

GD 00314.

1990. Jan. 07.

GROUND LEASE

BETWEEN:

THE CORPORATION OF THE DISTRICT OF WEST  
VANCOUVER

AND:

GATEWAY PACIFIC CONSTRUCTION LTD.

- RE:
- (1) Parcel Identifier 010-070-061  
Lot A  
Blocks 57 to 61  
District Lot 1039  
Plan 8516
  - (2) Parcel Identifier 009-405-593  
Block C  
District Lot 1039  
Plan 10407

INDEX

GROUND LEASE

SECTION

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

Definitions  
Provisions  
Internal Reference

1.01  
1.02  
1.03

ARTICLE 2 - PAYMENT OF RENT AND SECURITY FOR ITS PAYMENT

Rent  
Payments Generally  
Net Lease  
Interest on Amounts in Arrears  
Security for Payment of Rent  
Delay in Development Permit Delays  
Rent Obligations  
Public Process May Delay Rent  
and other Obligations

2.01  
2.02  
2.03  
2.04  
2.05  
2.06  
2.07

ARTICLE 3 - PAYMENT OF TAXES

Payment of Taxes if Lessor  
is Not Exempt Therefrom  
Payment of Taxes if Lessor  
is Exempt Therefrom  
Delinquent Taxes  
Payment for Utility Services  
Business Tax and License Fees

3.01  
3.02  
3.03  
3.04  
3.05

ARTICLE 4 - CONSTRUCTION

Lessee to Construct Buildings  
Substantial Completion of Buildings  
Deadlines for Commencement of  
Construction  
Lessor's Obligation to Construct  
Termination Where Lessee Defaults in  
Commencement of Construction  
Fire and Liability Insurance During  
Construction of Buildings

4.01  
4.02  
4.03  
4.03A  
4.04  
4.05

ARTICLE 5 - USE OF BUILDINGS

Use of Buildings  
Acknowledgment of Noise

5.01  
5.02

ARTICLE 6 - INSURANCE

Insurance  
Deductible Amounts  
Co-insurance Clauses  
Identity of Insured  
Release of Lessor from Liability  
for Insured Loss or Damage  
Payment of Loss Under the Insurance  
Policy Referred to in Section 6.01  
Workers' Compensation Coverage  
Comprehensive General Liability  
Payment of Insurance Premiums  
Copies of Insurance Policies  
Insurance May be Maintained by Lessor

6.01  
6.02  
6.03  
6.04  
6.05  
6.06  
6.07  
6.08  
6.09  
6.10  
6.11

INDEX (cont'd)

SECTION

ARTICLE 7 - REPAIRS AND MAINTENANCE

Lessor Not Obligated to Repair 7.01  
 Repair by the Lessee 7.02  
 Repairs to Buildings by Lessor 7.03  
 Removal of Ice and Snow from Sidewalks 7.04

ARTICLE 8 - DAMAGE OR DESTRUCTION

Rent Not to Abate 8.01  
 Lessee's Obligations When Buildings  
 Damaged or Partially Destroyed 8.02  
 Lessee's Obligations When Buildings  
 Completely or Substantially Destroyed 8.03  
 Replacement, Repair or Reconstruction  
 Under Section 8.02 or 8.03 to be  
 Carried Out in Compliance with  
 Sections 7.02 and 9.01 8.04

ARTICLE 9 - REPLACEMENT, CHANGES, ALTERATIONS  
 AND SUBSTITUTIONS

9.01

ARTICLE 10 - UNAVOIDABLE DELAYS

10.01

ARTICLE 11 - BUILDERS' LIENS

Builders' Liens 11.01  
 Builders' Lien Act Notices 11.02

ARTICLE 12 - INSPECTION AND EXHIBITION BY LESSOR

Inspection by Lessor 12.01  
 Exhibition by Lessor 12.02

ARTICLE 13 - OBSERVANCE OF GOVERNMENTAL REGULATIONS

13.01

ARTICLE 14 - RIGHTS OF LESSOR AND LESSEE

14.01

ARTICLE 15 - INDEMNITY

Breach, Violation or Non-Performance of  
 Covenants by Lessee 15.01  
 Injury, Damage or Loss of Property 15.02  
 Indemnification Survives Termination  
 of Lease 15.03

ARTICLE 16 - SUBLETTING AND ASSIGNING

Subletting by Lessee - Other than by  
 Way of Mortgage 16.01  
 Assignment by Lessee - Other than by  
 Way of Mortgage 16.02

INDEX (cont'd)

SECTION

ARTICLE 17 - MORTGAGE

|  |       |
|--|-------|
| Lessee Shall be Liable for Rent and Taxes Notwithstanding Mortgage | 17.01 |
| Mortgage Subject to Lessor's Rights Under Lease                    | 17.02 |
| Protection of Mortgagee (Tri-Partite Agreements)                   | 17.03 |

ARTICLE 18 - DEFAULT BY LESSEE

|  |       |
|--|-------|
| Re-entry on Certain Defaults by Lessee         | 18.01 |
| Forfeiture on Certain Other Defaults by Lessee | 18.02 |
| Notice to and remedies of Mortgagee            | 18.03 |
| Remedies of Lessor are Cumulative              | 18.04 |
| Waiver by Lessor                               | 18.05 |

ARTICLE 19 - COVENANTS OF LESSOR

|  |       |
|--|-------|
| Covenant Respecting Charges and Encumbrances | 19.01 |
| Covenant Respecting Authority to Lease       | 19.02 |

ARTICLE 20 - ARBITRATION

20.01

ARTICLE 21 - CERTAIN COVENANTS AND AGREEMENTS OF LESSEE

|                             |       |
|-----------------------------|-------|
| Conduct on Demised Premises | 21.01 |
|-----------------------------|-------|

ARTICLE 22 - SURRENDER OF LEASE

22.01

ARTICLE 23 - QUIET ENJOYMENT AND OWNERSHIP OF TENANTS' FIXTURES

|                                |       |
|--------------------------------|-------|
| Covenant for Quiet Enjoyment   | 23.01 |
| Ownership of Tenant's Fixtures | 23.02 |

ARTICLE 24 - OVERHOLDING

24.01

ARTICLE 25 - CONVERSION OF GROUND LEASE UNDER CONDOMINIUM ACT

|   |       |
|---|-------|
| Leasehold Strata Plan                                     | 25.01 |
| Conversion of Ground Lease                                | 25.02 |
| Execution of Model Strata Lot Lease by Strata Corporation | 25.03 |
| Release from Liability                                    | 25.04 |
|   | 25.05 |

ARTICLE 26 - NOTICE

26.01

ARTICLE 27 - MISCELLANEOUS

Statements by Lessor  
Time of the Essence  
Modifications  
Headings  
Enurement  
Partial Surrender  
Subdivision  
Separate Ground Lease  
Clear Title and Vacant Possession

27.01  
27.02  
27.03  
27.04  
27.05  
27.06  
27.07  
27.08  
27.09



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

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

YIELDING AND PAYING TO THE LESSOR in each and every of the years during the Term rent as hereinafter provided.

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

ARTICLE I  
DEFINITIONS & INTERPRETATION

1.01 Definitions

The terms defined in this Section 1.01, for all purposes of this Lease unless otherwise specifically provided herein, have the meanings hereinafter specified, as follows:

- (a) "Additional Rent" means the amounts, if any, payable by the Lessee pursuant to Sections 2.04, 3.01, 3.02, 3.04, 3.05, 6.09, 6.11, 7.03 and 7.04;
  - (b) "Architect" means Howard Yano Architects, or such other architects as the Lessee may appoint from time to time;
  - (c) "Basic Rent" as of any particular time means the net basic rental provided for in this Lease as specified in Article II of this Lease, together with any other and additional amounts which are herein expressed to be added to and made part of Basic Rent, other than Additional Rent;
  - (d) "Buildings" means all structures and buildings constructed upon the Lands or any part thereof by or for the Lessee pursuant to the provisions of this Lease, including, without limitation, hard landscaping, together with all replacements, alterations, additions, changes, substitutions, improvements or repairs thereto and all other improvements from time to time constructed upon or affixed or appurtenant to the Lands;
  - (e) "Building Permit I" means the building permit issued by the District for the construction of Tower I;
  - (f) "Building Permit II" means the building permit issued by the District for the construction of Tower II;
  - (g) "C.P.I." means the consumer price index, all items, for Canada. In the event that the C.P.I. is adjusted from the 1981 base, or the index re-weighted from the 1971 base, it is agreed that it is the percentage rate of change of the index from year to year which shall be operative.
- In the event that Statistics Canada or its successor:
- (i) no longer publishes a consumer price index; or
  - (ii) no longer publishes any consumer price index; or
  - (iii) is no longer operated by the Canadian Government,

then the amount of additional rent as provided for in Article II, if any, shall be determined by agreement between the Parties hereto or, in default of such agreement, at the instance of either party hereto under the Commercial Arbitration Act of British Columbia by a single arbitrator, which arbitrator shall have the power to select the index for the region published by the corporation, firm, governmental agency, or other entity, or to impose any other system that the Arbitrator deems appropriate in order to calculate the amount of additional rent, if any;

- (h) "Commencement of Construction" means that a building permit or permits have been issued to the Lessee by the District for the Buildings and the foundations and footings of the Buildings shall have been commenced as certified to the Lessor by the Architect;
- (i) "Commencement Date" means the 4th day of November, 1988;
- (j) "Common Facility" shall have the same meaning as such expression is given under the Condominium Act;
- (k) "Common Property" shall have the same meaning as such expression is given under the Condominium Act;
- (l) "Condominium Act" means the Condominium Act S.B.C. 1979, Chapter 61, as amended from time to time;
- (m) "Development Permit" means the development permit, if any, and all amendments thereto issued by the District to the Lessee for the purposes of constructing a multi-family residential complex within two high-rise towers, together with ancillary commercial uses;
- (n) "District" means the Corporation of the District of West Vancouver;
- (o) "LC1" has the meaning ascribed to that term in Section 2.05(a);
- (p) "LC2" has the meaning ascribed to that term in Section 2.05(b);
- (q) "LC3" has the meaning ascribed to that term in Section 2.05(c)(i);
- (r) "LC4" has the meaning ascribed to that term in Section 2.05(c)(ii);
- (s) "LC5" has the meaning ascribed to that term in Section 2.05(c)(iii);
- (t) "Lands" means those lands in the District known as:
  - (1) Parcel Identifier 010-070-061  
Lot A  
Blocks 57 to 61  
District Lot 1039  
Plan 8516
  - (2) Parcel Identifier 009-405-593  
Block C  
District Lot 1039  
Plan 10407
- (u) "Leasehold Strata Plan" means a strata plan deposited in the Vancouver Land Title Office pursuant to the Condominium Act in which the land included in the strata plan is subject to this Lease;



