

**LAND TITLE ACT
FORM C (Section 233) CHARGE**

GENERAL INSTRUMENT - PART 1 Province of British Columbia

PAGE OF PAGES

Your electronic signature is a representation that you are a designate authorized to certify this document under section 168.4 of the *Land Title Act*, RSBC 1996 c.250, that you certify this document under section 168.41(4) of the act, and that an execution copy, or a true copy of that execution copy, is in your possession.

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

Deduct LTSA Fees? Yes

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

STC? YES

3. NATURE OF INTEREST

CHARGE NO.

ADDITIONAL INFORMATION

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

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

(b) Express Charge Terms Annexed as Part 2

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

5. TRANSFEROR(S):

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

7. ADDITIONAL OR MODIFIED TERMS:

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

Officer Signature(s)

Execution Date

Transferor(s) Signature(s)

Y	M	D

OFFICER CERTIFICATION:

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

**LAND TITLE ACT
FORM E**

SCHEDULE

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**LAND TITLE ACT
FORM D**

EXECUTIONS CONTINUED

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Officer Signature(s)

Execution Date

Transferor / Borrower / Party Signature(s)

Y	M	D

OFFICER CERTIFICATION:

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

**LAND TITLE ACT
FORM E**

SCHEDULE

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ENTER THE REQUIRED INFORMATION IN THE SAME ORDER AS THE INFORMATION MUST APPEAR ON THE FREEHOLD TRANSFER FORM, MORTGAGE FORM, OR GENERAL INSTRUMENT FORM.

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DATED FOR REFERENCE THE 16TH DAY OF OCTOBER, 2017

PARKING AGREEMENT

WHEREAS:

- A. The Owner is the owner of the Lot A herein described and the Municipality is the owner of the Municipal Lands herein described;
- B. The parties have entered into a Design-Build Contract whereby the Owner has agreed to design and build the Library on the Development Lands and a Phased Development Agreement whereby, among other things, the Owner has agreed to design, build, operate and maintain the Parkade herein described;
- C. The Parkade will be located on the Parking Lot Area herein described and the Owner will assume the complete responsibility for the design, construction, operation and maintenance of the Parkade subject to the terms of this Agreement;
- D. The parties have agreed to grant Statutory Rights of Way over the Lot A herein described under section 218 of the *Land Title Act* to the Municipality which is necessary for the operation and maintenance of the Municipality's undertaking;
- E. The Municipality has agreed to grant a lease over the Municipal Parking Area herein described to the Owner for the purpose of constructing, operating and maintaining the Parkade in the Municipal Parking Area;

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS CONFIRMED BY THE PARTIES, THE PARTIES AGREE AS FOLLOWS:

**ARTICLE 1
DEFINITIONS AND INTERPRETATION**

1.1 Definitions

Capitalized terms used in this Agreement have the meanings specified in this section 1.1, unless otherwise provided in this Agreement:

- (a) “**Additional Rent**” means all sums, costs, expenses and other amounts, if any, payable by the Owner to the Municipality pursuant to the Lease, including, without limitation, Property Taxes, payments in lieu of Property Taxes, Utilities and all sums payable by way of indemnity under this Agreement, but excluding Basic Rent
- (b) “**Alterations**” means all alterations, changes, replacements, substitutes, additions and improvements to the Parkade;
- (c) “**Basic Rent**” means one dollar (\$1.00);
- (d) “**Commencement Date**” means the commencement date for the Lease, namely October 16, 2017;
- (e) “**Commencement of Construction**” means the later of the date when the first building permit for the Parkade is issued to the Owner by the Municipality and the date when the

Owner's contractor commences any work related to construction of the Parkade as certified to the Municipality by the Parkade Designer;

- (f) “**Design-Build Contract**” means the CCDC 14 2013 Design-Build Stipulated Price Contract between the Owner and the Municipality dated for reference July 17, 2017;
- (g) “**Development Lands**” means those lands and premises previously municipally described as the 1235 Esquimalt Road, Esquimalt, British Columbia and prior to their subdivision by Subdivision Plan EPP95431, were legally described as: PID: 029-349-311, LOT 1, SECTION 11, SUBURBAN LOT 40, ESQUIMALT DISTRICT, PLAN EPP32782;
- (h) “**General Instrument**” means the Form C - Land Title (Transfer Forms) Regulation pursuant to the *Land Title Act* to which these Terms of Instrument are attached and all schedules and addenda to the Form C;
- (i) “**Insurance**” means the insurance that is required to be maintained by the Owner in respect of the Parking Lot Area as described in Article 12 of this Agreement;
- (j) “**Land Title Act**” means the *Land Title Act* of British Columbia as amended or re-enacted from time to time;
- (k) “**Lands**” means Lot A and the Municipal Lands collectively;
- (l) “**Lease**” means the lease of the Municipal Parking Area by the Municipality to the Owner under this Agreement including all applicable schedules attached to this Agreement;
- (m) “**Lease Year**” means a 12-month period commencing with the 1st day of January in one calendar year and ending on the 31st day of December thereof, provided that the first Lease Year will commence on the Commencement Date and end on the 31st day of December next following and the last Lease Year will end on the last day of the Term and commence on the 1st day of the immediately preceding January;
- (n) “**Library**” means the Greater Victoria Public Library - Esquimalt Branch to be designed and built on the Development Lands by the Owner in accordance with the Design-Build Contract;
- (o) “**Library Exclusive Stalls**” means seven Parking Spaces in the Surface Parking Area, including in part of Area 1 outlined in bold in Reference Plan EPP104131, and 13 Parking Spaces in the Underground Parking Area for the exclusive use of Municipal Users to the Library;
- (p) “**Losses**” means liabilities, actions, judgments, claims, losses, damages, orders, fines, penalties, expenses, including related professional and other fees and disbursements and costs;
- (q) “**Lot A**” means those lands and premises formerly comprising part of the Development Lands and legally described in Item 2 of the General Instrument;
- (r) “**Municipal Hall**” means the Municipality's Municipal Hall located at 1229 Esquimalt Road, Esquimalt, British Columbia;

- (s) “**Municipal Hall Exclusive Stalls**” means eight Parking Spaces in the Surface Parking Area and four Parking Spaces in the Underground Parking Area for the exclusive use of Municipal Users to the Municipal Hall;
- (t) “**Municipal Lands**” means those lands and premises municipally described as 1229, Esquimalt, British Columbia and legally described as: PID: 003-882-641, Lot A, Section 11 Esquimalt District Plan 18121;
- (u) “**Municipal Parking Area**” means that part of the Municipal Lands identified in Explanatory Plan EPP76482 as shown in Schedule C and including those parts of the Surface Parking Area and the Underground Parking Area that are located within the Municipal Lands;
- (v) “**Municipal Spaces**” means Parking Spaces designated for the exclusive and non-exclusive use of motor vehicles by Municipal Users;
- (w) “**Municipal Users**” means the Municipality’s Personnel, invitees and any person employed at or visiting the Library or the Municipal Hall;
- (x) “**Municipality**” means the Township of Esquimalt or its permitted successors or assigns under this Agreement;
- (y) “**Municipality Contribution**” means the amounts described in sections 5.7 and 5.8 of this Agreement;
- (z) “**Operating and Maintenance Costs**” means all costs for the operation, cleaning, repairing and maintenance of the Parkade, including those costs described in sections 5.6(a)-(d) of this Agreement;
- (aa) “**Owner**” means ARAGON ESQUIMALT TC PROPERTIES LTD. (INC. NO. BC1068481), its affiliates as that term is defined in the Business Corporations Act (BC) and its successors or assigns under this Agreement;
- (bb) “**Parkade**” means the parkade to be designed, built and operated by the Owner in accordance with the Phased Development Agreement, including without limitation, the Surface Parking Area and the Underground Parking Area, hard landscaping and all necessary services and ancillary facilities, together with all Alterations or repairs thereto and all improvements from time to time constructed upon or affixed or appurtenant to the Parking Lot Area,
- (cc) “**Parkade Designer**” means D’Ambrosio Architecture of Victoria, British Columbia, or such other building designer or architect qualified as such pursuant to the laws of the Province of British Columbia as the Owner may appoint from time to time, who is a member in good standing of the Architectural Institute of British Columbia for supervising the design, construction, repair, renovation and/or reconstruction of the Parkade;
- (dd) “**Parking Lot Area**” means the Municipal Parking Area and that part of Lot A comprising the Parkade, including the Surface Parking Area and the Underground Parking Area;
- (ee) “**Parking Space**” means every parking space within the Parkade reserved for parking of motor vehicles;

