, if it has specified an address for notice, and such Mortgagee so notified will be given a reasonable opportunity by the parties to participate in the arbitration proceedings if it considers such proceedings may affect the Mortgage security.

#### ARTICLE 20 SURRENDER OF LEASE

##### 20.1 Surrender of Lease

At the termination or expiration of the Term, whether by forfeiture, default or lapse of time, the Lessee will surrender the Lands and Building to the Lessor in the condition in which they were required to be kept by the Lessee pursuant to the provisions of this Lease, including, without restricting the generality of the foregoing, the provisions of sections 10.5(b) and 10.6(b), except as herein otherwise expressly provided.

#### ARTICLE 21 QUIET ENJOYMENT, OWNERSHIP OF TENANTS' FIXTURES AND OWNERSHIP OF BUILDING

##### 21.1 Covenant for Quiet Enjoyment

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

##### 21.2 Ownership of Tenant's Fixtures

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

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### 21.3 Ownership of Building

The Building will become the absolute property of the Lessor, free and clear of all liens, charges, encumbrances, equities or claims of any kind or nature whatsoever, save and except for the Permitted Encumbrances, upon the expiration or earlier termination of the Term or any permitted period of overholding, except as provided in Article 10, but will be deemed, as between the Lessor and the Lessee during the Term, to be the separate property of the Lessee and not of the Lessor but subject to and governed by all the provisions of this Lease, provided always that the Lessor's absolute right of property in the Building, which will arise at the expiration or earlier termination of the Term or any permitted period of overholding, will take priority over any other interest in the Building that may now or hereafter be created by the Lessee without the prior written consent of the Lessor, and provided that all dealings by the Lessee with the Building which in any way affect title thereto will be made expressly subject to this right of the Lessor and the Lessee will not assign, encumber or otherwise deal with the Building separately from any permitted dealing with the leasehold interest under this Lease, to the intent that no person will hold or enjoy any interest in this Lease acquired from the Lessee who does not at the same time hold a like interest in the Building.

## ARTICLE 22 OVERHOLDING

### 22.1 Overholding

The Lessee covenants and agrees with the Lessor that if the Lessee will hold over and the Lessor will accept rent after the expiration of the Term, the new tenancy thereby created will be a tenancy from month to month and not a tenancy from year to year and will be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month, provided however that the monthly Basic Rent payable by the Lessee will be the then market rental value of the Lands and the Building, taking into account any restrictions on the use of the Lands and Building at the time, as determined from time to time in the bona fide opinion of the Lessor's Director of Real Estate Services or his or her successor in function, and such monthly Basic Rent will be paid in advance. The Lessee will also pay monthly as Additional Rent one-twelfth of the then current sum described in section 3.1 or 3.2 hereof, as the case may be.

## ARTICLE 23 ENVIRONMENTAL MATTERS

### 23.1 Definitions

For the purposes of this Article 23:

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

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- (b) “Environmental Laws” means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any governmental authority having jurisdiction over the Lands or Building, now or hereafter in force and relating in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, and includes the principles of common law and equity.

### 23.2 Lessee’s Covenants and Indemnity

The Lessee covenants and agrees as follows:

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

- (g) without limiting the generality of Article 14, to indemnify the Lessor and its Personnel and contractors from any and all Losses (including the cost of remediation of the Lands and Building and any other affected property) arising from or in connection with:
- (i) any breach of or non-compliance with the provisions of this Article 25 by the Lessee; or
  - (ii) the release or alleged release of any Contaminants at or from the Lands related to or as a result of the use and occupation of the Lands and Building by, or any act or omission of, the Lessee or any person for whom the Lessee is responsible at law.

The obligations of the Lessee under this Article 23 will survive the expiry or earlier termination of this Lease, and the obligations of the Lessee under this Article 25 are in addition to, and will not limit, the other obligations of the Lessee under this Lease.

#### ARTICLE 24 NOTICE

##### 24.1 Notice

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

- (a) in the case of the Lessee, addressed to the Lessee at the postal address shown on the General Instrument;
- (b) in the case of the Lessor, addressed to:

City of Vancouver  
City Hall  
453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia V5Y 1V4

Attention: City Clerk  
and: Director of Legal Services

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



ARTICLE 25  
MISCELLANEOUS

25.1 Statements by Lessor

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

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

25.2 Time of Essence

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

25.3 Formality of Modifications

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

25.4 Captions and Headings

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

25.5 Enurement

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

25.6 Covenants or Conditions

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

## 25.7 References

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

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**SCHEDULE A  
HOUSING REQUIREMENTS**

**1. Definitions.**

Capitalized terms used in this Schedule A shall have the meanings specified in this Section 1:

(a) **“Building Condition Report”** has the meaning given to it in Section 5(b) of this Schedule A;

(b) **“Burrard Building”** means the building to be constructed by the Lessee at the civic addresses 1190 Burrard Street and 937 Davie Street, Vancouver, B.C., and the following legal descriptions:

PID: 015-484-211, Lot A (See 428984L) of Lots 17 to 19 Block 90 District Lot 541 Plan 210;

PID: 015-484-238, Lot B (Reference Plan 1606) of Lots 17 to 19 Block 90 District Lot 541 Plan 210;

PID: 015-484-220, Lot C (See 428984L) of Lots 17 to 19 Block 90 District Lot 541 Plan 210;

PID: 015-484-181, The South ½ of Lot 15 Block 90 District Lot 541 Plan 210; and

PID: 015-484-203, Lot 16 Block 90 District Lot 541 Plan 210;

(c) **“Capital Asset Plan”** has the meaning given to it in Section 7 of this Schedule A;

(d) **“Debt and Equity Payments”** means:

(i) payments to equity investors in the Building: (i) in accordance with the Project Pro Forma; or (ii) approved in writing by the Lessor; and

(ii) principal, interest and fees payable pursuant to the Mortgage;

(e) **“Development Agreement”** means the Development Agreement between the Lessor and Lessee in connection with the development by the Lessee of the Burrard Building, the Seymour Building, the Pender Building, the Vanness Building, the EFL Building and the Kingsway Building, or any of the foregoing buildings;

(f) **“EFL Building”** means the building to be constructed by the Lessee at the civic address 3310 Marine Way, Vancouver, B.C. and the following legal description:

PID: 029-936-560, Lot 46 District Lots 330 and 331 Group 1 New Westminster District Plan EPP53802

- (g) **"HILs Replacement Reserve"** has the meaning given to it in Section 10(a)(ii) of this Schedule A;
- (h) **"HILs Unit"** means a Residential Unit in respect of which a HILs Unit Housing Charge is payable;
- (i) **"HILs Unit Housing Charge"** means the Housing Charge to be charged by the Lessee to a HILs Unit Occupant from time to time during the Term, which on a monthly basis shall not exceed 1/40th of the then-current "Housing Income Limit" for the applicable type of HILs Unit as published by the British Columbia Housing Management Commission, or a successor or equivalent publication approved by the Lessor;
- (j) **"HILs Unit Occupant"** means one or more cohabiting adults, with or without cohabiting children, whose collective annual Income is no more than the then-current "Housing Income Limit" for the applicable unit type as published by the British Columbia Housing Management Commission or a successor or equivalent publication approved by the Lessor;
- (k) **"Housing Charge"** means the charge, determined and assessed by the Lessee from time to time, payable monthly by an Occupant of a Residential Unit in the Building pursuant to an Occupancy Agreement for the right to occupy a Residential Unit;
- (l) **"Income"** of an Occupant (where "Occupant" includes all persons for whom the Residential Unit serves as the principal residence) means the total annual world-wide income before income tax from all sources of the Occupant that the Occupant is required to report as income for income tax purposes;
- (m) **"Income Assistance"** means income received under the Employment and Assistance Act (British Columbia), the Employment and Assistance for Persons with Disabilities Act (British Columbia), or successor legislation;
- (n) **"Kingsway Building"** means the building to be constructed by the Lessee at the civic address 1001 Kingsway, Vancouver, British Columbia and the following legal description:  
  
PID: 011-951-591, Lot H Block 64 District Lot 301 Plan 4040;  
  
PID: 011-951-613, Lot J Block 64 District Lot 301 Plan 4040; and  
  
PID: 011-951-621, Lot K Block 64 District Lot 301 Plan 4040;
- (o) **"Low-End of Market Unit"** means a Residential Unit in respect of which a Low-End of Market Unit Housing Charge is payable;

- (p) **"Low-End of Market Unit Housing Charge"** means the Housing Charge to be charged by the Lessee to a Low-End of Market Unit Occupant which shall not exceed 90% of: (i) the appraised market rent for a comparable unit in the local area (where a "comparable unit" means a unit of the same type, similar size and in a building with a similar age and quality of construction); or (ii) in the absence of comparable units in the local area, CMHC's Rental Survey for Vancouver by year of construction, 2005+ category;
- (q) **"Low-End of Market Unit Occupant"** means one or more cohabiting adults (18 years of age or older) with or without cohabiting children, whose collective Income does not exceed the low and moderate income limit as determined by BC Housing from time to time based on data provided by Statistics Canada;
- (r) **"Occupancy Agreement"** means an agreement, lease, license or other right of an occupant of a Residential Unit to occupy that Residential Unit;
- (s) **"Occupancy Guidelines"** means the National Occupancy Standards published by Canada Mortgage and Housing Corporation from time to time during the Term or such other standards as the Lessor may reasonable establish;
- (t) **"Occupant"** means all persons for whom the Residential Unit serves as the principal residence;
- (u) **"Operating Expenses"** means all sums, costs, expenses, outgoings and other amounts incurred by the Operator, other than Basic Rent, payable in respect of the Lands and the Building, including, without limitation:
- (i) the insurance required by the Lease;
  - (ii) sewer, water and garbage and recycling pickup;
  - (iii) Utilities;
  - (iv) salaries and benefits paid to staff engaged in providing services to the Lands and the Building or an Occupant pursuant to this Lease;
  - (vi) maintenance and repair of all non-capital items;
  - (vii) all applicable taxes and amounts payable in lieu of property taxes pursuant to this Lease;
  - (viii) amounts payable by the Lessee under Permitted Encumbrances (each as defined in this Lease);
  - (ix) administration costs in connection with the Building and Lands, including accounting and legal fees;
  - (x) all equipment, materials and supplies required to perform any of the foregoing;
  - (xi) rent-up costs; and

- (xii) the cost of fulfilling the City's requirements for budgets, reports, audits, and plan preparation, for data and research, and other special requests made by the City;

but excluding Debt and Equity Payments;

- (v) **"Operating Income"** means all gross income, revenue, operating grants, sums and other amounts, directly or indirectly, collected by or credited to the Lessee pursuant to this Lease, including, without limitation, Housing Charges, parking fees, vending machine revenue, laundry machine revenue and other fees and charges payable by Occupants or others for use of the Lands and the Building;
- (w) **"Operating Reserve"** has the meaning given to it in Section 10(a)(i) of this Schedule A;
- (x) **"Operating Surplus"** means any surplus Operating Income remaining after payment of all: (i) Operating Expenses; (ii) Debt and Equity Payments; and (iii) contributions to the Replacement Reserve;
- (y) **"Pender Building"** means the building to be constructed by the Lessee at the civic address 177 West Pender, Vancouver, B.C., and the following legal descriptions:
  - PID: 030-401-488, Lot E Block 28 District Lot 541 Group 1 New Westminster District Plan EPP76989;
- (z) **"Portfolio Buildings"** means the Burrard Building, Pender Building, Seymour Building, Vanness Building, EFL Building and Kingsway Building, or any of the foregoing;
- (aa) **"Project Pro Forma"** means the pro forma for the Buildings approved by the Lessor;
- (bb) **"Refinancing Reserve"** has the meaning given to it in Section 10(a)(ii) of this Schedule A;
- (cc) **"Replacement Reserve"** has the meaning given to it in Section 8 of this Schedule A;
- (dd) **"Residential Unit"** means a self-contained dwelling unit in the Building with its own kitchen, bathroom, and sleeping and living spaces;
- (ee) **"Seymour Building"** means the building to be constructed by the Lessee at the civic addresses 1210 Seymour Street and 560 Davie Street, Vancouver, B.C., and the following legal descriptions:

PID: 015-473-881, Lot 1 Block 104 District Lot 541 Plan 210

PID: 015-473-929, Lot 2 Block 104 District Lot 541 Plan 210;

PID: 006-169-571, Lot 3 Block 104 District Lot 541 Plan 210;

PID: 015-473-953, Lot 4 Block 104 District Lot 541 Plan 210; and

PID: 015-474-399, Lot 5 Block 104 District Lot 541 Plan 210;

- (ff) **"Shelter Rate Unit"** means a Residential Unit in respect of which a Shelter Rate Unit Housing Charge is payable;
- (gg) **"Shelter Rate Unit Housing Charge"** means the Housing Charge to be charged by the Lessee to a Shelter Rate Unit Occupant from time to time during the Term, which shall not exceed the shelter component of Income Assistance;
- (hh) **"Shelter Rate Unit Occupant"** means one or more cohabiting adults who is/are in receipt of Income Assistance;
- (ii) **"Utilities"** means all charges, rates and levies on account of utilities, including for heat, electricity, gas, telephone, television, internet and other costs and expenses of a similar nature; and
- (jj) **"Vanness Building"** means the building to be constructed by the Lessee at the civic address 3279-3297 Vanness Avenue, Vancouver, B.C. and the following legal description:

PID: 024-073-423, Lot A (BM67938) Blocks 23 and 24 District Lots 36 and 51 Group 1 New Westminster District Plan 4413

PID: 011-573-953, Lot 14 Blocks 23 and 24 District Lots 36 and 51 Plan 4413;

PID: 011-573-961, Lot 15 Blocks 23 and 24 District Lots 36 and 51 Plan 4413; and

PID: 011-573-970, Lot 16 Blocks 23 and 24 District Lots 36 and 51 Plan 4413.

## 2. **Affordability Requirements**

- (a) The Lessee will at all times during the Term until the conditions set out in Section 2(b) below are satisfied, ensure that not less than 30% of the Residential Units in the Building are HILs Units occupied by HILs Unit Occupants (the **"Minimum Affordability Requirement"**).
- (b) Following the issuance of an occupancy permit for each of the Portfolio Buildings, the Lessee shall at all times during the remaining Term ensure that the aggregate Housing Charge across all residential units in the Buildings and the Portfolio Buildings is:
  - (i) between 70% and 85% of the aggregate market rental rate for such residential units; or

(ii) such other amount as may be set out in the Development Agreement.

### 3. Proof of Income

The Lessee shall establish policies and procedures for establishing the Income of Occupants for the purpose of determining Occupant eligibility: (i) on an annual basis in respect of HILs Units; and (ii) every five years in respect of all other Residential units, and, prior to the issuance of an occupancy permit in respect of the Building, submit these to the City for approval. Once approved, the Lessee shall establish the Income of Occupants in accordance with such policies and procedures.

### 4. Tenanting

The Lessee will, prior to the issuance of an occupancy permit in respect of the Building, prepare and submit to the City for approval a plan for the tenanting of the Building (the “**Tenanting Plan**”). The Tenanting Plan must:

- (a) use a waiting list for affordable housing established by the British Columbia Housing Management Commission as one of the Lessee’s tenant referral source;
- (b) prioritize people who live or work in Vancouver;
- (c) make best efforts to confirm the citizenship or legal residency in Canada of prospective Occupants; and
- (d) make best efforts to be consistent with the Occupancy Guidelines;

in each case, only to the extent permitted by applicable law.

Once approved, the Lessee shall implement and at all times during the Term comply with the Tenanting Plan.

### 5. Reporting Requirements

- (a) **Operating Report.** The Lessee will, on an annual basis commencing on the first anniversary of the date of the occupancy permit issued to the Lessee in respect of the Building, provide the Lessor with a report with the information relating to the Building set out in Annex 1 to this Schedule A.
- (b) **Building Condition Report.** The Lessee will, every five years commencing on the first anniversary of the date of the occupancy permit issued to the Lessee in respect of the Building, provide the Lessor with a building condition report setting out the condition of the Building structure and all major Building systems, prepared by an independent third party (each, a “**Building Condition Report**”).



