

**THIRD PARTY LEASE
(WITH CONTRIBUTION AGREEMENT)
TERMS OF INSTRUMENT - PART 2
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WITNESSES that in consideration of the covenants and agreements herein set out, the parties covenant and agree as follows:

1. INTERPRETATION

1.1. **Definitions.** In this Lease the following terms will have the following meanings:

- (a) “Additional Rent” means all sums of money referred to in section 3.2;
- (b) “Alterations” means any change, alteration, substitution or replacement to the Improvements, but not the structural components thereof, which when made will form part of the Improvements;
- (c) “Approved Plans and Specifications” mean any Plans and Specifications and any amendments thereto which the Landlord has approved pursuant to sections 4.1 or 4.2(a);
- (d) “Architect” means an architect who is qualified to practise in British Columbia, or other design professional who is at arm’s-length from the Tenant, and who has been approved by the Landlord;
- (e) “Basic Rent” means \$10.00;
- (f) “Business Day” means any day other than Saturday, Sunday or a statutory holiday in the Province of British Columbia;
- (g) “CMHC” means Canada Mortgage and Housing Corporation or its successors in function;
- (h) “Commencement Date” means the date of registration of this Lease in the Land Title Office for the jurisdiction in which the Land is situate;
- (i) “Contribution Agreement” means an agreement entered into or to be entered into by the Tenant and CMHC which provides, amongst other things, for CMHC to provide assistance to the Tenant in relation to the Tenant’s cost of acquiring and developing the Property;
- (j) “Date of Damage or Destruction” means any date upon which the Improvements are wholly or partially damaged or destroyed by any cause;
- (k) “Day” means a calendar day;
- (l) “Eligible Occupant” means an individual who meets the eligibility criteria prescribed in the Contribution Agreement, whether or not the Contribution Agreement is in force, or as CMHC may otherwise prescribe, so long as CMHC has advised the Tenant in writing of such criteria, and the Landlord has consented to any change in the criteria;
- (m) “Event of Insolvency” means:

- (i) if the Tenant files a voluntary petition in bankruptcy, or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the Bankruptcy and Insolvency Act of Canada or any present or future applicable federal, provincial, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, or seeks or consents to, or acquiesces in, the appointment of any trustee, receiver, receiver manager, conservator, or liquidator of the Tenant of all or a substantial part of its property or its Leasehold Interest (the term “acquiesce” includes the failure to file a petition or motion to vacate or discharge any order, judgment, or decree providing for such appointment within 30 days after the appointment),
- (ii) if a court of competent jurisdiction enters an order, judgment, or decree approving a petition filed against the Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the Bankruptcy and Insolvency Act of Canada or any present or future applicable federal, provincial, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, or if the Court appoints a receiver or receiver manager of the Tenant, the Tenant acquiesces in the entry of such order, judgment, or decree (the term “acquiesce” includes the failure to file a petition or motion to vacate or discharge such order, judgment, or decree within 30 days after the entry of the order, judgment, or decree), or such order, judgment, or decree remains unvacated and unstayed for an aggregate of 90 days (whether or not consecutive) from the date of entry thereof or any trustee, receiver, receiver manager, conservator, or liquidator of the Tenant, of all or a substantial part of its property or its Leasehold Interest, is appointed without the consent or acquiescence of the Tenant and such appointment remains unvacated and unstayed for an aggregate of 60 days (whether or not consecutive),
- (iii) if the Tenant admits in writing to its inability to pay its debts as they mature,
- (iv) if the Tenant gives notice to any Statutory Authority of insolvency, or pending insolvency, or suspension, or pending suspension, of its operations,
- (v) if the Tenant makes an assignment for the benefit of its creditors or takes any similar action for the protection or benefit of creditors under the Bankruptcy and Insolvency Act of Canada or any present or future applicable federal, provincial, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, or

- (vi) if the Term is seized or taken in execution or attachment by a creditor of the Tenant;
- (n) “General Instrument Part 1” means Part 1 of the General Instrument as prescribed by the Land Title (Transfer Forms) Regulation, as amended;
- (o) “General Taxes” mean the aggregate of all taxes, charges, duties, assessments, rates, fees, levies or impositions, general or special, ordinary or extraordinary, now or hereafter during the Term imposed, assessed, rated, charged, or levied by any Statutory Authority on the Landlord or the Tenant on account of the parties entering into this Lease, or otherwise on account of this Lease, or on the use or occupancy of the Property or any part thereof, or on the Rent payable under this Lease, or in respect of the provision of any goods, services, or utilities by the Landlord under this Lease, including any goods and services tax imposed under Part IX of the Excise Tax Act of Canada, value added tax, business tax, transfer tax, retail sales tax, federal sales tax, excise tax, or duty or tax similar to the foregoing, and also including all legal, accounting and other professional fees and disbursements payable by the Landlord in respect of any determination of General Taxes as a result of assessment, appeal, or judicial review, and all penalties and interest charged on such taxes by reason of the Tenant’s failure to pay them when due, but excluding Property Taxes;
- (p) “Hazardous Substance” means without limitation, contaminants, pollutants or other substances, products, materials or goods which are hazardous or dangerous to human, animal, or plant health or life or the environment, and, in particular, includes substances, products, materials or goods which are defined as hazardous substances or special waste in or pursuant to any law, regulation or order of any authority of competent jurisdiction;
- (q) “Improvements” mean those improvements, structures, buildings, fixtures, equipment, and systems which now exist, or which may be constructed by the Tenant on the Land from time to time, including the heating, ventilating, air-conditioning, plumbing, electrical and mechanical systems and equipment;
- (r) “Land” means that certain parcel, or those certain parcels of land, or any part thereof, described in Item 2 of the General Instrument Part 1;
- (s) “Landlord” means the Person named in the General Instrument Part 1 as Transferor;
- (t) “Lease” means the General Instrument Part 1 and these Express Charge Terms under Part 2;
- (u) “Leasehold Interest” means the leasehold interest in and to the Property which the Tenant will acquire and hold by virtue of this Lease;

- (v) “Lender” means any Person who lends money to the Tenant against the security of a Mortgage, who qualifies as an “approved lender” as that term is defined in the National Housing Act of Canada, including CMHC;
- (w) “Month” means a calendar month;
- (x) “Mortgage” means a mortgage or other financing instrument which charges the Leasehold Interest to secure the payment by the Tenant of principal, interest and other charges under that mortgage or other financing instrument, together with security additional or collateral thereto;
- (y) “Permitted Encumbrances” means those charges and encumbrances set forth in Schedule “A”, and any other encumbrances which from time to time are approved in writing by the parties;
- (z) “Person” means any association, society, corporation, individual, joint-stock company, joint venture, partnership, trustee, administrator, legal representative, unincorporated organization, or Statutory Authority;
- (aa) “Plans and Specifications” mean all plans, drawings and specifications relating to the construction of the Improvements and any Alterations including architectural, structural, mechanical, electrical, and landscaping plans and specifications, and surveyors’ certificates;
- (bb) “Project” means construction and development of the Improvements on the Land;
- (cc) “Property” means the Land and Improvements;
- (dd) “Property Taxes” mean the aggregate of all taxes, charges, duties, assessments, rates, local improvement charges, school taxes, fees, levies or impositions, general or special, ordinary or extraordinary, now or hereafter during the Term, imposed, assessed, rated, charged, or levied by any Statutory Authority in respect of or against or relating to the Land, the Improvements, the Leasehold Interest, the business or undertaking of the Tenant, or the personal property of the Tenant located on the Land or in the Improvements, and including all amounts payable by the Landlord which are imposed by any Statutory Authority in substitution for all or any of the foregoing taxes, charges, duties, assessments, rates, local improvement charges, school taxes, fees, levies or impositions, all legal, accounting and other professional fees and disbursements payable by the Landlord in respect of any determination of any Property Taxes as a result of assessment, appeal, or judicial review and all penalties and interest charged on such taxes by reason of the Tenant’s failure to pay when due, but excluding capital gains, income or profits or taxes charged against and payable by the Landlord and General Taxes;
- (ee) “Rent” means the aggregate of Basic Rent and Additional Rent;

