

**SUBLEASE**

THIS SUBLEASE is made in quadruplicate this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

BETWEEN:

**OSOYOOS COTTAGES LIMITED PARTNERSHIP**, by its  
Managing General Partner Stelkia Homes Ltd. having an office at  
Suite 202, 45793 Luckakuck Way, Chilliwack, British Columbia,  
V2R 5S3

(the “**Sublessor**”)

OF THE FIRST PART

AND:



(the “**Sublessee**”)

OF THE SECOND PART

AND:

**STELKIA HOMEOWNERS CORPORATION**, a British  
Columbia company having an office at Suite 202, 45793 Luckakuck  
Way, Chilliwack, British Columbia, V2R 5S3

(the “**Homeowners Corporation**”)

OF THE THIRD PART

WHEREAS:

A. Pursuant to a lease (the “**Lot 39-1-1 Headlease**”) dated for reference the 8<sup>th</sup> day of October, 2010, Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development demised to the Sublessor those certain lands situate on the Osoyoos Indian Reserve No. 1, more particularly described as follows:

Lot 39-1-1  
Osoyoos Indian Reserve IR#1  
Plan of Survey RSBC 2012

(“**Lot 39-1-1**”),

for a term commencing on the 1<sup>st</sup> day of December, 2010 and ending on the 30<sup>th</sup> day of November, 2109, which lease was registered at the Indian Lands Registry at Ottawa, Ontario (the “**Indian Lands Registry**”) on the 3<sup>rd</sup> day of February, 2011 under No. 6053868;

B. Pursuant to a lease (the “**Lot 39-2 Headlease**”) dated for reference the 8<sup>th</sup> day of October, 2010, Her Majesty the Queen in Right of Canada as represented by the Minister of Indian Affairs and Northern Development demised to the Sublessor those certain lands situate on the Osoyoos Indian Reserve No. 1, more particularly described as follows:

Lot 39-2  
Osoyoos Indian Reserve IR#1  
Plan of Survey RSBC 1935

(“**Lot 39-2**”)

(Lot 39-1-1 and Lot 39-2 are together the “**Lands**”)

for a term commencing on the 1<sup>st</sup> day of December, 2010 and ending on the 30<sup>th</sup> day of November, 2109, which lease was registered at the Indian Lands Registry at Ottawa, Ontario on the 1<sup>st</sup> day of February, 2011 under No. 6053869;

C. The Sublessor wishes to lease the Leased Premises (hereinafter defined) to the Sublessee, and the Sublessee wishes to lease the Leased Premises from the Sublessor, on the terms and conditions set out herein;

D. The Sublessee is, or will become, a shareholder of the Homeowners Corporation;  
and

E. The Homeowners Corporation has certain obligations in respect of the Common Areas and Common Facilities, and the Sublessee has certain obligations to the Homeowners Corporation.

NOW THEREFORE THIS SUBLEASE WITNESSES that in consideration of the premises, the covenants, agreements, representations and warranties set out herein and other good and valuable consideration (the receipt and sufficiency of which is acknowledged), the Sublessor and the Sublessee covenant and agree as follows:

**1. SCHEDULES**

1.1 List of Schedules – The Schedules which form part of this Sublease consist of:

Schedule A - Plan of Development  
Schedule B - Leased Premises  
Schedule C - Computation of Prepaid Rent

**2. DEFINITIONS**

2.1 Definitions – In this Sublease, unless there is something in the context inconsistent therewith, the following words will have the following meanings:

- (a) “**Additional Rent**” means all sums of money, whether or not designated as Additional Rent, to be paid by the Sublessee to the Sublessor or to any other person pursuant to this Sublease;
- (b) “**Assessments**” means the costs and levies assessed by the Homeowners Corporation to the Sublessee, and payable by the Sublessee, pursuant to this Sublease;
- (c) “**Band**” means the Osoyoos Indian Band;
- (d) “**Bylaws**” means the bylaws approved from time to time by the Sublessor or the Homeowners Corporation, governing the use of the Leased Premises and the Lands (including the Common Areas and the Common Facilities) by the Sublessee;
- (e) “**CEAA**” means the *Canadian Environmental Assessment Act*, R.S.C. 1992, c. 37, and any regulations made pursuant to it, all as amended or replaced from time to time;
- (f) “**CEPA**” means the *Canadian Environmental Protection Act*, R.S.C. 1985, c. C-15.3, and any regulations made pursuant to it, all as amended or replaced from time to time;
- (g) “**CMHC**” means Canada Mortgage and Housing Corporation;
- (h) “**Common Areas**” means those areas of the Development that are designated by the Sublessor as common areas, which designation may be reasonably changed by the Sublessor from time to time, including but not limited to landscaped areas, parking areas, roadways, sidewalks, water and sewage treatment facilities, utility buildings, and water reservoir;
- (i) “**Common Costs**” means the total of the costs and expenses (without duplication) incurred by the Sublessor or the Homeowners Corporation to operate, manage, insure, repair, maintain and replace the Development (including the Common Areas and the Common Facilities, but excluding Homes), including without limitation:
  - (i) all costs and expenses to repair, maintain, replace and decorate the Common Areas and the Common Facilities;
  - (ii) the Cost of Insurance;
  - (iii) the Tax Cost for Common Areas and Common Facilities;
  - (iv) all costs and expenses for gardening, landscaping and landscape irrigation carried out on any part of the Development, line painting and repainting, rental of equipment, garbage removal, snow removal and cleaning of Common Areas and Common Facilities;

- (v) wages and other amounts paid for maintenance, security and operating personnel;
- (vi) all accounting and other professional fees, costs and expenses relating to the operation, management, insurance, repair, maintenance and replacement of the Common Areas and the Common Facilities;
- (vii) all costs of water and sewer for the Development including without limitation operating costs to treat water and sewage, costs to maintain, repair and replace the wastewater and water treatment plants and landscape irrigation system; and
- (viii) all costs of utilities, taxes and other amounts payable in connection with the Common Areas and the Common Facilities;

together with a contingency reserve fund for each Lease Year as determined by the Homeowners Corporation, but not less than five percent (5%) of the costs and expenses described above;

- (j) “**Common Facilities**” means those facilities within the Development that are designated by the Sublessor as common facilities, which designation may be reasonably changed by the Sublessor from time to time, including but not limited to roads, electrical and mechanical systems, drainage and sewer systems, waterworks, landscape irrigation systems, fire prevention and security systems primarily located in the Common Areas, vehicle parking areas and the clubhouse building (including a caretaker suite);
- (k) “**Completion Date**” is the date which is six (6) months after the earlier of the completion of construction of the last Home to be built on the Lands, or the abandonment of the construction of the Development by the Sublessor;
- (l) “**Cost of Insurance**” means the annual cost to the Sublessor to take out and maintain the insurance required to be taken out and maintained by the Sublessor under the terms of the Headlease and such other insurance as the Sublessor shall deem necessary from time to time;
- (m) “**Development**” means the residential housing development to be constructed on the Lands including the buildings, improvements and facilities located thereon, or related thereto from time to time, and the Permit Areas;
- (n) “**Environment**” means all the components of the earth including, without limitation, all layers of the atmosphere, air, land (including, without limitation, all underground spaces and cavities and all lands submerged under water), soil, water (including, without limitation, surface and underground water), organic and inorganic matter and living organisms, the interacting natural systems that include the foregoing and all other external conditions or influences under which humans, animals and plants live or are developed;

- (o) “**Environmental Laws**” means any Laws relating, in whole or in part, to the protection and enhancement of the Environment, occupational safety, product liability, public health, public safety, and transportation of dangerous goods; and any decision and any specifications, mitigative measures, and environmental protection measures described or contained, or referred to, in any decision under CEAA pertaining to any project (as that term is used in CEAA) on the Lands;
- (p) “**Event of Default**” means any of the events of default described in Section 21.1 of this Sublease;
- (q) “**Hazardous Substances**” means:
  - (i) any pollutants, wastes, special wastes or other such substances, including, without limitation, any flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls, chlorofluorocarbons, hydro chlorofluorocarbons, urea formaldehyde foam insulation, radon gas, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances (as that term is used in CEPA) or related materials, nutrients (as that term is used in CEPA) and petroleum and petroleum products, and any substance declared to be hazardous or toxic under any Environmental Laws; and
  - (ii) any substances, whether or not defined as hazardous, toxic, or a threat to public health or the Environment under any Environmental Laws, that the Lessor reasonably deems to be hazardous;
- (r) “**Headlease**” means together the Lot 39-1-1 Headlease and the Lot 39-2 Headlease described in the Recitals to this Sublease and all modifications to such leases;
- (s) “**Her Majesty**” means Her Majesty the Queen in Right of Canada, as represented by the Minister of Aboriginal Affairs & Northern Development;
- (t) “**Home**” means a detached or semi-detached building in the Development intended for occupation by an individual as a place of residence or lodging;
- (u) “**Homeowners Corporation**” means Stelkia Homeowners Corporation, a British Columbia company;
- (v) “**Indian Act**” means the *Indian Act*, R.S.C. 1985, c. I.5, and regulations made thereunder, as amended, replaced or re-enacted from time to time, and any reference to a section of the Act will include that section as amended, replaced or re-enacted from time to time;
- (w) “**Indian Lands Registry**” has the meaning ascribed to such term in Recital A of this Sublease;

- (x) “**Lands**” means those lands situate on Osoyoos Indian Reserve No. 1 more particularly described in the Recitals to this Sublease, and includes without limitation any premises subleased to Sublessees, the Common Areas and the Common Facilities;
- (y) “**Lease Year**” means a calendar year or such other twelve (12) month period as established by the Sublessor;
- (z) “**Leased Premises**” means that portion of the Lands more particularly described on Schedule B to this Sublease, together with the improvements located thereon from time to time;
- (aa) “**Minister**” means the Minister of Indian Affairs and Northern Development;
- (bb) “**Mortgagee**” means any mortgagee under any mortgage of this Sublease and includes CMHC;
- (cc) “**Permit Areas**” mean the areas subject to and governed by the Permits;
- (dd) “**Permits**” means the permits issued by the Band to the Sublessor and described as the water tower permit (Reg. No. 6060330) and the road permit (Reg. No. 6060331), together with any other permits arranged by the Sublessor for the use or benefit of the Lands;
- (ee) “**Personal Goods**” means goods and chattels of the Sublessee or other occupier of part of the Leased Premises, that are not fixtures as determined at common law;
- (ff) “**Prepaid Rent**” means the rent provided for in Subsection 4.1(a);
- (gg) “**Proportionate Share**” means an equal share for each of the Subleases, or as otherwise amended from time to time by the Sublessor;
- (hh) “**Release**” includes releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping;
- (ii) “**Rent**” means the Prepaid Rent and Additional Rent;
- (jj) “**Sublease**” means this Sublease and the Schedules attached hereto, together with the Bylaws made from time to time by the Sublessor;
- (kk) “**Sublessee**” means the person named on page 1 of this Sublease, and if the Sublessee so named assigns its interest in this Sublease, the assignor from time to time shall be the Sublessee;
- (ll) “**Sublessees**” means the Sublessee and any other sublessees of part of the Lands;

- (mm) “**Sublessor**” means the person so named on page 1 of this Sublease, and if the Sublessor so named assigns its interest in this Sublessee, the assignee from time to time shall be the Sublessor;
- (nn) “**Tax Cost**” means the total, without duplication, of all taxes, trade licenses, rates, levies, service fees and charges, duties and assessments levied or imposed on or in respect of the Common Areas and Common Facilities, or the Leased Premises, by any competent authority, including without limitation any utilities, service fees or charges and ad valorem fees levied from time to time by competent authorities;
- (oo) “**Term**” means the term of this Sublease commencing on the day first written on page 1 of this Sublease and expiring on the 29<sup>th</sup> day of November, 2109, unless earlier terminated pursuant to this Sublease; and
- (pp) “**Trustee**” means, for the purposes of the insurance provisions of this Sublease, the Receiver General for Canada, or a trust company appointed by Her Majesty.

