

ANNOTATED TEMPLATE

LEASE FOR STRATA-STYLE DEVELOPMENT OF DESIGNATED LANDS

BETWEEN:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

AND:

[FIRST NATION],
as represented by the Council

AND:

[LESSEE'S NAME]

For lands in [Reserve Name] Indian Reserve No. [#]

Commencement Date: [Month Day, Year]

DRAFTING NOTES:

- 1. Not everything within square brackets needs to be filled in, just fields, which are highlighted in grey onscreen. To move between fields, press F11 and ensure that all fields are complete. F11 will also take you to each cross-reference but these do not need to be manually updated as they will be updated in step 3.**
- 2. Remove all bolded red drafting language before finalizing the lease.**
- 3. Update all cross-references and the Table of Contents before finalizing the lease by pressing CTR+A to highlight everything and then pressing F9.**

STRATA-STYLE LEASING

This annotation is a corollary to the annotations of the Lease of Designated Lands (LDL) and the Lease of Locatee Lands (LLL) templates. It will only address issues specific to strata-style leasing and you should refer to the other annotations for discussion of other non-strata topics.

There is no separate annotation of the Lease for Strata-style Development of Locatee Lands as there are no issues specific to strata-style leasing on locatee lands that are not covered under this annotation.

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SCHEDULE A – Improvements Existing at Commencement Date

SCHEDULE B – Band Council Resolution

SCHEDULE C – Assignment Consent Agreement

SCHEDULE D – Mortgage Acknowledgment Agreement

SCHEDULE E – The Strata Plan and the HOA

OPTIONAL: Add the following if there is to be a right of cancellation throughout the Term coupled with non-disturbance rights for Sublessees:

SCHEDULE F – Form of Sublease **END OF OPTION**

LEASE FOR STRATA-STYLE DEVELOPMENT OF DESIGNATED LANDS

This lease is made between:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the “**Lessor**”)

and:

[FIRST NATION],
a “band” within the meaning of the *Indian Act*, as represented by the Council

(the “**First Nation**”)

and:

[LESSEE'S NAME] [OPTIONAL – If the Lessee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Lessee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]

(the “**Lessee**”).

BACKGROUND:

- A. The Lands are part of the Reserve, which is held for the use and benefit of the First Nation.
- B. The members of the First Nation designated the Lands on [Month Day, Year], which designation was accepted by **[Choose accepting entity and delete the other: the Governor in Council by PC [#] OR Order of the Minister of Indigenous Services]** on [Month Day, Year] and is registered in the Registry under No. [#].
- C. This Lease is a combination of a leasehold estate granted by the Lessor to the Lessee and a contract between the Parties. The First Nation negotiated the

business arrangement with the Lessee set out in this Lease and the Parties negotiated the terms and conditions of this Lease.

- D. The Lessee wishes to lease the Premises for a strata-style development on the terms and conditions of this Lease.
- E. The Lessor is authorized to grant this Lease under subsection 53(1) of the *Indian Act*.
- F. The First Nation authorized the execution of this Lease by the signatories for the First Nation, as evidenced by the Band Council Resolution attached as Schedule B.

NOW THEREFORE, for mutual consideration, the Parties agree as follows:

1. INTERPRETATION

1.1 **Definitions** – In this Lease, including the recitals, the following terms have the meanings ascribed to them in this section 1.1:

1.1.1 **“Additional Rent”** means the amounts payable to the Lessor referred to in section 4.4.

1.1.2 **“Architect”** means a person who is licensed as an architect in the province of [Name of Province].

1.1.3 **“Artifact”** means a burial site, human remains, or an item of archeological or cultural interest.

1.1.4 **“Authority”** means:

1.1.4.1 a federal, provincial, municipal, First Nation, or other governmental authority having jurisdiction in respect of the Premises or activities on the Premises; or

1.1.4.2 a utility company lawfully acting under its statutory power.

1.1.5 **“Authorized Uses”** means the uses referred to in section 3.1.

1.1.6 **“Business Day”** means a day that is not a Saturday, a Sunday, a federal or [Name of Province] statutory holiday, National Indigenous Peoples Day, or, with respect to obligations owed by or owing to the First Nation, a day designated by the First Nation as an official holiday on which the First Nation’s administrative offices are closed.

1.1.7 “**Codes**” means **[Note: Insert applicable codes. For example, in BC:** the BC Building Code, the BC Fire Code, and all requirements of the *Building Act*, S.B.C. 2015, c. 2, that would be applicable to an Improvement if it were built on fee simple lands in the province of British Columbia (other than the City of Vancouver) owned by a Person other than the Crown.]

1.1.8 “**Commencement Date**” means [Month Day, Year].

1.1.9 “**Construction and Environmental Management Plan**” means:

1.1.9.1 plans, design briefs, and construction specifications; and

1.1.9.2 all other documents reasonably required by the Decision Maker relating to the construction, operation, or decommissioning, as the case may be,

of the subject Improvements, which comply with or are consistent with:

1.1.9.3 applicable Codes and Laws;

1.1.9.4 an applicable Development Plan; and

1.1.9.5 all terms and conditions of a Decision Maker’s determination, including all mitigation measures, timelines, and monitoring, required under an applicable Environmental Review,

and include plans to address how the impacts on the Environment during construction, operation, or decommissioning, as the case may be, of the subject Improvements will be managed, including the management of soil, water, waste, traffic, and fire safety.

1.1.10 “**Contaminant**” means a substance regulated under the Laws of Canada, the First Nation, or the province of [Name of Province] (whether or not the province has jurisdiction in respect of the protection of the Environment as it pertains to the Premises or the occupation or use of the Premises) relating to the protection of the Environment, including, for greater certainty, a toxic substance, deleterious substance, hazardous substance, hazardous waste, hazardous recyclable, ozone-depleting substance, halocarbon, pesticide, and waste.

1.1.11 “**Council**” means the First Nation’s “council of the band” within the meaning of the *Indian Act*, and any successor.

1.1.12 “**Decision Maker**” means the Minister, when the Minister is representing the Lessor under this Lease, and, if the First Nation takes over the position of the Lessor under this Lease by operation of law, the Council or a Person designated by the Council.

- 1.1.13 **“Development Plan”** means a scaled site plan for the Premises, prepared and certified by an Architect or Engineer on the basis that it may be relied upon by each of the Parties, which includes a “North” arrow, title block, drawing scale, date, developer’s name and address, reference numbers, and the following features, including their location and dimensions where applicable:
- 1.1.13.1 Boundary lines, acreage, natural and artificial features, and contiguous property.
 - 1.1.13.2 Roads, parking lots, and driving aisles.
 - 1.1.13.3 Buildings and structures, including number of units, storeys, floor area, number of rooms, and dimensions of front, side, and rear yards.
 - 1.1.13.4 On-site sanitary sewer connections.
 - 1.1.13.5 Existing and proposed water mains.
- 1.1.14 **“Engineer”** means a person who is licensed as an engineer in the province of [Name of Province].
- 1.1.15 **“Environment”** has the meaning given it in the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33.
- 1.1.16 **“Environmental Review”** means the environmental review process referred to in section 8.2, whether conducted before or after the Commencement Date.
- 1.1.17 **“Exempt Project”** means a Project:
- 1.1.17.1 that is in one of the classes of projects designated under section 88 of the IAA; or
 - 1.1.17.2 for which a Decision Maker is not required to conduct an Environmental Review by section 91 of the IAA,
- and includes any similar concepts in an amended, succeeding, or replacement Law.
- 1.1.18 **“First Nation Fees”** means the amounts payable to the First Nation referred to in section 4.5.
- 1.1.19 **“Gross Negligence or Wilful Misconduct”** means an act or failure to act (whether sole, joint, or concurrent) by a Party that was intended to cause or was in reckless disregard of, or wanton indifference to, the harmful consequences to the safety or property of a Person which the Party knew, or should have known, would result from such act or omission, but does not include an act or failure to act that constitutes mere ordinary negligence or occurred in accordance with the express instructions or approval of the relevant other Party.

1.1.20 “**HOA**” means a society or corporation established under the laws of the province of [Name of Province] for the purposes of managing the Premises by way of a homeowners’ association.¹

1.1.21 “**IAA**” means the *Impact Assessment Act*, S.C. 2019, c. 28, s. 1.

1.1.22 “**Improvements**” means the improvements to the freehold, as determined according to the common law, forming part of the Lands from time to time, including any:

1.1.22.1 buildings, structures, works, facilities, infrastructure, and utility services; and

1.1.22.2 equipment, machinery, apparatus, and other such fixtures forming part of an improvement.

1.1.23 “**Indian Act**” means the *Indian Act*, R.S.C. 1985, c. I-5.

1.1.24 “**Lands**” means those lands more particularly known and described as:

[Legal Description],

excepting all Minerals, and, without derogating from section 2.2, subject to the following interests:

[List interests or enter "nil"].

1.1.25 “**Laws**” means all applicable laws, statutes, regulations, codes, orders, and by-laws of an Authority, as amended or replaced from time to time.

1.1.26 “**Lease**” means this lease agreement, and all Schedules attached to it, as amended from time to time.

1.1.27 “**Minerals**” means ore of metal and every natural substance that can be mined and that:

1.1.27.1 occurs in fragments or particles lying on, above, or adjacent to the bedrock source from which it is derived and commonly described as talus; and

1.1.27.2 is in place or position in which it was originally formed or deposited, as distinguished from loose, fragmentary, or broken rock or float, which,

¹ There are various names for this type of entity off-reserve. Often called a strata corporation, that name would be confusing on-reserve as a contractual HOA has more limited powers than a strata corporation under provincial legislation. Although HOA stands for “Homeowners’ Association”, the strata-style lease template contemplates that the HOA will benefit all unit holders, regardless of use. Uses are not limited solely to residential uses, although a particular lease may restrict use to residential uses (e.g., if the Designation limited uses to residential purposes).

by decomposition or erosion of rock, is found in wash, loose earth, gravel, or sand,

including:

1.1.27.3 coal, petroleum, and other hydrocarbons, regardless of gravity and howsoever and wheresoever recovered;

1.1.27.4 natural gas, methane, coal bed methane, and other gases; and

1.1.27.5 building and construction stone, limestone, dolomite, marble, shale, clay, sand, and gravel.

1.1.28 **“Minister”** means the Minister with responsibility, from time to time, for administering this Lease.

1.1.29 **“Mortgage”** means a mortgage, debenture, deed of trust, bond, assignment of rents, or any other means by which the Lessee’s leasehold interest in the Premises is used as security for a loan.

1.1.30 **“Mortgagee”** means a mortgagee under a valid Mortgage.

1.1.31 **“Party”** means a party to this Lease.

1.1.32 **“Person”** includes an individual, partnership, firm, company, corporation, incorporated or unincorporated association or society, co-tenancy, joint venture, syndicate, fiduciary, estate, trust, bank, government, governmental or quasi-governmental agency, board, commission or authority, organization, any other form of entity however designated or constituted, and any combination of any of them.

1.1.33 **“Premises”** means the Lands and Improvements or any part of the Lands and Improvements.

1.1.34 **“Prepaid Rent”** means the amount set out in section 4.3.

1.1.35 **“Project”**:

1.1.35.1 has the meaning given it in section 81 of the IAA;

1.1.35.2 includes any designated activities under section 87 of the IAA; and

1.1.35.3 includes any similar concepts in an amended, succeeding, or replacement Law.

1.1.36 **“Registry”** means the registry with registration jurisdiction over the Lands.

1.1.37 **“Rent”** means Additional Rent and Prepaid Rent.

1.1.38 “**Reserve**” means [Reserve Name] Indian Reserve No. [#].

1.1.39 “**Schedule**” means an attachment to this Lease labeled as a Schedule, which forms part of and is integral to this Lease.

OPTIONAL – Include the following if the use of Standards is chosen in the environmental sections offering this choice (see sections 8.4 and 12.3.2). Otherwise, delete it.

1.1.40 “**Standard**” means the amount of a Contaminant, based on the more conservative standard set out in the:

1.1.40.1 *Canadian Environmental Quality Guidelines* established by the Canadian Council of Ministers of the Environment, as amended or replaced from time to time; or

1.1.40.2 laws and published guidelines of the province of [Name of Province],

below which is considered acceptable for the uses to which the particular part of the Premises are being put.

End of Option.

1.1.41 “**Sublease**” means a leasehold interest in the Premises granted by the Lessee to a sublessee, **[OPTIONAL: Add the following if the First Nation wishes for there to be a right of cancellation throughout the Term coupled with non-disturbance rights for Sublessees:** in the form attached as Schedule F,] which, for greater certainty, does not include a Mortgage by way of a sublease.²

1.1.42 “**Subleased Property**” means the portion of the Premises leased under a Sublease.

1.1.43 “**Sublessee**” means a sublessee under a Sublease.