- (ff) “Specific Purpose” means the provision of affordable rental housing in all residential components of the Improvements and ancillary parking; *[NTD: Specific Purpose to be confirmed.]*
- (gg) “Statutory Authority” means any federal, provincial, regional, municipal, or other government, or authorized agency, department, or ministry thereof, which has jurisdiction with respect to any matter referred to in this Lease;
- (hh) “Substantial Completion” means the completion of a designated part of the Alterations or Improvements constructed in accordance with this Lease, or the whole of such work, as applicable, to the extent that a certificate of completion is required to be issued pursuant to section 7 of the Builders Lien Act of British Columbia, or such future applicable law;
- (ii) “Tenant” means the Person named in the General Instrument Part 1 as Transferee;
- (jj) “Term” means the period commencing on the Commencement Date and ending 60 years after the date the certificate of occupancy is issued by the Statutory Authority for the Improvements; and
- (kk) “Tri-Partite Agreement” means an agreement entered into among the Landlord, the Tenant and the Lender in substantially the same form as attached hereto as Schedule “B”.
- 1.2. **Time.** Time is of the essence of this Lease. If either party expressly or impliedly waives this requirement, that party may reinstate it by delivering notice to the other party. If a time is specified in this Lease for observing or performing an obligation, such time will be then local Vancouver, British Columbia time.
- 1.3. **Governing Law.** This Lease will be governed by and construed and enforced in accordance with the laws of British Columbia and the laws of Canada applicable therein.
- 1.4. **References.** In this Lease, words importing the singular include the plural and vice versa and words importing gender include all genders.
- 1.5. **Construction.** The division of this Lease into sections and the use of headings are for convenience of reference only and are not intended to govern, limit, or aid in the construction of any provision contained in this Lease. In all cases, the language in this Lease will be construed simply, according to its fair meaning, and not strictly for or against either party.
- 1.6. **No Limitation.** The word “including” when following any general statement, term, or matter is not to be construed to limit such general statement, term, or matter to the specific items set forth immediately following such word or to similar items whether or not non-limiting language such as “without limitation” or “but not limited to” or words of similar import is used with reference thereto, but

rather such general statement, term, or matter is to be construed to refer to all other items that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

- 1.7. **Validity of Provisions.** If a Court of competent jurisdiction finds that any provision contained in this Lease is invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provisions of this Lease which will be construed as if such invalid, illegal, or unenforceable provision had never been contained therein and such other provisions will be enforceable to the fullest extent permitted at law or in equity.
- 1.8. **No Waiver.** No party will be deemed to have waived the exercise of any right that it holds under this Lease unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right. Failure by either party to exercise any of its rights, powers or remedies hereunder, or its delay to do so, will not constitute a waiver of those rights, powers or remedies.
- 1.9. **Survival.** The representations, warranties and covenants of the Landlord and the Tenant, including any indemnification provisions contained in this Lease, will continue throughout the Term and will survive the expiry or earlier termination of this Lease.
- 1.10. **Financial Terms.** All accounting terms not otherwise defined in this Lease have the meanings assigned to them, and all calculations to be made under this Lease are to be made in accordance with Canadian generally accepted accounting principles consistently applied.
- 1.11. **Approvals, Consents and Agreements.** Except as otherwise expressly set out in this Lease, where this Lease provides for any approval, consent, or agreement with respect to any matter:
 - (a) it must be obtained prior to any action being taken thereon;
 - (b) it must be requested and responded to in writing; and
 - (c) it must not be unreasonably withheld or delayed.
- 1.12. **Relationship.** Nothing in this Lease will create any relationship between the Landlord and Tenant except that of landlord and tenant.
- 1.13. **Statutes.** Any reference to a statute is to such statute and to the regulations made pursuant to such statute as such statute and regulations may at any time be amended or modified and in effect, and to any statute or regulations that may be passed that have the effect of supplementing or superseding such statute or regulations.
- 1.14. **Schedules.** The following schedules are attached to and form part of this Lease:

2. DEMISE AND TERM

- 2.1. **Demise.** In consideration of the Rent, covenants, agreements, and conditions herein to be paid, performed, or observed by the Tenant, the Landlord hereby demises and leases the Property to the Tenant, and the Tenant hereby accepts that demise and lease, subject to the covenants, agreements, and conditions herein set out.
- 2.2. **Term.** Subject to the terms and conditions of this Lease, the Tenant will be entitled to have and to hold the Property for the Term.
- 2.3. **Occupancy Prior to Commencement Date.** If the Tenant, with the consent of the Landlord, uses or occupies the Property during any period prior to the Commencement Date, the Tenant will comply with all of its obligations under this Lease during such period which are consistent with a licence to occupy the Property other than obligations with respect to the payment of Rent.

3. RENT

- 3.1. **Basic Rent.** The Tenant will pay to the Landlord, or as the Landlord may in writing direct, the Basic Rent on the Commencement Date.
- 3.2. **Additional Rent.** Additional Rent includes all money, whether or not designated as Additional Rent, including but not limited to General Taxes and Property Taxes, to be paid by the Tenant whether to the Landlord or otherwise under this Lease, and includes any money paid by the Landlord as a result of any default by the Tenant, save and except Basic Rent. The Tenant will pay Additional Rent to the Landlord on demand, except if other terms for payment are expressly stipulated in this Lease.
- 3.3. **Utilities.** The Tenant will pay to the Landlord, or to the appropriate Statutory Authority, or other Person entitled to receive payment, as and when due, all charges for gas, electricity, light, heat, power, water, telephone, and other utilities and services used in or supplied to the Property, and all installation and hook-up charges. The Tenant will pay all fines, penalties, interest, and costs arising from unpaid and overdue utility charges.
- 3.4. **Proof of Payment.** The Tenant will deliver to the Landlord, within 10 days after demand by the Landlord from time to time, receipts or other evidence of the payment of General Taxes, Property Taxes and utility charges, and of all other amounts due and owing by the Tenant from time to time in connection with the Property, the Project, the Lease or any Mortgage.
- 3.5. **Right to Contest.** Each of the Landlord and Tenant may contest or appeal in good faith the validity or amount of any Property Taxes, except that if the Tenant wishes to so contest or appeal:

- (a) the Tenant will deliver to the Landlord notice that it intends to do so;
 - (b) the Tenant will not withhold or delay payment of the Property Taxes which are being contested or appealed unless the Landlord consents; and
 - (c) the Tenant will pay its own cost of so contesting or appealing.
- 3.6. **Net Lease.** The Tenant will pay all Rent without any deduction, abatement, or set-off. Except as otherwise expressly set out herein, the Tenant will pay and discharge all costs, expenses, and outlays incurred in respect of the Project and the Property. Rent will be absolutely net to the Landlord.
- 3.7. **Irregular Periods.** If for any reason it becomes necessary to calculate Rent for irregular periods, an appropriate pro rata adjustment will be made on a daily basis as at the Commencement Date or the date of termination of the Term.
- 3.8. **Rent Accruing.** All Rent reserved herein will be deemed to accrue from day to day.

4. **CONSTRUCTION OF IMPROVEMENTS**

- 4.1. **Prerequisites to Construction.** Prior to commencing excavation in contemplation of the Project, the Tenant will submit to the Landlord, or will cause its contractor to submit to the Landlord for approval:
- (a) Plans and Specifications which meet the lawful requirements of any Statutory Authority; and
 - (b) evidence that the insurance referred to in section 4.5 is in effect and that the premiums have been paid;

The Landlord will deliver to the Tenant, in a timely manner, a notice approving or refusing to approve the Plans and Specifications, and the evidence of insurance, provided that approval by the Landlord in no way makes the Landlord responsible for the Plans and Specifications, or the implementation thereof, the sole responsibility for which remains that of the Tenant. If the Landlord refuses to approve either of the foregoing, the Landlord will give reasons for such refusal, and the Tenant will make the necessary rectifications and re-submit such changes for approval promptly. The Tenant will not commence excavation or construction, as the case may be, until the Landlord has given all the approvals required pursuant to this section 4.1. The Landlord will approve the Plans and Specifications, and any amendments thereto, if they meet the lawful requirements of all Statutory Authorities.

- 4.2. **Construction Process.** The Tenant will:
- (a) submit to the Landlord for approval any amendment to the Approved Plans and Specifications prior to implementing any such amendment during the course of construction, and any such amendment must meet the lawful requirements of any Statutory Authority, provided that such

approval by the Landlord in no way makes the Landlord responsible for the amendment to the Approved Plans and Specifications or the implementation thereof, the sole responsibility for which remains that of the Tenant;

- (b) cause all Improvements to be constructed continuously, diligently, and in a good and workmanlike manner, and in accordance with the Approved Plans and Specifications, all lawful requirements of any Statutory Authority, safety precautions and programs required under applicable construction safety legislation and general and accepted construction practice including adequate supervision;
- (c) comply with the requirements of the Builders Lien Act of British Columbia;
- (d) permit the Landlord, or its representatives, from time to time without unreasonably impeding construction, to visit the Property to inspect the progress of construction of the Improvements and the Project, and to inspect and test the materials being used and the work being done, and cause its contractors and consultants to co-operate with the Landlord or its representatives so as to allow them to conduct such inspections;
- (e) cause to be promptly corrected all defects or variations in construction as reported by the Landlord or its representatives;
- (f) keep the Landlord advised in a timely manner of the progress of construction of the Project and any delays thereto;
- (g) upon request, provide the Landlord with a complete list of all contractors, subcontractors, suppliers, material men, consultants, engineers, architects and other Persons who have been retained by the Tenant and its contractors to perform the work in connection with the Project, together with the addressees of each of them;
- (h) pay or cause to be paid when due all lawful claims of contractors, employees, labourers, suppliers, material men and consultants, and all wages, salaries, holiday pay, workers' compensation assessments, and other like charges, and deliver to the Landlord evidence of all such payments on request, except that the Tenant may contest in good faith the amount or validity of any lien in accordance with section 4.4;
- (i) within 10 days after the date of Substantial Completion, deliver to the Landlord, or its representatives, a certificate signed by an Architect as described in section 7 of the Builders Lien Act certifying Substantial Completion of construction of the Project in accordance with the Approved Plans and Specifications; and
- (j) cause the Project to be completed within 24 months of the Commencement Date, provided however that if construction is delayed by

an event beyond the Tenant's reasonable control including any labour dispute, shortage of material or labour, transportation delay, act of God, pandemic or other like event commonly known as "force majeure", but not including lack of money, and provided further that the Tenant could not have avoided the delay by the exercise of reasonable effort or foresight, and the Tenant has used all reasonable efforts to overcome such delay, then the date for completion of the Project will be extended by such period of unavoidable delay, and within 10 days after the date of Substantial Completion of the Project, the Tenant will deliver to the Landlord:

- (i) a certificate signed by an Architect certifying completion of construction of the Project in accordance with the Approved Plans and Specifications, and
- (ii) evidence reasonably satisfactory to the Landlord that all unconditional occupancy and inspection permits required from any Statutory Authority in connection with the Improvements have been issued.

