

THIS AGREEMENT is made as of \_\_\_\_\_ .

BETWEEN:

\_\_\_\_\_ (the "Landlord")

AND:

\_\_\_\_\_ (the "Tenant")

Lands:

Term:

Three (3) years

Rent:

\$1.00 per year

Early Termination:

Lessee, anytime  
Landlord, six (6) months written notice

Option to Renew

None

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WHEREAS:

A. The Landlord is the owner of the lands at the civic addresses \_\_\_\_\_, inclusive, in the City of Vancouver, British Columbia, which are legally described as:

(collectively, the "Lands")

B. The Tenant has requested that the Landlord lease the Lands to the Tenant for purposes of establishing and operating a commercial planter-box based organic vegetable garden thereon.

C. The Landlord believes that the Tenant's use of the Lands as proposed will align with the Landlord's interest in urban health, including food security, and the priorities of its current Mayor and Council, which include the Greenest City Action Plan and job creation for low income individuals.

D. The Landlord's Standing Committee of City Finance and Services, by resolution passed on February 14, 2012, authorized the lease of the Lands to the Tenant for the establishment and operation of a commercial planter-box based organic vegetable garden.

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

**ARTICLE 1**

**Section 1.01 Term**

In consideration of the rents, covenants and conditions herein on the part of the Tenant to be performed and observed, the Landlord hereby leases the Lands to the Tenant, on the terms and conditions contained herein, to have and to hold the same for and during the term of three (3) years commencing March 1, 2012 and expiring at 11:59 p.m. on February 28, 2015 (the "Term").

**Section 1.02 Early Termination**

The Tenant may terminate this lease at any time without prior notice to the Landlord, and the Landlord may terminate this lease at any time upon giving the Tenant not less than six (6) months prior written notice of such termination.

If for any reason at any time during the Term the Development Permit (as defined below herein) in any way expires or is discontinued or cancelled such that by City of Vancouver by-law the Permitted Use (as defined below herein) is or will no longer permitted, this lease agreement will terminate automatically at such time as effectively the Development Permit is to so expire or be so discontinued or cancelled.

### **Section 1.03 Rent**

Yielding and paying therefor in advance during the Term annual rent (the "**Rent**") in the sum of \$1.00 for each year of the Term. The Rent together with any additional rent payable by the Tenant is referred to as "rent" in this lease.

### **Section 1.04 Payments Generally**

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

- (a) paid to the Landlord by the Tenant in lawful currency of Canada;
- (b) made when due hereunder, without prior demand therefor and without any setoff, compensation or deduction whatsoever at the office of the Landlord's Director of Real Estate Services specified in Section 14.01 or such other place as the Landlord may designate from time to time in writing to the Tenant;
- (c) applied towards amounts then outstanding hereunder, in such manner as the Landlord may see fit; and
- (d) deemed to be rent, in partial consideration for which this lease has been entered into, and shall be payable and recoverable as rent, such that the Landlord shall have all rights and remedies against the Tenant for default in making any such payment which may not be expressly designated as rent as the Landlord has for default in payment of rent.

### **Section 1.05 Utilities**

The Tenant shall pay all charges, rates and levies on account of utilities including electricity, water, garbage collection and all other expenses and outgoings relating to the Lands immediately when due and, upon request, provide the Landlord with receipts evidencing such payment.

### **Section 1.06 Use of Lands**

The Tenant may use and occupy the Lands for establishing and operating a commercial planter-box based organic vegetable garden thereon in accordance with this lease agreement and the City of Vancouver development permit number DE415681 (the "**Development Permit**") as may be amended and renewed from time to time (the "**Permitted Use**").

The Tenant may not use the Lands for any purpose other than the Permitted Use.

Notwithstanding anything else herein, the Tenant may not use or will discontinue the use hereunder of such portions of the Lands as from time to time during the Term the Landlord or anyone authorized by the Landlord may specifically require for purposes connected with the monitoring, investigating or remediation of any Pollution (as defined below herein) on or near the Lands or such portions of the Lands as the Landlord, for any reason, may consider are not suitable for the Permitted Use (as defined below herein), and the Tenant will forthwith on demand by the Landlord or anyone authorized by it remove from

any such portions of the Lands all property, materials and other things of the Tenant and/or anyone else on the Lands under the Tenant's authorization.

Notwithstanding anything else herein, the Tenant shall not at anytime and shall not suffer or permit anyone else who enters the Lands with its permission to at anytime do anything on the Lands that will involve any disturbance or excavation of the soils thereof.

The Tenant shall not use or suffer or permit the use of any part of the Lands in such a manner as to cause, suffer or permit any annoying noises or offensive odours to emanate from any part of the Lands in contravention of any provincial or civic statutes, by-laws, regulations and orders.

The Tenant may bring motor vehicles onto the Lands from time to time during the Term, but only for purposes directly related to its use of the Lands for the Permitted Use and in the performance of its obligations hereunder.

Notwithstanding any other applicable permit or law, the Tenant will not suffer or permit members of the general public to enter the Lands at any time during the Term for any purpose and, to the Landlord's satisfaction, will put in place and maintain, in the form of fully functional fencing, gates and/or other barriers, reasonable measures to prevent members of the general public from freely entering the Lands.

Notwithstanding the preceding paragraph, the Tenant may from time to time during the Term bring visitors onto the Lands to observe or view the Tenant's activities and operations thereon.

By agreeing to the Tenant using the Lands for the Permitted Use, the Landlord is agreeing as the owner of the Lands only and is not in any way (either in its capacity as landlord or as a regulatory public body) stating, warranting or representing that the Permitted Use is a permitted use under the City of Vancouver *Zoning and Development By-law No. 3575* and amendments thereto and other relevant by-laws. Nothing in this Section 1.06 affects the Tenant's obligations to comply at its sole expense with all such by-laws pursuant to Section 9.01 of this lease.

### **Section 1.07 Contracting**

The Tenant may hire or otherwise engage contractors and subcontractors to perform services for the Tenant and may make use of such contractor and subcontractor services in its use of the Lands for the Permitted Use.

### **Section 1.08 Interest on Arrears**

Whenever and so long as the Rent or any other amounts payable hereunder by the Tenant to the Landlord shall be in arrears, such amounts shall bear interest at the rate of three percent (3%) per annum above the "prime rate" (hereinafter defined), per annum calculated monthly not in advance, from the date due until paid irrespective of whether or not the Landlord has demanded payment. In this lease, "prime rate" means the floating annual percentage rate of interest established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada

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

### **Section 1.09 Property Taxes**

N/A

### **Section 1.10 Harmonized Sales Tax or Successors thereto**

The Tenant shall pay when due all goods and services taxes, value-added taxes, sales taxes and consumption based taxes, rates, levies and assessments which are from time to time payable by the Tenant or the Landlord as a result of or that would not be payable but for the rights and obligations contained in this lease, including but without derogating from the generality of the foregoing, such taxes, rates, levies and assessments payable as a result of any payment obligations herein of the Tenant to the Landlord. Any loss, costs, charges and expenses which relate to such taxes, rates, levies and assessments suffered by the Landlord may be collected by the Landlord as additional rent with all rights of distress and otherwise as reserved to the Landlord in respect of rent in arrears.