- (ff) **“Permit”** means any building permit, development permit or other approval issued by the Municipality or another governmental authority relating to the construction of the Parkade;
- (gg) **“Permitted Encumbrances”** means the charges and encumbrances, if any, registered on title to the Lands on the Commencement Date, the Statutory Rights of Way herein granted and any other charges specifically approved in writing by the Municipality;
- (hh) **“Personnel”** means the elected officials, officers, employees, agents, contractors, licensees, permittees, nominees and delegates of a party, as applicable;
- (ii) **“Phased Development Agreement”** means the phased development agreement between the parties dated for reference October 16, 2017;
- (jj) **“Property Taxes”** means all assessments for taxes, rates, duties (including school taxes, local improvement rates and other charges levied pursuant to the *Hospital District Finance Act* (British Columbia), the *Municipal Finance Authority Act* (British Columbia) or otherwise) that now are or will or may be levied, rated, charged or assessed in respect of the Parking Lot Area and all other structures, machinery, equipment, facilities and other property of any nature whatsoever located within the Parking Lot Area by any municipal, parliamentary, legislative, regional, school or other authority;
- (kk) **“Prime Rate”** means the floating annual percentage rate of interest established from time to time by the main branch of the Bank of Nova Scotia or Royal Bank of Canada located in Esquimalt, British Columbia, or its successor, as the base rate that is used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Nova Scotia or Royal Bank of Canada Bank as its “prime rate”;
- (ll) **“Reference Plan EPP104129”** means Reference Plan EPP104129 (Control Number 159-715-8608) prepared by Ryan Hourston, BCLS, and certified correct by him on August 11th, 2020, a copy of which is attached hereto as Schedule B;
- (mm) **“Reference Plan EPP104131”** means Reference Plan EPP104131 (Control Number 159-727-1692) prepared by Ryan Hourston, BCLS, and certified correct by him on August 12th, 2020, a copy of which is attached hereto as Schedule A;
- (nn) **“Rent”** means the Basic Rent, Additional Rent, and any other amounts payable by the Owner under the Lease;
- (oo) **“SRW Area”** has the meaning described in section 3.1 of this Agreement;
- (pp) **“Statutory Rights of Way”** means the statutory rights of way granted to the Municipality as described in Article 3 of this Agreement;
- (qq) **“Subdivision Plan EPP95431”** means Subdivision Plan EPP95431 (Control Number 159-484-0744) prepared by Ryan Hourston, BCLS, and certified correct by him on July 15th, 2020;
- (rr) **“Surface Parking Area”** means that part of the Parking Lot Area constituting the surface area of the Parkade, including in part of Lot A shown as Area 1 outlined in bold in Reference Plan EPP104131;

- (ss) “**Term**” means the term of the Lease as described in section 5.1 of this Agreement;
- (tt) “**Underground Parking Area**” means that part of the Parking Lot Area constituting the underground area of the Parkade, including that part in Lot A shown as Area 4 and Area 5 in Reference Plan EPP104129; and
- (uu) “**Utilities**” means all charges, rates and levies on account of utilities, including heat, electricity, gas, and other costs and expenses of a similar nature, and, if not included in Property Taxes, for water, storm, sanitary and garbage collection in respect of the Parking Lot Area.

1.2 Legislation

Any reference in this Agreement to legislation will be deemed to include all regulations thereto, all amendments and re-enactments thereof and all successor legislation.

ARTICLE 2 CONSTRUCTION OF PARKADE

2.1 The Owner to Construct Parkade

- (a) On or before the first anniversary of the Commencement Date, the Owner will apply to the Municipality for all Permits necessary to construct the Parkade. Upon receipt of the Municipality’s approval and all necessary Permits in the Municipality’s absolute discretion and provision of such security by the Owner as the Municipality may require in its absolute discretion in respect of the construction of the Parkade and the development of the Parking Lot Area, the Owner will construct the Parkade, together with other facilities ancillary thereto and connected therewith, on the Parking Lot Area in substantial accordance with the Phased Development Agreement and the drawings, specifications (including materials to be used), elevations, location on the Parking Lot Area and exterior decoration and design and all other documents and information upon which the issuance of the Permits by the Municipality are based and that have been approved by the Municipality. No changes of any substantial nature that alters the general intent and function of the Parkade will be made to such drawings, specifications, elevations, location, exterior decoration and design, other documents or information, or to the requirements of such Permits without the approval of the Municipality.
- (b) The Owner covenants and agrees with the Municipality that, subject always to section 2.5:
 - (i) Commencement of Construction of the Parkade will take place on or before the first anniversary of the Commencement Date;
 - (ii) the Parkade will be substantially completed on or before the fourth anniversary of the Commencement of Construction; and
 - (iii) the Parkade will include the Municipal Spaces described in section 3.2(a) consisting of the following:
 - (A) eight Municipal Hall Exclusive Stalls in the Surface Parking Area and four Municipal Hall Exclusive Stalls in the Underground Parking Area;

- (B) seven Library Exclusive Stalls in the Surface Parking Area including in part of Area 1 outlined in bold in Reference Plan EPP104131 and 13 Library Exclusive Stalls in the Underground Parking Area; and
- (C) 20 Parking Spaces in the Surface Parking Area for the non-exclusive use of motor vehicles by Municipal Users and other persons parking in the Parkade.

2.2 Substantial Completion of Parkade

For the purposes of this Article 2, the Parkade will be deemed to have been substantially completed when the Parkade Designer has certified to, or otherwise satisfied, the Municipality that, with respect to the Parkade:

- (a) all work of a structural nature has been properly completed;
- (b) all building bylaws and regulations of the Municipality have been complied with by the Owner;
- (c) all Parking Spaces are completed and ready for use;
- (d) the Parkade has been constructed in all respects in a good and workmanlike manner and in accordance with the drawings and specifications, and in compliance with all Permits; and
- (e) a certificate of completion has been issued in respect of the Parkade pursuant to the *Builders Lien Act* (British Columbia).

2.3 Landscaping

Within one hundred and eighty (180) days of substantial completion of the Parkade, the Owner will landscape the Parking Lot Area and thereafter maintain the landscaping in accordance with landscaping plans that have been approved by the Municipality.

2.4 Alterations After Substantial Completion

After substantial completion of the Parkade, the Owner will not make or permit to be made any Alterations affecting the structure of the Parkade, the major electrical and/or mechanical systems contained in them, or the exterior decoration, design, or appearance of the Parkade without the written approval of the Municipality, which approval the Municipality will not unreasonably withhold. No Alterations will be undertaken until the Owner has submitted or caused to be submitted to the Municipality such drawings, specifications (including the materials to be used), elevations (where applicable), locations (where applicable), exterior decoration and design and such other documentation and information as the Municipality may request in connection with the proposed Alterations, and until all of the same have been approved in writing by the Municipality, which approval the Municipality will not unreasonably withhold. The Owner covenants and agrees with the Municipality that, subject to section 2.5, all Alterations undertaken by or for the Owner once begun will be prosecuted with due diligence to completion. All such Alterations will meet the requirements of any government authorities having jurisdiction. Notwithstanding the above, minor alterations in connection with the maintenance and repair of the Parkade and which do not alter the use of the Parkade are permitted and no permission from the Municipality shall be required.

2.5 Unavoidable Delays

If, by reason of strike, lock-out or other labour dispute, material or labour shortage not within the control of the Owner, stop-work order issued by any court or tribunal of competent jurisdiction (provided that such order was not issued as the result of any act or fault of the Owner or of any one employed by it directly) fire, explosion, flood, wind, water, earthquake, act of God or other similar circumstances beyond the reasonable control of the Owner and not avoidable by the exercise of reasonable effort or foresight by the Owner, the Owner is, in good faith and without default or neglect on its part, prevented or delayed in achieving Commencement of Construction or substantial completion of the Parkade in accordance with section 2.2 or the repair of the Parkade or any part or parts of the Parkade which under the terms of this Agreement the Owner is required to do by a specified date or within a specified time, the date or period of time within which such work was to have been completed will be extended by the Municipality by a reasonable period of time at least equal to that of such prevention or delay, and the Owner will not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Agreement within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Municipality and the Owner. If the Municipality and the Owner cannot agree as to whether or not there is a prevention or delay within the meaning of this section 2.5, or they cannot agree as to the length of such prevention or delay, then such matter will be determined by reference to arbitration in accordance with Article 20. For the purposes of this section 2.5 the failure of the Owner to obtain all Permits under section 2.1(a) or the inability of the Owner to meet its financial obligations under this Agreement or otherwise will not be a circumstance beyond the reasonable control of the Owner and not avoidable by the exercise of reasonable effort or foresight by the Owner.

The Owner will act diligently and take all reasonable steps of a prudent owner to remove the cause or causes of delay in the Commencement of Construction or completion of the Parkade.

ARTICLE 3 STATUTORY RIGHTS OF WAY

3.1 Statutory Right of Way over Lot A

Pursuant to section 218 of the *Land Title Act*, and subject to section 3.2, the Owner itself and for its successors and assigns, hereby agrees to grant and convey in perpetuity and at all times to the Municipality, its Personnel and invitees the full, free, unrestricted and uninterrupted right, license, liberty, privilege, easement and right of way to enter, go, be on, pass and repass upon, over, under and across that part of Lot A shown as Area 4 and Area 5 in Reference Plan EPP104129 and that part of Lot A shown as Area 1 outlined in bold in Reference Plan EPP104131 (the “**SRW Area**”), and:

- (a) to use part of the SRW Areas shown as Area 1 outlined in bold in Reference Plan EPP104131 at all times as motor vehicle parking for the Municipal Spaces;
- (b) to enter, use, pass and repass along, over, and upon the SRW Area;
- (c) to have unobstructed access to the SRW Area at all times;
- (d) to affix such signs or other notices as the Municipality considers necessary to manage parking for the Municipal Spaces within the SRW Area;

- (e) to impose parking fees and charges for those Municipal Spaces reserved for the exclusive use of Municipal Users and to retain the revenue from such fees and charges for its own use absolutely; and
- (f) to do all acts which are necessary and incidental to the use of the Statutory Right of Way herein granted.