4.3. **Payment of Accounts.** The Tenant will pay as and when due all accounts for labour, services and material supplied to the Tenant or the Property.

4.4. **Liens.** The Tenant will not suffer or permit any lien claims to be filed against the title to the Land or the Leasehold Interest by reason of labour, services, or materials supplied or alleged to have been supplied to or for the benefit of the Tenant or the Project. If any lien claim is filed, the Tenant will obtain its discharge within 30 days after it comes to the Tenant's notice. If the Tenant wishes to contest in good faith the amount or validity of any lien claim and has so notified the Landlord, the Tenant may pay into Court the amount of the lien claim together with such costs as the Court may direct or to which the lien claimant may agree. If payment is made into Court, the Tenant may defer payment of the lien claim if it contests the claim with due diligence, and if neither the Land nor the Leasehold Interest becomes liable to forfeiture or sale. The Landlord may pay and discharge any lien claim if, in its reasonable judgment, the Land or the Leasehold Interest becomes liable to forfeiture or sale, or is otherwise in jeopardy. The Tenant will reimburse to the Landlord any amount paid by the Landlord in discharging a lien claim and the Landlord's reasonable expenses in connection therewith. The Tenant, on its own behalf and on behalf of the Landlord, will defend at its own expense all lien claims in any action brought for the enforcement of a lien claim.

4.5. **Insurance During Construction.** The Tenant will obtain, or will cause its contractor or contractors to obtain, prior to commencing site preparation or excavation, and will maintain, or will cause its contractor or contractors to maintain, until the insurance required pursuant to section 8 has been effected, insurance in accordance with GC 11.1 of "Standard Construction Document CCDC2 1994 issued by the Canadian Construction Documents Committee". The limits of the general liability insurance is not to be less than \$10,000,000 per

occurrence, with a deductible not exceeding \$2,500, and such other insurance as the Landlord may reasonably require. The Landlord will be an insured party in all policies of insurance as its interest may appear.

- 4.6. **Particulars of Insurance.** All the provisions of section 8 which, in the Landlord's opinion are reasonably applicable, will apply to the insurance required pursuant to this section 4.

5. **USE AND ENJOYMENT OF THE PROPERTY**

- 5.1. **Use and Operation.** The Tenant will develop, use and occupy the Property only for the Specific Purpose and in accordance with the Contribution Agreement in effect from time to time. The Tenant will operate and manage the Property in a reputable and efficient manner as a prudent owner would do and in accordance with its obligations under this Lease and the Contribution Agreement.
- 5.2. **Nuisance.** The Tenant will not carry on, or suffer, or permit to be carried on, in or upon the Property, anything which is noisy, noxious or offensive, or which constitutes a nuisance or annoyance to the Landlord, or to any neighboring properties, or their owners or occupants, provided however that the occupation of the Property for the Specific Purpose in accordance with the terms of this Lease will not constitute a nuisance.
- 5.3. **Waste.** The Tenant will not commit, or suffer, or permit any wilful or voluntary waste, spoil, or destruction in or upon the Property.
- 5.4. **Acts Conflicting with Insurance.** The Tenant will not do or omit to do, or suffer or permit to be done or omitted to be done, anything, which may render void or voidable, or which may conflict with the requirements of any policy of insurance, including any regulations of fire insurance underwriters applicable to such policy, required under this Lease.
- 5.5. **Compliance with Laws.** The Tenant will comply with all lawful requirements now or hereafter imposed by every Statutory Authority, or by insurers, concerning the Tenant or the Property including the construction, repair, maintenance, operation, use, and occupancy of the Property, and also including all lawful requirements pertaining to the environment and its protection to be observed or performed by the Landlord or the Tenant.
- 5.6. **Quiet Enjoyment.** If the Tenant observes or performs its obligations as required by this Lease, the Tenant may peaceably hold and enjoy the Property during the Term without interruption or disturbance by the Landlord or any Person lawfully claiming under the Landlord.

6. **DISPOSITIONS**

- 6.1. **Assigning and Sub-Letting.** The Tenant will not assign its Leasehold Interest, in whole or in part, or sublet, transfer, or otherwise part with possession of its Leasehold Interest or any part thereof for the whole or part of the Term, except if

the Landlord consents. The Landlord agrees that it will not unreasonably withhold its consent if the assignment is to a Person whose constating instruments preclude it from operating for profit, and that Person, in the Landlord's reasonable opinion, has the management skills necessary to operate the Project as a prudent owner would do.

(a)

The Tenant may sublet or otherwise part with possession of individual units in the Property to Eligible Occupants or to staff and other personnel who are required to operate and maintain the Property for the purposes of this Lease.

In the event of an assignment, subletting, transfer or other parting with possession other than to Eligible Occupants or to staff and other personnel as set forth above in this section 6.1, the Tenant will deliver to the Landlord, promptly after execution, a true copy of every permitted assignment, sublease, tenancy agreement, or other instrument evidencing a right of occupancy in respect of the Property, and of every modification thereof.

- 6.2. **Attornment.** If the Tenant assigns in whole or in part, sublets, transfers or otherwise parts with possession of its Leasehold Interest as permitted by section 6.1, other than in the case of a sublet or other parting with possession by the Tenant of individual units in the Property to Eligible Occupants or to staff and other personnel, then, concurrently therewith, the Tenant will cause the assignee, subtenant or occupant to deliver to the Landlord an agreement in form and substance reasonably satisfactory to the Landlord, whereby the assignee, subtenant or occupant will agree with the Landlord to observe or perform the Tenant's obligations under this Lease from and after the effective date of the assignment, sublease, or transfer for the remainder of the Term.
- 6.3. **Transfer of Property.** If the Landlord transfers any interest it has in the Property to any Person, or if any Person acquires that interest by virtue of foreclosure or other proceedings, the Tenant will attorn to such Person from and after the effective date of the transfer. Upon such attornment, this Lease will continue in full force and effect as a direct lease between the Tenant and such Person upon all the terms and conditions hereof, except that, after such attornment, such Person will not be liable for any act or omission of the Landlord prior to such attornment or subject to any offsets or defences which the Tenant might have had against the Landlord prior to such attornment, and the Landlord, without further written agreement, will be relieved of all liability for its obligations under the Lease which occurs or arises on or after the effective date of the transfer. Such attornment will take effect from and after the effective date of the transfer but the Tenant, upon request by the Landlord or any such Person, will execute and deliver to the Landlord or to any such Person, as the case may be, in a timely manner, an instrument evidencing such attornment in form and substance reasonably satisfactory to such Person.

- 6.4. **Tenant Encumbrances.** Except for the Permitted Encumbrances and a mortgage and assignment of rents of the Leasehold Interest in favour of CMHC, the Tenant will not mortgage, charge, encumber, or pledge its Leasehold Interest except that the Tenant may with the prior written consent of the Landlord grant a Mortgage and security collateral thereto to a Lender.
- 6.5. **Tri-Partite Agreement.** If and whenever a Mortgage is granted, the Landlord and the Tenant will execute and deliver to the Lender a Tri-Partite Agreement.
- 6.6. **Lender's Agreement.** At the request of any Lender, the Landlord and the Tenant will execute and deliver to the Lender an agreement among the Landlord, the Tenant and the Lender, in form and substance satisfactory to the Lender and the Landlord, each acting reasonably, and which will be binding and enforceable against the Landlord, the Tenant and the Lender, whereby the Landlord and the Tenant will be bound to pay, perform and observe their respective covenants, agreements and conditions contained in the Lease in favour of the Lender.
- 6.7. **Subordination.** At the Landlord's request, the Tenant will subordinate and postpone its Leasehold Interest and this Lease to all mortgages, deeds of trust and mortgage, debentures and other security which, from time to time, may charge or affect the Property and to all renewals, modifications, consolidations, replacements and extensions thereof, to the extent that all or any of the foregoing will have priority over the Leasehold Interest and this Lease despite the respective dates of execution or registration. At the Landlord's request, the Tenant will execute and promptly deliver to the Landlord a document confirming such subordination and priority, in form and substance reasonably satisfactory to the Landlord. The Tenant will not be obliged to subordinate and postpone its Leasehold Interest and this Lease except if the holder of the security who is requesting same assures to the Tenant quiet enjoyment under this Lease in accordance with its terms unless and until an event of default set out in section 11.3 occurs which entitles the Landlord to exercise its rights and remedies under section 11.