## **ARTICLE 2**

### **Section 2.01 No Damage**

The Tenant shall not damage or injure and shall not suffer or permit its directors, officers, employees, servants, helpers, volunteers, agents, contractors, invitees or permittees to in any way damage or injure the Lands or any structures, fixtures, installations, equipment, instruments, materials, supplies or other things of any kind within the Lands, whether affixed to the Lands or not, belonging to the Landlord or anyone other than the Tenant or its directors, officers, employees, servants, helpers, volunteers, agents, contractors, invitees or permittees, and the Tenant shall indemnify the Landlord for any loss, injury, damage or expense it may suffer, incur or experience and for any and all claims against the Landlord for any loss, injury, damage or expense of any kind anyone else may suffer, incur or experience as a result of any act or omission on the part of the Tenant or any of its directors, officers, employees, servants, helpers, volunteers, agents, contractors, invitees or permittees on the Lands resulting in damage or injury to any such structures, fixtures, installations, equipment, instruments, materials, supplies or other things.

### **Section 2.02 Renovations**

The Tenant shall not carry out or cause to be carried out any installations on or alterations to the Lands ("**Alterations**") except as provided for in the Development Permit or otherwise without the Landlord's explicit prior written consent and in the giving of such consent the Landlord may attach whatever conditions, directions, stipulations, prohibitions or



deadlines as it deems appropriate and the same shall be conditions of this lease. All such works shall be wholly at the Tenant's expense but shall be the Landlord's absolute property, except to the extent that the same may be reasonably categorized as trade fixtures subject to Section 11.02.

By approving or consenting to any Alterations, the Landlord is not in any way (either in its capacity as landlord or as a regulatory public body) stating, warranting or representing in relation to this lease agreement that the Alterations are permitted under the City of Vancouver *Zoning and Development By-law No. 3575* and amendments thereto, the City of Vancouver *Building By-law No. 6134* and amendments thereto, and other relevant by-laws. No consent given by the Landlord (and no failure to enforce this section of this lease) will affect the Tenant's obligations to comply at its sole expense with all such by-laws pursuant to Section 9.01 of this lease.

### **Section 2.03 Maintenance**

The Tenant shall maintain the Lands in a sanitary, neat, tidy and safe condition and free from nuisance at all times.

### **Section 2.04 Repairs**

The Tenant shall keep and maintain the Lands in good repair as would a reasonable and prudent owner of such Lands, reasonable wear and tear and structural elements or defects excepted, and on reasonable notice the Landlord shall have access to the Lands for the purpose of inspection during normal business hours and the Tenant shall repair according to notice. If the Tenant shall fail promptly to commence repairs and diligently prosecute same to completion after receipt of notice from the Landlord requiring repairs, then the Landlord may carry out or cause to be carried out such repairs, the costs of which shall be payable by the Tenant, and the Landlord and its employees, agents, contractors and subcontractors shall not be liable to the Tenant for any inconvenience, annoyance, disruption, loss of income or liability suffered or incurred by the Tenant by reason of the Landlord effecting such repairs unless caused by the negligence of the Landlord or those for whom the Landlord is responsible in law.

### **Section 2.05 Liens and Encumbrances**

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

The Tenant will not create any mortgage, security agreement or other encumbrance in respect of any of its leasehold improvements or trade fixtures and will not permit any mortgage, security agreement or other encumbrance to attach to the Lands in any way.

If and whenever any builders lien or other lien for work, labour, services or materials supplied to or for the Tenant or for the cost of which the Tenant may be in any way liable, or claims therefor arise or are filed or any such mortgage, security agreement or other encumbrance attaches to the title to the Lands, the Tenant will, within fifteen (15) days after

receipt of notice thereof, procure the discharge thereof, including any certificate of pending litigation or other notation or charge registered in respect of any lien, by payment or giving security or in such other manner as may be required or permitted by law. Provided however, that in the event of a bona fide dispute by the Tenant of the validity or correctness of any claim for any such lien, the Tenant will not be bound by the foregoing, but will be entitled to defend against the same in any proceedings brought in respect thereof after first paying into a court of competent jurisdiction the amount claimed or sufficient security therefor, and such costs as the court may direct. This section shall not prevent the Tenant mortgaging or encumbering its chattels, inventory, trade fixtures or equipment which are not fixtures.

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

### **ARTICLE 3**

#### **Section 3.01 Limitation of Liability**

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

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

whether in the course of the performance of the Landlord's obligations under this lease or otherwise, unless resulting from the negligence of the Landlord.

#### **Section 3.02 Exclusion of Liability**

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

- (a) any personal injury or death or property damage or consequential damage of any nature whatsoever, however caused, that may be suffered or sustained by the Tenant or by its officers, employees or agents or any other person who may be in or about the Lands, or any loss or damage of any nature whatsoever to the Lands or to any property belonging to the Tenant or to its officers, employees or agents or to any other person while such property is in or about the Lands, including, without limitation,
  - (i) any caused by failure, by reason of breakdown or other cause, to supply adequate drainage, or by interruptions of any utility or other services,

or by steam, water, rain, snow, or other substances leaking, entering, issuing or flowing onto or into any part of the Lands; or

- (ii) any caused if the Landlord or its officers, employees or agents enter upon the Lands in the case of an emergency;
- (b) any business, economic or indirect loss or damage suffered or sustained by the Tenant or its officers, employees or agents of any nature whatsoever, however caused; or
- (c) any loss which the Tenant is obligated to insure against hereunder or has insured against.

