

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

**COPY**  
PAGE 1 OF 54 PAGES

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

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

**Peter D. Shrimpton, Mountain Conveyancing  
Lawyer & Notary  
#200 - 1410 Alpha Lake Road  
Whistler BC V0N 1B1**

Telephone: (604) 932-5674  
LTO Client Number: 12105

Deduct LTSA Fees? Yes

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

**018-353-517 LOT 2 DISTRICT LOT 1758 PLAN LMP11103**

STC? YES

3. NATURE OF INTEREST CHARGE NO. ADDITIONAL INFORMATION  
**SEE SCHEDULE**

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):

**RESORT MUNICIPALITY OF WHISTLER**

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

**WHISTLER COMMUNITY SERVICES SOCIETY**

P.O. 900  
WHISTLER

V0N 1B0

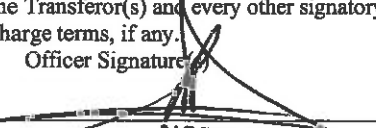
BRITISH COLUMBIA  
CANADA

Incorporation No  
S-0025152

7. ADDITIONAL OR MODIFIED TERMS:  
N/A

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)

  
**NORM MCPHAIL**  
Deputy Corporate Officer  
A Commissioner for taking Affidavits  
for the Province of British Columbia  
4325 Blackcomb Way, Whistler  
B.C. V0N 1B4

Execution Date

Y	M	D
17	05	11

Transferor(s) Signature(s)

RESORT MUNICIPALITY OF WHISTLER by its authorized signatories:

  
Print Name: NANCY WILHELM-MORDEN  
MAYOR.

  
Print Name: LAURIE-ANNE SCHIMEK,  
MUNICIPAL CLERK

(as to both signatures)

OFFICER CERTIFICATION:

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

LAND TITLE ACT  
FORM D  
EXECUTIONS CONTINUED

Officer Signature(s)



PETER D. SHRIMPSON, Lawyer & Notary  
#200 - 1410 Alpha Lake Rd.  
Whistler, B.C. V0N 1B1  
Tel: 604-938-4947  
Permanent Commission

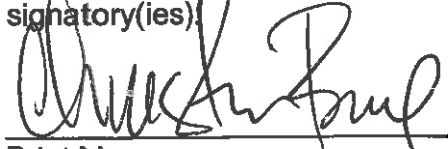
~~(as to both signatures)~~

Execution Date

Y	M	D
17	05	05

Transferor / Borrower / Party Signature(s)

WHISTLER COMMUNITY SERVICES  
SOCIETY by its authorized  
signatory(ies)



Print Name:

CHRISTIAN BOONE

Print Name:

OFFICER CERTIFICATION:

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

LAND TITLE ACT  
FORM E  
SCHEDULE

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
Lease		Description: Ground Lease of Plan EPP70485 Document: Entire Document Person Entitled to Interest: Transferee

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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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NATURE OF INTEREST	CHARGE NO.	ADDITIONAL INFORMATION
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**TERMS OF INSTRUMENT**

**GROUND LEASE**

**BETWEEN:**

**RESORT MUNICIPALITY OF WHISTLER**

**AND:**

**WHISTLER COMMUNITY SERVICES SOCIETY (S-0025152)**

**RE: Site for Whistler Community Services Building at 7600 Nesters Road, Whistler, BC**

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## GROUND LEASE

THIS INDENTURE dated for reference the 10<sup>th</sup> day of April, 2017

BETWEEN:

**RESORT MUNICIPALITY OF WHISTLER ("RMOW")**, a municipal corporation continued pursuant to the *Resort Municipality of Whistler Act*, R.S.B.C. 1996, c. 407 and having its office at 4325 Blackcomb Way, Whistler, BC, V0N 1B4

(the "Lessor")

AND:

**WHISTLER COMMUNITY SERVICES SOCIETY (S-0025152) ("WCSS")**, a society duly incorporated pursuant to the Society Act, R.S.B.C. 1996, c. 433 and having its address at 1519 Spring Creek Drive, Whistler, BC, V0N 1B1

(the "Lessee")

WHEREAS:

- A. The Lessor is the registered and beneficial owner in fee simple of the **Subject Property** (hereinafter defined), together with all improvements presently standing thereon;
- B. The Lessee operates programs and services that support social sustainability for RMOW;
- C. The Lessee wishes to centralize services and staff by constructing, operating and managing a public not for profit Community Social Services building (the "**Facility Building**") within the Subject Property pursuant to a long-term ground lease (the "**Ground Lease**"); and
- D. The Lessor has agreed to lease to the Lessee the Facility Lands (the "**Facility Lands**") for the Term in order that the Lessee at its expense, may erect the Facility Building and use, occupy and enjoy the Facility Lands and the Facility Building erected thereon for social services programs, a retail thrift store, and recycling and solid waste programs and other ancillary purposes for the Term, all upon the terms and conditions and subject to the provisos herein contained.

NOW THIS INDENTURE WITNESSES that in consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Lessee to be paid, observed and performed, the Lessor has demised and leased and by these presents does demise and lease unto the Lessee and the Lessee does hereby take and rent the Facility Lands upon and subject to the conditions hereinafter expressed.

TO HAVE AND TO HOLD the Facility Lands for and during the Term.



YIELDING AND PAYING Rent to the Lessor, upon commencement of the Term as hereinafter provided.

This Ground Lease is made upon and subject to the following covenants and conditions which each of the Lessor and the Lessee respectively covenants and agrees to keep, observe and perform to the extent that the same are binding or expressed to be binding upon it.

## **ARTICLE 1**

### **DEFINITIONS**

#### **1.1 Definitions**

1.1.1 The terms defined in this Section 1.1.1, for all purposes of this Ground Lease unless otherwise specifically provided herein, have the meanings hereinafter specified, as follows:

**"Additional Rent"** means the amounts, if any, payable by the Lessee pursuant to Sections 3.4, 4.1, 4.2, 4.3, 4.4, 7.10, 7.12, 8.3 and 8.4 together with any other additional amounts which are expressed to be added to and made part of Additional Rent, other than Basic Rent.

**"Annual Plan"** means an annual report that outlines the programs offered at the Proposed Site, the volumes of clients and customers served, the revenues earned and such other information as the RMOW may reasonably require.

**"Architect"** means such architect as the Lessee may appoint from time to time, who shall be a member in good standing of the Architectural Institute of British Columbia.

**"Basic Rent"** as of any particular time means the net basic rental provided for in this Ground Lease as specified in Article 3 of this Ground Lease.

**"Builders Lien Act"** means the *Builders Lien Act*, S.B.C. 1997, Ch. 45 and amendments thereto.

**"Building Permit"** means each building permit issued by RMOW, authorizing construction on the Facility Lands or a portion thereof, as amended from time to time.

**"Commencement Date"** means the 1<sup>st</sup> day of May, 2017.

**"Commencement of Construction"** means that a Building Permit or Building Permits have been issued to the Lessee by RMOW for the Facility Building and the foundations and footings of the Facility Building shall have been commenced as certified to the Lessor by the Architect.

**"Design Guidelines"** means those parts of the Official Community Plan and any other Land Use Rules that deal with design issues lawfully applicable to the Facility Lands and Facility Building and all amendments thereto whether made before or after the date of this Ground Lease, and

specifically the design guidelines as provided by RMOW staff and referenced in OCP Bylaw No. 1983, 2011.

**“Development Activity”** means any site preparation or alteration of the Facility Lands whatsoever, and includes any construction of, addition to or alteration of any buildings or other structures on the Facility Lands.

**“Development Agreements”** means, collectively:

- (a) the section 219 covenant granted by the Lessee to the Lessor and registered against title to the Lessee’s leasehold interest in the Facility Lands concurrently with this Ground Lease for the purposes of ensuring environmental monitoring during construction and the Lessee’s compliance with flood-proofing conditions and green building commitments; and
- (b) such other registrable charges granted to or by the Lessor or Lessee.

**“Development Permit”** means the development permit issued by RMOW, authorizing development on the Facility Lands or a portion thereof, as amended from time to time.

**“Facility Building”** means all structures and buildings constructed upon the Facility Lands or upon any adjacent lands owned by the Lessor or any part thereof by or for the Lessee for social services and ancillary uses pursuant to the provisions of this Ground Lease and as may be permitted by the Zoning Bylaw, including, without limitation, necessary structures for ingress and egress, and all hard landscaping, together with all replacements, alterations, additions, changes, substitutions, improvements or repairs thereto and all other improvements from time to time constructed upon or affixed or appurtenant to the Facility Lands.

**“Facility Lands”** means that portion of the Subject Property shown outlined in bold on leasehold subdivision plan EPP 70485, a copy of which is attached hereto as “Schedule B”.

**“Ground Lease”** means this document and any amendments thereto made between the Lessor and the Lessee.

**“Indemnified Parties”** means the Lessor, the Mayor, the members of the Lessor’s council, and the Lessor’s officers, employees, agents, successors and assigns and each of its subsidiary, affiliated or associated corporations and all others for whose conduct the Lessor is responsible in law.

**“Land Use Rules”** means the applicable plans, policies, handbooks, guidelines, rules, regulations, bylaws and any other documents no matter how they are titled, adopted in accordance with the bylaws of RMOW from time to time, including all other rules governing

land use and the construction, renovation, maintenance, repair and replacement of buildings on the Facility Lands and in the neighbourhood in which the Facility Lands are situated.

**“Lessee”** means Whistler Community Services Society.

**“Mortgage”** means a mortgage or mortgages upon or in respect of and specifically charging the leasehold interest of the Lessee in the Facility Lands and the Facility Building or any part thereof and includes any debenture or deed of trust and mortgage to secure any bonds or debentures issued thereunder, and any assignment of rents made to the Mortgagee as security.

**“Mortgagee”** means a mortgagee or mortgagees under a Mortgage.

**“Off-site Works”** means collectively, all off-site works and services required by the RMOW pursuant to the Development Permit, the Building Permit or any Development Agreement.

**“Penalty”** means a penalty, fine, cost, levy, imposition or other like charge.

**“Prime Rate”** means the annual percentage rate of interest established from time to time by the Royal Bank of Canada, Vancouver, British Columbia, or any successor bank, as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Royal Bank of Canada as the prime rate, or any rate which may replace the prime rate in the future as a method for determining rates of interest to be charged.

**“Proposed Site”** means an approximate 0.07 ha (15 meter x 45 meter) portion of the Subject Property, as shown on the Plan attached hereto as Schedule A for the construction of the Facility Building.

**“Rent”** means, collectively, the Basic Rent, Additional Rent and any other amounts payable by the Lessee under this Ground Lease.

**“RMOW”** means Resort Municipality of Whistler in its capacity as the local government.

**“Subject Property”** means the 1.06 ha. parcel of land described as PID:018353517, Lot 2, District Lot 1758, Plan LMP11103

**“Substantial Completion”** means substantial completion as defined in Section 5.2 of this Ground Lease.

**“Term”** means the fifty (50) year period commencing on the 1<sup>st</sup> day of May, 2017 and ending at 11:59 p.m. on the 30<sup>th</sup> day of April, 2067, subject to any renewal period.

**"Trustee"** means the trustee of insurance proceeds as described herein.

**"Zoning Bylaw"** means Zoning and Parking Bylaw No. 303, 1983, as may be amended or replaced from time to time.

**"Zoning Regulations"** means collectively, those parts of the Official Community Plan, the Zoning Bylaw, and any other applicable Land Use Rules, which deal with zoning issues relating to the Facility Lands and all amendments thereto whether made before or after the date of this Ground Lease.

1.1.2 All the provisions of this Ground Lease shall be deemed and construed, to the extent the context requires and save and except for the definitions, 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.

1.1.3 The words "herein", "hereby", "hereunder" and words of similar import refer to this lease as a whole and not to any particular article, Section or sub-section hereof.

1.1.4 Words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine gender and words importing persons shall include firms and corporations or vice versa.

1.1.5 It is agreed that the covenants, agreements, provisos and conditions contained in any Schedule attached to this Ground Lease are part of this Ground Lease and the Lessee agrees to be bound thereby.

## **ARTICLE 2**

### **TERM**

#### **2.1 Term**

Lessor leases to Lessee the above Subject Property for a Term of fifty (50) years, as defined above, or sooner as provided herein. On or before January 31, 2018 the WCSS will discontinue occupancy of Lessor's property located at 1519 Spring Creek Drive and relocate its operations to the Proposed Site. The period between January 31, 2018 and the Lessee's relocation to the Proposed Site will be considered overholding and will not extend the term of the lease between RMOW and WCSS dated January 2, 2012.