3.2 Details of Statutory Right of Way in Section 3.1

The parties agree that the Statutory Right of Way in section 3.1 will include the following provisions:

- (a) the Municipal Spaces will consist of the following:
 - (i) eight Municipal Hall Exclusive Stalls in the Surface Parking Area and four Municipal Hall Exclusive Stalls in the Underground Parking Area;
 - (ii) seven Library Exclusive Stalls in the Surface Parking Area, including in part of the SRW Area shown as Area 1 outlined in bold in Reference Plan EPP104131, and 13 Library Exclusive Stalls in the Underground Parking Area; and
 - (iii) 20 Parking Spaces in the Surface Parking Area for the non-exclusive use of motor vehicles by Municipal Users and other persons parking in the Parkade; and
- (b) access to the Municipal Spaces shall be in that part of the Underground Parking Area shown as Area 4 and Area 5 in Reference Plan EPP104129.

3.3 Limits on Statutory Rights of Way

The Municipality acknowledges and agrees that:

- (a) part of the Utility SRW Area is used as a Parkade and has various utility services such as sanitary, storm, electrical and mechanical services traversing the Utility SRW Area and any access, works or repairs contemplated by the Township requires the approval of the Owner, such approval not to be unreasonably withheld; and
- (b) the Owner may close or interfere with the SRW Area and Utility SRW Area on a temporary basis at any time in the normal course in the operation of the Parkade for the purposes of maintaining or repairing the Parkade provided that the Municipality is treated in the same manner as all other users and stakeholders of the Parkade; and
- (c) no breach of this Agreement by the Municipality will entitle the Owner to terminate this Agreement.

3.4 No Derogation from Occupier's Liability

The Owner covenants and agrees that the grant of the Statutory Rights of Way contained in sections 3.1 and 3.3 will not abrogate or detract from the liabilities and obligations of the Owner as the occupier thereof.

3.5 Discharge of the Right of Way

All the rights, privileges, easements and Statutory Rights of Way hereby granted will exist and continue in perpetuity unless discharged by the Municipality and the Municipality will have the right unilaterally to do so, and in such case the Municipality will execute a registrable discharge for removal of this Agreement from title to Lot A.

3.6 Licence

The Owner hereby grants to the Municipality an irrevocable licence, coupled with the grant of Statutory Rights of Way herein, to enter onto and cross over Lot A for the purposes of access to the SRW Area and the Utility SRW Area, and for the purpose of gaining access to any contiguous right of way on any lands adjoining the SRW Area and the Utility SRW Area.

3.7 Registration of Statutory Rights of Way against Lot A

The parties agree that the Statutory Rights of Way in sections 3.1 and 3.3 shall be registered as first charges against title to Lot A, subject only to the Lease and any non-financial charges.

ARTICLE 4

SECTION 219 COVENANTS AND MUNICIPALITY'S OBLIGATIONS

4.1 Section 219 Covenant over Lot A

The Owner covenants and agrees pursuant to section 219 of the *Land Title Act*, as a covenant in respect of the use of Lot A and annexed to and running with Lot A that Lot A shall not be used except in accordance with this covenant and that:

- (a) the Owner shall construct, operate and maintain the Parkade for the parking of motor vehicles in accordance with the requirements of the Phased Development Agreement and all Municipality bylaws, Permits and other applicable enactments and consistent with its obligations under Article 2 of this Agreement;
- (b) the Owner shall at all times keep the Parkade in good repair and condition appropriate for its use and replace those portions of the Parkade which cannot be kept in good repair and appearance with items of equal kind, value and utility, the cost of which will be borne by the Owner, subject to the Municipality Contribution;
- (c) the Owner shall keep the Parkade in a neat, tidy, safe and unobstructed condition at all times, except during repair or maintenance thereof, the cost of which will be borne by the Owner subject to the Municipality Contribution;
- (d) except during repairs or maintenance of the Parkade, the Owner will not make, place, erect, maintain or permit in Lot A any building, structure, foundation or obstruction which may interfere with the Statutory Rights of Way granted over Lot A or the rights herein granted;
- (e) the Owner will observe, abide by and comply with, at all times, its obligations under this Agreement and all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent government authority in any way affecting Lot A and improvements situate thereon, or their use and occupation;

- (f) the Owner shall not commit or suffer any wilful or voluntary waste, spoil or destruction in Lot A or do or suffer to be done thereon by its Personnel or anyone for whom the Owner is responsible at law, anything that may be or become a nuisance or annoyance to Lot A;
- (g) the Municipality shall and may peaceably hold and enjoy the rights, licenses, liberties, rights of way, privileges and easements hereby granted without hindrance, molestation or interruption on the part of the Owner or of any person, firm or corporation claiming by, through, under or in trust for the Owner;
- (h) the Owner will not permit to be done any act or thing which might interfere with the use of the Statutory Rights of Way granted over Lot A in the manner set out herein;
- (i) the Owner shall be responsible for compliance with all fire and safety regulations and all applicable building, development and zoning enactments and Permits in effect from time to time with respect to Lot A;
- (j) without limiting the foregoing, the Owner shall operate and maintain the Parking Lot Area in the same manner and to the same standards as if they constituted a single site;
- (k) throughout the Term, the Owner will take reasonable measures to enforce the rules of the Parkade, including but not limited to ensuring that Parking Spaces are only used by those who are allowed to use them pursuant to this Agreement; and
- (l) the Owner shall fully cooperate with the Municipality to enable the Municipality to register the Statutory Rights of Way in accordance with section 3.7.

4.2 Owner's Default

The Owner further covenants and agrees with the Municipality that:

- (a) If the Owner defaults in observing or performing any obligation under this Agreement, the Owner will rectify such default within 30 days after receipt of notice from the Municipality, except that if the Owner, by reason of the nature of the default, cannot in the opinion of the Municipality, rectify such default within 30 days, the Owner will have a further reasonable period to rectify so long as the Owner proceeds promptly and diligently. If the Owner fails to rectify such default within the permitted time period or if the Municipality, in case of emergency, does not consider that it has time to deliver such notice, the Municipality may rectify the default on the Owner's behalf, although the Municipality will be under no obligation to do so. If any default by the Owner results in the need for the Owner to take positive action to rectify such default, the Owner will take such positive action as the Municipality considers necessary, and if the Owner fails to do so, the Municipality may apply to court for a mandatory injunction requiring the Owner to take such action.
- (b) The Owner will pay to the Municipality on demand the aggregate of all of the Municipality's costs and expenses of rectifying any default of the Owner plus a sum equal to 10% of those costs and expenses on account of the Municipality's overhead plus any other amounts the Owner may owe to the Municipality from time to time pursuant to this Agreement. If the Owner does not pay the Municipality within 30 days after the date the Owner receives demand from the Municipality, the arrears will bear interest from the date of demand to the date of payment at the Prime Rate plus 1% per annum, calculated and compounded monthly not in advance.

This section 4.2 will survive the termination or release of this Agreement.

4.3 Municipality's Obligations and Owner's Rights

The Municipality agrees that:

- (a) it shall access and use the SRW Area for the primary purpose of motor vehicle parking and access and egress to and from the Parkade;
- (b) it shall comply with all applicable enactments in respect of its use of the Parkade for motor vehicle parking;
- (c) it shall not assign its rights to the Municipal Spaces to anyone other than Municipal users without the approval of the Owner, such approval not to be unreasonably withheld;
- (d) the Municipality and its Personnel shall exercise their rights under section 3.1 in a reasonable manner so as to reasonably minimize the inconvenience to the Owner and residents or other occupants of the Lands and to avoid damage to the Lands;
- (e) in respect of the access rights granted under section 3.1, the Owner may prohibit or impose reasonable limitations on the public from engaging in any of the following within the SRW Area and the Utility SRW Area:
 - (i) panhandling or begging;
 - (ii) soliciting;
 - (iii) disturbing the peace, using abusive or grossly insulting language, singing or shouting in a boisterous manner or engaging in unruly behaviour as to create a disturbance;
 - (iv) participating in a fight or other similar physical confrontation;
 - (v) loitering, obstructing or creating a nuisance with any other person; or
 - (vi) engaging in any illegal activity.

ARTICLE 5 LEASE, PAYMENT OF RENT AND MUNICIPALITY CONTRIBUTION

5.1 Lease of Municipal Parking Area

The Municipality hereby demises and leases unto the Owner and the Owner does hereby take and rent the Municipal Parking Area, to have and to hold the Municipal Parking Area unto the Owner for and during the Term herein provided which Term shall be ninety-nine (99) years commencing on the Commencement Date and ending at 11:59 p.m. on October 15, 2116. The parties agree that the Term may be renewed for an additional period of ninety-nine (99) years at any time in the final five (5) years of the initial Term provided the Owner is not in default under the Lease. The parties further agree that the Lease may be terminated prior to the expiry of the Term or any renewal Term if any of the following circumstances occur:

- (a) the Parkade is rendered obsolete, derelict, abandoned or destroyed as a result of an intentional act or omission of the Owner, or by misuse, neglect, natural disaster,

expropriation or the redevelopment or change in use of Lot A and the Owner does not restore or replace the Parkade within three (3) years of the Parkade becoming obsolete, derelict, abandoned or destroyed; or

- (b) the parties agree in writing to terminate the Lease.