7. **REPAIRS, MAINTENANCE, AND ALTERATIONS**

- 7.1. **Repair and Maintenance.** The Landlord will not be obliged to repair, maintain, replace, or alter the Improvements or to supply any services or utilities to them, except as otherwise agreed by the parties in writing. The Tenant will repair and maintain as required the Improvements, including all equipment, fixtures, machinery and other facilities in, upon, or about the Improvements, commensurate with the condition in which a prudent owner would keep a development similar to the Property, excepting reasonable wear and tear, and whether such repair and maintenance is interior or exterior, ordinary or extraordinary, foreseen or unforeseen, except for repairs from which the Tenant has been released pursuant to sections 10.3 and 10.4. All repairs will be to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Improvements. If any repair is estimated to cost more than \$100,000, the Tenant will comply with the requirements of section 4 to the

extent that they are, or the Landlord considers them to be, reasonably applicable to the repairs.

- 7.2. **Repair according to notice.** Without restricting the Tenant's obligation to repair and maintain the Improvements pursuant to section 7.1, the Tenant, promptly upon notice by the Landlord, will repair and maintain the Improvements as required by section 7.1.
- 7.3. **Inspection.** The Landlord or its representatives may enter upon the Property at any reasonable time, and at any time in case of emergency, to examine the condition of the Improvements.
- 7.4. **Repair responsibilities.** If at any time during the Term the Tenant fails to maintain the Improvements pursuant to section 7.1, the Landlord may, but will not be obligated to make such repairs but only after giving the Tenant seven day's written notice of its intention to do so, except in the case of an emergency when no notice to the Tenant is required. In making such repairs, the Landlord will act reasonably so as to minimize the disruption to the Eligible Occupants. The Tenant will on demand reimburse any amount paid by the Landlord in making such repairs to the Improvements to the Landlord.
- 7.5. **Sidewalks.** The Tenant will keep the sidewalks adjacent to the Property clean from rubbish, ice, and snow, and free from obstruction as a prudent owner would do and in accordance with the lawful requirements of any Statutory Authority.
- 7.6. **Alterations.** The Tenant will not make, or suffer or permit to be made, any Alterations, except if:
- (a) the Tenant is not then in default in observing or performing its obligations under this Lease and no Event of Insolvency then exists;
 - (b) the Alterations would not materially change the design or operation of the Project and the Tenant obtains the Landlord's consent to the Alterations;
 - (c) the Tenant complies with the requirements of section 4 to the extent that they are, or the Landlord considers them to be, reasonably applicable to the Alterations; and
 - (d) the Tenant completes the Alterations in a timely manner.
- 7.7. **Demolition of Existing Improvements.** The Tenant, with the prior written consent of the Landlord, may at any time during the Term, upon giving 120 days prior written notice to the Landlord, elect to demolish the Improvements. If the Landlord consent to the demolition of the Improvements, the consents will include the following conditions:
- (a) if the Improvements are to be replaced, the new Improvements will have a value of not less than the full insurable value of the Improvements being

demolished and will be constructed in accordance with the requirements of this Lease; or

- (b) if the Improvements are not to be replaced, to return the Property to a safe, clean and sanitary condition and free of all Hazardous Substances, provided that upon receipt by the Landlord of the 120 day notice setting out the Tenant's intention to so demolish, the Landlord may, within 60 days of receiving such notice, require that the Tenant execute a surrender of the Lease without payment of any compensation by the Landlord to the Tenant for such surrender, and in such event the Tenant will not demolish the existing Improvements.

8. INSURANCE

8.1. **Insurance.** The Tenant will, at its expense, obtain and will, at its expense, maintain throughout the Term:

- (a) insurance protecting the Landlord (including the Landlord's employees and agents) and the Tenant against claims for personal injury, death, property damage or loss or third party or other public liability claims arising from any accident or occurrence in, on or about the Property to an amount of at least \$10,000,000 inclusive for any one occurrence or such greater amount as the Landlord, from time to time, may reasonably require;
- (b) insurance, calculated on a replacement cost basis, upon the full insurable value of the Improvements in the names of the Landlord, the Tenant, and any Lender, as their interests may appear, and protecting all of them from loss or damage caused by fire and other perils, including earthquake and flood, as may from time to time be included in a standard form "All Risks" insurance policy generally available in British Columbia;
- (c) if applicable, broad comprehensive boiler and machinery insurance, in the names of the Landlord, the Tenant, and any Lender, as their interests may appear, covering all boilers and pressure vessels on the Property, and also covering loss or damage caused by rupture of steam pipes, in such amount as a prudent owner of a project similar to the Property would obtain or in such greater amount as the Landlord, from time to time, may reasonably require; and
- (d) such other insurance as the Landlord may reasonably require from time to time, provided that nothing herein affects the Tenant's responsibility for obtaining and maintaining in force insurance, in addition to any insurance described in this section 8, that a prudent owner of a similar project being used for a similar Specific Purpose would obtain and maintain in force.

8.2. **Insurance Requirements.** The Tenant will ensure that the following provisions will govern the insurance referred to in section 8.1, and will comply with the following requirements with regard to such insurance:

- (a) the policies for such insurance will provide that the policies cannot be cancelled, terminated or materially amended, except if the insurer delivers to the Landlord at least 30 days' prior written notice of its intention to cancel, terminate or materially change the policy;
- (b) such policies will insure the interests of and protect the Landlord and the Tenant, notwithstanding any act, omission or negligence of the Landlord or the Tenant, which might otherwise result in the forfeiture or invalidity of such policies or any of them;
- (c) all policies of public liability insurance will be written to cover the Landlord and Tenant and will provide that each Person insured under such policy or policies will be insured in the same manner and to the same extent as if individual policies had been issued to each Person;
- (d) contain a cross liability clause and a waiver of subrogation in favour of the Landlord;
- (e) such policies will be written by insurers on terms and conditions, reasonably satisfactory to the Landlord;
- (f) such policies will be primary and will not require contribution or be in excess of any other insurance available to the Landlord or the additional named insured(s);
- (g) the Tenant will deliver to the Landlord certified copies of such policies or renewals thereof as soon as reasonably possible after the Tenant has acquired such policies or renewals thereof, as the case may be;
- (h) the Tenant will notify the Landlord immediately of any circumstance known to the Tenant which might materially affect the coverage under any such policies; and
- (i) such policies may provide that the amount payable in the event of any loss will be reduced by a deductible in an amount acceptable to the Landlord. The Tenant will be a co-insurer to the extent of the amount so deducted from the insurance proceeds paid in the event of any loss, and for the purposes of section 10, such amount will be included as part of the insurance proceeds payable and paid.

8.3. **Landlord May Obtain Insurance.** The Tenant will pay or cause to be paid all of the premiums under the policies of insurance referred to in this section 8 as they become due and payable, and upon default of payment by the Tenant, the Landlord may pay the same and add the amount so paid to the Additional Rent.

8.4. **Workers' Compensation.** At all times during the Term, the Tenant will, at its own expense, obtain and maintain, or cause to be obtained and maintained, workers' compensation coverage in respect of all workers, employees and other Persons engaged in any work in or upon the Property, non-payment of which

would create a lien claim against the Property or the Leasehold Interest or would contravene the Workers' Compensation Act of British Columbia.

- 8.5. **No Representation.** The Tenant acknowledges that any requirement or advice by the Landlord as to the amount of coverage under any policy of insurance will not constitute a representation by the Landlord that the amount required is adequate and, without limiting the generality of section 8.2(f) the Tenant acknowledges and agrees that it is solely responsible for obtaining and maintaining policies of insurance in adequate amounts pursuant to this Lease.
- 8.6. **Release from Liability for Insured Loss or Damage.** The Tenant hereby releases the Landlord and its personnel, whether or not the Landlord and their respective personnel have been negligent from any and all liability for loss or damage caused by any of the perils against which the Tenant will have insured or is obligated to insure pursuant to the terms of this Lease or any applicable law, the intent being that the Tenant's policies of insurance will contain a waiver of subrogation in favour of the Landlord.