- (v) "Letter of Credit" means a "clean", unconditional letter of credit issued by a Canadian chartered bank and in a form and containing such terms as are acceptable to the Landlord. In the event the Tenant is not able to obtain letters of credit for the time periods specified herein, the letters of credit may be for a shorter term provided that:
- (i) the terms of such letters of credit shall be not less than 1 year; and
- (ii) the Tenant shall provide replacement letters of credit at least 30 days prior to their expiry, failing which the Landlord in its absolute discretion, may forthwith tender the same for payment.
- (w) "Mortgage" means a mortgage or mortgages upon or in respect of and specifically charging the leasehold interest of the Lessee in the Lands and the Buildings or any part thereof and includes any debenture or deed of trust and mortgage to secure any bonds or debentures issued thereunder;
- (x) "Mortgagee" means a mortgagee or mortgagees under a Mortgage;
- (y) "Municipal Act" means the Municipal Act, S.B.C. 1979, Chapter 290 as amended from time to time;
- (z) "No. 2 Payment Date" has the meaning ascribed to that term in Section 2.01(b);
- (aa) "No. 3 Payment Date" has the meaning ascribed to that term in Section 2.09(c);
- (bb) "No. 4 Payment Date" has the meaning ascribed to that term in Section 2.01(d);
- (cc) "No. 5 Payment Date" has the meaning ascribed to that term in Section 2.01(e);
- (dd) "Owner" shall have the same meaning as such expression is given under the Condominium Act;
- (ee) "Prime Rate" means the annual percentage rate of interest established from time to time by The Royal Bank of Canada, Main Branch, Vancouver, British Columbia as the base rate that will be used to determine rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by such bank as the prime rate;
- (ff) "Project" means the construction of a multi-family residential complex within 2 high-rise Towers, together with ancillary commercial uses;
- (gg) "Special Resolution" means a special resolution passed by the Strata Corporation in accordance with the provisions of the Condominium Act;
- (hh) "Strata Corporation" means the corporation created by the provisions of the Condominium Act upon deposit of the Leasehold Strata Plan in the Land Title Office;
- (ii) "Strata Lot" means a strata lot shown as such on the Leasehold Strata Plan;
- (jj) "Substantial Completion" means substantial completion as defined in Section 4.02 of this Lease;

- (kk) "Term" means the ninety-nine (99) year period commencing on the Commencement Date and ending at 11:59 p.m. on the day immediately preceding the ninety-ninth anniversary of the Commencement Date;
- (ll) "Tower I" means the building constructed pursuant to Building Permit I";
- (mm) "Tower I Proportionate Share" has the meaning ascribed to that term in Section 2.01(d)(i);
- (nn) "Tower II" means the building constructed pursuant to Building Permit II;
- (oo) "Tower II Proportionate Share" has the meaning ascribed to that term in Section 2.01(e)(ii);
- (pp) "Trustee" means a trust company duly authorized to carry on business in the Province of British Columbia appointed by the Lessor for the purposes of Section 6.06;
- (qq) "Unit Entitlement" shall have the same meaning as such expression is given under the Condominium Act.

1.02 Provisions

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

1.03 Internal Reference

The words "herein", "hereby", "hereunder" and words of similar import refer to this Lease as a whole and not to any particular Article, Section or Subsection hereof.

ARTICLE II  
PAYMENT OF RENT AND SECURITY FOR ITS PAYMENT

2.01 Rent

The Lessee shall yield up and pay unto the Lessor Basic Rent for the Term in the amounts and times as follows:

- (a) the sum of \$800,000 which the Lessor acknowledges having received;
- (b) the sum of \$2,300,000 shall be paid on the earlier of January 4, 1990, or within 10 days of the issuance of Building Permit I (the "No. 2 Payment Date"). In addition, the Lessee shall pay to the Lessor, as additional rent, within 10 days of the date upon which the C.P.I. for the month of the No. 2 Payment Date is published, an amount which is equal to the product obtained by multiplying \$2,300,000 by the fraction, the numerator of which is the C.P.I. for the month of the No. 2 Payment Date and the denominator of which is the C.P.I. for the month of July, 1989 minus the sum of \$2,300,000. PROVIDED HOWEVER such additional rent shall not increase at a rate which is less than 4% nor greater than 6% compounded annually;
- (c) the sum of \$2,900,000 shall be paid upon the earlier of August 1, 1992 or within 10 days of the issuance of Building Permit II (the "No. 3 Payment Date"). In addition, the Lessee shall pay to the Lessor, as additional rent, within 10 days of the date, upon which the C.P.I. for the month of the No. 3 Payment Date is published, an amount which is equal to the product

obtained by multiplying \$2,900,000 by the fraction, the numerator of which is the C.P.I. for the month of the No. 3 Payment Date and the denominator of which is the C.P.I. for the month of July, 1989, minus the sum of \$2,900,000. PROVIDED HOWEVER such additional rent shall not increase at a rate which is less than 4% nor greater than 6% compounded annually;

(d) subject to the conditions set out below, the sum of \$1,837,500 shall be paid on January 1, 1993 (hereinafter called the "No. 4 Payment Date"). In addition, the Lessee shall pay to the Lessor, as additional rent, within 10 days of the date upon which the C.P.I. for the month of the No. 4 Payment Date is published, an amount which is equal to the product obtained by multiplying \$1,837,500 by the fraction, the numerator of which is the C.P.I. for the month of the No. 4 Payment Date and the denominator of which is the C.P.I. for the month of July, 1989, minus the sum of \$1,837,500. PROVIDED HOWEVER such additional rent shall not increase at a rate which is less than 4% nor greater than 6% compounded annually and provided further that in the event of early partial payments on account of Basic Rent due to sales of leasehold strata lots as provided for below, the total additional rent payable as a consequence of the increase in C.P.I. shall from the date of each early payment be calculated on \$1,837,500 less the amount of such early payment such that the additional rent payment based on the increase in C.P.I. shall only be payable on the portion of the \$1,837,500 from time to time unpaid. In the event a leasehold strata plan is filed for Tower I and the Lessee wishes to assign its interest in any leasehold strata lot thereby created prior to full payment of the Basic Rent payable pursuant to this Section 2.01(d), the Lessee shall pay to the Lessor, as a condition of the Lessor's consent to such assignment and on account of the Lessee's rent obligations under this Section 2.01(d), the following:

(i) on account of the Basic Rent payment of \$1,837,500 an amount equal to the product obtained by multiplying \$1,837,500 by the fraction ("Tower I Proportionate Share"), the numerator of which is in each instance the unit entitlement of the leasehold strata lot being assigned and the denominator of which is the aggregate unit entitlement of Tower I; plus

(ii) on account of the additional rent due to an increase in the C.P.I. an amount equal to the product obtained by multiplying \$1,837,500 by the Tower I Proportionate Share and multiplying this product by the fraction, the numerator of which is the C.P.I. for the month of such early payment and the denominator of which is the C.P.I. for the month of July, 1989, and deducting therefrom the sum of \$1,837,500, PROVIDED HOWEVER such additional rent shall not increase at a rate which is less than 4% nor greater than 6% compounded annually. In the event the C.P.I. for the month of such assignment is not known at the time of such assignment, the parties shall use as the basis of their calculation and make payment using the C.P.I. for the month for which such statistics were last published and shall re-adjust the amount owing when the C.P.I. for the actual month of the assignment is first known;

(e) subject to the conditions set out below, the sum of \$1,837,500 shall be paid on January 1, 1995 ("No. 5 Payment Date"). In addition, the Lessee shall pay to

the Lessor, as additional rent, within 10 days of the date upon which the C.P.I. for the month of the No. 5 Payment Date is published, an amount which is equal to the product obtained by multiplying \$1,837,500 by the fraction, the numerator of which is the C.P.I. for the month of the No. 5 Payment Date and the denominator of which is the C.P.I. for the month of July, 1989, minus the sum of \$1,837,500. PROVIDED HOWEVER such additional rent shall not increase at a rate which is less than 4% nor greater than 6% compounded annually and provided further that in the event of early partial payments on account of Basic Rent due to sales of leasehold strata lots as provided for below, the total additional rent payable as a consequence of the increase in C.P.I. from the date of each early payment shall be calculated on \$1,837,500 less the amount of such early payment such that the additional rent payment based on the increase in C.P.I. shall only be payable on the portion of the \$1,837,500 from time to time unpaid. In the event a leasehold strata plan is filed for Tower II and the Lessee wishes to assign its interest in any leasehold strata lot thereby created, the Lessee shall pay to the Lessor as a condition of the Lessor's consent to such assignment and on account of the Lessee's rent obligations under this Section 2.01(e), the following:

(i) on account of the Basic Rent payment of \$1,837,500 an amount equal to the product obtained by multiplying \$1,837,500 by the fraction ("Tower II Proportionate Share"), the numerator of which is in each instance the unit entitlement of the leasehold strata lot being assigned and the denominator of which is the aggregate unit entitlement of Tower II; plus

(ii) on account of the additional rent due to an increase in the C.P.I. an amount equal to the product obtained by multiplying \$1,837,500 by the Tower II Proportionate Share and multiplying this product by the fraction, the numerator of which is the C.P.I. for the month of such early payment and the denominator of which is the C.P.I. for the month of July, 1989, and deducting therefrom the sum of \$1,837,500; PROVIDED HOWEVER such additional rent shall not increase at a rate which is less than 4% nor greater than 6% compounded annually. In the event the C.P.I. for the month of such assignment is not known at the time of such assignment, the parties shall use as the basis of their calculation and make payment using the C.P.I. for the month for which such statistics were last published and shall re-adjust the amount owing when the C.P.I. for the actual month of the assignment is first known;

(f) commencing January 1, 1993 the sum of \$125,000 per annum plus, commencing January 1, 1998, an amount which is equal to the product obtained by multiplying \$125,000 by a fraction, the numerator of which is the C.P.I. for the month of January in each successive year and the denominator of which is the C.P.I. for January 1998, minus the sum of \$125,000. PROVIDED HOWEVER such additional rent shall not increase at a rate which is less than 4% nor greater than 6% compounded annually. This additional rent shall be paid in equal monthly instalments on the first day of each month. If the term, should end on any other day than the last day of a month the rent for the fraction of the month shall be calculated on a per diem basis at a rate per day equal to 1/365ths of the annual rent paid in the last year of the term of the Lease. This rental obligation shall become an obligation of the Strata Corporations who

shall be responsible for its collection from the strata lot lessees. The Lessee shall, at any time, be entitled to prepay the rent due under this Section 2.01(f) upon payment of the then net present value of the annual rental of \$125,000 discounted at 5%. The discount rate has been determined by using an interest rate of 9% per annum and deducted therefrom the minimum C.P.I. increase of 4%.

## 2.02 Payments Generally

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

- (a) paid to the Lessor by the Lessee in Canadian currency;
- (b) made when due hereunder, without prior demand therefor and without any setoff, compensation or deduction whatsoever at the address set out above or such other place as the Lessor may designate from time to time to the Lessee;
- (c) deemed to be Basic Rent, in partial consideration for which this Lease has been entered into, and shall be payable and recoverable as rent, such that the Lessor shall have all rights and remedies against the Lessee for default in making any such payment which may not be expressly designated as rent as the Lessor has for default in payment of rent.

## 2.03 Net Lease

Unless otherwise expressly stipulated herein to the contrary, all rent required to be paid by the Lessee hereunder shall be paid without any deduction, abatement or set-off whatsoever, it being the intention of this Lease that to the extent provided for herein all expenses, costs, payments and outgoings incurred in respect of the Lands, the Buildings and any other improvements of the Lands or for any other matter or thing affecting the Lands, shall be borne by the Lessee, that the rent herein provided shall be absolutely net to the Lessor and free of all abatements, set-off or deduction of real property taxes, charges, rates, assessments, expenses, costs, payments or outgoings of every nature arising from or related to the Lands, the Buildings or any other improvements on the Lands and that the Lessee shall pay or cause to be paid all such taxes, charges, rates, assessments, expenses, costs, payments and outgoings.