### **Section 3.03 Indemnification**

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

## **ARTICLE 4**

### **Section 4.01 Definitions**

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

- (a) "**Environment**" has its plain and ordinary meaning and, without limitation, includes the meaning given to it in the *Canadian Environmental Protection Act* (Canada) as of the date of this lease;
- (b) "**Hazardous Substances**" means any Substance capable of creating harm to people, property and/or the Environment including, without limitation, any flammable liquids, flammable or reactive solids, oxidizers, poisons, gases (compressed, liquified or dissolved), explosives, radioactive materials, ureaformaldehyde, asbestos materials, underground or above-ground tanks, compounds known as chlorobiphenyls, Pollutants, contaminants, hazardous, corrosive, deleterious or toxic Substances or waste of any kind, including, without limitation, any Substance the storage, manufacture, disposal, treatment, generation, use, transport, remediation or Release into the

Environment of which is prohibited, controlled, regulated or licenced by any federal, provincial or municipal authority;

- (c) **"Medium"** means any land, vapour, water or air and includes the Lands;
- (d) **"Pollute"** means to Release into or onto any Medium any Hazardous Substance and "Polluted", "Pollution" and "Pollutant" have corresponding meanings;
- (e) **"Release"** includes release, spill, leak, pump, pour, dump, abandon, emit, empty, discharge, spray, inoculate, deposit, seep, throw, place, exhaust, inject, escape, leach, dispose, infuse or introduce;
- (f) **"Substance"** means "substance" in its plain and ordinary meaning and, without limitation thereto, includes the meaning given to it in the *Canadian Environmental Protection Act* (Canada) as of the date of this lease.

#### **Section 4.02 Suitability of the Lands**

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

- (a) the state of repair of the Lands;
- (b) the suitability of the Lands for any business, activity or purpose whatever;
- (c) the suitability of the Lands for the Permitted Use;
- (d) the existence, nature or extent of any Pollution on or near the Lands; or
- (e) the need or any legal requirement to take any remedial action in relation to any Pollution on, of or from the Lands.

#### **Section 4.03 Tenant's Knowledge of Condition of the Lands**

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

- (a) the state of repair of the Lands;
- (b) the suitability of the Lands for the Permitted Use;
- (c) the existence, nature or extent of any Pollution on or near the Lands; and
- (d) the need to take any remedial action in relation to any Pollution on or near the Lands;

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

Without limitation to anything else herein, the Tenant acknowledges and understands that in the past the Lands were used for commercial and/or industrial purposes and that the soils and groundwater of the Lands do or may contain Hazardous Substances and the Lands are or may be or in the past were or may have been a contaminated site or part of a contaminated site within the meaning of the *Environmental Management Act SBC 2003 c.53* and therefore are subject to the provisions of that legislation, and the Tenant will provide to all people entering the Lands on its behalf or with its permission or authorization, whether directors, officers, employees, agents, invitees, guests or permittees of the Tenant, an explicit warning that the soils and groundwater of the Lands do or may contain Hazardous Substances and that the Lands are a contaminated site or part of a contaminated site or in the past were or may have been a contaminated site or part of a contaminated site within the meaning of the *Environmental Management Act SBC 2003 c.53* and that therefore, on that basis, entering and being on the Lands might be hazardous to human and animal health.

The Tenant hereby assumes all risks and all duties, obligations and liabilities under all laws applicable in respect of its use and occupation of the Lands hereunder, including but not limited to all costs, expenses, liabilities, duties and obligations for any remedial action required, necessary or advisable in respect of any Pollution of the Lands or of any other lands nearby during the Term caused by the Tenant in using the Lands.

#### **Section 4.04 Release and Indemnification**

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

- (a) the Lands not being suitable for the Permitted Use;
- (b) the Lands being, or being found to be at any time, Polluted;
- (c) the need to take any remedial action and the taking of such action as a result of such Pollution on or off the Lands; or
- (d) any Pollution remediation activities being conducted on the Lands by anyone during the Term.

The Tenant shall indemnify, defend and save harmless the Landlord in respect of all claims for bodily injury (including death), property damage or other loss or damage, including damage or injury to persons or property outside the Lands, arising out of or in any way connected with the manufacture, storage, transportation, handling or discharge of Hazardous Substances on or from the Lands by the Tenant or any one there with the Tenant's permission or authorization.

#### **Section 4.05 Removal of Hazardous Substances**

Without limitation to anything else herein or in the Development Permit, the Tenant shall not bring upon the Lands or any part thereof, or cause or suffer the bringing upon the Lands or any part thereof, any Hazardous Substances and if at any time any Hazardous Substances are brought onto or Released on the Lands by the Tenant or anyone on the Lands with the Tenant's permission or authorization, the Tenant, at its expense, shall:

- (a) immediately give the Landlord notice to that effect and thereafter give the Landlord from time to time written notice of the extent and nature of the Tenant's compliance with the following provisions of this Article;
- (b) promptly remove the Hazardous Substances from the Lands in a manner which conforms with all laws and regulations governing the movement of the same; and
- (c) if requested by the Landlord, obtain from an independent and duly qualified consultant designated or approved by the Landlord verification of the complete and proper removal of the Hazardous Substances from the Lands or, if such is not the case, reporting as to the extent and nature of any failure to comply with the foregoing provisions of this Section 4.05; and
- (d) if requested by the Landlord, obtain from the British Columbia Ministry of the Environment a confirmation satisfactory to the Landlord that the Tenant's removal of such Hazardous Substances from the Lands constitutes a remediation of the Lands in respect thereof in accordance with the *Environmental Management Act* and any other applicable provincial legislation.

Subject to Section 9.01 of this lease, the Tenant may bring on to the Lands motor vehicles pursuant to Section 1.06 of this lease.

#### **Section 4.06 Breach of Laws Relating to Hazardous Substances**

Without limiting the generality of Section 4.05, the Tenant shall immediately give written notice to the Landlord of the occurrence during the Term of any event on the Lands (upon becoming aware of same) in the Tenant's use thereof constituting an offence under or a breach of any statutes, by-laws, regulations or orders from time to time enforced relating to Release of Hazardous Substances, and at its own cost and expense, shall comply with all laws and regulations applicable thereto and shall immediately give written notice to the Landlord of the occurrence of any event on the Lands constituting an offence thereunder or a breach thereof and, if the Tenant shall, either alone or with others, cause or suffer the happening of such event, the Tenant shall, at its own expense:

- (a) immediately give the Landlord notice to that effect and thereafter give the Landlord, upon the Landlord's request from time to time, written notice of the extent and nature of the Tenant's compliance with the provisions of this Section 4.06;
- (b) promptly remove such Hazardous Substances from the Lands in a manner which conforms with all laws and regulations governing the movement of the same; and

- (c) if requested by the Landlord, obtain at the Tenant's cost and expense from an independent consultant designated or approved by the Landlord a report verifying the complete and proper removal thereof from the Lands or, if such is not the case, a report as to the extent and nature of any failure to comply with the foregoing provisions of this Section 4.06.

The Tenant shall, at its own expense, remedy any damage to the Lands caused by such event within the Lands or by the performance of the Tenant's obligations under this Section 4.06 as a result of such occurrence.