### **3. DEMISE AND TERM**

3.1 Demise – Subject to the prior written consent of the Minister and subject to the terms and conditions set out in this Sublease, the Sublessor does hereby demise and sublease unto the Sublessee the Leased Premises to have and to hold for and during the Term unless sooner terminated as herein provided, together with the right in common with the other Sublessees in the Development, Her Majesty, the Sublessor, the Homeowners Corporation, and their respective employees, agents, contractors and other invitees to the non-exclusive use of the Common Areas and Common Facilities, subject to the terms and conditions contained in this Sublease.

### **4. RENT AND COMMON COSTS**

4.1 Rent – The Sublessee covenants and agrees to pay to the Sublessor, or as the Sublessor may in writing direct, in lawful money of Canada, without any claim, set-off, compensation or deduction whatsoever, the aggregate of the following sums:

- (a) ● dollars (\$●) being rent in respect of each year or part of a year of the Term as set out in Schedule C and payable in advance on the date of this Sublease; and
- (b) Additional Rent, which shall be payable as and when required pursuant to the terms and conditions of this Sublease.

The Sublessor has been advised by its legal counsel that the sublease of the Leased Premises is not subject to Goods and Services Tax (“**GST**”). If it is determined that the disposition by the Sublessor to the Sublessee of the sublease interest in the Leased Premises is subject to GST, the Lessor will pay the GST provided that the Sublessee promptly executes and returns, at no cost to the Sublessor, any and all documents required by the Sublessor, to assign and transfer to the Sublessor any New Housing Rebate that might apply in respect of the sublease of the Leased Premises. The Sublessee hereby irrevocably assigns and transfers to the Sublessor any New

Housing Rebate, or refund, or reduction of GST to which Sublessee may be entitled, and authorizes the Sublessor and its agents to apply for and collect any such rebate, refund or reduction. The Sublessor irrevocably appoints the Sublessee and the Sublessee's authorized signatories as attorney of the Sublessee to execute, on behalf of the Sublessee, all such documents. If it is determined that the Sublessee's use of the Leased Premises results in Rent being subject to GST, the Sublessee will pay to the Sublessor such GST amounts, when due, as Additional Rent.

Any purported set-off, withholding or deduction of Rent by the Sublessee shall be deemed to be a breach of this Sublease, and entitle the Sublessor, at its option, to exercise any right or remedy available to it pursuant to this Sublease or at law. The Sublessee will have no right to a refund of, and the Sublessor will not be liable to the Sublessee for refunding, any Rent in the event of the termination of this Sublease.

4.2 Common Costs – The Common Costs for each Lease Year shall be estimated by the Homeowners Corporation and communicated to the Sublessee. The Homeowners Corporation shall have the right at any time during any Lease Year to adjust the budget for the Common Costs for such Lease Year or to allocate specific Common Costs, in whole or in part, to the Sublessee based on a determination by the Homeowners Corporation that the Sublessee is solely or partially responsible for such costs, in which event the amount payable by the Sublessee as its Proportionate Share of the Common Costs shall be adjusted accordingly. The Sublessor reserves the right to estimate, bill, re-estimate and collect Common Costs to the extent such Common Costs have not been charged by the Homeowners Corporation, or paid by the Sublessee to the Homeowners Corporation, and if the Sublessor bills the Sublessee for the Sublessee's Proportionate Share of such Common Costs, the Sublessee shall forthwith pay such amount to the Sublessor as Additional Rent.

4.3 Payment and Adjustments of Common Costs – The Sublessee will pay its Proportionate Share of the estimated Common Costs for each Lease Year on a monthly basis in advance during each Lease Year. Within a reasonable time period following the end of each Lease Year, the Homeowners Corporation (or the Sublessor to the extent that the Sublessor bills the Sublessee for such costs) will advise the Sublessee in writing of the actual amount of the Common Costs for the Lease Year and the actual amount required to be paid as the Sublessee's Proportionate Share of the Common Costs for the Lease Year. In the event that the actual Common Costs for such Lease Year are less than the Common Costs that had been estimated by the Homeowners Corporation or the Sublessor, the overpayment by the Sublessee shall be applied to the Common Costs payable to the Homeowners Corporation or the Sublessor, as the case may be, for the next Lease Year. In the event the actual Common Costs for such Lease Year are greater than the Common Costs that had been estimated by the Homeowners Corporation or the Sublessor, the Homeowners Corporation or the Sublessor shall have the right to either include the amounts in the Common Costs for the upcoming Lease Year or assess the Sublessees for the shortfall, and the Sublessee shall pay such additional amounts at the time or times required by the Homeowners Corporation or the Sublessor.

4.4 Rental for Irregular Periods – All Rent shall be deemed to accrue from day to day and if for any reason it shall become necessary to calculate the Rent for irregular periods of less



than one year or one month, as the case maybe, an appropriate pro rata adjustment shall be made on a daily basis in order to compute Rent for such irregular period.

4.5 Place of Payment – All payments required to be made to the Sublessor pursuant to this Sublease shall be made at the address of the Sublessor referred to in Part 31 unless otherwise directed by the Sublessor. All payments required to be made to the Homeowners Corporation pursuant to this Sublease shall be made at the address of the Homeowners Corporation referred to in Part 31 unless otherwise directed by the Homeowners Corporation. At the request of the Sublessor, or the Homeowners Corporation, the Sublessee shall establish an automatic pre-authorized payment plan that will be used to make payments due under this Sublease.

4.6 Late Payments – Without limiting other remedies pursuant to this Sublease, any payment of Rent that is not received when due is subject to a late payment fee, as determined by the Sublessor or Homeowners Corporation, and the Sublessee agrees to pay such fee, on demand, as Additional Rent. The late payment fee shall not exceed the fee charged by Canadian Imperial Bank of Commerce, Main Branch, Vancouver, British Columbia, for NSF cheques. A certificate of an officer of such bank shall be conclusive evidence of such fee.

## **5. USE OF THE LEASED PREMISES**

5.1 Permitted Use – The Sublessee covenants with the Sublessor that it will only use the Leased Premises for residential purposes (which includes the use of part of the Leased Premises for a home office) and will not carry on, or permit to be carried on, on the Leased Premises any activity which is deemed a nuisance by the Sublessor or which is illegal. Short term rentals (for period not less than five (5) consecutive days) are permitted.

5.2 Pets – The environmental report for the Lands obtained by the Sublessor recommended a prohibition on free roaming cats and dogs as a means of minimizing interference with birds and other wildlife. The Sublessee covenants that it will not permit cats or dogs belonging to the Sublessee, its family, guests, occupants or other invitees, to freely roam on any part of the Development.

## **6. REPAIRS TO THE LEASED PREMISES**

6.1 Sublessee's Obligation to Repair – The Sublessee covenants with the Sublessor that it will at all times during the Term, at its own cost and expense, repair, renew, replace and maintain the Leased Premises in good and tenantable condition in every respect as would a careful owner in possession, excepting reasonable wear and tear. At the end of the Term or earlier termination of this Sublease, the Sublessee will deliver to the Sublessor vacant possession of the Leased Premises in the condition which the Sublessee is required to maintain the Leased Premises by the terms of this Sublease.

6.2 Sublessor's Right to Inspect – The Sublessor or any employee, agent or representative of the Sublessor shall be entitled from time to time (upon reasonable notice, except in the case of an emergency when no notice is required) to enter and examine the state of maintenance, repair, decoration and order of the Leased Premises, and the Sublessor may give notice to the Sublessee requiring the Sublessee to perform such maintenance or effect such

repairs, replacements or decorations as may be found necessary from such examination. The failure of the Sublessor to inspect or provide notice shall not relieve the Sublessee from its obligations as set out in this Sublease and in particular its obligations set out in Section 6.1.

6.3 Sublessor's Right to Repair – The Sublessor or any employee, agent or representative shall be entitled from time to time (upon reasonable notice, except in the case of an emergency when no notice is required) to enter the Leased Premises to make such alterations or repairs as the Sublessor shall deem necessary for the safety, preservation, proper administration or improvement of the Leased Premises or the Development (including the Common Areas and Common Facilities).

Without limiting the foregoing, the Sublessor may carry out, at the expense of the Sublessee, such work as is necessary, in the opinion of the Sublessor, to preserve the beauty, quality and standards of the Leased Premises and the Development, including painting, repairing and replacing the roof, gutters, downspouts and exterior building surfaces of the Leased Premises and providing exterior cleanup and landscaping.

## **7. COMMON AREAS AND COMMON FACILITIES**

7.1 Use of Common Areas and Common Facilities – The Sublessee covenants with the Sublessor that:

- (a) the Sublessor will have the right to control the use of the Common Areas and the Common Facilities, to grant exclusive rights to use parking spaces that are part of the Common Areas and Common Facilities and to alter and/or expand the location, area, arrangement or composition of the Common Areas and Common Facilities. In exercising the Sublessor's Rights under this Subsection 7.1(a), the Sublessor shall act honestly, in good faith and with a view to the best interests of the Homeowners Corporation. The Sublessor may delegate all or part of such control and rights to the Homeowners Corporation from time to time;
- (b) the Sublessee, its tenants and guests shall only use the Common Areas and Common Facilities in accordance with this Sublease, including without limitation the Bylaws in force from time to time; and
- (c) the Sublessee will not do or omit, or permit to be done or omitted, anything which shall cause the Common Costs to be increased, and if the Common Costs shall be so increased the Sublessee shall pay the amount of such increase to the Sublessor upon demand.