1.1.44 “**Substantial Completion**” means the date on which a written certificate by an Architect or Engineer is provided to each of the Lessor and the First Nation certifying to them that:

1.1.44.1 the Improvements are substantially complete in all material respects, in a proper and workmanlike manner, and in accordance with the applicable Development Plan, the applicable Construction and Environmental Management Plan, and applicable Codes and Laws,

² If this option is chosen, then the Lessor and the First Nation may be in the position of taking over the administration of the Sublease by way of a Replacement Lease that is granted on the terms and conditions of the Sublease, so it is important that they approve of the form of the Sublease. See section 10.3.3.

except for minor deficiencies which, in the opinion of the Architect or Engineer, will not render the Improvements unfit for occupancy;

1.1.44.2 all permits for occupancy required by an Authority have been obtained;
and

1.1.44.3 the Improvements are ready for occupancy.

1.1.45 **"Taxes"** means a tax imposed by an Authority in relation to the granting of this Lease or the payment of Rent.

1.1.46 **"Term"** means the period starting on the Commencement Date and expiring on [Month Day, Year], unless this Lease otherwise ends early.

1.1.47 **"Unavoidable Delay"** means a delay, stoppage, or interruption resulting from:

1.1.47.1 strike, lock-out, or other labour dispute;

1.1.47.2 material or labour shortage not within the control of the Party;

1.1.47.3 stop-work order issued by an Authority or a court or tribunal of competent jurisdiction, on the condition that such order is not issued as a result of an act or fault of the Party;

1.1.47.4 fire, explosion, or other casualty;

1.1.47.5 pandemic, epidemic, or other widespread illness or disease that results in mandated employee lockdowns or business closures;

1.1.47.6 flood, wind, earthquake, or act of God;

1.1.47.7 any Law, on the condition that the application of such Law is not as a result of an act or fault of the Party; or

1.1.47.8 other similar circumstances beyond the reasonable control of the Party and not avoidable by the exercise of reasonable effort or foresight by the Party,

but does not include the inability of the Party to meet its financial obligations under this Lease or otherwise.

1.2 **Form of Definition** – Defined words are capitalized for ease of reference. A defined word may be read as having an appropriate corresponding meaning when it is used in the plural or verb form.

1.3 **Headings** – All headings in this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit, enlarge, modify, or explain the scope or meaning of this Lease or any of its provisions.

1.4 **Extended Meaning**

- 1.4.1 A word in the singular form may be read in the plural form if the context allows it and a word in the plural form may be read in the singular form if the context allows it.
- 1.4.2 The words “include”, “includes”, and “including” are to be read as if they are followed by the phrase “without limitation”.
- 1.4.3 The phrase “this Lease ends” includes an ending by expiration of the Term and an earlier termination. The phrases “earlier termination” and “early termination” include a surrender.
- 1.4.4 The phrases “on the Lands”, “in the Lands”, or “on the Premises” includes in, on, under, and above such Lands or Premises.
- 1.4.5 Unless stated otherwise, the construction of Improvements includes the making of alterations to an Improvement.
- 1.5 **Joint and Several** – If the Lessee is more than one Person, then all of the Lessee’s obligations are joint and several.
- 1.6 **Statutes** – A reference to a statute means that statute and all regulations made under it, all as amended or replaced from time to time.
- 1.7 **Governing Laws** – This Lease will be governed by and interpreted in accordance with the Laws of Canada and of the province of [Name of Province].
- 1.8 **Entire Agreement** – This Lease constitutes the entire agreement between the Parties with respect to the subject matter of this Lease and supersedes and revokes all previous discussions, negotiations, arrangements, letters of intent, offers to lease, representations, and warranties. There are no obligations, covenants, agreements, representations, or warranties between the Parties with respect to the subject matter of this Lease other than those explicitly set out in this Lease.
- 1.9 **Modification** – A modification of this Lease must be in writing and executed in the same manner as this Lease.
- 1.10 **Consent and Approval** – Unless stated otherwise, when a Party is required to provide consent or approval under this Lease, that consent or approval will not be unreasonably withheld.
- 1.11 **Time is of the Essence** – Time is of the essence in this Lease and time will remain of the essence notwithstanding any extension of time granted to a Party.
- 1.12 **Severability** – If a part of this Lease is declared or held invalid for any reason, then the invalidity of that part will not affect the validity of the remainder of this

Lease, which will continue in full force and effect and be construed as if this Lease had been executed without the invalid part.

- 1.13 **Survival of Obligations and Rights** – If a part of this Lease states that it survives when this Lease ends, then the survival of that part is only to the extent required for the performance of any continuing obligations and the exercise of any rights pertaining to them.
- 1.14 **Business Day** – If the date for the occurrence or performance of anything under this Lease falls on a day that is not a Business Day, then the date for its occurrence or performance will be automatically extended to the next Business Day.

2. THE PREMISES

- 2.1 **Lessee's Rights to the Premises** – The Lessor hereby leases the Premises to the Lessee to have and to hold during the Term for the Authorized Uses, and the Lessee is entitled to quiet enjoyment of the Premises for the Term, under the terms of this Lease.
- 2.2 **Subject to Prior Interests and Rights** – This Lease is subject to all valid, existing interests in, and rights in relation to, the Premises, whether or not the Lessee has notice of them.
- 2.3 **Reservation of Minerals**
- 2.3.1 The Lessor reserves all Minerals on the Lands and retains the right, subject to reasonable prior notice being provided to the Lessee, to enter the Premises to prospect for, drill for, work, extract, and produce Minerals and to lay pipeline and build such tanks, stations, improvements, and roads as may be reasonably necessary, on the condition that the activity has no material adverse effect on the Authorized Uses.
- 2.3.2 If there is any interference with the Lessee's rights under this Lease due to the exercise of the Lessor's rights under section 2.3.1 that is less than a material adverse effect on the Authorized Uses, then the Lessor will determine the amount of any compensation and provide notice to the Lessee of such amount. Such interference is not a default of the Lessor's covenant of quiet enjoyment.
- 2.3.3 If the Lessee disagrees with the compensation determined by the Lessor under section 2.3.2, then the Lessee may, within 60 days of delivery of the notice referred to in section 2.3.2, refer the matter to Federal Court for a review of the determination of compensation. If the Lessee fails to refer the matter to Federal Court within the specified time, then the compensation set out in the Lessor's notice will be final and binding on the Parties.
- 2.4 **Reservation for Other Interests and Rights**

- 2.4.1 The Lessor reserves the right to grant other interests in, or rights in relation to, the Premises without compensation to the Lessee, including by way of permit, easement (statutory or otherwise), right-of-way, or other similar interest in, or right in relation to, the Lands, in favour of an Authority or any other Person, as long as the grant of interest or right has no material adverse effect on actual or potential use of the Lands for the Authorized Uses.
- 2.4.2 Prior to granting an interest or right under section 2.4.1, the Lessor will provide the Lessee with information about the proposed interest or right to give the Lessee an opportunity to provide any comments respecting any material adverse effects the proposed interest or right may have on the actual or potential use of the Lands for the Authorized Uses.
- 2.4.3 On notice being delivered by the Lessor, the Lessee will promptly sign and provide to each of the Lessor and the First Nation the necessary documentation to subordinate the Lessee's right and interest in the Premises under this Lease to an interest or right granted in accordance with this section 2.4.
- 2.5 **Access** – The grant of this Lease does not grant the Lessee any rights of access over any other lands of the Lessor. The Lessee will secure and maintain legal access (be it by public or private road, water, air, or otherwise) to and from the Premises.

3. USE OF THE PREMISES

- 3.1 **Authorized Uses** – The Lessee will not use the Premises for any purposes except for the following purposes:
- [List the Uses]
- 3.2 **Nuisance** – Except as required by the construction, repair, rebuilding, replacement, or removal of Improvements, the Lessee will not cause, permit, or suffer a nuisance on the Premises.
- 3.3 **Waste**
- 3.3.1 The Lessee will not cause, permit, or suffer any waste of the Premises.
- 3.3.2 The Lessee will not cause, permit, or suffer the removal of sand, gravel, topsoil, or other constituent material of the Lands, except as required by the clearing and construction permitted in this Lease and any Law, in which case, such removal will not constitute waste.
- 3.4 **Garbage** – The Lessee will not cause, permit, or suffer garbage or debris to be placed or left at the Premises, except as is reasonably necessary in accordance with the Authorized Uses.

3.5 **No Abandonment** – The Lessee will not abandon the Premises without the prior consent of each of the Lessor and the First Nation. The Lessee will be considered to be in possession and control of the Premises from and after the Commencement Date, even though construction of proposed Improvements may not have commenced, and will, at its cost, secure the Premises during such time as would a reasonably prudent owner in occupation.

3.6 **Inspection**

3.6.1 The Lessee will provide each of the Lessor and the First Nation with reasonable access to inspect the Premises, including conducting site assessments, audits, and other tests on, and investigations of, the Premises. Except in the case of an emergency, reasonable notice will be provided to exercise this right of access. If the inspection is in response to a default of this Lease, or if, in the process of inspecting the Premises, a default is discovered or confirmed, then the Lessor's reasonable expenses under this section 3.6.1 are Additional Rent and the First Nation's reasonable expenses under this section 3.6.1 are First Nation Fees.

3.6.2 During the last 12 months of the Term and as long as the Lessee's use and enjoyment of the Premises are not unreasonably interfered with, the First Nation may:

3.6.2.1 display signs on the Premises advertising the Premises for lease; and

3.6.2.2 on reasonable notice being provided to the Lessee, allow prospective lessees and their advisors access to the Premises so that they may inspect or perform any reasonable assessments of the Premises, however, the Lessee may require its representative to attend such inspection or assessment.

3.7 **Artifacts** – If an Artifact is unearthed or discovered on the Premises, then the Lessee will:

3.7.1 promptly notify the First Nation;

3.7.2 cease further activity that could affect the Artifact;

3.7.3 take reasonable measures to protect the Artifact;

3.7.4 comply with the direction of an Authority and the reasonable requirements of the First Nation in relation to the handling of the Artifact; and

3.7.5 if there are no First Nation or federal Laws relating to the handling of such an Artifact, at the written direction of the First Nation, comply with the requirements in the laws of the province of [Name of Province] relating to the protection of heritage objects or sites such as the Artifact, to the extent possible, even if such laws are not applicable on the Premises.

3.8 **Survey Monuments** – If a legal survey monument is disturbed, damaged, or destroyed during the Term, then the Lessee will ensure that it is replaced by a licensed surveyor to the satisfaction of the Surveyor General of Canada.

3.9 **Representations about the Premises and their Use**

3.9.1 The Premises are leased to the Lessee on an “as is – where is” basis.

3.9.2 Without limiting section 1.8, the Lessor, the Minister, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:

3.9.2.1 the condition of the Premises, including the Premises’ compliance with Laws and the presence of Contaminants on the Premises;

3.9.2.2 issues of title, encumbrances affecting title, and matters contained within the Registry;

3.9.2.3 access to and from the Premises; and

3.9.2.4 the suitability of the Premises for the Lessee.

3.9.3 The Lessee represents and warrants that:

3.9.3.1 prior to the Commencement Date, it inspected the Premises, including conducting all investigations that it deemed prudent regarding the matters referred to in sections 3.9.2.1 - 3.9.2.3; and

3.9.3.2 it is satisfied that the Premises are suitable for its intended uses and that those uses are within the Authorized Uses.

3.10 **Others Performing the Lessee’s Obligations** – The Lessee may allow any Person to perform any of the Lessee’s obligations in this Lease, but in doing so the Lessee will ensure performance of such obligations by such Person and it in no way affects the Lessee’s obligation to perform.