5.2 Basic Rent

The Owner covenants and agrees with the Municipality to pay to the Municipality the full amount of the Basic Rent for the Term by way of a lump sum payment of \$1.00 on or before the date of Commencement of Construction.

5.3 Net Lease

Subject only to the Municipality Contribution, all Basic Rent and Additional Rent required to be paid by the Owner hereunder will be paid at such location as the Municipality may stipulate from time to time without any deduction, abatement or set-off whatsoever, it being the intention of this Agreement that the Basic Rent and Additional Rent payable under this Agreement will, except for the Municipality Contribution or unless otherwise expressly stipulated herein to the contrary, be absolutely net to the Municipality and free of all abatements, set-off or deduction of any costs, payments and outgoing of every nature arising from or related to the Municipal Parking Area, the Parkade, or any other improvements on the Municipal Parking Area, and the Owner will pay or cause to be paid all such costs, payments and outgoings.

All payments by the Owner to the Municipality of whatsoever nature required or contemplated by this Agreement will be:

- (a) paid to the Municipality by the Owner in lawful currency of Canada;
- (b) made when due under this Agreement, without prior demand and without any set-off, abatement, or deduction whatsoever, at the office of the Municipality or such other place as the Municipality may designate from time to time to the Owner;
- (c) applied towards amounts then outstanding under this Agreement, in such manner as the Municipality may see fit; and
- (d) deemed to be Rent, in partial consideration for which this Agreement has been entered into, and will be payable and recoverable as Rent, such that the Municipality will have all of the rights and remedies against the Owner for default in making any such payment that may not be expressly designated as Rent, as the Municipality has for default in payment of Rent.

5.4 Interest on Amounts in Arrears

When the Basic Rent, Additional Rent or any other amount payable hereunder by the Owner to the Municipality is in arrears, such amount will bear interest at the Prime Rate plus one percent (1%) per annum, calculated and compounded monthly not in advance, from the date due until paid.

5.5 Revenue Sharing

The parties agree to impose parking fees and charges for those Municipal Spaces reserved for the non-exclusive use of Municipal Users as identified in subsection 3.2(a)(iii) in the same amounts

as those imposed for other Parking Spaces within the Parkade that are not reserved for the exclusive use of Municipal Users. The parties shall share equally all revenues collected from such fees and charges and each year of the Term, the revenues shall be distributed on or before June 30th.

5.6 Operating and Maintenance Costs

For greater certainty and without limiting its obligations under this Agreement, the Owner shall be responsible for all Operating and Maintenance Costs for the Parkade including all Property Taxes, Utilities costs, Insurance costs and all other costs for the operation, cleaning, repairing and maintenance of the Parkade. On or before June 30th in every year after the date of this Agreement, the Owner will provide the Municipality with access to all invoices, receipts and other documentation that is sufficient and acceptable to the Municipality in its discretion, disclosing all of the following Operating and Maintenance Costs in respect of the Parkade for the preceding year:

- (a) all Property Taxes payable in respect of the Parking Lot Area for the preceding year;
- (b) all Utilities costs payable in respect of the Parkade for the preceding year;
- (c) all Insurance costs payable in respect of the Parkade for the preceding year; and
- (d) all costs directly attributable for operating, cleaning, repairing and maintaining the Parkade for the preceding year.

5.7 Municipality Contribution to Operating and Maintenance Costs

Within sixty (60) days of the Owner providing the documentation for the Operating and Maintenance Costs detailed in section 5.6:

- (a) the Municipality shall pay or credit to the Owner an amount equal to the following:
 - (i) \$35.00 per month for every Municipal Space reserved for the exclusive use of Municipal Users as detailed in subsections 3.2(a)(i) and (ii); and
 - (ii) \$17.50 per month for every Municipal Space reserved for the non-exclusive use of the Municipal Users as detailed in subsection 3.2(a)(iii).

The parties acknowledge that the Municipality Contribution herein represents a reasonable estimate of the Municipality's proportion of the Operating and Maintenance Costs with respect to the number of Municipal Spaces in relation to the total number of Parking Spaces in the Parkade. The parties will adjust the Municipality Contribution by June 30th or such other date as may be agreed by the parties in each year of the Term to ensure that the Municipality Contribution remains commensurate with the Operating and Maintenance Costs for the Parkade and any adjustment in Operating and Maintenance Costs for the Parkade.

5.8 Municipality Contribution to Capital Repair and Replacement Costs

In addition to the Municipality Contribution for Operating and Maintenance Costs, the Municipality shall pay or credit to the Owner a portion of the capital repair and replacement costs for the Parkade in accordance with the following:

- (a) the Owner shall provide the Municipality with all relevant documentation in respect of the proposed capital repair and replacement costs, including a cost report prepared by a qualified professional;
- (b) the documentation and cost report to be provided to the Municipality under subsection (a) above shall be provided at least sixty (60) days prior to the capital expenditure, unless there is an emergency that requires the expenditure sooner than sixty days, in which case the documentation shall be provided as soon as possible;
- (c) the parties shall reach agreement on the anticipated capital repair and replacement costs before they are incurred and failing agreement, the cost shall be determined in accordance with the dispute resolution provisions in Article 20 of this Agreement;
- (d) the Municipality Contribution under this section 5.8 shall be a percentage of the total capital repair and replacement costs for the Surface Parking Area or the Underground Parking Area, as the case may be, of the Parkade based on the following formulas:
 - (i) in the case of a capital repair or replacement of the Surface Parking Area:

Municipality Contribution =	Total number of Municipal Spaces for exclusive use of Municipal Users in Surface Parking Area under section 3.2(a) of this Agreement plus one-half of total number of Municipal Spaces for non-exclusive use of Municipal Users in Surface Parking Area under section 3.2(a)
<hr/>	
Total number of all Parking Spaces (including Municipal Spaces) in Surface Parking Area	
 - (ii) in the case of a capital repair or replacement of the Underground Parking Area:

Municipality Contribution =	Total number of Municipal Spaces for exclusive use of Municipal Users in Underground Parking Area under section 3.2(a) of this Agreement plus one-half of total number of Municipal Spaces for non-exclusive use of Municipal Users in Underground Parking Area under section 3.2(a)
<hr/>	
Total number of all Parking Spaces (including Municipal Spaces) in Underground Parking Area;	
- (e) any Municipality Contribution under this section 5.8 shall be subject to, and in accordance with, the Municipality's obligations and requirements under the *Community Charter* and any other applicable enactment, including the *Municipal Liabilities Regulation*.

**ARTICLE 6
PAYMENT OF TAXES AND UTILITIES**

6.1 Payment of Property Taxes if Lands Not Exempt

Unless the Parking Lot Area and Parkade are exempt from Property Taxes in whole or in part, the Owner will, during the Term, no later than the day immediately preceding the date or dates on which the Property Taxes become due and payable, whether monthly, quarterly, twice-yearly, or

otherwise, pay and discharge or cause to be paid and discharged the Property Taxes and, if requested by the Municipality, will deliver to the Municipality for inspection receipts for payments of the Property Taxes within fourteen (14) days of such payment. the Owner will indemnify and keep indemnified the Municipality from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such taxes, rates, duties, charges, and assessments; and any such losses, costs, charges, and expenses incurred by the Municipality may be collected by the Municipality as Additional Rent.

The Owner will be responsible for the payments referred to in this section 6.1 from the Commencement Date.

6.2 Right to Appeal Assessment

The Owner will have the right from time to time to appeal, in its own or the Municipality's name, any assessment of the Parking Lot Area or Parkade or any Property Taxes referred to in section 6.1, provided that such appeal will be at the sole expense of the Owner.

6.3 Business Tax and License Fees

The Owner covenants with the Municipality to pay or cause to be paid during the Term when due every tax, permit and license fee (including penalties and interest) in respect of any and every business carried on, in or upon the Parking Lot Area or in respect of the use or occupancy of the Parking Lot Area by the Owner (and any and every sub-lessee, permittee and licensee), other than such taxes as corporate income, profits, or excess profit taxes assessed upon the income of the Owner (or such subtenant, permittee, and licensee) whether such taxes or permit and license fees are charged by any municipal, parliamentary, legislative, regional or other authority, and the Owner will indemnify and keep indemnified the Municipality from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such tax, permit and license fee; and any such loss, costs, charges, and expenses that relate to such charges incurred by the Municipality may be collected by the Municipality as Additional Rent. For greater certainty, the parties acknowledge that all contractors working on the Parking Lot Area will be required to obtain a business license issued by the Municipality.

6.4 Other Taxes

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

6.5 Pro-rating Obligations

In the first and last years of the Term, the Owner's obligations under section 6.1 will be pro-rated according to the portion of the year included in the Term, such pro-rating to be on a per diem basis.