## **8. BYLAWS**

8.1 Power to Make Bylaws – The Sublessor shall have the right from time to time to make Bylaws relating to the use of the Leased Premises by the Sublessee. The Sublessor and the Homeowners Corporation shall have the right from time to time to make Bylaws relating to the use of the Common Areas and Common Facilities by the Sublessees, including the Sublessee. Such Bylaws shall be deemed to form a part of this Sublease and be incorporated herein. The

Sublessor will communicate any amendments or changes to the Bylaws to the Sublessee in writing and upon receipt of notice of any such amendment or change, the amended Bylaws shall be in force until further notice or amendment thereof. The Sublessor shall not be responsible to the Sublessee for the non-observance or violation of the Bylaws by any of the other Sublessees.

8.2 Adherence to Bylaws – The Sublessee shall abide by any and all Bylaws which may from time to time be established by the Sublessor and shall pay, as Additional Rent when demanded by the Sublessor, any fines or penalties imposed on the Sublessee pursuant to the Bylaws, and shall pay to the Homeowners Corporation, as an Assessment, any fines or penalties imposed by it, on the Sublessee, pursuant to the Bylaws.

## **9. UTILITIES**

9.1 Payment for Utilities – The Sublessee is responsible for paying for all services, utilities and facilities required by it for its use of the Leased Premises. Without limiting the generality of the foregoing, the Sublessee will pay for all water, telephone, cable, light, power, heat, sewer and garbage disposal services and facilities and other utilities for its use of the Leased Premises. To the extent any such service, utility or facility is provided to the Development as a whole, the Sublessee shall pay its Proportionate Share of the cost thereof, or, if the Sublessee's use of such service, utility or facility is disproportionately higher than the average of other Sublessees, the Sublessee shall pay any additional amount billed to it to reflect such use.

9.2 Interruption of Services – No interruption of any service or facility provided to the Leased Premises will be deemed to be a disturbance of the Sublessee's enjoyment of the Leased Premises or render the Sublessor or Her Majesty (subject to the terms of the Headlease) liable for injury to or in damages to the Sublessee or relieve the parties from their obligations under this Sublease.

## **10. TAXES, SERVICE FEES AND OTHER FEES AND CHARGES**

10.1 Liability for Taxes – Without limiting the generality of Part 12, the Sublessee will pay on or before the due date in each and every year during the Term all taxes, trade licenses, rates, levies, service fees and charges, duties and assessments of any kind lawfully imposed by the Band or any competent authority, whether in respect of the Leased Premises, fixtures, machinery, equipment or business relating to the Leased Premises or in respect of the occupation of the Leased Premises by anyone.

10.2 Right to Contest the Validity of Taxes – Without in any way relieving or modifying the obligation of the Sublessee to comply with Section 10.1, the Sublessee may, at its expense, contest or appeal the validity or amount of any tax, trade license, rate, levy, service fee or charge, duty or assessment, provided that the Sublessee commences any proceedings to contest or appeal the validity or amount within the time permitted by the relevant statute or bylaw and continues with the proceedings with all due diligence.

10.3 Evidence of Payment – The Sublessee will, upon request by the Sublessor and/or the Minister and within thirty (30) days after the date taxes, trade licenses, rates, levies, service

fees and charges, duties or assessments are due, provide the Sublessor and/or the Minister with official receipts of the competent authority or other proof satisfactory to the Sublessor and/or the Minister evidencing payment.

10.4 Payment of Ad Valorem Fees – The Sublessee covenants and agrees with the Sublessor that if, during the Term:

- (a) the Leased Premises and the fixtures, machinery, equipment or business relating to the Leased Premises are, by the provisions of any Band, municipal, parliamentary, legislative or regional enactment or otherwise, exempt (in whole or in part) from taxes, trade licenses, rates, levies, service fees and charges, duties and assessments of any kind lawfully imposed by reason of the Sublessee's ownership of the Leased Premises; or
- (b) the Sublessee is, by the provisions of any Band, municipal, parliamentary, legislative or regional enactment or otherwise, exempt (in whole or in part) from taxes, trade licenses, rates, levies, service fees and charges, duties and assessments of any kind lawfully imposed;

and they would otherwise have been subject to taxation, then the Sublessee shall in each and every year during the Term that such exemption occurs pay to the Sublessor as Additional Rent, in like manner and time as taxes, trade licenses, rates, levies, service fees and charges, duties and assessments are to be paid pursuant to Section 10.1, an amount equal to the service fees, charges and costs payable by the Sublessor in respect of the Leased Premises, in lieu of taxes. For such purpose, in each year during the Term the following provisions shall apply.

- (c) upon receipt by the Sublessor of any assessment, advance tax statement, statement of taxes, statement of service fees or charges or statement of ad valorem fees relating to the Leased Premises or a parcel of land which includes the Leased Premises from the Band or the competent municipal, parliamentary, legislative, regional or other authority having authority over the Leased Premises, the Sublessor shall deliver to the Sublessee such assessment or statement;
- (d) if a separate determination of the taxes or ad valorem fees is not provided for the Leased Premises by the Band or the competent municipal, parliamentary, legislative, regional or other authority having authority over the Leased Premises, the Sublessor shall determine the Additional Rent payable by the Sublessee pursuant to this Section 10.4 by applying the rate or rates of levy established by the competent rating by-law or rating by-laws (as the case may be) to all, or such portion of the assessed value of the Leased Premises and all other structures, all machinery, equipment and facilities and other property of any nature whatsoever thereon and therein as the said rate or rates of levy are applied to other taxpayers in the area where the Leased Premises are located in like case;
- (e) the Sublessee shall have the right from time to time to appeal any assessment of the Leased Premises or any other tax, rate, duty, charge, amount or fee referred to in this Section 10.4, provided that such appeal shall be at the sole cost and

expense of the Sublessee. If in the future, the Sublessee is unable to appeal any assessment of the Leased Premises or any tax, rate, duty, charge, amount or fee referred to in this Section 10.4 except in the name of the Sublessor, then the Sublessee shall have the right to appeal in the name of the Sublessor, but at the sole cost and expense of the Sublessee; and

- (f) the Sublessee shall take such actions as are necessary, including without limitation, removing the Leased Premises from assessment rolls if such action is appropriate, so as to exempt the Sublessee or Leased Premises from taxation, and if the Sublessee fails to take such action, and as a result thereof the Sublessor becomes obligated to pay any amount on behalf of the Sublessee, even though the Sublessee would have been exempt from such payment if it had taken appropriate action, the Sublessee shall forthwith pay to the Sublessor on demand as Additional Rent, and not as taxes, the full amount which the Sublessor becomes obligated to pay, and failure to pay such Additional Rent, when due, constitutes a default under the Sublease.

## **11. SECURITY FOR UTILITIES AND TAXES**

11.1 Utilities and Taxes – The Sublessee shall enter into any agreements, and grant all security, requested by the Band or any other competent authority to evidence or secure the obligation of the Sublessee to pay all utilities, taxes, service fees, costs and charges and, if applicable, ad valorem fees (including without limitation those set out in Parts 9 and 10), and in the event the Sublessee is requested by the Band or other competent authority to enter into and deliver any such agreements or security and fails to execute and deliver the same within fourteen (14) days from the date of the request, the Sublessor shall be irrevocably appointed the attorney of the Sublessee with the full power to execute and deliver such agreements or security in the name of the Sublessee and any such agreements or security executed and delivered by the Sublessor under such power of attorney shall be binding upon the Sublessee without liability to the Sublessor or the party signing on behalf of the Sublessor (except in the case of fraudulent acts by the Sublessor or the party signing on behalf of the Sublessor).

11.2 Band Taxation – If the Band is the taxing authority for the Leased Premises or the Development, the Sublessee shall pay to the Band, when due, all taxes, service fees, costs and charges and, if applicable, ad valorem fees, as provided for in Part 10.

## **12. COMPLIANCE WITH LAWS**

12.1 Obligation to Comply with Applicable Laws – The Sublessee will at its expense observe and perform all of its obligations under, and all matters and things necessary or expedient to be observed or performed by it, by virtue of any applicable law, statute, by-law, ordinance, regulation, statutory notice or order, stop work order issued by a governing local jurisdiction or the Band, or lawful requirement of the federal, provincial or municipal government or authority, the Council or other competent authority of the Band or any public utility company lawfully acting under statutory power.

12.2 Evidence of Compliance – If any statutory notice is given lawfully requiring the execution of works by the Sublessee at the Leased Premises during the Term, and:

- (a) if notice is served upon the Sublessee, the Sublessee will forthwith forward it or a copy of it to the Sublessor and the Minister and will (unless a certificate of exemption is obtained from the respective statutory authority) forthwith, at its expense, execute such works as are necessary to comply with the notice; or
- (b) if the notice is served upon the Sublessor, the Sublessor will forthwith forward it or a copy of it to the Sublessee and thereupon the Sublessee will (unless a certificate of exemption is obtained from the respective statutory authority) forthwith, at its expense, execute such works as are necessary to comply with the notice,

and, in each such instance, the Sublessee will, forthwith upon completion of the works required by such statutory notice or order, provide evidence satisfactory to the Sublessor and/or the Minister of compliance with the terms of the statutory notice or order, including any certificates of inspection issued in respect of the works.

12.3 Contesting of Laws – If the Sublessee contests the validity of any requirements set out in Section 12.1, proceedings relating thereto must be commenced before the expiration of sixty (60) days after the Sublessee has first been notified of any breach of such requirements.

12.4 Indemnity – The Sublessee will indemnify and hold harmless the Sublessor and Her Majesty from all loss, damage, cost and expense suffered by the Sublessor or Her Majesty by reason of the Sublessee undertaking such proceedings, and the Sublessee covenants that it will conduct such proceedings with all due diligence.

12.5 CMHC – There shall be no obligation for CMHC to indemnify the Sublessor herein.

### **13. NUISANCE**

13.1 Obligation not to Cause a Nuisance – The Sublessee will not cause, permit or suffer any nuisance in, on or about the Leased Premises or on the Development.

13.2 Noise – Without limiting Section 13.1, the Sublessee will not permit any persons within the Leased Premises, nor will it permit itself or any invitee of the Sublessee to cause any noise, disturbance or disruption to other Subleasees, or their invitees, whether from the Leased Premises or the Common Areas or the Common Facilities.