If any governmental authority having jurisdiction shall require the cleanup of any Hazardous Substances held, Released, spilled, abandoned or placed upon the Lands or Released into the Environment from the Lands during the Term as a result of the Tenant's use of the Lands, then the Tenant shall, at its own expense, prepare all necessary studies, plans and proposals and submit the same for approval, provide all bonds and other security required by governmental authorities having jurisdiction and carry out the work and shall keep the Landlord fully informed and provide to the Landlord full information with respect to proposed plans and comply with the Landlord's requirements with respect to such plans. AND the Tenant agrees that if the Landlord determines, in its sole discretion, that the Landlord, its property or its reputation is placed in any jeopardy by the requirement for any such work, the Landlord may itself undertake such work or any part thereof at the cost and expense of the Tenant, pursuant to Section 10.07 of this lease.

#### **Section 4.07 Enquiries Pertaining to Hazardous Substances**

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

#### **Section 4.08 Landlord's Inspection of Goods**

Upon reasonable notice to the Tenant, the Landlord may at any time and from time to time inspect the Tenant's goods and other property upon the Lands and the Tenant's records relating thereto for the purpose of identifying the nature of the goods and property and the existence or absence of any Hazardous Substances among or in or on them and the Tenant shall assist the Landlord in so doing.

#### **Section 4.09 Ownership Remains With Tenant**

If the Tenant shall bring or create upon the Lands any Hazardous Substances or suffer the bringing or creation upon the Lands of any Hazardous Substances or if the conduct of the Tenant's business shall cause there to be any Hazardous Substance upon the Lands then, notwithstanding any rule of law or equity to the contrary, such Hazardous Substance shall be and remain the sole and exclusive property of the Tenant and shall not become the property of the Landlord and notwithstanding the degree of affixation of the Hazardous Substance or

the goods containing the Hazardous Substance to the Lands and notwithstanding the expiry or earlier termination of this lease.

#### **Section 4.10 Environmental Covenants Survive Termination**

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

### **ARTICLE 5**

#### **Section 5.01 Tenant's Insurance**

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

- (a) commercial liability insurance with limits of \$5,000,000 dollars per occurrence or such higher limit of coverage as the Landlord's Director of Risk Management may require from time to time and the policy shall:
  - (i) indemnify and protect the Tenant and its officers, employees, volunteers and agents against all claims for loss, damage, injury or death to any person or persons and for damage to the Lands or to any public or private property occurring within or about the Lands or arising by virtue of the Tenant's use, occupation or possession of the Lands;
  - (ii) insure the Tenant and its officers, employees, volunteers and agents and the Landlord and its officials, officers, employees and agents in the same manner and to the same extent as if separate policies had been issued to each and apply with respect to any action brought against one party by the other or by any officer, employee, volunteer or agent of one party and any breach of a condition of the policy by any party or by any officer, employee, volunteer or agent of one party shall not affect the protection given by the policy to any other party or to any officer, employee, volunteer or agent of any party;
  - (iii) add the Landlord and its officials, officers, employees and agents as additional insured;
  - (iv) include blanket contractual liability covering liability arising directly or indirectly out of the performance of this lease:



- (v) provide limited pollution liability coverage in IBC Form 2313 protecting the Tenant and the Landlord against third party claims providing bodily injury, death or property damage resulting from “Sudden, Accidental and Unintentional release of pollutants”; and
  - (vi) provide for a limit of deductibility not greater than Two Thousand Dollars (\$2,500.00) or such other minimum limit as the Landlord’s Director of Risk and Emergency Management may sanction from time to time.
- (b) If the Tenant hires any contractors and/or sub-contractors to perform any work on its behalf, the Tenant shall cause each such contractor and/or sub-contractor to obtain commercial liability insurance with limits and coverage equivalent to those described herein in sub-sections 5.01(a)(i)-(vi) above. Upon request of the Landlord, the Tenant shall provide satisfactory evidence of such insurance of its contractors and subcontractors.
  - (c) All Risk (Broad Form) insurance on property of every description and kind owned by the Tenant or for which the Tenant is legally liable or installed by or on behalf of the Tenant (and which is located in the Lands), including without limitation furniture, fittings, installations, alterations, additions, partitions, fixtures, trade fixtures and any display model, project, prototype, tool, instrument or device within the Lands in an amount not less than ninety percent (90%) of the full replacement cost thereof. Such insurance policy shall name the Landlord as additional insured and loss payee for its interest and shall contain a waiver of subrogation clause in favour of the Landlord.

## **Section 5.02 General Requirements of Insurance**

The following shall apply to all insurance policies required hereunder:

- (a) all insurers under such policies shall duly authorized to carry on business in the Province of British Columbia, and the policies shall be in a form and in amounts satisfactory from time to time and acceptable to the Landlord’s Director of Risk Management and shall provide that the Landlord is to be given not less than 60 days prior written notice of material change or cancellation. The notice shall be given to the City of Vancouver to the attention of the Director of Real Estate Services and must identify the name of the Tenant as set out in this lease and the location or address of the Lands;
- (b) neither the providing of insurance by the Tenant in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing shall be held to relieve the Tenant from any other provisions of this lease with respect to liability of the Tenant or otherwise;
- (c) the insurance coverage shall be primary insurance as respects the Landlord and any insurance or self-insurance maintained by or on behalf of the Landlord, its officials, officers, employees or agents shall be excess of this insurance and shall not contribute with it; and

- (d) subject to the provisions of this Article 5, the Tenant shall provide at its own cost any additional insurance which the Tenant is required by law to provide or which the Tenant considers or ought reasonably to consider necessary.

### **Section 5.03 Evidence of Insurance**

Prior to the commencement of the lease, the Tenant shall provide evidence of each policy of insurance required to be taken out by the Tenant in the form of a City of Vancouver Certificate of Insurance attached as Appendix A. If required by the Landlord, the Tenant shall provide certified copies of the policies signed by the insurers. Although not required to do so, if the Tenant fails to adduce satisfactory proof of such coverage being in full force and effect at all times, the Landlord may secure such insurance and the Tenant shall pay the cost of same as additional rent.

### **Section 5.04 *Workers Compensation Act***

The Tenant in its use of the Lands hereunder will comply at all times in all respects and will ensure that all its contractors and subcontractors in any way involved with the Tenant in its use of the Lands hereunder will comply fully at all times in all respects with all *Workers Compensation Act* (British Columbia) (“WCA”) requirements applicable thereto.

If at anytime and whenever during the Term the Lands, in whole or in part(s), are a multiple-employer workplace(s) under Section 118 of the WCA, the Tenant will be the “**Prime Contractor**” thereunder and as such will perform all the responsibilities of the Prime Contractor in accordance with the WCA for such multiple-employer workplace(s).