9. INDEMNITY

- 9.1. **Non-liability of Landlord.** The Landlord will not be liable or responsible in any way, and the Tenant hereby releases the Landlord, for any personal injury that may be sustained by the Tenant or other Person in or about the Property, or on the sidewalks or lanes adjacent thereto, or for any loss of or damage or injury to property belonging to or in the possession of the Tenant or other Person in or about the Property, or for any injury, loss, or damage to person or property caused by smoke, steam, water, ice, rain, snow, or fumes which may leak, issue, or flow into, through or from the Improvements or from the sprinkler system, drainage or smoke pipes or plumbing therein or from any other place or quarter or caused by or attributable to the condition or arrangement of any electrical or other wiring or the air-conditioning equipment.
- 9.2. **Indemnity.** Except for the negligence or other wrongful act of the Landlord or its employees, agents or contractors, the Tenant will indemnify and save harmless the Landlord from all loss, damage, liabilities, costs, claims, suits, or actions, including fees of solicitors and other professional advisors, in connection with or arising out of:
- (a) any breach by the Tenant in observing or performing any of its obligations under this Lease; and
 - (b) any personal injury, death or property damage or third party or public liability claims arising from any accident or occurrence on or about the Property or on the sidewalks, lanes or streets adjacent thereto, or happening by virtue of the Tenant's or any Person's use of the Improvements or occupation of the Property, or otherwise.

10. DAMAGE OR DESTRUCTION

- 10.1. **No Abatement.** Subject to sections 10.3 and 10.4 the damage or destruction of the Improvements will not entitle the Tenant to any abatement or reduction of Rent.
- 10.2. **Notice of Damage or Destruction.** If and whenever the Improvements are damaged or destroyed, the Tenant will give the Landlord immediate notice thereof.
- 10.3. **Termination-No Mortgage.** If, in the opinion of a professional engineer or architect appointed by the Landlord, who is at arm's-length from the Landlord, the Improvements are damaged or destroyed in excess of 25% of their value during the last five years of the Term, the Tenant may, within 30 days after receipt of the opinion of the professional engineer or architect, deliver written notice to the Landlord that the Tenant elects not to repair or replace the Improvements. If the Tenant delivers such notice, this Lease will be deemed to be terminated on the 60th day after the Date of Damage or Destruction. In such case, the Landlord and Tenant will apply, or permit to be applied, the proceeds of the insurance referred to in section 8.1 as follows:
- (a) first, to pay the cost of demolishing the Improvements and removing from the Property all debris and waste, and of restoring the Property to a safe, neat, and level condition;
 - (b) second, to pay all Rent owing as at the termination date of the Lease, and
 - (c) third, the balance, to be apportioned between the Landlord and Tenant and paid as follows:
 - (i) to the Landlord a sum which bears to such balance the same ratio as the expired portion of the Term as at the Date of Damage or Destruction bears to the whole Term; and
 - (ii) to the Tenant a sum which bears to such balance the same ratio as the unexpired portion of the Term from and after the Date of Damage or Destruction bears to the whole Term.
- 10.4. **Termination-Mortgage.** If, in the opinion of a professional engineer or architect appointed by the Landlord, who is at arm's-length from the Landlord, the Improvements are damaged or destroyed in excess of 25% of their value during the last five years of the Term, the Tenant may, within 30 days after receipt of the opinion of the professional engineer or architect, deliver to the Landlord written notice that the Tenant elects not to repair or replace the Improvements. If the Tenant delivers such notice, this Lease will be deemed to be terminated on the 60th day after the Date of Damage or Destruction. In such case, the Landlord and the Tenant will apply, or permit to be applied, and the Tenant will cause the Lender to apply or permit to be applied, the proceeds of the insurance referred to in section 8.1 to:

- (a) first, to pay to the Lender the balance of principal, interest and other charges owing under the Mortgage;
- (b) second, to pay the cost of demolishing the Improvements and removing from the Property all debris and waste, and of restoring the Property to a safe, neat, and level condition;
- (c) third, to pay all Rent owing as at the termination date;
- (d) fourth, the balance, to be apportioned between the Landlord and the Tenant and paid as follows:
 - (i) to the Landlord a sum which bears to such balance the same ratio as the expired portion of the Term as at the Date of Damage or Destruction bears to the whole Term, and
 - (ii) to the Tenant, a sum which bears to such balance the same ratio as the unexpired portion of the Term from and after the Date of Damage or Destruction bears to the whole Term.

10.5. **Restoring Land.** If the Tenant gives a notice of termination pursuant to section 10.3 or section 10.4, the Tenant will, at its sole cost, demolish the Improvements, including the foundations, and promptly restore the Land, in a good and workmanlike manner, in accordance with the lawful requirements of any Statutory Authority, and to the reasonable satisfaction of the Landlord. In doing so, the Tenant will comply with the requirements of section 4 to the extent that they are, or the Landlord considers them to be, reasonably applicable.

10.6. **Repairing or Replacing Improvements.** If the Lease is not terminated pursuant to sections 10.3 or 10.4, the Tenant will proceed promptly to repair or replace the Improvements:

- (a) in compliance with the requirements of section 4 to the extent that they are, or the Landlord considers them to be, reasonably applicable, except that the Landlord will reasonably determine the time for Substantial Completion; and
- (b) to the similar condition as existed prior to the occurrence of such damage or destruction, having comparable value and character, provided that the new Improvements will yield, on the basis of reasonable calculation and expectation, the most profitable and efficient return from their use and occupation, taking into account the Specific Purpose.

10.7. **Payment of Insurance Proceeds.** Forthwith after the Date of Damage or Destruction, the Tenant will deliver to the Landlord an irrevocable order, in form and substance reasonably satisfactory to the Landlord, authorizing the insurer(s) to pay all of the insurance proceeds resulting from the damage or destruction to the Landlord, except if any Lender requires that such proceeds be paid to it and delivers to the Landlord an acknowledgment, in form and substance reasonably

satisfactory to the Landlord, and which will be binding and enforceable against the Lender, that the Lender will use and disburse such proceeds only in accordance with this section 10.

- 10.8. **Use of Proceeds.** The Landlord or the Lender, as the case may be, will pay to the Tenant from time to time out of the insurance proceeds such sums as the Tenant may require to comply with sections 10.5 or 10.6, as the case may be, in accordance with such terms and conditions as the Landlord or the Lender, as the case may be, may reasonably require.

11. **DEFAULTS AND REMEDIES**

- 11.1. **Interest and Costs.** The Tenant will pay to the Landlord interest on any Rent in arrears from the date such Rent was due until it is paid, at the rate of interest prescribed from time to time under the Land Act of British Columbia and the regulations made pursuant thereto, in respect of money payable under this Lease that is not paid on the due date until such arrears are fully paid and satisfied.

- 11.2. **Landlord's Right to Perform Covenants.** If the Tenant fails to observe or perform any obligation under this Lease, including any obligation to pay Additional Rent, the Landlord may observe or perform such obligation without waiving or releasing the Tenant from its obligation to do so, and without limiting or abrogating any other right or remedy it may have. In order to do so, the Landlord may enter upon the Property and no entry for the purpose of curing a default will be deemed to be a forfeiture or termination of this Lease. The Tenant will pay to the Landlord all sums paid or costs incurred by the Landlord in so observing or performing, together with interest thereon at the rate referred to in section 11.1 from the date each such payment was made or each such cost was incurred by the Landlord plus an administration fee equal to 10% of each such cost. The Landlord will not be liable to the Tenant for any inconvenience, disturbance or other damage resulting from the Landlord's observance or performance of any of the Tenant's obligations.

- 11.3. **Events of Default.** If and whenever:

- (a) the Tenant defaults in its obligation to pay any Rent and such default continues for 30 days after the Landlord delivers notice of the default to the Tenant;
- (b) the Tenant defaults in observing or performing any other obligation under this Lease, and such default continues for 60 days after the Landlord delivers to the Tenant notice of the default, except that if the default, by its nature, requires more than 60 days to cure, the Tenant may have such further time to rectify the default as the Landlord considers reasonable so long as the Tenant begins to rectify promptly and thereafter proceeds with all due diligence;
- (c) the Tenant defaults in observing or performing any of its obligations under the Contribution Agreement, and such default continues for 60 days after

CMHC delivers to the Tenant and the Landlord notice of the default, except that if the default, by its nature, requires more than sixty days to cure, the Tenant may have such further time to rectify the default as CMHC considers reasonable so long as the Tenant begins to rectify promptly and thereafter proceeds with all due diligence;

- (d) an Event of Insolvency occurs;
- (e) the Property is vacated, is used by a person who is not entitled to use the Property, or the Property is not used for the Specific Purpose; or
- (f) the Tenant defaults in observing or performing any obligation contained in any charge or encumbrance registered against the title to the Property, to which the Tenant has agreed to observe or perform;

then, and in every such case, it will be lawful for the Landlord without notice to the Tenant, to immediately re-enter into and upon the Property, or any part thereof in the name of the whole, whereupon, but subject to the rights of a Lender set out in section 14 hereof, this Lease will terminate immediately. Such termination will be wholly without prejudice to the Landlord's right to recover arrears of Rent or damages for any antecedent breach of covenant by the Tenant, and the Landlord may subsequently recover from the Tenant all losses, damages, costs, including legal costs, and expenses the Landlord suffers by reason of the Lease having been prematurely terminated.