## 6. Operating Expenses

- (a) No less than two months prior to the issuance of an occupancy permit in respect of the Buildings, the Lessee shall submit to the Lessor an operating budget for the first year of operation of the Buildings for approval by the Lessor.
- (b) Following the first anniversary of the date of issuance of the last occupancy permit for the Buildings, the Lessor will perform an audit of the Lessee's Operating Expenses for the first year of the Term and the Lessee will assist the Lessor in carrying out such audit by making available to the Lessor all relevant documentation related to Operating Expenses incurred or claimed by the Lessee during the first year of the Term. Based on such audit, the Lessor shall, acting reasonably, establish an annual Operating Expense baseline (the "**Operating Expense Baseline**") for the Lessee's operating of the Building that sets out the maximum Operating Expenses the Lessee may incur for Operating Expense line items without obtaining prior written consent from the Lessor (such consent not to be unreasonably withheld). The maximum values set out in the Operating Expense Baseline shall be adjusted for inflation on an annual basis or as otherwise required by operational requirement subject to approval by the Lessor, such consent not to be unreasonably withheld.
- (c) The Lessee shall ensure that all goods and services (excluding insurance) purchased by the Lessee that constitute Operating Expenses are purchased pursuant to a procurement process that is:
  - (i) open and competitive in reasonable proportion to the value of the applicable expenditure; and
  - (ii) is conducted at least every five years in respect of any particular good or service.

For greater certainty, the Lessee may purchase goods and services that constitute Operating Expenses through buying groups, provided that any such vendors were selected by the buying group through an open and competitive procurement process within the previous five years. The Lessee may also make use of prequalification lists of vendors provided such list was established within the previous five years through an open and competitive procurement process.

Notwithstanding the foregoing, the Lessee may use its own employees for the delivery of services that constitute Operating Expenses. However, if the costs of the delivery of such services rise above the Operating Expense Baseline for such services, the Lessor may require the Lessee obtain such services through competitive procurement in accordance with this section.

## 7. **Capital Asset Plan**

The Lessee will, commencing on the second anniversary of the date of the occupancy permit issued to the Lessee in respect of the Building and updated every five years subsequently, submit to the Lessor for approval a capital asset plan (the “**Capital Asset Plan**”) that sets out the maintenance, repair and replacement standards and practices required to preserve the capital components of the Lands and the Building over the Term, including, without limitation, in respect of the following:

- (a) major maintenance or replacement of the structure, including the roof, roof membrane, bearing walls, foundations and floors of the Building, and seismic upgrades;
- (b) major repair or replacement of the exterior of the Building;
- (c) life cycle replacement of the fire alarm and safety systems;
- (d) life cycle replacement of the heating, hot water, plumbing, mechanical, electrical, sanitary and storm drainage systems (building systems);
- (e) life cycle replacement of elevators; and
- (f) all equipment, materials and supplies required to perform any of the foregoing.

The Capital Asset Plan shall additionally address any issues described in the Building Condition Report submitted to the Lessor the previous year. The Lessee shall implement the recapitalization/life cycle replacement of building systems, including equipment, structures, surfaces or fixtures installed in the Lands and the Building, in accordance with the Capital Asset Plan approved by the Lessor.

The Capital Asset Plan will identify possible sources of funds to fund identified work, such sources will include the Replacement Reserve Fund set aside by the Lessee.

The parties agree that with respect to Capital Assets Plans submitted to the City for approving within a 15 year period prior to expiry of the Term, the Lessee shall consult with the Lessor during the preparation of such plans in order to take into account the transfer of ownership of the Building at the expiry of the Term as contemplated in Section 21.3.

## 8. **Replacement Reserve**

The Lessee will create a reserve (the “**Replacement Reserve**”) for capital replacements to the Lands and the Building and their systems, equipment and surfaces, based on the items and life in years as set out in the Capital Asset Plan. Beginning on the Lease Commencement Date, the Lessee will deposit in the Replacement Reserve an amount to be determined by an independent third party consultant with experience in capital asset planning and approved by the Lessor. The Lessee will use or dispose of the Replacement Reserve only for capital replacements to the Lands and the Building and their systems, equipment and surfaces in accordance with the Capital Asset Plan, or to pay for other payments as may be approved by the Lessor.

**9. Audit**

The Lessor reserves the right to audit the books, records and accounts of the Lessee pertaining to its operation of the Lands and Building or otherwise pertaining to this Lease at any reasonable time, including without limitation, tenancy applications, Occupancy Agreements and Occupant Income declarations and other documents evidencing Occupant Income. The parties acknowledge that the Lessor intends to conduct an audit of the Lessee's operation of the Building every five years during the Term.

**10. Operating Surplus**

- (a) Operating Surplus shall be used by the Lessee in the following order of priority:
- (i) first, by the Lessee to create and maintain a reserve (the "**Operating Reserve**") for the purpose of stabilizing annual variances in Operating Income and Operating Expenses in such an amount as is reasonable given the purpose of such reserve and the expected frequency and duration of such occurrences during the Term such that the balance of the Operating Reserve is not to exceed 10% of annual Operating Expenses;
  - (ii) second, by the Lessee to create and maintain a reserve (the "**HILs Replacement Reserve**") for the purpose of subsidizing the rent of HILs Units Occupants whose Income decreases below the level of Income such Occupants had at the commencement of the applicable Occupancy Agreement in such an amount as is reasonable given the purpose of such reserve and the expected frequency and duration of such occurrences during the Term, such that the balance of the HILs Replacement Reserve is not to exceed 10% of the total of the maximum annual HILs Unit Housing Charges of all HILs Units;
  - (iii) third, until the date of the Lessee's first refinancing of its Mortgage as shown in the Project Pro Forma, by the Lessee to create and maintain a reserve (the "**Refinancing Reserve**") for the purpose of paying down the Mortgage principal at the time of such contemplated refinancing;
  - (iv) fourth, and only following the funding of the reserves described in Sections 10(a)(i), 10(a)(ii) and 10(a)(iii) and the discharge of the Second Mortgage, divided on a 50%/50% basis between the Lessee and the Lessor, with the Lessee's portion to be used to:
    - (A) increase the affordability of HILs Units in the Building or increase the net number of HILs Units in the Building through turnover of non-HILs Units or as the result of Income-testing of existing Occupants; and

- (B) create or acquire net new, social housing within the City of Vancouver, provided such acquisitions are in accordance with any agreements between the Lessee and Lessor for the development of affordable housing existing between the parties from time to time during the Term.

Prior to the distribution of any Operating Surplus pursuant to this Section 10(a)(iv), the Lessee shall provide to the Lessor:

- (C) audited financial statements for the Building or such other form of financial statements as may be accepted by the Lessor in its sole discretion;
- (D) evidence of payment in full of the Operating Surplus priorities set out in Section 10(a)(i) through (iii) above; and
- (E) the amounts of Operating Surplus to be distributed pursuant to this Section 10(a)(iv) and a proposed schedule for distribution.

The Lessor shall review such documentation for confirmation of the Lessee's compliance with the requirements of this Schedule A. Upon such confirmation by the Lessor, the Lessee shall distribute the Operating Surplus in accordance with the approved schedule.

- (b) The Lessee shall ensure that the reserves described in Sections 10(a)(i), (ii) and (iii) are kept in separate bank accounts and that each account is insured by the Canadian Deposit Insurance Corporation or Credit Union Deposit Insurance Corporation.

#### **11. Mortgage and Refinancing Requirements**

- (a) The retirement schedule for the initial Mortgage in respect of the Buildings and any subsequent refinancing of the Mortgage shall be consistent with the Project Pro Forma unless otherwise in writing approved by the Lessor.
- (b) The Lessee shall use the Refinancing Reserve solely for the purpose of payment towards the Mortgage principal at the time of the refinancing of the Mortgage contemplated for the ninth year of operation of the Buildings (as set out in the Project Pro Forma).

#### **12. Option for City Capital Contribution**

The Lessor may, at its sole discretion, make available to the Lessee a capital contribution for the purposes of reducing the amount of any Mortgage required by the Lessee. If such a contribution is made available and accepted, the parties agree that:

- (a) the Project Pro Forma (and any other provisions of this Schedule A, as required) will be amended accordingly and approved by both parties; and

- (b) any such capital contribution will be repaid to the Lessor by the Lessee from Operating Surplus following the funding of the Operating Reserve, Refinancing Reserve and HILs Replacement Reserve but in priority to the distribution of Operating Surplus set out in Section 10(a)(iv).

### 13. Adjustments on Termination

Upon the termination of this Lease, however effected, the parties will forthwith complete all necessary accounting and adjustments between them to effectively reconcile and finalize their obligations pursuant to this Lease. Such adjustments will include, without limitation:

- (a) the delivery or transfer by the Lessee to the Lessor, effective as of the termination date, of the Replacement Reserve, the Operating Reserve, the Refinancing Reserve and the HILs Replacement Reserve, in each case including all accumulated interest; and
- (b) use or division of any unexpended or allocated accrued Operating Surplus, including all accumulated interest.

### 14. Conflicts of Interest

The Lessee shall establish and enforce a conflict of interest policy that prevents the Lessee from contracting for services in relation to the Building with its directors or employees or any immediate family members of its directors or employees (collectively, “**non-arm’s length persons**”) or any organization in which a non-arm’s length person is a shareholder, director or officer or from which a non-arm’s length person holds a pecuniary interest.

### **ANNEX 1 TO SCHEDULE A OPERATING REPORT COMPONENTS**

The intent of the operating report requirement is to ensure the Lessee collects, maintains and shares relevant data with the Lessor to help support a better understanding of the housing operations. All information is to be provided without any names, unit numbers or any other personal details.

#### **Rent Statistics**

- Rents charged to and Incomes of all Occupants

#### **Affordability Statistics**

- Any information the Lessor may reasonably require from the Lessee to determine the Lessee's compliance with Section 2 including information on units whose occupants were tested for compliance.
- Analysis of affordability delivered (\$ value and % discount) by the project based on comparing the actual rent revenue to an estimate of the full market rent based on comparable units in the area

#### **Occupancy Statistics**

- Occupant counts for all units including number of adult (18 and over) and non-adult (under 18) occupants

#### **Operating Expense Statistics**

- Build up and summary (per unit & per sqft) of Operating Expenses consistent with level of detail included in the pro-forma appendix or other agreed upon level of detail consistent with the Lessee's internal financial reporting
- Build up and summary (per unit & per sqft) Building Management Costs, defined as membership fees, staff costs, accounting costs & any other Operating Expense related to managing the building.
- Build up and summary (per unit & per sqft) Operating Expenses before Building Management Costs

#### **Operating Surplus Statistics**

- Summary of Operation Surplus allocation to various reserves
- Continuity schedule for all Reserves or unrestricted surplus
- Summary of Operating Surplus distributed or available for distribution for equity partners
- Summary of the use by the Lessee of Operating Surplus distributed pursuant to Section 10(e)

**Liabilities**

- Summary of any material (in aggregate >20% of annual operating costs) liabilities of any nature, including any deferred maintenance or capital expenditures

**Audited Financial Statements**

- Audited financial statements for the Building or such other form of financial statements as may be accepted by the Lessor in its sole discretion.

END OF SET

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**TRI-PARTY AGREEMENT**

THIS AGREEMENT made as of the \_\_\_19th\_\_\_ day of June,

2019. B E T W E E N:

**CITY OF VANCOUVER**  
(hereinafter referred to as the "Landlord")

- and -

**COMMUNITY LAND TRUST FOUNDATION  
OF BRITISH COLUMBIA**  
(hereinafter referred to as the "Tenant")

- and -

**CANADA MORTGAGE AND HOUSING  
CORPORATION, as Lender**  
(hereinafter referred to as the "Lender")

WHEREAS The Landlord is the legal and beneficial owner of the Lands (as defined below);

AND WHEREAS pursuant to a ground lease (the "Ground Lease") dated as of April 30, 2019 between the Landlord, as landlord and the Tenant, as tenant, whereby the Landlord leased to the Tenant the Lands;

AND WHEREAS pursuant to lending agreements between the Lender and the Tenant to finance the development of the Lands, the Lender has agreed to provide financing to the Tenant;

AND WHEREAS to secure payment and performance of the Tenant's obligations in respect of such financing, the Tenant has delivered in favour of the Lender: (i) a leasehold mortgage (the "Mortgage") in respect of the Tenant's leasehold interest in the Lands; and (ii) a general security agreement (the "General Security Agreement");

AND WHEREAS pursuant to the Mortgage and the General Security Agreement the Tenant granted a security interest in, among other things, any and all "personal property" (as defined in the *Personal Property Security Act* (British Columbia)) (the "Collateral") of the Tenant and the Tenant's leasehold interest in the Lands, among other things;

AND WHEREAS pursuant to the Ground Lease, the parties wish to enter into this agreement for the purpose of establishing their respective rights and obligations if the Tenant



defaults in the performance by it of any of its obligations under the Ground Lease or the Security Documents (as defined below);

NOW THEREFORE, for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties), the parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

**1.1**            **Defined Terms**

For the purpose of this Agreement, including the recitals herein, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

“**Collateral**” has the meaning given to such term in the fifth recital;

“**General Security Agreement**” means the general security agreement referred to in the fourth recital, as the same may be amended, supplemented, modified, extended, renewed, restated or replaced from time to time;

“**Ground Lease**” means the ground lease referred to in the second recital, a copy of which is attached as Schedule A, as the same may be amended, supplemented, modified, extended, renewed, restated or replaced from time to time;

“**Lands**” has the meaning ascribed thereto in the Ground Lease;

“**Mortgage**” means the leasehold mortgage referred to in the fourth recital, as the same may be amended, supplemented, modified, extended, renewed, restated or replaced from time to time; and

“**Security Documents**” means, collectively, the Mortgage and the General Security Agreement.

**ARTICLE 2**  
**TERM OF AGREEMENT**

**2.1**            **Term of Agreement**

(a) The provisions of this Agreement shall apply throughout the term of the Ground Lease unless and until the Mortgage is discharged. This Agreement shall automatically terminate upon the registration of a discharge of the Mortgage.

(b) If the Lender exercises its rights pursuant to the Security Documents to acquire the Lands or to transfer the interest of the Tenant therein, the provisions of this Agreement shall continue to apply.

(c) The obligations of the parties pursuant to this Agreement shall survive the termination of the Ground Lease.

(d) The term of this Agreement shall not extend beyond the end of the Term (as defined in the Ground Lease) of the Ground Lease.

**ARTICLE 3**  
**ACKNOWLEDGMENT OF LANDLORD**

**3.1 Acknowledgment of the Landlord**

In addition to any rights granted to the Lender under this Agreement, the Landlord acknowledges and agrees that the Lender shall also have the benefit of any and all rights contemplated in the Ground Lease to be provided to any "Mortgagee", including without limitation, the rights and remedies set forth in Article 18 of the Ground Lease, without the need for any further notice(s) to be submitted by the Lender to the Landlord. For greater certainty, the parties hereto agree that to the extent there is any ambiguity, conflict or inconsistency between the provisions of this Agreement and any provision of the Ground Lease with respect to the rights and remedies of the Lender as a "Mortgagee", such ambiguity, conflict or inconsistency shall be resolved by granting to the Lender whichever rights and remedies are greater.

**ARTICLE 4**  
**TENANT'S RIGHT TO MORTGAGE**

**4.1 Tenant's Right to Mortgage**

The Landlord acknowledges and agrees that the Tenant shall have the right to grant the Mortgage in favour of the Lender.

**ARTICLE 5**  
**CONSENT TO TENANT**

**5.1 Consent to the Tenant**

Pursuant to Article 16 of the Ground Lease, the Landlord hereby consents to the granting of the Mortgage and subject to the terms of this Agreement, the exercise of remedies thereunder by the Lender and represents to the Lender that all consent and approval requirements in the Ground Lease relating to the Mortgage and this Agreement have been complied with or waived, provided that except as hereinafter provided this consent shall not be deemed to waive or modify in any respect any of the rights of the Landlord or the Tenant under the Ground Lease or to relieve the Landlord or the Tenant from the observance and performance of any and all covenants to be performed by them pursuant to the Ground Lease.