#### **2.2 Renewal**

Provided that Lessee is not in default in the performance of this Ground Lease, Lessee shall have the option to renew the Ground Lease for two (2) additional term(s) of ten (10) years commencing at the expiration of the initial Ground Lease term. The option shall be exercised by written notice given to

Lessor not less than ninety (90) days prior to the expiration of the prior Ground Lease term. If notice is not given in the manner provided herein within the time specified, this option shall lapse and expire.

**ARTICLE 3**  
**PAYMENT OF RENT**

**3.1 Rent**

The Lessee covenants and agrees to pay to the Lessor as Basic Rent a minimum annual lease payment of \$17,000 per year, or such greater amount as the WCSS may, in its discretion, determine, provided that once the WCSS has paid to the RMOW total annual lease payments amounting to \$850,000, the WCSS will have no further obligation to make lease payments under the Ground Lease, other than payments of any Additional Rent, for the remainder of the Term and any renewal thereof. Rent shall be paid on the first day of each rental year for that year's rent. All rental payments shall be made to the Lessor at the address specified above.

**3.2 Payments Generally**

All payments by the Lessee to the Lessor of whatsoever nature required or contemplated by this Ground Lease shall be:

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

**3.3 Net Lease**

Unless otherwise expressly stipulated herein to the contrary, all Rent required to be paid by the Lessee hereunder shall be paid without any deduction, abatement or set-off whatsoever, it being the intention of the Lessor and Lessee that all expenses, costs (including without limitation all operating costs), payments and outgoings incurred in respect of the Facility Lands, the Facility Building and any other improvements on the Facility Lands or for any other matter or thing affecting the Facility Lands,

shall be borne by the Lessee, that the Basic Rent herein provided shall be absolutely net to the Lessor and free of all abatements, set-off or deduction of real property taxes, charges, rates, assessments, expenses, costs, payments or outgoings of every nature arising from or related to the Facility Lands, the Facility Building or any other improvements on the Facility Lands and that the Lessee shall pay or cause to be paid all such taxes, charges, rates, assessments, expenses, costs, payments and out goings.

#### **3.4 Interest on Amounts in Arrears**

3.4.1 When the Rent shall be in arrears, such amounts shall bear interest, including interest on overdue interest, at the Prime Rate plus six percent (6%) per annum calculated monthly not in advance from the date due until paid, irrespective of whether or not the Lessor demanded payment. The Lessor shall have all the remedies for the collection of such interest, if unpaid after demand, as in the case of Rent in arrears, but this stipulation for interest shall not prejudice or affect any other remedy of the Lessor under this Ground Lease. Provided however, the provisions of this Section 3.4 shall not apply to the Lessee's failure to pay taxes under Sections 4.1 and 4.2 when due.

3.4.2 If a court declares or holds the Prime Rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder shall be eighteen percent (18%) per annum calculated monthly not in advance from the date due until paid.

### **ARTICLE 4**

#### **PAYMENT OF TAXES, SERVICES, LICENSES AND PENALTIES**

##### **4.1 Payment of Taxes if Lessee is not Exempt Therefrom**

4.1.1 Save as otherwise provided in Section 4.2, the Lessee will in each and every year during the Term not later than the day immediately preceding the date or dates on which real property taxes and other charges imposed upon real property within RMOW become due and payable whether monthly, quarterly, twice-yearly or otherwise, pay and discharge or cause to be paid and discharged all taxes, rates, duties, charges and assessments, including school taxes, local improvement rates and other charges which now are or shall or may be levied, rated, charged or assessed against the Facility Lands, the Facility Building, all other structures, all machinery, equipment, facilities and other property of any nature whatsoever thereon and therein, whether such taxes, rates, duties, charges and assessments are charged by any municipal, parliamentary, legislative, regional, school or other authority including RMOW during the Term and will indemnify and keep indemnified the Lessor 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 suffered by the Lessor may be collected by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears. The Lessee further covenants and agrees that during the Term, it will deliver to the Lessor for inspection receipts for payments of all taxes, rates, duties, charges, assessments, including school taxes, local improvement rates and other charges in respect of

the Facility Lands, the Facility Building, all other structures, all machinery, equipment, facilities and other property of any nature whatsoever thereon and therein which were due and payable during the Term within fourteen (14) days following receipt by the Lessee of each of such receipts for payment. The Lessor shall, not later than fourteen (14) days following receipt of any assessment notices delivered to the Lessor by any taxing authority, relating to the Facility Lands, the Facility Building or any other structures, any machinery, equipment, facilities and other property of any nature whatsoever thereon and therein, forward a copy thereof to the Lessee. The Lessee shall have the right from time to time to appeal any assessment of the Facility Lands or the Facility Building or any other tax, rate, duty, charge or amount referred to in this Section 4.1 provided that such appeal shall be at the sole cost and expense of the Lessee.

4.1.2 The Lessee shall be responsible for the payments referred to in this Section 4.1 from the Commencement Date.

#### **4.2 Payment of Taxes if Lessee is Exempt Therefrom**

4.2.1 The Lessee covenants and agrees with the Lessor that if during the Term, the Facility Lands, the Facility Building, all other structures, all machinery, equipment and facilities and other property of any nature whatsoever, thereon and therein, are by the provisions of any municipal, parliamentary, legislative or regional enactment exempt from taxation in whole or in part by reason of the Lessee's charitable status, and they would otherwise have been subject to taxation, then the Lessee shall in each and every year during the Term that such exemption occurs pay to the Lessor as Additional Rent in like manner and time as taxes are to be paid pursuant to Section 4.1, an amount equal to \$1.00.

4.2.2 The Lessee shall have the right from time to time to appeal any assessment of the Facility Lands or Facility Building or any other tax, rate, duty, charge or amount referred to in this Section 4.2, provided that such appeal shall be at the sole cost and expense of the Lessee.

4.2.3 The Lessee shall be responsible for the payments referred to in this Section 4.2 from the Commencement Date.

#### **4.3 Delinquent Taxes**

If the Lessee shall in any year during the Term fail to pay the taxes under Sections 4.1 and 4.2 when due, the Lessee shall thereupon pay interest at the percentage rate or rates established by RMOW or any other taxing authority, for unpaid real property taxes in the Province of British Columbia or any other taxing authority, for delinquent taxes, provided that the Lessee shall only be obligated to pay such interest as would be payable by other taxpayers in the Province of British Columbia.

#### **4.4 Payment of Utility Services**

The Lessee covenants with the Lessor to pay for or cause to be paid when due to the providers thereof, including RMOW, all charges for gas, electricity, light, heat, power, telephone, water, sanitary

sewers, storm sewers, cable and other utilities and services used in or supplied to the Facility Lands and the Facility Building throughout the Term and will indemnify and keep indemnified the Lessor 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 which relate to such charges suffered by the Lessor may be collected by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

#### **4.5 Business Tax and License Fees**

The Lessee covenants with the Lessor to pay for or cause to be paid when due every tax and permit and license fee in respect of the use or occupancy of the Facility Lands and conduct of business by the Lessee (and any and every sublessee, permittee and licensee) other than such taxes as corporate income, profits or excess profit taxes assessed upon the income of the Lessee (or such sublessee, permittee and licensee) whether such taxes or permit and license fees are charged by any municipal, parliamentary, legislative, regional or other authority during the Term and will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such taxes and permit and license fee, and any such loss, costs, charges and expenses which relate to such charges suffered by the Lessor may be collected by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

#### **4.6 Permissive Tax Exemption**

The Lessee may apply to the Council of the RMOW for a permissive property tax exemption in any year of the Lease. The Lessee acknowledges and agrees that the grant of a permissive property tax exemption is entirely within the sole discretion of the Council of the RMOW, and nothing herein obliges the Council to grant any requested permissive tax exemption.



**ARTICLE 5**  
**CONSTRUCTION**

**5.1 Lessee to Construct Facility Building**

5.1.1 The Lessee will not carry out any Development Activity on the Facility Lands, except in accordance with the Design Guidelines and Development Permit issued by the RMOW. The Lessee shall at its cost apply to the RMOW for the partial Building Permit required to commence excavation either before the issuance of the Development Permit or as soon as is reasonably practical after the issuance of the Development Permit, which Building Permit application shall comply with the Zoning and any other applicable permits and approvals. Upon receipt of the complete Building Permit from RMOW, the Lessee shall, at its cost:

- (a) construct the Facility Building, together with other facilities ancillary thereto and connected therewith on or off-site the Facility Lands, including without limitation the Off-site Works;
- (b) install on the Lessor's lands adjacent to the Facility Lands all crosswalks, sidewalks, layby, trails, trail lighting, walls and landscaping required in connection with the Development Permit; and
- (c) install all hard and soft landscaping on the Facility Lands and adjacent areas required in connection with the Development Permit;

expeditiously and in a good and workmanlike manner and in substantial accordance with the drawings, elevations, specifications (including, without limitation, the materials to be used), location on the Facility Lands and exterior decoration and design all upon which the issuance of the Building Permits by RMOW or other authority having jurisdiction are based, and in compliance with the requirements of the Development Permit and any Development Agreements registered against title to the Subject Property or the Lessee's leasehold interest in the Facility Lands and in accordance with Schedule B of the Whistler Village Construction Management Strategy. RMOW will, to the extent possible at law, reduce or waive fees otherwise payable by the Lessee for the development and building permits.

5.1.2 Any material changes to the drawings, specifications, location, exterior decoration, design, or exterior appearance of the Facility Building or the appearance of the Facility Lands, all upon which the issuance of the Building Permit and Development Permit by RMOW or other authority having jurisdiction are based, must first be approved by the Lessor, and by RMOW to the extent required by permits or bylaws of RMOW.

## **5.2 Substantial Completion of Facility Building**

5.2.1 The Facility Building shall be deemed to have been Substantially Completed when the Architect or engineer of the Lessee has issued a certificate to the Lessor, signed and sealed by the Architect or engineer, certifying that:

- (a) the Facility Building is substantially complete in all material respects in a proper and workmanlike manner and in accordance with the applicable plans, specifications and supporting documents submitted to and accepted by RMOW, except for deficiencies, the correction of which, in the opinion of the Architect or engineer is adequately ensured;
- (b) all building requirements and regulations of RMOW have been complied with by the Lessee except for deficiencies, the correction of which, in the opinion of the Architect or engineer is adequately ensured;
- (c) all permits for occupancy which may be required by RMOW have been obtained; and
- (d) the Facility Building is ready for occupancy.

5.2.2 For purposes other than Section 5.3(b), Substantial Completion may be in respect of portions of the Facility Building.

## **5.3 Deadlines for Commencement of Construction and Substantial Completion of Facility Building**

The Lessee covenants and agrees with the Lessor that:

- (a) Commencement of Construction of the Facility Building shall take place on or before the day which is the one (1) year anniversary of the Commencement Date;
- (b) the Facility Building, services and facilities shall be Substantially Completed in accordance with the requirements of Section 5.2 on or before the day which is the two (2) year anniversary of the day of Commencement of Construction; and
- (c) The Lessee shall own the Facility Building upon Substantial Completion of construction.

## **5.4 Termination Where Lessee Defaults in Commencement of Construction or Substantial Completion**

If Commencement of Construction or Substantial Completion of the Facility Building, as appropriate, does not occur by the dates set forth in Section 5.3, then the Lessor, after having given the Lessee ninety (90) days' notice to complete Commencement of Construction or Substantial Completion shall have the right and option to terminate this Ground Lease subject to the terms hereof. The Lessor

may agree, at the discretion of the Chief Administrative Officer of the RMOW, acting reasonably, to a reasonable extension of the date for Substantial Completion upon written request of the Lessee.

## **5.5 Fire and Liability Insurance During Construction of Facility Building**

5.5.1 The Lessee shall, at its cost, effect or shall cause its contractor or contractors to effect prior to the Commencement of Construction of the Facility Building, or any portion thereof, and shall maintain and keep in force, until the insurance required under Article 7 shall have been effected, insurance:

- (a) protecting both the Lessee and the Lessor and the Lessor's servants and agents (without any rights of cross claim or subrogation against the Lessor) against claims for personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Facility Lands and from any cause, including, without limitation, the risks occasioned by the construction of the Facility Building, and to an amount reasonably satisfactory to the Lessor for any personal injury, death, property or other claims in respect of any one accident or occurrence; and
- (b) protecting both the Lessee and the Lessor and the Lessor's servants and agents from loss or damage (without any rights of cross claim or subrogation against the Lessor) to the Facility Building and all fixtures, equipment, improvements and building materials on the Facility Lands from time to time both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the Facility Building) against fire, earthquake and all other perils from time to time customarily included in the usual all risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Lessor may reasonably require to be insured against to the full insurable value thereof at all times and in any event in the amount sufficient to prevent the Lessor or the Lessee being deemed co-insurer.