11.4. **Re-Letting.** If any event of default set out in section 11.3 occurs, the Landlord, in addition to its other rights hereby reserved, may enter the Property as agent of the Tenant, either by using force or otherwise, without being liable for any prosecution therefor, and without terminating this Lease, and, on notice to the Tenant, may re-let or sublet, as the Tenant's agent, the Property or any part thereof and may apply the proceeds of that re-letting or subletting on account of Rent due or in satisfaction of the breach of any covenant or agreement herein contained, and the Tenant will remain liable for the deficiency, if any, together with the Landlord's reasonable expenses of retaking and re-letting, including legal fees, and the Landlord will nevertheless be entitled to recover from the Tenant, Rent due for the remainder of the Term in the event the Landlord has not so re-let, or, if the Landlord has re-let, may recover from the Tenant the difference in Rent payable by any new tenant of the Property for the balance of the Term and that required to be paid by the Tenant under this Lease for the balance of the Term, and the Tenant agrees to pay promptly on demand any amount as so determined.

11.5. **Distress.** The Landlord may levy distress upon the personal property of the Tenant for Rent in arrears, and, in case of removal by the Tenant of any personal property from the Property after any default by the Tenant, may follow such personal property notwithstanding any statute, by-law, regulation, or order of any Statutory Authority. The Tenant waives and renounces the benefit of any present or future legislation purporting to limit or qualify the Landlord's right to distrain.

- 11.6. **Remedies Cumulative.** The exercise of any specific right or remedy by the Landlord will not prejudice or preclude the Landlord from exercising any other right or remedy in respect thereof, whether allowed at law or in equity or expressly provided for in this Lease. No such remedy will be exclusive or dependent upon any other such remedy, but the Landlord may from time to time exercise any one or more of such remedies independently or in combination. All remedies are cumulative. The Landlord may apply to restrain by injunction any breach by the Tenant in observing or performing its obligations under this Lease.
- 11.7. **Waiver Re-Entry.** The Tenant hereby waives any present or future requirement that notice of the Landlord's intention to re-enter the Property be served or that the Landlord commence legal proceedings in order to re-enter the Property.
- 11.8. **Condoning.** Any condoning, excusing, or overlooking by the Landlord of any default by the Tenant in observing or performing its obligations under this Lease will not operate as a waiver of, or affect or defeat, the Landlord's rights in respect of any subsequent default.

12. IMPROVEMENTS

- 12.1. **Ownership.** The Improvements are to form part of the Property and are not to be considered the separate property of the Tenant and will become the absolute property of the Landlord upon the termination of the Lease, free and clear from all liens, charges, encumbrances, equities, or claims of the Tenant or any Person claiming under the Tenant.

13. SURRENDER OF LEASE

- 13.1. **Surrender.** The Tenant will peaceably surrender this Lease and its Leasehold Interest, and deliver possession of the Property to the Landlord at the expiry or earlier termination of the Term in accordance with its obligations hereunder, in a state of good repair pursuant to section 7 hereof. If this Lease is registered, the Tenant will deliver to the Landlord, in a timely manner, upon the request of the Landlord, a discharge of this Lease in registrable form.
- 13.2. **Removal of Personal Property.** Upon the expiry or earlier termination of the Term, and if the Tenant is not then in default, the Tenant may remove from the Property all of the Tenants' personal property. The Tenant will repair any damage to the Improvements resulting from the Tenant's removal of its personal property.

14. RIGHTS OF LENDER

- 14.1. **Notice of Mortgage.** Within seven days after a Mortgage permitted under section 6.4 is granted, the Tenant will deliver to the Landlord a true copy of that Mortgage.
- 14.2. **No Surrender or Modification of Lease.** The Landlord will not accept the surrender of, modify, or agree to accept the surrender of or modification of this Lease, except with the prior written consent of the Lender.

- 14.3. **Notice of Default.** The Landlord will not terminate this Lease or re-enter upon the Property, unless:
- (a) the Landlord first delivers to the Lender written notice of the default entitling the Landlord to so re-enter or terminate the Lease and specifying, in reasonable detail, the nature of the default;
 - (b) the Lender fails to cure the Tenant's default within 45 days after the date of receipt of notice or within such further period as may be reasonable, having regard to the nature of the default or event, so long as the Lender commences to cure promptly and thereafter continues diligently; or
 - (c) the Lender does not proceed under, or comply with, section 14.6.
- 14.4. **Possession.** If the default is of such nature that the Lender must be in possession of the Property in order to cure, then the period of 45 days referred to in section 14.3(b) will be extended to include the period of time required by the Lender to obtain such possession with due diligence, so long as during such extended period all the Tenant's other obligations under this Lease are being duly observed or performed.
- 14.5. **Acceptance of Performance.** The Landlord will accept observance or performance by the Lender of any of the Tenant's obligations as having the same force and effect as though observed or performed by the Tenant.
- 14.6. **Realization.** If the Lender commences foreclosure or other realization proceedings under its Mortgage, the Landlord will not terminate this Lease or re-enter upon the Property if:
- (a) within the 45 day period referred to in section 14.3(b), as the case may be, the Lender delivers to the Landlord written notice that it has commenced such proceedings;
 - (b) except for an Event of Insolvency or other default or event which, by its nature, is incurable, the Lender cures all defaults or events as required by section 14.3(b) and, during the course of such proceedings, observes or performs, or causes to be observed or performed, the Tenant's obligations under this Lease; and
 - (c) the Lender diligently prosecutes such proceedings to a conclusion.
- 14.7. **Foreclosure.** If the Lender, by foreclosure or otherwise, acquires or intends to assign or sublet the Leasehold Interest, the Lender, assignee or subtenant will not be obliged to observe or perform the Tenant's obligations under sections 5.1 or 6.4, so long as the Lender's assignee or subtenant is a not for profit organization but will otherwise comply with all the Tenant's other obligations under this Lease. For certainty, the restrictions on use contained in any housing agreement that is registered on title prior to the Lease will apply to the Lender and any assignee or subtenant. If the Lender, assignee or subtenant elects not to comply

with sections 5.1 and 6.4, the Landlord may deliver to the Lender within 60 days thereafter written notice electing to terminate this Lease at the end of such 60 day period. If the Landlord so elects, it will either:

- (a) pay to the Lender, on the termination date, the amount secured by the Mortgage; or
- (b) grant to the Lender, as a condition of the termination of the Lease, a non-recourse mortgage in the principal amount equal to the amount secured by the Mortgage, which non-recourse mortgage will charge the Landlord's fee simple interest in the Property in priority to all other financial charges and otherwise on the same terms and conditions as the Mortgage with such amendments as are required to have the non-recourse mortgage charge the fee simple interest of the Landlord in the Property rather than the Leasehold Interest.

14.8. **Limited Recourse.** If the Lender forecloses on the Leasehold Interest, or if the Lender assigns this Lease to another Person in the course of realization proceedings, in accordance with the requirements of this Lease, the Lender will deliver to the Landlord, concurrently with the effective date of any such foreclosure or assignment, a copy of the instrument of foreclosure or assignment and a binding and enforceable agreement whereby the Lender or the assignee, as the case may be, agrees with the Landlord, from and after the effective date of the foreclosure or assignment, to attorn as tenant to the Landlord and to be bound by the Tenant's obligations under the Lease except as otherwise set out in section 14.7. Upon delivery of such assignment of the Lease by the Lender to the Landlord, the Lender will be released from all liability for the observance or performance of the Tenant's obligations under the Lease except for uncured defaults during such time as the Lender was tenant under the Lease provided that the assignee agrees to be bound by the terms of the Lease. The Landlord will consent to any such instrument or assignment if the Lender has cured, or caused to be cured, all defaults of the Tenant under the Lease.

14.9. **CMHC.** If a Lender other than CMHC forecloses on the Leasehold Interest and assigns the Leasehold Interest to CMHC, then so long as CMHC remains in possession of the Land it will be deemed to be a Lender for the purposes of this section 14. If a Lender other than CMHC assigns the Leasehold Interest to CMHC or if CMHC is the Lender, CMHC will not be bound by any provisions of this section 14 which contravene CMHC's requirements with respect to insured loans. If CMHC is the Lender, CMHC will not be bound by the insurance requirements set out in sections 8.1 or 8.1 during such time as it holds the Leasehold Interest after a foreclosure.

14.10. **Priority.** If there is more than one Lender, the rights granted to each of them by the Landlord pursuant to this section 14 will be deemed granted to each of them in order of the priority in the land title office of the registered security of each of them.