**5.2 Status of Ground Lease**

(a) The Landlord and the Tenant agree not to amend the Ground Lease without the prior written consent of the Lender, which consent may be arbitrarily or unreasonably withheld if the Lender determines that such amendment would have an adverse effect on the rights of the

Lender. The Landlord and the Tenant agree that no amendment to the Ground Lease shall have any force and effect without the prior written consent of the Lender. Except as provided in this Agreement and in the Ground Lease, no surrender of the Ground Lease prior to the expiry of the term of the Ground Lease shall be valid unless accepted in writing by the Landlord and consented to in writing by the Lender, which consent may be arbitrarily withheld.

- (b) The Landlord confirms to and for the benefit of the Lender that as of the date hereof:
- (i) the Ground Lease is in full force and effect;
  - (ii) no modification has been made to the Ground Lease; and
  - (iii) no notice of default has been given to the Tenant, neither the Landlord nor, to the best of the Landlord's knowledge, the Tenant is in default of any covenant, agreement or condition contained in the Ground Lease and the Landlord is not aware of any facts or circumstances existing as at the date hereof which with the passage of time or the giving of notice or both would constitute a default under the Ground Lease.

**ARTICLE 6**  
**GROUND LEASE**

**6.1 Enforcement of the Ground Lease**

(a) Each of the Landlord and the Tenant agrees that the Lender shall have the right (but not the obligation) to perform any term, covenant, condition, agreement or obligation of the Tenant under the Ground Lease and to remedy any default of the Tenant under the Ground Lease. The Landlord agrees to accept such performance by the Lender with the same force and effect as if performed by the Tenant.

(b) Each of the Landlord and the Tenant agrees that the Lender shall be entitled to enforce as against the Landlord or the Tenant, as the case may be, any and all provisions of the Ground Lease that may have a material effect on the security of the Lender, as if it were a party thereto either, in the name of the Tenant if the Tenant is not then in default under the applicable Security Documents or on its own behalf if the Tenant is then in default under the applicable Security Documents, including the right to bring injunctive relief if applicable.

(c) The Tenant assigns to the Lender all rights which it may have pursuant to the Ground Lease to appoint an arbitrator, appraiser, expert or other third party and the Landlord hereby consents to such assignment.

(d) The Tenant hereby irrevocably constitutes and appoints the Lender, with right of substitution, as its true and lawful attorney and agent to act with full power and authority, in the name of the Tenant, to enforce the Ground Lease, and to do such acts and make such decisions with respect to the Ground Lease as the Lender shall consider necessary and appropriate and the Tenant agrees to be bound by all of the foregoing as may be done by the Lender pursuant to this authority.

**6.2 Default under Ground Lease**

(a) In respect of every default by the Tenant under the Ground Lease, including without limitation any non-payment of rent, the Landlord shall, in addition to any other obligation to give notice of default under the Ground Lease and before becoming entitled as against the Tenant or the Lender to exercise any of the rights and remedies of the Landlord set forth in the Ground Lease, give the Lender notice in writing of every such default and the particulars thereof in the same form and at the same time as notice of said default is delivered to the Tenant under the Ground Lease. Upon the expiration of any applicable cure period provided to the Tenant and if the applicable default has not been cured, the Landlord shall send written notice to the Lender of the Tenant's failure to cure such default within said cure period.

(b) The Landlord covenants and agrees with the Lender, that it will not permit:

- (i) any payment required to be made by the Tenant under the Ground Lease to remain outstanding for a period of time in excess of three months from the date on which such payment was originally to have been made, or
- (ii) to allow any other material default by the Tenant under the Ground Lease to remain unremedied for a period of time in excess of three months from the date on which such default first came to the attention of the Landlord,

without delivery of notice of such nonpayment or default to the Lender and Tenant.

**6.3 Non-Termination of Ground Lease**

(a) In the event of any default by the Tenant under the Ground Lease, the Lender shall have the right (but not the obligation) to cure such default under the Ground Lease during the cure period provided to the Tenant under the Ground Lease for remedying such default. Where the Tenant has failed to cure a default, the Lender shall have a period of 60 days from the date of receipt of notice from the Landlord of the Tenant's failure, to cure such default, provided that, prior to the expiration of such 60-day period, the Lender sends the Landlord written notice that the Lender intends to cure such default. The Landlord shall accept such performance on the part of the Lender (itself or by a receiver and/or receiver and manager appointed by it) as though the same has been performed by the Tenant, and for such purpose the Landlord and the Tenant hereby authorize the Lender to enter upon the Lands and to exercise any of the Tenant's rights and powers under the Ground Lease without the need for any further notice(s) to be submitted to the Landlord. None of the foregoing shall in itself constitute a transfer of the Ground Lease or otherwise constitute the Lender a mortgagee in possession. The Landlord shall not terminate the Ground Lease until the expiry of the said period of 60 days and only if the default has not been cured or the matter contested in good faith, or for any default which cannot reasonably be cured within such 60 days, is proceeding to be cured in a diligent manner.

(b) Notwithstanding Section 6.3(a), if the default giving rise to the right of the Landlord to terminate the Ground Lease is the bankruptcy or insolvency of the Tenant, the Landlord agrees with the Lender not to exercise its right to terminate the Ground Lease if, within a period of 60 days after delivery of notice by the Ground Lease in accordance with Section 6.3(a) above advising the Lender of such bankruptcy or insolvency and the Landlord's intent to

terminate the Ground Lease, the Lender shall have cured any other non-bankruptcy or non-insolvency defaults under the Ground Lease of which the Lender shall have been given written notice by the Landlord, or if not cured, has contested the matter in good faith, or for any default which cannot reasonably be cured within such 30 days, is proceeding to cure same in a diligent manner.

(c) Notwithstanding that any default giving to the Landlord the right to terminate the Ground Lease may have occurred, the right of the Landlord to terminate the Ground Lease shall not be effective where the Lender has cured the default, is proceeding to cure same in a diligent manner or has contested the matter in good faith.

#### 6.4 Assignment of Ground Lease

(a) If a default occurs under the Security Documents which entitles the Lender to enforce its security, the Landlord agrees that the Lender may assign the Ground Lease to the same party to whom the Lender shall have sold or transferred the Tenant's interest in the Ground Lease. Alternatively, the Landlord may agree to enter into a new lease of the Lands with such party aforesaid, for the remainder of the term of the Ground Lease, including any renewals, with the same priority as the Ground Lease with regard to any mortgage of the Lands, or any other lien, charge or encumbrance thereon created by or against the Landlord, at the same rent and otherwise upon the same terms as the Ground Lease, PROVIDED HOWEVER, that the Landlord's obligation to consent to such assignment or grant such new lease is conditional upon:

- (i) the Landlord being paid moneys which would have been lawfully due and owing under the Ground Lease;
- (ii) all conditions set out in Article 15 of the Ground Lease having been met; and
- (iii) all curable defaults in the performance of the Tenant's covenants under the Ground Lease being cured.

The assigned Ground Lease or new lease referred to in this Section 6.4(a) shall not include, and neither the Lender nor the party to whom the Lender has sold or transferred the Tenant's interest in the Ground Lease shall be required to remedy, the obligation related to such default which cannot be remedied. For greater certainty, all defaults by the Tenant under the Ground Lease which are not curable by the Lender or assignee or transferee of the Ground Lease shall, as between the Landlord and the Lender or assignee or transferee, as the case may be, be deemed to be cured.

(b) Subject to the provisos in Section 6.4(a) above, in the event the Ground Lease is terminated by reason of bankruptcy, insolvency or for any reason at law other than failure of the Lender to cure a default thereunder, or the Ground Lease is incapable of being assigned, the Landlord shall enter into a new lease of the Lands with such party as the Lender shall direct upon the same terms and provisions of the Ground Lease.

(c) Any such party to whom the Ground Lease is to be assigned or with whom the Landlord is to enter into a new lease in accordance with Section 6.4(a) or (b) above, shall be

subject to the consent of the Landlord, which consent shall not be arbitrarily or unreasonably withheld. The Landlord agrees that it will be deemed to have consented to such assignment of the Ground Lease to such party or the new lease with such party, as the case may be, if it has not objected thereto within 10 days of receiving notice from the Lender of the proposed assignment to, or new lease with, such party.

#### **6.5 Enforcement of the Security Documents**

(a) The Lender agrees that if a default occurs under the Security Documents and the Lender deems it necessary to take action under its security or to enforce the security under the Mortgage, the Lender shall provide notice to the Landlord of its intent to enforce upon the security in accordance with the notice provisions contained in the Ground Lease.

(b) For the purposes of this Agreement, the Lender shall be deemed to have commenced to enforce its security on the date on which the Lender shall have made demand on the Tenant pursuant to the terms of the Mortgage.

(c) If the Tenant shall be in breach of any covenant or provision contained in the Mortgage and the Lender shall have commenced to enforce its security, then so long as the Lender shall observe and perform the terms and conditions of the Ground Lease, the Lender shall be entitled to enforce its security and the Landlord shall not in such event, and so long as the Lender observes and performs the terms and conditions of the Ground Lease, exercise any of its rights against the Tenant or terminate the Ground Lease.

(d) In the event that the Lender exercises its right to acquire the Lands, the provisions of this Agreement shall apply, *mutatis mutandis*, to the Lender in its capacity as lessee under the Ground Lease.

#### **6.6 Collateral**

(a) The Landlord hereby acknowledges that the Tenant has granted to the Lender a security interest in and to the Collateral and may from time to time be entitled to pursue certain remedies with respect thereto as provided in the Security Documents.

(b) Notwithstanding that the Tenant may be in default under the Ground Lease, the Landlord hereby agrees to grant to the Lender or a receiver appointed pursuant to the Security Documents such reasonable access to the Lands as the Lender or such receiver may require for the purposes of inspecting the Collateral in accordance with the Security Documents or exercising any remedies to which the Lender or such receiver may be entitled with respect to the Collateral; PROVIDED ALWAYS that the Lender agrees with the Landlord that the Collateral which constitutes leasehold improvements shall not be dealt with by the Lender, its agent or receiver other than concurrently with any dealing with the Tenant's leasehold interest.

(c) The Landlord hereby agrees that it will not exercise any rights of distress upon the Collateral or any other comparable rights of seizure or claims of ownership which it may be entitled to from time to time with respect to the Collateral without the prior written consent of the Lender. Following the occurrence of a default under the Security Documents, the Lender (or a duly appointed receiver) may, by written notice to the Landlord, request that the Landlord

deliver up any Collateral in its possession to the Lender (or the receiver) and the Landlord agrees to do so as soon as reasonably practicable following receipt of such notice.

**6.7 Transfer of the Leasehold Interest**

(a) If the Lender enforces its security and in so doing becomes liable as lessee under the Ground Lease, such liability shall (except for liability already incurred), terminate upon the earlier of 10 days after notice from the Lender to the Landlord of its abandonment of the Lands or upon an assignment to a new lessee, with the consent of the Landlord, which consent shall not be unreasonably withheld.

(b) No surrender of the Ground Lease by the Tenant shall be valid unless consented to in writing by the Lender, nor shall there be any merger of the Landlord's freehold estate and the Tenant's leasehold estate without the prior written consent of the Lender.

**6.8 Tenant to Perform Ground Lease and Security Documents**

The Tenant hereby covenants and agrees with the Landlord and the Lender that it shall continue to observe and perform all of the covenants in each of the Ground Lease and the Security Documents to be observed and performed by the Tenant.

**6.9 Concurrence of Tenant**

The Tenant hereby consents to this Agreement and to all of the terms and conditions hereof and agrees to be bound thereby. The Tenant hereby further covenants and agrees that each of the Landlord and the Lender may rely and act upon any notice given by the other under this Agreement without requiring any further concurrence on the part of the Tenant and neither the Landlord nor the Lender shall be required to enquire into the right, power, capacity or authority of the other to exercise their respective rights under this Agreement or to perform their covenants under this Agreement.

**6.10 Limitation on Liability**

(a) Except as expressly provided herein, nothing in this Agreement shall be construed so as to render the Lender or its agents liable for the performance of any of the covenants, conditions or agreements of the Tenant under the Ground Lease unless the Lender or its agent has: (i) become a mortgagee in possession of the Lands; (ii) become the owner of the Tenant's interest in the Ground Lease or the Lands; or (iii) received an assignment of the Ground Lease or a new lease, as the case may be, under Section 6.4 hereof, in which case the Lender or its agents shall be liable only for such period of time as it is or was a mortgagee in possession of the Lands or the owner of the Tenant's interest in the Ground Lease or the Lands or holds or held an assignment of the Ground Lease or a new lease under Section 6.4. For greater certainty, if the Lender abandons possession of the Lands, the Lender will not be liable to the Landlord for further payments of rent or the performance of any obligations under the Ground Lease other than for any amounts owing or obligations incurred by the Lender under the Ground Lease prior to such time.

(b) Any payment to be made or action to be taken by the Lender under this Agreement as a condition to keeping the Ground Lease in effect or to cure a default by the Tenant shall be deemed properly to have been made or taken by the Lender if such payment is made or action is taken by a nominee, agent, receiver, receiver or manager or assignee of the rights of the Lender or any transferee of the leasehold interest from the Lender in accordance with the terms of this Agreement.

(c) Nothing in this Agreement shall be construed to obligate the Lender to advance any monies whatsoever pursuant to the Mortgage.

**6.11 Estoppel Certificates**

The Tenant and the Landlord acknowledge and agree to provide to the Lender, at the option and request of the Lender, upon not less than 10 days' prior written notice, a certificate addressed to the Lender certifying whether the Ground Lease is in good standing, unmodified and in full force and effect, or where requested, that the particular terms thereof have been met or satisfied, as the case may be, or if there have been modifications that the same is in good standing, in full force and effect as modified, stating the modifications, the dates to which the rent and other charges, if any, have been paid in advance, the defaults, if any, on the part of the party requesting such statement known to the party from whom such statement is requested and the action taken or proposed to be taken by such last-mentioned party with respect to the same; it being intended that any such statement delivered pursuant to this Section 6.11 may be relied upon by the Lender, any prospective purchaser of the Landlord's freehold estate, the Tenant's leasehold estate, any mortgagee of the freehold, any assignee or sublessee of the Tenant's leasehold estate, including a subtenant, or any mortgagee, as the case may be.

**ARTICLE 7  
MISCELLANEOUS**

**7.1 Notices**

All notices or other communications required or permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered to:

(a) if to the Landlord: City of Vancouver  
453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia V5Y 1V4  
Attention: Director of Legal Services  
Facsimile: (604) 873-7445

(b) if to the Tenant: Community Land Trust Foundation of British  
Columbia  
220-1651 Commercial Drive  
Vancouver, BC  
V5L 3Y3  
Attention: Tiffany Duzita  
Email: TDuzita@cltrust.ca



(c) if to the Lender: Canada Mortgage and Housing Corporation  
700 Montreal Rd.  
Ottawa, ON K1A 0P7  
Attention: Vice President, Multi-Unit Insurance  
Operations  
Email: financinginitiative@cmhc-schl.gc.ca

with copies to:  
Canada Mortgage and Housing Corporation  
700 Montreal Rd.  
Ottawa, ON K1A 0P7  
Attention: VP, Legal Services  
Fax: (613) 748-4098

Goodmans LLP  
Bay Adelaide Centre – West Tower  
333 Bay Street, Suite 3400  
Toronto, Ontario M5H 2S7  
Attention: Jeffrey Shore  
Email: jshore@goodmans.ca

Any communication shall be deemed to have been received on the date of transmission if faxed or sent by electronic mail and on the date of delivery if personally delivered. Any party may change its address in the manner provided for the giving of notices set out above.

**7.2 Gender and Number**

Any reference in this Agreement to gender includes all genders, and words importing the singular number only include the plural and vice versa.

**7.3 Interpretation Not Affected by Headings, etc.**

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. The terms “this Agreement”, “hereof”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement supplemental hereto. Save as expressly provided herein, references herein to Articles and Sections are to Articles and Sections of this Agreement.