5.5.2 The proceeds of insurance which may become payable under any policy of insurance effected pursuant to this Section 5.5 shall be payable to the Mortgagee or to the Trustee if there is no Mortgagee and shall be available to finance repair and reconstruction.

5.5.3 All the provisions of Article 7 respecting insurance which are of general application shall apply to the insurance during construction of the Facility Building required by this Section 5.5.

## **5.6 Prime Contractor**

For the purposes of the construction of the Facility Building, the Lessee will ensure compliance with and conform to all health and safety laws, bylaws and regulations of the Province of British Columbia, including without limitation, the *Workers' Compensation Act* and regulations pursuant thereto. The Lessee agrees and acknowledges that, pursuant to Section 118 of the *Workers'*

*Compensation Act*, the Contractor shall for the purposes of the *Workers' Compensation Act* be the prime contractor in respect of the construction of the Facility Building.

#### **5.7 Security for the Facility Lands and Facility Building**

The Lessee will ensure that the design and construction of any security system for the Facility Lands and the Facility Building will be consistent with the RMOW's night-sky friendly lighting requirements and will not, except as otherwise provided in this Ground Lease, prohibit public pedestrian access on or through designated areas of the Facility Lands.

#### **5.8 Payment of Capital Costs**

5.8.1 The Lessee is responsible for the design, construction, and siting of the Building and all other capital improvements on the Proposed Site, including without limitation those capital improvements referenced in this Section 5.8

5.8.2 Without limiting the generality of Sections 3.3 and 5.1.1 above, the Lessee acknowledges and agrees that it will be responsible to pay:

- (a) all capital costs for the construction of the Facility Building, including telephone, internet, electricity, gas, and any other communications services, onsite from the property line, up to and within the Building;
- (b) all capital costs for the construction of the sanitary sewer, drainage and water system service extensions shown schematically on the plan attached as Schedule A; and
- (c) all capital costs for the Off-site Works, including any utility improvements or upgrades, required to provide services or access to the Facility Lands and the Facility Building and all crosswalks, sidewalks, layby, trails, trail lighting, walls and landscaping required in connection with the Development Permit.

#### **5.9 Payment of Pre-Construction Costs**

The Lessee acknowledges and agrees that it will be responsible to pay all due diligence costs, including but not limited to resulting site development costs, soil remediation costs, and, if required, flood proofing costs and flood management costs.

#### **5.10 Payment of Subdivision Costs**

The Lessee acknowledges and agrees that it will be responsible to pay any leasehold subdivision costs that may be required, including without limitation, all surveying costs and registration costs.

#### **5.11 Payment of Operating Costs**

5.11.1 Without limiting the generality of Section 3.3, the Lessee acknowledges and agrees that it will be responsible to pay all operating costs in respect of the Facility Building and the Facility Lands, including without limitation all deficits of operating costs. The Lessee is responsible to, at its cost, to operate and maintain, for as long as WCSS occupies the Proposed Site, all building systems including plumbing, electrical, water, Heating/Ventilation/Air Conditioning (HVAC), communications, and any other system within the Building. Nothing herein limits the ability of the Lessee to apply for available grants or funding from any governmental authority, including RMOW, and third parties.

5.11.2 Notwithstanding the generality of Section 5.11.1 and notwithstanding the projections set out in the Lessee's Business Plan, the Lessee agrees that should it not, in any year of the Term, generate sufficient revenue to ensure the ongoing operations and viability of the Facility Building in accordance with the spirit and intent of this Ground Lease, the Lessee will use reasonable efforts to obtain funding from other entities and funding agencies sufficient to bridge all revenue and operating cost differences.

#### **5.12 Parking**

The Lessee shall have the right to use parking spaces or parking areas near or adjacent to the Facility Building that are from time to time designated by the Lessor for the use of the Lessee and its employees. All such parking shall be on a nonexclusive, non-assigned basis. The Lessee shall not use or permit its employees or invitees to use any spaces which have been specifically reserved by the Lessor to other tenants or for such other uses as have been designated by appropriate governmental entities as being restricted to certain uses. The Lessee shall at all times comply and cause its employees and invitees to comply with any parking rules and regulations as the Lessor may from time to time reasonably adopt. At no time will the Lessee use any parking spaces for storage or containers of any type or description. The Lessor assumes no liability or risk for any personal injury, or damage that may occur to the automobile or other property of the Lessee, its employees, customers or others in any parking area. The Lessor shall be responsible for maintenance of the parking area, including snow clearing and other general maintenance requirements as may be reasonably necessary.

**ARTICLE 6****QUALITY OF LANDS, ACCESS, USE AND OPERATION OF THE LANDS AND FACILITY BUILDING****6.1 Quality of Facility Lands**

The Lessee accepts the Facility Lands "as is where is" knowing the condition thereof, and agrees that the Lessor has made no representation, warranty or agreement with respect thereto, except as otherwise expressly provided herein. The Lessee is responsible for undertaking all investigations and due diligence to ascertain the suitability of the Proposed Site for the purposes of constructing the Building and carrying on the uses contemplated in section 6.2 hereunder.

**6.2 Use of Facility Building**

The Lessee covenants and agrees with the Lessor that:

- (a) neither the Facility Lands nor the Facility Building nor any part thereof, or any other facilities ancillary thereto and connected therewith as set forth in the Development Permit, shall at any time be used for overnight occupancy;
- (b) if not in current use by the Lessee, the RMOW will be allowed use of the forty (40) person meeting room within the Facility Building, and the WCSS will make that room available to the RMOW, including for use for Town Hall Meetings, Council Retreats, or other uses;
- (c) the Lessor will be notified of any changes to the programs or services offered by the Lessee at the Facility Building;
- (d) the Lessee will obtain the prior written consent of the Lessor, which determination and consent may be withheld at the discretion of the Lessor prior to beginning any new programs which are outside the scope of the programs described in Section 6.3.3;
- (e) the Annual Report will be presented to the RMOW each year of the Term, within ninety (90) days of March 31<sup>st</sup> of every year;
- (f) the Lessee, at its cost, will maintain through the Term any business licenses required by law; and
- (g) the Lessee will not seek the Province's consent to a subdivision of the Facility Lands or the Facility Building or any portion thereof, and will not seek any amendments to the Crown Grant without the prior written consent of the Lessor, which consent may be withheld at the Lessor's sole discretion.

### **6.3 Operation of the Facility Business**

6.3.1 During the Term, the Lessee will include on the Board of the WCSS, the Mayor of the RMOW and one other incumbent member of council selected by the Mayor and council, at their discretion. The RMOW, at its discretion, may select whether the Mayor or its other appointee will be observers at meetings and may amend such selection from time to time throughout the Term subject to the qualifications set out herein or in the bylaws of the Lessee, which will apply to all Board members and which will not preclude RMOW elected officials as Board members. The Lessee will deliver to the Mayor and RMOW's other appointee prior written notice of all Board meetings and copies of the minutes of all Board meetings.

6.3.2 The introduction of new solid waste or EPR programs organized by the Province, or a stewardship organization enabled by Provincial legislation, will require the prior written approval of the RMOW. The Facility Building operations will not include stewardship/EPR programs that are already available at the adjacent Nesters Recycling and Garbage Depot without the consent of the other operators providing that program or services.

#### **6.3.3 The Facility Building operations:**

- (a) must be carried out for a non-profit purpose only;
- (b) must include a retail thrift store available to the public for drop-off items for resale;
- (c) may include integration of food bank services with food waste reduction programs;
- (d) will include a tool lending library that will be commence operating within six (6) months of WCSS occupying the Facility Building, and will operate either from the Facility Building or an alternate location depending on suitability of location. If after operating for a two (2) year trial period, WCSS determines, acting reasonably, that the operation of the program is no longer feasible from a liability or financial perspective, the WCSS may, upon notice to the RMOW, discontinue operating the program;
- (e) will include programs and services that support social sustainability for Whistler residents, such as:
  - (i) food bank;
  - (ii) youth programs;
  - (iii) counseling;
  - (iv) outreach;

- (v) health education and programs;
- (vi) mentoring;
- (vii) training;
- (viii) family support; and
- (ix) seasonal worker support programs.

## **ARTICLE 7**

### **INSURANCE**

#### **7.1 Insurance**

At all times during the Term immediately following the Substantial Completion of construction of the Facility Building, the Lessee shall, at no expense to the Lessor, insure and keep insured or cause to be insured the Facility Building with one or more companies entitled to do business in the Province of British Columbia against loss or damage by fire and other perils now or hereafter from time to time embraced by or defined in the commercial building form of insurance coverage applicable to similar properties as the Facility Lands and the Facility Building and effected in the Province of British Columbia by prudent owners from time to time during the Term including, without restricting the generality of the foregoing, the hazards of lightning, earthquake, explosion, wind storm, cyclone, tornado, hail, riot, civil commotion, malicious damage, aircraft, smoke and vehicle damage to the extent that insurance against such risk or perils, or any of them, may be obtained in an amount equal to the full replacement value thereof. For clarity, the Lessor acknowledges that it will not have any insurable or any other rights of ownership or of the contents of the Facility Building at any time.

#### **7.2 Boiler and Machinery Insurance**

At all times during the Term the Lessee shall, at no expense to the Lessor, maintain or cause to be maintained in respect of the Facility Building boiler and machinery insurance with one or more companies entitled to do insurance business in the Province of British Columbia protecting the Lessor and the Lessee during the Term in respect of all boilers, pressure vessels, mechanical and electrical breakdown and damage to objects and building systems.

#### **7.3 Deductible Amounts**

Any of the policies of insurance referred to in Section 5.6 or 7.1 hereof may, with the approval of the Lessor, which approval shall not be unreasonably withheld, provide that the amount payable in the event of any loss shall be reduced by a deductible amount, such amount to be designated by the Lessee and approved by the Lessor, such approval not to be unreasonably withheld, and the Lessee shall



be a co-insurer to the extent of the amount so deducted from the insurance monies paid in the event of any loss, and the said amount shall for the purpose of Section 7.7 hereof, be included as part of the insurance monies payable and paid.

#### **7.4 Co-Insurance Clauses**

If any of the policies of insurance which are required by the Lessor in Sections 5.65 and 7.1 hereof contain any co-insurance clauses, the Lessee shall maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent the Lessor or the Lessee from becoming a co-insurer under the terms of such policy or policies and to permit full recovery in the event of loss.

#### **7.5 Identity of Insured and Subrogation**

Any and all policies of insurance referred to in Sections 5.6 and 7.1 hereof shall:

- (a) be written in the name of the Lessee and the Lessor as the insureds with loss payable to the Lessor, the Lessee and the Mortgagee, if any, as their respective interests may appear;
- (b) shall contain a waiver of subrogation clause to the effect that any release from liability entered into by the Lessee prior to any loss, shall not affect the right of the Lessee, the Mortgagee or the Lessor to recover; and
- (c) contain a provision or shall bear an endorsement that the insurer will not cancel such policy without first giving the Lessor and the Mortgagee at least sixty (60) days notice in writing of its intention to cancel.

#### **7.6 Release of the Indemnified Parties from Liability for Insured Loss or Damage**

The Lessee hereby releases the Indemnified Parties from any and all liability for loss or damage caused by any of the perils against which the Lessee shall have insured, or pursuant to the terms of this Ground Lease is obligated to insure, and the Lessee hereby covenants to defend, indemnify and save harmless the Indemnified Parties from and against all manner of actions, causes of action, suits, judgments, damages, loss, costs, expenses (including, without limitation, legal expenses on a solicitor and own client basis), claims and demands of any nature whatsoever relating to such insured loss or damage, save and except for willful or grossly negligent acts of the Indemnified Parties.

#### **7.7 Payment of Loss Under the Insurance Policy Referred to in Section 7.1**

7.7.1 The insurance monies payable under any or all of the policies of insurance referred to in Section 7.1 or 7.12 hereof, will be paid to the order of the Mortgagee or to the order of the Trustee if there is no Mortgagee unless the Lessor and Lessee otherwise agree and subject always to the then current insurance policy.