13.3 Termination of Nuisance – Without limiting Sections 13.1 and 13.2, the Sublessee will, upon written notice from the Sublessor, the Homeowners Corporation, or the Minister, abate any nuisance arising directly or indirectly out of the use or occupation of the Leased Premises or the Development by the Sublessee, by any family member, guest, tenant, contractor, agent or invitee of the Sublessee or by any other person.

**14. WASTE**

14.1 Obligation Not to Cause Waste – The Sublessee will not cause, permit or suffer the commission of any waste on the Leased Premises or on the Development.

**15. RUBBISH**

15.1 Obligations Relating to Refuse – Without limiting Parts 13 or 14, the Sublessee will not cause, permit or suffer any refuse, rubbish or debris to be placed or left in, on or about the Leased Premises or the Development, and will take all necessary precautions to protect the Leased Premises and the Development against fire.

**16. ENVIRONMENT**

16.1 General Obligations to Comply with Environmental Legislation – Without limiting the generality of Part 12 (Compliance with Laws), the Sublessee will at all times use and occupy the Leased Premises and the Development in strict compliance with all applicable Environmental Laws.

16.2 Hazardous Substances – The Sublessee will not use or permit or suffer the use of the Leased Premises to generate, manufacture, refine, treat, transport, store, handle, dispose of, transfer, produce or process any Hazardous Substances except in strict compliance with Environmental Laws and with the prior written consent of the Sublessor, which consent may be unreasonably and arbitrarily withheld.

16.3 Report of Release – Upon the Release of Hazardous Substances, or discovery of a Release of Hazardous Substances, by the Sublessee in, on or under the Leased Premises, the Sublessee will:

- (a) immediately deliver written notice to the Sublessor and any appropriate Authority of the occurrence of the Release and details relating to the Release including, without limitation, the time of the Release, the estimated amount of Hazardous Substances which were released, and remedial action taken prior to the delivery of the notice, the remedial action which the Sublessee intends to take in order to contain or rectify the Release and any Persons observed who appeared to have caused or who were in the vicinity of the Release;
- (b) at its own expense, immediately take all remedial action necessary, in compliance with all Environmental Laws, to fully rectify the effects of the Release;
- (c) provide the Sublessor with an independent audit, satisfactory to the Sublessor, of its activities under Subsection 16.3(b) and the state of the Leased Premises after such activities compared with the state of the Leased Premises prior to the Release; and
- (d) do such further activities as the Sublessor may reasonably require, based on the audit referred to in Subsection 16.3(c), to rectify the Release.

16.4 Removal of Hazardous Substances – If requested by the Sublessor or any Authority, the Sublessee will at its own expense remove from the Leased Premises any Hazardous Substances which are or have been located, stored or incorporated in, on or under the Leased Premises. Prior to the end of the Term, the Sublessee will at its own expense remove from the Leased Premises any Hazardous Substances which are or have been located, stored or incorporated in, on or under the Leased Premises.

16.5 Increased Risks – The Sublessee will not carry out any operations or activities or construct any alterations or improvements which materially increase the risk of liability to the Sublessor (whether direct or indirect) as a result of the application of Environmental Laws (as determined by the Sublessor acting reasonably).

16.6 Inspection – The Sublessor may, at any time during the Term, inspect the Leased Premises in order to assess the existence of any Hazardous Substances and to conduct an environmental site assessment, environmental audit or any other testing or investigations which the Sublessor deems reasonably necessary in order to ascertain the compliance of the Sublessee's operation on the Leased Premises with Environmental Laws and to determine the extent of any contamination of the Leased Premises due to the presence of any Hazardous Substances in, on or under the Leased Premises. The reasonable costs to the Sublessor of conducting any of the foregoing will be deemed to be Additional Rent payable by the Sublessee upon the Sublessor delivering notice of its costs.

16.7 Title to Hazardous Substances – The Sublessee acknowledges and agrees that, notwithstanding any rule of law to the contrary, any Hazardous Substances, which are located, stored or incorporated in, on or under the Leased Premises remain the sole and exclusive property of the Sublessee and will not become the property of the Sublessor regardless of any degree of affixation of the Hazardous Substances to the Leased Premises. This section will survive the expiration or earlier termination of this Sublease, save only that, to the extent that the performance of any obligation pertaining to it requires access to or entry upon the Leased Premises after the expiration or earlier termination of this Sublease, the Sublessee will have entry and access only at such times and upon such terms and conditions as the Sublessor may from time to time specify in writing.

16.8 Additional Rights – Without limiting Part 21, upon:

- (a) the breach by the Sublessee of any provision contained in this Part; or
- (b) the Sublessor becoming aware of a breach of Environmental Laws with respect to the Leased Premises or the presence of any Hazardous Substances on, in or under the Leased Premises which is not present in strict compliance with Environmental Laws and which raises a material risk of liability to the Sublessor, as determined by the Sublessor;

such event will constitute a default for the purposes of Section 21.1 of this Sublease.

16.9 Environmental Indemnity – The Sublessee hereby indemnifies and saves harmless the Sublessor from and against all claims, demands, actions, suits or other proceedings, judgments, damages, penalties, fines, costs, liabilities and losses (including any diminution in the



market value of the Leased Premises, based on the highest and best use of the Leased Premises, as opposed to the uses permitted by this Sublease), sums paid in settlement of any claims, reasonable legal, consultant and expert fees or any costs incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work required by any authority) which arise during or after the Term and are in any way based upon, arise out of or are connected with:

- (a) the presence or suspected presence of Hazardous Substances in, on or under the Leased Premises or in the soil, groundwater or surface water in, on, under or near the Leased Premises as a result of the actions or omissions of the Sublessee; or
- (b) the Release of any Hazardous Substances in, on or under the Leased Premises by or at the direction of the Sublessee;

unless the presence of the Hazardous Substances is solely attributable to the negligence or wilful misconduct of the Sublessor. This indemnity will survive the expiration or earlier termination of this Sublease

## **17. ALTERATIONS AND ADDITIONS**

17.1 Permitted Alterations – The Sublessee may from time to time, at its expense, paint and decorate the interior and exterior of the Leased Premises and make such changes, additions, alterations and improvements in and to the Leased Premises as will in the judgment of the Sublessee better adapt the Leased Premises for the purpose of the Sublessee, provided however that no structural changes, additions, alterations or improvements shall be made to the floor, structure, perimeter walls, exterior or roof of the Leased Premises, no buildings, improvements or structures shall be constructed or erected upon the Leased Premises, and the colour of the exterior of the Leased Premises and materials used thereon shall not be changed, without the prior written consent of the Sublessor and, if required, the Minister.

17.2 Standards – All construction and other work on the Leased Premises will be carried out and completed to a standard and quality at least as high as those of any improvements which are being repaired, restored, renewed, replaced or substituted and in accordance with the standards set out in the Headlease, as those standards may be amended or replaced from time to time. If there is a conflict among any of the standards in this Sublease or if they cover the same subject matter, then the highest standard will apply, and if any standard is inapplicable for any reason the remaining standards will continue to apply. All alterations to the Leased Premises shall be carried out without interference or disruption of other Sublessees, and both before, during, and after such alterations the Sublessee shall comply with all provisions of this Sublease.

## **18. INSURANCE**

18.1 Provision of Insurance – The Sublessor has obligations, pursuant to the Headlease, in respect of insurance, and certain of those obligations will be satisfied by the insurance to be provided by the Sublessees. To assist in the orderly administration of insurance, each Sublessee will be required to obtain the insurance required by this Sublease, from an insurance broker designated by the Homeowners Corporation, and the insurance policies issued

to the Sublessees shall have a common expiry date. The insurance shall comply in all respects with the requirements of the Headlease, including, without limitation, provisions relating to the Trustee in respect of insurance proceeds.

18.2            Sublessee Insurance – The Sublessee covenants with the Sublessor that it will take out and maintain in force during the Term the following insurance:

- (a)    an “All Risks” policy covering the buildings including costs of excavations and foundations and improvements on the Leased Premises as would be insured against by a prudent owner, including coverage for earthquake and such other perils as Her Majesty may reasonably require to be insured against, in an amount not less than the Replacement Cost of such buildings and replacements; and
- (b)    a comprehensive personal liability policy or Commercial General Liability Policy against claims for personal injury, sickness, illness, disease or disability, death or property damage or loss (including liability coverage for pollution, to the extent such coverage is available) arising out of the ownership, occupation, maintenance and use of the Leased Premises by the Sublessee, in an amount not less than One Million Dollars (\$1,000,000.00) in respect of any one accident or occurrence, or such higher amount as Her Majesty may require from time to time.

18.3            Sublessee Covenants Relating to Insurance – The Sublessee covenants and agrees:

- (a)    to cause its insurance policy required under Section 18.2 of this Sublease to contain an agreement by the insurer that it will not cancel or substantially alter the policy without first giving the Sublessor at least thirty (30) days’ prior written notice;
- (b)    if any insurance policy contains a co-insurance provision, then the Sublessee will at all times maintain sufficient insurance to prevent the Sublessor and the Sublessee from being co-insurers and permit full recovery from the insurer;
- (c)    to deliver to the Sublessor and to the Minister from time to time, on request, certificates from its insurers evidencing each such policy of insurance to be taken out and maintained by the Sublessee pursuant to this Sublease, and also to deliver evidence of the renewal of such policies at least ten (10) days prior to the time for the renewal of the same; and
- (d)    not to do, permit or suffer anything to be done or omitted on the Leased Premises or the Development which might cause any policy of insurance (including the insurance of the Sublessor) to be invalidated or cancelled, and to comply forthwith with any and every written notice from the Sublessee, the Minister or any insurer requiring the execution of works or the discontinuance of any use of the Leased Premises in order to avoid the invalidation or cancellation of any insurance.