4. **RENT**

4.1 **Payments** – All payments made by the Lessee to the Lessor under this Lease will be:

4.1.1 paid in Canadian dollars;

4.1.2 made payable to the Receiver General for Canada;

4.1.3 paid without any prior demand, set-off, deduction, or abatement; and

- 4.1.4 accompanied by applicable Taxes.
- 4.2 **Outstanding Amounts** – The Lessor may apply payments received against outstanding amounts owed to it by the Lessee under this Lease in the Lessor’s sole discretion.
- 4.3 **Prepaid Rent**
- 4.3.1 The Lessee paid Prepaid Rent of \$[Amount] to the Lessor on the Commencement Date.
- 4.3.2 The Lessee has no right to a refund of any Prepaid Rent from the Lessor or the First Nation if this Lease ends early.
- 4.4 **Additional Rent** – The Lessee will pay to the Lessor as Additional Rent, no later than 30 days after notice from the Lessor has been delivered, the amount of:
- 4.4.1 Additional Rent referred to in a provision of this Lease; or
- 4.4.2 any other expenses reasonably incurred by the Lessor, before or after this Lease ends, due to, in whole or in part, a failure of the Lessee to perform or observe its obligations in this Lease,
- plus an administration fee of 15% of such amount.
- 4.5 **First Nation Fees** – The Lessee will pay to the First Nation as First Nation Fees, no later than 30 days after notice from the First Nation has been delivered, the amount of:
- 4.5.1 First Nation Fees referred to in a provision of this Lease; or
- 4.5.2 any other expenses reasonably incurred by the First Nation, before or after this Lease ends, due to, in whole or in part, a failure of the Lessee to perform or observe its obligations in this Lease,
- plus an administration fee of 15% of such amount. First Nation Fees will be paid in Canadian dollars, accompanied by any applicable Taxes, and without any set-off, deduction, or abatement.
- 4.6 **Arrears to Bear Interest** – If Rent or First Nation Fees are not paid when due, or any other time interest is stipulated to be due, then the Lessee will pay the Lessor or the First Nation, as the case may be, interest on the unpaid amount at the prime lending rate established by the Bank of Canada plus 5% per annum, calculated quarterly and compounded semi-annually, from the date that such unpaid amount is due until the date that the payment is received. This interest provision does not relieve the Lessee from its obligation to pay Rent and First Nation Fees at the time and in the manner specified in this Lease and will not

prejudice or affect the remedies of the Lessor and the First Nation under this Lease or otherwise.

4.7 **Survival of Sections** – Sections 4.4 – 4.6 survive when this Lease ends.

5. IMPROVEMENTS

5.1 **Existing Improvements** – The Parties confirm that the Improvements on the Lands at the Commencement Date are identified in Schedule A of this Lease.

5.2 **Ownership of Improvements During the Term** – Improvements constructed during the Term will not be the property or liability of the Lessor or the First Nation during the Term, on the condition that the Lessee will not remove any such Improvements without the prior consent of the First Nation, in its sole discretion, however, this limitation does not prohibit the Lessee from repairing, rebuilding, or replacing, in whole or in part, Improvements in accordance with the terms of this Lease.

5.3 Requirements to Construct, Operate, or Remove

5.3.1 The Lessee will not construct, operate, or remove any Improvements, except for those related to an Exempt Project, or modify the Premises in anticipation of such construction, operation, or removal, without first having:

5.3.1.1 obtained all applicable building permits, approvals, and authorizations for such construction, operation, or removal under section 5.4;

5.3.1.2 obtained the Decision Maker's written determination under an Environmental Review that the applicable Project pertaining to such construction, operation, or removal may proceed; and

5.3.1.3 obtained the Decision Maker's written confirmation that an applicable Construction and Environmental Management Plan to implement such Project complies with the applicable Environmental Review.

5.3.2 The Lessee will not construct, operate, or remove any Improvements related to an Exempt Project, or modify the Premises in anticipation of such construction, operation, or removal, without first having obtained all applicable building permits, approvals, and authorizations for such construction, operation, or removal under section 5.4. For greater certainty:

5.3.2.1 the Lessee is still required to submit appropriate information under section 8.2.3 for the Decision Maker to determine if such construction, operation, or removal constitutes an Exempt Project; and

5.3.2.2 sections 8.2.4 - 8.2.7 and 8.3 do not apply to such construction, operation, or removal.

5.4 **Authority Authorization** – The Lessee will apply to all appropriate Authorities for all applicable building permits, approvals, and authorizations necessary for the Lessee to construct, operate, or remove any Improvements.

5.5 **Construction Compliance**

5.5.1 Once the requirements of section 5.3 have been met in relation to proposed Improvements, the Lessee will ensure that such Improvements are **[OPTIONAL – the First Nation to determine if there should be a time element to completing construction, such as: promptly]** constructed in a proper and workmanlike manner in accordance with:

5.5.1.1 applicable Codes, Laws, building permits, approvals, and authorizations;

5.5.1.2 any applicable Development Plan and Construction and Environmental Management Plan; and

5.5.1.3 the terms and conditions, including all mitigation measures, timelines, and monitoring, required by an applicable determination made under an Environmental Review.

OPTIONAL – Include the following section if a time element such as “promptly” is NOT used in section 5.5.1:

5.5.2 Except as may be specifically set out in this Lease, the Lessee will not be required to commence construction of any Improvements within any period of time, even after the requirements of section 5.3 have been met with respect to such Improvements, on the condition that, once construction of the Improvements has commenced, such construction will be pursued to completion with commercially reasonable diligence in accordance with this Lease and, without limiting the generality of the foregoing, no Improvements under construction will be left unfinished in an unsafe, unsightly, or uneconomic condition.

End of Option.

5.6 **Security for Construction** – The Lessee will, prior to constructing any Improvements, provide to the First Nation, concurrently with the applicable certified Construction and Environmental Management Plan, written evidence that a performance bond, letter of credit, or other similar security has been obtained in an amount at least equal to 50% of the estimated cost of the work, including all labour and material in connection with the work. Such security must be in a form satisfactory to the First Nation with sureties, if required, approved of by the First Nation.

5.7 **Substantial Completion** – Improvements must not be occupied until they are Substantially Complete. Substantial Completion may occur in respect of portions of the Improvements.

5.8 **Drawings and Plans**

5.8.1 The Lessee will promptly provide to each of the Lessor and the First Nation reproducible as-built or record drawings, certified by an Architect or Engineer that applicable Codes and Laws have been met, of all completed Improvements and any completed substantial alterations.

5.8.2 The Lessee will maintain an updated chronological record of all finalized Construction and Environmental Management Plans relating to the Premises. Within 30 days of a request by the Lessor or the First Nation, the Lessee will provide the requesting Party with a copy of the updated chronological record and copies of such plans for any year identified by the requesting Party.

5.9 **Repair & Maintenance** – The Lessor and the First Nation have no obligation to maintain or repair any Improvements. Subject to section 5.11, the Lessee will repair and maintain the Premises as would a prudent owner, keeping the Premises in good order and condition in all respects consistent with their age and nature.

OPTIONAL – Add the following section if the Lessee will be required to get regular engineering reports to assist in determining what repair and maintenance needs exist:

5.10 **Report of Engineering Firm** - To assist the Lessee with its obligations under section 5.9, the Lessee will obtain from a reputable, independent professional engineering firm, at least every five years during the Term, a building condition report with respect to each building forming part of the Improvements that sets out the items requiring repair or replacement, appropriate timelines for completing such repairs and replacements, and the estimated cost to complete each such item. The Lessee will promptly provide a copy of such report to each of the Lessor and the First Nation and promptly carry out such repairs and replacements in accordance with the timeline set out in such report. To avoid duplication, such report will not be required if one is required on a regular basis under applicable Codes or Laws.

End of Option.

5.11 **Damage to, or Destruction of, Improvements** – If any Improvements are damaged or destroyed during the Term, then the Lessee will promptly notify the Lessor and the First Nation.³

³ There is no requirement to rebuild the Improvements as the HOA and unit owners will make that determination. If the First Nation wishes to require rebuilding, then that requirement could be added, but

6. INSURANCE

- 6.1 **Errors and Omissions Insurance** – The Lessee will provide evidence to the First Nation that errors and omissions insurance, with minimum limits of \$1,000,000 per claim and annual aggregate, is obtained with respect to the design work of the Architects or Engineers for proposed Improvements estimated to be valued at more than \$250,000.
- 6.2 **Construction Insurance** – From the earlier of the date upon which construction of an Improvement starts or the date upon which stockpiling construction materials on the Premises in anticipation of such construction starts through until Substantial Completion of the Improvement, the Lessee will ensure that the following insurance is obtained and maintained to the extent that coverage is not available under the insurance required in section 6.3:
- 6.2.1 “Wrap up” commercial general liability insurance against claims for bodily injury (including death), personal injury, and property damage arising in connection with the use of the Premises for construction, which must:
- 6.2.1.1 be written on a commercial general liability basis with liability limits of at least \$5,000,000 per occurrence (or any higher amount that the Lessor or the First Nation reasonably requires, by providing notice to the Lessee before construction begins); and
 - 6.2.1.2 include each of the Lessor and the First Nation as additional insureds.
- 6.2.2 Builders risk construction insurance to cover “all risks” of physical damage to, or loss of, the Improvements (including goods and materials to be incorporated in the Improvements while in storage at the site or in transit to it), which must:
- 6.2.2.1 be written in an amount at least equal to such Improvements’ full replacement value, plus no less than 25% of budgeted “soft costs”;
 - 6.2.2.2 include the First Nation as a named insured;
 - 6.2.2.3 to prevent the First Nation from becoming a co-insurer, include either a stated amount co-insurance endorsement or confirm that no co-insurance applies; and
 - 6.2.2.4 include reasonable coverage for flood and for earthquake (for properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor).

it may eliminate the unit owners’ ability to obtain CMHC financing, which could affect the value of the project.

The insurance may allow for full or partial occupancy of the Improvements prior to completion of construction and allow for the testing and commissioning of equipment installed as part of the Improvements.

6.3 **Liability & Property Insurance** – Subject to section 6.2, the Lessee will ensure that the insurance required by Schedule E is obtained and maintained during the Term and any other period it may be on the Premises to remove Improvements under section 12.2, notwithstanding section 12.5.

6.4 **General Insurance Provisions**

6.4.1 Every insurance policy required under this Lease in which the Lessor or the First Nation is an additional or named insured must:

6.4.1.1 contain an agreement by the insurer that it will not cancel the policy without first giving such Party at least 15 days prior notice;

6.4.1.2 contain a clause to the effect that a release from liability entered into prior to any loss will not affect the right of such Party to recover;

6.4.1.3 contain a waiver of subrogation by the insurers against such Party;

6.4.1.4 contain a provision that the policies will not be invalidated by any act, omission, or negligence of any Person that is not within the knowledge or control of such Party;

6.4.1.5 include features customarily included by prudent owners in the province of [Name of Province] in:

6.4.1.5.1 property insurance for improvements similar to the Improvements; and

6.4.1.5.2 liability insurance for the type of business carried on by the Lessee on the Premises;

6.4.1.6 include features reasonably required by such Party; and

6.4.1.7 not include any non-standard, special, or unusual exclusions or restrictive endorsements without first getting the written consent of such Party.

6.4.2 The Lessee will not do anything, or permit or suffer anything to be done, on the Premises that might cause the insurance policies required by this Lease to be invalidated or cancelled.

6.4.3 The Lessee will:

- 6.4.3.1 on the Commencement Date, provide certificates evidencing every insurance policy that is required at that time by this Lease to each Party who is required to be an insured under such policy;
 - 6.4.3.2 from time to time when an insurance policy is required under this Lease, provide certificates evidencing such policy to each Party who is required to be an insured under such policy; and
 - 6.4.3.3 prior to an insurance policy required under this Lease expiring, provide to each Party insured under such policy a certificate of renewal or other evidence satisfactory to such Party that the insurance has been renewed or replaced.
- 6.4.4 Upon request by the Lessor or the First Nation, the Lessee will provide to such Party a certified copy of each requested insurance policy.
- 6.5 **Release of Insured Claims** – The Lessee releases the Lessor, the Minister, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives from all liability for loss (including economic loss), damage, and injury (including loss, damage, and injury arising out of the negligent acts or omissions of any of them) in any way caused by or resulting from any of the perils or injury against which it has covenanted in this Lease to insure.

7. LAWS / TAXES / SERVICES

7.1 Laws

- 7.1.1 The Lessee will comply with all Laws regarding this Lease, the Premises, and activities on the Premises and will require all those for whom the Lessee is responsible in law to comply with all Laws regarding this Lease, the Premises, and activities on the Premises.
- 7.1.2 The Lessee will promptly provide to each of the Lessor and the First Nation copies of any notice that it receives from an Authority requiring something to be done, or stop being done, on the Premises. Once the matter under the notice has been resolved to the Authority's satisfaction, the Lessee will promptly provide reasonably satisfactory evidence to each of the Lessor and the First Nation.
- 7.1.3 On request from the Lessor or the First Nation, the Lessee will either promptly provide to such Party reasonably satisfactory information from an Authority about the Lessee's compliance with Laws or promptly arrange for written authorization

to allow such Party to receive information from an Authority about the Lessee's compliance with Laws.⁴

7.2 Taxes

7.2.1 Without limiting the generality of section 7.1, the Lessee will promptly pay all applicable taxes (including property taxes), rates, levies, duties, and assessments of any kind, together with all applicable charges, penalties, and interest imposed by an Authority, regarding the Lands, the Improvements, the assignment of an interest in the Premises, the occupation of the Premises by any Person, or the payment of Rent or other amounts payable by the Lessee.