7.7.2 Subject to Article 9 the Lessor and the Lessee agree that the Mortgagee or Trustee (as the case may be) shall use such insurance monies for the restoration, reconstruction or replacement of the loss or damage in respect of which such insurance monies are payable hereunder against certificates of the Architect or Quantity Surveyor, or Engineer engaged by the Lessee or such other person as the Lessor and the Lessee may agree upon who is in charge of such restoration, reconstruction or replacement. Should the Lessee fail to effect the restoration, reconstruction or replacement of the loss or damage in respect of which the insurance monies are payable, without unreasonable delay, the Lessor shall be entitled to effect such restoration, reconstruction or replacement and the Mortgagee or Trustee to whom such insurance monies are payable shall pay or cause to be paid to the Lessor such insurance monies in the same manner the Mortgagee or Trustee (as the case may be) would have done had the Lessee effected such restoration, reconstruction or replacement.

#### **7.8 Workers' Compensation Coverage**

7.8.1 At all times during the Term and subject to the Workers' Compensation Board refusing coverage for the work being done on site, the Lessee, shall at its own expense procure and carry or cause to be procured and carried and paid for full workers' compensation coverage in respect of all workmen, employees, servants and others engaged in or upon any work, the non-payment of which would create a lien on the Facility Lands or the Facility Building.

7.8.2 The Lessee shall immediately notify the Lessor of any dispute involving third parties which may arise in connection with the obtaining and maintenance of workers' compensation coverage required hereby if such dispute results in the requisite coverage not being in place, and the Lessee shall take all reasonable steps to ensure the resolution of such dispute forthwith. At all times the Lessee shall defend, indemnify and save harmless the Indemnified Parties from and against all damages, costs, expenses (including, without limitation, legal expenses on a solicitor and own client basis), claims, suits, judgments and demands which the Indemnified Parties may incur or suffer as a result of any default by the Lessee of its obligation under this Section 7.8 to ensure the said full workers' compensation coverage is maintained. The Lessee shall further ensure that no amount of the said Workers' Compensation coverage is left unpaid so as to create a lien on the Facility Lands or the Facility Building. If the workers' compensation coverage required by this Section 7.8 is not in place within five (5) days of the date of the notice to the Lessor hereinbefore mentioned, the Lessor shall be entitled to have recourse to the remedies of the Lessor specified in this Ground Lease or at law or equity.

#### **7.9 Comprehensive General Liability**

At all times during the Term, the Lessee shall at the expense of the Lessee, maintain with one or more companies duly authorized to carry on business within the Province of British Columbia and approved by the Lessor, comprehensive general liability insurance in an amount of not less than \$5,000,000, for bodily injury to any one or more persons or property damage or such greater amount as the Lessor may reasonably require from time to time against claims for personal injury, death or property damage or loss arising out of the use and occupation of the Facility Lands and Facility Building,

indemnifying and protecting the Indemnified Parties and the Lessee and its directors, officers, employees, agents, successor and assigns. The amount of such coverage will be reviewed by the parties every five (5) years from and including the Commencement Date and determined by agreement. If the Lessor and Lessee are unable to agree on a revised amount within ninety (90) days of the anniversary date of the Commencement Date, the Lessor will determine the applicable minimum amount by reference to then prevailing industry standards for similar buildings.

#### **7.10 Payment of Insurance Premiums**

The Lessee shall pay or cause to be paid all the premiums under the policies of insurance referred to in this Article 7 as they become due and payable and in default of payment by the Lessee, the Lessor may pay the same and add the amount so paid to the Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of Additional Rent as rent in arrears.

#### **7.11 Copies of Insurance Policies**

Prior to the Commencement Date, and from time to time, if requested by the Lessor, and on an annual basis without request, the Lessee will furnish to the Lessor copies of all policies referred to in this Article 7, or insurance certificates in lieu thereof, accompanied by evidence satisfactory to the Lessor that the premiums thereon have been paid and will provide written notice of the continuation of such policies not less than ten (10) days prior to their respective expiry dates.

#### **7.12 Insurance May be Maintained by Lessor**

The Lessee agrees that should the Lessee, at any time during the Term, fail to insure or keep insured the Facility Building against loss or damage by fire and other perils as required under Section 7.1, or fail to maintain insurance against claims for personal injury, death or property damage or loss as required under Section 7.9, then in any of such events, the Lessor, although not obliged to do so, may obtain and maintain such insurance in such amount or amounts with such deductible amounts and for such period or periods of time as the Lessor deems advisable; and the Lessee shall pay to the Lessor as Additional Rent upon the Lessor obtaining any of such insurance and thereafter annually during the Term within 30 days after receipt of any invoice from the Lessor such amounts as, at the rates charged by the insurance companies with whom the Lessor has placed such insurance will pay all premiums therefor. In the event the Lessor pays for or obtains and maintains any insurance pursuant to this Section 7.12, the Lessor shall submit to the Lessee annually a statement of the amount or amounts payable by the Lessee under this Section 7.12 as the cost of such insurance for the next ensuing year and upon receipt of payment therefor shall apply the same on account of the premiums of such insurance with the loss, if any, thereunder payable to the Lessor, the Lessee and any Mortgagee as their interests may appear.

### **7.13 Appointment of Trustee**

The Lessor and the Lessee jointly reserve the right to appoint a Trustee at any time and from time to time during the Term, but only after each giving to the other party not less than seven (7) days' written notice of its intention to do so. The Trustee will manage the payment out of insurance monies for the repair, restoration, reconstruction or replacement of loss or damage to the Facility Lands or the Facility Building, such appointment to be made in consultation with the insurer and subject to the terms of the applicable insurance policy or policies.

## **ARTICLE 8**

### **REPAIRS AND MAINTENANCE**

#### **8.1 Lessor not Obligated to Repair**

The Lessor, unless otherwise agreed and subject to then existing bylaw or regulation relating thereto, shall not be obliged to furnish any services or facilities or make repairs or alterations in or to the Facility Lands, or the Facility Building, the Lessee hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Facility Lands and the Facility Building. The Lessee will, at its sole cost, maintain the Facility Lands in accordance with RMOW Property Maintenance Bylaw No. 810, 1990, as amended from time to time, as a minimum standard of maintenance.

#### **8.2 Repair by the Lessee**

8.2.1 The Lessee at the Lessee's cost and expense shall during the Term, put and keep in good order and condition or shall cause to be put and kept in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Facility Building or the foundation or structure of the Facility Building) the Facility Lands and the Facility Building, and the appurtenances and equipment thereof, both inside and outside, including, but not limited to fixtures, walls, foundations, roofs, vaults, elevators, safety systems, and similar devices, heating and air conditioning equipment, crosswalks, sidewalks, hard and soft landscaping, yards and other like areas, water and sewer mains and connections, water, steam, gas, and electric pipes and conduits, and all other fixtures on the Facility Lands and the Facility Building and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and shall, in the same manner and to the same extent as would a prudent owner of similar facilities, make any and all necessary repairs, replacements, alterations, additions, changes, substitutions and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the Facility Lands and the Facility Building and aforesaid fixtures, appurtenances and equipment fully usable for all the purposes for which the Facility Building were erected and constructed and the aforesaid fixtures, appurtenances and equipment were supplied and installed. Such repairs shall be in all respects to the

standard at least substantially equal in quality of material and workmanship to the original work and material in the Facility Building and aforesaid fixtures, appurtenances and equipment.

**8.2.2** The Lessee shall not commit, or allow any licensee, sub-lessee, concessionaire, invitee, or other person or entity the Lessee has permitted to occupy all or any portion of the Facility Lands or Facility Building, or any person for whom the Lessee is responsible at law, to commit, waste or injury to the Facility Lands or the Facility Building or any part thereof (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Facility Building or the foundation or structure of the Facility Building) and shall not use or occupy or permit to be used or occupied the Facility Lands or the Facility Building or any part thereof for any illegal or unlawful purpose or in any manner which will result in the cancellation of any insurance, or in the refusal of any insurers generally to issue any insurance as requested. The Lessee shall not injure or disfigure the Facility Lands or the Facility Building or to the extent reasonably possible, permit the same to be injured or disfigured in any way. At the expiration or other termination of this Ground Lease, the Lessee shall, except as otherwise expressly provided herein, surrender and deliver up the Facility Lands with the Facility Building and fixtures therein, and the aforesaid fixtures, appurtenances and equipment thereof, or any replacements thereof or substitution therefor, in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Facility Building or the foundation or structure of the Facility Building).

### **8.3 Repairs to Facility Building by Lessor**

The Lessee covenants and agrees with the Lessor that if the Lessee does not put and keep in good order and condition or cause to put and keep in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Facility Building or the foundation or structure of the Facility Building) the Facility Lands and the Facility Building and the fixtures, appurtenances and equipment thereof, both inside and outside, all as more particularly required by the provisions of Section 8.2, the Lessor through its agents, servants, contractors and subcontractors, although not obliged to do so, may enter upon those parts of the Facility Lands and the Facility Building required for the purpose of making the necessary repairs required to put the Facility Lands, Facility Building, fixtures, appurtenances and equipment in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Facility Building or the foundation or structure of the Facility Building). The Lessor will make such repairs, only after giving the Lessee sixty (60) days written notice of its intention so to do, except in the case of an emergency, and in so doing will be compliant with the then current safety and security systems and policies of the Lessee and of the insurers of the Facility Building. Any amount paid by the Lessor in making such repairs to the Facility Lands and the Facility Building or any part or parts thereof, together with all costs and expenses of the Lessor shall be reimbursed to the Lessor by the Lessee on demand together with interest at the rate of six percent (6%) per annum above the Prime Rate from the date incurred until paid and may be recovered by the Lessor as Additional Rent.

#### **8.4 Removal of Ice and Snow from Sidewalks**

The Lessee will have the sole obligation for removal of ice and snow from the sidewalks and walkways on the Facility Lands providing pedestrian access to the Facility Building. The Lessee covenants and agrees with the Lessor that if the Lessee at any time during the Term fails to keep the sidewalks and walkways on the Facility Lands providing pedestrian access to the Facility Building reasonably clean from ice and snow during the times and to the extent required of an owner under the provisions of RMOW bylaws and Regulations applicable to the Facility Lands in effect from time to time, the Lessor through its agents, servants, contractors and subcontractors may (but shall not be obligated to) remove such ice and snow and the Lessor shall not be required to give the Lessee any notice of its intention so to do. Any costs and expenses incurred by the Lessor in removing such ice and snow shall be reimbursed to the Lessor by the Lessee on demand together with interest at the rate of six percent (6%) per annum above the Prime Rate from the date incurred until paid and may be recovered by the Lessor as Additional Rent.

### **ARTICLE 9** **DAMAGE OR DESTRUCTION**

#### **9.1 Rent not to Abate**

The partial destruction, damage or complete destruction by fire or other casualty of the Facility Building shall not terminate this Ground Lease, entitle the Lessee to surrender possession of the Facility Lands or the Facility Building, or to demand any abatement or reduction of the Rent or other charges payable under this Ground Lease, any law or statute now or in the future to the contrary notwithstanding.

#### **9.2 Lessee's Obligations When the Facility Building Are Damaged or Partially Destroyed**

The Lessee covenants and agrees with the Lessor that in the event of damage to or partial destruction of the Facility Building, the Lessee, subject to the regulations and requirements of RMOW and any other governmental authority having jurisdiction and to the current insurance coverages and subject to the consent of the current Insurer(s) shall either:

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

#### **9.3 Lessee's Obligations When the Facility Building Are Completely or Substantially Destroyed**

The Lessee covenants and agrees with the Lessor that in the event of complete or substantially complete destruction of the buildings the Lessee, subject to the regulations and requirements of RMOW

and any other governmental authority having jurisdiction and subject to the terms of the then current insurance policies and the agreement of the insurer, shall either:

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

**9.4 Replacement, Repair or Reconstruction Under Section 9.2 or 9.3 to be Carried Out in Compliance with Section 8.2**

Any replacement, repair or reconstruction of the Facility Building or any part thereof pursuant to the provisions of Section 9.2 or 9.3 hereof shall be made or done in compliance with the provisions of Section 8.2 hereof.