6.6 Payment of Utilities

The Owner covenants with the Municipality to pay for or cause to be paid when due to the providers thereof all charges for gas, electricity, light, heat, power, telephone, cable, water, garbage collection and other utilities and services used in or supplied to the Parking Lot Area

throughout the Term, and will indemnify and keep indemnified the Municipality from and against payment of all losses, costs, charges, and expenses occasioned by or arising from any and all such charges, and any such loss, costs, charges, and expenses that relate to such charges suffered by the Municipality may be collected by the Municipality as Additional Rent.

ARTICLE 7 CONDITIONS PRECEDENT

7.1 Conditions Precedent of Municipality

The obligations of the Municipality under this Agreement are subject to the following conditions precedent, all of which shall be satisfied or waived on or before October 16, 2017, or such other date agreed in writing by the parties:

- (a) the municipal council of the Municipality, in its sole discretion, will have adopted all resolutions and bylaws necessary to carry out the terms of this Agreement; and
- (b) the Municipality shall have otherwise complied with all of its statutory obligations in connection with this Agreement.

The parties agree that these conditions precedent are for the benefit of the Municipality and may only be declared waived or satisfied by written notice given by the Municipality to the Owner.

ARTICLE 8 BUILDERS LIENS

8.1 Builders Liens

In connection with all labour performed on or materials supplied to the Parking Lot Area, including but not limited to the construction of the Parkade, the Owner will comply with, and will cause any contractor hired by it to comply with, the provisions of the *Builders Lien Act* (British Columbia), and with all other statutes applicable in connection therewith and in force from time to time, including any provision or statute requiring or permitting the retention of portions of any sums payable by way of holdbacks.

8.2 Notice by Municipality

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

It is agreed that the Municipality will not be responsible for claims of builders liens filed by persons claiming through the Owner or persons for whom the Owner is in law responsible. The Owner acknowledges and agrees that the improvements to be made to the Municipal Parking Area and Parkade are made at the Owner's request solely for the benefit of the Owner and those for whom the Owner is in law responsible.

**ARTICLE 9
USE AND ASSUMPTION OF CERTAIN OBLIGATIONS**

9.1 Use

Unless otherwise agreed to in writing by the Municipality, the Owner covenants and agrees with the Municipality that no part of the Parking Lot Area will be used for any purpose except that of public and private parking of motor vehicles and ancillary purposes, subject always to the laws, bylaws, regulations and Permits governing the use of the Parking Lot Area from time to time, provided that farmers' markets or other similar festive events are permitted in the Parking Lot Area from time to time provided such events do not prevent the Municipality's and Municipal Users' use of the Municipal Hall and the Library.

9.2 No Nuisance

Subject to 9.1 the Owner will not carry on, or suffer or permit to be carried on, upon the Parking Lot Area anything which would constitute a nuisance to the Municipality or to any neighbouring properties or their owners or occupants.

9.3 No Subdivision

The Owner covenants that it will not subdivide Lot A pursuant to the *Strata Property Act* (British Columbia) so as to adversely affect the Statutory Rights of Way in sections 3.1 and 3.2 without the written permission of the Municipality. The Municipality acknowledges that the Owner will be stratifying Lot A in accordance with the Phased Development Agreement.

9.4 Permitted Encumbrances

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

**ARTICLE 10
REPAIRS AND MAINTENANCE**

10.1 Municipality Not Obligated to Repair

The Municipality will not be obliged to furnish any services or facilities or to make repairs or Alterations in or to the Parking Lot Area or the Parkade, and the Owner hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Parking Lot Area and the Parkade and all expenses related thereto.

10.2 Repairs by the Owner

Reasonable wear and tear excepted, so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Parkade:

- (a) the Owner at the Owner's cost and expense will put and keep in good order and condition, or cause to be put and kept in good order and condition, the Parking Lot Area and Parkade (and any equipment located thereon and therein), both inside and outside, including but not limited to fixtures, walls, foundations, roofs, vaults, stairways, elevators (if any) and similar devices, heating and air conditioning equipment, sidewalks, yards and other like areas, water and sewer mains and connections, water, steam, gas and electric pipes and conduits, and all other fixtures and appurtenances to the Parking Lot Area and the Parkade and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and will, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs and, subject to section 2.5, Alterations, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Parkade and any and all fixtures and equipment therein fully usable for the purposes for which the Parkade was constructed. Such repairs and Alterations will be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Parkade, and will in each case be performed only in accordance with all applicable terms and conditions of the Permitted Encumbrances;
- (b) the Owner will not commit or suffer waste to the Municipal Lands or the Parkade or any part thereof;
- (c) at the expiration of the Lease, the Owner will, except as otherwise expressly provided herein, surrender and deliver up the Municipal Parking Area with the Parkade, and the fixtures, appurtenances and equipment thereon and therein, or any replacements or substitution therefor, in good order and condition; and
- (d) if any default by the Owner results in the need for the Owner to take positive action to rectify such default, the Municipality may apply to court for a mandatory injunction requiring the Owner to take such action and to seek recovery for its costs.

10.3 Removal of Ice and Snow from Sidewalks

The Owner covenants and agrees with the Municipality to keep the public sidewalk adjacent to the Parking Lot Area reasonably clean from rubbish, ice and snow during the times and to the extent lawfully required of an owner. If any default by the Owner results in the need for the Owner to take positive action to rectify such default, the Municipality may apply to court for a mandatory injunction requiring the Owner to take such action and to seek recovery for its costs.

10.4 Municipal Parking Area Accepted "As Is"

Subject to any latent environmental conditions, the Owner accepts the Municipal Parking Area "as is" knowing the condition of the Municipal Parking Area, and agreeing that the Municipality has made no representation, warranty, or agreement with respect to the Municipal Lands, except as may be otherwise expressly provided in this Agreement.

**ARTICLE 11
ADDITIONAL RENT**

11.1 This section intentionally deleted.

**ARTICLE 12
INSURANCE**

12.1 Insurance during Construction of Parkade

Prior to the Commencement of Construction of the Parkade, and throughout the entire period of construction until substantial completion of the Parkade pursuant to section 2.2, the Owner will effect or will cause its contractor or contractors to effect and maintain in full force the following insurance coverage:

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

12.2 Commercial General Liability Insurance upon Completion

Upon completion of the Parkade, the Owner shall, at its sole expense and subject to the Municipality Contribution, obtain and maintain the following insurance coverage in respect of the Parking Lot Area:

- (a) comprehensive general liability insurance providing coverage for death, bodily harm and injury, property loss and damage, and all other losses arising out of or in connection with the operation, use and occupation of the Parking Lot Area in an amount of not less than five million dollars (\$5,000,000) per occurrence;
- (b) such additional amounts of insurance under section (a) or any other form or forms of insurance in amounts and for such perils against which a prudent operator acting reasonably would protect itself in similar circumstances; and
- (c) such additional insurance as the Municipality may request from time to time, provided that the Municipality shall be responsible for the cost of such additional insurance it may request.

12.3 All Risk Property Insurance Upon Completion

Immediately following substantial completion of the Parkade and at all times thereafter during the Term, the Owner will effect and maintain property insurance to the full replacement value of the Parkade and fixtures on the Parking Lot Area, protecting the Owner, the Municipality, the Owner's contractors, any subcontractors and their respective Personnel against "All Perils" of loss or damage including fire, flood, sewer backup and earthquake, and will include boilers and pressure vessels, protecting against usual and unusual perils, including damage caused by rupture of steam pipes.

The policies described in this section 12.3 will contain a clause directing insurers to make losses payable to the Owner and the Municipality.

12.4 Insurance – Additional Provisions

The following provisions will apply to all policies of insurance which are referred to in this Article 12:

- (a) the Owner shall ensure that all policies of Insurance required to be taken out by it:
 - (i) name the Municipality as an additional insured;
 - (ii) include that the Municipality is protected notwithstanding any act, neglect or misrepresentation by the Owner which might otherwise result in the avoidance of a claim and that such policies are not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insureds;
 - (iii) be issued by an insurance company entitled to carry on the business of insurance under the laws of British Columbia;
 - (iv) be primary and non-contributing with respect to any policies carried by the Municipality and that any coverage carried by the Municipality is excess coverage;
 - (v) not be cancelled without the insurer providing the Municipality with 60 days written notice to the Director stating when such cancellation is to be effective;
 - (vi) not include a deductible greater than \$25,000.00 per occurrence;
 - (vii) include a cross liability clause; and
 - (viii) be on other terms acceptable to the Municipality, acting reasonably.
- (b) In addition to the notification obligations of the insurers required by section 12.4, the Owner will provide to the Municipality a minimum of sixty (60) days prior written notice of any cancellation, lapse or material change resulting in reduction of coverage, either in whole or in part, in respect of any of the policies of insurance which are referred to in this Article 12.