**7.4 References to Parties**

Any reference in this Agreement to the Landlord, the Tenant or the Lender shall be construed so as to include its successors and permitted transferees or assigns hereunder in accordance with its respective interests.

**7.5**            **Severability**

In the event that any provision contained in this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the invalidity, illegality or unenforceability of that provision will not affect:

- (a) the validity, legality or enforceability of the remaining provisions hereof or thereof; or
- (b) the validity, legality or enforceability of that provision in any other jurisdiction.

**7.6**            **Time**

Time is of the essence of this Agreement.

**7.7**            **Amendment**

No provision of this Agreement may be changed, modified, amended, restated, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing or in any other manner other than by a written agreement signed by the parties hereto.

**7.8**            **Successors and Assigns**

The benefits under this Agreement accruing to each of the parties hereto shall extend to all their permitted respective successors and assigns, all of whom, according to their interests, shall also be bound by all the provisions and obligations of this Agreement (it being the responsibility of each party to require its successors and assigns to expressly' acknowledge and agree to be bound by this Agreement). Upon the acquisition by any such successor or assign of such an interest, such successor or assign shall be joined, as a party benefiting and bound by this Agreement, by the appropriate further agreement supplementary to this Agreement.

**7.9**            **Further Assurances**

The parties shall promptly execute and deliver all such other and further documents, agreements, certificates and instruments necessary or desirable to implement this Agreement.

**7.10**           **Counterparts**

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement. Delivery by facsimile, electronic mail or other electronic transmission of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.

**7.11 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable in that Province.


**7.12 Submission to Jurisdiction**

The parties hereto agree that any legal suit, action or proceeding arising out of this Agreement may be instituted in the courts of British Columbia, and the parties hereto hereby accept and irrevocably submit to the non-exclusive jurisdiction of said courts and acknowledge their competence and agree to be bound by any judgment thereof.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date hereof.

**CITY OF VANCOUVER**

By:   
Name: \_\_\_\_\_  
Title: **JERRY EVANS, Director  
Real Estate Services**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/we have authority to bind the Landlord.

**COMMUNITY LAND TRUST FOUNDATION OF  
BRITISH COLUMBIA**

By:   
Name: Tiffany Duzita  
Title: Director

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/we have authority to bind the Tenant.

**CANADA MORTGAGE AND HOUSING  
CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

I/we have authority to bind the Lender.

**SCHEDULE A  
GROUND LEASE**

See attached.

1. TO THE CITY OF VANCOUVER  
2. TO THE CITY OF VANCOUVER

LAND TITLE ACT  
FORM C (Section 233) CHARGE  
GENERAL INSTRUMENT - PART 1 Province of British Columbia

Your electronic signature is a representation that you are a subscriber as defined by the Land Title Act, RSBC 1996 c.250, and that you have applied your electronic signature in accordance with Section 168.3, and a true copy, or a copy of that true copy, is in your possession.



1. APPLICATION: (Name, address, phone number of applicant, applicant's solicitor or agent)

L. Michael Walker, Miller Thomson LLP  
400 - 725 Granville Street

604-643-1288  
Client No. 010437 File No.: 0202846.0012  
CLT(3183 Pierview)/ Doc ID:39280949

Vancouver BC V7Y 1G5

Deduct LTSA Fees? Yes

2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:  
[PID] [LEGAL DESCRIPTION]

SEE SCHEDULE

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

Lease

Entire Instrument

4. TERMS: Part 2 of this instrument consists of (select one only)

(a)  Filed Standard Charge Terms D.F. No.

(b)  Express Charge Terms Annexed as Part 2

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument.

5. TRANSFEROR(S):

CITY OF VANCOUVER

6. TRANSFEREE(S): (including postal address(es) and postal code(s))

COMMUNITY LAND TRUST FOUNDATION OF BRITISH COLUMBIA

200-1651 COMMERCIAL DRIVE

Incorporation No

VANCOUVER

BRITISH COLUMBIA

S0063904

V5L 3Y3

CANADA

7. ADDITIONAL OR MODIFIED TERMS:

8. EXECUTION(S): This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)

BRAD WOODS  
453 WEST 12TH AVENUE  
VANCOUVER BC V5Y 1V4  
LAWYER

Execution Date

Y	M	D
19	05	06

Transferor(s) Signature(s)

CITY OF VANCOUVER by its  
authorized signatory:

Name: Jerry Evans  
Director of Real Estate Services

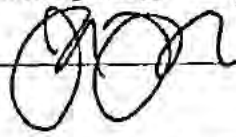
Name:

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

LAND TITLE ACT  
FORM D  
EXECUTIONS CONTINUED

Officer Signature(s)



**JADA M. TELLIER**  
BARRISTER & SOLICITOR  
400 - 725 GRANVILLE STREET  
VANCOUVER, B.C. V7Y 1G5  
(604) 687-2242

Execution Date

Y	M	D
19	05	07

Transferor / Borrower / Party Signature(s)

COMMUNITY LAND TRUST  
FOUNDATION OF BRITISH  
COLUMBIA by its authorized  
signatories:

  
Name: Tiffany Duzita

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

**OFFICER CERTIFICATION:**

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the *Evidence Act*, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the *Land Title Act* as they pertain to the execution of this instrument.

**LAND TITLE ACT  
FORM E**

**SCHEDULE**

---

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**  
[PID] [LEGAL DESCRIPTION]

**030-284-767 LOT 52 BLOCK 10 DISTRICT LOT 330 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP65172**

STC? YES

---

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**  
[PID] [LEGAL DESCRIPTION]

**030-284-775 LOT 53 BLOCK 10 DISTRICT LOT 330 GROUP 1 NEW WESTMINSTER  
DISTRICT PLAN EPP65172**

STC? YES

---

**2. PARCEL IDENTIFIER AND LEGAL DESCRIPTION OF LAND:**  
[PID] [LEGAL DESCRIPTION]

STC? YES



THIS AGREEMENT is made as of the 30<sup>th</sup> day of April, 2019,

**BETWEEN:**

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

(the "Lessor")

**AND:**

**COMMUNITY LAND TRUST FOUNDATION OF BRITISH COLUMBIA**,  
a society incorporated under the laws of British Columbia and  
having an office at 200-1651 Commercial Drive,  
Vancouver, British Columbia, V5L 3Y3

(the "Lessee")

**PREMISES:**

**Civic Address:** 3183 Pierview Crescent and 3245 Pierview Crescent

**Legal Descriptions:** PID: 030-284-767

Lot 52 Block 10 District Lot 330 Group 1 New Westminster  
District Plan EPP65172

PID: 030-284-775

Lot 53 Block 10 District Lot 330 Group 1 New Westminster  
District Plan EPP65172

**TERM:** 99 years, commencing on the Lease Commencement Date

**RENT:** Total prepaid rent in the amount of Ten Dollars (\$10.00) for  
the Term

**OPTION(S) TO RENEW:** None

[01169260v1]

**TABLE OF CONTENTS**

ARTICLE 1 DEFINITIONS AND INTERPRETATION .....	9
ARTICLE 2 PAYMENT OF RENT .....	12
2.1 Basic Rent .....	12
2.2 Net Lease.....	12
2.3 Interest on Amounts in Arrears .....	12
ARTICLE 3 PAYMENT OF TAXES.....	13
3.1 Payment of Realty Taxes if Lands Not Exempt.....	13
3.2 Payment in Lieu of Realty Taxes if Lands Exempt.....	13
3.3 Right to Appeal Assessment .....	13
3.4 Business Tax and License Fees.....	13
3.5 Other Taxes .....	14
3.6 Pro-rating Obligations .....	14
ARTICLE 4 CONSTRUCTION OF BUILDING .....	14
4.1 Intentionally Deleted.....	14
4.2 Lessee to Construct Building .....	14
4.3 Substantial Completion of Building .....	14
4.4 Termination of Lease on Failure to Construct.....	15
4.5 Landscaping.....	15
4.6 Alterations After Substantial Completion.....	16
4.7 Unavoidable Delays .....	16
ARTICLE 5 BUILDERS LIENS .....	16
5.1 Builders Liens.....	16
5.2 Discharge of Builders Liens.....	17
5.3 Notice by Lessor.....	17
ARTICLE 6 RESTRICTIONS ON OPERATIONS AND USE .....	17

{01169260v1}

6.1	Restricted Use .....	17
6.2	No Subdivision .....	18
6.3	Intentionally Deleted.....	18
6.4	Permitted Encumbrances .....	18
6.5	Housing Requirements .....	18
ARTICLE 7 REPAIRS AND MAINTENANCE.....		18
7.1	Lessor Not Obligated to Repair.....	18
7.2	Repairs by the Lessee .....	18
7.3	Removal of Ice and Snow from Sidewalks .....	19
ARTICLE 8 ADDITIONAL RENT.....		20
8.1	All Defaults in Payment as Additional Rent.....	20
ARTICLE 9 INSURANCE.....		20
9.1	Insurance During Construction of Building .....	20
9.2	Commercial General Liability Insurance .....	20
9.3	All Risk Property, Pressure Vessel and Rental Income Insurance.....	21
9.4	Insurance - Additional Provisions .....	21
9.5	Evidence of Insurance .....	22
9.6	Payment of Loss Under Insurance Policies .....	22
9.7	Workers Compensation Coverage.....	22
9.8	Release of Lessor from Liability for Insured Loss or Damage .....	23
ARTICLE 10 DAMAGE OR DESTRUCTION.....		23
10.1	Rent Not to Abate.....	23
10.2	Lessee's Obligation When Building Partially Damaged or Destroyed .....	24
10.3	Lessee's Obligations When Building Completely or Substantially Destroyed .....	24
10.4	Replacement, Repair or Reconstruction .....	24
10.5	Special Provisions Where Lessee has Mortgaged its Interest.....	24

{01169260v1}

10.6	Destruction or Damage During Last Two Years of Term .....	25
ARTICLE 11 INSPECTION AND EXHIBITION BY LESSOR .....		26
11.1	Inspection by Lessor .....	26
11.2	Exhibition by Lessor .....	26
ARTICLE 12 OBSERVANCE OF GOVERNMENTAL REGULATIONS.....		27
12.1	Compliance .....	27
ARTICLE 13 RIGHTS OF LESSOR AND LESSEE .....		27
13.1	As Landlord and Tenant.....	27
ARTICLE 14 EXCLUSION OF LIABILITY AND INDEMNITY .....		27
14.1	Limitation of Liability and Release .....	27
14.2	Exclusion of Liability .....	27
14.3	Indemnification .....	28
14.4	Indemnification Survives Termination of Lease.....	28
ARTICLE 15 SUBLETTING AND ASSIGNING .....		28
15.1	Subletting and Assigning by Lessee .....	28
15.2	Copies of Subleases .....	29
ARTICLE 16 MORTGAGE .....		29
16.1	Mortgaging by Lessee.....	29
16.2	Tripartite Agreement.....	29
ARTICLE 17 BANKRUPTCY OF LESSEE.....		29
17.1	Bankruptcy of Lessee.....	29
ARTICLE 18 DEFAULT BY LESSEE .....		30
18.1	Re-entry on Certain Defaults by Lessee .....	30
18.2	Notice to and Remedies of Mortgagee.....	31
18.3	Remedies of Lessor are Cumulative.....	34
18.4	Waiver by Lessor .....	34

{01169260v1}

	8
ARTICLE 19 ARBITRATION.....	34
19.1 Arbitration .....	34
ARTICLE 20 SURRENDER OF LEASE.....	35
20.1 Surrender of Lease.....	35
ARTICLE 21 QUIET ENJOYMENT, OWNERSHIP OF TENANTS' FIXTURES AND OWNERSHIP OF BUILDING .....	35
21.1 Covenant for Quiet Enjoyment .....	35
21.2 Ownership of Tenant's Fixtures .....	35
21.3 Ownership of Building .....	36
ARTICLE 22 OVERHOLDING .....	36
22.1 Overholding .....	36
ARTICLE 23 ENVIRONMENTAL MATTERS.....	36
23.1 Definitions .....	36
23.2 Lessee's Covenants and Indemnity.....	37
ARTICLE 24 NOTICE .....	38
24.1 Notice.....	38
ARTICLE 25 MISCELLANEOUS .....	39
25.1 Statements by Lessor.....	39
25.2 Time of Essence .....	39
25.3 Formality of Modifications.....	39
25.4 Captions and Headings .....	39
25.5 Enurement .....	39
25.6 Covenants or Conditions .....	39
25.7 References .....	40

{01169260v1}

**WHEREAS:**

- A. The Lessee wishes to provide housing for Eligible Occupants and requires a lease of the Lands for this purpose.
- B. The Lessor is the owner of the Lands and has agreed to lease to the Lessee the Lands for the Term upon the terms, conditions and provisos herein so that the Lessee may construct the Building and otherwise use, occupy and enjoy the Lands.

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

IN CONSIDERATION OF THE GOOD AND VALUABLE CONSIDERATION PAID TO THE LESSOR BY THE LESSEE THE LESSOR HEREBY DEMISES AND LEASES UNTO THE LESSEE AND THE LESSEE DOES HEREBY TAKE AND RENT THE LANDS, TO HAVE AND TO HOLD THE LANDS UNTO THE LESSEE FOR AND DURING THE TERM AS HEREIN PROVIDED.

**ARTICLE 1  
DEFINITIONS AND INTERPRETATION**

- 1.1 Capitalized terms used in this Lease have the meanings specified in this section 1.1, unless otherwise provided in this Lease:
- (a) "Additional Rent" means all sums, costs, expenses and other amounts, if any, payable by the Lessee to the Lessor pursuant to this Lease, including, without limitation, Realty Taxes, payments in lieu of Realty Taxes, Utilities and all sums payable by way of indemnity under this Lease, but excluding Basic Rent;
  - (b) "Alterations" means all alterations, changes, replacements, substitutes, additions and Improvements to the Lands and Building;
  - (c) "Architect" means the architect qualified as such pursuant to the laws of the province of British Columbia who is supervising the design, construction, repair, renovation and/or reconstruction of the Building;
  - (d) "Basic Rent" means the net basic rent as described in the General Instrument, together with any other and additional amounts which are herein expressed to be added to and made part of Basic Rent, other than Additional Rent;
  - (e) "Building Permits" means any building permits issued by the City for the Building, together with all amendments, modifications or replacements thereof, and all plans, drawings and specifications related thereto, which are approved by the City;
  - (f) "Building" means the multiple unit residential building and all other structures to be constructed on the Lands, together with all Alterations or repairs thereto and all improvements from time to time constructed upon or affixed or appurtenant to the Lands;

{01169260v1}

- (g) "City" means the municipality and corporation of the City of Vancouver;
- (h) "Commencement of Construction" means the later of the date when the first Building Permit for the first Building to be constructed is issued to the Lessee by the City and the date when the Lessee's contractor commences any work on the Lands related to construction of the first Building to be constructed;
- (i) "Construction Work" means the construction of the Building in accordance with the Project Design, including:
  - (i) competitively procuring construction services for the Building;
  - (ii) executing and administering all contracts related to construction of the Building;
  - (iii) paying in full all invoices for construction work for the Building;
  - (iv) providing appropriate staff resources for day-to-day construction management; and
  - (v) preserving all records related to construction of the Building for a period of not less than three (3) years after completion of construction;
- (j) "CRU Mortgagee" means a mortgagee or mortgagees under a mortgage of prepaid lease of a CRU Unit, and includes any trustee for bondholders or debenture holders under a deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (k) "CRU Units" means the at-grade commercial retail units in the Building, if any, as contemplated in the applicable Building Permits issued in respect of the Building;
- (l) "Development Permits" means the development permits for the Building, together with all amendments, modifications or replacements thereof, and all plans, drawings and specifications related thereto, which are approved by the City;
- (m) "Eligible Occupant" means a person who meets the income or housing need criteria prescribed in Schedule A hereto;
- (n) "General Instrument" means the Form C under the *Land Title (Transfer Forms) Regulation* under the *Land Titles Act* (British Columbia), and all schedules and addenda to the Form C;
- (o) "Lands" means all of the Lessor's interest in the lands described in the General Instrument, including every incidental right, benefit or privilege attaching to that land or running with it;
- (p) "Lease" means the General Instrument together with these Terms of Instrument;