**ARTICLE 10**

**REPLACEMENT, CHANGES, ALTERATIONS AND SUBSTITUTIONS**

**10.1 Replacement, Changes, Alterations and Substitutions**

10.1.1 The Lessee shall not make or permit to be made any changes, alterations, replacements, substitutions or additions affecting the structure of the Facility Building, the major electrical and/or mechanical systems contained therein, or the exterior decoration, design or appearance of the Facility Building or the Facility Lands, when the cost thereof is reasonably expected to exceed \$500,000 (such amount shall be adjusted by the amount of any increase in the Consumer Price Index (All Items) for Vancouver, B.C. as published by Statistics Canada, or any comparable index which might replace it at any time, from the date the Facility Building may lawfully be occupied following completion of the Facility Building to the end of the month immediately preceding the month in which the costs are going to be incurred), without the written approval of RMOW, which approval RMOW shall not withhold or delay unreasonably. No changes, alterations, replacements, substitutions or additions shall be undertaken until the Lessee has submitted or caused to be submitted to RMOW drawings, elevations (where applicable), specifications (including, without limitation, the materials to be used), locations (where applicable) and exterior decoration and design of the proposed changes, alterations, replacements, substitutions or additions and until the same have been approved in writing by RMOW, which approval RMOW agrees not to unreasonably withhold or delay. Approval of the RMOW for interior changes to the Facility Building will not be required except where the proposed interior changes are of a nature that requires the Lessee to first obtain a building or other permit. Nothing in this section exempts the Lessee from the obligation to obtain any development permit, building permit, or other permit or approval requirement of the RMOW then in effect.

10.1.2 The Lessee covenants and agrees with the Lessor that, subject to Article 11, all changes, alterations, replacements, substitutions and additions undertaken by or for the Lessee once begun shall be prosecuted with due diligence to completion. All such changes, alterations, additions shall meet the requirements of the applicable permits, bylaws and restrictions on use.

**ARTICLE 11**  
**UNAVOIDABLE DELAYS**

**11.1 Unavoidable Delays**

11.1.1 If, by reason of strike, lock-out or other labour dispute, material or labour shortage not within the control of the Lessee, 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 Lessee or of any one employed by it directly or indirectly, fire or explosion, flood, wind, water, earthquake, snowfall, inclement weather affecting construction conditions, act of God or other similar circumstances beyond the reasonable control of the Lessee and not avoidable by the exercise of reasonable effort or foresight by the Lessee, the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in the Commencement of Construction or the prosecution of construction or in the Substantial Completion or completion of the Facility Building or repair of the Facility Building or any part or parts of them which under the terms of this Ground Lease the Lessee is required to do by a specified date or within a specified time or if not specified within a reasonable time, the date or period of time within which the work was to have been completed shall be extended by the Lessor by a reasonable period of time at least equal to that of such delay or prevention and the Lessee shall not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Ground Lease 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 Lessor and the Lessee.

11.1.2 The Lessee shall 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 Substantial Completion and completion of the Facility Building or any repairs thereto.

**ARTICLE 12**  
**BUILDERS' LIENS**

**12.1 Release of Liens**

The Lessee shall, throughout the Term at its own cost and expense, cause any and all builders' liens and other liens for labour, services or materials alleged to have been furnished to the Facility Lands or the Facility Building, which may be registered against or otherwise affect the Subject Property, the Facility Lands or the Facility Building, to be paid, satisfied, released (including, without limitation, the release of all such liens from the Subject Property or the interest of the Lessor in the Facility Lands), or



vacated within forty-two (42) days after the Lessor shall send to the Lessee and the Mortgagee written notice by registered mail of any claim for any such lien. In the event there is a *bona fide* dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee shall not be bound by the foregoing, but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into court the amount claimed or sufficient security therefor, and such costs as the court may direct, or the Lessee may provide, as security in respect of such claim, a money or an irrevocable letter of credit, lodged with the Lessor, or other trustee acceptable to the Lessor, Lessee and claimant, for one hundred and ten percent (110%) of the full amount of any claim for any such lien. The amount of the letter of credit shall be increased every six (6) months to include interest on the claimed amount at the Prime Rate, calculated semi-annually not in advance from the date any such claim is registered against or otherwise affects the Facility Lands or the Facility Building, continuing so long as the aforesaid proceedings continue. The letter of credit shall be on terms sufficient to protect the Lessor's interest in the Facility Lands and the Facility Building and in a form reasonably satisfactory to the Lessor and shall be issued by one of the chartered Banks of Canada. Upon being entitled to do so, the Lessee shall register all such documents as may be necessary to cancel such lien from the Subject Property, the Facility Lands and the Facility Building, including, without limitation, the Lessor's interest therein and cause any remaining letter of credit funds or other security on hand to be delivered or paid to the rightful person.

#### **12.2 Lessor Has Filed Notice of Interest**

It is agreed that the Lessor shall not be responsible for claims of builders liens filed by persons claiming through the Lessee or persons for whom the Lessee is in law responsible. The Lessee acknowledges and agrees that the improvements and repairs to be made to the Facility Lands and the Facility Building will be made at the Lessee's request solely for the benefit of the Lessee and those for whom the Lessee is in law responsible. The Lessor has filed a notice of interest in the land title office pursuant to paragraph 3(b) of the *Builders Lien Act* stating that the Lessor is giving notice that it will not be responsible for any improvements or repairs done to the Facility Lands and Facility Building or other improvements thereon, unless the improvements are undertaken at the express request of the Lessor (not including a request made by the Lessor pursuant to this Ground Lease).

### **ARTICLE 13**

#### **INSPECTION BY LESSOR**

##### **13.1 Inspection by Lessor**

The Lessor and the Lessee, subject to any applicable bylaws or permit requirements and except in the case of an Emergency, agree that it shall be lawful at the Lessor's sole risk for a representative of RMOW at all reasonable times during the Term during business hours and upon twenty one (21) days notice (which notice need not be given in cases of emergency, and in other circumstances may be shortened with consent of the Lessee) to the Lessee to enter the Facility Lands

and the Facility Building, or any of them and to examine the condition thereof. If any reasonable requirements for repair as required by Section 8.2 pursuant to the Lessor's investigation are found, notice of such requirements shall be delivered or given by the Lessor to the Lessee, the Lessee shall within sixty (60) days after every such notice or such longer period as provided in Section 19.1(e), well and sufficiently repair and make good accordingly. The Lessor will, during any and all periods of inspection, cause its employees, contractors and agents to comply with the Lessee's safety and security requirements and policies and rules relating to the Facility Lands and Facility Building.

**ARTICLE 14**  
**OBSERVANCE OF REGULATIONS**

**14.1 Observance of Regulations**

The Lessee covenants with the Lessor that, notwithstanding any other provision of this Ground Lease to the contrary, throughout the Term the Lessee will comply with all provisions of law including, without limitation, municipal, regional, provincial and federal legislative enactments including, without limitation, all police, fire and sanitary regulations, zoning and building bylaws, and any municipal, regional, provincial, federal, other governmental regulations or regulations of RMOW, including, without limitation, the applicable permits, bylaws and restrictions on use, which relate to the construction and erection of the Facility Building, to the equipment and maintenance of the Facility Building, to the operation, occupation and use of the Facility Building or the Facility Lands to the extent that the Lessee operates, occupies and uses the Facility Building or the Facility Lands whether by subletting the same or any part thereof and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Facility Building, the Facility Lands or any part thereof.

**ARTICLE 15**  
**RIGHTS OF LESSOR AND LESSEE**

**15.1 Rights of Lessor and Lessee**

All rights and benefits and all obligations of the Lessor and the Lessee under this Ground Lease shall be rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as Lessor and Lessee respectively under this Ground Lease, and references in this Ground Lease to the "Lessor" shall be to RMOW in its capacity and role as landlord under this Ground Lease and as registered owner of the Subject Property and the Facility Lands. References to RMOW, means RMOW in its capacity as municipality having jurisdiction over the Facility Land and Facility Building with regulatory powers with respect thereto.

**ARTICLE 16**  
**RELEASE, INDEMNITY AND LIMITATION OF LIABILITY**

**16.1 Indemnification of the Indemnified Parties by the Lessee**

16.1.1 Subject to the applicable laws preventing indemnification of its directors, the Lessee covenants and agrees to defend, indemnify and save harmless the Indemnified Parties from and against all damages, losses, actions, causes of action, suits, judgments, claims, demands, builders liens, liabilities, expenses (including, without limitation, legal expenses on a solicitor and own client basis), costs, indirect or consequential damages (including, without limitation, loss of profits and loss of use and damage arising out of delays), fines and penalties which may arise or accrue to any person, firm or corporation against the Indemnified Parties or any of their respective contractors and subcontractors which the Indemnified Parties may pay, incur, sustain or be put to arising out of or in any way connected with, or that would not or could not be made or incurred but for, this Ground Lease.

16.1.2 The Lessee, on behalf of itself and its successors and permitted assigns, acknowledges that the Lessor does not represent to the Lessee, nor to any other person that the Facility Building or any other structure or improvement on the Facility Lands, including the contents of any of them, built, constructed or placed on the Facility Lands will not be damaged by flooding or erosion and the Lessee, on behalf of itself and its successors and permitted assigns, with full knowledge of the potential flood or erosion damage and in consideration of any approvals given the Lessee. The Lessee agrees to indemnify and save harmless the Indemnified Parties from and against all damages, losses, actions, causes of action, suits, judgments, claims, demands, builders liens, liabilities, expenses (including, without limitation, legal expenses on a solicitor and own client basis), costs, indirect or consequential damages (including, without limitation, loss of profits and loss of use and damage arising out of delays), fines and penalties which may arise or accrue to any person, firm or corporation against the Indemnified Parties or any of their respective contractors and subcontractors which the Indemnified Parties may pay, incur, sustain or be put to arising out of or in any way connected with any breach of any covenant or agreement on the part of the Lessee or its successors or permitted assigns contained in this Ground Lease or any Development Agreement or arising out of or in connection with any personal injury, death or loss or damage to the Facility Lands or the Facility Building or to any building, modular home, manufactured home or unit, improvement, chattel or other structure, including the contents of any of them, built, constructed or placed on the Facility Lands caused by flooding, erosion or some such similar clause.

16.1.3 Without derogating from the generality of the foregoing, the Lessee agrees to defend, indemnify and save harmless the Indemnified Parties in respect of:

- (a) all manner of actions, causes of action, suits, judgments, damages, loss, costs, claims, demands, fines and penalties of any nature whatsoever relating to and arising during the Term or any period of overholding out of:
  - (i) bodily injury or death,

- (ii) property damage,
- (iii) or other loss or damage,

resulting from:

- (iv) the conduct of any work,
- (v) any act or omission, or
- (vi) relating to or arising from the occupation or possession of the Facility Lands, the Facility Building or any portion thereof,

by the Lessee or any assignee, sub-tenant, agent, employee, contractor, subcontractor, invitee or licensee of the Lessee, or those for whom the Lessee is at law responsible;

- (b) all costs, expenses and liabilities incurred by the Indemnified Parties in connection with or arising out of all such claims, including, without limitation, the expenses of any action or legal proceeding pertaining thereto on a solicitor and own client basis;
- (c) the liabilities or obligations incurred or sustained by or imposed upon the Indemnified Parties; and
- (d) any and all manner of actions, causes of action, suits, judgments, administrative proceedings, damages, losses, costs, expenses (including without limitation, legal expenses on a solicitor and own client basis), builder's liens, claims, demands, fines and penalties of any nature whatsoever,

arising from any breach, violation or non-performance of any covenant, proviso, condition or agreement contained in this Ground Lease on the part of the Lessee to be fulfilled, kept, observed or performed.

## **16.2 Limitation of Liability of RMOW**

16.2.1 The Lessee acknowledges and agrees that, in its capacity as Lessor, RMOW, when involved in:

- (a) inspecting and approving plans; or
- (b) inspecting buildings, utilities, structures; or
- (c) inspecting other things,

requiring a permit for their construction, renovation, repair or reconstruction, owes no legal duty of care to the Lessee, its officers, employees, agents, contractors, subcontractors, successors and assigns on which a cause of action can be based, to ensure that plans, buildings, utilities, structures or other things

so constructed, renovated, repaired or reconstructed on the Facility Lands or on lands elsewhere, comply with the Zoning and development approvals in respect of the Facility Lands or any other applicable codes, bylaws, regulations or enactments in respect of the Facility Lands.

16.2.2 The Lessee further acknowledges and agrees that RMOW is not liable for damages of any nature (including, without limitation, indirect or consequential damages such as loss of profits and/or loss of use and damage arising out of delays) sustained by the Lessee as a result of the neglect (except for gross negligence) or failure, for any reason or in any manner, of RMOW to:

- (a) discover or detect contraventions of; or
- (b) enforce,

the Zoning and development approvals in respect of the Facility Lands or any other applicable codes, bylaws, regulations or enactments in respect of the Facility Lands.