## 2.04 Interest on Amounts in Arrears

When the Basic Rent, Additional Rent or any other amounts payable hereunder by the Lessee to the Lessor shall be in arrears, such amounts shall bear interest, including interest on overdue interest, at the Prime Rate plus three per centum (3%) per annum calculated monthly not in advance from the date due until paid, irrespective of whether or not the Lessor demanded payment. The Lessor shall have all the remedies for the collection of such interest, if unpaid after demand, as in the case of rent in arrears, but this stipulation for interest shall not prejudice or affect any other remedy of the Lessor under this Lease. Provided however, the provisions of this Section 2.04 shall not apply to the Lessee's failure to pay taxes under Sections 3.01 and 3.02 when due.

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

**2.05**      Security for Payment of Rent

As security for the due and punctual payment of the rents to be paid to the Lessor, the Lessee agrees to provide the following Letters of Credit to the Lessor:

- (a)    A Letter of Credit ("LC1") in the amount of \$500,000 which was surrendered by the Lessor to the Lessee upon payment of the rents due pursuant to Section 2.01(a);
- (b)    A Letter of Credit ("LC2") which the Lessor acknowledges having received in the amount of \$500,000 expiring on April 11, 1990. LC2 shall be surrendered by the Lessor to the Lessee upon payment of the Basic Rent due pursuant to Section 2.01(b);
- (c)    on the earlier of January 4, 1990 or the issuance of Building Permit I:
  - (i)    a Letter of Credit ("LC3") in the amount of \$2,900,000 expiring August 10, 1992;
  - (ii)   a Letter of Credit ("LC4") in the amount of \$1,837,500 expiring January 10th, 1993;
  - (iii)  a Letter of Credit ("LC5") in the amount of \$1,837,500 expiring January 10, 1995.

LC3 shall be surrendered by the Lessor to the Lessee upon payment of the Basic Rent due pursuant to Section 2.01(c).

LC4 shall be surrendered by the Lessor to the Lessee upon payment of all of the Basic Rent due pursuant to Section 2.01(d).

LC5 shall be surrendered by the Lessor to the Lessee upon payment of all of the Basic Rent due pursuant to Section 2.01(e).

When each of LC2, LC3, LC4 and LC5 are to be surrendered (as provided above) the Lessee shall, as a condition of such surrender, provide the Lessor with a Letter of Credit (the "CPI Letter of Credit") representing the estimated amount of additional rent payable under the provisions of the applicable subsection of Section 2.01 calculated in the manner set out in that subsection except that the numerator shall be the CPI for the most recent month for which such figures are available. Each CPI Letter of Credit shall be surrendered once the actual additional rent with respect to the increases in the CPI under the applicable subsection has been determined and paid.

LC4 and LC5 shall provide for reduction in the event of and in proportion to early partial payments on account of rent due to sales of leasehold strata lots as provided for in section 2.01(d) and Section 2.01(e) respectively.

**2.06**      Delay in Development Permit Delays Rent Obligations

If the Development Permit for Tower I has not been issued on or before January 3, 1990 then the No. 2 Payment Date, the No. 3 Payment Date, the No. 4 Payment Date, the No. 5 Payment Date, the dates for the commencement of annual Basic Rent and the payment of the increase in additional rent due to an increase in C.P.I. and dates for providing LC2, LC3, LC4, LC5 (and their respective expiry dates) as provided for in Section 2.05 shall all be extended by the period of time between January 3, 1990 and the date the Development Permit for Tower I is issued; Provided that such extension shall be limited to a maximum of 90 days.

**2.07**      Public Process May Delay Rent and other Obligations

In addition to the provisions of Section 2.06 if the Lessee is delayed in obtaining any approval under Section 4.01, the Development Permit, Building Permit I or Building Permit II as a result of:

- (a) changes to the Lessee's drawings, elevations, specifications, locations of the Buildings on the Lands, exterior decorations or design required by the Lessor as a result of any public hearing, public information meeting or other public input required by the Landlord; or
- (b) such approval, Development Permit, Building Permit I or Building Permit II being challenged by legal proceedings,

then, for each day the Lessee is so delayed, the respective dates for payment of rent and provision and expiry of the Letters of Credit and performance by the Lessee of its obligations under this Lease shall be extended for one day and no additional rent on account of an increase in the C.P.I. shall accrue during the period of delay. The Lessor and Lessee shall each use all reasonable efforts to minimize the period of any delay.

ARTICLE III  
PAYMENT OF TAXES

3.01 Payment of Taxes if Lessor is Not Exempt Therefrom

Save as otherwise provided in Section 3.02, the Lessee will in each and every year during the Term not later than the day immediately preceding the date or dates on which real-property taxes and other charges imposed upon real property within the District become due and payable whether monthly, quarterly, twice-yearly or otherwise, pay and discharge or cause to be paid and discharged all taxes, rates, duties, charges and assessments, including school taxes, local improvement rates and other charges which now are or shall or may be levied, rated, charged or assessed against the Lands, the Buildings, all other structures, all machinery, equipment, facilities and other property of any nature whatsoever thereon and therein, whether such taxes, rates, duties, charges and assessments are charged by any municipal, parliamentary, legislative, regional, school or other authority during the Term and will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such taxes, rates, duties, charges and assessments; and any such losses, costs, charges and expenses suffered by the Lessor may be collected by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears. The Lessee further covenants and agrees that during the Term, it will deliver upon request to the Lessor for inspection receipts for payments of all taxes, rates, duties, charges, assessments, including school taxes, local improvement rates and other charges in respect of the Lands, the Buildings, all other structures, all machinery, equipment, facilities and other property of any nature whatsoever thereon and therein which were due and payable during the Term within the 14 days following receipt by the Lessee of each of such receipts for payment. The Lessor shall, not later than 14 days following receipt of any assessment notices delivered to the Lessor by any taxing authority, relating to the Lands, the Buildings, or any other structures, any machinery, equipment, facilities and other property of any nature whatsoever thereon and therein, forward a copy thereof to the Lessee. The Lessee shall have the right from time to time to appeal any assessment of the Lands or the Building or any other tax, rate, duty, charge or amount referred to in this Section 3.01 provided that such appeal shall be at the sole cost and expense of the Lessee.

The Lessee shall be responsible for the payments referred to in this Section 3.01 from July 4, 1989.

3.02 Payment of Taxes if Lessor is Exempt Therefrom

The Lessee covenants and agrees with the Lessor that if during the Term, the Lands, the Buildings, all other structures, all machinery, equipment and facilities and other property of any



nature whatsoever, thereon and therein, are by the provisions of the Municipal Act, or any other municipal, parliamentary, legislative or regional enactment exempt from taxation in whole or in part by reason of the Lessor's ownership of the Lands and they would otherwise have been subject to taxation, then the Lessee shall in each and every year during the Term that such exemption occurs pay to the Lessor as Additional Rent in like manner and time as taxes are to be paid pursuant to Section 3.01, an amount equal to the amount that but for such exemption would have been paid by the Lessee pursuant to Section 3.01 for taxes, rates, duties, charges, assessments, including school taxes and local improvement rates, and other charges. For such purpose in each year during the Term the following provisions shall apply:

(a) if the District or any municipal, parliamentary, legislative, regional or other authority having in whole authority so to do passes a by-law or by-laws in advance of the passing of a rating by-law or preparation of the real-property tax roll for the current year providing for that the payment of real-property taxes and other charges imposed or to be imposed upon real property within the District by monthly, quarterly or twice-yearly instalments and providing that the amounts of such instalments shall be a percentage of the amount of real-property taxes payable on the real-property roll for the immediately preceding year, the Lessor shall deliver to the Lessee an advance tax statement or statements of the amount or amounts determined in accordance with such by-law or by-laws from time to time in respect of the Lands, the Buildings and all other structures, all machinery and equipment and facilities and other property of any nature whatsoever thereon and therein; and

(b) after the passing of a rating by-law or rating by-laws (as the case may be) by the District or any municipal, parliamentary, legislative, regional or other authority having the authority so to do, establishing the rate or rates to be levied on real property within the District, for the current year, the Lessor shall determine the Additional Rent by applying the rate or rates of levy established by such rating by-law or rating by-laws (as the case may be) to all, or such portion of the assessed value of the Lands, the Buildings 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 District in like case, and the Lessor shall deliver to the Lessee a statement of the amount payable under this Section 3.02 after deducting all real-property taxes and other charges paid in advance for the current year.

The Lessee shall have the right from time to time to appeal any assessment of the Lands or the Buildings or any other tax, rate, duty, charge or amount referred to in this Section 3.02, provided that such appeal shall be at the sole cost and expense of the Lessee.

The Lessee shall be responsible for the payments referred to in this Section 3.02 from July 4, 1989.

### 3.03 Delinquent Taxes

If the Lessee shall in any year during the Term fail to pay the taxes under Sections 3.01 and 3.02 when due, the Lessee shall thereupon pay interest at the percentage rate or rates established pursuant to the provisions of the Municipal Act, or any other taxing authority, for unpaid real property taxes in the District, and in addition thereto, if such be the case, the interest fixed by the Municipal Act, or any other taxing authority, for delinquent taxes, or taxes in arrears, but so that the Lessee shall only be obligated to pay such interest as would be payable by other taxpayers in the District in like case.



### 3.04 Payment for Utility Services

The Lessee covenants with the Lessor to pay for or cause to be paid when due all charges for gas, electricity, light, heat, power, telephone, water and other utilities and services used in or supplied to the Lands and the Buildings throughout the Term and will indemnify and keep indemnified the Lessor from and against payment of all losses, costs, charges and expenses occasioned by or arising from any and all such charges, and any such loss, costs, charges and expenses which relate to such charges suffered by the Lessor may be collected by the Lessor as Additional Rent with all rights of distress and otherwise as reserved to the Lessor in respect of rent in arrears.

### 3.05 Business Tax and License Fees

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

## ARTICLE IV CONSTRUCTION

### 4.01 Lessee to Construct Buildings

The Lessee shall construct the Buildings, together with other facilities ancillary thereto and connected therewith on the Lands in substantial accordance with the drawings, elevations, specifications (including materials to be used), location on the Lands and exterior decoration and design all upon which the issuance of Building Permit I and Building Permit II are based, and in compliance with the requirements of the Development Permit, and all such drawings, elevations, specifications, location on the Lands and exterior decoration and design must first receive the approval of the Lessor before being submitted to the District as aforesaid, and, without limitation, all drawings, plans, specifications, location on the Lands and exterior decoration and design which affect the exterior decoration, design or appearance of the Buildings or the appearance of the Lands must first be approved by the Lessor. The Lessor shall not unreasonably withhold or delay its approval under this Section 4.01, shall respond to any request for approval as quickly as reasonably possible and shall, if the Lessor is withholding its approval in whole or in part, indicate in writing the reasons for the withholding of its approval.