18.4            Payment of Loss Under Sublessee Insurance – The Sublessor and the Sublessee covenant and agree as follows with respect to the use of insurance proceeds:

- (a) all proceeds from insurance policies shall be applied to the repair, replacement, reconstruction or restoration of the property damage for which such proceeds have become payable. Any such repair, replacement, reconstruction or restoration shall be carried out so as to repair, replace, reconstruct or restore the Leased Premises to the same condition as the Sublessee is required to maintain the same pursuant to this Sublease immediately prior to such damage or destruction. All repair, replacement, reconstruction and restoration shall be completed in accordance with this Sublease, and the Sublessee will be responsible for the repair, replacement, reconstruction and restoration of the Leased Premises whether or not the cost of such work exceeds the insurance proceeds;
- (b) if the Sublessor and all mortgagees of this Sublease have consented in writing to the payment of insurance proceeds to the Sublessee, then the proceeds shall be paid to the Sublessee in trust to apply to the costs of repairing, replacing, reconstructing and restoring the Leased Premises, and the Sublessee will be responsible for the repair, replacement, reconstruction and restoration of the Leased Premises whether or not such work exceeds the insurance proceeds;
- (c) if the Sublessor or any of the mortgagees of this Sublease do not consent to the payment of the insurance proceeds to the Sublessee pursuant to Section 18.4, then the insurance proceeds shall be paid to the Trustee, to be held and disbursed on behalf of the Sublessee, the Sublessor and mortgagees, subject to the following conditions:
  - (i) all such parties shall do all acts, matters, deeds and things as are necessary to facilitate the payment of the insurance proceeds to the Trustee;
  - (ii) work in progress will be paid for in instalments out of the insurance proceeds, provided that the Trustee at all times will retain sufficient of the insurance proceeds to pay for the estimated cost of the remaining work to be completed and any Trustee fees and costs to be paid;
  - (iii) progress payments will only be made to the Sublessee upon submission by the Sublessee to the Sublessor of a statement, certified by a professional engineer or architect licensed to practice in British Columbia, attaching the invoices for work to be covered by the progress payment and setting out the work completed to date, the cost of the work completed to date, the amount owing on work completed to date and the estimated amount required to complete the work, and verifying the standard and quality of the work already completed; and
  - (iv) the Sublessee will pay and be responsible for all costs, fees and expenses in excess of the insurance proceeds.
- (d) Notwithstanding the foregoing, insurance proceeds in respect of Personal Goods do not have to be paid to the Trustee.

18.5 Mortgages Insured by CMHC – Notwithstanding any other term or condition of this Sublease, if the Mortgage is insured by CMHC, then during any such time as CMHC has possession of the Leased Premises or holds the equity of redemption in the Leased Premises, CMHC will not assume or be responsible for the duties, obligations or liabilities whatsoever for taking out or maintaining insurance as set out herein.

18.6 Homeowners Corporation Insurance – The Homeowners Corporation covenants with the Sublessor and the Sublessee that it will take out and maintain in force during the Term the following insurance:

- (a) an “all risks” policy covering such Common Facilities against fire and other perils from time to time included in standard fire insurance policies affecting similar properties in British Columbia (with extended or additional perils supplemental coverage) and as would be insured against by a prudent owner, including loss or damage by fire, explosion, impact by aircraft or vehicles, lightning, riot, vandalism or malicious acts, smoke, leakage from fire protection equipment, windstorm, hail and such other perils as the Sublessor or the directors of the Homeowners Corporation may reasonably require to be insured against, in an amount not less than the replacement cost of such Common Facilities (including, in the case of coverage for earthquake and collapse, the cost of excavation and foundations); and
- (b) a comprehensive general liability policy against claims for personal injury, sickness, illness, disease or disability, death or property damage or loss (including liability coverage for pollution, to the extent such coverage is available) arising out of the ownership, occupation, maintenance and use of such Common Facilities, in an amount not less than Two Million Dollars (\$2,000,000.00) in respect of any one accident or occurrence, or such higher amount as the Sublessor may require from time to time.

18.7 Release of Liability – The Homeowners Corporation releases the Sublessor from all liability for loss or damage caused by or resulting from any of the perils or injury against which it has covenanted in this Sublease to insure, even though the loss, damage or injury may arise out of the negligence or omission of the Sublessor and even though the Homeowner’s Corporation has failed to so insure.

18.8 Homeowners Corporation Covenants Relating to Insurance – The Homeowners Corporation covenants and agrees as follows:

- (a) to cause its insurance policy required under Section 18.6 of this Sublease to:
  - (i) name the Sublessor as an additional insured; and
  - (ii) contain an agreement by the insurer that it will not cancel or substantially alter the policy without first giving the Sublessor at least thirty (30) days’ prior written notice; and

- (b) if any insurance policy contains a co-insurance provision, then the Homeowners Corporation will at all times maintain sufficient insurance to prevent the Sublessor and the Homeowners Corporation from being co-insurers and permit full recovery from the insurer;
- (c) to deliver to the Sublessor and to the Minister from time to time, on request, certificates from its insurers evidencing each such policy of insurance to be taken out and maintained by the Homeowners Corporation pursuant to this Sublease, and also to deliver evidence of the renewal of such policies at least ten (10) days prior to the time for the renewal of the same; and
- (d) not to do, permit or suffer anything to be done or omitted on the Leased Premises, Common Facilities or the Development which might cause any policy of insurance (including the insurance of the Sublessor or the Sublessee) to be invalidated or cancelled, and to comply forthwith with any and every written notice from the Homeowners Corporation, the Minister or any insurer requiring the execution of works or the discontinuance of any use of the Common Facilities in order to avoid the invalidation or cancellation of any insurance.

18.9 Payment of Loss Under Homeowners Corporation Insurance –

- (a) The Homeowners Corporation covenants and agrees that all proceeds from insurance policies shall be applied to the repair, replacement, reconstruction or restoration of the property damage for which such proceeds have become payable. Any such repair, replacement, reconstruction or restoration shall be carried out so as to repair, replace, reconstruct or restore the Common Facilities to the same condition as the Homeowners Corporation is required to maintain the same pursuant to the Headlease and this Sublease immediately prior to such damage or destruction. All repair, replacement, reconstruction and restoration shall be completed in accordance with the Headlease and this Sublease, and the Homeowners Corporation will be responsible for the repair, replacement, reconstruction and restoration of the Common Facilities whether or not the cost of such work exceeds the insurance proceeds.
- (b) Notwithstanding the foregoing and subject to the repair obligations under the Head Lease, the Homeowners Corporation may, by a resolution passed by a special resolution (as such term is defined in the *British Columbia Business Corporations Act*) of shareholders of the Homeowners Corporation passed no later than sixty (60) days after the receipt by the Homeowners Corporation of the proceeds of insurance, decide not to repair, replace, reconstruct or restore the damaged property.
- (c) If the Homeowners Corporation decides pursuant to Subsection 18.9(b) not to repair, replace, reconstruct or restore the damaged property, the Homeowners Corporation shall receive the proceeds of insurance and any interest on such proceeds in trust for each of the Sublessees including the holder of a registered charge in respect of a Sublessee's sublease based on each Sublessee's respective

Proportionate Share, and must distribute the money according to each person's interest.

## **19. DAMAGE OR DESTRUCTION**

19.1 Rights on Damage or Destruction – In the event of damage or destruction to the Leased Premises at any time during the Term, the Rent shall not abate and this Sublease shall not terminate unless the Headlease is terminated pursuant to the terms and conditions thereof.

19.2 Sublessee's Obligations – In the event of damage or destruction to the Leased Premises or any building, structure or improvement forming part of the Leased Premises, whether partial, substantial or complete, the Sublessee will, subject to applicable laws, repair, replace, restore or reconstruct such building, structure and improvement with buildings, structures and improvements comparable to those being repaired, replaced, restored or reconstructed.

## **20. EXCLUSION OF LIABILITY AND INDEMNITY**

20.1 Release in Favour of the Sublessor – Except and to the extent that such injury, loss or damage is caused by the Sublessor and is covered by insurance taken out by the Sublessor, the Sublessor, its directors, officers, agents, servants, employees or invitees shall not be liable or responsible in any way for any injury that may be suffered or sustained by the Sublessee, or any family member, guest, tenant, contractor, agent or invitee of the Sublessee, or for any loss of or damage to any property belonging to the Sublessee or to any other person (including without limitation any family member, guest, tenant, contractor, agent or invitee of the Sublessee) while such property is on the Development or the Leased Premises, and in particular, but without limiting the generality of the foregoing, the Sublessor shall not be liable for any damage or inconvenience caused by the failure to supply utilities to the Leased Premises but the Sublessor shall use all reasonable diligence to remedy such failure or interruption of service if it is within its power and obligation to do so. The Sublessee hereby releases the Sublessor and Her Majesty from any and all liability for loss and damage caused at any time by any of the perils against which the Sublessee has covenanted to insure under this Sublease, and (except for fraudulent acts of the Sublessor) to indemnify and hold harmless the Sublessor and Her Majesty from and against all manner of actions, suits, damages, losses, costs, claims and demands of any nature whatsoever relating to such loss or damage.

20.2 Indemnity – The Sublessee covenants with the Sublessor to indemnify and save harmless Her Majesty, the Band and the Sublessor, its directors, officers, agents, servants, employees and invitees, from any and all claims for personal injury or property damage arising from any default by the Sublessee in the observance or performance of the covenants and agreements on its part to be observed and performed pursuant to this Sublease or from any act or omission of the Sublessee or any family member, guest, tenant, contractor, agent or invitee of the Sublessee and from all costs, fees and expenses incurred as a result of any such claim or any action or proceeding brought in connection with such claim and this indemnity shall survive the expiration or sooner termination of the Term.

**21. SUBLESSOR'S RIGHTS AND REMEDIES**

21.1 Events of Default – It shall be an Event of Default under this Sublease if the Sublessee:

- (a) fails to pay any Rent or any other sum required to be paid by the Sublessee when due under this Sublease, whether demanded or not or purports to set off, withhold or deduct any amount of Rent due;
- (b) fails to perform or observe any other term, agreement, condition, covenant, warranty or proviso of this Sublease (including without limitation the Schedules hereto, the Bylaws and the covenant in respect of the Headlease contained in Section 27.2), whether demanded or not;
- (c) abandons the Leased Premises for a period of greater than thirty (30) days (it being acknowledged that seasonal use of the Leased Premises does not constitute the Leased Premises being abandoned); or
- (d) fails to pay any Assessment when due to the Homeowners Corporation, whether demanded or not.