15. **ARBITRATION**

15.1. **Arbitration Process.** If and whenever any dispute arises between the Landlord and the Tenant concerning anything regarding this Lease, including the interpretation or enforceability of any provision, or the rights or obligations of either the Landlord or the Tenant, the Landlord and the Tenant agree to submit that dispute to arbitration before a single arbitrator in the following manner and according to the following rules:

- (a) one party may deliver notice to the other party setting out the nature of the dispute;
- (b) the Landlord and the Tenant will agree on the appointment of the single arbitrator within 30 days of the notice being delivered pursuant to section 15.1(a);
- (c) the single arbitrator will be at arm's-length from the Landlord and the Tenant and the Landlord and the Tenant will instruct the single arbitrator to reach their decision fairly and without bias toward or against either party;
- (d) the single arbitrator will be governed by the provisions of the Arbitration Act of British Columbia and, within 30 days after the date of appointment, will reach a decision on the dispute and will deliver notice of that decision to the Landlord and the Tenant;
- (e) the decision of the single arbitrator will be conclusive and binding on the Landlord and Tenant;
- (f) the Landlord and Tenant will bear the costs of arbitration equally or as determined by the single arbitrator, as the case may be; and
- (g) if the Landlord and the Tenant fail to agree on the appointment of the single arbitrator within 30 days of the notice being delivered pursuant to section 15.1(a), the single arbitrator will be appointed in accordance with the provisions of the Arbitration Act of British Columbia.

If a Lender holds a Mortgage of the Tenant's leasehold interest in the Land, any notice of a dispute delivered pursuant to this section 15.1 by one party to the other party will be given at the same time to the Lender if it has specified an address for notice, and the Lender 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.

16. **HAZARDOUS SUBSTANCES**

16.1. **Acceptance of the Land.** The Tenant has leased the Land after examining it and the Tenant takes possession of the Land on an "as is" basis and agrees that the Landlord has not made any representations, warranties, covenants and agreements

with respect to the condition of the Land, the suitability of the Land for the Tenant's intended use or any use whatsoever, and in particular and without limiting the generality of the foregoing, as to the environmental condition of the Land.

- 16.2. **Indemnity.** The Tenant will indemnify and save harmless the Landlord, its officers, employees, agents, successors and assigns from any and all liabilities, actions, damages, claims, losses, costs and expenses whatsoever including, without limitation, the full amount of all reasonable legal fees, costs, charges and expenses and the reasonable costs of removal, treatment, storage and disposal of any Hazardous Substance and remediation of the Property which may be paid by, incurred by or asserted against the Landlord, its officers, employees, agents, successors or assigns as a direct or indirect result of the presence of any Hazardous Substance on, in or under, or the escape, seepage, leakage, spillage, discharge, emission or other release of any Hazardous Substance from any part of the Property to the extent caused by any act or omission of the Tenant, its employees, agents, contractors, invitees, licensees or subtenants from any part of the Property, into the environment including, without limitation, into or upon any real property, the atmosphere or any water course or body of water. This agreement to indemnify will continue in force so long as the possibility of such liability, loss, claim or damage exists.
- 16.3. **Not to Permit Hazardous Substances.** The Tenant will not bring onto the Property, or suffer or permit to be brought onto the Property, any Hazardous Substance, and the Tenant hereby assumes all duties or obligations, including the costs in connection therewith, pursuant to the lawful requirements of any Statutory Authority for any remedial action for any Hazardous Substance found in, on or under the Property.
- 16.4. **Removal of Hazardous Substances.** If any Hazardous Substance is found in, on or under the Property, the Tenant will:
- (a) give the Landlord immediate notice, and thereafter give the Landlord from time to time notice of the extent and nature of the Tenant's compliance with the provisions of this section 16.4;
 - (b) promptly remove from the Property any such Hazardous Substance in a manner which conforms with the lawful requirements of any Statutory Authority pertaining to the removal and movement of same;
 - (c) if requested by the Landlord, obtain from an independent consultant approved by the Landlord verification of the complete and proper removal of the Hazardous Substance or, if such is not the case, a report as to the extent and nature of any failure to comply with the foregoing provisions; and
 - (d) remedy, to the reasonable satisfaction of the Landlord, any damage to the Property caused by the presence of any Hazardous Substance or the

Tenant's compliance with lawful statutory requirements with regard thereto.

- 16.5. **Exclusive Property of Tenant.** If the Tenant brings or creates upon or under the Property any Hazardous Substance, or suffers or permits such, then, notwithstanding any rule of law or equity to the contrary, such Hazardous Substance will be and remain the sole and exclusive property of the Tenant, and will not become the property of the Landlord, notwithstanding the degree of affixation of the Hazardous Substance or the goods containing the Hazardous Substance, and notwithstanding the expiry or earlier termination of this Lease.
- 16.6. **Inspection of the Property.** Upon giving notice to the Tenant, the Landlord or its representative may enter upon the Property to inspect the same if the Landlord has reason to believe that Hazardous Substances may be in, on or under the Property, but in so doing the Landlord will act reasonably to minimize the disruption to the Eligible Occupants. Without in any way limiting the generality of the foregoing, the Landlord or its representative may enter upon the Property to conduct any environmental testing, site assessment, investigation or study deemed necessary by the Landlord, and the reasonable cost of such testing, assessment, investigation or study, as the case may be, will be payable by the Tenant forthwith and will be a charge upon the Property if such investigation finds that the Tenant is in breach of its duties or obligations under this section 16.

17. **GENERAL PROVISIONS**

- 17.1. **Sale or Lease.** The Landlord or its representative may enter on the Land at any reasonable time during normal business hours to display the Property for sale, and during the last two years of the Term, to display the Property for lease.
- 17.2. **Notices.** Unless otherwise specified, each notice to a party must be given in writing and delivered personally, or by courier to the parties as follows:

If to the Landlord at:

Capital Regional District
625 Fisgard Street
PO Box 1000
Victoria, BC V8W 2S6
Attention: ♦

If to the Tenant at:

Capital Region Housing Corporation
631 Fisgard Street
Victoria, BC V8W 1R7
Attention: ♦

or to any other address or person that the party designates. Any notice, if delivered personally or by courier, will be deemed to have been given when actually received.

- 17.3. **Overholding.** If with the Landlord's consent, the Tenant remains in possession of the Property after the expiry or earlier termination of the Term, the Tenant will be deemed to be occupying the Property on a month to month tenancy, at a monthly basic rent as stipulated in the Landlord's consent to the overholding. Either the Landlord or the Tenant may terminate such month-to-month tenancy on the last day of any month by delivery of at least one month's notice of termination to the other. If, without the Landlord's consent the Tenant remains in possession of the Property after the expiry or earlier termination of the Term, the Tenant will be deemed to be occupying the Property upon a tenancy at sufferance only, at a monthly basic rent stipulated by the Landlord and which may apply retroactively to the day following the end of the Term. The Landlord may terminate such tenancy at sufferance at any time by delivery of notice to the Tenant. Nothing contained in this section 17.3 will be construed so as to limit or impair or constitute a waiver of the Landlord's rights and remedies under section 11 or at law or in equity.
- 17.4. **Payments after Termination.** No payment of money by the Tenant to the Landlord after the expiry or earlier termination of the Term or after the Landlord has given any notice to the Tenant, will reinstate, continue, or extend the Term or render ineffective any notice given by the Landlord to the Tenant prior to the payment of such money. After the service of notice or the commencement of a suit, or after final judgment granting the Landlord possession of the Property, the Landlord may collect and receive any Rent due under the Lease, and the payment thereof will not render ineffective any notice, or in any manner affect any pending suit or any judgment previously obtained.
- 17.5. **No Merger.** At the Landlord's option, the voluntary or other surrender or termination of this Lease will either have the effect of terminating all or any subleases or other rights of occupancy or of assigning to the Landlord all the Tenant's rights, benefits, and advantages under all or any such subleases or rights of occupancy, provided that if the Landlord elects to take an assignment of the Tenant's interests in the subleases or other rights of occupancy, the Landlord will assume the obligations of the Tenant thereunder. The Landlord may exercise such option by notice to the Tenant and to all subtenants or other occupants known to the Landlord.
- 17.6. **Estoppel.** The Tenant or Landlord, as the case may be, will execute and deliver, in a timely manner, to the Person who has made a written request therefor, a written statement certifying:
- (a) that this Lease is unmodified and is in full force and effect or, if there have been modifications, identifying what they are and certifying that the Lease is in full force and effect as modified;

- (b) the dates to which Rent has been paid; and
 - (c) that neither the Landlord nor the Tenant, as the case may be, is in default under this Lease or, if in default, the particulars thereof.
- 17.7. **Registration.** The Tenant, at its cost, including the cost of preparing the leasehold explanatory plan, if any, will register this Lease in the appropriate land title office.
- 17.8. **Conditions.** All the provisions of this Lease will be deemed and construed to be conditions as well as covenants as though the words specifically expressing covenants or conditions were used in each separate provision hereof.
- 17.9. **Enuring effect.** This Lease will enure to the benefit of and be binding upon the successors and permitted assigns of each of the Landlord and Tenant.
- 17.10. **Modification or Amendment.** Except as expressly provided in this Lease no amendment, supplement, restatement or termination of any provision of this Lease is binding unless it is in writing and signed by each person that is a party to this Lease at the time of the amendment, supplement, restatement or termination.
- 17.11. **Counterparts.** This Lease and any amendment, supplement, restatement or termination of any provision of this Lease may be executed and delivered in any number of counterparts each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.
- 17.12. **Execution.** By signing the General Instrument, the parties have agreed to be bound by their respective obligations contained in this Lease.