Any changes to the drawings, specifications, location, exterior decoration and design aforesaid which require that the Lessee make application to amend the Development Permit may not be made without the Lessor's prior approval and any changes which may affect the exterior decoration, design or appearance of the Buildings or the appearance of the Lands must first be approved by the Lessor.

#### 4.02 Substantial Completion of Buildings

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

- (a) the Buildings substantially conform in all material respects to the applicable plans, specifications and supporting documents submitted to and accepted by the District upon which the issuance by the District of the Development Permit and Building Permit I and Building Permit II; and
- (b) all building by-laws and regulations of the District have been complied with by the Lessee save and except by-laws and regulations of the District governing work of a minor or inconsequential nature or work permitted by the District to be completed after certification of Substantial Completion and save and except issuance of the unconditional occupancy permit.

Substantial Completion may be in respect of portions of the Buildings.

#### 4.03 Deadlines for Commencement of Construction

The Lessee covenants and agrees with the Lessor that, subject to Sections 2.07, 10.01 and 18.03 the Lessee shall make application for Building Permit I prior to July 4, 1990 (PROVIDED HOWEVER that if the Development Permit for Tower I has not been issued on or before January 3rd, 1990 this date shall be extended by the period of time between January 3, 1990 and the date the Development Permit for Tower I is issued; PROVIDED THAT such extension shall be limited to a maximum of 90 days) and that Commencement of Construction of Tower I shall take place within 12 months from the date of issuance of Building Permit I (or such later date as the Lessor may approve in writing). The Lessee shall diligently prosecute the construction thereof, subject only to Section 2.07 and any extension or extensions for unavoidable delays granted pursuant to Sections 10.01 and 18.03.

#### 4.03A Lessor's Obligation to Construct

The Lessor shall, at the Lessor's cost, provide or cause to be provided:

- (a) water and sewer services to the perimeter of the Lands. The water and sewer services shall be of a standard adequate for the Project and shall be installed in accordance with the Lessee's construction scheduling requirements; and
- (b) access for cars to the Lands via an underpass under Marine Drive. The location of the underpass shall be as may be required by the Province of British Columbia, but the Lessor shall use its reasonable efforts to locate the underpass to meet the Lessee's design requirements. The underpass will allow for 2-way traffic, be built to current District standards and have a clearance of not less than 7 feet. Construction of the underpass will be completed prior to Substantial Completion of Tower I.

#### 4.04 Termination Where Lessee Defaults in Commencement of Construction

- (a) If Commencement of Construction of the Buildings does not occur by the date set forth in Section 4.03, the Lessor shall have the right and option to terminate this Lease and provisions of Section 18.01 shall apply.

(b) In the event of a dispute between the Lessor and the Lessee as to whether or not the Lessor is entitled to terminate this Lease pursuant to the provisions of this Section 4.04 the Lessor and the Lessee agree to submit such dispute to arbitration in accordance with the provisions of Article XX.

4.05 Fire and Liability Insurance During Construction of Building

(a) The Lessee shall effect or shall cause its contractor or contractors to effect prior to the Commencement of Construction of the Buildings, or any of them, and shall maintain and keep in force until the insurance required under Article VI shall have been effected, insurance:

(i) protecting both the Lessee and the Lessor and the Lessor's servants and agents without any rights of cross claim or subrogation against the Lessor against claims for personal injury, death or property damage or other third party or public liability claims arising from any accident or occurrence upon, in or about the Lands and from any cause, including the risks occasioned by the construction of the Buildings, and to an amount reasonably satisfactory to the Lessor for any personal injury, death, property or other claims in respect of any one accident or occurrence; and

(ii) protecting both the Lessee and the Lessor and the Lessor's servants and agents from loss or damage (without any rights of cross claim or subrogation against the Lessor) to the Buildings and all fixtures, equipment, improvements and building materials on the Lands from time to time both during and after construction (but which may be by policies effected from time to time covering the risk during different phases of construction of the Buildings) against fire, earthquake and all other perils from time to time customarily included in the usual all risks builders' risk form of policy applicable to similar properties during construction and effected in the Province of British Columbia by prudent owners, and such other perils as the Lessor may reasonably require to be insured against to the full insurable value thereof at all times and in any event in an amount sufficient to prevent the Lessor or the Lessee being deemed co-insurer.

(b) The proceeds of insurance which may become payable under a policy of insurance effected pursuant to this Section 4.05 shall be payable to the Mortgagee or to the Trustee if there is no Mortgagee and shall be available to finance repair and reconstruction.

(c) All the provisions of Article VI respecting insurance which are of general application shall apply to the insurance during construction of the Buildings required by this Section 4.05.

ARTICLE V  
USE OF BUILDINGS

5.01 Use of Buildings

The Lessee covenants and agrees with the Lessor that neither the Lands nor the Buildings nor any part of the Lands or the Buildings shall be used for any purposes except as are permitted by the applicable zoning by-laws, and any and all subsequent amendments thereto and any development permits,

building permits and other permits issued in respect of the Lands and Buildings from time to time pursuant to the Municipal Act, or any other statutory authority or any by-laws, resolutions or regulations of the District.

**5.02 Acknowledgement of Noise**

The Lessee acknowledges that the Lands and the Buildings may receive considerable noise from nearby roads and bridges and that the Buildings may not be suitable for people sensitive to noise.

**ARTICLE VI  
INSURANCE**

**6.01 Insurance**

At all times during the Term immediately following the Substantial Completion of Construction of the Buildings, the Lessee shall, at no expense to the Lessor, insure and keep insured or cause to be insured the Buildings in one or more companies entitled to do business in the Province of British Columbia against:

- (a) loss or damage by fire and other perils now or hereafter from time to time embraced by or defined in the commercial building form of insurance coverage applicable to similar properties as the Lands and the Buildings and effected in the Province of British Columbia by prudent owners from time to time during the Term including, without restricting the generality of the foregoing, the hazards of lightning, earthquake, explosion, wind storm, cyclone, tornado, hail, riot, civil commotion, malicious damage, aircraft, smoke and vehicle damage to the extent that insurance against such risk or perils, or any of them, may be obtained in an amount equal to the full replacement value thereof.
- (b) loss or damage in respect of all boilers and such other pressure vessels, such insurance shall cover loss or damage caused by rupture of steam pipes.

**6.02 Deductible Amounts**

Any of the policies of insurance referred to in Section 4.05 or 6.01 hereof may, with the approval of the Lessor, which approval shall not be unreasonably withheld, provide that the amount payable in the event of any loss shall be reduced by a deductible amount, such amount to be designated by the Lessee and approved by the Lessor, such approval not to be unreasonably withheld, and the Lessee shall be a co-insurer to the extent of the amount so deducted from the insurance monies paid in the event of any loss, and the said amount shall, for the purpose of Section 6.06 hereof, be included as part of the insurance monies payable and paid.

**6.03 Co-insurance Clauses**

If any of the policies of insurance referred to in Section 4.05 and 6.01 hereof shall contain any co-insurance clauses, the Lessee shall maintain at all times a sufficient amount of insurance to meet the requirements of such co-insurance clause so as to prevent the Lessor or the Lessee from becoming a co-insurer under the terms of such policy or policies and to permit full recovery in the event of loss.

**6.04 Identity of Insured**

Any and all policies of insurance referred to in Section 4.05 and 6.01 hereof shall be written in the name of the Lessee

and the Lessor as the insureds with loss payable to the Lessor, the Lessee and the Mortgagee, if any, as their respective interests may appear. Each policy of insurance referred to in Section 4.05 and 6.01 hereof shall contain a provision or shall bear an endorsement that the insurer will not cancel such policy without first giving the Lessor at least thirty (30) days notice in writing of its intention to cancel.

**6.05 Release of Lessor from Liability for Insured Loss or Damage**

The Lessee hereby releases the Lessor, its servants, agents, successors and assigns, from any and all liability for loss or damage caused by any of the perils against which the Lessee shall have insured or pursuant to the terms of this Lease is obligated to insure the Buildings, or any part or parts thereof, and the Lessee hereby covenants to indemnify and save harmless the Lessor, its servants, agents, successors and assigns from and against all manner of actions, causes of action, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to such insured loss or damage.

**6.06 Payment of Loss Under the Insurance Policy Referred to in Section 6.01**

- (a) The insurance monies payable under any or all of the policies of insurance referred to in Section 6.01 or 6.11 hereof, shall, notwithstanding the terms of the policy or policies, be paid to the order of the Mortgagee or to the order of the Trustee if there is no Mortgagee.
- (b) Subject to Article VIII the Lessor and the Lessee agree that the Mortgagee or Trustee (as the case may be) shall use such insurance monies for the restoration, reconstruction or replacement of the loss or damage in respect of which such insurance monies are payable hereunder against certificates of the Architect engaged by the Lessee or such other person as the Lessor and the Lessee may agree upon who is in charge of such restoration, reconstruction or replacement. Should the Lessee fail to effect the restoration, reconstruction or replacement of the loss or damage in respect of which the insurance monies are payable, without unreasonable delay, the Lessor shall be entitled to effect such restoration, reconstruction or replacement and the Mortgagee or Trustee to whom such insurance monies are payable shall pay or cause to be paid to the Lessor such insurance monies in the same manner the Mortgagee or Trustee (as the case may be) would have done had the Lessee effected such restoration, reconstruction or replacement.

**6.07 Workers' Compensation Coverage**

At all times during the Term, the Lessee shall require as a condition of any agreement made with respect to construction of the Buildings on the Lands, whether with contractors, materialmen or otherwise, and they shall require of their workmen and subcontractors, that there be full workers' compensation coverage in respect of all workmen, employees, servants and others engaged in or upon any work, non-payment of which would create a lien on the Lands or the Buildings.

**6.08 Comprehensive General Liability**

At all times during the Term, the Lessee shall at the expense of the Lessee, maintain in one or more companies duly authorized to carry on business within the Province of British Columbia, comprehensive general liability insurance against claims for personal injury, death or property damage or loss arising out of the use and occupation of the Lands, indemnifying

and protecting the Lessor, its servants and agents and the Lessee to limits approved by the Lessor from time to time, such approval not to be unreasonably withheld.

**6.09** Payment of Insurance Premiums

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

**6.10** Copies of Insurance Policies

The Lessee shall deliver or cause to be delivered to the Lessor certified copies of all policies of insurance referred to in this Article VI and obtained and maintained by the Lessee hereunder, accompanied by evidence satisfactory to the Lessor that the premiums thereon have been paid.

**6.11** Insurance May be Maintained by Lessor

The Lessor and the Lessee agree that should the Lessee at any time during the Term fail to insure or keep insured the Buildings against loss or damage by fire and other perils as required under Section 6.01, or fail to maintain insurance against claims for personal injury, death or property damage or loss as required under Section 6.08, then in any of such events, the Lessor, although not obliged to do so, may obtain and maintain such insurance in such amount or amounts with such deductible amounts and for such period or periods of time as the Lessor deems advisable; and the Lessee shall pay to the Lessor as Additional Rent upon the Lessor obtaining any of such insurance and thereafter annually during the Term within thirty (30) days after receipt of any invoice from the Lessor such amount as, at the rates charged by the insurance companies with whom the Lessor has placed such insurance will pay all premiums therefor. The Lessor shall submit to the Lessee annually a statement of the amount or amounts payable by the Lessee under this Section 6.11 as the cost of such insurance for the next ensuing year and upon receipt of payment therefor shall apply the same on account of the premiums of such insurance with the loss, if any, thereunder payable to the Lessor, the Lessee and any Mortgagee as their interests may appear.