12.5 Evidence of Insurance

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

12.6 Workers Compensation Coverage

At all times during the Term, the Owner will, and will cause its Personnel and all others engaged in or upon any work on the Parkade or the Parking Lot Area to, comply with the *Workers Compensation Act* (British Columbia) (the “WCA”) and the requirements and regulations of WorkSafeBC in respect of the Parkade and the Parking Lot Area. Without limiting the generality of the foregoing, the Owner will:

- (a) require as a condition of any agreement made with respect to construction, repair, renovation or demolition of the Parkade, whether with contractors, materialmen or otherwise, that there is full workers compensation insurance coverage in place in respect of all workmen, employees, servants and others engaged in or upon any work, and that all workmen, contractors or other workers require the same of their workmen and subcontractors. The Owner will immediately notify the Municipality of any dispute involving third parties that arises in connection with obtaining and maintaining the workers compensation insurance coverage required hereby if such dispute results or may result in the required insurance coverage not being in place, and the Owner will take all reasonable steps to ensure resolution of such dispute forthwith. The Owner will further ensure that no amount payable pursuant to the WCA is left unpaid so as to create a lien on the Municipal Lands or the Parkade. If the workers compensation insurance coverage required by this section 12.7 is not in place, the Municipality will be entitled to have recourse to all remedies specified in this Agreement or at law or equity; and
- (b) be deemed to be, and is hereby designated and appointed by the Municipality as, the “Prime Contractor” as that term is defined in section 118 of the WCA for the purposes of the WCA and related regulations, including the Occupational Health and Safety Regulation (the “OHS Regulation”), and the requirements and regulations of WorkSafeBC, and will in that capacity strictly comply with all requirements applicable to that designation, including without limitation those set forth in Division 3 of Part 3 of the WCA and in sections 20.2 and 20.3 of the OHS Regulation, as they may be amended from time to time. Notwithstanding the foregoing, with the prior written consent of the Municipality, a contractor hired by the Owner to perform work on the Parking Lot Area on its behalf may be designated as the Prime Contractor instead of the Owner.

12.7 Release of Municipality from Liability for Insured Loss or Damage

The Owner hereby releases the Municipality and its Personnel, whether or not the Municipality and its Personnel have been negligent, from any and all liability for loss or damage caused by any of the perils against which the Owner will have insured or is obligated to insure pursuant to the terms of this Agreement or any applicable law, or self-insures if it elects to do so under section 12.9, the intent being that the Owner’s policies of insurance will contain a waiver of subrogation

in favour of the Municipality or, if the Owner elects to self-insure under section 12.9, the Owner will release the Municipality from any and all liability for loss or damage caused by the perils referred to in sections 12.1(b) and 12.2 to the same extent as if the Owner had taken out insurance.

12.8 Insurance Exemption for Municipality

Notwithstanding anything contained in this Agreement, the Municipality will not be under any obligation to take out and keep in force any of the insurance required to be taken out and kept in force under this Article 12, provided that the Municipality has in place a program of self-insurance that provides the same or better coverage than the insurance coverage described in this Article 12.

12.9 General Application

For further clarity, all of the provisions of this Article 12 respecting insurance that are of general application will apply to the insurance applying during construction of the Parkade required by section 12.1.

ARTICLE 13 DAMAGE OR DESTRUCTION

13.1 Rent Not to Abate

Subject to the provisions of section 13.5, the partial destruction or damage or complete destruction by fire or other casualty of the Parkade will not result in the termination of this Agreement or entitle the Owner to surrender possession of the Municipal Parking Area or the Parkade or to demand any abatement or reduction of the Basic Rent or Additional Rent or other charges payable under this Agreement, any law or statute now or in the future to the contrary notwithstanding.

13.2 Obligations When Parkade Partially Damaged or Destroyed

Subject to the provisions of section 13.5, the Owner covenants and agrees with the Municipality that in the event of partial damage to or partial destruction of the Parkade, the Owner will either:

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

13.3 Obligations When Parkade Completely or Substantially Destroyed

Subject to the provisions of section 13.5, the Owner covenants and agrees with the Municipality that in the event of complete or substantially complete destruction of the Parkade, the Owner will either:

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

provided that the Owner's obligation to reconstruct or replace the Parkade under this section 13.3 shall not apply in the event of some uninsurable calamity that results in the complete or substantial destruction of the Parkade, in which case, the provisions of section 13.5 below shall apply.

13.4 Replacement, Repair or Reconstruction

Any replacement, repair or reconstruction of the Parkade or any part thereof pursuant to the provisions of section 13.2 or 13.3 will be made or done in compliance with section 2.4 and Article 10.

13.5 Destruction or Damage during Last Five Years of Term

(a) In the event of the complete or substantial destruction of the Parkade during the last five (5) years of the Term, the Owner may, at its option, either reconstruct or replace the Parkade so destroyed or damaged in accordance with section 13.3 or decline to do so, and instead elect to terminate this Agreement, provided that the Owner makes such election within sixty (60) days after the date on which the Parkade was so destroyed and notifies the Municipality of its election forthwith after making it;

(b) As soon as reasonably possible, but not later than one hundred and eighty (180) days following the date of termination of this Agreement by the Owner pursuant to section 13.5(a), the Owner will demolish and completely remove the Parkade and all foundations and debris from the Municipal Parking Area and restore the Municipal Parking Area to a neat and level condition in a good and workmanlike manner. Any insurance money payable by reason of any fire or other casualty causing such destruction will, notwithstanding the provisions of Article 12, be distributed as follows:

(i) firstly, to reimburse the Owner for all costs and expenses necessarily incurred by the Owner in the demolition and removal of the Parkade and all foundations and debris from the Municipal Parking Area and the restoration of the Municipal Parking Area as aforesaid; and

(ii) secondly, to pay the balance of the insurance monies, if any, as follows:

(A) to the Municipality the amount calculated as follows:

amount payable = (balance of insurance monies) x (days in expired portion of the Term ÷ total days in Term); and

(B) to the Owner the amount calculated as follows:

amount payable = (balance of insurance monies) x (days remaining in the Term ÷ total days in Term),

provided however that any amount payable to the Owner will be paid directly to the Municipality;

(c) Notwithstanding anything contained herein, in the event the Owner terminates this Agreement in accordance with this section 13.5, this section 13.5 will nevertheless survive such termination and remain in full force and effect and be binding upon the parties and their respective successors and assigns so long as any obligations of the parties under this section 13.5 or any part thereof remains unperformed; and

- (d) In all events under this section 13.5, the obligations of the Owner shall be subject to the proceeds received from the insurance claims and the Owner shall not be obligated to pay any amounts over and above the proceeds received from the insurance claims.

**ARTICLE 14
INSPECTION BY MUNICIPALITY**

14.1 Inspection by Municipality

The Municipality and the Owner agree that it will be lawful for representatives of the Municipality to enter the Parking Lot Area and the Parkade at all reasonable times during the Term and to examine the condition thereof.

**ARTICLE 15
OBSERVANCE OF GOVERNMENTAL REGULATIONS**

15.1 Compliance

The Owner covenants notwithstanding any other provision of this Agreement to the contrary, throughout the Term to competently and faithfully observe and comply with all laws, bylaws and lawful orders including without limitation municipal, regional, provincial, and federal legislative enactments concerning, without limitation, all environmental, police, fire, and sanitary regulations, zoning and building bylaws, and any municipal, regional, provincial, federal or other government regulations which apply to the Parking Lot Area and the Parkade, the construction and erection of the Parkade, to the equipment and maintenance of the Parkade, or the Owner's operation, occupation of, use or activities on the Parking Lot Area or in the Parkade, whether by subletting them or any part of them or otherwise, or to the making of any Alterations of or to the Parkade, the Parking Lot Area, or any part of them.

The Owner further covenants to not knowingly use or occupy or permit to be used or occupied the Parking Lot Area or the Parkade or any part thereof for any illegal or unlawful purpose or in any manner which would result in the cancellation or threatened cancellation of any insurance, or in the refusal of any insurer to issue any insurance as requested. If any law, bylaw or lawful order is directed at or places a duty or obligation upon the Municipality, then the same will be performed and observed by the Owner, at its cost, in the place and stead of the Municipality provided that any such obligations are not greater than those of a private land owner.

**ARTICLE 16
EXCLUSION OF LIABILITY AND INDEMNITY**

16.1 Limitation of Liability and Release

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

- (a) any bodily injury or death caused, suffered or sustained in or about the Parking Lot Area or the Parkade; or
- (b) any property damage or other loss or damage to the Parking Lot Area or the Parkade, or to any property belonging to the Owner or to any other person in or about the Parking Lot Area or the Parkade,

unless resulting from the respective negligence or wilful acts of the Municipality or its Personnel or contractors, as the case may be.

16.2 Exclusion of Liability

Notwithstanding section 16.1, the Municipality and its Personnel or contractors will not be liable for:

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

16.3 Indemnification

The Owner will indemnify and save harmless the Municipality and its Personnel and contractors from and against all Losses which the Municipality or its Personnel or contractors may suffer or incur arising out of this Agreement; provided, however, that such indemnity will not apply to the extent to which such Losses result from the respective negligence and/or wilful acts of the Municipality or its Personnel or contractors, as the case may be, unless the act or omission involves a peril against which the Owner is obligated to place insurance, in which case the release and indemnity specified in section 12.8 absolves the Municipality of all liability with respect to the act or omission. Subject to the foregoing proviso, the Owner will indemnify and save harmless the Municipality and its Personnel and contractors in respect of all Losses:

- (a) as a result of any breach by the Owner of any covenant or agreement contained in this Agreement; and
- (b) as a result of bodily injury or death, property damage or other damage arising from the conduct of any work by or any act or omission of or relating to or arising from the occupation or possession of the Parking Lot Area and the Parkade by the Owner or any assignee, subtenant, Personnel, contractor, invitee or licensee of the Owner; or
- (c) suffered or incurred by the Municipality or its Personnel and contractors that arise, whether directly or indirectly, from any breach, violation, or non-performance of any covenant, condition, or agreement by the Owner, its Personnel, contractors or any other person for whom the Owner is responsible in law, of any of the covenants and obligations under this Agreement to be fulfilled, kept, observed and performed by the Owner.