- (q) "Lease Commencement Date" means the commencement date of the Lease set out in the General Instrument;
- (r) "Losses" means all manner of liabilities, actions, statutory or other proceedings, judgments, investigations, claims, losses, damages, orders, fines, penalties, expenses, professional and other fees and disbursements, and costs;
- (s) "Mortgage" means a registered mortgage or registered mortgages granted by the Lessee in accordance with section 16.1 upon or in respect of the interest of the Lessee in the Lands and the Building or any part thereof and includes any deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (t) "Mortgagee" means a mortgagee or mortgagees under a Mortgage and includes any trustee for bondholders or debenture holders under a deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (u) "Permitted Encumbrances" means the charges and encumbrances, if any, named in the General Instrument as Permitted Encumbrances, the Mortgage and any other charges specifically approved in writing by the Lessor;
- (v) "Personnel" of a party means the elected officials and directors, as applicable, officers, employees, servants and agents of that party;
- (w) "Prime Rate" means the floating annual percentage rate of interest established from time to time by the main branch of the Bank of Montreal located in Vancouver, British Columbia, or its successor, as the base rate that 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";
- (x) "Project Design" means the design of the Building approved by the Lessor;
- (y) "Realty Taxes" means all assessments for taxes, rates, duties (including school taxes, local improvement rates and other charges levied pursuant to the *Hospital District Finance Act* (British Columbia), the *Municipal Finance Authority Act* (British Columbia) or otherwise) and all other charges for services used in or supplied to the Lands and the Building (including penalties and interest) that now are or will or may be levied, rated, charged or assessed against the Lands, the Building, and all other structures, machinery, equipment, facilities and other property of any nature whatsoever located thereon or therein, charged by any municipal, parliamentary, legislative, regional, school or other authority during the Term;
- (z) "Rental Housing" means a dwelling unit which is not occupied by the registered or beneficial owner of the same, but which is made available by such owner to the general public, at arm's length, for use as rental accommodation on a month-to-month or longer basis in accordance with this Lease, reasonably prudent landlord-tenant practices for rental residential accommodation and any and all laws applicable thereto;



- (aa) "Term" means nine-nine (99) years commencing on the Lease Commencement Date;
  - (bb) "Trustee" means a trust company duly authorized to carry on business in the province of British Columbia and appointed by the Lessor for the purposes of Article 9 of this Lease; and
  - (cc) "Utilities" means all charges, rates and levies on account of utilities, including for heat, electricity, gas, telephone, television, internet and other costs and expenses of a similar nature, and, if not included in Realty Taxes, for water and garbage collection.
- 1.2 Any reference in this Lease to legislation will be deemed to include all regulations thereto, all amendments and re-enactments thereof and all successor legislation.

## ARTICLE 2 PAYMENT OF RENT

### 2.1 Basic Rent

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

### 2.2 Net Lease

All Basic Rent and Additional Rent required to be paid by the Lessee hereunder will be paid at such location as the Lessor may stipulate from time to time without any deduction, abatement or set-off whatsoever, it being the intention of this Lease that:

- (a) all expenses, costs, payments and outgoings incurred in respect of the Lands, the Building and any other improvements on the Lands or for any other matter or thing affecting the Lands, will, unless otherwise expressly stipulated herein to the contrary, be borne by the Lessee; and
- (b) the Basic Rent and Additional Rent payable under this Lease will be absolutely net to the Lessor and free of all abatements, set-off or deduction of any costs, payments and outgoing of every nature arising from or related to the Lands, the Building, or any other improvements on the Lands, and the Lessee will pay or cause to be paid all such costs, payments and outgoings.

### 2.3 Interest on Amounts in Arrears

When the Basic Rent, Additional Rent or any other amount payable hereunder by the Lessee to the Lessor is in arrears, such amount will bear interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly not in advance, from the date due until paid. Notwithstanding the foregoing, this section will not apply to defaults under sections 3.1 and 3.2.

#### 2.4 Reimbursement of Development Costs

Within 30 days of the Lease Commencement Date , the Lessee shall pay to the Lessor an amount equal to all costs and expenses incurred by the Lessee or its affiliate, Vancouver Affordable Housing Agency Ltd. ("VAHA"), in connection with the engagement of contractors and consultants in connection with the design of the Building, including the costs of all permits and approvals required for the construction of the Building, whether incurred directly by the Lessor or VAHA or paid as disbursements to contractors or consultants.

### ARTICLE 3 PAYMENT OF TAXES

#### 3.1 Payment of Realty Taxes if Lands Not Exempt

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

#### 3.2 Payment in Lieu of Realty Taxes if Lands Exempt

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

#### 3.3 Right to Appeal Assessment

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

#### 3.4 Business Tax and License Fees

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

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### 3.5 Other Taxes

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

### 3.6 Pro-rating Obligations

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

## ARTICLE 4 CONSTRUCTION OF BUILDING

### 4.1 Intentionally Deleted

### 4.2 Lessee to Construct Building

Subject to section 4.1, the Lessee will perform the Construction Work, together with other facilities ancillary thereto and connected therewith, on the Lands in substantial accordance with the drawings, specifications (including materials to be used), elevations, location on the Lands and exterior decoration and design and all other documents and information upon which the issuance of the Building Permits by the City are based and that have been approved by the Lessor, and are in compliance with the requirements of the applicable Development Permit. No changes will be made to such drawings, specifications, elevations, location, exterior decoration and design, other documents or information, or to the requirements of such Building Permit or Development Permit, without the approval of the Lessor.

### 4.3 Substantial Completion of Building

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

- (a) all work of a structural nature has been properly completed;
- (b) all building equipment and services, including elevators (if any), heating systems and air-conditioning systems (if any), and utilities have been completed, are operating properly and are available for use by tenants of the Lessee, and all lobbies, stairwells and other areas intended for the common use of tenants of the Lessee are completed except for work of a superficial nature, which is both minor in character and of a type that, owing to the likelihood of damage, may reasonably be deferred until the Building is partially or substantially occupied by tenants of the Lessee;

- (c) all building bylaws and regulations of the City have been complied with by the Lessee;
- (d) all rentable space is completed for occupancy except for work of a superficial nature that is dependent upon unascertained requirements of individual tenants of the Lessee, and work that is reasonably and customarily performed by tenants of the Lessee;
- (e) all areas are clean and all surplus building material and rubbish have been removed;
- (f) the Building is in a condition in which it can be occupied by tenants of the Lessee, and any work that is still unfinished can be completed promptly and is work the Incompletion of which will not be objectionable to a tenant of the Lessee acting reasonably;
- (g) the Building has been constructed in all respects in a good and workmanlike manner and in accordance with the drawings and specifications, location on the Lands and the exterior decoration and design approved in writing by the Lessor, and in compliance with the Development Permit and all Building Permits issued by the City; and
- (h) a certificate of completion has been issued in respect of the Building pursuant to the *Bullders Lien Act* (British Columbia).

#### 4.4 Termination of Lease on Failure to Construct

Subject to sections 4.7 and 18.2 and Article 23, the Lessee agrees with the Lessor that if Commencement of Construction for the first Building to be constructed has not taken place within one hundred and eighty (180) days of the Lease Commencement Date, or if construction of the last Building to be constructed is not substantially completed in accordance with the requirements of section 4.2 by the third anniversary of the Lease Commencement Date, the Lessor will have the option at any time thereafter to terminate this Lease, and in such event this Lease will terminate and be of no further force or effect and without any reimbursement or compensation to the Lessee, unless the Lessor consents in writing to extend the deadline for Commencement of Construction or substantial completion of construction, as the case may be, such consent not to be unreasonably withheld.

#### 4.5 Landscaping

Within one hundred and eighty (180) days of substantial completion of the Building, the Lessee will landscape the Lands in substantial accordance with the drawings, specifications (including materials to be used), elevations, location on the Lands and exterior decoration and design and all other documents and information upon which the issuance of the Building Permits by the City are based, and thereafter the Lessee will keep and maintain the landscaping of the Lands to a standard acceptable to a skilled gardener selected by the Lessor.

#### 4.6 Alterations After Substantial Completion

After substantial completion of each Building, the Lessee will not make or permit to be made any Alterations affecting the structure of the Building or the exterior appearance of the Building without the written approval of the Lessor, which approval the Lessor will not unreasonably withhold. No Alterations involving an estimated cost of more than Two Hundred Thousand Dollars (\$200,000.00) (in 2017 dollars) will be undertaken until the Lessee has submitted or caused to be submitted to the Lessor such drawings, specifications (including the materials to be used), elevations (where applicable), locations (where applicable), exterior decoration and design and such other documentation and information as the Lessor may request in connection with the proposed Alterations, and until all of the same have been approved in writing by the Lessor, which approval the Lessor will not unreasonably withhold. The Lessee covenants and agrees with the Lessor that, subject to section 4.7, all Alterations undertaken by or for the Lessee once begun will be prosecuted with due diligence to completion.

#### 4.7 Unavoidable Delays

- (a) Subject to the exceptions set out in Section 4.7(c), time periods for the performance under this Lease will be extended for periods of time during which the performance is delayed or prevented due to an Unavoidable Delay.
- (b) An "Unavoidable Delay" means any circumstances beyond the parties' reasonable control such as failure to obtain any required regulatory approval or other governmental action impeding the Project, acts of God, strikes/lockouts, war, or other strife. However, despite the preceding sentence, an "Unavoidable Delay" does not include any lockouts, strikes or other disputes between the Lessor or the Lessee and their respective employees.
- (c) This Section 4.7 does not apply to the performance of any obligations of the Lessee to pay money in connection with this Lease.
- (d) Whenever the Lessee is aware of an event or any circumstance which constitutes or could constitute an Unavoidable Delay, it will promptly provide the Lessor with a written notice of:
  - (i) the particulars of the cause of any anticipated Unavoidable Delay,
  - (ii) the anticipated length of the Unavoidable Delay and
  - (iii) steps that the Lessee intends to take to mitigate or overcome any delays caused by the actual or expected Unavoidable Delay.

### ARTICLE 5 BUILDERS LIENS

#### 5.1 Builders Liens

In connection with all labour performed on or materials supplied to the Lands, including but not limited to the construction of the Building, the Lessee will comply

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with, and will cause any contractor hired by it to comply with, the provisions of the *Builders Lien Act* (British Columbia), and with all other statutes applicable in connection therewith and in force from time to time, including any provision or statute requiring or permitting the retention of portions of any sums payable by way of holdbacks.

## 5.2 Discharge of Builders Liens

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

## 5.3 Notice by Lessor

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

## ARTICLE 6 RESTRICTIONS ON OPERATIONS AND USE

### 6.1 Restricted Use

Unless otherwise agreed to in writing by the Lessor, the Lessee covenants and agrees with the Lessor that neither the Lands nor Building nor any part of the Lands or Building will be used for any purpose except:

- (a) the provision of Rental Housing in accordance with the requirements set out in Schedule A hereto and the Operating Agreement; and
- (b) in the case of the CRU Units, subletting to commercial or retail tenants for market rent;

subject always to the laws, bylaws, regulations and permits governing the use of the Lands and Building from time to time. Except as provided immediately above, neither the Lands nor Building nor any part of the Lands or Building will be used for business, trade or manufacture without the written approval of the Lessor, which approval the Lessor may arbitrarily withhold.

## 6.2 No Subdivision

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

## 6.3 Intentionally Deleted

## 6.4 Permitted Encumbrances

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

## 6.5 Housing Requirements

The Lessee shall comply with the requirements set out in Schedule A hereto.

## ARTICLE 7 REPAIRS AND MAINTENANCE

### 7.1 Lessor Not Obligated to Repair

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

### 7.2 Repairs by the Lessee

Reasonable wear and tear is not excepted and the Lessee will periodically replace or repair any part of the Lands and Building which become subject to reasonable wear and tear with the express intent that the Lands and Building will be substantially in the same condition as at the Lease Commencement Date:

- (a) the Lessee at the Lessee's cost and expense will, during the Term, put and keep in good order and condition, or cause to be put and kept in good order and condition, the Lands and Building (and any equipment located thereon and therein), both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, stairways, elevators (if any) and similar devices, heating and air conditioning equipment, sidewalks, yards and other like areas, water and sewer mains and connections, water, steam, gas and electric pipes

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and conduits, and all other fixtures and appurtenances to the Lands and the Building and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs and, subject to section 4.6, Alterations, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Building and any and all fixtures and equipment therein fully usable for the purposes for which the Building was constructed. Such repairs and Alterations will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Building, and will in each case be performed only in accordance with all applicable terms and conditions of the Permitted Encumbrances;

- (b) the Lessee will not commit or suffer waste or injury to the Lands or the Building or any part thereof;
- (c) the Lessee will not injure or disfigure the Lands or the Building or permit them to be injured or disfigured in any way, and at the expiration or earlier termination of this Lease, the Lessee will, except as otherwise expressly provided herein, surrender and deliver up the Lands with the Building, and the fixtures, appurtenances and equipment thereon and therein, or any replacements or substitution therefor, in good order and condition; and
- (d) If the Lessee does not fulfil its obligations set out in this Article 7, the Lessor, through their agents, employees, contractors and subcontractors, may, but will not be obliged to, enter (without hindrance by the Lessee) upon the Lands and the Building as required for the purpose of making any repairs necessary to put the Lands and the Building in good order and condition, provided that the Lessor will make such repairs only after giving the Lessee not less than thirty (30) days written notice of its intention to do so, except in the case of an emergency when no notice will be required. Any costs and expenses (including overhead costs) incurred by the Lessor in making such repairs to the Lands and Building will be reimbursed to the Lessor, by the Lessee on demand, together with interest at the Prime Rate plus three percent (3%) per annum, calculated and compounded monthly, from the date incurred until the date paid.

### 7.3 Removal of Ice and Snow from Sidewalks

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

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**ARTICLE 8  
ADDITIONAL RENT**

**8.1 All Defaults in Payment as Additional Rent**

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

**ARTICLE 9  
INSURANCE**

**9.1 Insurance During Construction of Building**

Prior to the Commencement of Construction of the Building, and throughout the entire period of construction until substantial completion of the applicable Building pursuant to section 4.3, the Lessee will effect or will cause its contractor or contractors to effect and maintain in full force the following insurance coverage for the Building:

- (a) wrap-up liability insurance with limits of not less than Five Million Dollars (\$5,000,000), or such other amount as the Lessor may require from time to time, per occurrence, issued in the joint names of the Lessee, the Lessor, the Lessee's contractors, any subcontractors and their respective Personnel, protecting them against claims for bodily injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands from any cause, including the risks occasioned by the construction of the Building; and
- (b) all-risk course of construction insurance issued in the joint names of the Lessee, the Lessor, protecting them from all loss or damage of or to the Building and all fixtures, equipment, improvements and building materials on the Lands from time to time, both during and after construction (but which may be by different policies effected from time to time covering the risk during different phases of construction of the Building, provided that at no time will the Building be uninsured) against fire, earthquake, flood and all other perils from time to time customarily included in the usual all-risks builders' risk form of policy applicable to similar properties during construction and effected in the province of British Columbia by prudent owners, and such other perils as the Lessor may reasonably require to be insured against, to the full replacement value thereof at all times.

**9.2 Commercial General Liability Insurance**

At all times during the Term, the Lessee will effect and keep in force commercial general liability insurance with limits of not less than Five Million Dollars (\$5,000,000),

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or such other amount as the Lessor may require from time to time, per occurrence, against public liability claims for bodily injury, death and property damage (including loss of use) arising from the Lessee's use and occupancy of the Building and from any occurrence or accident on the Lands or Building. Such insurance will be written on an occurrence basis and will provide for blanket contractual liability, including liability assumed by the Lessee under this Lease. The policy will also contain a cross liability or severability of interests clause and will name the Lessor and Lessor's Personnel as additional insureds with respect to third party claims arising out of the Lessee's operations pursuant to this Lease.