ARTICLE VII  
REPAIRS AND MAINTENANCE

**7.01** Lessor Not Obligated to Repair

The Lessor shall not be obliged to furnish any services or facilities or to make repairs or alterations in or to the Lands or the Buildings, the Lessee hereby assuming the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Lands and the Buildings.

**7.02** Repair by the Lessee

The Lessee at the Lessee's cost and expense shall during the Term, put and keep in good order and condition or shall cause to be put and kept in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the foundation or structure of the Buildings) the Lands and the Buildings, and the appurtenances and equipment thereof, both inside and outside, including, but not limited to fixtures, walls, foundations, roofs, vaults, elevators, if any, and similar devices, heating and air conditioning equipment, sidewalks,



landscaping, yards and other like areas, water and sewer mains and connections, water, steam, gas and electric pipes and conduits, and all other fixtures on the Lands and the Buildings and machinery and equipment used or required in the operation thereof, whether or not enumerated herein, and shall, in the same manner and to the same extent as a prudent owner, make any and all necessary repairs, replacements, alterations, additions, changes, substitutions and improvements, ordinary or extraordinary, foreseen or unforeseen, structural or otherwise, and keep the buildings and aforesaid fixtures, appurtenances and equipment fully usable for all the purposes for which the Buildings were erected and constructed and the aforesaid fixtures, appurtenances and equipment were supplied and installed. Such repairs shall be in all respects to a standard at least substantially equal in quality of material and workmanship to the original work and material in the Buildings and aforesaid fixtures, appurtenances and equipment.

The Lessee shall not commit or suffer waste or injury to the Lands or the Buildings or any part thereof (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the foundation or structure of the Buildings) and shall not use or occupy or permit to be used or occupied the Lands or the Buildings or any part thereof for any illegal or unlawful purpose or in any manner which will result in the cancellation of any insurance, or in the refusal of any insurers generally to issue any insurance as requested. The Lessee shall not injure or disfigure the Lands or the Buildings or permit the same to be injured or disfigured in any way; and at the expiration or other termination of this Lease, the Lessee shall, except as otherwise expressly provided herein, surrender and deliver up the Lands with the Buildings, and the aforesaid fixtures, appurtenances and equipment thereof, or any replacements thereof or substitution therefor, in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the foundation or structure of the Buildings). The Lessee accepts the Lands "as is" knowing the condition thereof, and agreeing that the Lessor has made no representation, warranty or agreement with respect thereto, except as otherwise expressly provided herein.

#### 7.03 Repair to Buildings by Lessor

The Lessee covenants and agrees with the Lessor that if the Lessee does not put and keep in good order and condition or cause to be put and kept in good order and condition or wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the foundation or structure of the Buildings) the equipment thereof, both inside and outside, all as more particularly required by the provisions of Section 7.02, the Lessor through its agents, servants, contractors and subcontractors although not obliged to do so, may enter upon those parts of the Lands and the Buildings required for the purpose of making the necessary repairs required to put the Lands, Buildings, fixtures, appurtenances and equipment in good order and condition (reasonable wear and tear excepted so long as the reasonable wear and tear does not unreasonably affect the exterior appearance of the Buildings or the foundation or structure of the Buildings); provided that the Lessor will make such repairs, only after giving the Lessee sixty (60) days written notice of its intention so to do, except in the case of an emergency. Any amount paid by the Lessor in making such repairs, to the Lands and Buildings or any part or parts thereof, together with all costs and expenses of the Lessor shall be reimbursed to the Lessor by the Lessee on demand and may be recovered by the Lessor as Additional Rent.

**7.04 Removal of Ice and Snow from Sidewalks**

The Lessee covenants and agrees with the Lessor that if the Lessee at any time during the Term fails to keep the public sidewalks adjacent to the Lands reasonably clean from ice and snow during the times and to the extent required of an owner under the provisions of the applicable by-laws of the District, the Lessor through its agents, servants, contractors and subcontractors may remove such ice and snow and the Lessor shall not be required to give the Lessee any notice of its intention so to do. Any costs and expenses incurred by the Lessor in removing such ice and snow shall be reimbursed to the Lessor by the Lessee on demand and may be recovered by the Lessor as Additional Rent.

**ARTICLE VIII  
DAMAGE OR DESTRUCTION**

**8.01 Rent Not to Abate**

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

**8.02 Lessee's Obligations When Buildings Damaged or Partially Destroyed**

The Lessee covenants and agrees with the Lessor that in the event of damage to or partial destruction of the Buildings, the Lessee shall either (a) replace any part of the Buildings destroyed with a new structure in accordance with any agreement which may be made by the Lessee with the Lessor, or (b) repair or replace such damage or destruction, in the absence of any such agreement.

**8.03 Lessee's Obligations When Buildings Completely or Substantially Destroyed**

The Lessee covenants and agrees with the Lessor that in the event of complete or substantially complete destruction of the Buildings the Lessee, subject to the District's by-laws governing development on the Lands at such time, shall either (a) reconstruct or replace the Buildings, with a new structure or structures in accordance with any agreement which may be made by the Lessee with the Lessor, or (b) in the absence of any such agreement, replace the Buildings with a new structure or structures comparable to the structure or structures being replaced.

**8.04 Replacement, Repair or Reconstruction Under Section 8.02 or 8.03 to be Carried Out in Compliance With Sections 7.02 and 9.01**

Any replacement, repair or reconstruction of the Buildings or any part thereof pursuant to the provisions of Section 8.02 or 8.03 hereof shall be made or done in compliance with the provisions of Sections 7.02 and 9.01 hereof.

**ARTICLE IX  
REPLACEMENT, CHANGES, ALTERATIONS AND SUBSTITUTIONS**

9.01 The Lessee shall not make or permit to be made any changes, alterations, replacements, substitutions or additions affecting the structure of the Buildings or the exterior appearance of the Buildings involving an estimated cost of more than fifty thousand dollars (\$50,000) without the written approval of the Lessor thereto, which approval the Lessor shall not withhold unreasonably. No changes, alterations,



replacements, substitutions or additions shall be undertaken until the Lessee shall have submitted or caused to be submitted to the Lessor drawings, elevations (where applicable), specifications (including the materials to be used), locations (where applicable) and exterior decoration and design of the proposed changes, alterations, replacements, substitutions or additions and until the same have been approved in writing by the Lessor, which approval the Lessor agrees not to unreasonably withhold.

The Lessee covenants and agrees with the Lessor that subject to Article X, all changes, alterations, replacements, substitutions and additions undertaken by or for the Lessee once begun shall be prosecuted with due diligence to completion.

#### ARTICLE X UNAVOIDABLE DELAYS

10.01 If, by reason of strike, lock-out or other labour dispute, material or labour shortage not within the control of the Lessee, stop work order issued by any court or tribunal of competent jurisdiction, provided that such order was not issued as the result of any act or fault of the Lessee or of anyone employed by it directly or indirectly, fire or explosion, flood, wind, water, earthquake, act of God or other similar circumstances beyond the reasonable control of the Lessee and not avoidable by the exercise of reasonable effort or foresight by the Lessee, the Lessee is, in good faith and without default or neglect on its part, prevented or delayed in the Commencement of Construction or the prosecution of construction or completion of the Buildings or repair of the Buildings or any part or parts of them which under the terms of this Lease the Lessee is required to do by a specified date or within a specified time or if not specified within a reasonable time, the date or period of time within which the work was to have been completed shall be extended by the Lessor by a reasonable period of time at least equal to that of such delay or prevention and the Lessee shall not be deemed to be in default if it performs and completes the work in the manner required by the terms of this Lease within such extended period of time or within such further extended period of time as may be agreed upon from time to time between the Lessor and the Lessee. If the Lessor and the Lessee cannot agree as to whether or not there is a prevention or delay within the meaning of this Section or they cannot agree as to the length of such prevention or delay, then such matter shall be determined by reference to arbitration in accordance with Article XX.

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

#### ARTICLE XI BUILDERS' LIENS

11.01 The Lessee shall, throughout the Term at its own cost and expense, cause any and all builders' liens and other liens for labour, services or materials alleged to have been furnished with respect to the Lands or the Buildings, which may be registered against or otherwise affect the Lands or the Buildings, to be paid, satisfied, released (including, without limitation, the release of all such liens from the interest of the Lessor in the Lands), or vacated within forty-two (42) days after the Lessor shall send to the Lessee and the Mortgagee written notice by registered mail of any claim for any such lien, PROVIDED HOWEVER, that in the event of a bona fide dispute by the Lessee of the validity or correctness of any claim for any such lien, the Lessee shall not be bound by the foregoing, but shall be entitled to defend against the same in any proceedings brought in respect thereof after first paying into Court the amount

claimed or sufficient security therefor, and such costs as the Court may direct, and upon being entitled to do so, the Lessee shall promptly register all such documents as may be necessary to cancel such lien from the Lands and the Buildings, including the Lessor's interest therein.

**11.02 Builder's Lien Act Notices**

The Lessor reserves the right throughout the Term to enter upon the Lands and the Buildings for the purpose of affixing to the Lands or the Buildings notices pursuant to the Builders Lien Act, S.B.C 1979, C. 40, S. 13, and amendments thereto and re-enactments thereof. The form, size and location of posting such notices shall be in the discretion of the Lessor, acting reasonably, and the Lessee and those claiming through the Lessee shall not remove, deface or obscure such notices.

The Lessee acknowledges and agrees that the improvements to be made to the Lands are made at the Lessee's request solely for its benefit. The Lessee covenants and agrees to post and keep posted the notices, pursuant to Section 13 of the Builders Lien Act, in the form provided by the Lessor in two conspicuous places on the Lands obvious to workmen, materialmen, contractors and subcontractors from the date of commencement of this Lease until the date which is 45 days next following the date on which the Lessee's Architect certifies that all the improvements to the Lands are substantially completed.

**ARTICLE XII  
INSPECTION AND EXHIBITION BY LESSOR**

**12.01 Inspection by Lessor**

The Lessor and the Lessee agree that it shall be lawful for a representative of the Lessor at all reasonable times during the Term to enter the Lands and the Buildings, or any of them and to examine the condition thereof; and, further, that all wants of repairation as required by Section 7.02 which upon such views shall be found, and that the amendment of which notice shall be delivered or given by the Lessor to the Lessee, the Lessee shall within sixty (60) days after every such notice or such longer period as provided in Subsection (a) of Section 18.02, well and sufficiently repair and make good accordingly.

**12.02 Exhibition by Lessor**

During the final twelve (12) months of the Term, the Lessor shall be entitled to display upon the Lands the usual signs advertising the Lands and Buildings as being available for purchase or letting, provided such signs are displayed in such a manner as not to interfere unreasonably with the Lessee's use and enjoyment of the Lands and the Buildings.