16.4 Indemnification Survives Termination of Lease

The obligations of the Owner to indemnify the Municipality and its Personnel and contractors will apply and continue notwithstanding the termination or expiration of this Agreement.

**ARTICLE 17
SUBLETTING AND ASSIGNING**

17.1 Subletting and Assigning

The Owner may sublease, assign, transfer, sell or encumber the Lease or enter into any agreement for the purpose of sub-leasing, assignment, transferring, selling or encumbering the Lease, the Parkade or the Parking Lot Area, provided such assignee, transferee, purchaser or encumbrance

holder abides by all of the obligations of the Owner under this Agreement. The Owner may sublet or grant licences or other rights to occupy or use any part of the Parkade to staff and other personnel authorized by the Owner who are required to operate and maintain the Parkade and the Parking Lot Area for the purposes of this Agreement.

**ARTICLE 18
BANKRUPTCY**

18.1 Bankruptcy

This section intentionally deleted.

**ARTICLE 19
DEFAULT**

19.1 Municipality's Rights on Certain Defaults

Subject to the provisions of section 19.2 and Articles 20 and 24, if and whenever:

- (a) Basic Rent or any part thereof is not paid on the day appointed for payment thereof; or
- (b) the Owner defaults in ensuring Commencement of Construction or substantial completion of the Parkade by the dates specified in section 2.1, and such default continues for a period of thirty (30) days after written notice of intention to terminate this Agreement by reason of such default has been given by the Municipality to the Owner; or
- (c) the Owner defaults in payment of Additional Rent or any other sums required to be paid to the Municipality by any provision of this Agreement, and such default continues for thirty (30) days following any specific due date on which the Owner is to make such payment or, in the absence of such specific due date, for thirty (30) days following notice by the Municipality requiring the Owner to pay the same; or
- (d) the Parkade is abandoned or remains vacant for more than thirty (30) days; or
- (e) the Owner defaults in performing or observing any of its other covenants or obligations under this Agreement, or any event occurs which by the terms of this Agreement constitutes a breach hereof or confers upon the Municipality the right to re-enter, and the Municipality has given to the Owner notice of such default or the happening of such event, and if at the expiration of forty-five (45) days after the giving of such notice the default continues to exist, or in the case of a default which cannot with due diligence be cured within the period of forty-five (45) days aforesaid, if the Owner does not commence the rectification of such default within the said forty-five (45) day notice period and thereafter promptly and diligently and continuously proceed with such rectification; or
- (f) this Agreement expires pursuant to any other provision contained herein, including, without restricting the generality of the foregoing, pursuant to the provisions of section 13.5,

then and in every such case, the Municipality at any time thereafter without notice or demand, may apply to the Supreme Court of British Columbia for such relief as the Municipality considers appropriate and to recover its costs therefor.

19.2 Remedies of Municipality are Cumulative

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

19.3 Waiver by Municipality

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

ARTICLE 20 DISPUTE RESOLUTION AND ARBITRATION

20.1 Negotiation and Mediation

In the event of any dispute between the parties with respect to the interpretation of this Agreement, the parties shall attempt to amicably resolve such dispute through negotiations and failing negotiation, by mediation with the assistance of a mediator approved by the parties, or failing agreement, by a mediator appointed by the court with each party paying one-half of the costs of such mediation. Each party shall be responsible for its own legal costs in connection with any such dispute, subject to any award of costs by the courts.

20.2 Arbitration

If a disagreement arises pursuant to sections 2.5 or 9.1, the same will be settled by arbitration. The arbitration will be conducted by a single arbitrator chosen by the Municipality which arbitrator will be at arm's length from the Municipality. The costs and expenses of the reference and award will be dealt with as follows:

- (a) each party will bear its own expense of preparing and presenting its case to the arbitrator, irrespective of whether any such expense was incurred or contracted for prior to the commencement of the arbitration process, including the expenses of appraisals, witnesses and legal representation; and
- (b) the fees of the arbitrator will be paid as determined by the arbitrator.

The *Arbitration Act* (British Columbia) will apply with respect to the arbitration.

**ARTICLE 21
SURRENDER OF LEASE**

21.1 Surrender of Lease

At the termination or expiration of the Term, the Owner will surrender the Municipal Parking Area and Parkade to the Municipality in the condition in which they were required to be kept by the Owner pursuant to the provisions of this Agreement, including, without restricting the generality of the foregoing, the provisions of section 13.5(b), except as herein otherwise expressly provided. the Owner will not be entitled to any compensation from the Municipality for surrendering and yielding up the Municipal Parking Area and the Parkade as provided.

**ARTICLE 22
QUIET ENJOYMENT, OWNERSHIP OF TENANTS' FIXTURES AND
OWNERSHIP OF PARKADE**

22.1 Covenant for Quiet Enjoyment

Subject to the Municipality's rights herein, and subject to the Permitted Encumbrances as extended or modified from time to time, if the Owner pays the Rent hereby reserved and all other amounts payable hereunder, and observes and performs all of the obligations, covenants and agreements of the Owner herein contained, the Owner may peaceably enjoy and possess the Municipal Parking Area for the Term, without any interruption or disturbance whatsoever from the Municipality or any other person, firm or corporation lawfully claiming through, from or under the Municipality, provided however that the enforcement by the Municipality, in its capacity as a local government, of its laws, bylaws and orders that touch and concern the Municipal Parking Area and Parkade will not be a breach of the Municipality's covenant set forth in this section 22.1.

22.2 Ownership of Parkade

The Parkade located on the Municipal Parking Area will become the absolute property of the Municipality, free and clear of all liens, charges, encumbrances, equities or claims of any kind or nature whatsoever, save and except for the Permitted Encumbrances, upon the expiration of the Term or any permitted period of overholding, except as provided in Article 13, but will be deemed, as between the Municipality and the Owner during the Term, to be the separate property of the Owner and not of the Municipality but subject to and governed by all the provisions of this Agreement, provided always that the Municipality's absolute right of property in the Parkade located on the Municipal Parking Area, which will arise at the expiration of the Term or any permitted period of overholding, will take priority over any other interest in the Parkade that may now or hereafter be created by the Owner without the prior written consent of the Municipality, and provided that all dealings by the Owner with the Parkade which in any way affect title thereto will be made expressly subject to this right of the Municipality and the Owner will not assign, encumber or otherwise deal with the Parkade separately from any permitted dealing with the leasehold interest under this Agreement, to the intent that no person will hold or enjoy any interest in this Agreement acquired from the Owner who does not at the same time hold a like interest in the Parkade.

22.3 Covenant Respecting Charge and Encumbrances

The Municipality covenants with the Owner that the Municipality has a good and marketable title in fee simple to the Municipal Lands and that the Municipality has not at any time prior to the reference date of this Agreement, except as otherwise herein disclosed, made, done, committed,

executed, or wilfully or knowingly permitted any act, deed, matter, or thing whatsoever whereby the Municipal Lands or any part of the Municipal Lands are charged or encumbered in title or estate other than the subsisting exceptions and reservations contained in the original grant of the Municipal Lands from the Crown and subject to section 27.1, any restrictive covenants and/or easements and/or rights-of-way in favour of the Municipality or other public bodies that may be registered against the Municipal Lands. The Municipality represents and agrees that the Parkade can be constructed on the Municipal Lands.

22.4 Covenant Respecting Authority to Lease

The Municipality covenants with the Owner that it now has in itself good right, full power, and authority to lease the Municipal Parking Area to the Owner in the manner and according to the true intent of this Agreement.

22.5 Municipality's Right to Further Encumber

Notwithstanding anything to the contrary contained in this Agreement, the Municipality hereby reserves the right to further charge the Municipality's interest in the Municipal Lands, or any part of them, by way of easement, right of way, or restrictive covenant in favour of a Crown corporation or agency, a municipality, a regional district, or other government agency or authority, provided such charge does not hinder the operation and maintenance of the Parkade in any material way; and the Owner agrees, at the request of the Municipality, promptly to execute and deliver to the Municipality such instrument as may be necessary to subordinate the Owner's right and interest in the Municipal Lands under this Agreement to such charge.

ARTICLE 23 OVERHOLDING

23.1 Overholding

The Owner covenants and agrees with the Municipality that if the Owner overholds and the Municipality accepts rent after the expiration of the Term, the new tenancy thereby created will be a tenancy from month to month and not a tenancy from year to year and will be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month, provided however that the monthly Basic Rent payable by the Owner will be the then market rental value of the Municipal Parking Area and the Parkade as determined from time to time in the bona fide opinion of the Municipality, and such monthly Basic Rent will be paid in advance. The Owner will also pay monthly as Additional Rent one-twelfth of the then current amounts as the case may be.