### 9.3 All Risk Property, Pressure Vessel and Rental Income Insurance

Immediately following substantial completion of each Building and at all times thereafter during the Term, the Lessee will effect and maintain property insurance in the joint names of the Lessor and the Mortgagee (if any) as their interests may appear, to the full replacement value of the applicable Building and fixtures on the applicable Lands, protecting them against "All Perils" of loss or damage including flood, sewer backup and earthquake, and will include:

- (a) rental income insurance in an amount equal to the maximum annual rental income of the Building pursuant to the terms and conditions set out herein; and
- (b) boilers and pressure vessels, protecting against usual and unusual perils, including damage caused by rupture of steam pipes.

The policies described in this section 9.3 will contain a clause directing insurers to make losses payable to the Lessee, the Lessor, and the Mortgagee as their interests may appear.

### 9.4 Insurance - Additional Provisions

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

- (a) the policies will be primary and non-contributing with respect to any policy or self-insured fund otherwise held or established on behalf of the Lessor;
- (b) the stated amount of value insured under property policies will be of sufficient amount that neither the Lessee nor the Lessor will become co-insurers with respect to any loss claimed against the insurance;
- (c) each policy will be written on a form acceptable to the Lessor and with insurers licensed to do business in the province of British Columbia and acceptable to the Lessor;
- (d) any deductible amounts applying to a claim against a policy will be of an amount approved by the Lessor;
- (e) each policy will contain a clause requiring that the insurers provide to the Lessor a minimum of sixty (60) days prior written notice of any cancellation

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(except for cancellation resulting from non-payment of premiums, in which case applicable statutory provisions will apply); and

- (f) all premiums and deductibles required under said policies will be paid by the Lessee to the insurers and proof of such payment will be submitted to the Lessor.

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

#### 9.5 Evidence of Insurance

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

#### 9.6 Payment of Loss Under Insurance Policies

The insurance monies payable under any or all of the policies of insurance referred to in this Article 9, will, notwithstanding the terms of the policy or policies, be paid to the Trustee on behalf of the Lessee, the Lessor, and the Mortgagee. The Lessee and Lessor agree that the Trustee will, subject to section 10.5, pay for all restoration, reconstruction or replacement of the loss or damage in respect of which such insurance monies were paid to the Trustee out of such insurance monies in accordance with certificates of the Architect or such other person as the Lessee and Lessor may agree upon and who is in charge of such restoration, reconstruction or replacement, after receiving such other certificates, evidence or opinions as the Trustee will require for the purpose of being satisfied that such restoration, reconstruction or replacement is being properly carried out. If the Lessee fails to restore, reconstruct or replace the loss or damage in respect of which the insurance monies were paid to the Trustee within a reasonable time, the Lessor will be entitled to effect such restoration, reconstruction or replacement and the Trustee will pay such insurance monies to the Lessor in the same manner that the Trustee would have done had the Lessee effected such restoration, reconstruction or replacement.

#### 9.7 Workers Compensation Coverage

At all times during the Term, the Lessee will, and will cause its Personnel and all others engaged in or upon any work on the Building or the Lands to, comply with the *Workers Compensation Act* (British Columbia) (the "WCA") and the requirements and

regulations of WorkSafeBC in respect of the Building and the Lands. Without limiting the generality of the foregoing, the Lessee will:

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

#### 9.8 Release of Lessor from Liability for Insured Loss or Damage

The Lessee hereby releases the Lessor and Lessor's Personnel, whether or not the Lessor or its Personnel have been negligent, from any and all liability for loss or damage caused by any of the perils against which the Lessee will have insured or is obligated to insure pursuant to the terms of this Lease or any applicable law.

### ARTICLE 10 DAMAGE OR DESTRUCTION

#### 10.1 Rent Not to Abate

Subject to the provisions of sections 10.5 and 10.6, the partial destruction or damage or complete destruction by fire or other casualty of the Building will not result in the termination of this Lease or entitle the Lessee to surrender possession of the Lands or the Building or to demand any abatement or reduction of the Basic Rent or Additional

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Rent or other charges payable under this Lease, any law or statute now or in the future to the contrary notwithstanding.

#### 10.2 Lessee's Obligation When Building Partially Damaged or Destroyed

Subject to the provisions of sections 10.5 and 10.6, the Lessee covenants and agrees with the Lessor that in the event of partial damage to or partial destruction of the Building, the Lessee will either:

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

#### 10.3 Lessee's Obligations When Building Completely or Substantially Destroyed

Subject to the provisions of sections 10.5 and 10.6, the Lessee covenants and agrees with the Lessor that in the event of complete or substantially complete destruction of the Building, the Lessee will either:

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

#### 10.4 Replacement, Repair or Reconstruction

Any replacement, repair or reconstruction of a Building or any part thereof pursuant to the provisions of section 10.2 or 10.3 will be made or done in compliance with section 4.6 and Article 7.

#### 10.5 Special Provisions Where Lessee has Mortgaged its Interest

- (a) If, during the Term, the Building is damaged or destroyed to the extent of at least twenty-five percent (25%) of the full replacement cost of the Building, and at the time of such damage or destruction the Lessee has mortgaged its interest in the Building, and such Mortgagee notifies the parties that the insurance monies made available by reason of the casualty causing such damage or destruction will not be applied in repairing, reconstructing or replacing the Building, and the right to so elect is reserved to the Mortgagee under the terms of the Mortgage, then the Lessee may decline to repair, reconstruct or replace the Building and instead elect to terminate this Lease, provided that the Lessee makes such election within sixty (60) days after the date on which the Building was so damaged or destroyed and notifies the Lessor of its election forthwith after making it. If the Lessee does not elect to so

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terminate this Lease, then the Lessee will repair, reconstruct or replace the Building or any part thereof damaged or destroyed in accordance with section 10.2 or section 10.3, as the case may be, and section 10.4;

- (b) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Lessee pursuant to section 10.5(a), the Lessee will demolish and completely remove the damaged or destroyed Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 9, be distributed as follows:
  - (i) firstly, to reimburse the Lessee for all costs and expenses necessarily incurred by the Lessee in the demolition and removal of the Building and all foundations and debris from the Lands and the restoration of the Lands as aforesaid;
  - (ii) secondly, to pay and satisfy the Mortgage, if any; and
  - (iii) thirdly, to pay the balance of the insurance monies, if any, to the Lessor.
- (c) Notwithstanding anything contained herein, in the event the Lessee terminates this Lease in accordance with this section 10.5, this section will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this section 10.5 or any part thereof remains unperformed; and
- (d) The provisions of this section 10.5 are subject always to the provisions of section 10.6.

#### 10.6 Destruction or Damage During Last Two Years of Term

- (a) In the event of the complete or substantially complete destruction of a Building during the last two (2) years of the Term, the Lessee may, at its option, either reconstruct or replace the Building so destroyed or damaged in accordance with section 10.3 or decline to do so, and instead elect to terminate this Lease, provided that the Lessee makes such election within sixty (60) days after the date on which the Building was so destroyed and notifies the Lessor of its election forthwith after making it;
- (b) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Lease by the Lessee pursuant to section 10.6(a), the Lessee will demolish and completely remove the Building and all foundations and debris from the Lands and restore the Lands to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 9, be distributed as follows:

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- (i) firstly, to reimburse the Lessee for all costs and expenses necessarily incurred by the Lessee in the demolition and removal of the Building and all foundations and debris from the Lands and the restoration of the Lands as aforesaid;
- (ii) secondly, to pay and satisfy the Mortgage, if any;
- (iii) thirdly, to pay the balance of the insurance monies, if any, as follows:
  - A. to the Lessor the amount calculated as follows:  

$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days in expired portion of the Term} \div \text{total days in Term}); \text{ and}$$
  - B. to the Lessee the amount calculated as follows:  

$$\text{amount payable} = (\text{balance of insurance monies}) \times (\text{days remaining in the Term} \div \text{total days in Term}).$$
- (c) Notwithstanding anything contained herein, in the event the Lessee terminates this Lease in accordance with this section 10.6, this section 10.6 will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this section 10.6 or any part thereof remains unperformed.

**ARTICLE 11  
INSPECTION AND EXHIBITION BY LESSOR**

**11.1 Inspection by Lessor**

The Lessor and the Lessee agree that it will be lawful for representatives of the Lessor to enter the Lands and the Building at all reasonable times during the Term and to examine the condition thereof. If the Lessor determines that any of the repairs described in section 7.2 are required, notice of such required repairs will be given by the Lessor to the Lessee, and the Lessee will within thirty (30) days after every such notice, or such longer period as provided in section 18.1(c), repair and make good accordingly.

**11.2 Exhibition by Lessor**

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

**ARTICLE 12  
OBSERVANCE OF GOVERNMENTAL REGULATIONS**

**12.1 Compliance**

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

**ARTICLE 13  
RIGHTS OF LESSOR AND LESSEE**

**13.1 As Landlord and Tenant**

All rights and benefits and all obligations of the Lessor and the Lessee under this Lease will be rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as landlord and tenant respectively under this Lease.

**ARTICLE 14  
EXCLUSION OF LIABILITY AND INDEMNITY**

**14.1 Limitation of Liability and Release**

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

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

whether such Losses arise from an exercise of the Lessor's rights or privileges herein or otherwise, unless directly resulting from the respective negligence of the Lessor or its Personnel or contractors, as the case may be.

**14.2 Exclusion of Liability**

Notwithstanding section 14.1, neither the Lessor nor its Personnel or contractors will be liable for:

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

#### 14.3 Indemnification

The Lessee hereby agrees to indemnify and save harmless the Lessor and its Personnel and contractors from and against all Losses which the Lessor or its Personnel or contractors may suffer or incur arising out of, or in any way connected with, or that would not or could not be made or incurred but for this Lease; provided, however, that such indemnity will not apply to the extent, if any, to which such Losses directly result from the respective negligence of the Lessor or its Personnel or contractors, as the case may be. Without derogating from the generality of the foregoing, the Lessee agrees to indemnify and save harmless the Lessor and its Personnel and contractors in respect of all Losses:

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

#### 14.4 Indemnification Survives Termination of Lease

The obligations of the Lessee to indemnify the Lessor and its Personnel and contractors will apply and continue notwithstanding the termination or expiration of this Lease, breach of this Lease by the Lessor, or negligence on the part of the Lessor or its Personnel or contractors, anything in this Lease to the contrary notwithstanding.

### ARTICLE 15 SUBLETTING AND ASSIGNING

#### 15.1 Subletting and Assigning by Lessee

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

- (a) Eligible Occupants; or

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(b) commercial or retail tenants of the CRU Units.

Notwithstanding the foregoing, the Lessee may, with the written consent of the Lessor, acting reasonably, enter into agreements with one or more sub-operators in respect of some or all of the units in the Building. A sub-operator may, pursuant to such agreement, discharge duties of the Lessee hereunder, and may enter into occupancy agreements with Eligible Occupants in its own name. No agreement with any sub-operator will relieve the Lessee of any of its obligations to the Lessor hereunder.

#### 15.2 Copies of Subleases

If required by the Lessor, a copy of any or all subleases or agreements with sub-operators will be forwarded to the Lessor within thirty (30) days after the conclusion of each transaction, together with particulars of registration (if any) in the Land Title Office.

### ARTICLE 16 MORTGAGE

#### 16.1 Mortgaging by Lessee

The Lessee may mortgage its leasehold interest in the Lands and Building only with the prior written consent of the Lessor and subject to the mortgage requirements set out in Schedule A hereto. Notwithstanding any such Mortgage, the Lessee will be and remain liable for the payment of all Basic Rent and Additional Rent, and the performance of all of its obligations set out in this Lease.

#### 16.2 Tripartite Agreement

At the request of a Mortgagee or CRU Mortgagee, the Lessor will execute and deliver to the Mortgagee (or CRU Mortgagee) an agreement among the Lessee, the Lessor and the Mortgagee (or CRU Mortgagee), or between the Lessor and the Mortgagee (or CRU Mortgagee), which will be binding and enforceable against the Lessee (if a party thereto), the Lessor and the Mortgagee (or CRU Mortgagee) and their successors and assigns, whereby the Lessor will agree with the Mortgagee (or CRU Mortgagee) to afford to the Mortgagee (or CRU Mortgagee) the rights and remedies afforded to Mortgagees under this Lease.

### ARTICLE 17 BANKRUPTCY OF LESSEE

#### 17.1 Bankruptcy of Lessee

Subject to the provisions of section 18.2(c), if the Term is at any time seized or taken in execution by any creditor of the Lessee, or if the Lessee makes a general assignment for the benefit of creditors, or institutes proceedings to subject itself to the *Winding-up and Restructuring Act* (Canada) or to be adjudicated a bankrupt or insolvent, or consents to the institution of bankruptcy or insolvency proceedings against it, or files an application or petition or answer or consent seeking reorganization or readjustment of the Lessee under the *Bankruptcy and Insolvency Act*

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(Canada) or the *Companies' Creditors Arrangement Act* (Canada) or any law of Canada or any province thereof relating to bankruptcy or insolvency, or consents to the filing of any such application or petition, or consents to the appointment of a receiver, or if the Lessee or its directors pass any resolution authorizing the dissolution or winding-up of the Lessee, or if a receiver, interim receiver, trustee or liquidator of all or any part of the property of the Lessee is appointed or applied for by the Lessee, or if a judgment, decree or order is entered by a court of competent jurisdiction adjudging the Lessee a bankrupt or insolvent or subject to the provisions of the *Winding-up and Restructuring Act* or *Bankruptcy and Insolvency Act* or determining the proceedings for reorganization, arrangement, adjustment, composition, liquidation, dissolution or winding-up or any similar relief under the *Bankruptcy and Insolvency Act* or the *Companies' Creditors Arrangement Act* or any law of Canada or any province thereof relating to bankruptcy or insolvency has been properly instituted, then, subject to Section 23.4, this Lease will, at the option of the Lessor, immediately become terminated.

ARTICLE 18  
DEFAULT BY LESSEE

18.1 Re-entry on Certain Defaults by Lessee

The Lessee and the Lessor agree that, subject to the provisions of sections 18.2 and 23.4, if and whenever:

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

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- (e) this Lease expires or is forfeited or terminated pursuant to any other provision contained herein, including, without restricting the generality of the foregoing, the termination of this Lease pursuant to the provisions of sections 4.4 or 10.5,

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

## 18.2 Notice to and Remedies of Mortgagee

The following provisions will apply with respect to any Mortgagee:

- (a) no re-entry, termination or forfeiture of this Lease by the Lessor will be valid against the Mortgagee who has filed with the Lessor a notice of Mortgage and specified an address for notice in accordance with Article 26, unless the Lessor has first given to the Mortgagee written notice of the default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease, specifying the nature of that default or contingency, and stating the Lessor's intention to take such proceedings and requiring the Mortgagee:
- (i) to cure the default or contingency specified in the notice within a period of sixty (60) days from the date of receipt of that notice by the Mortgagee; or
  - (ii) if the default or contingency is other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease, and if the default or contingency cannot reasonably be cured within such sixty (60) day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency,

and the Lessor hereby grants the Mortgagee access to the Lands and the Building for that purpose. If the default or contingency is cured within the period specified, or in the circumstances referred to in 18.2(a)(ii), if cured within a reasonable period, the Mortgagee will be entitled to continue as tenant for the balance of the Term remaining at the date of the notice of default or contingency providing that the Mortgagee attorns as tenant to the Lessor and undertakes to be bound by and to perform and observe all of the Lessee's obligations, covenants and agreements under this Lease until such Mortgagee as tenant assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to be bound by and to perform

and observe all of the Lessee's obligations, covenants and agreements under this Lease. If the Mortgagee consists of more than one mortgagee, each having a separate charge upon the Lessee's interest in this Lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Lessor hereby agrees to permit curing of the default or contingency specified as aforesaid by that Mortgagee that is willing to cure the default or contingency and attorn as tenant as aforesaid and whose charge ranks in priority over the charge or charges held by the other Mortgagee or Mortgagees willing to cure and attorn as aforesaid, except that in the event that any Mortgagee has commenced a foreclosure action, the provisions of section 18.2(b) will apply;