**ARTICLE XIII  
OBSERVANCE OF GOVERNMENTAL REGULATIONS**

**13.01** The Lessee covenants with the Lessor that, notwithstanding any other provision of this Lease to the contrary, throughout the Term the Lessee will comply with all provisions of law including without limitation, municipal, regional, provincial and federal legislative enactments including, without limitation, all police, fire and sanitary regulations, zoning and building by-laws, and any municipal, regional, provincial, federal or other governmental regulations which relate to the construction and erection of the Buildings, to the equipment and maintenance of the Buildings, to the operation, occupation and use of the Buildings or the Lands to the extent that the Lessee operates, occupies and uses the Buildings or the Lands whether by subletting the same or any part thereof or otherwise prior to the filing of the Leasehold Strata

Plan and the creation of the Strata Corporation, and to the making of any repairs, replacements, alterations, additions, changes, substitutions or improvements of or to the Buildings, the Lands, or any part thereof. Provided however that nothing in this Lease shall be taken to obligate the Tenant to comply with municipal by-laws, processes or other requirements which a municipality is not empowered by law to impose.

**ARTICLE XIV**  
**RIGHTS OF LESSOR AND LESSEE**

14.01 All rights and benefits and all obligations of the Lessor and the Lessee under this Lease shall be rights, benefits and obligations of the Lessor and the Lessee respectively in their capacities as Lessor and Lessee respectively under this Lease, and references in this Lease to the "Lessor" shall be to the District in its capacity and role as landlord under this Lease and as registered owner of the Lands and not the District in its capacity as a legislative body with regulatory powers (the District, in the latter capacity, being referred to in this Lease as the "District").

**ARTICLE XV**  
**INDEMNITY**

15.01 Breach, Violation or Non-performance of Covenants by Lessee

The Lessee shall indemnify and save harmless the Lessor from any and all manner of actions, causes of action, suits, damages, loss, costs, builders' liens, claims and demands of any nature whatsoever relating to and arising during the Term out of any breach, violation or non-performance of any covenant, condition or agreement in this Lease set forth and contained on the part of the Lessee to be fulfilled, kept, observed and performed.

15.02 Injury, Damage or Loss of Property

Notwithstanding the provisions of Article VI hereof, the Lessee shall indemnify and save harmless the Lessor from any and all manner of actions, causes of action, suits, damages, loss, costs, claims and demands of any nature whatsoever relating to and arising during the Term out of:

- (a) any injury to person or persons, including death resulting at any time therefrom, occurring in or about the Lands or the Buildings; and
- (b) any damage to or loss of property occasioned by the use and occupation of the Lands or the Buildings.

PROVIDED HOWEVER, that except as otherwise provided in Section 6.05 nothing contained herein shall require the Lessee to indemnify the Lessor against any action, causes of action, suits, claims or demands for damages arising out of the willful or negligent acts or omissions of the Lessor, its servants, agents or contractors.

15.03 Indemnification Survives Termination of Lease

The obligations of the Lessee to indemnify the Lessor under the provisions of Sections 3.01, 3.04, 3.05, 6.05, 15.01 and 15.02 of this Lease with respect to liability by reason of any matter arising prior to the date of release of the Lessee pursuant to Section 25.04 hereof, shall survive any termination of this Lease, anything in this Lease to the contrary notwithstanding.

ARTICLE XVI  
SUBLETTING AND ASSIGNING

16.01 Subletting by Lessee - Other Than by Way of Mortgage

The Lessee shall not and will not during the Term, sublease the Lands, or any part thereof or any structure or any part of any structure erected thereon, to any person, persons or corporation whatsoever, without the consent in writing of the District's Council, which consent the Council may arbitrarily withhold; PROVIDED HOWEVER that if the Tenant is not in default hereunder:

- (a) the Council shall consider the request to sub-let positively if the request is to enter into subleases with lessees or occupants of the dwelling units in the Buildings comprising in every case part or parts (but not the whole) of the Buildings;
- (b) notwithstanding any such consent being given by the Council under this Section 16.01 and such subleasing being effected, the Lessee shall remain bound to the Lessor for the fulfillment of all of its obligations hereunder;
- (c) at the Lessor's request, a copy of any or all sub-leases shall be forwarded to the Lessor within thirty (30) days of the conclusion of such transaction together with particulars of registration (if any) in the Vancouver Land Title Office.

16.02 Assignment by Lessee - Other Than by Way of Mortgage

(a) The Lessee shall not and will not prior to Substantial Completion of the Buildings (other than by way of Mortgage) assign, transfer or sell or otherwise, by any act or deed, procure the Lands or Buildings, or any of them, or this Lease, to be assigned, transferred or sold to any person, persons or corporation whatsoever without the consent in writing of the Lessor, which consent the Lessor shall not unreasonably withhold, provided as hereinafter set forth.

(b) PROVIDED that the Lessor, in considering a request by the Lessee that such an assignment be approved, shall be acting reasonably in taking into account the following matters, and if the Lessor is not satisfied as to any of such matters, the Lessor shall be acting reasonably in refusing to approve the proposed assignment:

- (i) the reputation and experience of the proposed assignee as a real estate developer and the nature of the business of the proposed assignee;
- (ii) the financial standing and capability of the proposed assignee (as evidence of which the three most recent financial statements of the proposed assignee shall be provided to the Lessor), including evidence that the proposed assignee will be able to secure a lender to finance construction of the Buildings and all ancillary facilities, and evidence that there are no actions, suits, claims, legal or administrative proceedings or investigations, private or public, pending or threatened, which might affect the proposed assignee's ability to fulfill all the covenants and agreements of the Lessee under this Lease and the Model Strata Lot Lease attached hereto as Schedule "A";
- (iii) the ability of the Lessee and the proposed assignee to arrange that the proposed assignee, following

the assignment, will have full ability to perform the covenants and agreements of the Lessee under this Lease and the Model Strata Lot Lease attached hereto as Schedule "A", including evidence that all drawings, plans, specifications, designs, applications, permits, approvals and contracts relating to the construction of the Buildings and all facilities ancillary thereto will be assigned to the proposed assignee;

- (iv) the Lessee is in default under the Lease; and
  - (v) past and present dealings of the proposed assignee with the District.
- (c) PROVIDED HOWEVER that the Lessor shall not be obliged to:
- (i) consent to such assignment unless the proposed assignee enters into an agreement, in form and content satisfactory to the Lessor, with the Lessor whereby the proposed assignee covenants directly with the Lessor and agrees to be bound by and comply with all the covenants, provisos and agreements required of the Lessee to be performed and observed under this Lease and the Model Strata Lot Lease attached hereto as Schedule "A".
- (d) PROVIDED further that the Tenant is not in default hereunder;
- (i) the Lessee, without the consent of the Lessor, may offer for sale its leasehold interest in the proposed Strata Lots which the Lessee proposes to create by the deposit of a Leasehold Strata Plan in accordance with Article XXV if a prospectus or a disclosure statement, as the case may be, relating to the proposed Strata Lots has been submitted to and accepted by the Superintendent of Real Estate under the provisions of the Real Estate Act, S.B.C. 1979, Chapter 356, the Lessee has complied with all other requirements of the said Act so far as they pertain to the offer for sale of the proposed Strata Lots, provided however that the Lessee shall not be required to submit a prospectus or a disclosure statement, as the case may be, to the Superintendent at the time the Leasehold Strata Plan is approved by the Superintendent;
  - (ii) the Lessee, may, without the consent of the Lessor, assign, transfer or convey its leasehold interest in those Strata Lots created by the deposit of the Leasehold Strata Plan as aforesaid which have been Substantially Completed, if the District has issued an interim occupancy permit in respect thereof and the provisions of Section 16.02 of the Model Strata Lot Lease attached hereto as Schedule "A" shall apply to such assignments, transfers or conveyances.
- (e) If the Lessee is required by the Superintendent of Real Estate to submit a prospectus or disclosure statement, as the case may be, to the Superintendent relating to proposed Strata Lots, a copy of the prospectus or disclosure statement shall be delivered to the Lessor within thirty (30) days of the acceptance thereof by the Superintendent of Real Estate.
- (f) A copy of any or all agreements to purchase, assignments, transfers or sales shall be furnished to

the Lessor within thirty (30) days of the conclusion of each transaction together with particulars, if any, of registration in the Vancouver Land Title Office.

**ARTICLE XVII**  
**MORTGAGE**

**17.01 Lessee Shall be Liable for Rent and Taxes**  
**Notwithstanding Mortgage**

Nothing herein contained shall be construed to prevent or prohibit the assignment or subletting by the Lessee of the Lease or the leasehold interest of the Lessee in any portion of the Lands and the Buildings by way of mortgage, provided however that in the event of and notwithstanding any such assignment or subletting the Lessee shall be and remain liable for the payment of all Basic Rent, Additional Rent and taxes and the performance of all the terms, covenants and conditions of this Lease.

**17.02 Mortgage Subject to Lessor's Rights Under Lease**

Subject to the provisions of Section 18.03, every Mortgage shall be made expressly subject to the rights of the Lessor under this Lease.

**17.03 Protection of Mortgagee (Tri-Partite Agreements)**

The Lessor agrees to execute, on request by a Mortgagee, a tripartite agreement between the Lessor, the Lessee and the Mortgagee wherein the Lessor agrees: (1) to give to the Mortgagee, in the event the Mortgagee acquires the leasehold interest of the Lessee in the Lands, whether by foreclosure or otherwise, the direct benefit of the covenant herein contained on the part of the Landlord relating to Mortgages and the rights of Mortgagees together with such other assurances as the Mortgagee may reasonably require, and (2) that the Lessor will not agree to any amendment of the Lease which increases the liability of the Lessee or accept a surrender of the Lease without the Mortgagee's consent.

**ARTICLE XVIII**  
**DEFAULT BY LESSEE**

**18.01 Re-entry on Certain Defaults by Lessee**

The Lessor and the Lessee agree that subject to the provisions of Section 18.03, if

- (a) the Lessee shall default in payment of Basic Rent, the additional rent due to increases in the C.P.I. or Additional Rent or taxes or any other sums required to be paid to the Lessor by any provision of this Lease, and such default shall continue for a period of thirty (30) days after written notice of intention to terminate this Lease by reason of such default shall have been given by the Lessor to the Lessee; or
- (b) this Lease shall expire or be voluntarily surrendered by the Lessee; or
- (c) the Lessee shall default in ensuring Commencement of Construction of the Buildings by the dates set forth in Section 4.03, and such default shall continue for a period of thirty (30) days after written notice of intention to terminate this Lease by reason of such default shall have been given by the Lessor to the Lessee;

the Lessor or the Lessor's agents or employees authorized by the Lessor may immediately or at any time thereafter re-enter the

Lands and the Buildings without being liable to any prosecution or damages therefor and may repossess and enjoy the Lands, the Buildings and all fixtures and improvements on the Lands except fixtures and improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Buildings or the Lands, as liquidated damages, without such re-entry and repossession working a forfeiture or waiver of the Basic Rent and Additional Rent paid or required to be paid by the Lessee to the Lessor, to the date of such termination all of which Basic Rent and Additional Rent shall be retained by the Lessor as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Lessee up to the date of such re-entry and repossession. Except for the payment of Basic Rent, the additional rent due to increases in the C.P.I. and Additional Rent or taxes or any other sums required to be paid by the Lessor by any provision of this Lease and the performance by the Lessee of the Lessee's covenants up to the date of such re-entry and repossession the Lessee shall be relieved of any further obligations hereunder.