### **16.3 Release and Indemnification of the Lessor**

The Lessee does hereby remise, release and forever discharge, and does hereby covenant and agree to defend, indemnify and save harmless:

- (a) the Lessor in its capacity as landlord and owner of the Facility Lands;
- (b) RMOW in its capacity as regulator; and
- (c) the Indemnified Parties,

whether or not the Lessor, RMOW and/or the Indemnified Parties have been negligent (except for grossly negligent acts or omissions), from and against all damages, losses, actions, causes of actions, claims, demands, builder's liens, liabilities, judgments, expenses (including without limitation, legal expenses on a solicitor and own client basis), costs, indirect or consequential damages (including, without limitation, loss of profits and loss of use and damage arising out of delays) which may arise or accrue to the Lessee or any person, firm or corporation against the Lessor, RMOW and/or the Indemnified Parties, arising out of or in any way connected with:

- (d) the construction of the Facility Building;
- (e) their later renovation, repair, and/or reconstruction from time to time, including, without limitation, any failure to complete construction, renovation, repair, and/or reconstruction of the Facility Building, howsoever arising; or
- (f) inspecting and approving plans or inspecting buildings, utilities, structures or other things requiring a permit for their construction; and

(g) any neglect or failure for any reason or in any manner by the Lessor, RMOW and/or the Indemnified Parties or any of their respective contractors or subcontractors, to:

(i) discover or detect contraventions of; or

(ii) enforce,

the Zoning Bylaw, the Development Agreements, all development approvals or any other applicable codes, regulations, bylaws or enactments in respect of the Facility Lands. Nothing in the general law of suretyship shall operate to release the Lessee from its obligations under this release and indemnity.

#### **16.4 Indemnification Survives Termination of Ground Lease**

The obligations of the Lessee to release, defend, indemnify and save harmless the Lessor, RMOW and/or the Indemnified Parties under the provisions of this Ground Lease shall apply and continue notwithstanding the termination or breach of this Ground Lease by the Lessor, or negligence on the part of the Lessor, RMOW and/or the Indemnified Parties, or any of their respective contractors, or subcontractors anything in this Ground Lease to the contrary notwithstanding. The indemnities provided in this Article 16 may be limited by the provisions of the *Canada Not-For-Profit Organization Act*.

#### **16.5 Limited Recourse of Lessor**

Notwithstanding any other terms or conditions of this Ground Lease, the rights of the Lessor are *in rem* only. The Lessor's recourse is limited solely to the Facility Lands and the Facility Building.

### **ARTICLE 17**

#### **SUBLETTING AND ASSIGNING**

##### **17.1 Subletting and Assignment**

17.1.1 Except as expressly provided in this Article, the Lessee will not assign this Ground Lease in whole or in part, or sublease the Facility Lands or the Facility Building or any part thereof, nor grant any concession, licence, privilege, easement or other right in respect of any part of the Facility Lands or the Facility Building, without the written consent of the Lessor. Permitted ancillary uses not involving subletting or assignment, such as social and fund raising functions, will not require notice to, or consent of, the Lessor. The Licensee will not permit any uses of the Facility Lands or Facility Building where such uses result in a breach of the Possibility of Reverter to the Crown, the bylaws or regulations of RMOW, and other applicable laws.

17.1.2 No such assignment, sub-letting or parting with possession, nor the Lessor's consent thereto, will relieve the Lessee from observance and performance of the Lessee's obligations contained in this Ground Lease.

17.1.3 The Lessor as a condition of granting its consent to an assignment of this Ground Lease which would release the Lessee from its obligations hereunder, may require the proposed assignee to covenant with the Lessor, on terms reasonably satisfactory to the Lessor, for the due and faithful performance and observance of the Lessee's obligations under this Ground Lease, including this clause.

17.1.4 When requesting the Lessor's consent to an assignment as aforesaid, the Lessee will cause such request to be accompanied by information as to the proposed assignee's corporate structure, business and financial responsibility received by the Lessee from such person as the Lessor may reasonably require, together with all terms and conditions of the proposed assignment, sub-letting or parting with possession.

17.1.5 Notwithstanding anything to the contrary contained in this Ground Lease, the Lessor will have the right, if the request is to assign this Ground Lease or sublet or part with possession of the whole of the Facility Lands, to cancel and terminate this Ground Lease, in which case as a of a termination date to be stipulated in the Lessor's notice to the Lessee regarding the exercise of the Lessor's rights, which will not be less than 90 days or more than 180 days following the date of delivery of such notice. The Lessee will surrender the whole of the Facility Lands and the Facility Building, in accordance with such notice and rent will be apportioned and paid to the date of surrender. If the Lessee withdraws its application at any time up to 60 days after the date of such notice from the Lessor, then the Lessee's notice and the rights of termination under this section will be extinguished and of no further force or effect in respect of such application but will remain in effect for all subsequent applications.

17.1.6 The consent to any assignment or sublease will not constitute a waiver of the necessity for such consent to any subsequent assignment or sublease.

17.1.7 The Lessee will apply revenues received from assignees, sub-tenants and licensees first to payment of operating costs for the Facility, and thereafter to such Facility purposes as the Board of directors or the Facility director deem appropriate, without in any way conflicting with the Possibility of Reverter.

## **17.2 Mortgaging by Lessee**

17.2.1 The Lessee will not mortgage its leasehold interest in the Facility Lands by assignment or sublease or give security by way of an assignment of rents or extend, modify, renew, vary or replace any such mortgage, assignment or other security without the consent of the Lessor, which consent may be withheld at the RMOW's sole and unfettered discretion. The Lessee acknowledges that it does not intend to mortgage its leasehold interest in the Facility Lands in order to finance the construction or operation of the Facility Building.

17.2.2 Every Mortgage permitted by the Lessor shall be made expressly subject to the rights of the Lessor under this Ground Lease and under any Development Agreements registered against the Lessee's leasehold interest in the Facility Lands.

**ARTICLE 18**  
**BANKRUPTCY OF LESSEE**

**18.1 Events of Bankruptcy or Receivership**

**18.1.1 If and whenever:**

- (a) a receiver, guardian, trustee in bankruptcy or any other similar officer is appointed to take charge of all or any substantial part of the Lessee's property by a court of competent jurisdiction;
- (b) a petition is filed for the re-organization of the Lessee under any provision of the *Bankruptcy Act* or any law of Canada or any province thereof or of the jurisdiction in which the Lessee is incorporated relating to bankruptcy or insolvency, then in force;
- (c) the Lessee becomes insolvent;
- (d) the Lessee files a petition for such re-organization or for arrangements under any provision of the *Bankruptcy Act* or any law of Canada or any province thereof or of the jurisdiction in which the Lessee is incorporated relating to bankruptcy or insolvency then in force and providing a plan for a debtor to settle, satisfy or to extend the time for the payment of debts; or
- (e) if any application or petition or certificate or order is made or granted for the winding up or dissolution of the Lessee voluntarily or otherwise,

then in any such case, this Ground Lease, at the option of the Lessor, and upon 30 days prior written notice or as otherwise ordered by a court of competent jurisdiction, will terminate and the Term will immediately become forfeited and void, and the Lessor may re-enter and take possession of the Facility Lands and the Facility Building or any part of them in the name of the Lessee and expel the Lessee, subject to the rights of sub-tenant and those claiming under it and remove its or their effects (forcibly if necessary) without being deemed guilty of trespass, any statute or law to the contrary notwithstanding. The Lessee hereby waives any present or future requirements that notice of the Lessor's intention under this Article 18 to re-enter be served or that the Lessor commencing legal proceedings in order to re-enter.



**ARTICLE 19**  
**DEFAULT BY LESSEE**

**19.1 Termination**

If and whenever:

- (a) the Facility Lands or the Facility Building are used for a purpose contrary to Article 6;
- (b) the WCSS abandons the Facility Lands, has ceased operations on the Facility Lands for a continuous period of six (6) months (unless due to flood, fire, earthquake or natural disaster);
- (c) the WCSS gives the RMOW prior written notice it wishes to terminate the Ground Lease for any reason whatsoever;
- (d) any Basic Rent or Additional Rent remains unpaid after any of the days on which the same ought to have been paid and following five (5) days notice of non-payment by the Lessor to the Lessee;
- (e) there is a breach of any of the Lessee's obligations hereunder (other than as set out in the other clauses of this Article) which is not cured within 120 days after delivery of notice by the Lessor to the Lessee specifying such breach, provided that if any default of the Lessee can only be cured by the performance of work or the furnishing of materials and if such work cannot reasonably be completed or such materials reasonably obtained within said 120 days, then such default will not be deemed to continue if the Lessee proceeds promptly with such work as may be necessary to cure the default and continues diligently to complete such work;
- (f) the Term or any goods and chattels on the Facility Lands or the Facility Building are at any time lawfully seized or taken in execution or attachment;
- (g) the WCSS becomes insolvent or bankrupt or an application or petition or certificate or order is made or granted for the winding up or dissolution of the WCSS, voluntarily or otherwise;
- (h) the Lessee assigns, sublets or parts with possession of the Facility Lands or the Facility Building or any part of either without the Lessor's consent as required herein;
- (i) the Lessee makes an application to subdivide or stratify the Facility Lands or the Facility Building without the prior consent of the Lessor;
- (j) the Lessee fails to remain in good standing with the applicable Registrar of Companies; or
- (k) the Lessee is no longer a charity or not-for-profit corporation;

then in any of the said cases (and notwithstanding any prior waiver of breach of covenant) the Lessor, at its option (and without prejudice to any other right or remedy it may then have or be entitled to), upon sixty (60) days prior written notice, may take possession of the Facility Lands and the Facility Building, as applicable, or any part thereof in the name of the whole and expel the Lessee and those claiming through or under it, subject to the rights of such persons, and remove its or their effects, without being deemed guilty of any manner of trespass, any statute or law to the contrary notwithstanding.

#### **19.2 Remedies of Lessor are Cumulative**

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

#### **19.3 Waiver by Lessor**

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

#### **19.4 Legal Fees**

If the Lessor retains a lawyer or other person reasonably necessary for the purpose of assisting the Lessor in enforcing any of its rights under this Ground Lease in the event of default by the Lessee, the Lessor will be entitled to collect from the Lessee as Additional Rent the cost of all such services on a solicitor and own client basis.

### **ARTICLE 20 COVENANTS OF LESSOR**

#### **20.1 Covenant Respecting Charges and Encumbrances**

The Lessor covenants with the Lessee that the Lessor has a good and marketable title in fee simple to the Facility Lands and that the Lessor has not at any time heretofore made, done, committed, executed or willfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the Facility Lands or any part thereof are charged or encumbered in title or estate other than the Possibility of Reverter, the subsisting exceptions and reservations contained in

the original grant of the Facility Lands from the Crown and any restrictive covenants and/or easements and/or rights of way in favour of the Lessor or other public bodies which may be registered against the Facility Lands.

## **20.2 Covenant Respecting Authority to Grant Ground Lease**

The Lessor covenants with the Lessee that it has in itself good right, full power and authority to lease the Facility Lands to the Lessee in the manner and according to the true intent of this Ground Lease. The Lessor, in co-operation with the Lessee, will defend against any claim by the Crown in right of the Province of British Columbia or any of its agencies to any attempted exercise of the Possibility of Reverter, directly or indirectly, provided that such claim has not arisen from a breach of this Ground Lease or of the term of the Possibility of Reverter.

## **ARTICLE 21**

### **CERTAIN COVENANTS AND AGREEMENTS OF LESSEE**

#### **21.1 Conduct on Demised Premises**

Taking into account that during construction of the Facility Building, the Facility Lands will be operated as a normal construction site, the Lessee covenants and agrees with the Lessor that it will not carry on nor do, nor allow to be carried on or done upon the Facility Lands or in the Facility Building any work, business or occupation which may be a nuisance or which may be improper, noisy or contrary to any law or to any bylaw or to any regulation of RMOW or any enactment of any governmental agencies or authorities having jurisdiction for the time being in force.

#### **21.2 Assumption and Covenant Respecting Charges and Encumbrances**

##### **21.2.1 In this Section as and from the Commencement Date,**

**"Assumed Agreements"** means, collectively, all charges or encumbrances registered against title to the Parent Parcel or the Lessee's leasehold interest in the Facility Lands, all agreements benefiting the Facility Lands filed as a legal notation on title to the Subject Property or the Lessee's leasehold interest in the Facility Lands, and all agreements between the Lessor and the Lessee respecting the development of and construction on the Facility Lands, whether or not registered against title to the Facility Lands or the Parent Parcel.

**"Ongoing Benefits"** means all rights, benefits and interest of a party derived from and pursuant to each of the Assumed Agreements.