- (b) In the event the Mortgagee commences foreclosure proceedings against the Lessee, whether or not the Lessee is in default of the performance of its covenants and agreements with the Lessor under this Lease at the time such foreclosure proceedings are commenced, the Lessor will not re-enter, terminate or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease if the Mortgagee:
- (i) has given to the Lessor notice of the foreclosure proceedings;
  - (ii) is actively prosecuting the foreclosure proceedings;
  - (iii) except for the bankruptcy or insolvency of the Lessee, which will be governed by section 18.2(c), cures the default or contingency within a period of sixty (60) days from the date of receipt of notice from the Lessor specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or contingency cannot reasonably be cured within such sixty (60) day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency; and
  - (iv) performs and observes all of the Lessee's covenants and agreements under this Lease, except for any obligation to cure the bankruptcy or insolvency of the Lessee, and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee;

provided, however, that the curing of the default or contingency may be delayed until the date that the Mortgagee acquires the Lessee's interest in this Lease. In the event that the Mortgagee acquires the Lessee's interest in the Lands and Building pursuant to the foreclosure proceedings, the Mortgagee will thereupon become subrogated to the rights of the Lessee under this Lease, provided it attorns to the Lessor as tenant and undertakes to be bound by and perform the covenants and agreements of this Lease until such Mortgagee as Lessee assigns its leasehold estate as permitted by this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as

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of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to be bound by and to perform the covenants and agreements of this Lease. If the Mortgagee consists of more than one mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default or contingency granted by this section 18.2(b) to a foreclosing Mortgagee will be deemed granted to them in the order of priority of the charges held by the foreclosing mortgagees;

- (c) If this Lease is subject to termination or forfeiture pursuant to Article 17 by reason of the bankruptcy or insolvency of the Lessee and the Mortgagee has filed with the Lessor a notice of Mortgage in favour of the Mortgagee and specified an address for notice in accordance with Article 26, the Lessor will give to the Mortgagee notice of the bankruptcy or insolvency of the Lessee entitling the Lessor to terminate or forfeit this Lease and stating the Lessor's intention to take such proceedings and requiring the Mortgagee to cure the Lessee default under this Lease (except for the bankruptcy or insolvency of the Lessee), and the Lessee's default will be deemed to have been sufficiently cured if the Mortgagee will:
- (i) take possession and control of the Lands and Building, or cause a receiver to be appointed under the terms of the Mortgagee's charge or by a court of competent jurisdiction, which receiver will take possession and control of the Lands and Building, and the Lessor hereby grants the Mortgagee or such receiver access to the Lands and Building for that purpose;
  - (ii) cure every default under this Lease (except for the bankruptcy or insolvency of the Lessee) within a period of sixty (60) days from the date of receipt by the Mortgagee of the notice from the Lessor of the bankruptcy or insolvency of the Lessee, or if such default or defaults are other than the failure to pay Basic Rent or Additional Rent or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or defaults cannot reasonably be cured within such sixty (60) day period, immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure such default or defaults; provided, however, that the curing of the default or contingency may be delayed until the Mortgagee acquires the Lessee's interest in this Lease; and
  - (iii) subject to the right of a Mortgagee to delay the curing of the default or contingency as set out in section 18.2(c)(ii), attorn as tenant to the Lessor and undertake to observe, be bound by and perform the obligations, covenants and agreements of the Lessee under this Lease until such Mortgagee, as tenant, assigns its leasehold estate as permitted under this Lease and delivers to the Lessor an agreement from the assignee which is enforceable and binding on the assignee and its heirs, executors, successors, administrators and assigns as of the date of the assignment and by which the assignee agrees with the Lessor to attorn as tenant to the Lessor and to observe, be bound by and

perform the obligations, covenants and agreements of the Lessee under this Lease.

If the Mortgagee consists of more than one mortgagee, the right to take possession and control, to cure any default and to assume the Lease as aforesaid will be deemed granted to them in the order of the priority of their respective charges;

- (d) any re-entry, termination or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Lessee will be valid and effectual against the Lessee even though made subject to the rights of any Mortgagee to cure any default of the Lessee and to continue as tenant under this Lease; and
- (e) no entry upon the Lands or into the Building by the Mortgagee for the purpose of curing any default of the Lessee will release or impair the continuing obligations of the Lessee.

### 18.3 Remedies of Lessor are Cumulative

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

### 18.4 Waiver by Lessor

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

## ARTICLE 19 ARBITRATION

### 19.1 Arbitration

If a disagreement arises pursuant to Sections 4.4 or 4.7, the same will be settled by arbitration. The arbitration will be conducted in accordance with the following procedures:

- (a) the arbitration will be commenced and finally resolved by arbitration under the rules of the British Columbia International Commercial Arbitration Centre ("BC ICAC") for domestic commercial arbitration;

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- (b) the arbitrator will be as agreed upon by the parties or, failing agreement, the appointing authority will be BC ICAC;
- (c) the arbitration will be conducted in the City of Vancouver;
- (d) the cost of the arbitration will be as determined by the arbitrator; and
- (e) the decision of the arbitrator will be final and binding on all parties.

The *Commercial Arbitration Act* (British Columbia) will apply with respect to the arbitration. If a Mortgagee holds a Mortgage of the Lessee's leasehold interest in the Lands and Building, any notice of a dispute given under this section by one of the parties to the others will be given at the same time to such Mortgagee, if it has specified an address for notice, and such Mortgagee so notified will be given a reasonable opportunity by the parties to participate in the arbitration proceedings if it considers such proceedings may affect the Mortgage security.

#### ARTICLE 20 SURRENDER OF LEASE

##### 20.1 Surrender of Lease

At the termination or expiration of the Term, whether by forfeiture, default or lapse of time, the Lessee will surrender the Lands and Building to the Lessor in the condition in which they were required to be kept by the Lessee pursuant to the provisions of this Lease, including, without restricting the generality of the foregoing, the provisions of sections 10.5(b) and 10.6(b), except as herein otherwise expressly provided.

#### ARTICLE 21 QUIET ENJOYMENT, OWNERSHIP OF TENANTS' FIXTURES AND OWNERSHIP OF BUILDING

##### 21.1 Covenant for Quiet Enjoyment

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

##### 21.2 Ownership of Tenant's Fixtures

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

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### 21.3 Ownership of Building

The Building will become the absolute property of the Lessor, free and clear of all liens, charges, encumbrances, equities or claims of any kind or nature whatsoever, save and except for the Permitted Encumbrances, upon the expiration or earlier termination of the Term or any permitted period of overholding, except as provided in Article 10, but will be deemed, as between the Lessor and the Lessee during the Term, to be the separate property of the Lessee and not of the Lessor but subject to and governed by all the provisions of this Lease, provided always that the Lessor's absolute right of property in the Building, which will arise at the expiration or earlier termination of the Term or any permitted period of overholding, will take priority over any other interest in the Building that may now or hereafter be created by the Lessee without the prior written consent of the Lessor, and provided that all dealings by the Lessee with the Building which in any way affect title thereto will be made expressly subject to this right of the Lessor and the Lessee will not assign, encumber or otherwise deal with the Building separately from any permitted dealing with the leasehold interest under this Lease, to the intent that no person will hold or enjoy any interest in this Lease acquired from the Lessee who does not at the same time hold a like interest in the Building.

## ARTICLE 22 OVERHOLDING

### 22.1 Overholding

The Lessee covenants and agrees with the Lessor that if the Lessee will hold over and the Lessor will accept rent after the expiration of the Term, the new tenancy thereby created will be a tenancy from month to month and not a tenancy from year to year and will be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month, provided however that the monthly Basic Rent payable by the Lessee will be the then market rental value of the Lands and the Building, taking into account any restrictions on the use of the Lands and Building at the time, as determined from time to time in the bona fide opinion of the Lessor's Director of Real Estate Services or his or her successor in function, and such monthly Basic Rent will be paid in advance. The Lessee will also pay monthly as Additional Rent one-twelfth of the then current sum described in section 3.1 or 3.2 hereof, as the case may be.

## ARTICLE 23 ENVIRONMENTAL MATTERS

### 23.1 Definitions

For the purposes of this Article 23:

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

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- (b) "Environmental Laws" means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any governmental authority having jurisdiction over the Lands or Building, now or hereafter in force and relating in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, and includes the principles of common law and equity.

### 23.2 Lessee's Covenants and Indemnity

The Lessee covenants and agrees as follows:

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

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- (g) without limiting the generality of Article 14, to indemnify the Lessor and its Personnel and contractors from any and all Losses (including the cost of remediation of the Lands and Building and any other affected property) arising from or in connection with:
- (i) any breach of or non-compliance with the provisions of this Article 25 by the Lessee; or
  - (ii) the release or alleged release of any Contaminants at or from the Lands related to or as a result of the use and occupation of the Lands and Building by, or any act or omission of, the Lessee or any person for whom the Lessee is responsible at law.

The obligations of the Lessee under this Article 23 will survive the expiry or earlier termination of this Lease, and the obligations of the Lessee under this Article 25 are in addition to, and will not limit, the other obligations of the Lessee under this Lease.

#### ARTICLE 24 NOTICE

##### 24.1 Notice

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

- (a) in the case of the Lessee, addressed to the Lessee at the postal address shown on the General Instrument;
- (b) in the case of the Lessor, addressed to:

City of Vancouver  
City Hall  
453 West 12<sup>th</sup> Avenue  
Vancouver, British Columbia V5Y 1V4

Attention: City Clerk  
and: Director of Legal Services

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

**ARTICLE 25  
MISCELLANEOUS**

**25.1 Statements by Lessor**

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

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

**25.2 Time of Essence**

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

**25.3 Formality of Modifications**

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

**25.4 Captions and Headings**

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

**25.5 Enurement**

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

**25.6 Covenants or Conditions**

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

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**25.7 References**

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

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**SCHEDULE A  
HOUSING REQUIREMENTS**

**1. Definitions.**

Capitalized terms used in this Schedule A shall have the meanings specified in this Section 1:

(a) **"Building Condition Report"** has the meaning given to it in Section 5(b) of this Schedule A;

(b) **"Burrard Building"** means the building to be constructed by the Lessee at the civic addresses 1190 Burrard Street and 937 Davie Street, Vancouver, B.C., and the following legal descriptions:

PID: 015-484-211, Lot A (See 428984L) of Lots 17 to 19 Block 90 District Lot 541 Plan 210;

PID: 015-484-238, Lot B (Reference Plan 1606) of Lots 17 to 19 Block 90 District Lot 541 Plan 210;

PID: 015-484-220, Lot C (See 428984L) of Lots 17 to 19 Block 90 District Lot 541 Plan 210;

PID: 015-484-181, The South 1/2 of Lot 15 Block 90 District Lot 541 Plan 210; and

PID: 015-484-203, Lot 16 Block 90 District Lot 541 Plan 210;

(c) **"Capital Asset Plan"** has the meaning given to it in Section 7 of this Schedule A;

(d) **"Debt and Equity Payments"** means:

(i) payments to equity investors in the Building: (i) in accordance with the Project Pro Forma; or (ii) approved in writing by the Lessor; and

(ii) principal, interest and fees payable pursuant to the Mortgage;

(e) **"Development Agreement"** means the Development Agreement between the Lessor and Lessee in connection with the development by the Lessee of the Burrard Building, the Seymour Building, the Pender Building, the Vanness Building, the EFL Building and the Kingsway Building, or any of the foregoing buildings;

(f) **"EFL Building"** means the building to be constructed by the Lessee at the civic address 3310 Marine Way, Vancouver, B.C. and the following legal description:

PID: 029-936-560, Lot 46 District Lots 330 and 331 Group 1 New Westminster District Plan EPP53802

- (g) **"HILs Replacement Reserve"** has the meaning given to it in Section 10(a)(ii) of this Schedule A;
- (h) **"HILs Unit"** means a Residential Unit in respect of which a HILs Unit Housing Charge is payable;
- (i) **"HILs Unit Housing Charge"** means the Housing Charge to be charged by the Lessee to a HILs Unit Occupant from time to time during the Term, which on a monthly basis shall not exceed 1/40th of the then-current "Housing Income Limit" for the applicable type of HILs Unit as published by the British Columbia Housing Management Commission, or a successor or equivalent publication approved by the Lessor;
- (j) **"HILs Unit Occupant"** means one or more cohabiting adults, with or without cohabiting children, whose collective annual income is no more than the then-current "Housing Income Limit" for the applicable unit type as published by the British Columbia Housing Management Commission or a successor or equivalent publication approved by the Lessor;
- (k) **"Housing Charge"** means the charge, determined and assessed by the Lessee from time to time, payable monthly by an Occupant of a Residential Unit in the Building pursuant to an Occupancy Agreement for the right to occupy a Residential Unit;
- (l) **"Income"** of an Occupant (where "Occupant" includes all persons for whom the Residential Unit serves as the principal residence) means the total annual world-wide income before income tax from all sources of the Occupant that the Occupant is required to report as income for income tax purposes;
- (m) **"Income Assistance"** means income received under the Employment and Assistance Act (British Columbia), the Employment and Assistance for Persons with Disabilities Act (British Columbia), or successor legislation;
- (n) **"Kingsway Building"** means the building to be constructed by the Lessee at the civic address 1001 Kingsway, Vancouver, British Columbia and the following legal description:
  - PID: 011-951-591, Lot H Block 64 District Lot 301 Plan 4040;
  - PID: 011-951-613, Lot J Block 64 District Lot 301 Plan 4040; and
  - PID: 011-951-621, Lot K Block 64 District Lot 301 Plan 4040;
- (o) **"Low-End of Market Unit"** means a Residential Unit in respect of which a Low-End of Market Unit Housing Charge is payable;

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- (p) **"Low-End of Market Unit Housing Charge"** means the Housing Charge to be charged by the Lessee to a Low-End of Market Unit Occupant which shall not exceed 90% of: (i) the appraised market rent for a comparable unit in the local area (where a "comparable unit" means a unit of the same type, similar size and in a building with a similar age and quality of construction); or (ii) in the absence of comparable units in the local area, CMHC's Rental Survey for Vancouver by year of construction, 2005+ category;
- (q) **"Low-End of Market Unit Occupant"** means one or more cohabiting adults (18 years of age or older) with or without cohabiting children, whose collective income does not exceed the low and moderate income limit as determined by BC Housing from time to time based on data provided by Statistics Canada;
- (r) **"Occupancy Agreement"** means an agreement, lease, license or other right of an occupant of a Residential Unit to occupy that Residential Unit;
- (s) **"Occupancy Guidelines"** means the National Occupancy Standards published by Canada Mortgage and Housing Corporation from time to time during the Term or such other standards as the Lessor may reasonable establish;
- (t) **"Occupant"** means all persons for whom the Residential Unit serves as the principal residence;
- (u) **"Operating Expenses"** means all sums, costs, expenses, outgoings and other amounts incurred by the Operator, other than Basic Rent, payable in respect of the Lands and the Building, including, without limitation:
- (i) the insurance required by the Lease;
  - (ii) sewer, water and garbage and recycling pickup;
  - (iii) Utilities;
  - (iv) salaries and benefits paid to staff engaged in providing services to the Lands and the Building or an Occupant pursuant to this Lease;
  - (vi) maintenance and repair of all non-capital items;
  - (vii) all applicable taxes and amounts payable in lieu of property taxes pursuant to this Lease;
  - (viii) amounts payable by the Lessee under Permitted Encumbrances (each as defined in this Lease);
  - (ix) administration costs in connection with the Building and Lands, including accounting and legal fees;
  - (x) all equipment, materials and supplies required to perform any of the foregoing;
  - (xi) rent-up costs; and

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- (xii) the cost of fulfilling the City's requirements for budgets, reports, audits, and plan preparation, for data and research, and other special requests made by the City;

but excluding Debt and Equity Payments;