The Tenant will provide to the Landlord immediately, whenever the Landlord may request from time to time during the Term, proof to the Landlord’s satisfaction that the Tenant’s use of the Lands hereunder complies fully in all respects at all times with all applicable WCA requirements and this Section 5.04 and that the Tenant is fulfilling its Prime Contractor obligations hereunder as required.

The Landlord may terminate this lease agreement immediately without prior notice to the Tenant if at anytime during the Term the Tenant is in breach of this Section 5.04.

## **ARTICLE 6**

### **Section 6.01 Termination on Damage or Destruction**

If the Lands are substantially damaged or destroyed to the extent the Lands or a substantial area of the Lands are rendered unusable by the Tenant either party may terminate this lease upon providing the other party with ninety (90) days prior written notice within ten (10) days of the date of the damage or destruction. The Tenant’s liability for rent will end as of the date of such damage or destruction but will not operate so as to relieve the Tenant of any liability arising from such damage or destruction. There will be no compensation to the Tenant on account of such termination.

## **Section 6.02 Repair of Damage or Destruction**

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

## **Section 6.03 Abatement of Rent**

In the event of damage or destruction to the Lands to the extent that the Lands or part of the Lands are rendered unusable or convenient access to the Lands cannot be had, which in either case is not caused by the default or negligence of the Tenant or those for whom it is responsible in law, the rent will abate in the same proportion that the area of which the Tenant is deprived bears to the total area as determined in the opinion of the Landlord and such abatement will continue only so long as the Landlord determines its continuance to be reasonable.

# **ARTICLE 7**

## **Section 7.01 No Assignment**

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

Any amalgamation of the Tenant with any other party, and any change of effective control of the Tenant, will constitute an assignment of the Tenant's interest under this lease and will be subject to all of the provisions of this Section 7.01. Change of effective control of the Tenant includes any transfer, voluntary or involuntary, direct or indirect, which results in a change in the person or persons exercising or who might exercise effective control of the Tenant or the business required to be carried on in the Lands. In the event that the shares of the Tenant are listed and traded publicly on a recognized stock exchange in Canada, the United States or Europe, such trading of shares shall not constitute an assignment under this Section 7.01.

Despite any assigning, sub-letting or parting with possession the Tenant shall remain liable for the Tenant's obligations under this lease.

## **Section 7.02 No Subleasing**

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

### **Section 7.03 Assignment of Sublease Rent**

Notwithstanding Section 7.02 hereof, the Tenant hereby assigns to the Landlord all rents and fees payable to the Tenant under any sublease, license or occupation agreement with any third party, which assignment shall supersede any provisions regarding the Tenant in bankruptcy and any claims of the creditors of the Tenant whether by execution, attachment, garnishing order or otherwise PROVIDED HOWEVER the Landlord agrees to refrain from enforcing the said assignment so long as the Tenant shall not be in default in the payment of rent or the performance or observance of its covenants hereunder. Upon the Tenant falling into default in the payment of its rent or the performance or observance of its other covenants hereunder, the Landlord may forthwith direct the sublessee, licensee or such other third party to pay to the Landlord the sublease rent, license fees or other monies as would otherwise be owing to the Tenant from time to time and the payment of such monies to the Landlord shall pro tanto discharge the sublessee's, licensee's or other third party's obligations to the Tenant and the Landlord shall apply such monies to the rent and the performance and observance of the Tenant's covenants hereunder notwithstanding any claims on the part of the Tenant's trustee in bankruptcy or the Tenant's creditors, whether by execution, attachment, garnishing order or otherwise. If the sublessee, licensee or other third party fails to abide by the Landlord's directions in this behalf then, at the Landlord's election, the sublease, license or other third party agreement shall cease and determine and the Landlord may forthwith re-enter the subleased, licensed or occupied portion of the Lands and arrange for new occupants thereof whose occupation shall be subject to the provisions of this paragraph.

### **Section 7.04 Mortgage of Lease**

Under no circumstances whatsoever may this lease be mortgaged or otherwise financially encumbered by way of sublease, assignment or otherwise.

## **ARTICLE 8**

### **Section 8.01 Bankruptcy**

If the Term or any of the goods or chattels of the Tenant are at any time seized or taken in execution by any creditor of the Tenant, or if the Tenant makes a general assignment for the benefit of creditors, or if the Tenant institutes proceedings to have the Tenant adjudicated as bankrupt or insolvent, or if the Tenant becomes the subject of bankruptcy or insolvency proceedings, or if a judgment, decree or order be entered by a court of competent jurisdiction adjudging the Tenant bankrupt or insolvent, or if the Tenant is unable to meet all debts as they fall due for a period of not less than three (3) months, or if the Tenant or its directors shall pass any resolution authorizing the dissolution or winding-up of the Tenant, or if a receiver, interim receiver, manager, receiver-manager, trustee or liquidator of all or any part of the Tenant's property shall be appointed or applied for by the Tenant or by one or more of the Tenant's creditors, then the Landlord shall be so notified and the then current rent plus an additional three (3) months current rent shall immediately become due and be paid and the Landlord may immediately claim the same together with any arrears of rent and, at the option of the Landlord, the Term is subject to termination forthwith. If the Tenant becomes defunct or amalgamates with any other body without obtaining the prior written consent of the Landlord or if a committee is appointed under the *Patients Property Act*,

R.S.B.C. 1996, c. 349, as amended or substituted from time to time, to lawfully deal with the Tenant's estate then at the option of the Landlord the Term shall forthwith terminate. If the Tenant surrenders up its certificate of incorporation or otherwise ceases to exist the Term terminates as of such surrender or dissolution. If the Tenant is a natural person, at any time after the Tenant's death the Landlord may terminate the Term upon sixty (60) days notice to any executor or administrator of his estate.

## ARTICLE 9

### Section 9.01 Statutes and By-laws

The Tenant covenants to promptly and faithfully observe and comply with all federal, provincial or civic statutes, by-laws, regulations and orders now or hereafter which are in force and in effect which touch and concern the Lands or the Tenant's activities within the Lands, including, without limitation, any applicable environmental guidelines, and any amendments thereto, which deal with environmental protection and safety and/or Hazardous Substances. If any such statutes, by-laws, regulations, orders or guidelines are directed at owners, during the Term, the Tenant shall perform and observe same at his own expense in the place and stead of the Landlord.