7.2.2 Without relieving or modifying the obligation of the Lessee to comply with section 7.2.1, the Lessee may, at its expense, contest or appeal the validity or amount of any tax, rate, levy, duty, assessment, charge, penalty, or interest referred to in section 7.2.1, on the condition that the Lessee promptly commences any proceedings to contest or appeal such validity or amount, continues the proceedings with all due diligence, and does not cause a charge, encumbrance, or claim to be made against the Premises.

7.2.3 On request by the Lessor or the First Nation, the Lessee will provide to such Party official receipts of an Authority, or other proof satisfactory to such Party, evidencing payment of applicable taxes, rates, levies, duties, assessments, charges, penalties, and interest.

7.3 Services

7.3.1 The Lessee will provide, secure, and maintain all services, utilities, and facilities required from time to time for the use of the Premises.

7.3.2 The Lessor and the First Nation have no obligation to provide, secure, or maintain any services, utilities, and facilities to or on the Premises.

7.3.3 The interruption of a service, utility, or facility referred to in section 7.3.1 will not be considered a disturbance of the Lessee's right to enjoyment of the Premises or relieve the Parties from their respective obligations in this Lease.

8. ENVIRONMENT

8.1 **Compliance with Environmental Laws** – The Lessee will not use any Contaminants on the Premises, except as may be reasonably required for the Authorized Uses and in compliance with Laws related to the protection of the Environment.

⁴ This template does not include a requirement for fire service inspections as that is not a requirement for residential condominiums in BC, where this template is used most often. If inspections would be required in the development's province, consider adding the requirement back in.

8.2 Environmental Review Process

- 8.2.1 As a “designated project”, as defined in the IAA, has its own process under the auspices of a different federal authority than the Minister, sections 8.2.2 - 8.2.7, and 8.3 do not apply to a designated project, and any similar concept in any amended, succeeding, or replacement Law.
- 8.2.2 Sections 8.2.3 - 8.2.7 only apply to the Decision Maker’s environmental review process with respect to a Project and do not limit the processes or powers of any other federal authority with assessment responsibilities for such Project.
- 8.2.3 If the Lessee considers that a proposed Project is an Exempt Project, then it will provide the Decision Maker (and, if the Minister is the Decision Maker, then also the First Nation) sufficient information about the proposed Project for the Decision Maker to determine if the Project is an Exempt Project. If the Decision Maker determines that the proposed Project is an Exempt Project, then further review of such Project is not required and sections 8.2.4 - 8.2.7, and 8.3 do not apply to such Project.
- 8.2.4 The Lessee will provide the Decision Maker (and, if the Minister is the Decision Maker, then also the First Nation) all information about a proposed Project reasonably required by the Decision Maker, including:
- 8.2.4.1 an environmental site assessment of the environmental condition of the Premises affected by such Project, stating that it may be relied upon by all Parties;
 - 8.2.4.2 a Development Plan consistent with the Project; and
 - 8.2.4.3 an environmental review report of such Project,
- to enable the Decision Maker to determine the environmental effects of such Project:
- 8.2.4.4 as the Decision Maker may by Law be required to make; or
 - 8.2.4.5 in the reasonable discretion of the Decision Maker, if the First Nation takes over the position of the Lessor under this Lease by operation of law and no Law requires a determination.
- 8.2.5 If the Decision Maker is not reasonably satisfied with any information provided under section 8.2.4, then the Decision Maker will notify the Lessee of each inadequacy (and, if the Minister is the Decision Maker, provide a copy of such notification to the First Nation). The Lessee will ensure that the inadequacies are addressed to the reasonable satisfaction of the Decision Maker, which revised information the Lessee will provide to the Decision Maker (and, if the Minister is the Decision Maker, then also to the First Nation.)

8.2.6 If the Decision Maker determines that the Project may proceed, then the Lessee will:

- 8.2.6.1 ensure that implementation of the Project, including site preparation, construction, operation, and decommissioning, complies with all terms and conditions, including all mitigation measures, timelines, and monitoring, required by the Decision Maker's determination; and
- 8.2.6.2 provide the Decision Maker (and, if the Minister is the Decision Maker, then also the First Nation) with evidence, to the reasonable satisfaction of the Decision Maker, of compliance with such terms, conditions, mitigation measures, timelines, and monitoring.

8.2.7 If the Decision Maker determines that the Project may not proceed, then:

- 8.2.7.1 the Decision Maker will provide reasons for such determination to the Lessee (and, if the Minister is the Decision Maker, provide a copy of such reasons to the First Nation); and
- 8.2.7.2 subject to such appeals as may be permitted by law, the Lessee releases the Lessor, the Decision Maker, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives for the Lessee's inability to use the Premises as anticipated.

8.3 **Construction and Environmental Management Plan**

8.3.1 The Lessee will provide the Decision Maker (and, if the Minister is the Decision Maker, then also the First Nation) with a Construction and Environmental Management Plan for the implementation of each Project.

8.3.2 The Decision Maker will review the Construction and Environmental Management Plan to confirm if it meets the requirements of the applicable Environmental Review. If further information is required, then the Decision Maker will notify the Lessee (and, if the Minister is the Decision Maker, provide a copy of such notification to the First Nation) and the Lessee will provide such additional information to the Decision Maker (and, if the Minister is the Decision Maker, then also to the First Nation). This process will continue until the Decision Maker confirms in writing that the Decision Maker is reasonably satisfied that the Construction and Environmental Management Plan meets the requirements of the applicable Environmental Review.

8.3.3 The Lessor, the Decision Maker, the First Nation, and the Council do not owe, individually or in any combination, a duty of care to the Lessee (and any Sublessee, any Mortgagee, and any other Person deriving from the Lessee, directly or indirectly, an interest in, or right in relation to, the Premises) because of their respective reviews of any Construction and Environmental Management Plan, as such reviews are solely for their respective benefits. The Lessee

releases the Lessor, the Decision Maker, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives from any liability associated with their reviews of, and the Lessee's implementation of, a Construction and Environmental Management Plan. This section 8.3.3 survives when this Lease ends.⁵

There are 2 options for the next section. Choose one and delete the other.

OPTION 1 – If remediation is to be to the level set out in the Standards, then use the following:

- 8.4 **Contaminants** – If the Premises are exposed to a Contaminant in an amount that may cause levels of the Contaminant on the Premises to exceed its Standard, then the Lessee will:
- 8.4.1 promptly notify the Lessor, the First Nation, and any appropriate Authority of the exposure, ensuring that the notice includes details relating to the exposure, including the time and extent of the exposure, the remedial action taken prior to providing the notice, the remedial action that the Lessee intends to take in order to contain or rectify the exposure, and any Persons observed who appeared to have caused or who were in the vicinity of the exposure;
 - 8.4.2 promptly take all remedial action necessary to reduce the Contaminant on the Premises to a level that is at or below its Standard and to fully rectify the effects of the exposure off the Premises, both on and off the Reserve, in compliance with all Laws and all reasonable requests of the Lessor and the First Nation;
 - 8.4.3 provide each of the Lessor and the First Nation with an environmental site assessment report (which is reasonably satisfactory to each of them and which states that it may be relied upon by all Parties) evidencing the results of the Lessee's activities under section 8.4.2; and
 - 8.4.4 undertake such further activities as each of the Lessor and the First Nation may reasonably require for the Lessee to reduce the Contaminant on the Premises to a level that is at or below its Standard and to fully rectify the effects of the exposure off the Premises, both on and off the Reserve, based on the report referred to in section 8.4.3.

End of Option 1.

OPTION 2 – If remediation is to be to the condition existing at the Commencement Date, then use the following:

⁵ There is no provision for Environmental Bonds in this template as strata developments do not tend to be the sort of projects that pose significant decommissioning risks.

- 8.5 **Contaminants** – If the Premises are exposed to a Contaminant, then the Permittee will:
- 8.5.1 promptly notify the Lessor, the First Nation, and any appropriate Authority of the exposure, ensuring that the notice includes details relating to the exposure, including the time and extent of the exposure, the remedial action taken prior to providing the notice, the remedial action that the Lessee intends to take in order to contain or rectify the exposure, and any Persons observed who appeared to have caused or who were in the vicinity of the exposure;
 - 8.5.2 promptly remove all such Contaminant from the Premises and take all remedial action necessary to fully rectify the effects of the exposure off the Premises, both on and off the Reserve, in compliance with all Laws and all reasonable requests of each of the Lessor and the First Nation;
 - 8.5.3 provide each of the Lessor and the First Nation with an environmental site assessment report (which is reasonably satisfactory to each of them and which states that it may be relied upon by all Parties) evidencing the results of the Lessee’s activities under section 8.5.2; and
 - 8.5.4 undertake such further activities as each of the Lessor and the First Nation may reasonably require for the Lessee to remove all such Contaminant from the Premises and to fully rectify the effects of the exposure off the Premises, both on and off the Reserve, based on the report referred to in section 8.5.3.

End of Option 2.

- 8.6 **Environmental Representation and Warranty** – The Lessee represents and warrants to each of the Lessor and the First Nation that the Lessee, its affiliates, and their respective directors and senior officers have not been prosecuted for any offences, or received any orders or administrative, monetary, or other similar penalties, under any law related to the protection of the Environment.
- 8.7 **Survival of Section 8** – This section 8 survives when this Lease ends.

9. STRATA PLAN AND HOA

- 9.1 The Lessee is bound by the terms of Schedule E.⁶
- 9.2 The Lessee will establish the HOA prior to the grant of any Subleases.⁷
- 9.3 The Lessee warrants and agrees that the HOA is (or will be) for the equal membership or ownership, as applicable, and collective benefit of the “owners” of

⁶ Although Schedules form part of the Lease, this clause is required to create the obligation to comply.

⁷ The idea within this Lease is that the Sublessees are never to be without the benefit of the HOA to represent their interests.

the “strata lots” established under a “strata plan”, as those terms are defined in Schedule E, and no other Person.⁸

10. ASSIGNMENTS, MORTGAGES & SUBLEASES

10.1 Assignments

10.1.1 The Lessee may not assign its interest in this Lease without the consent of each of the Lessor and the First Nation, in their discretion, and no assignment is valid until the proposed assignee has entered into an Assignment Consent Agreement, substantially in the form attached as Schedule C, with any changes as may be agreed to by the Parties and the assignee.

10.1.2 An assignment of the Lessee’s interest in this Lease will not relieve or discharge the Lessee from any of its obligations in this Lease, unless the Party benefitting from such an obligation has agreed, in writing, to release the Lessee from it.

10.2 Mortgages

10.2.1 Although the Lessee may Mortgage its interest in this Lease without the consent of the Lessor and the First Nation, no Mortgage is valid until the proposed Mortgagee has entered into a Mortgage Acknowledgement Agreement, substantially in the form attached as Schedule D, with any changes as may be agreed to by the Parties and the Mortgagee.

10.2.2 The Lessee will ensure that any Mortgage does not conflict with the terms of this Lease and, by complying with such Mortgage, the Lessee will not be in default of this Lease.

10.2.3 If the Lessee defaults on an obligation in a Mortgage, then the Lessor or the First Nation may cure the default under the Mortgage on the Lessee’s behalf and all expenses incurred by such Party to cure such default are payable by the Lessee as Additional Rent or First Nation Fees, as the case may be.

There are two options for the next part. Choose one and delete the other.

OPTION 1 – choose the following two sections if there is NO right to cancel:

10.2.4 If the Lessee defaults on an obligation in this Lease, then:

10.2.4.1 any default notice issued by a Party under section 11 will not be valid for any purpose unless and until a copy of such notice is also provided to all Mortgagees of valid Mortgages; and

⁸ This clause ensures that the Lessee-developer cannot provide itself with any greater voting representation than it has by unit ownership.

10.2.4.2 a Mortgagee of a valid Mortgage may cure or cause to be cured a default of this Lease on behalf of the Lessee within the time period specified in this Lease or in the applicable default notice, whichever is greater, from the date of delivery of the notice to the Mortgagee.

10.2.5 A Mortgagee may exercise all of its rights and remedies with respect to this Lease and the Lessee's leasehold interest in the Premises, including the right to sell or assign the Lease, on the condition that the sale or assignment will not be valid without the consent of each of the Lessor and the First Nation and until the proposed assignee has entered into an Assignment Consent Agreement, substantially in the form attached as Schedule C, with any changes as may be agreed to by the Parties and the assignee.

End of Option 1.