**18.02 Forfeiture on Certain Other Defaults by Lessee**

The lessor and the Lessee agree that, subject to the provisions of Section 18.03, if

- (a) the Lessee shall default in performing or observing any of its covenants or obligations under this Lease (other than those referred to in Section 18.01) and the Lessor shall have given to the Lessee notice of such default and at the expiration of sixty (60) days after the giving of such notice the default shall continue to exist or, in the case of a default which cannot with due diligence be cured within the period of sixty (60) days aforesaid, the Lessee fails to proceed promptly after the giving of such notice to cure such default; and
- (b) the Lessor desires to re-enter the Lands and to repossess and enjoy the Lands and the Buildings and all fixtures and improvements thereon, except fixtures and improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Lands and the Buildings,

the Lessor shall unless the Lessee voluntarily surrenders the Lands and the Buildings to the Lessor, apply to the Supreme Court of British Columbia, upon not less than fourteen (14) days notice to all persons interested in the Lands and the Buildings, for an Order that, either:

- (a) the interest of the Lessee in this Lease and the Lands and the Buildings for the remainder of the Term and all the rights of the Lessee hereunder be sold by public auction or private sale on such terms and conditions as the Court deems fair and equitable in the circumstances, the proceeds therefrom to be distributed, after all Basic Rent, Additional Rent, taxes and other money due to the Lessor hereunder is paid to the Lessor, in accordance with the priorities of the persons interested as aforesaid as ascertained by the Court upon enquiry or reference; or
- (b) the Lessor or the Lessor's agents or employees be authorized to re-enter the Lands and the Buildings without being liable to any prosecution or damages therefor, and repossess and enjoy the Lands and the Buildings and all fixtures and improvements therein or thereon, except fixtures and improvements which are of the nature of usual tenants, fixtures and normally removable by tenants, and which are not part of the Buildings or the Lands, as liquidated damages, without such re-entry and repossession working a forfeiture or



waiver of the Basic Rent, Additional Rent, taxes and other money paid or to be paid to the Lessor, all of which Basic Rent and Additional Rent may be retained by the Lessor as liquidated damages and not as a penalty and without forfeiture or waiver of the covenants to be performed by the Lessee up to the date of such re-entry and repossession; and

in ordering such sale or re-entry, the Court may direct the registrar to cancel the Lessee's interest in the Lands and the Buildings, the registration thereof, and any certificate of leasehold charge and this Lease and issue a new or replacement certificate in the name of the Lessor or the purchaser, as the case may be, free and clear of and from all liens, charges and encumbrances whatsoever. The Lessor shall not be responsible for any loss to any such person interested which may arise by reason of any such sale or re-entry unless the same occurs by reason of the willful neglect or default of the Lessor.

#### 18.03 Notice to and Remedies of Mortgagee

(a) No re-entry, termination or forfeiture of this Lease by the Lessor shall be valid against a Mortgagee who has filed with the Lessor notice of Mortgage in favour of the Mortgagee and specified an address for notice unless the Lessor shall first have given to the Mortgagee notice of the default entitling the Lessor to re-enter, terminate or forfeit this Lease, specifying the nature of that default and stating the Lessor's intention to take such proceedings and requiring the Mortgagee:

- (i) to cure the default specified in the notice within a period of sixty (60) days from the date of receipt of that notice by the Mortgagee; or
- (ii) if the default is other than the failure to pay Basic Rent or Additional Rent or taxes or any other sums required to be paid to the Lessor by any provision of this Lease and if the default cannot reasonably be cured within such sixty (60) day period, then to immediately commence to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default;

and the Lessor hereby grants the Mortgagee access to the Lands and the Buildings for that purpose. If the default is cured within the period specified, the mortgagee shall be entitled to continue as tenant for the balance of the Term remaining at the date of the notice of default or contingency, providing that the Mortgagee attorns as tenant to the Lessor and undertakes to be bound by and to perform the covenants and agreements of this Lease; PROVIDED HOWEVER that in the event the Mortgagee consists of more than one Mortgagee each having a separate charge upon the Lessee's interest in this Lease, and more than one of them wishes to cure the default or contingency specified in the notice aforesaid, then the Lessor hereby agrees to permit curing of the default or contingency specified as aforesaid and the assumption of the balance of the Term as aforesaid and whose charge ranks in priority over the charge or charges held by the other Mortgagee or Mortgagees willing to cure and assume as aforesaid; EXCEPT THAT in the event any Mortgagee has commenced a foreclosure action the provisions of Section 18.03(b) shall apply.

- (b) In the event the Mortgagee commences foreclosure proceedings against the Lessee, whether or not the Lessee is in default of the performance of its covenants and agreements with the Lessor under this Lease at the time such foreclosure proceedings are commenced, the



Lessor shall not re-enter, terminate or forfeit this Lease after the commencement of foreclosure proceedings on the ground of any default or contingency entitling the Lessor to re-enter, terminate or forfeit this Lease if the Mortgagee:

- (i) shall first have given to the Lessor notice of the foreclosure proceedings;
- (ii) is actively prosecuting the foreclosure proceedings;
- (iii) cures the default or contingency within a period of sixty (60) days from the date of receipt of notice from the Lessor specifying the nature of the default or contingency, or if the default or contingency is other than the failure to pay Basic Rent or Additional Rent or taxes or any other sums required to be paid to the Lessor by any provision of this Lease and if such default or contingency cannot reasonably be cured within such sixty (60) day period, immediately commences to cure the same and to diligently prosecute to conclusion all acts necessary to cure the default or contingency;
- (iv) performs and observes all of the Lessee's covenants and agreements under this Lease and without undue delay diligently prosecutes to a conclusion the foreclosure proceedings commenced by the Mortgagee.

In the event that the Mortgagee acquires title to the Lessee's interest in the Lands and Buildings pursuant to the foreclosure proceedings, the Mortgagee shall thereupon become subrogated to the rights of the Lessee under this Lease provided it attorns to the Lessor as tenant and undertakes to be bound by and perform the covenants and agreements of this Lease. PROVIDED HOWEVER that in the event the Mortgagee consists of more than one Mortgagee and more than one of them commences foreclosure proceedings, the right to cure any default or contingency granted by the Section 18.03(b) to a foreclosing Mortgagee shall be deemed granted to them in the order of priority of the charges held by the foreclosing Mortgagees.

- (c) Any re-entry, termination or forfeiture of this Lease made in accordance with the provisions of this Lease as against the Lessee shall be valid and effectual against the Lessee, even though made subject to the rights of any Mortgagee to cure any default of the Lessee and to continue as tenant under this Lease.
- (d) No entry upon the Lands or into the Buildings by the Mortgagee pursuant to this Section 18.03 for the purpose of curing any default or defaults of the Lessee shall release or impair the continuing obligations of the Lessee.

#### 18.04 Remedies of Lessor are Cumulative

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

18.05 Waiver by Lessor

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

ARTICLE XIX  
COVENANTS OF LESSOR

19.01 Covenant Respecting Charges and Encumbrances

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

19.02 Covenant Respecting Authority to Lease

Except as otherwise herein provided, the Lessor covenants with the Lessee that the Lands are not required by the Lessor for Municipal purposes and it now has in itself good right, full power and absolute authority to Lease the Lands to the Lessee in the manner and according to the true intent of this Lease.

ARTICLE XX  
ARBITRATION

20.01 If the Lessor and the Lessee do not agree as to any of the matters which, if no agreement is reached upon they are by the provisions hereof to be determined by arbitration, any such disagreement shall be referred to three arbitrators, one of whom shall be chosen by the Lessor, one by the Lessee, and the third by the two so chosen and third arbitrator so chosen shall be the chairman. The award may be made by the majority of the arbitrators appointed. If within fifteen (15) days or such extended time as the parties may agree upon, a party who has been notified of a dispute fails to appoint an arbitrator or the two arbitrators appointed by the parties do not agree upon a third arbitrator, then the party or parties not in default may apply to the Supreme Court of British Columbia for the appointment by the Supreme Court of British Columbia of an arbitrator to represent the party or parties in default or a third arbitrator or both of such arbitrators. Each party shall pay its own costs of attending the reference. The costs of the arbitration shall be borne equally by the parties. Except as to matters otherwise provided herein, the provisions of the Commercial Arbitration Act S.B.C. 1986, Chapter 3 as amended from time to time, shall apply.

ARTICLE XXI  
CERTAIN COVENANTS AND AGREEMENTS OF LESSEE

21.01 Conduct on Demised Premises

Taking into account that during construction of the Buildings the Lands will be operated as a normal construction site, the Lessee covenants and agrees with the Lessor that it

will not carry on nor do, nor allow to be carried on or done upon the Lands or in the Buildings any work, business or occupation which may be a nuisance or which may be improper, noisy or contrary to any law or to any by-law of the District for the time being in force.

**ARTICLE XXII**  
**SURRENDER OF LEASE**

22.01 At the end of the Term, either by forfeiture, default or lapse of time, the Lessee shall surrender the Lands and the Buildings to the Lessor in the condition in which they were required to be kept by the Lessee under the provisions of this Lease, except as herein otherwise expressly provided. The Lessee shall not be entitled to any compensation from the Lessor for surrendering and yielding up the Lands and Buildings as aforesaid except as otherwise provided in the Model Strata Lot Lease attached hereto as Schedule "A".

**ARTICLE XXIII**  
**QUIET ENJOYMENT AND OWNERSHIP OF TENANTS' FIXTURES**

23.01 **Covenant for Quiet Enjoyment**

If the Lessee pays the rent hereby reserved and the other charges, and performs the covenants hereinbefore and the Lessee's part contained, the Lessee shall and may peaceably enjoy and possess the Lands for the Term, without any interruption or disturbance whatsoever from the Lessor or any other person, firm or corporation lawfully claiming from, or under the Lessor, except as provided herein.

23.02 **Ownership of Tenant's Fixtures**

The Lessee may confer upon tenants or occupants of the Buildings the right or property in, or the right to remove fixtures or improvements which are of the nature of usual tenants' fixtures and normally removable by tenants, and which are not part of the Buildings or the Lands. The Lessee shall make good or shall cause such tenants to make good, any damage to the Buildings caused by any removal of the Tenant's fixtures.

23.03 **Ownership of the Buildings**

The Lessor, and the Lessee agree that the title to and ownership of the Buildings and all alterations, additions, changes, substitutions or improvements thereto shall at all times during the Term be vested in the Lessee, notwithstanding any rule or law as to the immediate vesting of the title to and ownership of the Buildings in the Lessor as owner of the freehold. The title to and ownership of the Buildings shall not pass to or become vested in the Lessor until the expiration of the Term either by forfeiture, default or lapse of time under the terms of this Lease in which event, subject to the provisions of the Condominium Act, the Buildings shall become the absolute property of the Lessor free of all encumbrances.

**ARTICLE XXIV**  
**OVERHOLDING**

24.01 The Lessee covenants and agrees with the Lessor that if the Lessee shall hold over and the Lessor shall accept rent after the expiration of the Term, the new tenancy thereby created shall be a tenancy from month to month, at a rent which is the fair market rent of the Lands as agreed between the Lessor and the Lessee, or, failing such agreement, as determined by arbitration pursuant to Article XX, and not a tenancy from year to year and shall be subject to the covenants and conditions herein contained so far as the same are applicable to a tenancy from month to month.