### Section 9.02 Quiet Enjoyment

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

### Section 9.03 Performance of Obligations

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

### Section 9.04 No Registration of Lease

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

### Section 9.05 Remediation Activities Exception to Quiet Enjoyment

Notwithstanding anything else herein, the Landlord or anyone authorized by it may enter the Lands at any time from time to time during the Term to carry out in any lawful manner it may choose investigatory and/or remediation activities thereon in connection with any Pollution or possible Pollution of the Lands or near the Lands or coming to the Lands from off the Lands, and the Tenant shall not and shall not suffer or permit anyone on the Lands under the Tenant's authority to do anything at any time during the Term that will interfere in

any way with any such activities and will, if requested by the Landlord, move or remove any Tenant or Tenant authorized property or things on the Lands as the Landlord or such others authorized by it may require for purposes of carrying out such investigatory and/or remediation activities, and the Tenant hereby releases and discharges the Landlord and agrees to indemnify and save harmless the Landlord, its officials, officers, employees, servants and agents in respect of all damages, costs, claims, demands, suits, losses, liabilities, expenses, actions, causes of action, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays) that may arise or accrue to the Tenant or to any person, firm or corporation against the Landlord, its officials, officers, employees, servants and agents or anyone authorized by it that arise out of, relate in any way to such investigatory or remediation activities howsoever caused.

#### **Section 9.06 Landlord Inspections Exception to Quiet Enjoyment**

Notwithstanding anything else herein, the Landlord or anyone authorized by it may enter the Lands at any time from time to time during the Term to inspect the Lands and the Tenant's activities and things thereon to determine whether the Tenant is using the Lands only for the Permitted Use in accordance with this Agreement, and the Tenant hereby releases and discharges the Landlord and agrees to indemnify and save harmless the Landlord, its officials, officers, employees, servants and agents in respect of all damages, costs, claims, demands, suits, losses, liabilities, expenses, actions, causes of action, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays) that may arise or accrue to the Tenant or to any person, firm or corporation against the Landlord, its officials, officers, employees, servants and agents or anyone authorized by it that arise out of, relate in any way to such investigatory activities howsoever caused.

#### **Section 9.07 Landlord Visitor Exception to Quiet Enjoyment**

Notwithstanding anything else herein, authorized representatives of the Landlord, on reasonable notice to the Tenant each time, may at any time from time to time during the Term enter the Lands with or without guests or visitors to view and observe the Tenant's Permitted Use operations and activities on the Lands, and the Tenant will co-operate reasonably with such Landlord representatives and guests and visitors at all times in respect of and during such visits to the Lands and hereby releases and discharges the Landlord and all such visitors agrees to indemnify and save harmless the Landlord and its officials, officers, employees, servants and agents in respect of all damages, costs, claims, demands, suits, losses, liabilities, expenses, actions, causes of action, indirect or consequential damages (including loss of profits and loss of use and damages arising out of delays) that may arise or accrue to the Tenant or to any person, firm or corporation against the Landlord, its officials, officers, employees, servants and agents or anyone authorized by it that arise out of, relate in any way to such investigatory activities howsoever caused.

### **ARTICLE 10**

#### **Section 10.01 Breach of Covenants**

If and whenever:

- (a) any Rent payment or any part thereof is not made on the day appointed for payment thereof and such default continues for five (5) days following notice requiring the Tenant to pay same; or
- (b) the Tenant is in default in the payment of any money, other than Rent, required to be paid by the Tenant under the terms of this lease and such default continues for ten (10) days following any specific due date on which the Tenant is to make such payment or, in the absence of such specific due date, for ten (10) days following notice requiring the Tenant to pay the same; or
- (c) the Tenant defaults in performing or observing any of the provisions of this lease other than those requiring payment of money to the Landlord and such default continues for a period of thirty (30) days after notice thereof to the Tenant, except for a default which to be cured with all due diligence would require a longer period, then after such longer period, or if the Tenant fails to proceed promptly and diligently and continuously after the service of such notice to cure same; or
- (d) the Lands are vacated or unoccupied for ten (10) or more consecutive days while the Lands can be used for the Permitted Use, without the consent of the Landlord; or
- (e) the Lands are abandoned by the Tenant; or
- (f) this lease is terminated, except as permitted by Section 1.02 herein;

then and in every such case, it shall be lawful for the Landlord at any time thereafter without notice or demand, with or without process of law and by forcible entry if necessary, to re-enter into and upon the Lands, and to terminate this lease by leaving upon the Lands notice in writing of such termination. If the Landlord terminates this lease pursuant to this section, or otherwise as a result of default of the Tenant, there shall immediately become due and owing to the Landlord, in addition to any other sums payable to the Landlord hereunder as damages suffered by the Landlord as a result of the Tenant's breach, the then current month's rent, together with the rent accruing for the remainder of the Term. This provision for notice and termination shall not be construed so as to delay or supersede any specific remedy to which the Landlord may have recourse in this lease.

#### **Section 10.02 Distraint**

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

### **Section 10.03 Right to Re-let**

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

### **Section 10.04 Forfeiture**

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

### **Section 10.05 Remedies Generally**

Mention in this lease of any particular right or remedy of the Landlord in respect of the default by the Tenant shall not preclude the Landlord from any other right or remedy in respect thereof, whether available at law or in equity or by statute or expressly provided for in this lease. No right or remedy shall be exclusive or dependent upon any one or more of such rights or remedies independently or in combination, such rights or remedies being cumulative and not alternative. Whenever the Tenant seeks a remedy in order to enforce the observance or performance of any of the terms, covenants and conditions contained in this lease on the part of the Landlord to be observed or performed, the Tenant's only remedy (except where another remedy is expressly provided herein, in which event the Tenant shall be restricted to that remedy) shall be for such damages as the Tenant shall be able to prove in a court of competent jurisdiction that the Tenant has suffered as a result of a breach (if established) by the Landlord in the observance and performance of any of the terms, covenants and conditions contained in this lease on the part of the Landlord to be observed and performed. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of or in any way connected with this lease, the relationship of the Landlord and the Tenant created hereby, the Tenant's use or occupancy of the Lands or any claim for any injury. In the event the Landlord commences any action or proceeding for non-payment of rent, the Tenant agrees not to interpose any counterclaim of any nature or description in any such action or proceeding. In the event of any breach or threatened breach by the Tenant of any of the terms and provisions of this lease, the Landlord shall have the right to injunctive relief as if no other remedies were provided herein for such breach. The Tenant hereby expressly waives any right to assert a defence based on merger and agrees that neither the commencement of any action or proceeding, nor the settlement thereof, nor the entry of judgment therein shall bar the Landlord from bringing any subsequent action or proceeding from time to time. If the Tenant shall default hereunder prior to the date fixed as the commencement of any renewal



or extension of this lease, whether by a renewal or extension option herein contained or by separate agreement, the Landlord may cancel such option or agreement for renewal or extension of this lease, upon written notice to the Tenant.