21.2 Rights and Remedies Upon Default – Upon the happening of an Event of Default, the Sublessor shall have the following rights and remedies:

- (a) in the case of an Event of Default which constitutes a default under the terms and conditions of the Headlease, the Sublessor shall have the right to re-enter and re-take possession of the Leased Premises and terminate this Sublease if such default is not remedied within forty-five (45) days from receipt of written notice from the Sublessor or the Minister advising of the default or if the default is not reasonably capable of being cured in such time, if the Sublessee fails to commence to cure the default within forty-five (45) days of receipt of the notice and to proceed to cure it with all due diligence to completion;
- (b) in the case of an Event of Default which constitutes a default under the terms and conditions of the Headlease, the Sublessor shall have the right to re-enter and re-take possession of the Leased Premises for the purpose of re-leasing the same as agent for the Sublessee if such default is not remedied within forty-five (45) days from receipt of written notice from the Sublessor or the Minister advising of the default or if the default is not reasonably capable of being cured in such time, if the Sublessee fails to commence to cure the default within forty-five (45) days of receipt of the notice and to proceed to cure it with all due diligence to completion, in which event all money received by the Sublessor from such re-leasing (but excluding any ongoing Rent from the date of the re-leasing) shall be applied, first, to the payment of any indebtedness due under this Sublease from the Sublessee to the Sublessor, second, to the payment of all costs and expenses incurred by the Sublessor in re-leasing the Leased Premises (including brokerage and lawyer's fees and the cost of any alterations and repairs to the Leased Premises) third, to the payment of any indebtedness of the Sublessee to the

Homeowners Corporation and, fourth, as to the balance of the money, if any, to the Sublessee (provided that if there are any financial charges registered in the Indian Lands Registry against the interest of the Sublessee at the time of the disbursement of monies, the amount payable to the Sublessee shall first be applied to satisfy the Sublessee's obligations to such financial chargeholders in accordance with their priority and any balance shall then be paid in accordance with this Sublease);

- (c) in the case of an Event of Default which does not constitute a default under the terms and conditions of the Headlease, the Sublessor shall have the right to re-enter and re-take possession of the Leased Premises and terminate this Sublease if such default is not remedied within ninety (90) days from receipt of written notice from the Sublessor advising of the default, in which event all money received by the Sublessor from such re-leasing (but excluding any ongoing Rent from the date of the re-leasing) shall be applied as set out in Subsection 21.2(b);
- (d) in the case of an Event of Default which does not constitute a default under the terms and conditions of the Headlease, the Sublessor shall have the right to re-enter and re-take possession of the Leased Premises for the purpose of re-leasing the same as agent for the Sublessee if such default is not remedied within ninety (90) days from receipt of written notice from the Sublessor advising of the default, in which event all money received by the Sublessor from such re-leasing shall be applied as set out in Subsection 21.2(b);
- (e) in the case of an Event of Default which constitutes a default under the Bylaws, impose any fines or penalties as set out in the Bylaws;
- (f) the Sublessor may, but shall not be obliged to, itself observe and perform any covenant or agreement in respect of which the Sublessee has made default and for such purpose may enter onto the Leased Premises without liability to the Sublessee, provided that such performance by the Sublessor shall not in any way relieve the Sublessee from its obligations and liabilities with respect to the performance of the covenant or agreement;
- (g) the Sublessor shall have the right to collect from the Sublessee any and all costs and expenses incurred by the Sublessor in enforcing the covenants and agreements set out in this Sublease and in performing the covenants and agreements of the Sublessee set out in this Lease, including without limitation reasonable legal fees as between solicitor and his own client, together with interest thereon at the rate set out in Subsection 21.2(h) from the date that the costs and expenses are incurred to the date the same are paid by the Sublessee;
- (h) the Sublessor shall have the right to claim from the Sublessee interest at the rate equal to two percent (2%) per annum above the prevailing prime lending rate for commercial loans in Canadian dollars then being published by the Sublessor's bankers on all amounts which are due and owing by the Sublessee to the



Sublessor (and a certificate signed by an officer of a bank that the Sublessor designates as its bank, shall be conclusive evidence of such rate); and

- (i) the Sublessor shall be entitled to such other rights and remedies as may be available to it pursuant to this Sublease, at law or in equity, including without limitation rights of distress, the right to claim damages against the Sublessee and the right to seek and obtain injunctive or other equitable relief upon the happening of an Event of Default.

21.3 Rights of the Sublessee on Termination for Default – In the case of an Event of Default and the termination of this Sublease pursuant to the terms and conditions of Section 21.2, then the Sublessor shall use its reasonable efforts to lease the Leased Premises through the issuance of another sublease for the Leased Premises to a third party purchaser on terms and conditions substantially the same as set out in this Sublease.

21.4 Rights and Remedies Cumulative – All rights and remedies of the Sublessor in this Sublease shall be cumulative and not alternative.

21.5 Remedy of Defaults by Mortgagees – If a mortgagee of the Sublessee's interest in this Sublease has provided written notice to the Sublessor advising of such mortgage, the mortgagee shall be entitled to receive notice at the address for delivery set out in the mortgage of the Sublessee's interest registered in the Indian Lands Registry or such other address for delivery specified in writing by the mortgagee of and cure any Event of Default pursuant to and within the applicable time frame provided for in Section 21.2 or, in the event any default is not reasonably capable of being remedied within the time frame set out in Section 21.2, within such longer time period as is reasonable in the circumstances provided the mortgagee immediately commences to cure the default and then diligently prosecutes to conclusion all acts necessary to cure the default. Any curing of an Event of Default by the Mortgagee shall be construed as a curing of the Event of Default by the Sublessee. No notice of an Event of Default shall be effective as against any such mortgagee unless and until a copy of such notice has been provided to the mortgagee at the address specified by the mortgagee as set out above, and any such notice to the mortgagee shall be provided as set out in Part 31 of this Sublease.

21.6 Notices of Defaults under the Headlease – Upon receipt of notice of default under the Headlease by the Sublessor, the Sublessor shall promptly provide a copy of such notice to the Sublessee and any mortgagee(s) of the Sublessee's interest in this Sublease or the Leased Premises who has provided written notice to the Sublessor at the address for delivery set out in the mortgage of the Sublessee's interest or such other address for delivery specified in writing by the mortgagee.

21.7 Non-Waiver – No condoning, excusing or overlooking by the Sublessor or the Sublessee of any default, breach or non-observance by the other in respect of any covenant, proviso or condition herein contained shall operate as a waiver of the Sublessor's or the Sublessee's rights hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the Sublessor or the Sublessee in respect of any continuing or subsequent default or breach, and no waiver shall be

inferred from or implied by anything done or omitted by the Sublessor or the Sublessee, save only express waivers in writing.

## **22. CMHC**

22.1 Notwithstanding any other provisions of this Sublease, where the whole or any part of the interest of the Sublessee under this Sublease is mortgaged to a Mortgagee, insured against borrower default, under the *National Housing Act* (Canada), then:

- (a) the Sublessor shall not exercise effectively as against the Mortgagee any right of re-entry or distress or right to terminate this Sublease until:
  - (i) the Sublessor gives to the Mortgagee at least forty-five (45) days in writing of the intention to re-enter or to distraint or to terminate specifying the full particulars of the grounds therefor;
  - (ii) the Mortgagee does not during that forty-five (45) day period either remedy all specified proper grounds for re-entry or distraint or termination or give to the Sublessor notice in writing that the Mortgagee intends to take, or has taken, formal proceedings for the enforcement of its mortgage and the protection of its position; and
  - (iii) the Mortgagee, having given the notice specified in (ii), has had reasonable time to pursue to their conclusion all reasonable proceedings for the enforcement of its mortgage and the protection of its position;
- (b) if upon the conclusion of proceedings by the Mortgagee for the enforcement of its mortgage and the protection of its position the rights of the Sublessee have been released to the Mortgagee or foreclosed or sold then thereupon all then existing grounds for re-entry or distress or termination and all the existing rights (if any) of re-entry or distress or termination shall terminate and the Mortgagee or purchaser shall become the sublessor free of all liability for such grounds;
- (c) where the Sublessor, at the request of the Sublessee, intends to terminate the Sublease either by surrender or otherwise, notice of such intention shall be given in writing to the Mortgagee, allowing the Mortgagee at least sixty (60) days to obtain repayment in full of the outstanding mortgage, inclusive of interest and penalties, or take mortgage default enforcement action with its rights pursuant to paragraphs (a), (b) and (c) herein intact. If the Mortgagee provides to the Sublessor notice of its intention to commence or the commencement of mortgage default enforcement action to realize on its security, including but not limited to foreclosure proceedings, the Sublessor shall not accept a surrender of this Sublease;
- (d) throughout any period of time during which, as a result of proceedings for default under the mortgage including transfer of title under the *National Housing Act*

(Canada), the Mortgagee or CMHC as successor is in leasehold possession of the Leased Premises or holds leasehold title to the Leased Premises:

- (i) the Sublessor waives, as against the Mortgagee and CMHC and their successors and assigns, all rent and additional rent and interest accruing and otherwise required to be paid under this Sublease, but for the purposes of this waiver, rent and additional rent do not include municipal real estate taxes, school taxes, local improvement charges, water rates and utility charges required to be paid by the Sublessor or the Sublessee and the actual costs of construction, maintenance and repair of damage that are the responsibility of the Sublessee,
  - (ii) the review and approval of the Sublessor shall not be required with respect to plans, specifications, contractors, workers, tradesmen, materials, proposals, details and drawings for repairs, replacements, maintenance, improvements, alterations, and decorations, and
  - (iii) the consent of the Sublessor shall not be required with respect to any vacancy of or removal of goods from the demised premises;
- (e) the Mortgagee and CMHC shall not remain liable on the Sublease after assignment or release by them of this Sublease;
- (f) if the Mortgagee or CMHC is entitled under this Sublease to take action for the enforcement of its mortgage and the rights of the Sublessee have been assigned or transferred to the Mortgagee or CMHC, the Sublessor waives, as against the Mortgagee or CMHC, the conditions to the assignment or transfer of the Sublease set out in Subsections 24.1(d) and (g);
- (g) if any time the Leased Premises are damaged or destroyed to the extent of fifty percent (50%) or more of their full insurable value, then the Mortgagee or CMHC as successor may, within sixty (60) days of its receipt of notice of the event and extent of damage or destruction and appropriate amount of available insurance proceeds, elect to require that the insurance proceeds not be applied toward the repair or rebuilding or restoration of the Leased Premises, and in the event of such an election the insurance proceeds shall be applied, in priority,
- (i) first, but only if and to the extent required by the Sublessor or the Sublessee, toward clearing and restoring the lands as nearly as possible to their condition prior to the commencement of construction,
  - (ii) second, towards payment of all monies owing on the mortgage,
  - (iii) third, towards payment of all monies payable to the Sublessor under this Sublease, and
  - (iv) fourth, in payment to the Sublessor and the Sublessee in accordance with their interests therein,

and the Sublessee shall not be obligated to repair or rebuild or restore; and

- (h) there shall be no obligation on CMHC to arrange or maintain any insurance, and for the purposes of paragraph (g) if because the CMHC has not arranged or maintained insurance there are no or insufficient insurance proceeds and the CMHC makes the election specified then the CMHC shall not be required to do more than clear and restore the Leased Premises as nearly as possible to their condition prior to the commencement of construction and shall be entitled to apply to that end whatever insurance proceeds may be available;
- (i) there shall be no obligation on CMHC to indemnify the Sublessor except where the CMHC would be so obligated apart from the terms of this Sublease;
- (j) any party requiring arbitration pursuant to the terms of this Sublease shall give timely notice of all arbitration proceedings to the Mortgagee and the Mortgagee may participate fully in the proceedings if in its reasonable opinion the outcome may affect its security; and
- (k) without restricting the generality of the foregoing, all references to Mortgagee shall include the CMHC.