- (v) "Operating Income" means all gross income, revenue, operating grants, sums and other amounts, directly or indirectly, collected by or credited to the Lessee pursuant to this Lease, including, without limitation, Housing Charges, parking fees, vending machine revenue, laundry machine revenue and other fees and charges payable by Occupants or others for use of the Lands and the Building;
- (w) "Operating Reserve" has the meaning given to it in Section 10(a)(i) of this Schedule A;
- (x) "Operating Surplus" means any surplus Operating Income remaining after payment of all: (i) Operating Expenses; (ii) Debt and Equity Payments; and (iii) contributions to the Replacement Reserve;
- (y) "Pender Building" means the building to be constructed by the Lessee at the civic address 177 West Pender, Vancouver, B.C., and the following legal descriptions:
  - PID: 030-401-488, Lot E Block 28 District Lot 541 Group 1 New Westminster District Plan EPP76989;
- (z) "Portfolio Buildings" means the Burrard Building, Pender Building, Seymour Building, Vanness Building, EFL Building and Kingsway Building, or any of the foregoing;
- (aa) "Project Pro Forma" means the pro forma for the Buildings approved by the Lessor;
- (bb) "Refinancing Reserve" has the meaning given to it in Section 10(a)(ii) of this Schedule A;
- (cc) "Replacement Reserve" has the meaning given to it in Section 8 of this Schedule A;
- (dd) "Residential Unit" means a self-contained dwelling unit in the Building with its own kitchen, bathroom, and sleeping and living spaces;
- (ee) "Seymour Building" means the building to be constructed by the Lessee at the civic addresses 1210 Seymour Street and 560 Davie Street, Vancouver, B.C., and the following legal descriptions:

PID: 015-473-881, Lot 1 Block 104 District Lot 541 Plan 210

PID: 015-473-929, Lot 2 Block 104 District Lot 541 Plan 210;

PID: 006-169-571, Lot 3 Block 104 District Lot 541 Plan 210;

PID: 015-473-953, Lot 4 Block 104 District Lot 541 Plan 210; and

PID: 015-474-399, Lot 5 Block 104 District Lot 541 Plan 210;

- (ff) "Shelter Rate Unit" means a Residential Unit in respect of which a Shelter Rate Unit Housing Charge is payable;
- (gg) "Shelter Rate Unit Housing Charge" means the Housing Charge to be charged by the Lessee to a Shelter Rate Unit Occupant from time to time during the Term, which shall not exceed the shelter component of Income Assistance;
- (hh) "Shelter Rate Unit Occupant" means one or more cohabiting adults who is/are in receipt of Income Assistance;
- (ii) "Utilities" means all charges, rates and levies on account of utilities, including for heat, electricity, gas, telephone, television, internet and other costs and expenses of a similar nature; and
- (jj) "Vanness Building" means the building to be constructed by the Lessee at the civic address 3279-3297 Vanness Avenue, Vancouver, B.C. and the following legal description:

PID: 024-073-423, Lot A (BM67938) Blocks 23 and 24 District Lots 36 and 51 Group 1 New Westminster District Plan 4413

PID: 011-573-953, Lot 14 Blocks 23 and 24 District Lots 36 and 51 Plan 4413;

PID: 011-573-961, Lot 15 Blocks 23 and 24 District Lots 36 and 51 Plan 4413; and

PID: 011-573-970, Lot 16 Blocks 23 and 24 District Lots 36 and 51 Plan 4413.

## 2. Affordability Requirements

- (a) The Lessee will at all times during the Term until the conditions set out in Section 2(b) below are satisfied, ensure that not less than 30% of the Residential Units in the Building are HILs Units occupied by HILs Unit Occupants (the "Minimum Affordability Requirement").
- (b) Following the issuance of an occupancy permit for each of the Portfolio Buildings, the Lessee shall at all times during the remaining Term ensure that the aggregate Housing Charge across all residential units in the Buildings and the Portfolio Buildings is:
  - (i) between 70% and 85% of the aggregate market rental rate for such residential units; or

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(ii) such other amount as may be set out in the Development Agreement.

### 3. Proof of Income

The Lessee shall establish policies and procedures for establishing the Income of Occupants for the purpose of determining Occupant eligibility: (i) on an annual basis in respect of HILs Units; and (ii) every five years in respect of all other Residential units, and, prior to the issuance of an occupancy permit in respect of the Building, submit these to the City for approval. Once approved, the Lessee shall establish the Income of Occupants in accordance with such policies and procedures.

### 4. Tenanting

The Lessee will, prior to the issuance of an occupancy permit in respect of the Building, prepare and submit to the City for approval a plan for the tenanting of the Building (the "Tenanting Plan"). The Tenanting Plan must:

- (a) use a waiting list for affordable housing established by the British Columbia Housing Management Commission as one of the Lessee's tenant referral source;
- (b) prioritize people who live or work in Vancouver;
- (c) make best efforts to confirm the citizenship or legal residency in Canada of prospective Occupants; and
- (d) make best efforts to be consistent with the Occupancy Guidelines;

in each case, only to the extent permitted by applicable law.

Once approved, the Lessee shall implement and at all times during the Term comply with the Tenanting Plan.

### 5. Reporting Requirements

- (a) **Operating Report.** The Lessee will, on an annual basis commencing on the first anniversary of the date of the occupancy permit issued to the Lessee in respect of the Building, provide the Lessor with a report with the information relating to the Building set out in Annex 1 to this Schedule A.
- (b) **Building Condition Report.** The Lessee will, every five years commencing on the first anniversary of the date of the occupancy permit issued to the Lessee in respect of the Building, provide the Lessor with a building condition report setting out the condition of the Building structure and all major Building systems, prepared by an independent third party (each, a "Building Condition Report").

## 6. Operating Expenses

- (a) No less than two months prior to the issuance of an occupancy permit in respect of the Buildings, the Lessee shall submit to the Lessor an operating budget for the first year of operation of the Buildings for approval by the Lessor.
- (b) Following the first anniversary of the date of issuance of the last occupancy permit for the Buildings, the Lessor will perform an audit of the Lessee's Operating Expenses for the first year of the Term and the Lessee will assist the Lessor in carrying out such audit by making available to the Lessor all relevant documentation related to Operating Expenses incurred or claimed by the Lessee during the first year of the Term. Based on such audit, the Lessor shall, acting reasonably, establish an annual Operating Expense baseline (the "Operating Expense Baseline") for the Lessee's operating of the Building that sets out the maximum Operating Expenses the Lessee may incur for Operating Expense line items without obtaining prior written consent from the Lessor (such consent not to be unreasonably withheld). The maximum values set out in the Operating Expense Baseline shall be adjusted for inflation on an annual basis or as otherwise required by operational requirement subject to approval by the Lessor, such consent not to be unreasonably withheld.
- (c) The Lessee shall ensure that all goods and services (excluding insurance) purchased by the Lessee that constitute Operating Expenses are purchased pursuant to a procurement process that is:
  - (i) open and competitive in reasonable proportion to the value of the applicable expenditure; and
  - (ii) is conducted at least every five years in respect of any particular good or service.

For greater certainty, the Lessee may purchase goods and services that constitute Operating Expenses through buying groups, provided that any such vendors were selected by the buying group through an open and competitive procurement process within the previous five years. The Lessee may also make use of prequalification lists of vendors provided such list was established within the previous five years through an open and competitive procurement process.

Notwithstanding the foregoing, the Lessee may use its own employees for the delivery of services that constitute Operating Expenses. However, if the costs of the delivery of such services rise above the Operating Expense Baseline for such services, the Lessor may require the Lessee obtain such services through competitive procurement in accordance with this section.

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## 7. Capital Asset Plan

The Lessee will, commencing on the second anniversary of the date of the occupancy permit issued to the Lessee in respect of the Building and updated every five years subsequently, submit to the Lessor for approval a capital asset plan (the "Capital Asset Plan") that sets out the maintenance, repair and replacement standards and practices required to preserve the capital components of the Lands and the Building over the Term, including, without limitation, in respect of the following:

- (a) major maintenance or replacement of the structure, including the roof, roof membrane, bearing walls, foundations and floors of the Building, and seismic upgrades;
- (b) major repair or replacement of the exterior of the Building;
- (c) life cycle replacement of the fire alarm and safety systems;
- (d) life cycle replacement of the heating, hot water, plumbing, mechanical, electrical, sanitary and storm drainage systems (building systems);
- (e) life cycle replacement of elevators; and
- (f) all equipment, materials and supplies required to perform any of the foregoing.

The Capital Asset Plan shall additionally address any issues described in the Building Condition Report submitted to the Lessor the previous year. The Lessee shall implement the recapitalization/life cycle replacement of building systems, including equipment, structures, surfaces or fixtures installed in the Lands and the Building, in accordance with the Capital Asset Plan approved by the Lessor.

The Capital Asset Plan will identify possible sources of funds to fund identified work, such sources will include the Replacement Reserve Fund set aside by the Lessee.

The parties agree that with respect to Capital Assets Plans submitted to the City for approving within a 15 year period prior to expiry of the Term, the Lessee shall consult with the Lessor during the preparation of such plans in order to take into account the transfer of ownership of the Building at the expiry of the Term as contemplated in Section 21.3.

## 8. Replacement Reserve

The Lessee will create a reserve (the "Replacement Reserve") for capital replacements to the Lands and the Building and their systems, equipment and surfaces, based on the items and life in years as set out in the Capital Asset Plan. Beginning on the Lease Commencement Date, the Lessee will deposit in the Replacement Reserve an amount to be determined by an independent third party consultant with experience in capital asset planning and approved by the Lessor. The Lessee will use or dispose of the Replacement Reserve only for capital replacements to the Lands and the Building and their systems, equipment and surfaces in accordance with the Capital Asset Plan, or to pay for other payments as may be approved by the Lessor.

**9. Audit**

The Lessor reserves the right to audit the books, records and accounts of the Lessee pertaining to its operation of the Lands and Building or otherwise pertaining to this Lease at any reasonable time, including without limitation, tenancy applications, Occupancy Agreements and Occupant Income declarations and other documents evidencing Occupant Income. The parties acknowledge that the Lessor intends to conduct an audit of the Lessee's operation of the Building every five years during the Term.

**10. Operating Surplus**

- (a) Operating Surplus shall be used by the Lessee in the following order of priority:
- (i) first, by the Lessee to create and maintain a reserve (the "Operating Reserve") for the purpose of stabilizing annual variances in Operating Income and Operating Expenses in such an amount as is reasonable given the purpose of such reserve and the expected frequency and duration of such occurrences during the Term such that the balance of the Operating Reserve is not to exceed 10% of annual Operating Expenses;
  - (ii) second, by the Lessee to create and maintain a reserve (the "HILs Replacement Reserve") for the purpose of subsidizing the rent of HILs Units Occupants whose Income decreases below the level of Income such Occupants had at the commencement of the applicable Occupancy Agreement in such an amount as is reasonable given the purpose of such reserve and the expected frequency and duration of such occurrences during the Term, such that the balance of the HILs Replacement Reserve is not to exceed 10% of the total of the maximum annual HILs Unit Housing Charges of all HILs Units;
  - (iii) third, until the date of the Lessee's first refinancing of its Mortgage as shown in the Project Pro Forma, by the Lessee to create and maintain a reserve (the "Refinancing Reserve") for the purpose of paying down the Mortgage principal at the time of such contemplated refinancing;
  - (iv) fourth, and only following the funding of the reserves described in Sections 10(a)(i), 10(a)(ii) and 10(a)(iii) and the discharge of the Second Mortgage, divided on a 50%/50% basis between the Lessee and the Lessor, with the Lessee's portion to be used to:
    - (A) increase the affordability of HILs Units in the Building or increase the net number of HILs Units in the Building through turnover of non-HILs Units or as the result of Income-testing of existing Occupants; and

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- (B) create or acquire net new, social housing within the City of Vancouver, provided such acquisitions are in accordance with any agreements between the Lessee and Lessor for the development of affordable housing existing between the parties from time to time during the Term.

Prior to the distribution of any Operating Surplus pursuant to this Section 10(a)(iv), the Lessee shall provide to the Lessor:

- (C) audited financial statements for the Building or such other form of financial statements as may be accepted by the Lessor in its sole discretion;
- (D) evidence of payment in full of the Operating Surplus priorities set out in Section 10(a)(i) through (iii) above; and
- (E) the amounts of Operating Surplus to be distributed pursuant to this Section 10(a)(iv) and a proposed schedule for distribution.

The Lessor shall review such documentation for confirmation of the Lessee's compliance with the requirements of this Schedule A. Upon such confirmation by the Lessor, the Lessee shall distribute the Operating Surplus in accordance with the approved schedule.

- (b) The Lessee shall ensure that the reserves described in Sections 10(a)(i), (ii) and (iii) are kept in separate bank accounts and that each account is insured by the Canadian Deposit Insurance Corporation or Credit Union Deposit Insurance Corporation.

#### 11. Mortgage and Refinancing Requirements

- (a) The retirement schedule for the initial Mortgage in respect of the Buildings and any subsequent refinancing of the Mortgage shall be consistent with the Project Pro Forma unless otherwise in writing approved by the Lessor.
- (b) The Lessee shall use the Refinancing Reserve solely for the purpose of payment towards the Mortgage principal at the time of the refinancing of the Mortgage contemplated for the ninth year of operation of the Buildings (as set out in the Project Pro Forma).

#### 12. Option for City Capital Contribution

The Lessor may, at its sole discretion, make available to the Lessee a capital contribution for the purposes of reducing the amount of any Mortgage required by the Lessee. If such a contribution is made available and accepted, the parties agree that:

- (a) the Project Pro Forma (and any other provisions of this Schedule A, as required) will be amended accordingly and approved by both parties; and

- (b) any such capital contribution will be repaid to the Lessor by the Lessee from Operating Surplus following the funding of the Operating Reserve, Refinancing Reserve and HILs Replacement Reserve but in priority to the distribution of Operating Surplus set out in Section 10(a)(iv).

### 13. Adjustments on Termination

Upon the termination of this Lease, however effected, the parties will forthwith complete all necessary accounting and adjustments between them to effectively reconcile and finalize their obligations pursuant to this Lease. Such adjustments will include, without limitation:

- (a) the delivery or transfer by the Lessee to the Lessor, effective as of the termination date, of the Replacement Reserve, the Operating Reserve, the Refinancing Reserve and the HILs Replacement Reserve, in each case including all accumulated interest; and
- (b) use or division of any unexpended or allocated accrued Operating Surplus, including all accumulated interest.

### 14. Conflicts of Interest

The Lessee shall establish and enforce a conflict of interest policy that prevents the Lessee from contracting for services in relation to the Building with its directors or employees or any immediate family members of its directors or employees (collectively, "non-arm's length persons") or any organization in which a non-arm's length person is a shareholder, director or officer or from which a non-arm's length person holds a pecuniary interest.



**ANNEX 1 TO SCHEDULE A  
OPERATING REPORT COMPONENTS**

The intent of the operating report requirement is to ensure the Lessee collects, maintains and shares relevant data with the Lessor to help support a better understanding of the housing operations. All information is to be provided without any names, unit numbers or any other personal details.

**Rent Statistics**

- Rents charged to and Incomes of all Occupants

**Affordability Statistics**

- Any information the Lessor may reasonably require from the Lessee to determine the Lessee's compliance with Section 2 including information on units whose occupants were tested for compliance.
- Analysis of affordability delivered (\$ value and % discount) by the project based on comparing the actual rent revenue to an estimate of the full market rent based on comparable units in the area

**Occupancy Statistics**

- Occupant counts for all units including number of adult (18 and over) and non-adult (under 18) occupants

**Operating Expense Statistics**

- Build up and summary (per unit & per sqft) of Operating Expenses consistent with level of detail included in the pro-forma appendix or other agreed upon level of detail consistent with the Lessee's internal financial reporting
- Build up and summary (per unit & per sqft) Building Management Costs, defined as membership fees, staff costs, accounting costs & any other Operating Expense related to managing the building.
- Build up and summary (per unit & per sqft) Operating Expenses before Building Management Costs

**Operating Surplus Statistics**

- Summary of Operation Surplus allocation to various reserves
- Continuity schedule for all Reserves or unrestricted surplus
- Summary of Operating Surplus distributed or available for distribution for equity partners
- Summary of the use by the Lessee of Operating Surplus distributed pursuant to Section 10(e)

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**Liabilities**

- Summary of any material (in aggregate >20% of annual operating costs) liabilities of any nature, including any deferred maintenance or capital expenditures

**Audited Financial Statements**

- Audited financial statements for the Building or such other form of financial statements as may be accepted by the Lessor in its sole discretion.

END OF SET

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