OPTION 2 – choose the following three sections if there is a right to cancel:

10.2.6 If the Lessee defaults on an obligation in this Lease, then:

10.2.6.1 any default notice issued by a Party under section 11 will not be valid for any purpose unless and until a copy of such notice is also provided to all Mortgagees of valid Mortgages;

10.2.6.2 a Mortgagee of a valid Mortgage may cure or cause to be cured a default of this Lease on behalf of the Lessee within the time period specified in this Lease or in the applicable default notice, whichever is greater, from the date of delivery of the notice to the Mortgagee; and

10.2.6.3 if the Mortgagee notifies each of the Lessor and the First Nation within the cure period that the Mortgagee has taken or intends to take formal proceedings to enforce its Mortgage and protect its position, then:

10.2.6.3.1 the Mortgagee will have sufficient time to pursue such proceedings to their conclusion, acting expeditiously, to enforce its Mortgage and protect its position;

10.2.6.3.2 once such proceedings are commenced, the Lessor and the First Nation will not exercise any of their respective remedies (except for their respective rights to cure in accordance with sections 11.1.3 and 11.3.3), on the condition that the Mortgagee actively prosecutes such proceedings to their conclusion; and

10.2.6.3.3 if, upon the conclusion of such proceedings, the rights of the Lessee have been released to the Mortgagee or foreclosed or sold, then, on the condition that all previous defaults under this Lease that are capable of being cured

have been fully cured, the Mortgagee or, subject to section 10.2.4.2, the purchaser will become the Lessee.

10.2.7 Notwithstanding anything contained in this Lease, all obligations to construct Improvements in this Lease will not apply to a Mortgagee of a valid Mortgage during a period in which the Mortgagee is exercising its rights under section 10.2.6.3.

10.2.8 A Mortgagee may exercise all of its rights and remedies with respect to this Lease and the Lessee's leasehold interest in the Premises, including the right to sell or assign the Lease or to appoint a receiver of the Lessee or a receiver of the Premises (either by appointment under a security instrument or by an appointment by a court order) and take possession and administer the Premises (including with respect to the collection of rents and realizing any other rights or benefits of the Lessee in respect of the Premises), on the condition that, if the Mortgagee exercises any such power of sale or assignment, then the sale or assignment will not be valid without the consent of each of the Lessor and the First Nation and until the proposed assignee has entered into an Assignment Consent Agreement, substantially in the form attached as Schedule C, with any changes as may be agreed to by the Parties and the assignee.

End of Option 2.

10.2.9 The Lessee will not surrender any part of this Lease or the Premises, and the Lessor and the First Nation will not accept any such surrender, without the prior written consent of each Mortgagee of a valid Mortgage.

10.2.10 Notwithstanding any other provisions of this Lease, a Mortgagee will not be responsible for the Lessee's obligations in this Lease, including any requirement to take out or maintain insurance or any requirement to indemnify, unless and until either:

10.2.10.1 the Mortgagee becomes the Lessee by obtaining an order absolute of foreclosure in respect of this Lease or by taking an assignment of this Lease, and then only for the period in which the Mortgagee is the Lessee; or

10.2.10.2 the Mortgagee is in possession of the Premises (through the exercise of its default remedies or otherwise), and then only for the period in which the Mortgagee is in possession of the Premises, and the Mortgagee will not be considered to be in possession of the Premises as a result of the appointment of a receiver of the Lessee by a court or with court approval of the actions of such a receiver.

10.2.11 The Lessee will give each Mortgagee of a valid Mortgage reasonable notice of a dispute commenced in court under section 15.1.

- 10.2.12 The First Nation and the Lessee will give each Mortgagee of a valid Mortgage reasonable notice of an arbitration of a dispute under section 15.2 and each such Mortgagee will have the option of participating in the arbitration proceedings if such Mortgagee, acting reasonably, considers that such proceedings may affect the security of its Mortgage or the value of such security.
- 10.2.13 For greater certainty, this section 10.2 does not apply to a mortgage of a Sublease, which does not require consent of the Lessor or the First Nation, or entering into a Mortgage Acknowledgment Agreement, to be valid.

10.3 Subleases

- 10.3.1 The Lessee may grant Subleases without the consent of the Lessor and the First Nation, but each such Sublease is not valid unless:
 - 10.3.1.1 it states that it is made subject to and subordinate to this Lease;
 - 10.3.1.2 its term ends at least one day before the end of the Term and it contains no rights of extension or renewal beyond such date;
 - 10.3.1.3 it obligates the Sublessee to every other Sublessee and the Lessee on the terms of Schedule E as if they had contracted directly with each other; and⁹
 - 10.3.1.4 it states that it is required to be registered in the Registry and it requires any mortgages, transfers, or interests in land derived from it to be registered in the Registry.
- 10.3.2 If, by the time of Substantial Completion, the Lessee has not assigned this Lease to the HOA, then the Lessee must grant a Sublease of the “common property” (as defined in Schedule E) to the HOA.

OPTIONAL: Add the following if there is to be a right of cancellation throughout the Term coupled with non-disturbance rights for Sublessees:

- 10.3.3 If the Lessor issues a termination notice to the Lessee under section 11.1, then, upon the effective date of such termination (the “**Termination**”), the following provisions apply:
 - 10.3.3.1 A Sublessee who is not in default under a Sublease at the Termination and who, upon the Termination, attorns as tenant under the terms and conditions of such Sublease to the Lessor as

⁹ This provision allows Sublessees to have and enforce rights against each other without entering into a myriad of direct agreements. For example, Schedule E provides rights of support and easements between each unit and between units and the common property. This provision enables a Sublessee to enforce this against another Sublessee or the HOA (or vice versa).

landlord is entitled to a replacement lease of the applicable Subleased Property on the terms and conditions of such Sublease, subject to section 10.3.3.4, for the remainder of the term of the Sublease (“**Replacement Lease**”).

- 10.3.3.2 A Sublessee who is in default under a Sublease at the Termination and who, upon the Termination, attorns as tenant under the terms and conditions of such Sublease to the Lessor as landlord will have 60 days from the Termination (or such other number of days agreed to in writing by each of the Lessor and the First Nation) to remedy such default (which remedy may be made on its behalf by a Sublease mortgagee or any other Person). If such remedy occurs within such time, then the Sublessee will be entitled to a Replacement Lease. If such remedy does not occur within such time, then, at the end of such time, the Sublessee will peaceably surrender and yield up the Subleased Property to the Lessor in the condition required by the terms of the Sublease, without any subtenants in possession, and for no compensation.
- 10.3.3.3 A Sublessee who does not wish to obtain a Replacement Lease will, promptly after the Termination, provide written notice of such to the Lessor and the First Nation and, no later than 14 days after the Termination, peaceably surrender and yield up the Subleased Property to the Lessor in the condition required by the terms of the Sublease, without any subtenants in possession, and for no compensation. For greater certainty, despite surrendering and yielding up such Subleased Property, such Sublessee is liable to the Lessor for any pre-existing breaches of its Sublease as if the Lessor were the landlord under such Sublease.
- 10.3.3.4 If the First Nation has not taken over the position of the Lessor under this Lease by the Termination, then the Replacement Lease will include the First Nation as a party so that it has similar rights and obligations in the Replacement Lease as it has under this Lease, *mutatis mutandis*.¹⁰
- 10.3.3.5 By the Termination, the Lessee will provide each of the Lessor and the First Nation with particulars concerning all Subleases, including the then current contact information for each Sublessee, and indicate which, if any, Subleases are in default and what steps the Lessee has taken to ensure that any such defaults are remedied. If, and to the extent that, the indemnities in section 13 do not apply to this paragraph, then the Lessee will indemnify and hold harmless each of the Lessor and the First Nation from and for any claims,

¹⁰ *Mutatis mutandis* is a legal term of art roughly meaning “making appropriate changes without affecting the main point of the” clause or agreement.

demands, actions, suits, and other proceedings, judgments, damages, penalties, fines, costs (including reasonable legal fees, on a solicitor and own client basis, and reasonable consultant and expert fees), liabilities, losses, and sums paid in settlement of any claims arising out of, in whole or in part, the Lessee's breach of this paragraph or any inaccuracies in the information that the Lessee provides.

- 10.3.3.6 A Sublessee can rely on this subsection as if it were a direct contract between the Lessor, the First Nation, the Lessee, and the Sublessee that survives the early termination of this Lease, the consideration for which having been given under this Lease by the Lessee on the Sublessee's behalf and the acceptance of which the Sublessee makes by executing a Sublease or an assignment agreement of such Sublease.¹¹
- 10.3.3.7 For greater certainty, a Sublease may not be modified from the form in Schedule F without the consent of the Lessor and the First Nation, each in its absolute discretion, and any purported modifications are void and will not form part of any Replacement Lease.
- 10.3.3.8 For greater certainty, whether or not either the Lessor or the First Nation is aware of any breaches of a Sublease existing at the Termination, a Sublessee is liable to each of the Lessor and the First Nation, without duplication, under a Replacement Lease for any pre-existing breaches of such Sublease as if it were a continuous tenancy. The Sublessee will not be entitled to use the change in tenure to obtain any advantage over either the Lessor or the First Nation from its position with respect to the Lessee if the Sublease had continued.
- 10.3.3.9 For greater certainty, only a Sublessee in possession of a Subleased Property is entitled to a Replacement Lease and any previous Sublessees under the applicable Sublease who have not been released from their Sublease obligations before the Termination are not so entitled.
- 10.3.3.10 This subsection survives the early termination of this Lease.

END OF OPTION

10.4 **Registration** – The Lessee will ensure that all assignments of its interest in this Lease, Mortgages, Subleases, and interests in land granted by it under this

¹¹ As Sublessees are not parties to this lease, this clause provides them with the ability to enforce these non-disturbance provisions.

Lease are submitted to the Registry in a registerable form promptly after execution. The Lessee will require that any tenancies or other interests in land granted by any Sublessee be submitted to the Registry in a registerable form promptly after execution.

11. REMEDIES

11.1 Defaults on Obligations Owed to the Lessor

11.1.1 If the Lessee defaults on an obligation owed to the Lessor in this Lease, then the Lessor may provide a default notice to the Lessee, with a copy to the First Nation, the HOA, and each Mortgagee of a valid Mortgage.

11.1.2 If a default:¹²

11.1.2.1 can reasonably be cured within 45 days after the default notice is delivered and the Lessee fails to cure such default within the 45 days;
or

11.1.2.2 cannot reasonably be cured within 45 days after the default notice is delivered and the Lessee does not begin to cure such default within the 45 days to the reasonable satisfaction of the Lessor or continue to cure such default with due diligence after beginning to cure,

There are three options to consider for the remainder of this section. Choose one and delete the others.¹³

OPTION 1: This option provides no right of cancellation during the Term.

then the Lessor may not declare the Term ended and may only take advantage of any other legal and equitable remedies available, including commencing an action for specific performance, suing for damages, and applying for an injunction.

END OF OPTION 1

OPTION 2: This option provides a right of cancellation during the construction phase but not once unit holder Subleases have been granted:

then, if a Sublease:

11.1.2.3 has not yet been granted to a Person that is not directly or indirectly owned or controlled by the Lessee, an affiliate of the Lessee, or at

¹² The time to cure is 45 days rather than the usual 30 because the nature of decision-making with an HOA tends to be slower than a regular commercial enterprise.

¹³ The First Nation should consider discussing these options with any development partners and financiers, particularly if CMHC financing is anticipated at the Sublease level.

arm's length from the Lessee, then the Lessor may take advantage of any legal and equitable remedies available, including commencing an action for specific performance, suing for damages, applying for an injunction, and declaring the Term ended and claiming prospective losses, by providing a termination notice to the Lessee, with a copy to the First Nation and each Mortgagee of a valid Mortgage; and

- 11.1.2.4 has been granted to a Person that is not directly or indirectly owned or controlled by the Lessee, an affiliate of the Lessee, or at arm's length from the Lessee, then the Lessor may not declare the Term ended and may only take advantage of any other legal and equitable remedies available, including commencing an action for specific performance, suing for damages, and applying for an injunction.

END OF OPTION 2

OPTION 3: This option provides a right of cancellation throughout the Term and is to be coupled with the non-disturbance rights provision in section 10.3.3:

then the Lessor may take advantage of any legal and equitable remedies available, including commencing an action for specific performance, suing for damages, applying for an injunction, and declaring the Term ended and claiming prospective losses, by providing a termination notice to the Lessee, with a copy to the First Nation and each Mortgagee of a valid Mortgage.

END OF OPTION 3

- 11.1.3 If a default is not cured within the time allowed in this Lease, or is not being diligently cured under section 11.1.2.2, then the Lessor may, with unrestricted access to the Premises, cure it in the Lessor's sole discretion, and the Lessor's expenses related to such curing are Additional Rent. If the Lessor begins to cure the default, then the Lessor will have no obligation to continue to cure it to completion and the Lessor is not liable for any losses or expenses suffered as a result by the Lessee, any Sublessee, or any Person deriving an interest directly or indirectly from the Lessee.

- 11.2 **Additional Lessor Remedy for Unpaid Taxes, Additional Rent, and Interest**
– The Lessor may recover Taxes, Additional Rent, and interest due to the Lessor as if they were unpaid rent at common law.