### **Section 10.06 Expenses**

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

Without limiting the generality of the immediately preceding paragraph or any other provisions of this lease, the Tenant shall pay to the Landlord, as additional rent upon demand, all costs and expenses (including, without limitation, those fees, disbursements, costs and expenses set out in the bracketed insert in the immediately preceding paragraph of this Section 10.06) which the Landlord may incur or pay out by reason of, or in connection with:

- (a) any proceeding by the Landlord to terminate this lease, except as provided for in Section 1.02 of this lease or for the recovery of possession of the Lands or for the recovery of rent;
- (b) any other proceeding by the Landlord against the Tenant or any indemnitor with respect to this lease;
- (c) any distress levied by the Landlord against the Tenant's goods, chattels and inventory or any of them on the Lands for the recovery of rent;
- (d) any default by the Tenant in the observance or performance of any obligations of the Tenant under this lease whether or not the Landlord commences any proceeding against the Tenant or any indemnitor;
- (e) any proceeding brought by the Tenant with respect to this lease against the Landlord (or any officer, employee or agent of the Landlord) in which the Tenant fails to secure a final judgment against the Landlord;
- (f) any other appearance by the Landlord (or any officer, employee or agent of the Landlord) as a witness or otherwise in any proceeding whatsoever involving or affecting the Landlord, the Tenant, this lease, the indemnity agreement (if any) or the Lands;
- (g) any amendment, modification or change in any of the terms of this lease or the indemnity agreement, if any (and any request or negotiations pertaining thereto, whether or not such amendment, modification or change is finally

agreed on) unless such amendment, modification or change is requested by the Landlord;

- (h) any renewal, extension, surrender, or release of this lease or the indemnity agreement, if any (and any request or negotiations pertaining thereto, whether or not such renewal, extension, surrender or release becomes effective);
- (i) any transfer by the Tenant of this lease (and any request or negotiations pertaining thereto, whether or not such transfer is approved and finally agreed on); and
- (j) any Alterations of or to the Lands (and any request or negotiations pertaining thereto, whether or not such Alterations are approved and finally agreed on).

The Tenant's obligations under this Section 10.06 shall survive the expiration or earlier termination of this lease.

### **Section 10.07 Landlord May Remedy Tenant's Default**

If the Tenant fails to pay, when due, any amount required to be paid by the Tenant pursuant to this lease, the Landlord, after giving seven (7) days' notice in writing to the Tenant, may, but shall not be obligated to, pay all or any part of it. If the Tenant is in default in the performance of any of its covenants or obligations hereunder (other than the payment of rent required to be paid by the Tenant pursuant to this lease), the Landlord may from time to time after giving seven (7) days' notice (or without notice in the case of an emergency) having regard to the circumstances applicable, perform or cause to be performed any of such covenants or obligations, or any part thereof, and for such purpose may do such things as may be required, including, without limitation, entering upon the Lands and doing such things upon or in respect of the Lands or any part thereof as the Landlord considers requisite or necessary. All expenses incurred and expenditures attributable to or made (including all employee, overhead and other internal costs) pursuant to this Section 10.07, shall be paid by the Tenant to the Landlord as additional rent upon demand. The Landlord shall have no liability to the Tenant or any other person for any claims resulting from any such action, entry or performance of any work by the Landlord upon the Lands.

## **ARTICLE 11**

### **Section 11.01 Vacant Possession**

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

### **Section 11.02 Trade Fixtures**

- (a) If the Tenant is not in default hereunder at the expiration of the Term, the Tenant may remove from the Lands its trade fixtures and its other things or the

things of anyone who ever came to the Lands under authority of the Tenant and shall make good any damage caused to the Lands resulting from the installation or removal thereof.

- (b) If the Tenant fails to remove any of such trade fixtures or other things from and restore the Lands as provided in Section 11.02(a), all such remaining trade fixtures and other things shall become the property of the Landlord except to the extent that the Landlord requires removal thereof pursuant to Section 11.02(d).
- (c) If the Tenant abandons the Lands or this lease is terminated before the proper expiration of the Term due to a default on the part of the Tenant, as of the moment of such default by the Tenant, all trade fixtures and furnishings and other things of the Tenant (whether or not attached in any manner to the Lands) shall, except to the extent the Landlord requires the removal thereof pursuant to Section 11.02(d), become and be deemed to be the property of the Landlord, without compensation to the Tenant but without prejudice to any other right or remedy of the Landlord at law or in equity.
- (d) Notwithstanding that any trade fixture or other things is or may become the property of the Landlord, the Tenant shall forthwith remove all or part of the same and shall make good any damage caused to the Lands resulting from the installation or removal thereof, all at the Tenant's expense, should the Landlord so require by notice to the Tenant.
- (e) If the Tenant, after receipt of a notice from the Landlord pursuant to Section 11.02(d), fails to promptly remove any trade fixture or other things in accordance with such notice, the Landlord may enter into the Lands and remove therefrom all or part of the same and make good any damage caused to the Lands resulting from the installation or removal thereof, without any liability accruing against the Landlord and at the expense of the Tenant, which expense shall forthwith be paid by the Tenant to the Landlord.

### **Section 11.03 Overholding**

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

## **ARTICLE 12 RIGHT OF ENTRY**

### **Section 12.01 For Showings/Inspection**

The Landlord or its agents have the right to enter the Lands at any reasonable time (and upon twenty-four (24) hours written notice to the Tenant) to examine them or to show them to prospective purchasers, tenants or mortgagees, and to enter the Lands at times mutually agreed between the Landlord and the Tenant (or on reasonable prior notice) to make

such repairs as the Landlord may deem necessary or desirable and the Landlord will be allowed to take all required material into and upon the Lands without such entry constituting an eviction of the Tenant in whole or in part nor a breach of the Landlord's obligations and the rent reserved will in no way abate by reason of loss or interruption of the business of the Tenant or otherwise while the repairs are being made, provided the Landlord takes all commercially reasonable steps to perform the work expeditiously and with as little inconvenience to the Tenant as is possible in the circumstances.

#### **Section 12.02 Landlord's Access to Records**

The Landlord may at any reasonable time and upon twenty-four (24) hours written notice to the Tenant enter (or permit governmental authorities to enter) the Lands or any other office of the Tenant's for the purpose of ensuring the Tenant's compliance with this lease, including without limitation, by auditing the Tenant's environmental records with respect to the Lands and by conducting soil, water and other tests on the Lands, provided that the Landlord takes reasonable steps to avoid interfering with the Tenant's use and occupation of the Lands.

#### **Section 12.03 "For Lease/Sale" Signs**

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

#### **Section 12.04 Emergency Access**

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

### **ARTICLE 13**

#### **Section 13.01 Landlord Released**

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

#### **Section 13.02 Tenant's Covenant**

The Landlord may sell, transfer or otherwise dispose of the Lands, or any portion of the Lands, to any party and upon the conveyance to such party of the Lands or any portion of them, the Tenant will attorn to and become the Tenant of such party under the terms of this lease and upon request the Tenant will provide such party with an acknowledgment in writing

binding upon the Tenant that it will perform the obligations and satisfy the liabilities of the Tenant, and any indemnifier or covenantor will execute and deliver a new covenant or indemnity agreement to such party on the same terms as any existing agreement with the Landlord.