SCHEDULE “A”
PERMITTED ENCUMBRANCES

LEGAL NOTATIONS

◆

CHARGES AND ENCUMBRANCES

◆

DRAFT

SCHEDULE "B"

TRI-PARTITE AGREEMENT

THIS TRI-PARTITE AGREEMENT is dated for reference the ____ day of _____, 20__

AMONG:

CAPITAL REGIONAL DISTRICT

having an office at 625 Fisgard Street, PO Box 1000, Victoria, BC V8W 2S6

(the "Landlord")

AND:

CAPITAL REGION HOUSING CORPORATION

having an office at 631 Fisgard Street, Victoria, BC V8W 1R7

(the "Tenant")

AND:

[Lender Name]

having an office at ●

(the "Lender")

WHEREAS:

- A. By a lease (the "Lease") registered in the Victoria Land Title Office under registration no. _____, the Landlord leased to the Tenant that certain parcel of land legally described as:

Parcel Identifier: _____ (the "Land")

along with certain improvements (the "Improvements") constructed or to be constructed thereon (the Land and the Improvements are collectively called the "Property");

- B. The Lender has agreed to make a loan (the "Loan") to the Tenant, and as security for the Loan the Tenant has agreed to grant to the Lender a mortgage (the "Mortgage") of the Tenant's interest in the Lease which mortgage is registered against the Property under registration no. _____; and
- C. The Lender has required as a condition of making the Loan that the Landlord and the Tenant enter into this Tri-Partite Agreement with the Lender to set out their respective rights and obligations relating to the Lease and the Mortgage.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Representations of the Landlord and the Tenant.** Each of the Landlord and Tenant severally represent and warrant to the Lender as follows:
 - 1.1. the Lease is presently in full force and effect and has not been modified or amended, except as may have been disclosed to and accepted by the Lender in writing;
 - 1.2. there has been no assignment or subletting of the Tenant's interest under the Lease, except for the Mortgage; and
 - 1.3. all rental payments due and owing under the Lease have been paid in full and, to the best of each of their knowledge, there are no existing defaults under the Lease by either the Landlord or the Tenant.
2. **Covenants of the Landlord.** The Landlord covenants and agrees with the Lender that:
 - 2.1. it will observe and perform all of the terms, conditions, covenants and agreements contained in the Lease to be observed and performed by the Landlord, will provide the Lender with a copy of all correspondence sent to the Tenant in relation to the Lease, the Property or the Mortgage, and will allow the Lender (within the period available to the Tenant or such longer time as provided for in the Lease) to cure any default of the Tenant under the Lease;
 - 2.2. except with the written consent of the Lender, the Landlord will not:
 - 2.2.1 accept a surrender of the Lease;
 - 2.2.2 amend or vary the Lease in any way whatsoever; or
 - 2.2.3 transfer the Property or assign its interest in the Lease without first notifying the Lender of such intended transfer, and without first procuring from the proposed transferee before such transfer takes place a Tri-Partite Agreement among the proposed transferee, the Tenant and the Lender in substantially the same form as this Tri-Partite Agreement; and
 - 2.3. the Landlord will not terminate the Lease, unless the Landlord complies with Section 11.3 of the Lease.
3. **Covenants of the Tenant.** The Tenant covenants and agrees with the Lender that:
 - 3.1. it will observe and perform all of the terms, conditions, covenants and agreements contained in the Lease; and
 - 3.2. except with the written consent of the Lender, the Tenant will not:
 - 3.2.1 surrender the Lease; or

- 3.2.2 terminate the Lease; or
 - 3.2.3 assign, amend or vary the Lease in any way whatsoever; or
 - 3.2.4 otherwise part with possession of its interest in the Lease.
- 4. **Notice of Mortgage.** The Landlord acknowledges that it has received a copy of the Mortgage in satisfaction of the requirement for delivery to the Landlord of a true copy of the Mortgage as set out in section 14.1 of the Lease.
- 5. **Consent to Mortgage.** The Landlord consents to the Mortgage, and any amendments or supplements thereto or replacements thereof (other than amendments or replacements which have the effect of increasing the principal which will require the further written consent of the Landlord, such consent not to be unreasonably withheld), and waives any breach or event of default that may have been occasioned under the Lease by virtue of the execution, delivery or registration of the Mortgage; provided that such consent will not have the effect of waiving or modifying any of the other rights of the Landlord under the Lease, or of relieving the Tenant from the observance and performance of its covenants and obligations under the Lease.
- 6. **No Obligation to Advance Funds.** Nothing in this Tri-Partite Agreement will be construed to obligate the Lender to advance any moneys pursuant to the Mortgage, the advance of moneys being in the complete and absolute discretion of the Lender.
- 7. **Consent by the Tenant.** The Tenant hereby consents to:
 - 7.1. the Landlord giving to the Lender copies of all correspondence sent to the Tenant pursuant to the Lease; and
 - 7.2. the Lender giving to the Landlord notice of any default under the Mortgage and any steps taken by the Lender to enforce any of its rights under the Mortgage.
- 8. **Assignment.** The Landlord and the Tenant will not assign their rights or obligations under this Tri-Partite Agreement (otherwise than by assignment by the Landlord in accordance with and to a transferee referred to in Section 2.2.3) without the Lender's prior written consent.
- 9. **Additional Remedies.** In addition to any remedies that are available to it under this Tri-Partite Agreement and at law, the Lender will be entitled to all equitable remedies, including specific performance, injunction or declaratory relief, to enforce its rights under this Tri-Partite Agreement against the Landlord and/or the Tenant.
- 10. **Term.** This Tri-Partite Agreement will continue in full force and effect until the later of the termination of the Contribution Agreement, the Tenant becoming entitled in law to receive a discharge of the Mortgage or receiving a similar agreement releasing the Tenant of its obligations under the Mortgage, or termination of the Lease or for such further period of time as the Lender may require to fully satisfy and exhaust its rights and remedies set out herein and in the Lease and the Mortgage, provided that the Lender has provided a written acknowledgement of such termination to the Landlord and Tenant, such acknowledgement not to be unreasonably withheld or delayed.

11. **Notices.** Unless otherwise specified, each notice to a party must be given in writing and delivered personally or by courier to the parties as follows:

If to the Landlord at:

Capital Regional District
625 Fisgard Street
PO Box 1000
Victoria, BC V8W 2S6
Attention: ♦

If to the Tenant at:

Capital Region Housing Corporation
631 Fisgard Street
Victoria, BC V8W 1R7
Attention: ♦

If to the Lender at:

•

or to any other address or person that the party designates. Any notice, if delivered personally or by courier, will be deemed to have been given when actually received.

12. **Counterparts.** This Tri-Partite Agreement, and any amendments thereto, may be executed and delivered in any number of counterparts, each of which when executed and delivered is deemed to be an original but all of which taken together constitute one and the same instrument.
13. **Governing Law.** This Tri-Partite Agreement will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. The parties to this Tri-Partite Agreement hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of British Columbia and all courts competent to hear appeals therefrom.
14. **Headings.** The division of this Tri-Partite Agreement into articles, sections, paragraphs, subsections and clauses, and the insertion of headings, are for convenience of reference only and will not affect the construction or interpretation of this Tri-Partite Agreement.
15. **Validity of Provisions.** If any provision of this Tri-Partite Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision and everything else contained in this Tri-Partite Agreement will continue in full force and effect.
16. **Waiver.** No party will be deemed to have waived the exercise of any right that it holds under this Tri-Partite Agreement unless such waiver is made in writing. No waiver made with respect to any instance involving the exercise of any such right will be deemed to be a waiver with respect to any other instance involving the exercise of the right or with respect to any other such right. Failure by any party to exercise any of its rights, powers

to remedies hereunder or its delay to do so will not constitute a waiver of those rights, powers or remedies.

17. **Time.** Time is of the essence of this Tri-Partite Agreement, provided that the time for doing or completing any matter may be extended or abridged by an agreement in writing between the parties or their respective solicitors. Upon such extension or abridgement, time will remain of the essence unless otherwise agreed by the parties.
18. **Amendments.** Except as expressly provided in this Tri-Partite Agreement, no amendment, supplement, restatement or termination of any provision of this Tri-Partite Agreement is binding unless it is in writing and signed by each person that is a party to this Tri-Partite Agreement at the time of the amendment, supplement, restatement or termination.

19. **Binding Effect and Enurement.** This Tri-Partite Agreement will enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.

CAPITAL REGIONAL DISTRICT

by its authorized signatory(ies):

Name:
Signed this _____ day of _____, 20__

Name:
Signed this _____ day of _____, 20__

CAPITAL REGION HOUSING CORPORATION

by its authorized signatory(ies):

Name:
Signed this _____ day of _____, 20__

Name:
Signed this _____ day of _____, 20__

[Lender]

by its authorized signatory(ies):

Name:
Signed this _____ day of _____, 20__

Name:
Signed this _____ day of _____, 20__