**"Ongoing Obligations"** means all covenants, terms, provisos, stipulations, conditions, obligations and liabilities of a party contained in, existing by virtue of or arising out of each of the Assumed Agreements, including, without limitation: the obligations and responsibilities in

respect of ongoing payment obligations and liabilities and the performance of all indemnities and releases.

21.2.2 For the Term and any renewal thereof, the Lessor hereby assigns, conveys and transfers to the Lessee the Assumed Agreements and the Ongoing Benefits of the Lessor, as owner of the Facility Lands, for the sole use and benefit of the Lessee, all without the requirement or necessity of any further acts by or deliveries from the Lessor or the Lessee.

21.2.3 For the Term and any renewal thereof, the Lessee hereby assumes the Assumed Agreements and the Ongoing Obligations of the Lessor, as owner of the Facility Lands, and neither the Lessor nor Lessee will take any actions that cause or could cause a breach of the Assumed Agreements or the Possibility of Reverter.

21.2.4 The Lessee does hereby acknowledge and agree that the assumption herein of the Assumed Agreements and the Ongoing Obligations is made for the benefit of the Lessor and the other parties to the Assumed Obligations and may be enforced by such other parties directly against the Lessee.

## **ARTICLE 22**

### **SURRENDER OF LEASE AND ARBITRATION**

#### **22.1 Material Breach and Surrender**

In the event that of material breach of the lease by WCSS (which material breaches are expressly set out in Section 19.1 above), the Lessee has one hundred and twenty (120) days to rectify the breach through the arbitration process set forth in Section 22.3. If the breach is determined and unable to be rectified, the Facility Building will, upon Ground Lease termination, be surrendered to the RMOW subject to Section 22.2 below.

#### **22.2 Surrender of Facility Lands and Facility Building**

At the expiration or sooner determination of the Term, the Lessee shall surrender the Facility Lands and the Facility Building, to the Lessor in the condition in which they were required to be kept by the Lessee under the provisions of this Ground Lease, except for normal wear and tear, depreciation and acknowledging the age of the improvements. The RMOW intends to negotiate with the WCSS for reasonable compensation to be paid by the RMOW to the WCSS for the Facility Building. Notwithstanding the foregoing, the WCSS acknowledges and agrees that the RMOW, at its sole option, may choose not to negotiate compensation for the Facility Building, in which case the WCSS agrees to surrender the site to the RMOW for no compensation.

### **22.3 Arbitration**

If the Lessor and the Lessee do not agree on any matter that is by any provision of this Ground Lease to be determined by arbitration, such disagreement will be referred to three arbitrators, one of whom will be chosen by the Lessor, one by the Lessee and the third by the two so chosen, and the third arbitrator so chosen will be the chair. The award may be made by the majority of the arbitrators appointed. If, within fifteen (15) days or such extended time as the parties may agree upon, a party who has been notified of a dispute fails to appoint an arbitrator or the two arbitrators appointed by the parties do not agree upon a third arbitrator, then the party or parties not in default may apply to the Supreme Court of British Columbia for the appointment of an arbitrator to represent the party or parties in default or a third arbitrator or both of such arbitrators. Each party will pay its own costs of attending the reference. The costs of the arbitrators and the award will be in the discretion of the arbitrators, who may direct to and by whom and in what manner those costs or any part of those costs be paid, and may tax or settle the amount of costs to be paid or any part of those costs, and may award costs to be paid as between solicitor and client. Except as to matters otherwise provided in this Article 22, the rules of the British Columbia International Commercial Arbitration Centre as amended from time to time will apply. The case will be administered by the British Columbia International Commercial Arbitration Centre in accordance with its "Domestic Commercial Arbitration: Rules of Procedure".

## **ARTICLE 23**

### **QUIET ENJOYMENT AND OWNERSHIP OF TENANTS' FIXTURES**

#### **23.1 Covenant for Quiet Enjoyment**

If the Lessee pays the Rent hereby reserved and the other charges, and perform the covenants hereinbefore on the Lessee's part contained, the Lessee shall and may peaceably enjoy and possess the Facility Lands for the Term, without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming from or under the Lessor, provided however that nothing in this Section 23.1 shall limit the rights of access reserved by the Lessor under Section 8.3 or the rights of inspection conferred upon the Lessor by Section 13.1.

#### **23.2 Ownership of Tenants' Fixtures**

**23.2.1** If the Lessee is not in default hereunder, the Lessee will have the right to remove all fixtures or improvements which are of the nature of usual tenants' fixtures, and normally removable by tenants or sub-tenants at law or under this Ground Lease, and which are not part of the Facility Building or the Facility Lands. The Lessee shall make good or shall cause sub-tenants to make good, any damage to the Facility Building caused by any such removal.

**23.2.2** If any tenant's fixtures are not removed upon the expiration or earlier termination of the Ground Lease, the Lessee agrees to remove them at its cost, if requested to do so by the Lessor, within

seven (7) days of the expiration or earlier termination of the Ground Lease. If the Lessor does not request that the Lessee remove any such tenant's fixtures, then upon the termination of this Ground Lease they will become the absolute property of the Lessor free of all encumbrances, all of which are exempt from this Ground Lease or proceedings thereunder.

**ARTICLE 24**  
**OVERHOLDING**

**24.1 Overholding**

The Lessee covenants and agrees with the Lessor that if the Lessee shall hold over and the Lessor shall accept rent after the expiration of the Term, the new tenancy thereby created shall be a tenancy from year to year, at a rent which is the fair market rent of the Facility Lands without improvements and subject to the then legal impediments as to its use as agreed between the Lessor and the Lessee and shall be subject to the covenants and conditions herein contained so far as the same are applicable.

**ARTICLE 25**  
**NOTICE**

**25.1 Notice**

All notices, demands and requests which may be or are required to be given pursuant to this Ground Lease shall be in writing and shall be sufficiently given if personally served or mailed by pre-paid registered post or emailed to the parties as follows:

- (a) if to the Lessee:  
Executive Director  
P.O. Box 900, Whistler, BC V0N 1B0  
Email: [info@mywcss.org](mailto:info@mywcss.org)

And to:  
Richard Diamond, Chair of the Board  
Address: P.O. Box 98, Whistler, BC V0N 1B0  
Email: [diamonddesign@telus.net](mailto:diamonddesign@telus.net)

- (b) if to the Lessor:  
Chief Administrative Officer  
4325 Blackcomb Way,  
Whistler, BC, V0N 1B4  
Email: [corporate@whistler.ca](mailto:corporate@whistler.ca)

The date of receipt of any such notice, demand or request shall be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed aforesaid on the second business day next following the date of such mailing or if emailed on the first business day following the date of such emailing. Provided however that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slowdown of postal service or other labour dispute which affects the delivery of such notice, then such notice shall be deemed to be received when actually delivered. Any party may at any time give written notice to the other of any change of address and after the giving of such notice the address therein specified will be deemed to be the address of such party for the purpose of giving notices hereunder.

**ARTICLE 26**  
**ENVIRONMENTAL**

**26.1 Definitions**

For the purpose of this clause:

- (a) **"Environmental Contaminants"** means any contaminants, pollutants, hazardous, corrosive or toxic substances, flammable materials, explosive materials, radioactive materials, dangerous goods, microwaves, hazardous waste, urea formaldehyde, asbestos, noxious substances, compounds known as chlorobiphenyls, mould, and any other substance or material the storage, manufacture, disposal, treatment, generation, use, transport, remediation, or release of which into the environment is prohibited, regulated, controlled, or licensed under Environmental Laws.
- (b) **"Environmental Laws"** means any laws, statutes, regulations, orders, bylaws, permits or lawful requirements of any government authority with respect to environmental protection, or regulating, controlling, licensing, or prohibiting Environmental Contaminants.
- (c) **"Permit"** means any authorization, licence, approval or consent issued pursuant to any Environmental Laws.

**26.2 Environmental Provisions**

The Lessee covenants and agrees with the Lessor to:

- (a) use the Facility Lands and Facility Building only in compliance with all Environmental Laws and all Permits;
- (b) upon the request of the Lessor from time to time, provide to the Lessor satisfactory documentary evidence that all Permits are valid and in good standing;

- (c) permit the Lessor to annually investigate the Facility Lands and Facility Building, any goods on the Facility Lands and in the Facility Building and the Lessee's records at any time during open hours and upon ten (10) days prior notice and from time to time to verify such compliance with Environmental Laws, Permits and this Ground Lease;
- (d) at the reasonable request of the Lessor, obtain from time to time at the Lessee's cost a report from an independent consultant designated or approved by the Lessor verifying compliance with Environmental Laws, Permits and this Ground Lease or the extent of any non-compliance;
- (e) if remedial work is required due to the presence of Environmental Contaminants on or in the Facility Lands or Facility Building, take all necessary action, at the cost of the Lessee, to restore the Facility Lands and Facility Building to a level acceptable to the Lessor and to all governmental authorities having jurisdiction;
- (f) notify the Lessor in writing of:
  - (i) any enforcement, clean-up, removal, litigation, or other governmental, regulatory, judicial, or administrative action instituted, contemplated, or threatened against the Lessee, the Facility Lands or the Facility Building pursuant to any Environmental Laws;
  - (ii) all claims, actions, orders, or investigations instituted, contemplated, or threatened by any third party against the Lessee, the Facility Lands or the Facility Building relating to damage, contribution, cost recovery, compensation, loss, or injuries resulting from any Environmental Contaminants or any breach of the Environmental Laws; and
  - (iii) the discovery of any Environmental Contaminants or any occurrence or condition on the Facility Lands or any real property adjoining or in the vicinity of the Facility Lands that could subject the Lessee, the Facility Lands or the Facility Building to any fines, penalties, orders, or proceedings under any Environmental Laws.

### **26.3 Lessor May Make Inquiries**

The Lessee hereby authorizes the Lessor to make inquiries from time to time of any government authority with respect to the compliance by the Lessee with Environmental Laws, and the Lessee agrees that the Lessee will from time to time provide to the Lessor such written authorization as the Lessor's may reasonably require in order to facilitate the obtaining of such information.

### **26.4 No Representation or Warranty**

The Lessor makes no representation or warranty whatsoever to the Lessee concerning the environmental condition or state of the Facility Lands or Facility Building or the presence or absence of any Environmental Contaminants thereon or therein.



## **26.5 Environmental Indemnity**

The Lessee will indemnify and save harmless the Lessor, its officers, directors, employees, agents and shareholders, from and against any and all losses, claims, costs, expenses, damages and liabilities, including all costs of defending or denying the same, and all costs of investigation, monitoring, remedial response, removal, restoration or permit acquisition and including all solicitor's fees (on a solicitor and own client basis) and disbursements in connection therewith which at any time may be paid or incurred by or claimed against the Lessor, its officials, officers, employees, agents, arising, directly or indirectly, out of:

- (a) a breach by the Lessee of any of the covenants contained in this Article 26;
- (b) the presence of or release of any Environmental Contaminants contrary to any Environmental Laws on or off-site the Facility Lands;
- (c) any action taken by the Lessor with respect to the existence of any Environmental Contaminants contrary to any Environmental Laws on or off-site; or
- (d) any action taken by the Lessor in compliance with any citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication from any person which is related to Environmental Laws,

and any such indemnity will survive the expiration or any termination of this Ground Lease notwithstanding anything in this Ground Lease to the contrary.

## **ARTICLE 27 MISCELLANEOUS**

### **27.1 General**

27.1.1 The Lessor and the Lessee agree that at any time and from time to time upon not less than fourteen (14) days prior request by the other party, each will execute, acknowledge and deliver to the other a statement in writing certifying:

- (a) that this Ground Lease is unmodified and in full force and effect or if there have been modifications that the same are in full force and effect as modified and identifying the modifications;
- (b) the dates to which the Rent and other charges have been paid and the request shall specify the charges in respect of which such information is required; and

- (c) that, so far as the maker of the statement knows, without having conducted any searches or made any particular enquiries, the party who requests the statement is not in default under any provisions of this Ground Lease, or, if in default, the particulars thereof.

27.1.2 This certification shall be provided by the Lessor on the following conditions:

- (a) that neither the Lessor nor the party signing on behalf of the Lessor be liable for any damage or expense should for any reason, including, without limitation, negligence, the information provided be inaccurate, incomplete or misleading; and
- (b) that should any or all of the information be inaccurate, incomplete or misleading, for any reason, including, without limitation, negligence, the Lessor shall, as against any person or corporation who may rely on the contents of this certification statement, be able to assert and enforce its full rights in strict accordance with the lease as if this certification statement had not been signed on behalf of the Lessor and as if any or all persons and corporations who may rely on the contents of the certification statement had not relied on the contents of the certification statement.