11.3 Defaults on Obligations Owed to the First Nation

- 11.3.1 If the Lessee defaults on an obligation owed to the First Nation in this Lease, then the First Nation may provide a default notice to the Lessee, with a copy to the Lessor, the HOA, and each Mortgagee of a valid Mortgage.

11.3.2 If such default:

11.3.2.1 can reasonably be cured within 45 days after the default notice is delivered and the Lessee fails to cure such default within the 45 days;
or

11.3.2.2 cannot reasonably be cured within 45 days after the default notice is delivered and the Lessee does not begin to cure such default within the 45 days to the reasonable satisfaction of the First Nation or continue to cure such default with due diligence after beginning to cure,

then, as the First Nation may not terminate this Lease as a remedy, the First Nation may take advantage of any other legal and equitable remedies available, including commencing an action for specific performance, suing for damages, and applying for an injunction.

11.3.3 If a default is not cured within the time allowed in this Lease, or is not being diligently cured under section 11.3.2.2, then the First Nation may, with unrestricted access to the Premises, cure it in the First Nation's sole discretion, and the First Nation's expenses related to such curing are First Nation Fees. If the First Nation begins to cure the default, then the First Nation will have no obligation to continue to cure it to completion and the First Nation is not liable for any losses or expenses suffered as a result by the Lessee, any Sublessee, or any Person deriving an interest directly or indirectly from the Lessee.

11.4 Additional Lessor and First Nation Remedy for Breaches of Sections 5.3 and 5.5 – Stop Work Orders and Injunctions

11.4.1 If section 5.3 or 5.5 is breached, then, in addition to any other remedy available to the Lessor or the First Nation:

11.4.1.1 each such Party may issue a "stop work order", which such Party is entitled to post in conspicuous locations on the Premises, and the Lessee will ensure that all unauthorized work on the Premises ceases;

11.4.1.2 the Lessee will promptly remediate any damage to the Premises arising from such breach that is not otherwise permitted, approved of, or authorized, as required by sections 5.3 and 5.5; and

11.4.1.3 each such Party is entitled to obtain an injunction from a court of competent jurisdiction against the continuation of such breach, the Party's costs of which (including legal costs on a solicitor and own client basis) are, contingent upon success of the injunction application, Additional Rent or First Nation Fees, as the case may be.

11.4.2 The Lessor and the First Nation will notify each other of their actions under this section 11.4.

- 11.5 **Remedies are Cumulative** – Notwithstanding any part of this Lease that provides a specific remedy, all remedies under this Lease or at law may be exercised at the same time and the exercise of one remedy does not preclude the exercise of any other remedy.
- 11.6 **Unavoidable Delay** – A default of this Lease will not be a default if it was due to, caused by, or materially contributed to by Unavoidable Delay, on the condition that the Party claiming the benefit of Unavoidable Delay promptly:
- 11.6.1 provides the other Parties with notice of the Unavoidable Delay;
- 11.6.2 in good faith and in a commercially reasonable manner puts itself in a position to carry out the terms of this Lease notwithstanding the Unavoidable Delay; and
- 11.6.3 carries out the terms of this Lease once the Unavoidable Delay has ceased.
- 11.7 **Curing of Defaults by Others** – The curing of a default of this Lease by or on behalf of a Person other than the Lessee will be construed as a curing of that default by the Lessee.

12. END OF LEASE

- 12.1 **Surrender of Premises** – Subject to section 12.2:
- 12.1.1 when this Lease ends, the Lessee will peaceably surrender and yield up the Premises to the Lessor and the First Nation, as to their respective interests, in the condition required by the terms of this Lease; and
- 12.1.2 all Improvements will be the property of the Lessor and the First Nation, as to their respective interests, absolutely, free of all encumbrances and for no compensation.
- 12.2 **Removal of Improvements**
- 12.2.1 If, within 90 days:
- 12.2.1.1 of the end of the Term; or
- 12.2.1.2 after the report referred to in section 12.3.1 is issued if this Lease ends early,
- the First Nation notifies the Lessee that the Improvements described in such notice are to be removed from the Premises, then the Lessee will promptly remove them and will leave the remainder of the Premises in good and substantial repair and condition and free from all debris to the reasonable satisfaction of the First Nation.

12.2.2 If the Lessee does not promptly remove the Improvements as required under section 12.2.1, then the First Nation may remove and dispose of them in the First Nation's sole discretion and return the Premises to a good and substantial repair and condition and free from all debris, and the First Nation's expenses related to such work are First Nation Fees. The First Nation is not liable for any losses or expenses suffered as a result by the Lessee, any Sublessees, and any other Person on the Lands deriving an interest directly or indirectly from the Lessee.

12.3 Environmental Assessment and Contaminant Removal

12.3.1 Within 8 months before the expiration of the Term, or within 90 days after the earlier termination of this Lease, the Lessee will complete a sufficient environmental site assessment to establish the environmental condition of the Premises at that time and will provide each of the Lessor and the First Nation with a report (which is reasonably satisfactory to each of them and which must state that it may be relied upon by all Parties).

There are 2 options for the next section. Choose one and delete the other.

OPTION 1 – If remediation is to be to the level set out in the Standards, then use the following:

12.3.2 By the end of the Term, or within 90 days after the report referred to in section 12.3.1 is issued if this Lease ends early, the Lessee will remove from the Premises, to the reasonable satisfaction of each of the Lessor, the First Nation and any Authority, all Contaminants on the Premises in excess of their applicable Standard.

End of Option 1.

OPTION 2 – If remediation is to be to the condition existing at the Commencement Date, then use the following:

12.3.3 By the end of the Term, or within 90 days after the report referred to in section 12.3.1 is issued if this Lease ends early, the Lessee will, subject to its obligations relating to the Improvements under this section 12, remediate the Premises to their environmental condition prior to the Commencement Date, including removing from the Premises, to the reasonable satisfaction of each of the Lessor, the First Nation, and any Authority, all Contaminants brought onto the Premises during the Term.

End of Option 2.

12.4 **Securing the Premises** – When this Lease ends, the Lessee will promptly secure the Premises to the reasonable satisfaction of the First Nation so that the Premises do not pose a danger to any Person.

12.5 **Access after Lease Ends** – The Lessee is entitled to access the Premises when this Lease ends only at the reasonable times and on the reasonable conditions set by the First Nation and only to be able to perform any of the Lessee’s obligations that survive after this Lease ends. Such access will not be construed as providing any rights of possession to the Premises.

12.6 **Survival of Section 12** – This section 12 survives when this Lease ends.

13. INDEMNITIES

13.1 **Lessee’s Indemnities** – The Lessee will indemnify and hold harmless the Lessor, the Minister, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives (each being an “**Indemnified**”) from and for any claims, demands, actions, suits, and other proceedings, judgments, damages, penalties, fines, costs (including reasonable legal fees, on a solicitor and own client basis, and reasonable consultant and expert fees), liabilities, losses, and sums paid in settlement of any claims that arise during or after the Term and are in any way based upon, arise out of, or are connected with:

13.1.1 a breach of any of the Lessee’s obligations in this Lease;

13.1.2 an injury to, or death of, a Person on the Premises during the Term, other than a Person on the Premises under a right or interest granted by the Lessor under section 2.2 or 2.4;

13.1.3 damage to, or loss of, property by a Person in any way due to the use of the Premises during the Term;

13.1.4 the Decision Maker reviewing a Construction and Environmental Management Plan;

13.1.5 the Decision Maker determining under an Environmental Review that a Project may not proceed; or

13.1.6 the Indemnified curing or attempting to cure a default of this Lease,

but not if due to the Gross Negligence or Wilful Misconduct of such Indemnified, unless such negligence or misconduct involves a peril against which the Lessee is obligated to obtain and maintain insurance.

13.2 **Survival of Section 13** – This section 13 survives when this Lease ends.

14. DELIVERY

14.1 General Requirement

14.1.1 All notices, requests, demands, consents, and approvals to be provided under this Lease, which must be in writing, all other documents to be provided under this Lease, and all Rent and First Nation Fees to be paid will be delivered in accordance with this section 14 to the following addresses:

To the Lessor:

Director, Lands and Economic Development
Indigenous Services Canada
[Regional Office]
[Regional Office's Address]

Fax: [#]

Email: [Email]

To the First Nation:

[First Nation]
[First Nation's Address]

Fax: [#]

Email: [Email]

To the Lessee:

[Lessee's Name]
[Lessee's Address]

Fax: [#]

Email: [Email]

14.1.2 If the postal service is interrupted or threatened to be interrupted, then any notice, request, demand, consent, or approval will only be sent by means other than mail.

14.2 Date of Delivery

14.2.1 Rent and First Nation Fees will not be considered to be delivered until actually received by the Lessor and the First Nation, respectively.

- 14.2.2 If a question arises as to the date on which a notice, request, demand, consent, approval, or document provided under this Lease is delivered, then it will be conclusively deemed to have been delivered:
- 14.2.2.1 if sent by fax or email, the day of transmission if transmitted before 3:00 p.m. [Time zone] time, otherwise, the next day;
 - 14.2.2.2 if sent by mail, on the sixth day after the notice was mailed; or
 - 14.2.2.3 if sent by means other than fax, email, or mail, the day it was received.
- 14.3 **Change of Contact Information** – A Party may change its contact information by informing the other Parties of the new contact information and the change will take effect on the effective date set out in the notice or 30 days after the notice is delivered, whichever is later.

15. DISPUTE RESOLUTION

- 15.1 **Disputes Involving the Lessor** – A dispute arising under this Lease involving the Lessor that is not resolved by negotiation will be resolved by referral, in the first instance, to the Federal Court or any replacement or successor court having jurisdiction. If the Federal Court refuses jurisdiction or does not determine the dispute, then a Party to the dispute may refer it to any other court that has jurisdiction and the Parties may exercise any other right or remedy that they have under this Lease or otherwise.
- 15.2 **Disputes Not Involving the Lessor** – A dispute arising under this Lease solely between the Lessee and the First Nation, including when the First Nation takes over the position of the Lessor under this Lease by operation of law, will be resolved as follows:
- 15.2.1 **Negotiation:** The Party that wishes a dispute to be resolved will provide a dispute notice to the other Party to the dispute. Each such Party will promptly designate a senior representative to attempt in good faith to resolve the dispute by negotiation.
 - 15.2.2 **Mediation:** If negotiation does not resolve the dispute within 15 days of delivery of the dispute notice, then either Party may provide a mediation notice to the other Party. The Parties will then promptly appoint a qualified, impartial, and experienced mediator, the cost of which will be paid equally by both Parties. If the Parties cannot agree on a mediator within 15 days of delivery of the mediation notice, then the mediator will be appointed by the [Name of Provincial Arbitration Centre] (or its successor, or a similar body if neither is available). Within 10 days of appointment of a mediator, each Party will provide the mediator and each other with a written statement of its position about the dispute and summary of the arguments supporting its position. The mediator will meet with the Parties in the mediator's sole discretion in an attempt to resolve the dispute.

The Parties will provide any additional information requested by the mediator. The mediator may hire experts, the cost of which will be paid equally by both Parties unless the mediator orders a different division.

15.2.3 **Arbitration:** If the dispute is not resolved within 30 days of the appointment of a mediator, then, on application by a Party to the dispute, the dispute may be referred to a single arbitrator and determined by arbitration administered by the [Name of Provincial Arbitration Centre] (or its successor, or a similar body if neither is available). The decision of the arbitrator is final and binding on both Parties. The cost of the arbitrator will be paid equally by both Parties unless the arbitrator orders a different division.

15.2.4 The Party delivering the dispute notice under section 15.2.1 will promptly notify the HOA and each Mortgagee. The HOA is entitled to participate fully in the proceedings. The Mortgagee is entitled to participate fully in the proceedings if, in the Mortgagee's reasonable opinion, the outcome may affect its security.

16. MISCELLANEOUS

16.1 **Deemed Conditions and Covenants** – All agreements, terms, conditions, covenants, provisions, duties, and obligations to be performed or observed by the Lessee under this Lease for the benefit of the Lessor are conclusively deemed to be conditions as well as covenants.

16.2 **No Presumption** – There will be no presumption that an ambiguity in a term of this Lease is to be interpreted in favour of any particular Party.

16.3 **Absolute Net Lease for the Lessor** – This Lease is to be an absolute net lease for the Lessor. Except as otherwise explicitly set out in this Lease, the Lessor will not be responsible during the Term for any costs, charges, and expenses arising from or relating to the Premises, the use or occupancy of the Premises, the business carried out on the Premises, or any of the Lessee's obligations in this Lease.

16.4 **No Cost to the First Nation** – Except as otherwise explicitly set out in this Lease, the First Nation will not be responsible during the Term for any costs, charges, and expenses arising from or relating to the Premises, the use or occupancy of the Premises, the business carried out on the Premises, or any of the Lessee's obligations in this Lease.