### **23. MORTGAGES AND ASSIGNMENTS BY THE SUBLESSOR**

23.1 Right of Sublessor to Assign or Mortgage – Subject to the prior written consent of the Minister if required at law or under the Head Lease, the rights of the Sublessor herein may be assigned to a purchaser or mortgaged to a mortgagee. In the event of any purchaser or mortgagee duly entering into possession of the Sublessor's interest in the Sublease, the Sublessee agrees to attorn to and become Sublessee of such purchaser or mortgagee pursuant to the terms of this Sublease.

23.2 Release of Sublessor upon Assignment – In the event of an assignment by the Sublessor of its interest in this Sublease and to the extent that the purchaser assumes the covenants, agreements, obligations and liabilities of the Sublessor contained in this Sublease, the Sublessor shall without further written agreement be released and relieved of and from any and all obligations and liabilities whatsoever relating to this Sublease and the Development.

### **24. ASSIGNMENT AND SUBLETTING BY THE SUBLESSEE**

24.1 Right to Assign – The Sublessee may assign or transfer the whole or any part of its interest in this Sublease and the Leased Premises, subject to the following terms and conditions:

- (a) the assignment or transfer of the Sublease must be completed on a form acceptable for registration by the Registrar of Indian Lands or anyone in any successor office or anyone duly authorized to act as Registrar, and must be submitted in required quantities to the Indian Lands Registry for registration;

- (b) the assignment or transfer must include covenants and agreements pursuant to which the assignee or transferee covenants and agrees in writing, with the Sublessor and the Homeowners Corporation, to be bound by and liable under all terms, conditions, covenants and agreements of the Sublessee under this Sublease;
- (c) the assignee or transferee shall execute and deliver concurrently with the assignment or transfer any agreements or security as provided for in Section 11.1;
- (d) subject to Subsection 21.2(f) the Sublessee shall not be in default of its covenants and agreements set out in this Sublease, and in particular shall have paid its Proportionate Share of all Common Costs and shall have paid to the Homeowners Corporation all Assessments for the period to and including the date of the assignment or transfer;
- (e) the assignment or transfer shall be subject to the prior written consent of the Minister, which is a pre-requisite to the registration of any documentation in the Indian Lands Registry, and provided Subsection 24.1(d), as applicable, and Subsection 24.1(i) have been complied with no consent of the Sublessor is required;
- (f) the share in the capital of the Homeowners Corporation held by the Sublessee must be assigned to the assignee or transferee at the same time as the Sublease is assigned, provided that in the event the Sublessee fails to effect the transfer of the share in the Homeowners Corporation at the time of the assignment or transfer of this Sublease, the Homeowners Corporation shall be irrevocably appointed the attorney of the Sublessee with the full power to execute and deliver a transfer of the share in the name of the Sublessee and any transfer documentation executed and delivered by the Sublessor under such power of attorney shall be binding upon the Sublessee without liability to the Sublessor or the party signing on behalf of the Sublessor;
- (g) prior to any assignment or transfer the Sublessee shall request a certificate from the Sublessor confirming that to the Sublessor's knowledge the Sublease is in good standing;
- (h) the assignee or transferee agreeing in writing with the Sublessor to be bound by the articles of the Homeowners Corporation; and
- (i) concurrent with completion of the assignment, and as a condition of the assignment, pay the Sublessor an assignment administration fee equal to one percent (1%) of the greater of the selling price for the assignment of Sublease or the most recent assessed value of the Leased Premises.

24.2 Release on Assignment – Upon the assignment or transfer of this Sublease by the Sublessee, the Sublessee shall be released from its obligations pursuant to this Sublease as they relate to the period following the date of the assignment or transfer and the assignee or transferee shall assume all obligations of the Sublessee under this Sublease.

24.3 Right to Sublet – The Sublessee shall have the right to sublet the whole (but not less than the whole) of the Leased Premises, subject to the condition that the subletting of the Leased Premises shall be subject to the prior written consent of the Sublessor and the Minister, and any Sublease shall comply with the Bylaws.

**25. RIGHT TO MORTGAGE BY SUBLESSEE**

25.1 Right to Mortgage – The Sublessee shall have the right, at any time, and from time to time, to grant a mortgage of this Sublease, subject to the prior written consent of the Minister (such consent not to be unreasonably withheld), which is a pre-requisite to the registration of any documentation in the Indian Lands Registry.

25.2 Mortgagee’s Remedies – The mortgagee under any mortgage granted by the Sublessee may exercise any remedies available to it under its mortgage, and in particular, without limiting the generality of the foregoing, may enforce the mortgage and acquire title to this Sublease in any lawful way, directly, by its representative or by a receiver, as the case may be, and in such event may take possession of and manage the Leased Premises and sell or assign this Sublease, with the consent of the Minister and subject to the requirements set out in Section 24.1, in which case the assignee or transferee of the Sublease shall be liable to assume, abide by and perform the covenants, agreements, obligations and liabilities imposed on the Sublessee by this Sublease so long as such assignee or transferee has ownership or possession of the Leased Premises.

25.3 Obligations of a Mortgagee in Possession – If the mortgagee takes possession of the Leased Premises, or acquires the Sublessee’s equity of redemption, or a receiver or receiver-manager is appointed by or at the request of the mortgagee, then the mortgagee will, or will cause the receiver or receiver-manager to, perform and observe all of the Sublessee’s covenants and agreements under this Sublease until either the mortgagee ceases to be a mortgagee in possession, the receiver or receiver-manager ceases to be in possession or this Sublease is duly assigned or transferred to an assignee or transferee with the consent of the Minister and the assignee or transferee covenants and agrees to assume, abide by and perform the covenants, agreements, obligations and liabilities of the Sublessee under this Sublease.

25.4 Obligations of CMHC if in Possession – If the mortgage is insured by Canada Mortgage and Housing Corporation (“CMHC”), then:

- (a) during such time as CMHC has possession of the Leased Premises or holds the Sublessee’s equity of redemption in the Leased Premises, CMHC shall not be bound to pay Rent referred to in Section 4.1 or to take out or keep in force the insurance referred to in Part 18; and
- (b) the Sublessor must obtain the consent of the mortgagee in the event that the Sublessor intends to exercise its right under Subsection 21.2(b), (c) or 21.2(d) of this Sublease.

**26. SUBLESSOR'S COVENANTS**

26.1 Sublessor's Obligations – The Sublessor covenants with the Sublessee:

- (a) that if the Sublessee pays the Rent hereby reserved and performs the covenants herein on its part contained, the Sublessee shall, subject to the terms of this Sublease including without limitation Section 26.2, peaceably possess and enjoy the Leased Premises for the Term without any interruption or disturbance from the Sublessor or any other person or persons lawfully claiming by, from or under it;
- (b) to pay the rent and observe and perform all of the terms, covenants and agreements in the Headlease to be observed and performed by the Sublessor, and to indemnify and save harmless the Sublessee, and its permitted assigns and mortgagees, of and from any loss, damage, liability, claim or expense incurred by the Sublessee resulting from the failure to do so, unless the Sublessor's failure is caused or contributed to by a default of the Sublessee under this Sublease; and
- (c) not to amend the Headlease in any manner that will materially adversely affect the rights of the Sublessee, and its permitted assigns or mortgagees, under the terms and conditions of this Sublease.

26.2 Construction Activities – During construction of the Development, normal construction activities will take place on the Development, and will result in certain levels of noise, dust and disturbance. The Sublessor will follow prudent construction practices in carrying out its work, but shall have no liability for any claims relating to noise, dust, disturbance, inconvenience or other disruptions during construction. The Sublessor's construction guidelines will restrict the Sublessor's construction working hours to 7:00 a.m. to 5:30 p.m. weekdays, 8:00 a.m. to 4:00 p.m. Saturdays and no work on Sundays or statutory holidays except in exceptional circumstances.

**27. COMPLIANCE WITH HEADLEASE**

27.1 Sublease Subject to the Headlease – The Sublessee acknowledges and agrees that this Sublease is expressly subject and subordinate to the Headlease and to the rights of Her Majesty thereunder, and that this Sublease will terminate upon the termination of the Headlease, except in circumstances described in Section 20.10 of the Headlease.

27.2 Sublessee Not to Breach the Headlease – The Sublessee covenants and agrees with the Sublessor and Her Majesty not to cause the Sublessor at any time to be in breach of any of the terms, covenants, conditions, provisos and agreements of the Sublessor to be kept or observed under the Headlease, and that in the event of a conflict between the Headlease and this Sublease the provisions of the Headlease will govern.

## **28. HOMEOWNERS CORPORATION**

28.1 Creation – The Homeowners Corporation has been incorporated. One share in the capital of the Homeowners Corporation shall be transferred to the Sublessee. When all Subleases for the Lands have been issued, the number of issued shares in the Homeowners Corporation shall equal the number of issued Subleases, and each Sublessee shall own one share. In accordance with the Articles of the Homeowners Corporation, each share of the Homeowners Corporation must be transferred to the assignee of the Sublease in respect of which the share was issued, and no share may be dealt with independently from the Sublease.

28.2 Duties of Homeowners Corporation – The Common Areas and Common Facilities will be subleased by the Sublessee to the Homeowners Corporation. The Homeowners Corporation covenants and agrees with the Sublessor and the Sublessee to control, manage and administer the Common Areas and Common Facilities for the benefit of all Sublessees. Specific obligations of the Homeowners Corporation are contained in its Articles, a copy of which has been made available to the Sublessee prior to the execution of this Sublease. The rights and obligations of the Homeowners Corporation shall be subject and subordinate to the Sublessor's rights under this Sublease.

28.3 Funding of Homeowners Corporation – The Sublessee acknowledges that the operations of the Homeowners Corporation will be paid for by assessments (the “**Assessments**”) made by the Homeowners Corporation to the Sublessees. The Sublessee covenants and agrees to pay all Assessments made by the Homeowners Corporation when due. Such Assessments shall constitute Additional Rent pursuant to this Sublease, shall bear interest as provided for in this Sublease if not paid when due, and shall afford the Sublessor and the Homeowners Corporation with all remedies available to them pursuant to this Sublease.