27.1.3 Time shall be of the essence of this Ground Lease, save as herein otherwise provided.

27.1.4 This Ground Lease may not be modified or amended except by an instrument in writing of equal formality herewith executed by the Lessor and the Lessee or by the successors or assigns of the Lessor and the successors or permitted assigns of the Lessee.

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

27.1.6 It is further agreed and declared by the Lessor and the Lessee that these presents shall extend to, be binding upon and enure to the benefit of the Lessor and the Lessee and the successors and assigns of the Lessor and the successors and permitted assigns of the Lessee.

27.1.7 Nothing contained or implied in this Ground Lease will fetter in any way the discretion of the Lessor or the Council of the RMOW. Further, nothing contained or implied in this Ground Lease will derogate from the obligations of the Lessee under any other agreement with the Lessor or, if the Lessor so elects, prejudice or affect the Lessor's rights, powers, duties or obligations 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 Lessor's discretion, and the rights, powers, duties and obligations of the Lessor under all public and private statutes, bylaws, orders and regulations, which may be, if the Lessor so elects, as fully and effectively exercised in relation to the Facility Lands

and the Lessee as if this Ground Lease had not been executed and delivered by the Lessee and the Lessor.

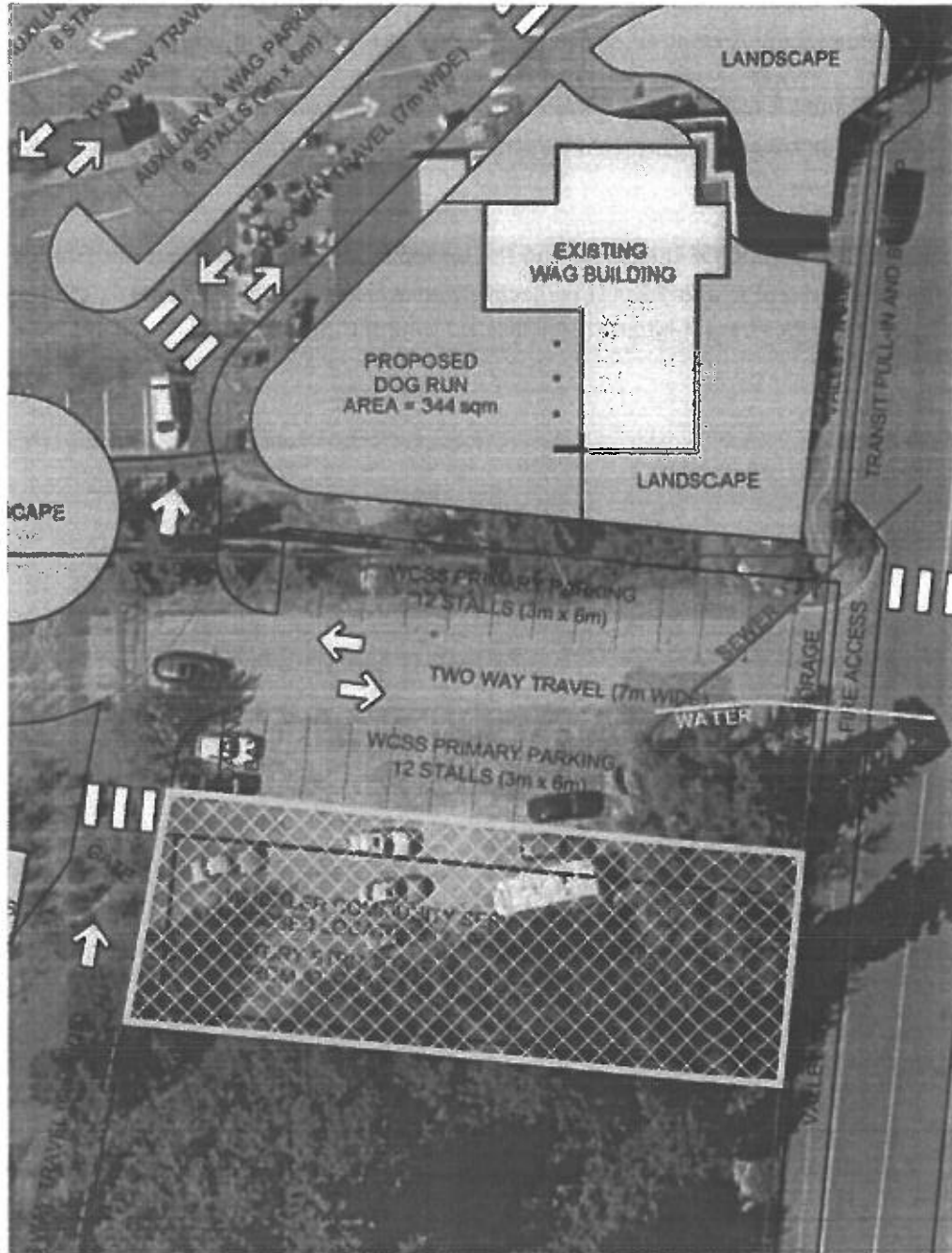
27.1.8 The Lessee may, at its cost (including survey costs), register this Ground Lease and any applicable survey plans in the Land Title Office against title to the Subject Property. Upon expiration or termination of this Ground Lease, the Lessee, at its cost, will deliver to the Lessor forthwith upon demand a surrender of the Ground Lease in a form registerable in the Land Title Office.

27.1.9 This Ground Lease may be executed by the parties in counterparts and may be executed and delivered by email or fax and all such counterparts, emails and faxes will, together, constitute one and the same Ground Lease.

IN WITNESS WHEREOF the Lessor and the Lessee have hereunto caused this Ground Lease to be executed on the Form C and Form D respectively to which this Ground Lease is attached by the signatures of their respective proper officers duly authorized for such purpose.

SCHEDULE "A"

Proposed Site – Sketch Plan including water & sewer



**SCHEDULE "B"**

**Subdivision Plan**

REFERENCE PLAN TO ACCOMPANY A LEASE OF A PORTION OF LOT 2 DISTRICT LOT 1758 PLAN LMP11103

PLAN EPP70485

PURSUANT TO SECTION 89(1)(a), LAND TITLE ACT  
RESORT MUNICIPALITY OF WHISTLER BCOS 824.018  
FOR LEASEHOLD PURPOSES

SCALE 1" = 200'

DISTANCES ARE IN METERS

THE DIMENSIONS PLotted ON THIS PLAN ARE SHOWN IN METERS BY REFERENCE TO RIGHT-TO-SIDE TECHNIQUE PLotted AT A SCALE OF 1:1000

AND BEARING ARE DERIVED FROM REAL PROPERTY DATA INFORMATION AND ARE REFERRED TO THE CENTRAL MERIDIAN OF THE ZONE 18

THE REAL COORDINATES AND ESTIMATED MERIDIONAL PROJECTION ACCURACY OBTAINED ARE SHOWN FROM REAL PROPERTY INFORMATION AND ARE REFERRED TO THE CENTRAL MERIDIAN OF THE ZONE 18

THIS PLAN SHOWS APPROXIMATE (ESTIMATED) DIMENSIONS (LENGTHS, BEARINGS, DISTANCES, BEARINGS, DISTANCES) DERIVED FROM THE COORDINATE FACTOR OF 0.9999998. THE COORDINATE FACTOR HAS BEEN DETERMINED BASED ON AN ELEVATION DIFFERENCE OF 53.8 METERS

LEGEND

FIELD PLACES

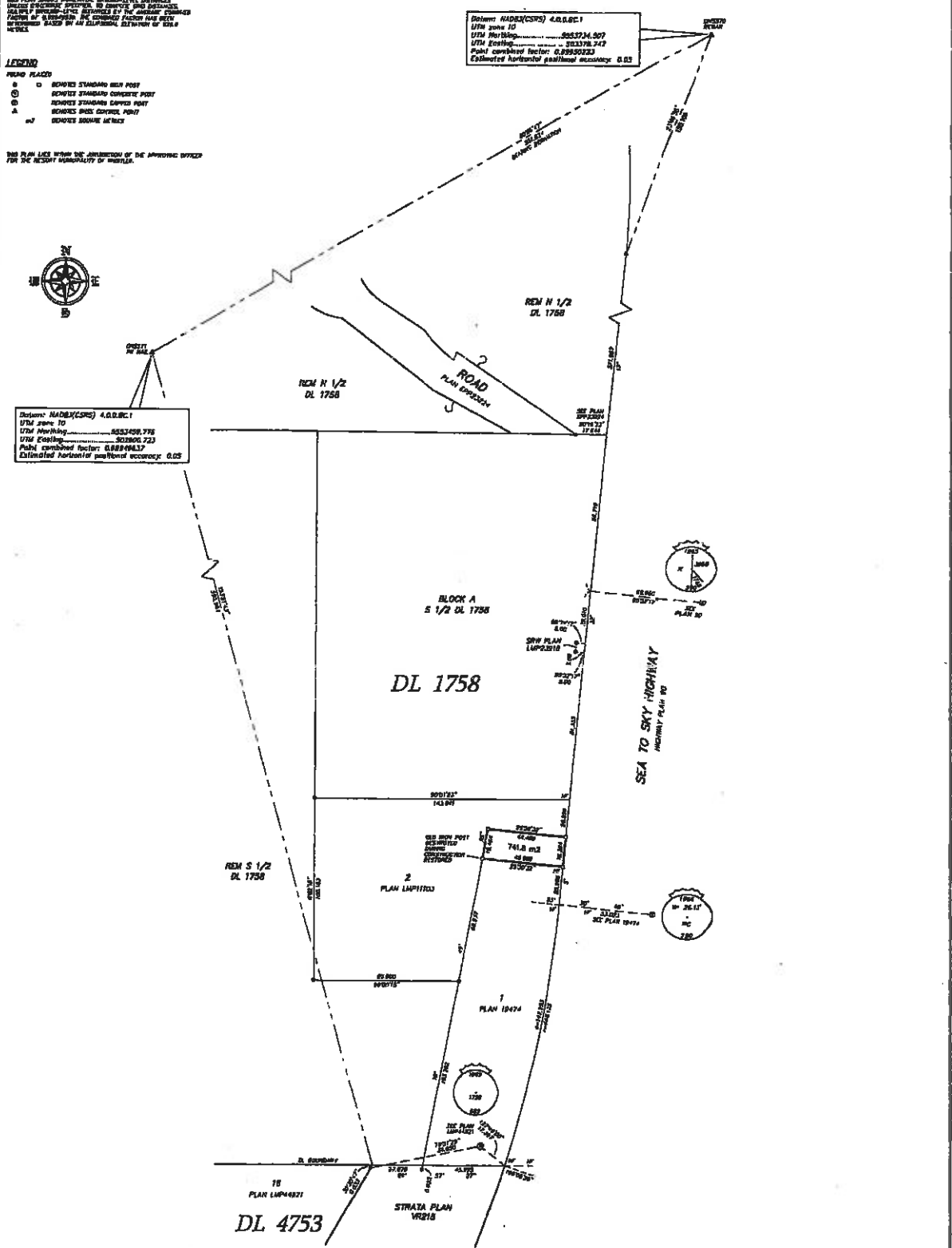
- SETBACK STANDARD WOOD POST
- ⊙ SETBACK STANDARD CONCRETE POST
- ⊙ SETBACK STANDARD CONCRETE POST
- A SETBACK WOOD CONCRETE POST
- ⊙ SETBACK BRONZE METERS

THIS PLAN LIES WITHIN THE JURISDICTION OF THE APPROVED BYLAWS FOR THE RESORT MUNICIPALITY OF WHISTLER.



Station: NAD83(CSRS) 4.0.D.R.C.1  
UTM zone ID: 86S1248.778  
UTM Northing: 802800.723  
UTM Easting: 802800.723  
Plan's combined factor: 0.9999998  
Estimated horizontal planimetric accuracy: 0.05

Station: NAD83(CSRS) 4.0.D.R.C.1  
UTM zone ID: 86S1248.507  
UTM Northing: 803378.242  
UTM Easting: 803378.242  
Plan's combined factor: 0.9999998  
Estimated horizontal planimetric accuracy: 0.05



THE FIELD SURVEY REPRESENTED BY THIS PLAN WAS COMPLETED BY THE SURVEYOR ON FEBRUARY 2017  
DARRYL J. JENNELL, BCOS 893

THIS PLAN LIES WITHIN THE SQUAMISH-LILLOOET REGIONAL DISTRICT