16.5 **Binding on Successors** – This Lease will be for the benefit of and be binding upon each Party's respective heirs, successors, executors, administrators, assigns, and other legal representatives.

16.6 **No Waiver** – No condoning, excusing, or overlooking of a default of this Lease will operate as a waiver by, or otherwise affect the respective rights of, the other Parties in respect of a continuing or subsequent default. A waiver must be in

writing and no waiver will be inferred from anything done or omitted to be done by a Party.

- 16.7 **No Assumption of Responsibility** – No consent or approval, or absence of consent or approval, by the Lessor or the First Nation will in any way be an assumption of responsibility or liability by such Party for any matter subject to or requiring such Party's consent or approval.
- 16.8 **Not a Joint Venture** – Nothing in this Lease will be construed as creating a relationship of agency, partnership, joint venture, or other such association between any of the Parties.

There are 3 options for the Lessee's authority. Choose one and delete the others.

OPTION 1 – If the Lessee is an individual, then delete both of options 2 and 3 and ensure that an affidavit of execution (see end of Lease) accompanies the Lease. End of Option 1.

OPTION 2 – If the Lessee is a corporation, then use the following:

16.9 **Corporate Authority** – The Lessee represents and warrants that the Lessee:

16.9.1 has all necessary authority to enter into this Lease and to perform all of the obligations contained in this Lease;

16.9.2 is a corporation duly incorporated under the laws of the province of [Name of Province], is not a reporting company, and is a valid and subsisting company in good standing with the [Name of Province] corporate registry; and

16.9.3 will remain in good standing with the [Name of Province] corporate registry.

End of Option 2.

OPTION 3 – If the Lessee is a limited partnership, then use the following:

16.10 **Authority** – The Lessee represents and warrants that the Lessee:

16.10.1 has all necessary authority to enter into this Lease and to perform all of the obligations contained in this Lease;

16.10.2 is the general partner of a limited partnership formed under the laws of the province of [Name of Province];

16.10.3 is a corporation duly incorporated under the laws of the province of [Name of Province], is not a reporting company, and is a valid and subsisting company in good standing with the [Name of Province] corporate registry; and

16.10.4 will remain in good standing with the [Name of Province] corporate registry.

End of Option 3.

16.11 **Counterpart Execution** – This Lease may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document. Upon execution by a Party, such Party will promptly provide a copy of its originally executed Lease to the other Parties.

The Parties have executed this Lease on the dates indicated below.

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Indigenous Services

 [Name]
 Date signed by the Lessor:_____

EXECUTED in the presence of:

) **[FIRST NATION]**, as represented by the
) Council
)
)
)

 Witness as to the First Nation's
 authorized signatories

) _____
) [Name]
) _____
) [Name]
) Date signed by the First Nation:_____
)
) I / We have authority to bind the First
) Nation

EXECUTED in the presence of:

) **[LESSEE'S NAME]**
) **If the Lessee is a limited partnership,**
) **they sign as:**
)
) **[LESSEE'S NAME]**, general partner of
) **[NAME OF LIMITED PARTNERSHIP]**

Witness as to the Lessee's
authorized signatory

)
) _____
) [Name]
) [Title]
)
) Date signed by the Lessee: _____
)
) I have authority to bind the Lessee
)

SCHEDULE A

IMPROVEMENTS EXISTING AT COMMENCEMENT DATE

When preparing the lease, ISC must assess the status of the Improvements existing on the Lands at the Commencement Date and make a determination as to what information should appear in this schedule. There are two options. Use one and delete the other.

OPTION 1 – If there are no Improvements on the Lands, then use the following:

None.

End of Option 1.

OPTION 2 – If there are pre-existing Improvements on the Lands, then list them below:

-
-

End of Option 2.

SCHEDULE B

BAND COUNCIL RESOLUTION

WHEREAS:

- A. We have negotiated a “Lease for Strata-Style Development of Designated Lands” to be entered into between His Majesty the King in right of Canada, [First Nation], and [Lessee's Name], to which this resolution is to be attached as a schedule; and
- B. The terms used in this resolution that are defined in the Lease have the same meaning as in the Lease.

BE IT RESOLVED that the Council, on behalf of [First Nation]:

- A. has read and understood the Lease terms;
- B. has been advised by the Lessor to receive independent legal and financial advice about the Lease before executing it and to continue to obtain such advice about the First Nation’s rights and obligations throughout the Term of the Lease;

OPTIONAL – Include the following if the lease stems from a general designation.

- A. to the extent required by the policies or customs of the [First Nation], has consulted with the [First Nation] membership regarding the Lease and has obtained its consent to the Lease;

End of optional language.

- B. consents to the execution of the Lease on its terms; and
- C. authorizes any two members of the Council to execute the Lease on behalf of the First Nation.

CARRIED at a duly convened and conducted meeting on _____, 20____.

Quorum for the Council is _____ members.

Chief

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

Councillor

SCHEDULE C

ASSIGNMENT CONSENT AGREEMENT

This agreement commences on [Month Day, Year] and is made between:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the “**Lessor**”)

and:

[FIRST NATION],
a band within the meaning of the *Indian Act*, as represented by the Council

(the “**First Nation**”)

and:

[LESSEE’S NAME] [OPTIONAL: If the Lessee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Lessee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]

(the “Lessee”)

and:

[ASSIGNEE’S NAME] [OPTIONAL: If the Assignee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Assignee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]

(the “Assignee”)

(collectively the “Parties”).

BACKGROUND

- A. The Lessor leased certain lands in the Reserve to the Lessee, by way of a lease to which the First Nation is a Party and which is dated [Month Day, Year] and registered in the Registry under No. [#] (the “Lease”).
- B. The Lessee wants to assign its right and interest in the Lease to the Assignee by entering into an assignment agreement (the “Assignment”), [OPTIONAL: a copy of] which is attached as Schedule “A” to this agreement.
- C. Under the Lease, the Assignment is not valid without this agreement being entered into for the benefit of the Lessor and the First Nation.

NOW THEREFORE, in consideration of the representations, warranties, obligations, covenants, and agreements in this agreement, the Parties agree as follows:

1. CONSENT, COVENANTS & REPRESENTATIONS

1.1 Consent

- 1.1.1 Each of the Lessor and the First Nation hereby consent to the Assignment.
- 1.1.2 The assignment of the Lessee's interest in the Lease under the Assignment will not relieve or discharge the Lessee from any of its obligations or liabilities under the Lease.

1.2 Covenants and Representations of Assignee

- 1.2.1 The Assignee covenants with each of the Lessor and the First Nation to observe and perform all of the obligations in the Lease to be observed or performed by the Lessee from and after the date of the assignment of the Lease.
- 1.2.2 Except as explicitly set out in this agreement, the Lessor, the Minister, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:
 - 1.2.2.1 the terms of the Lease;
 - 1.2.2.2 the condition of the Premises, including the Premises' compliance with Laws and the presence of Contaminants on the Premises;
 - 1.2.2.3 issues of title, encumbrances affecting title, and matters contained within the Registry;
 - 1.2.2.4 access to and from the Premises; and
 - 1.2.2.5 the suitability of the Premises for the Assignee.
- 1.2.3 The Assignee makes the same representations and warranties to each of the Lessor and the First Nation that the Lessee made in the Lease, with the Commencement Date meaning the effective date of the Assignment.
- 1.2.4 The Assignee represents and warrants to each of the Lessor and the First Nation that the person or persons signing this agreement on the Assignee's behalf have the authority to bind the Assignee to this agreement.
- 1.2.5 The Assignee's delivery information is as follows:

[Assignee's Name]
[Assignee's Address]

Fax: [#]

Email: [Email]

2. GENERAL

- 2.1 **No Merger** – The Lease will survive the execution of this agreement and will not merge in this agreement.
- 2.2 **Definitions** – A term not defined in this agreement but defined in the Lease has the same meaning as in the Lease.
- 2.3 **Headings** – All headings are for convenience and reference only. They are not to be used to define, limit, enlarge, modify, or explain the scope or meaning of a provision.
- 2.4 **Binding on Successors** – This agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors, assigns, and other legal representatives.
- 2.5 **Counterpart Execution** – This agreement may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document. Upon execution by a Party, such Party will promptly provide a copy of its originally executed agreement to the other Parties.

The Parties have executed this agreement as of the date first written above.

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Indigenous Services

[Name]

EXECUTED in the presence of:

)
)
)
)
)

[FIRST NATION], as represented by the Council

Witness as to the First Nation's) [Name]
authorized signatories)
_____) [Name]
)
)
) I / We have authority to bind the First
) Nation
)

EXECUTED in the presence of:) **[LESSEE'S NAME]**
)
) **If the Lessee is a limited partnership,**
) **they sign as:**

) **[LESSEE'S NAME], general partner of**
) **[NAME OF LIMITED PARTNERSHIP]**
_____)

Witness as to the Lessee's) [Name]
authorized signatory)
) I have authority to bind the Lessee
)

EXECUTED in the presence of:) **[ASSIGNEE'S NAME]**
)
) **If the Assignee is a limited partnership,**
) **they sign as:**

) **[ASSIGNEE'S NAME], general partner of**
) **[NAME OF LIMITED PARTNERSHIP]**
_____)

Witness as to the Assignee's)
authorized signatory)
_____) [Name]
)
) I have authority to bind the Assignee
)

SCHEDULE “A” TO AN ASSIGNMENT CONSENT AGREEMENT

(attach [a copy of] the Assignment)

SCHEDULE D

MORTGAGE ACKNOWLEDGMENT AGREEMENT

This agreement commences on [Month Day, Year] and is made between:

HIS MAJESTY THE KING IN RIGHT OF CANADA,
as represented by the Minister of Indigenous Services

(the “**Lessor**”)

and:

[FIRST NATION],
a band within the meaning of the *Indian Act*, as represented by the Council

(the “**First Nation**”)

and:

[LESSEE’S NAME] [OPTIONAL: If the Lessee is a corporation, limited partnership, society, utility or municipality, then type a comma after the Lessee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. Corporate example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345 Limited Partnership example: , incorporated under the *Business Corporations Act*, S.B.C. 2002, c. 57; Incorporation No. X12345, as general partner of [NAME OF LIMITED PARTNERSHIP], registered under the *Partnership Act*, R.S.B.C. 1996, c. 348; Registration No. Y12345 End of option]

(the “**Lessee**”)

and:

[MORTGAGEE’S NAME] [OPTIONAL: If the Mortgagee is a corporation, bank, or financial institution, then type a comma after the Mortgagee’s Name and include the statute under which the entity received its authority and its incorporation number, if applicable. For example: , a bank under the *Bank Act*, S.C. 1991, c. 46 End of option]

(the “**Mortgagee**”)

(collectively the “**Parties**”).

BACKGROUND:

- A. The Lessor leased certain lands in the Reserve to the Lessee, by way of a lease to which the First Nation is a Party and which is dated [Month Day, Year] and registered in the Registry under No. [#] (the “**Lease**”).
- B. **[Set out all assignments and modifications of the Lease and modify definition if necessary.]**
- C. The Lessee wants to mortgage its interest in the Lease to the Mortgagee by way of the mortgage (the “**Mortgage**”), **[OPTIONAL: a copy of]** which is attached as Schedule “A” to this agreement.
- D. Under the Lease, the Mortgage is not valid until the Mortgagee has entered into this agreement.

NOW THEREFORE, in consideration of the representations, warranties, obligations, covenants, and agreements in this agreement, the Parties agree as follows:

1. THE MORTGAGE

1.1 Representations and Warranties

- 1.1.1 The Lessor and the First Nation each represent and warrant to the Mortgagee that the Lease has not been modified or assigned, except as set out in Recital B.
- 1.1.2 The Lessor and the First Nation each represent and warrant that, to the best of such Party’s knowledge but with no investigation on its part, the Lessee is not in default of any obligations owed to such Party under the Lease.
- 1.1.3 Except as explicitly set out in this agreement, the Lessor, the Minister, the First Nation, the Council, and their respective officials, servants, employees, agents, contractors, subcontractors, and other legal representatives have not made any representations or warranties with respect to:
 - 1.1.3.1 the terms of the Lease;
 - 1.1.3.2 the condition of the Premises, including the Premises’ compliance with Laws and the presence of Contaminants on the Premises;
 - 1.1.3.3 issues of title, encumbrances affecting title, and matters contained within the Registry; and
 - 1.1.3.4 access to and from the Premises.
- 1.1.4 The Mortgagee represents and warrants to each of the Lessor and the First Nation that the person or persons signing this agreement on the Mortgagee’s behalf have the authority to bind the Mortgagee to this agreement.

1.2 **Default of Mortgage** – If the Mortgagee gives the Lessee a notice of default under the Mortgage, then the Mortgagee will provide notice of such default to each of the Lessor and the First Nation and any such Party may cure the default on behalf of the Lessee.