**ARTICLE XXV**  
**CONVERSION OF GROUND LEASE UNDER CONDOMINIUM ACT**

**25.01 Leasehold Strata Plan**

- (a) The Lessee shall prepare or cause to be prepared as soon as reasonably possible after the date of this Lease the Leasehold Strata Plan, the same to be prepared in accordance with the provisions of the Condominium Act.
- (b) The Lessee shall deliver the Leasehold Strata Plan to the Lessor and the Lessor agrees to deliver to the Lessee its written consent to the registration of the Leasehold Strata Plan for filing in the Vancouver Land Title Office if the Leasehold Strata Plan has been prepared in accordance with the provisions in that regard contained in the Condominium Act.
- (c) As soon as reasonably possible after the written consent of the Lessor has been delivered, the Lessee shall deposit the Leasehold Strata Plan in the Vancouver Land Title Office in accordance with the provisions of the Condominium Act and the Land Title Act, S.B.C. 1979, Chapter 219, as amended from time to time in respect of the Leasehold Strata Plan.
- (d) The Lessee acknowledges and confirms to the Lessor that it shall be the sole responsibility to the Lessee to comply with the requirements of the Condominium Act such that the Leasehold Strata plan may be accepted by the Vancouver Land Registrar for deposit in the Vancouver Land Title Office as aforesaid.

**25.02 Conversion of Ground Lease**

It is understood and agreed between the Lessor and the Lessee that the deposit of the Leasehold Strata Plan shall, in accordance with the provisions of Part 3 of the Condominium Act, operate as a conversion of this Lease into individual leases in the name of the Lessee in respect of the interest of the Lessor in each Strata Lot subject to the applicable terms and conditions contained in this Lease and the Model Strata Lot Lease attached hereto and forming Schedule "A" hereof and to the provisions of the Condominium Act and the regulations made thereunder. From and after the conversion of this Lease under the Condominium Act as aforesaid, each Strata Lot shall be held during all of the unexpired residue of the Term then remaining separately from and independently of each of the other Strata Lots as if each Strata Lot had been demised to the Lessee by separate leases in the form of the Model Strata Lot Lease attached hereto as Schedule "A".

**25.03 Execution of Model Strata Lot Lease by Strata Corporation**

The Lessee covenants and agrees with the Lessor that within 10 days after the deposit of the Leasehold Strata Plan in the Vancouver Land Title Office and prior to the assignment of any of the Strata Lots the Lessee will deliver to the Lessor a lease in the form of the Model Strata Lot Lease to the Lessor as Schedule "A" hereof executed by the Lessee and the Strata Corporation together with a resolution of the Strata Corporation to authorize the Strata Corporation to enter into and execute the said Model Strata Lot Lease attached hereto as Schedule "A". The Lessor shall upon receipt of the executed Model Strata Lot Lease, execute the same and return the same to the Lessee, and the Lessee shall cause the Model Strata Lot Lease attached hereto as Schedule "A" to be filed in the Vancouver Land Title Office.

25.04 Release from Liability

The Lessor covenants and agrees with the Lessee, the Lessee named herein, but not including any lessee, sublessee or tenant of the Lessee or any other party claiming under the Lessee or any party to whom the Lessee assigns, transfers or conveys a Strata Lot under Section 16.02(d) of this Lease or Section 16.02 of the Model Strata Lot Lease, shall be released and discharged from any and all of its liabilities and obligations under the covenants, terms and conditions contained in the Model Strata Lot Lease attached hereto as Schedule "A" in respect of each Strata Lot on the date which is the later of:

- (a) the date the Lessee's leasehold interest in that Strata Lot is assigned to the first purchaser thereof, or
- (b) the date of Substantial Completion of the Buildings.

Provided that the Lessee shall have paid the Basic Rent, the additional rent due to increases in the C.P.I., Additional Rent, taxes and any other monies required to be paid hereunder and observed and performed the covenants and agreements herein to be performed by the Lessee up to and including the said date.

25.05 The lessor agrees that, while otherwise having the right to do so, it will refrain from pursuing its remedies hereunder against the Lessee for a default under the Model Strata Lot Lease attached hereto as Schedule "A" in respect of which the Lessee has been released in accordance with the provisions of Section 25.04.

Save as herein specifically provided, the Lessee shall not be released from its liabilities and obligations under this Lease.

ARTICLE XXVI  
NOTICE

26.01 All notices, demands and requests which may be or are required to be given pursuant to this Lease shall be in writing and shall be sufficiently given if served personally upon the party or an executive officer of the party for whom it is intended or mailed prepaid and double-registered, in the case of the Lessor addressed to:

Municipal Clerk  
Municipal Hall  
750 - 17th Street  
West Vancouver, British Columbia  
V7V 3T3

and to: Law Department  
Municipal Hall  
750 - 17th Street,  
West Vancouver, British Columbia  
V7V 3T3

and in the case of the Lessee addressed to:

Gateway Pacific Construction Ltd.  
1551 Columbia Street  
North Vancouver, British Columbia  
V7J 1A3

or at such other addresses as the parties may from time to time advise by notice in writing. Mortgagees hereof shall supply their respective mailing addresses to the Lessor and the Lessee. The date of receipt of any such notice, demand or request shall be deemed to be the date of delivery if such notice, demand or request is served personally or if mailed as aforesaid on the third business day next following the date of

such mailing. PROVIDED HOWEVER that if mailed, should there be between the time of mailing and the actual receipt of the notice a mail strike, slow down of postal service or other labour dispute which affects the delivery of such notice, then such notice shall be deemed to be received when actually delivered.

ARTICLE XXVII  
MISCELLANEOUS

27.01 Statements by Lessor

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

- (a) that this Lease is unmodified and in full force and effect or if there have been modifications that the same are in full force and effect as modified and identifying the modifications;
- (b) the dates to which the rent and other charges have been paid and the request shall specify the charges in respect of which such information is required; and
- (c) that, so far as the maker of the statement knows, without having conducted any searches or made any particular enquiries, the party who requests the statement is not in default under any provisions of this Lease, or, if in default, the particulars thereof.

27.02 Time of Essence

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

27.03 Modifications

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

27.04 Headings

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

27.05 Enurement

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

successors and assigns of the Lessor and the successors and permitted assigns of the Lessee.

**27.06 Partial Surrender**

At any time after Substantial Completion the Lessor shall be entitled to require the Lessee to surrender this Lease, without compensation to the Lessee, over that portion of the Lands not exceeding a 30 foot wide strip of land adjacent to either Taylor Way or Marine Drive or both. The Lessor shall only be entitled to call for such partial surrender in the event such lands are to be used for road, sidewalk and/or services. The Lessor shall, at its cost and in a reasonable manner, replace at the boundary between the surrendered lands and the balance of the Lands any wall or other improvements or landscaping damaged or destroyed as a result of the partial surrender. Such partial surrender shall not diminish the development rights appurtenant to the Lands.

**27.07 Subdivision**

The Lessor, at the Lessee's expense, shall cause the Lands to be subdivided in the manner reasonably required by the Lessee, with the intent that each tower in the Project be situated on a separate lot. The Lessor acknowledges that the subdivision of the Lands into two separate lots is intended to allow the Lessee to phase the Project. Since phasing is not permitted under Part 3 of the Condominium Act, the Lessor covenants and agrees that the Lessee shall be entitled to develop the Project on the Lands after subdivision thereof subject only to the same zoning and development permit restrictions that would have applied to the development of the Project if the Lands were one legal lot.

**27.08 Separate Ground Leases**

Upon subdivision of the Lands in accordance with Section 27.07 this Lease shall be surrendered and separate ground leases for each of the separate lots shall be entered into. Each new ground lease shall be identical with this Lease, save and except for the following:

- (a) the rent for the lot created for Tower I shall include the rents referred to in Sections 2.01(a), (b), (d), and one-half of (f);
- (b) the rent for the lot created for Tower II shall include the rents referred to in Sections 2.01(a), (c), (e), and one-half of (f);
- (c) the Lessee will execute all access and utility easements and rights of way to ensure adequate access for both lots; and
- (d) the ground lease for the lot created for Tower II shall have no requirement as to when commencement of construction must occur.

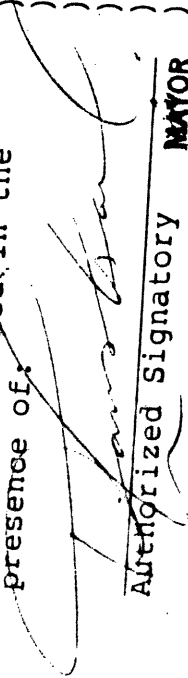
**27.09 Clear Title and Vacant Possession**

Title to the Lands shall be free and clear of all encumbrances except: subsisting conditions, provisos, restrictions, exceptions and reservations, including royalties contained in the original grant or contained in any other grant or disposition from the Crown. The Lessor represents and warrants that the Lands are zoned C.U.8 (Commercial Use Zone 8), that the permitted Floor Area Ratio for the Lands is 1.75 and that the development rights appurtenant to the Lands throughout the Term will not be diminished as a result of the partial surrender referred to in Section 27.06.

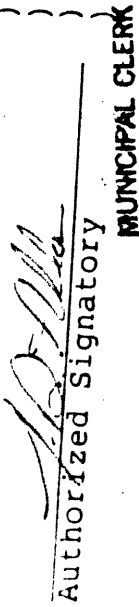
- The Landlord shall do the following at its own cost:
- (a) provide vacant possession of the Lands to the Tenant by evicting the overholding tenant which presently occupies a portion of the Lands as soon as reasonably possible;
  - (b) immediately after the overholding tenant is evicted, the Landlord shall clear the Lands of all buildings or other structures including, without limitation, any underground storage tanks or other facilities. The Tenant shall have a first right of refusal to clear the Lands and deduct the cost estimate that the Landlord has received therefor from the rents due under the Ground Lease. The Tenant shall advise the Landlord whether it is exercising the right within 48 hours of being notified by the Landlord of the Landlord's cost estimate for such clearing; and
  - (c) obtain all necessary approvals for the construction of the underpass referred to in Section 4.03A as soon as reasonably possible.

IN WITNESS WHEREOF the Lessor and the Lessee have hereunto caused to be affixed their respective seals attested by such authorized for such purpose.

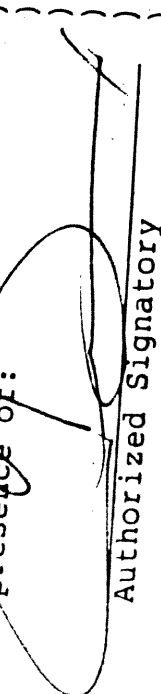
THE COMMON SEAL OF THE CORPORATION OF THE DISTRICT OF WEST VANCOUVER was hereunto affixed in the presence of:

  
 Authorized Signatory **MAYOR**

C/S

  
 Authorized Signatory **MUNICIPAL CLERK**

THE COMMON SEAL OF GATEWAY PACIFIC CONSTRUCTION LTD. was hereunto affixed in the presence of:

  
 Authorized Signatory

C/S

Authorized Signatory