ARTICLE 24 ADDITIONAL RIGHTS OF THE MUNICIPALITY

24.1 Notice to Municipality

Unless otherwise agreed in writing by the Municipality and unless failure of the Municipality to act in the circumstances would result in an emergency situation, the Municipality may exercise any of its rights which arise as a result of a default by the Owner under this Agreement at any time after seven (7) days (the "**Notice Period**") after receipt by the Owner of written notice describing the Owner's default.

24.2 Rights of Municipality Not Limited

The rights given to the Municipality pursuant to this Article 24 are not to be construed in any manner whatsoever so as to limit or otherwise prejudice the rights of the Municipality as against the Owner under any other agreement between the Municipality and the Owner.

ARTICLE 25 ENVIRONMENTAL MATTERS

25.1 Definitions

For the purposes of this Article 25:

- (a) **“Contaminants”** mean any pollutants, contaminants, deleterious substances, underground or aboveground tanks, asbestos materials, urea formaldehyde, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance which is now or hereafter prohibited, controlled or subject to Environmental Laws; and
- (b) **“Environmental Laws”** means any statute, law, regulation, order, bylaw, standard, guideline, permit and other lawful requirement of any governmental authority having jurisdiction over the Municipal Lands or Parkade, now or hereafter in force and relating in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, and includes the principles of common law and equity.

25.2 Owner’s Covenants and Indemnity

The Owner covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the Parking Lot Area or Parkade for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with Contaminants, without the prior written consent of the Municipality, which consent may be arbitrarily withheld;
- (b) to strictly comply, and cause all persons for whom it is at law responsible to comply, with all Environmental Laws regarding the use and occupancy of the Municipal Parking Area and Parkade;
- (c) to promptly provide to the Municipality a copy of any environmental site investigation, assessment, audit or report relating to the Municipal Lands or Parkade and conducted by or for the Owner at any time before, during or after the Term, or any renewal or extension thereof;
- (d) on the expiry of this Agreement if requested by the Municipality or required pursuant to Environmental Laws, to remove from the Municipal Lands and Parkade all Contaminants, and to remediate any contamination of the Municipal Lands or any adjacent or other affected property resulting from Contaminants, in either case brought onto, used at, created upon or released from the Municipal Lands by the Owner or any person for whom the Owner is at law responsible. The Owner will perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants will remain the property of the Owner, notwithstanding any rule of

law or other provision of this Agreement to the contrary and notwithstanding their degree of affixation to the Municipal Lands or Parkade; and

- (e) without limiting the generality of Article 16, to indemnify the Municipality and its Personnel and contractors from any and all Losses (including the cost of remediation of the Municipal Lands and Parkade and any other affected property) arising from or in connection with:
 - (i) any breach of or non-compliance with the provisions of this Article 25 by the Owner; or
 - (ii) the release or alleged release of any Contaminants on or from the Municipal Lands related to or as a result of the use and occupation of the Municipal Lands and Parkade by, or any act or omission of, the Owner or any person for whom the Owner is responsible at law.

The obligations of the Owner under this Article 25 will survive the expiry of this Agreement, and the obligations of the Owner under this Article 25 are in addition to, and will not limit, the other obligations of the Owner under this Agreement.

ARTICLE 26 NOTICES

26.1 Notices

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

- (a) in the case of the Municipality, addressed to:

Township of Esquimalt
1229 Esquimalt Road
Esquimalt, British Columbia, V9A 3P1

Attention: Laurie Hurst, CAO

- (b) in the case of the Owner, addressed to:

Aragon Esquimalt TC Properties Ltd
201 – 1628 1st West Avenue

Vancouver, British Columbia, V6J 1G1

Attention: Lenny Moy

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

**ARTICLE 27
MISCELLANEOUS**

27.1 Statements by Municipality

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

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

27.2 Time of Essence

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

27.3 Formality of Modifications

This Agreement may not be modified or amended except by an instrument in writing executed by the Municipality or their successors or assigns, and by the Owner or its successors or permitted assigns.

27.4 Captions and Headings

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

27.5 Enurement

It is further agreed and declared by the Municipality and the Owner that this Agreement will extend to, be binding upon and enure to the benefit of the Municipality and the Owner, the successors and assigns of the Municipality and the successors and permitted assigns of the Owner.

27.6 Runs with the Lands

The interests granted herein in Lot A including all covenants, rights of way, and easements, as the case may be, contained in this Agreement will, unless discharged in accordance with this Agreement, run with and bind Lot A in perpetuity.

27.7 Subdivision

If the Owner subdivides all or any part of Lot A, the interests in land, including all covenants and rights of way, as the case may be, contained in this Agreement will charge any portion of Lot A which contain the SRW Area or the Utility SRW Area or any portion thereof. If Lot A is subdivided by strata plan, the SRW Area and the Utility SRW Area will be located wholly on common property (but for certainty, the covenants and Statutory Rights of Way granted herein will be registered as a charge against title to all strata lots created by the strata plan) and will not be subject to any limited common property designation.

27.8 Severability

If any section, subsection, sentence, clause or phrase in this Agreement is for any reason held to be invalid by the decision of a Court of competent jurisdiction, the remainder of this Agreement will continue in full force and effect and, in such case, the parties hereto will agree upon an amendment to be made to the section, subsection, sentence, clause or phrase previously found to be invalid and will do or cause to be done all acts reasonably necessary in order to amend this Agreement so as to reflect its original spirit and intent.

27.9 Priority

The Owner agrees to cause the registrable interests in land granted pursuant to this Agreement to be registered as first registered charges against Lot A, save only for any reservations, liens, charges or encumbrances:

- (a) contained in any grant from Her Majesty the Queen in Right of the Province of British Columbia respecting Lot A;
- (b) registered in favour of the Municipality; or
- (c) which the Municipality has determined may rank in priority to the registrable interests in land granted pursuant to this Agreement.

27.10 Further Acts

The parties to this Agreement will do and cause to be done all things and execute and cause to be executed all documents which may be necessary to give proper effect to the intention of this Agreement.

27.11 Joint and Several

If the Owner is comprised of more than one person, firm or body corporate, then the covenants, agreements and obligations of the Owner shall be joint and several.

27.12 Covenants or Conditions

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

27.13 References

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

27.14 Powers Preserved

Nothing contained or implied in this Agreement shall fetter in any way the discretion of the Municipality or the Council of the Municipality. Further, nothing contained or implied in this Agreement shall derogate from the obligation of the Owner under any other agreement with the Municipality or, if the Municipality so elects, prejudice or affect the Municipality’s rights, powers, duties or obligation in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act*, as amended or replaced from time to time, or act to fetter or otherwise affect the Municipality’s discretion, and the rights, powers, duties and obligations of the Municipality under all public and private statutes, by-laws, orders and regulations, which may be, if the Municipality so elects, as fully and effectively exercised in relation to Lot A as if this Agreement had not been executed and delivered by the Owner and the Municipality.

27.15 Equitable Relief

The Owner covenants and agrees that in addition to any remedies which are available under this Agreement or at law, the Municipality will be entitled to all equitable remedies, including, without limitation, specific performance, injunction and declaratory relief, or any combination thereof, to enforce its rights under this Agreement. The Owner acknowledges that specific performance, injunctive relief (mandatory or otherwise) or other equitable relief may be the only adequate remedy for a default by the Owner under this Agreement. The Owner acknowledges and agrees that no failure or delay on the part of the Municipality to exercise any right under this Agreement will operate as a waiver by the Municipality of such right.

27.16 Applicable Law

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

27.17 Entire Agreement

This Agreement represents the entire agreement between the Municipality and the Owner regarding the matters set out in this Agreement, and supersedes all prior agreements, letters of intent, or understandings about those matters.

27.18 Counterparts

This Agreement may be executed in any number of counterparts with the same effect as if all parties had all signed the same document and all counterparts and adopting instruments will be construed together and will constitute one and the same agreement.

27.19 Execution

By signing the General Instrument, the parties have agreed to be bound by their respective obligations contained in this Agreement.

END OF PAGE

PRIORITY AGREEMENT

THE BANK OF NOVA SCOTIA (the “**Chargeholder**”) is the holder of charges encumbering Lot A registered in the Victoria Land Title Office under the following registration numbers (the “**Bank Charges**”):

- 1) Registration number CA7339335 (Mortgage); and
- 2) Registration number CA7339336 (Assignment of Rents)

The Chargeholder, being the holder of the Bank Charges, by signing the Form C General Instrument attached hereto as Part I, in consideration of the payment of One Dollar (\$1.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder) hereby consents to the granting of this Section 219 Covenant and Statutory Right of Way and hereby covenants that this Section 219 Covenant and Statutory Right of Way shall bind the Bank Charges in Lot A and shall rank in priority upon Lot A over the Bank Charges as if the Section 219 Covenant and Statutory Right of Way had been registered prior to the Bank Charges and prior to the advance of any monies pursuant to the Bank Charges. The grant of priority is irrevocable, unqualified and without reservation or limitation.

SCHEDULE C

MUNICIPAL PARKING AREA