### **Section 13.03 Status Statement**

The Tenant will provide within seven (7) days of the request of the Landlord a status statement for the Landlord, addressed to the Landlord and any potential buyer or mortgagee, binding upon the Tenant, confirming:

- (a) that the Tenant has accepted possession of the Lands;
- (b) whether or not the Landlord has carried out all of its obligations pursuant to this lease;
- (c) that this lease constitutes the whole of the agreement between the parties (or setting out such other agreements);
- (d) that this lease is in full force and effect and that there are no defences or set offs which the Tenant claims against the Landlord (or setting out any such claims); and
- (e) such other matters as may be reasonably required by the Landlord or any potential or actual purchaser of the Lands.

## **ARTICLE 14**

### **Section 14.01 Delivery of Notices**

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

- (a) if to the Tenant, to:
  
- (b) if to the Landlord, to:

or to such other address as the party by notice duly given hereunder may designate.

### **Section 14.02 Administration of Lease**

Where this agreement requires or permits on the part of the Landlord any authority, reservation, discretion, disallowance, approval or other act of supervision or the giving of any

notice, such act or action shall be well and truly performed on the part of the Landlord when performed by the Landlord's Director of Real Estate Services or his nominee.

#### **Section 14.03 Covenants Survive Termination**

The covenants herein on the part of the Landlord and the Tenant which, as of termination of this lease or the Term whether by passage of time or otherwise, remain unfulfilled, undischarged or otherwise outstanding shall nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as there is any liability or indebtedness by either party to the other or so long as any such covenant remains unfulfilled, undischarged or otherwise outstanding, whether in whole or in part, notwithstanding anything herein to the contrary.

#### **Section 14.04 Time is of the Essence**

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

#### **Section 14.05 Captions and Headings**

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

#### **Section 14.06 Interpretation**

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

#### **Section 14.07 Joint and Several**

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

#### **Section 14.08 Waiver**

No waiver of or neglect to enforce this lease upon a default by the Tenant will be deemed to be a waiver of any such right upon any subsequent similar default. Without limiting the generality of this Section 14.08, the acceptance by the Landlord of part payment of any sums, including rent, required to be paid under this lease will not constitute a waiver or release of the Landlord's right to payment in full of such sums.

#### **Section 14.09 Entire Agreement**

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

#### **Section 14.10 Governing Law**

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

#### **Section 14.11 Severability**

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

#### **Section 14.12 Relationship between Landlord and Tenant**

Nothing contained in this lease nor any acts of the Landlord or the Tenant will be deemed to create any relationship between the Landlord and the Tenant other than the relationship of landlord and tenant.

#### **Section 14.13 Force Majeure**

Despite anything contained in this lease to the contrary, if the Landlord or the Tenant is, in good faith, delayed or prevented from doing anything required by this lease because of a strike, labour trouble, inability to get materials or services, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, or any other similar reason, that is not the fault of the party delayed or of its officers, employees or agents, the doing of the thing is excused for the period of the delay and the party delayed will promptly do what was delayed or prevented within the appropriate period after the delay. The preceding sentence does not excuse the Tenant from payment of rent or the Landlord from payment of amounts, if any, that it is required to pay, in the amounts and at the time specified in this lease.

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

per:

Authorized Signatory

per:

Authorized Signatory



GENERAL CERTIFICATE OF INSURANCE

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

1. THIS CERTIFICATE IS ISSUED TO: City of Vancouver, 453 W 12th Avenue, Vancouver, BC, V5Y 1V4
and certifies that the insurance policies as listed herein have been issued to the Named Insured(s) and are in full force and effect as of the effective date of the agreement described below.

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

MAILING ADDRESS:

LOCATION ADDRESS:

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

3. PROPERTY INSURANCE naming the City of Vancouver as a Named Insured and/or Loss Payee with respect to its interests and shall contain a waiver clause in favour of the City of Vancouver.

(All Risks Coverage including Earthquake and Flood)

INSURED VALUES: (Replacement Cost)

INSURER: \_\_\_\_\_

Building and Tenants' Improvements: \$ \_\_\_\_\_

TYPE OF COVERAGE: \_\_\_\_\_

Contents and Equipment: \$ \_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_

Deductible Per Loss: \$ \_\_\_\_\_

POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

4. COMMERCIAL GENERAL LIABILITY INSURANCE (Occurrence Form)

Including the following extensions:

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

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

Per Occurrence: \$ \_\_\_\_\_

Aggregate: \$ \_\_\_\_\_

All Risk Tenants' Legal Liability: \$ \_\_\_\_\_

INSURER: \_\_\_\_\_

Deductible Per Occurrence: \$ \_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_

POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

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

INSURER: \_\_\_\_\_

LIMITS OF LIABILITY:

POLICY NUMBER: \_\_\_\_\_

Combined Single Limit: \$ \_\_\_\_\_

POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

If vehicles are insured by ICBC, complete and provide Form APV-47.

6. UMBRELLA OR EXCESS LIABILITY INSURANCE

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

INSURER: \_\_\_\_\_

Per Occurrence: \$ \_\_\_\_\_

POLICY NUMBER: \_\_\_\_\_

Aggregate: \$ \_\_\_\_\_

POLICY PERIOD: From \_\_\_\_\_ to \_\_\_\_\_

Self-Insured Retention: \$ \_\_\_\_\_

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

8. POLICY PROVISIONS:

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

- a) The City of Vancouver, its officials, officers, employees, servants and agents have been added as Additional Insureds with respect to liability arising out of the operation of the Named Insured pursuant to the governing contract, agreement, lease, permit or license;
b) SIXTY (60) days written notice of cancellation or material change resulting in reduction of coverage with respect to any of the policies listed herein, either in part or in whole, will be given by the Insurer(s) to the Holder of this Certificate; the exception is cancellation for non-payment of premiums in which case the applicable statutory conditions will apply;
c) The insurance policy (policies) listed herein shall be primary with respect to all claims arising out of the operation of the Named Insured. Any insurance or self-insurance maintained by the City of Vancouver shall be in excess of this insurance and shall not contribute to it.

SIGNED BY THE INSURER OR ITS AUTHORIZED REPRESENTATIVE

PRINT NAME OF INSURER OR ITS AUTHORIZED REPRESENTATIVE, ADDRESS AND PHONE NUMBER

Dated: \_\_\_\_\_