28.4 Access – The Homeowners Corporation, and its agents, employees and contractors, shall have the right to enter upon the Leased Premises and the Common Areas and Common Facilities to enable it to carry out its duties and responsibilities in connection with the Common Areas and Common Facilities.

28.5 Right to Suspend/Disconnect Services – Without limiting any right or remedy of the Homeowners Corporation or the Sublessor, if the Sublessee fails to pay a Homeowners Corporation Assessment when due, the Homeowners Corporation may, without notice, temporarily suspend or permanently disconnect the Leased Premises from any one or more service or utility that passes on, over, under or through any Common Area or Common Facility, to the Leased Premises including without limitation the provision of water, sewer, electricity, gas, power, telephone, cable or other service.

28.6 Breach – A breach or default by the Homeowners Corporation of any obligation under this Sublease shall not:

- (a) give the Sublessee any right to terminate this Sublease; or
- (b) impose any obligation on the Sublessor.



28.7 Delegation – The Sublessor may, from time to time, delegate to the Homeowners Corporation, all or any part of the Sublessor’s rights and obligations hereunder, including, without limitation, the right to grant approvals or consents, and may change such delegation from time to time.

28.8 Intent - Notwithstanding the fact that a strata plan under the *Strata Property Act* (British Columbia) cannot be filed in respect of the Lands, and without limiting the provisions of this Sublease, the parties agree that it is their intention that the Development and the Homeowners Corporation operate in the manner that would exist if a strata plan was filed in respect of the Lands, the Sublessee held a sublease of a strata lot and the Homeowners Corporation was the strata corporation. In the event of a disagreement as to the applicability of a provision of the *Strata Property Act* (British Columbia), amendments, replacements, successor statutes, the matter shall be referred to arbitration, provided that the provisions of this Sublease are paramount.

28.9 Control of Homeowners Corporation - From and after the Completion Date, the Sublessor shall not own or vote shares in the Homeowners Corporation, except that if the Sublessor is also a sublessee of a Home, it may vote a share in the Homeowners Corporation in respect of the sublease of the Home while it is such a sublessee.

## 29. RIGHTS OF WAY

29.1 Utility Rights of Way - If a plan registered in the Indian Lands Registry records a utility easement or right of way (the “**Utility Right of Way**”) over any portion of the Leased Premises, the Sublessee hereby grants to the Homeowners Corporation a non-exclusive easement with respect to the Utility Right of Way together with a full, free, and uninterrupted right, licence, liberty, privilege, permission, and right of way forever at all times and from time to time to install, construct, and maintain utility services of any kind whatsoever including, without limitation, sewage works, water works, drainage works, natural gas works, hydroelectric works, cable works, and telephone works together with the right of uninterrupted ingress, egress, and regress, with or without vehicles, supplies or equipment for the stated purpose. The Homeowners Corporation may from time to time grant to one or more utility providers some or all of the rights and interests granted by the Sublessee to the Homeowners Corporation under this Section 29.1.

29.2 Driveway Rights of Way - If a plan registered in the Indian Lands Registry records a driveway easement or right of way (the “**Driveway Right of Way**” and collectively with each Utility Right of Way the “**Right of Way Area**”) over any portion of the Leased Premises, the Sublessee hereby grants to the sublessee of the adjoining lands (the “**Adjacent Sublessee**”) and its heirs, executors, administrators, successors and permitted assigns, an easement with respect to the Driveway Right of Way together with a full, free and uninterrupted licence, liberty, privilege, permission, and right of way forever at all times and from time to time to use, in common with the Sublessee, the Driveway Right of Way for vehicular manoeuvring to permit ingress, egress and regress to and from the neighbouring lands.

The Sublessee covenants with the Homeowners Corporation that it will not build or permit to be built on that part of the Leased Premises burdened by a Right of Way Area any building or other

structure nor plant or allow to be planted any tree or shrub which would or could prevent or hinder the use of the Right of Way Area for the stated purposes.

The Sublessee agrees that the covenants herein contained shall be construed as running with the lands that comprise of Leased Premises, as the servient tenement and the lands stated as benefitting from any Right of Way Area, as the dominant tenement.

**30. MISCELLANEOUS**

30.1 No Partnership – It is understood between the Sublessor and the Sublessee that nothing contained in this Sublease shall be deemed to create any relationship between the Sublessor and the Sublessee other than the relationship of Sublessor and Sublessee.

30.2 Joint and Several Liability – Should the Sublessee comprise two or more persons each of them shall be jointly and severally bound to perform the obligations of the Sublessee hereunder.

30.3 Gender References – References to the Sublessor, the Sublessee or any other party shall be read with such changes in gender as may be appropriate and where appropriate the singular shall mean the plural and vice versa.

30.4 Enurement – This Sublease shall enure to the benefit of and be binding upon the Sublessor, its successors and assigns, and the Sublessee, its heirs, executors, administrators, successors and permitted assigns.

30.5 Time of the Essence – Time is of the essence in this Sublease.

**31. NOTICE**

31.1 Notice – Any notice, demand, consent, objection, or request for consent to be given hereunder shall be given in writing and either delivered or sent by registered mail, postage prepaid, addressed to the persons as follows:

- (a) to the Sublessor, addressed to the Sublessor at the address of the Sublessor set out on page 1 of this Sublease;
- (b) to the Homeowners Corporation, addressed to the Homeowners Corporation at the address of the Homeowners Corporation set out on page 1 of this Sublease;
- (c) to the Sublessee, addressed to the Sublessee at the Leased Premises; and
- (d) to the Minister, addressed to the Minister of Indian Affairs and Northern Development, Suite 600, 1138 Melville Street, Vancouver, British Columbia, V6E 4S3,

or to such other address in British Columbia which the persons may from time to time notify each other in writing. The time of giving or making such notice, demand, consent objection or request for consent shall be when delivered, if delivered, and on the fourth business day after the

day of the mailing thereof, if mailed, provided that if a notice is sent by mail and there is a mail strike, slowdown or other labour dispute between the time of mailing and the actual receipt of the notice, then such notice shall only be effective if delivered or actually received.

**32. NET SUBLEASE**

32.1 Net Sublease – It is agreed by the Sublessee that this Sublease shall be a completely carefree, net sublease to the Sublessor and that the Sublessor shall not be responsible for any costs, charges, expenses or outlays of any nature whatsoever arising from or related to the Leased Premises or the Development and the Sublessee shall pay all, or a portion of all, costs, expenses, fees and other amounts of every nature and kind arising from or relating to the Leased Premises, the Lands and the Development.

**33. APPLICABLE LAW**

33.1 Applicable Law – This Sublease shall be construed and governed by the applicable laws of the Province of British Columbia and the general laws of Canada therein, and the Sublessor and Sublessee agree to attorn to the jurisdiction of the British Columbia courts, which (subject to Part 34) shall have the exclusive jurisdiction to determine any dispute arising out of this Sublease.

**34. ARBITRATION**

34.1 Right to Refer Matters to Arbitration – Notwithstanding the provisions of Part 33, the Sublessor and the Sublessee may agree to resolve any dispute relating to this Sublease pursuant to the provisions of the *Commercial Arbitration Act*, R.S.B.C. 1996, c.55, as amended, re-enacted or replaced from time to time. In the event that a mortgage which is insured by CMHC is registered against the Leased Premises, then a copy of the notice of dispute shall be given to the mortgagee at the same time as it is given to the Sublessor or Sublessee, as the case may be, and if the mortgagee considers that the dispute may affect its mortgage security, the mortgagee shall be given the opportunity to participate in the arbitration proceedings.

**35. ENTIRE AGREEMENT**

35.1 Entire Agreement – This Sublease (together with the Schedules attached hereto and the Bylaws) constitutes the entire agreement between the Sublessor and the Sublessee and may not be modified except by agreement in writing signed by the Sublessor and Sublessee, and consented to by the Minister. Should any provision of this Sublease be illegal or unenforceable, it shall be considered separate and severable from this Sublease, and the remaining provisions and conditions of this Sublease shall remain in force and be binding upon the Sublessor and Sublessee as though the illegal or unenforceable provision had not been included.

**36. REGISTRATION OF SUBLEASE**

36.1 Registration – The Sublessor shall register this Sublease at the Indian Lands Registry in Ottawa pursuant to the provisions of the Indian Act. All costs incurred relating to the registration of this Sublease shall be borne by the Sublessee.

**37.           AMENDMENTS**

37.1           Amendments – The Sublessor and the Sublessee may amend this Sublease, by written agreement, from time to time, and the consent or approval of the Homeowners Corporation to such amendment shall not be required.

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

**OSOYOOS COTTAGES LIMITED PARTNERSHIP,**  
by its Managing General Partner, STELKIA HOMES LTD.

Per: \_\_\_\_\_  
Authorized Signatory

**STELKIA HOMEOWNERS CORPORATION**

Per: \_\_\_\_\_  
Authorized Signatory

**SIGNED, SEALED AND DELIVERED** in the )  
presence of: )  
)  
)  
\_\_\_\_\_)  
Witness )  
)  
\_\_\_\_\_)  
Name )  
)  
)  
\_\_\_\_\_)  
Address )

\_\_\_\_\_  
Sublessee

**SCHEDULE A**  
**PLAN OF DEVELOPMENT**

**SCHEDULE B**

**LEASED PREMISES**

Unit ● within Lot ●, Osoyoos Indian Reserve No. 1, Province of British Columbia, as shown on Plan of Survey ● deposited in the Canada Lands Surveys Records at Ottawa, Ontario.

**AFFIDAVIT OF WITNESS**

I, \_\_\_\_\_, of the City of \_\_\_\_\_, in the Province of British Columbia, make oath and say:

1. I was present and saw the instrument duly signed by \_\_\_\_\_.
2. I know the said \_\_\_\_\_ and believe that he/she is of the full age majority for the Province of British Columbia.
3. I am the subscribing witness to the instrument and I am of the full age of majority for the Province of British Columbia.
4. I verily believe that each person whose signature I witnessed is the party of the same name referred to in the instrument.

**SWORN BEFORE ME** at the City of \_\_\_\_\_ )  
\_\_\_\_\_, in the Province of \_\_\_\_\_ )  
British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_ )  
, 20\_\_\_\_. )  
\_\_\_\_\_)  
\_\_\_\_\_)  
A Commissioner for taking Affidavits for \_\_\_\_\_ )  
British Columbia )

\_\_\_\_\_



**SCHEDULE C**

**PREPAID RENT**

- (a) for the period from the date of this Sublease until the following November 30, \$●;
- (b) for each one year period (December 1 to November 30) thereafter, \$●.