1.3 **Rights and Obligations of the Mortgagee**

1.3.1 Except as set out in this agreement, the Mortgage is subject and subordinate to the Lease and to the Lessor's and the First Nation's rights under the Lease.

1.3.2 The Mortgagee will ensure that the Mortgage does not conflict with the Lease or, by the Lessee complying with the Mortgage, cause the Lessee to default on the Lease.

1.3.3 The Mortgagee will have all the rights and obligations of a Mortgagee set out in section 10.2 of the Lease as terms of this agreement between the Parties.

1.3.4 The Lessor will provide the Mortgagee with a copy of a default notice provided by the Lessor to the Lessee under the Lease and the Mortgagee may cure the default within the period specified in the notice on behalf of the Lessee.

OPTIONAL – Include the following section if the Lease can be terminated early.

1.3.5 The Lessor will provide the Mortgagee with a copy of a termination notice provided by the Lessor to the Lessee under the Lease.

End of optional language.

1.3.6 The Mortgagee will promptly file a discharge in the Registry when the Lease is no longer subject to the Mortgage.

2. GENERAL

2.1 Delivery

2.1.1 Delivery under this agreement is to be made in accordance with this section 2.1 to the following addresses:

To the Lessor:

Director, Lands and Economic Development
Indigenous Services Canada
[Regional Office]
[Regional Office's Address]

Fax: [#]

Email: [Email]

To the First Nation:

[First Nation]
[First Nation's Address]

Fax: [#]

Email: [Email]

To the Lessee:

[Lessee's Name]
[Lessee's Address]

Fax: [#]

Email: [Email]

To the Mortgagee:

[Mortgagee's Name]
[Mortgagee's Address]

Fax: [#]

Email: [Email]

- 2.1.2 If a question arises as to the date on which a delivery is made, it will be conclusively deemed to have been made:
- 2.1.2.1 if sent by fax or email, the day of transmission if transmitted before 3:00 p.m. [Time zone] time, otherwise, the next day;
 - 2.1.2.2 if sent by mail, on the sixth day after the notice was mailed; or
 - 2.1.2.3 if sent by means other than fax, email, or mail, the day it is received.
- 2.1.3 If the postal service is interrupted or threatened to be interrupted, then delivery will only be made by means other than mail.
- 2.1.4 A Party may change its contact information by informing the other Parties of the new contact information and the change will take effect on the effective date set out in the notice or 30 days after the notice is delivered, whichever is later.

- 2.2 **Definitions** – A term not defined in this agreement but defined in the Lease has the same meaning as in the Lease.
- 2.3 **Headings** – All headings are for convenience and reference only. They are not to be used to define, limit, enlarge, modify, or explain the scope or meaning of a provision.
- 2.4 **Binding on Successors** – This agreement will enure to the benefit of and be binding upon the Parties and their respective heirs, executors, administrators, successors, assigns, and other legal representatives.
- 2.5 **Counterpart Execution** – This agreement may be executed in one or more counterparts, each of which is considered to be an original but all of which together constitute one and the same document. Upon execution by a Party, such Party will promptly provide a copy of its originally executed agreement to the other Parties.

The Parties have executed this agreement as of the date first written above.

HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Minister of Indigenous Services

[Name]

EXECUTED in the presence of:)
)
)
)
)
)

[FIRST NATION], as represented by the Council

Witness as to the First Nation's authorized signatories

[Name]

[Name]

) I / We have authority to bind the First Nation

EXECUTED in the presence of:

) **[LESSEE'S NAME]**
) **If the Lessee is a limited partnership, they sign as:**
)

**[LESSEE'S NAME], general partner of
[NAME OF LIMITED PARTNERSHIP]**

Witness as to the Lessee's
authorized signatory

) _____
) [Name]
) I have authority to bind the Lessee

EXECUTED in the presence of:

) **[MORTGAGEE'S NAME]**
) _____
)

Witness as to the Mortgagee's
authorized signatory

) _____
) [Name]
) I have authority to bind the Mortgagee
)

SCHEDULE “A” TO A MORTGAGE ACKNOWLEDGEMENT AGREEMENT

(attach a copy of the Mortgage)

SCHEDULE E

THE STRATA PLAN AND THE HOA

1. **Interpretation** – The capitalized terms used in this Schedule not defined in this Schedule are definitions from the Lease, which continue to apply here, and the following definitions also apply to this Schedule:
 - 1.1 **“bare land strata plan”** means a strata plan on which the boundaries of the strata lots are defined on a horizontal plane by reference to survey markers and not by reference to the floors, walls, or ceilings of a building;¹⁴
 - 1.2 **“common property”** means:
 - 1.2.1 that part of the Premises not included within any strata lot; and
 - 1.2.2 pipes, wires, cables, chutes, ducts, and other facilities for the passage or provision of water, sewage, drainage, gas, oil, electricity, telephone, radio, television, garbage, heating and cooling systems, or other similar services, if they are located:
 - 1.2.2.1 within a floor, wall, or ceiling that forms a boundary:
 - 1.2.2.1.1 between two strata lots;
 - 1.2.2.1.2 between a strata lot and common property; or
 - 1.2.2.1.3 between a strata lot or common property and another parcel of land;
or
 - 1.2.2.2 wholly or partially within a strata lot, if they are capable of being and intended to be used in connection with the enjoyment of another strata lot or any common property;
 - 1.3 **“fixtures”** means items attached to a building, including floor and wall coverings and electrical and plumbing fixtures, but does not include, if they can be removed

¹⁴ A bare land strata is a development that usually provides common services to a strata lot’s property line (such as access roads and utilities) and owners contract to build their own homes on the lot (often with the developer of the common property providing these construction services).

without damage to the building, refrigerators, stoves, dishwashers, microwaves, washers, dryers, or other items;

1.4 **“owner”** means:

1.4.1 if a Sublease of a strata lot has been granted, the Sublessee of that strata lot; and

1.4.2 if a Sublease of a strata lot has not been granted, the Lessee;

1.5 **“strata lot”** means a two-dimensional or volumetric parcel of land identified as a strata lot in a strata plan; and

1.6 **“strata plan”** means the strata plan required by article 2 of this Schedule, and includes a bare land strata plan.

2. The Strata Plan

2.1 Before granting any Subleases, the Lessee must establish a strata plan, a copy of which must be provided to, or made available to, every proposed grantee of a Sublease.

2.2 A strata plan must:

2.2.1 show the boundaries of the land included in the strata plan and, except in the case of a strata lot in a bare land strata plan, show the location of the buildings;

2.2.2 contain a legal description of the Premises;

2.2.3 show the boundaries of the strata lots in accordance with section 3.1 of this Schedule, and distinguish the strata lots by numbers or letters in consecutive order;

2.2.4 show the area in square metres of each strata lot, including the areas and spaces referred to in section 2.3 of this Schedule, if they are part of a strata lot;

2.2.5 be endorsed by a Canada land surveyor that buildings shown on the strata plan are within the external boundaries of the land that is the subject of the strata plan;

2.2.6 be approved by the Surveyor General for Canada; and

2.2.7 be registered in the Registry.

2.3 Parking stalls, garage areas, storage areas, and similar areas or spaces intended to be used in conjunction with a strata lot must not be designated as separate

strata lots but must be included as part of a strata lot or as part of the common property.

3. General Property Matters

- 3.1 Unless otherwise shown on a strata plan, if a strata lot is separated from another strata lot, the common property, or another parcel of land by a wall, floor, or ceiling, the boundary of the strata lot is midway between the surface of the structural portion of the wall, floor, or ceiling that faces the strata lot and the surface of the structural portion of the wall, floor, or ceiling that faces the other strata lot, the common property, or the other parcel of land. If a strata lot is not separated from another strata lot, the common property or another parcel of land by a wall, floor, or ceiling, then the boundary of the strata lot is as shown on such strata plan.
- 3.2 There exists an easement in favour of each strata lot in the strata plan and the owner of each strata lot:
 - 3.2.1 for the strata lot's vertical and sideways support by the common property and by every other strata lot capable of providing support;
 - 3.2.2 for the passage or provision of water, sewage, drainage, gas, oil, electricity, garbage, heating and cooling systems, and other services, including telephone, radio, and television, through or by means of any pipes, wires, cables, chutes, ducts, or other facilities existing in the common property or another strata lot to the extent those systems or services are capable of being, and intended to be, used in connection with the enjoyment of the strata lot; and
 - 3.2.3 for shelter of the strata lot by every part of a building that is shown on the strata plan as part of the common property or another strata lot and that is capable of providing shelter.
- 3.3 There exists an easement in favour of the common property and the owners of the common property:
 - 3.3.1 for the common property's vertical and sideways support by every strata lot capable of providing support;
 - 3.3.2 for the passage or provision of the services and facilities described in subsection 3.2.2 of this Schedule existing in a strata lot to the extent those systems or services are capable of being, and intended to be, used in connection with the enjoyment of the common property; and
 - 3.3.3 for shelter of the common property by every part of a building that is shown on the strata plan as part of a strata lot and that is capable of providing shelter.

- 3.4 The easements referred to in sections 3.2 and 3.3 of this Schedule:
 - 3.4.1 exist without registration;
 - 3.4.2 charge and burden that part of the common property capable of providing support or shelter to a strata lot;
 - 3.4.3 charge and burden each strata lot capable of providing support or shelter to another strata lot or to the common property;
 - 3.4.4 charge and burden each strata lot and that part of the common property in which any part of the services and facilities described in subsections 3.2.2 and 3.3.2 of this Schedule are located; and
 - 3.4.5 include all of the rights and obligations needed to give effect to and enforce them, including a right of entry to inspect, maintain, repair, and replace the shelter, support, services, and facilities described in sections 3.2 and 3.3 of this Schedule.
- 3.5 The easements referred to in sections 3.2 and 3.3 of this Schedule may be enforced by the HOA on its own behalf or on behalf of one or more owners to the same extent as if the HOA were the owner of a strata lot or the common property that benefits from the easement.
- 3.6 The easements referred to in subsections 3.2.3 and 3.3.3 of this Schedule do not apply to strata lots in a bare land strata plan.

4. Insurance

- 4.1 The HOA must obtain and maintain “all risks” property insurance on common property and, unless it is a bare land strata plan, buildings shown on the strata plan. The property insurance must:
 - 4.1.1 be written in an amount at least equal to full replacement value;
 - 4.1.2 include reasonable coverage for flood and for earthquake (for properties located in earthquake zones classified as high to extreme by the Institute for Catastrophic Loss Reduction or its successor);
 - 4.1.3 include by-laws coverage and sewer backup coverage;
 - 4.1.4 include any features reasonably required by the First Nation; and
 - 4.1.5 not include any non-standard, special, or unusual exclusions or restrictive endorsements without first getting the written consent of the First Nation.

- 4.2 The HOA must obtain and maintain general liability insurance against claims for bodily injury (including death), personal injury, and property damage. The policy must:
 - 4.2.1 be written on a general liability basis with liability limits of at least \$5,000,000 per occurrence (or any higher amount that the Lessor or the First Nation reasonably requires, by providing notice to the Lessee);
 - 4.2.2 include each of the Lessor and the First Nation as additional insureds;
 - 4.2.3 include any features reasonably required by the Lessor or First Nation; and
 - 4.2.4 not include any non-standard, special, or unusual exclusions or restrictive endorsements without first getting the written consent of the Lessor and the First Nation.
- 4.3 The HOA may obtain and maintain insurance in respect of a peril or liability of the HOA that is not referred to in sections 4.1 and 4.2 of this Schedule.
- 4.4 The HOA has an insurable interest in any property insured under sections 4.1 and 4.3 of this Schedule.
- 4.5 An owner may obtain and maintain insurance for any or all of the following:
 - 4.5.1 loss or damage to the owner's strata lot:
 - 4.5.1.1 against perils that are not insured by the HOA; and
 - 4.5.1.2 for amounts that are in excess of amounts insured by the HOA;
 - 4.5.2 fixtures in the owner's strata lot and any improvements to such fixtures;
 - 4.5.3 loss of rental value of the owner's strata lot in excess of insurance obtained and maintained by the HOA; and
 - 4.5.4 liability for property damage and bodily injury, whether occurring on the owner's strata lot or on the common property.
- 4.6 If the strata plan is a bare land strata plan, then an owner of a strata lot must obtain and maintain the same insurance required of the HOA in sections 4.1 and 4.2 of this Schedule, but only with respect to buildings and fixtures built or installed on the strata lot.

OPTIONAL: Add the following if there is to be a right of cancellation throughout the Term coupled with non-disturbance rights for Sublessees:

SCHEDULE F

FORM OF SUBLEASE

(attach approved form of Sublease)

END OF OPTION